

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CROWN COMMUNICATION)	
INC. AND CELLCO PARTNERSHIP D/B/A VERIZON)	
WIRELESS FOR ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A WIRELESS COMMUNICATIONS)	CASE NO.
FACILITY AT 2201 OLD HIGBEE MILL ROAD,)	2001-063-UAC
LEXINGTON, KENTUCKY 40514 IN THE)	
WIRELESS COMMUNICATIONS LICENSE AREA)	
IN THE COMMONWEALTH OF KENTUCKY)	
IN THE COUNTY OF FAYETTE)	
SITE NAME: ELKHORN)	

O R D E R

On April 4, 2001, Crown Communication Inc. and Cellco Partnership, d/b/a Verizon Wireless (collectively "Applicants") filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 2201 Old Higbee Mill Road, Lexington, Fayette County, Kentucky 40514. By Orders of the Commission dated June 1, 2001 and July 9, 2001, the following were granted full intervention: Lexington-Fayette Urban County Government ("LFUCG"), Ernest Cook, Mark Dail, Laura Dail, James K. Piper, Sr., Clifford L. Parker, Ruth F. Parker, and Adam Schmitz.

On May 10, 2001, the Planning and Zoning Commission ("PZ Unit") of the LFUCG approved the application subject to two conditions, one of which located the tower at a different location on the same property as proposed by the application. Applicants are not prepared to relocate the tower as required by the PZ Unit. The

Applicants have pursued their original application and tower location and therefore are requesting the Commission to override the decision of the PZ Unit. Pursuant to KRS 100.987(5), the Commission may override the PZ Unit's rejection only if public convenience and necessity require the proposed construction and if no suitable alternative site for the proposed construction exists.

The Commission has scheduled a hearing on the proposed wireless telecommunications facility for November 6, 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 an Intervenor wishes to appear at the hearing in opposition to the proposed facility and produce evidence, he or she must, within 10 days of the date of this Order, so notify the Commission in writing, with a copy to all parties. If no statement of intent to appear at the hearing and present evidence against the proposed facility is received by that date, the hearing will be cancelled and submitted to the Commission for a decision based on the written record without further Orders herein.

Intervenors are put on notice that evidence regarding potential alternative sites for the proposed construction, if any, and any requests for information must be filed with the Commission, with a copy to all parties of record, no later than 15 days from the date of this Order. No Intervenor may produce evidence regarding alternative sites at the hearing except in regard to the specific sites filed of record as described in this Order.

Responses to information requests and site information regarding potential alternative sites, if filed by the Intervenor(s), shall be responded to by the Applicants within 30 days from the date of this Order, and Applicants shall include in such

responses a report of their view of the feasibility of the alternative sites presented by the Intervenor(s).

Unusually, there have been several pleadings and documents filed in this case prior to the issuance of the Order herein. The Applicants filed a normal and usual motion for expedited hearing and prehearing Order. LFUCG filed a response to the Applicants' motion, as did Intervenor Mark Dail and Laura Dail. The Applicants filed a reply to Intervenor's response and the Intervenor Mark Dail and Laura Dail filed a reply to the Applicants' reply. These pleadings by the Intervenor relate to issues that are jurisdictional to the Federal Communications Commission ("FCC") regarding radio frequency interference or emissions and issues that are jurisdictional solely to the local planning unit. The local planning unit determines the character of the general area concerned and the likely effects of the installation on nearby land uses and values. See KRS Chapter 100. The Commission finds that the sole issues to be addressed by the Commission at public hearing herein shall be engineering, design, and construction of the proposed facility (jurisdictional safety issues relating to the facility), the public necessity for construction and operation of the tower, and any proposed acceptable alternative sites for the location of the tower. The pleadings and documents that have been filed prior to the issuance of this Order shall be made and deemed a part of the record in any further evidentiary record made herein.

IT IS THEREFORE ORDERED that:

1. A hearing on the proposed wireless telecommunications facility is scheduled for November 6, 2001, at 9:00 a.m., Eastern Standard Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

2. If any Intervenor intends to appear at the hearing and present evidence against the construction of the tower, he or she 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 this matter shall be submitted to the Commission on the existing record without further Orders herein.

3. Within 15 days from the date of this Order, any Intervenor may file evidence regarding potential alternative sites for the proposed construction, with a copy to all parties of record.

4. Any person(s) subsequently granted intervention herein may not submit evidence at the hearing regarding potential alternative sites for the proposed facility, except in regard to those specific alternatives sites filed herein within 15 days of the date of this Order.

5. Applicants shall respond in writing to information requests and filings concerning potential alternative sites, if any, within 30 days of the date of this Order, and shall include in their responses information concerning the availability and feasibility of suggested alternative sites.

6. In this proceeding and hearing, the 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) and Southwestern Bell Wireless, Inc. v. Johnson County Board of County Commissioners, 199 F.3rd 1185 (10th Cir. 1999).

7. The Commission will not take into consideration matters exclusively within the jurisdiction of the local planning and zoning commission relating to the character of the general area in which the tower is to be constructed and the likely effects of the installation on nearby land uses and values.

8. Issues to be addressed at hearing by testimony and evidence are those relating to KRS 278.650(2), potential alternative sites, if any, engineering, design, and construction as related to the safety of the facility, and the public necessity for the construction and operation of the facility.

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

10. The pleadings and documents filed herein prior to the issuance of this Order shall be included and made a part of any evidentiary record herein.

11. Neither opening statements nor witnesses' summaries of prefiled testimony shall be permitted at hearing. Any interested person shall have the opportunity to present testimony or comment on the proposed facility.

12. Prefiled testimony, if any, shall be filed within 40 days of the date of this Order.

13. Commission Staff and Intervenors shall request in writing any informal conference or pretrial conference to address matters related to the evidentiary hearing.

14. Pursuant to KRS 100.324, a copy of this Order is being sent to the LFUCG's PZ Unit for the purpose of notification that the above-scheduled hearing may affect locations or relocations of the service facilities within the PZ Unit's jurisdiction.

Done at Frankfort, Kentucky, this 17th day of September, 2001.

By the Commission

ATTEST:


Executive Director