

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AMERICAN TOWERS, INC.,	)	
TRITEL COMMUNICATIONS, INC. AND TRITEL	)	
FINANCE, INC. FOR ISSUANCE OF A CERTIFICATE	)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY TO	)	2001-133-UAC
CONSTRUCT A PERSONAL COMMUNICATIONS	)	
SERVICES FACILITY IN THE LOUISVILLE	)	
MAJOR TRADING AREA [GREENWOOD MALL]	)	

O R D E R

American Towers, Inc., Tritel Communications, Inc. and Tritel Finance, Inc. (“Applicants”) filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility in the Louisville Major Trading Area [Greenwood Mall].

Steven Koontz of 310 Springhill Avenue, Bowling Green, Kentucky 42101 has requested intervention in this matter. The Commission finds that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Accordingly, Mr. Koontz’s motion to intervene should be granted.

The Commission, upon motion of Applicants, has scheduled a hearing in this matter for November 15, 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 any intervenor wishes to appear at the hearing in opposition to the application and the proposed facility, he or she must, within 20 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 the 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.

The intervenor is hereby notified that the hearing will be conducted pursuant to the evidentiary standards of KRS 278.650(4). All proposed alternative sites that the intervenors wish to be considered must be specifically identified and submitted to the Commission in writing, within 20 days of the date of this Order, if they are to be considered by the Commission. The location of proposed alternative sites must be submitted in writing to the Commission within 20 days of the date of this Order even if they were previously identified by the intervenors or others. Issues to be presented at this 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).

Accordingly, IT IS THEREFORE ORDERED that:

1. A hearing on the proposed wireless telecommunications facility is scheduled for November 15, 2001, at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission’s offices, at 211 Sower Boulevard, Frankfort, Kentucky.

2. The request to intervene of Steven Koontz is granted.
3. Mr. Koontz shall be entitled to the full rights of parties and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
4. Should any intervenor file documents of any kind with the Commission in the course of these proceedings, said intervenor shall also serve a copy of said documents on all other parties of record.
5. 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 20 days of the date of this Order. Such statement shall include the locations of any alternative sites the intervenor wishes the Commission to consider. If no statement is filed within 20 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. If any intervenor presents the location of any alternative site for the Commission to consider, then within 45 days of the date of this Order, the Applicants shall file a statement regarding their efforts to investigate each alternative and to determine whether a tower at each alternative location would satisfy system requirements.
7. 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

BellWireless, Inc. v. Johnson County Board of Education, 1999 F. 3d 1185 (10<sup>th</sup> Cir. 1999).

8. Issues to be addressed at the 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.

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

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

11. 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 45 days of the date of the Order.

13. A copy of this Order shall be served on the City-County Planning Commission of Warren County.

Done at Frankfort, Kentucky, this 17<sup>th</sup> day of September, 2001.

By the Commission

ATTEST:

  
Executive Director