

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CROWN COMMUNICATION	)	
INC. AND KENTUCKY CGSA, LLC D/B/A	)	
CINGULAR WIRELESS FOR ISSUANCE OF	)	
A CERTIFICATE OF PUBLIC CONVENIENCE	)	
AND NECESSITY TO CONSTRUCT A	)	
WIRELESS COMMUNICATIONS FACILITY AT	)	CASE NO.
889 DUNCANNON LANE, RICHMOND,	)	2001-241-UAC
KENTUCKY 40403, IN THE WIRELESS	)	
COMMUNICATIONS LICENSE AREA	)	
IN THE COMMONWEALTH OF KENTUCKY	)	
IN THE COUNTY OF MADISON	)	
SITE NAME: HAYS FORK	)	

O R D E R

On August 30, 2001, Crown Communication Inc. and Kentucky CGSA, LLC d/b/a Cingular Wireless (“Joint Applicants”) filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a personal communications services facility at 889 Duncannon Lane, Richmond, Madison County, Kentucky.

On September 4, 2001, a duplicate application was filed with the Madison County Planning and Development Office (“Planning Unit”), which serves as the Planning and Zoning Commission of Madison County, Kentucky.

On October 24, 2001, M. Kenneth Bellamy, 928 Menelaus Road, Berea, Kentucky 40403, filed a motion for full intervention in this proceeding.

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, the motion for full intervention should be granted.

The Commission, on its own motion, has scheduled a hearing in this case on December 19, 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 Mr. Bellamy wishes to appear at the hearing in opposition to the proposed facility, he should so notify the Commission in writing within 10 days of the date of this Order, with a copy to all parties of record.

Pursuant to KRS 100.987(1), the Planning Unit involved herein is properly registered with the Commission and therefore has the authority, pursuant to KRS 100.987(4)(b)(c), to approve or disapprove the application in writing within 60 days from the date the uniform application was received by the Planning Unit. The Planning Unit failed to make a final decision to approve or disapprove the application within 60 days and, as a result, the application is presumed to have been approved by the Planning Unit, pursuant to KRS 100.987(4)(c). If the Planning Unit desires to intervene in this matter, it should do so within 10 days of the date of this Order. In addition, if the Planning Unit desires to appear at the hearing and present evidence against the proposed facility, it should so notify the Commission within 10 days of the date of this Order.

If no statement from Mr. Bellamy or the Planning Unit of intent to appear at the hearing and present evidence against the proposed facility is received within 10 days of the date of this Order, the hearing shall be cancelled without further Order.

In light of the statutory presumption that the Planning Unit has approved the uniform application, it appears that the issues to be addressed by the Commission will concern engineering design and construction of the proposed facility, as well as the jurisdictional safety issues relating to the facility, and the public necessity for the construction and operation of the cellular tower.

IT IS THEREFORE ORDERED that:

1. The motion of M. Kenneth Bellamy to fully intervene is granted.
2. Mr. Bellamy shall be entitled to the full rights of a party and shall be served with Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties after the date of this Order.
3. Should Mr. Bellamy file documents of any kind with the Commission during the course of these proceedings, he shall also serve a copy of said documents on all parties of record.
4. A hearing on the proposed wireless telecommunications facility is scheduled for December 19, 2001 at 9:00 a.m., Eastern Standard Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky. The Planning Unit shall have 10 days from the date of this Order in which to file a motion for intervention in this proceeding. If such a motion to fully intervene is filed within the period allowed, the Planning Unit shall notify the Commission within 10 days of the date of this Order of its intent to appear in opposition to the proposed wireless telecommunications facility. Also, within 10 days of the date of this Order, Mr. Bellamy shall file a statement of intent to appear and present evidence in opposition to the proposed wireless

telecommunications facility. If no notice of intent to appear and present evidence in opposition to the proposed wireless telecommunications facility is filed with the Commission within 10 days of this Order, the hearing shall be cancelled and the matter submitted to the Commission on the existing record without further Order herein.

5. In regard to this uniform application, proceeding, 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) and Southwest Bell Wireless, Inc. v. Johnson County Bd. of Education Commissioners, 199 F.3d 1185 (10<sup>th</sup> Cir. 1999).

6. The Joint 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 jurisdictional safety issues relating to the facility, and to the public necessity for the facility.

7. Pursuant to 807 KAR 5:063, the Commission will not admit evidence concerning land use, land value, or the potential effects of the tower on the surrounding area.

8. Neither opening statements nor witnesses' summaries of prefiled testimony shall be permitted at the hearing in this matter.

9. Any interested persons shall have the opportunity to present testimony or comment on the proposed facility.

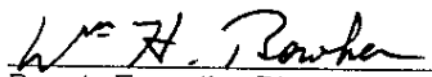
10. Prefiled testimony, if any, shall be filed within 20 days of the date of this Order.

11. Pursuant to KRS 100.324, a copy of this Order is being sent to the Madison County Planning Commission, Madison County Planning and Development Office, 321 North Madison Avenue, Richmond, Kentucky 40475, for the purpose of notification that the above-scheduled hearing may affect locations or relocations of service facilities within the Planning Unit's jurisdiction and to allow them the opportunity to intervene as hereinabove set forth.

Done at Frankfort, Kentucky, this 9<sup>th</sup> day of November, 2001.

By the Commission

ATTEST:

  
Deputy Executive Director