

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SBA TOWERS, INC. AND)	
WEST VIRGINIA CELLULAR TELEPHONE)	
CORPORATION D/B/A AT&T WIRELESS SERVICE)	
AND FOR ISSUANCE OF A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A WIRELESS)	CASE NO.
TELECOMMUNICATIONS FACILITY IN THE)	2000-371
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 Services ("Applicants") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 128 feet in height, with attached antenna, to be located at 127-A Ridge Road, Raceland, Greenup County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 32' 19.97" by West Longitude 82° 42' 54".

The Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a Licensed Professional Engineer has certified the plans.

Pursuant to 807 KAR 5:063, the Applicants have notified the County Judge/Executive of the proposed construction since there is no jurisdictional planning and zoning commission. To date, no comments or requests for intervention have been filed by the County Judge/Executive or the public, with the exception of Paul D. Adams as set out below. The Applicants have filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the proposed facility. The FAA has given approval, but the KAZC decision is pending.

The Applicants have filed evidence of the appropriate notices provided pursuant to 807 KAR 5:063. The notices solicited any comments and informed the recipients of their right to request intervention. On October 10, 2000, Paul D. Adams notified the Commission in writing of his desire to fully intervene in this case. The request for full intervention was granted by Commission Order on January 11, 2001, and a hearing was held on March 22, 2001.

The contested issues covered in the hearing were the following: (a) collocation sites; (b) alternative sites; (c) engineering, design, construction, and safety of the facility; (d) public convenience and necessity; and (e) character of the general area concerned. Sandra F. Keene and Mark W. Dobbins, counsel for the Applicants, called three direct witnesses and one rebuttal witness to address the contested issues. Mr. Adams appeared and testified *pro se* and called no witnesses. Applicants' first witness, David Farquhar, was called as an expert on collocation sites and alternative sites. Mr. Farquhar testified that there is no other tower or facility in the area for successful collocation and that there are no alternative sites available in the designated search ring. Applicants' next witness, Michael

Sherry, was called as an expert on engineering. Mr. Sherry testified that there are no impediments to safety based upon the engineering, design, and construction of the proposed tower. Applicants' witness, John Myers, called as an emissions and engineering expert, stated that the emissions and radio frequency interference that may arise from the constructed tower are within Federal Communications Commission's guidelines, and thus the Commission cannot hear arguments pertaining thereto. In addition, Mr. Myers testified consumer complaints had been lodged regarding poor wireless service in the area to be served by the proposed facility. Applicants' rebuttal witness was Mike Brown, a lawyer and certified real estate appraiser. Mr. Brown testified that Mr. Adams would suffer no diminution in the value of his property given nearby land uses including a railroad yard and mixture of open fields, woods, hills, and spotty residential density.

The testimony further revealed that the Applicants would completely repair any damage they might do to Mr. Adams's paved driveway leading to his proposed home site, and Applicants would work with Mr. Adams to provide appropriate buffering between the proposed site and Mr. Adams's proposed new home. Simply put, Mr. Adams did not want the tower within 75 to 80 feet from his proposed new home.

Cases of this nature frequently involve a clash between two competing issues: preservation of Kentucky's scenic beauty; and the need to ensure that the advantages of modern telecommunications technology are available to all of Kentucky's citizens. The issue of scenic beauty frequently arises because the location of a cellular tower is often in or near residential areas. The law, in requiring cellular companies to choose a location that is least objectionable, attempts to reconcile these competing interests; but, in the last analysis, when no such reconciliation is possible, the need for service must triumph over

aesthetics. KRS 278.020; KRS 278.650. Therefore, although the intervenor in this case has demonstrated that the site proposed herein leaves much to be desired from an aesthetic point of view, the record indicates that no suitable alternative site exists. The Commission, therefore, finds that the public convenience and necessity require the proposed construction. In addition, the Commission commends Mr. Adams for the manner in which he represented himself and for the manner in which he presented the issues and facts supporting his position.

The Commission finds that the Applicants adequately addressed each contested issue, and provided the Commission with enough evidence upon which to base a final decision in this matter. In addition, the Commission finds that the Applicants should work with Mr. Adams to provide buffering between the facility site and Mr. Adams's property.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, the Applicants should notify the Commission if it does not use this antenna tower to provide service in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by the Applicants.

The Commission, having considered all of the evidence of record and being otherwise sufficiently advised, finds that the Applicants have demonstrated that a facility is necessary to provide adequate utility service and therefore should be granted a Certificate of Public Convenience and Necessity to construct the proposed facility.

IT IS THEREFORE ORDERED that:

1. The Applicants are granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 128 feet in height, with attached antenna, and is to be located at 127-A Ridge Road, Raceland, Greenup County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 32' 19.97" by West Longitude 82° 42' 54".

2. The Applicants shall file a copy of the final decision regarding its pending KAZC application for the proposed construction within 10 days of receiving that decision.

3. The Applicants shall immediately notify the Commission in writing if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

4. The Applicants, pursuant to their stipulations made during the hearing, shall work with Mr. Adams to provide appropriate, acceptable buffering between the facility site and Mr. Adams's property. Further, Applicants shall completely repair any damage that might occur to Mr. Adams's paved driveway leading to his proposed home site as a result of the construction of the cell tower.

Done at Frankfort, Kentucky, this 7th day of May, 2001.

By the Commission

ATTEST:

Deputy W^m H. Fowler
Executive Director