

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)	CASE NO.
CONVENIENCE AND NECESSITY TO CONSTRUCT)	2001-153-UAC
A PERSONAL COMMUNICATIONS SERVICES)	
FACILITY IN LOUISVILLE MAJOR TRADING)	
AREA [VINE GROVE FACILITY])	

O R D E R

ACC of Kentucky, LLC and SBA, Inc. (“Applicants”) filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at Otter Creek Road, Vine Grove, Kentucky.

Jerry and Ursula Waibel, Stephanie Thomas, Marilyn Bevars, George and Marjorie Rogers, Mr. and Mrs. John Williamson and Roxie Claywell have requested intervention in this matter. The Commission finds that such interventions are likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

The Commission, upon motion of Applicants, has scheduled a hearing in this matter for October 16, 2001 at 9:00 a.m., Eastern Daylight 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 intervenors are 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 to the Commission within 20 days of the date of this Order even if they were previously identified by the intervenors or others. Issues 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 October 16, 2001, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission’s offices, at 211 Sower Boulevard, Frankfort, Kentucky.

2. The motions to intervene of Jerry and Ursula Waibel, Stephanie Thomas, Marilyn Bevars, George and Marjorie Rogers, Mr. and Mrs. John Williamson and Roxie Claywell are granted.

3. Intervenors 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 Commissioner 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. 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 (10th Cir. 1999).

7. 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.

8. 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.

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

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

11. Prefiled testimony, if any, shall be filed within 45 days of the date of the Order.

12. A copy of this Order shall be served on the Hardin County Judge/Executive.

Done at Frankfort, Kentucky, this 3rd day of August, 2001.

By the Commission

ATTEST:

Deputy W. H. Fowler
Executive Director