

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                           |   |                       |
|---------------------------|---|-----------------------|
| APPLICATION OF ACC OF     | ) |                       |
| KENTUCKY, LLC., AND SBA   | ) |                       |
| NETWORK SERVICES, INC.,   | ) |                       |
| JOINTLY, FOR ISSUANCE OF  | ) |                       |
| A CERTIFICATE OF PUBLIC   | ) |                       |
| CONVENIENCE AND NECESSITY | ) | CASE NO. 2001-151-UAC |
| TO CONSTRUCT A PERSONAL   | ) |                       |
| COMMUNICATIONS SERVICES   | ) |                       |
| FACILITY IN THE RURAL     | ) |                       |
| SERVICE AREA #5           | ) |                       |
| [GLASGOW NORTH FACILITY]  | ) |                       |

O R D E R

On June 6, 2001, ACC of Kentucky, LLC and SBA Network Services, Inc. (collectively "Applicants") jointly filed an application requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 156 Robert Bishop Road, Glasgow, Barren County, Kentucky, also known as the "Glasgow North Facility." The proposed tower site is within the jurisdiction of the Joint City/County Planning Commission of Barren County, Kentucky ("Planning Unit"). On July 16, 2001, the Planning Unit conducted a public hearing on the application to construct the proposed tower. As reflected by the minutes of the meeting of that date, the cell tower application was approved by the Planning Unit.

On August 14, 2001, the Commission issued an Order granting full intervention in these proceedings to Mary Edna Bishop and Robert N. Bishop, Jr. of Glasgow,

Kentucky. They are represented by Honorable Robert M. Alexander, Post Office Box 397, Glasgow, Kentucky 42142.

The Commission has scheduled a hearing on the proposed wireless telecommunications facility for November 20, 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 Robert N. Bishop, Jr. and his mother, Mary Edna Bishop, ("Intervenors") wish to appear at the hearing in opposition to the proposed facility, they 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 the hearing and present evidence against the proposed facility is received by that date, the hearing will be cancelled and this case will be submitted to the Commission for a decision based on the written record without further Orders herein.

In light of the fact that the Planning Unit has approved the uniform application at the local level, it appears that the issues to be addressed by the Commission will concern jurisdictional safety issues (engineering, design, construction, and safety relating to the facility), and the necessity for the construction and operation of the cellular tower facility. Issues that the Commission cannot address at the hearing are land use, zoning, general character of the surrounding area, and land value. These matters are within the jurisdiction of the Planning Unit. In addition, the Commission may not consider the "environmental effects of radio frequency emissions" that comply with Federal Communications Commission standards. 47 U.S.C. § 332(c)(7) and Southwest

Bell, Inc. v. Johnson County Board of Education Commissioners, 199 F.3d 1185 (10<sup>th</sup> Cir. 1999).

IT IS THEREFORE ORDERED that:

1. A hearing on the application for a proposed wireless telecommunications facility is scheduled for November 20, 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. In regard to the uniform application, proceedings, and hearing, it is understood and ordered that the Federal Communications Commission has exclusive jurisdiction over issues regarding radio frequency emissions, including radio frequency interference. 47 U.S.C. § 332(c)(7) and Southwest Bell, Inc. v. Johnson County Board of Education Commissioners, 199 F.3d 1185 (10<sup>th</sup> Cir. 1999). Issues specifically not at issue in these proceedings are land use or zoning, potential effects of a tower on the surrounding area, land value, and matters that are related to radio frequency and radio frequency interference.

3. The applicants shall appear at the hearing and shall be prepared to present testimony on the engineering, design, and construction of the proposed facility, as well as the safety issues relating to the facility and to the public necessity for the facility.

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

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

6. Prefiled testimony, if any, shall be filed within 15 days of the date of this Order.


7. 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.

8. Pursuant to KRS 100.324, a copy of this Order is being sent to the Planning Unit at 126 East Public Square, City Hall, Glasgow, Kentucky 42141.

Done at Frankfort, Kentucky, this 15<sup>th</sup> day of October, 2001.

By the Commission

ATTEST:

  
Deputy Executive Director