

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BELLSOUTH)
MOBILITY, LLC, D/B/A CINGULAR)
WIRELESS - KENTUCKY FOR)
ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A)
WIRELESS COMMUNICATIONS) CASE NO. 2004-00328
FACILITY AT 99 MOUNTAIN SPRING)
ROAD, VAN LEAR, KENTUCKY 41265)
IN THE WIRELESS COMMUNICATIONS)
LICENSE AREA)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF JOHNSON)
SITE NAME: ODDS)

O R D E R

On August 8, 2004, Bellsouth Mobility, LLC, d/b/a Cingular Wireless - Kentucky ("Cingular"), filed an application for a Certificate of Public Convenience and Necessity to construct a wireless communications facility at 99 Mountain Spring Road, Van Lear, Kentucky, known as the "ODDS" site. The Commission granted full intervention to Beech Fork Processing, Inc. ("Beech Fork"). Beech Fork has issues with the site selected due to claimed interferences with its coal lease and mining operations. Cingular and Beech Fork indicated that the parties were discussing a resolution of their differences as to the site location. Concerned with the time this case has been on our docket, we ordered Cingular individually or jointly to file a status report as to settlement

efforts and state whether a settlement is forthcoming. On September 22, 2005, Cingular filed a motion to withdraw its application.

Cingular states that it and Beech Fork have identified an alternative site and have engaged in significant good faith negotiations to attempt to finalize an Option and Lease Agreement to allow the location of the wireless facility on the alternative site. Cingular further states that, while the need for service still remains, its diligence in seeking the alternative site has been complicated by terrain, additional cost, and feasibility issues. With all these issues, Cingular cannot predict an early resolution to justify the continued presence of the pending application on the Commission's docket and wishes to withdraw the present application and file a new application upon resolution of the site issues.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. The application filed by Cingular for the ODDS site is withdrawn without prejudice and this case is removed from the Commission's docket.
2. Because filing separate applications under the same docket number could lead to confusion among those who receive, and read, regulatory notices of proposed construction, retaining this docket number would be impractical. Cingular must, therefore, obtain a new docket number for notice purposes prior to filing its new application.

Done at Frankfort, Kentucky, this 7th day of October, 2005.

By the Commission

ATTEST:


Executive Director

Case No. 2004-00328