

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 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)	
FACILITY AT 2701 AND 2729 HELM STREET,)	
LOUISVILLE, KENTUCKY 40213 IN THE WIRELESS)	
COMMUNICATIONS LICENSE AREA IN THE)	CASE NO.
COMMONWEALTH OF KENTUCKY IN THE)	2001-145
COUNTY OF JEFFERSON)	
)	
SITE NAME: FAIRGROUNDS)	
SITE NUMBER: KY 0363)	
REJECTED BY LOUISVILLE & JEFFERSON)	
COUNTY PLANNING COMMISSION-DOCKET #: 4-)	
13-00)	

O R D E R

On May 31, 2001, Crown Communication Inc. ("Crown") and Cellco Partnership d/b/a Verizon Wireless ("Verizon") (collectively, "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 monopole antenna tower not to exceed 175 feet in height, with attached antenna, to be located at 2701 and 2729 Helm Street, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 12' 15.64" by West Longitude 85° 45' 13.03".

Pursuant to KRS 100.987, the Applicants submitted the proposed construction for review by the Louisville and Jefferson County Planning Commission ("Planning Commission") on November 30, 2000. The Planning Commission rejected the proposed

construction, and the Applicants have requested that this Commission override the Planning Commission's determination. The Planning Commission did not request intervention in this matter.

The Applicants 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. The Commission received a letter of concern to the placement of the proposed tower from Mr. Allen F. Steinbock. The Commission notified Mr. Steinbock of his right to intervene in the case, but no request for intervention was received.

KRS 278.650 provides for the Commission's override of the Planning Commission's rejection of a wireless telecommunications tower application if there is no acceptable alternative site and the public convenience and necessity require the construction. "Public convenience and necessity" pertain to the service needs of utility customers. Satterwhite v. Public Service Comm'n, Ky., 474 S.W.2d 387, 388-89 (1971) (persons over whose land transmission lines would cross were not entitled to notice of, or participation in, hearing on certificate for the lines, and the Commission was not concerned with the specific path for the lines "because it was not relevant to the issue of convenience and necessity"); Public Service Comm'n v. City of Paris, Ky., 299 S.W.2d 811, 816 (1957) (demand and need for service "is to be gauged from the point of view of the consumers"). The record in this case is replete with evidence that, the "public convenience and necessity" require the proposed construction. In contrast, the evidence of record does not reveal the existence of an acceptable alternative site for construction or collocation.

The law on the jurisdictional issue in this matter is succinct and vests with the Commission the ultimate authority to override a determination of the Planning Commission.

It is with reluctance that the Commission overrides the determination of the Planning Commission in this proceeding, for its determination is based upon legitimate concerns within the scope of its jurisdiction. However, KRS 278.650 makes it clear that the need for service takes precedence over aesthetics. Even if it did not, we are bound by federal law, which demands “rapid deployment of telecommunications technology” AT&T Communications of the South Central States v. BellSouth Telecommunications, Inc., 20 F.Supp.2d 1097 (E.D. Ky. 1998), See also 47 U.S.C. § 332(c)(7)(B) (no state or local government may deny a wireless telecommunications utility permission to construct if such denial will have the effect of prohibiting the provision of service).

Pursuant to KRS 278.030(2), Verizon Wireless is required to “furnish adequate, efficient and reasonable service.” It is, in turn, the obligation of this Commission to ensure that the facilities of all utilities it regulates are sufficient to comply with this mandate. See KRS 278.040 (requiring the Commission to enforce the provisions of KRS Chapter 278); KRS 278.280 (requiring the Commission to ensure, among other things, that the facilities of utilities are sufficient and adequate). Here, the Applicants have shown that denial of the instant application would jeopardize the availability of adequate utility service. Accordingly, in the absence of evidence to the contrary, the Commission finds that the application should be approved. However, the Applicants should make every effort to mitigate the effects of the construction on the surrounding area.

Crown has 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.

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. Both decisions are pending.

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, Crown 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 Applicant.

The Commission, having considered 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. Crown is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a monopole antenna tower not to exceed 175 feet in height, with attached antenna and is to be located at 2701 and 2729 Helm Street, Louisville, Jefferson County, Kentucky. The

coordinates for the proposed facility are North Latitude 38° 12' 15.64" by West Longitude 85° 45' 13.03".

2. Crown shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the proposed construction within 10 days of receiving these decisions.

3. The Applicants shall take reasonable steps to mitigate the aesthetic impact of the proposed construction on surrounding property.

4. Crown 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.

Done at Frankfort, Kentucky, this 25th day of July, 2001.

By the Commission

ATTEST:


Executive Director