

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SBA TOWERS, INC. AND)	
WEST VIRGINIA CELLULAR TELEPHONE)	
CORPORATION D/B/A AT&T WIRELESS)	
SERVICE FOR ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2000-371
TO CONSTRUCT A WIRELESS)	
TELECOMMUNICATIONS FACILITY IN THE)	
HUNTINGTON-ASHLAND METROPOLITAN)	
STATISTICAL AREA [RACELAND FACILITY])	

O R D E R

On September 8, 2000, SBA Towers, Inc. and West Virginia Cellular Telephone Corporation d/b/a AT&T Wireless Service (collectively "Applicants") filed an application requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 127-A Ridge Road, Raceland, Greenup County, Kentucky.

The proposed tower site is not within a jurisdiction that has adopted planning and zoning regulations in accordance with KRS Chapter 100. The County Judge/Executive of Greenup County was properly notified of the pending application and construction.

Paul D. Adams notified the Commission in writing of his desire to fully intervene in this case. The Commission finds that such intervention is likely to present issues and develop facts that will assist the Commission without unduly complicating or disrupting the proceedings. Accordingly, the request for full intervention should be granted.

In addition, the Commission, on its own motion, has scheduled a hearing in this matter for March 22, 2001 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

If Mr. Adams wishes to appear at the hearing in opposition to the application and the proposed facility, he must, within 10 days of the date of this Order, so notify the Commission in writing, with a copy to all parties of record. If no statement of intent to appear at hearing and present evidence against the proposed facility is received by that date, the hearing will be cancelled and the matter will be submitted to the Commission for a decision based upon the written record without further Orders herein.

Mr. Adams is hereby notified that the hearing will be conducted pursuant to the evidentiary standards of KRS 278.650(4), and any evidence regarding potential alternative sites for the proposed construction and any requests for information must be filed with the Commission, with a copy to all parties of record, no later than 20 days from the date of this Order. No intervenor may produce evidence at the hearing regarding alternative sites except in regard to specific sites filed of record as described in this Order. Applicants' responses to any filed information requests regarding potential alternative sites shall be filed within 30 days from the date of this Order, including in such responses a report concerning the feasibility of the alternative sites.

Issues to be addressed at hearing by testimony and evidence are those relating to KRS 278.650(4), alternative sites, if any, engineering, design, construction, and safety of the facility, and the public necessity for the construction and operation of the facility. In this proceeding and hearing, the Federal Communications Commission ("FCC") has exclusive jurisdiction over radio emissions, including radio frequency

interference. The Commission will not consider the “environmental effects of radio frequency emissions” that comply with FCC standards. 47 U.S.C. § 332(c)(7).

IT IS THEREFORE ORDERED that:

1. The request of Paul D. Adams to fully intervene is granted.
2. Mr. Adams shall be entitled to the full rights of a party and shall be served with the Commission’s Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties after the date of this Order.
3. Should Mr. Adams, or any subsequent intervenor, file any documents of any kind with the Commission during the course of these proceedings, a copy of said documents shall also be served on all parties of record.
4. A hearing on the proposed wireless telecommunications facility is scheduled for March 22, 2001 at 9:00 a.m., Eastern Standard Time, in the Commission’s offices at 211 Sower Boulevard, Frankfort, Kentucky.
5. If Mr. Adams intends to appear at the hearing and present evidence against the construction of the tower, he shall file a statement of intent to appear in opposition to the proposed telecommunications facility within 10 days of the date of this Order. If no statement is filed within 10 days of the date of this Order, the hearing shall be cancelled and the matter shall be submitted to the Commission on the existing record without further Orders herein.
6. Within 20 days from the date of this Order, Mr. Adams may file evidence regarding potential alternative sites for the proposed construction, with a copy to all parties of record.

7. Mr. Adams, or any person subsequently granted intervention herein, may not submit evidence at the hearing regarding alternative sites for the proposed facility, except in regard to those specific alternative sites filed herein within 20 days of the date of this Order.

8. Applicants shall respond in writing to information requests and potential alternative sites, if any, within 45 days of the date of this Order, and shall include in their responses information concerning the availability and feasibility of suggested alternative sites.

9. During this proceeding and public hearing, it is understood and ordered that the FCC has exclusive jurisdiction over issues regarding radio frequency, including radio frequency interference, pursuant to 47 U.S.C. § 332(c) and Southwest Bell Wireless, Inc. v. Johnson County Board of Education, 199 F.3d 1185 (10th Cir. 1999).

10. Issues to be addressed at hearing by testimony and evidence are those relating to KRS 278.650(4), alternative sites, if any, engineering, design, construction, and safety of the facility, and the public necessity for the construction and operation of the facility.

11. Applicants shall appear at hearing and shall be prepared to present testimony and evidence regarding the matters set out herein, including safety and public necessity issues.

12. Neither opening statements nor witnesses' summaries of prefiled testimony shall be permitted at the hearing.

13. Any interested person shall have the opportunity to present testimony or comment on the proposed facility.

14. Prefiled testimony, if any, shall be filed within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 11th day of January, 2001.

By the Commission

ATTEST:


Executive Director