

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLUEGRASS WIRELESS)	
LLC FOR ISSUANCE OF A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2005-00320
TO CONSTRUCT A CELL SITE (LILY II) IN)	
RURAL SERVICE AREA #6 (LAUREL) OF)	
THE COMMONWEALTH OF KENTUCKY)	

O R D E R

On September 2, 2005, Bluegrass Wireless LLC ("Bluegrass") filed an application requesting the issuance of a Certificate of Public Convenience and Necessity ("CPCN") to construct, maintain, and operate a wireless telecommunications facility ("Cell Facility") in Laurel County, Kentucky. Mr. and Mrs. L. Glenn Shadoan, who own real estate adjacent to the proposed Cell Facility, were granted intervention by Commission Order dated October 7, 2005. Subsequently, Bluegrass discovered that Laurel County had an established joint city/county planning commission that had adopted planning and zoning administrative regulations in accordance with KRS Chapter 100. Bluegrass concluded that the Commission did not have jurisdiction to issue a CPCN based on the coterminous county-wide jurisdiction of the planning commission in Laurel County, and the fact that the planning commission had adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, although the planning commission had not adopted specific regulations that relate to the siting of cellular facilities. By

letter dated April 10, 2006, with a copy to Intervenor's counsel, Bluegrass requested that the Commission dismiss this action for lack of jurisdiction.

On May 17, 2006, Intervenor's counsel filed a response in opposition to dismissal which succinctly stated the issue as being "a question of statutory interpretation and construction - does the phrase 'outside the jurisdiction of a planning commission' in KRS 278.650 refer to a geographic area, or to the regulatory ambit of a planning unit."¹ The Intervenor's suggest that the phrase "outside the jurisdiction of a planning commission" refers to "the regulatory jurisdiction rather than physical boundaries of a planning unit. . . ."² Bluegrass replied to Intervenor's response on May 24, 2006, taking the position that the plain and literal language of KRS 278.650 relates to the physical boundaries of a planning commission.

The Commission recognizes that, as a statutorily authorized agency, its jurisdiction is limited to that expressed by statute. See Public Service Comm'n v. Jackson County Rural Electric Cooperative, et al., 50 S.W.3d 764, 767 (Ky. App. 2000) citing Boone Co. Water and Sewer District v. Public Service Comm'n, 949 S.W.2d 588 (Ky. 1997). With regard to review of the proposed location of antenna towers, the Commission's jurisdiction is set forth in KRS 278.650, which states:

If an applicant proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in an area

¹ Intervenor's Response at 8. The Intervenor's do not dispute that the London and Laurel County Planning Commission is a planning commission with geographical jurisdiction over the entirety of Laurel County and that the London and Laurel County Planning Commission has adopted planning and zoning regulations in accordance with Chapter 100 of the Kentucky Revised Statutes. The case therefore presents no factual issues.

² Id.

outside the jurisdiction of a planning commission, the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), 278.665 and this section. . . .

With regard to this case, the critical phrase in the statute is “which is to be located in an area outside the jurisdiction of a planning commission. . . .” The motion for dismissal turns upon whether the phrase refers to a geographical location or a legislative grant of authority. In construing this language, the Commission is guided by the fundamental principle that the words in statutes are to be accorded their plain and common meaning. See KRS 446.080(4) (“All words and phrases shall be construed according to the common and approved usage of language. . . .”); Lamb v. Holmes, 162 S.W.3d 902, 909 (Ky. 2005) (“The ‘plain meaning’ of statutes controls when interpreting statutory language.”). Only where there is ambiguity on the face of a statute may the Commission look to extrinsic references to aid in the construction of the statute. See Lewis v. Jackson Energy Co-op. Corp., 189 S.W.3d 87, 94 (Ky. 2005) (“Where a statute is unambiguous, there is no need to use extrinsic evidence of legislative intent and public policy which the statute is intended to effect. A reviewing court cannot amend it by means of a so-called interpretation contrary to the plain meaning.”)

Here, there is no ambiguity. The plain and common meaning of the subject phrase is a description of the geographical scope of the applicable planning commission’s jurisdiction – not its subject-matter jurisdiction. The Intervenor’s response overlooks the General Assembly’s inclusion of the words “in an area” before “outside the jurisdiction of a planning commission.” Arguably, the exclusion of “in an area” from the statute would create an ambiguity in the statute. Since the General Assembly expressly included these words in describing the distinction between the jurisdiction of

the Commission and that of a planning commission, however, these words must be given full effect. See DeStock No. 14, Inc. v. Logsdon, 993 S.W.2d 952, 957 (Ky. 1999) (“Any apparent conflict between sections of the same statute should be harmonized if possible so as to give effect to both; and, in so doing, the statute should be construed so that no part of it is meaningless or ineffectual.”). Because KRS 278.650 presents no ambiguity and clearly limits the Commission’s jurisdiction to areas outside the jurisdiction of a planning commission, the motion for dismissal must be granted.

Even if KRS 278.650 were determined to be ambiguous, however, the use of extrinsic references to aid in the construction of the statute would lead to the same result. Chapter 100 of the Kentucky Revised Statutes defines the scope and extent of a local planning commission’s jurisdiction. KRS 100.987(1) provides, “A planning unit as defined in KRS 100.111 and legislative body or fiscal court that has adopted planning and zoning regulations may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in this Chapter.” (Emphasis added). The planning commission in Laurel County apparently has not yet availed itself of the grant of authority set forth in KRS 100.987(1), but the mere creation of a county-wide planning commission effectuates the General Assembly’s intent to promote the local regulation of cell phone tower placement. Moreover, KRS 100.131 clearly provides that, “the jurisdiction [of such planning commissions] . . . shall be *coterminous with their political boundaries*.” (Emphasis added). As has been often stated, statutes relating to the same subject matter should be construed harmoniously wherever possible so as to give effect to each. See Sumpter v. Burchett, 202 S.W.2d 735, 736 (Ky. 1947) (“It is well settled that two or more acts dealing with the same

subject matter must be construed *in pari materia*, and any apparent conflict between them must be reconciled, if possible, so as to give effect to both.”). On the basis of the foregoing, the Commission concludes that a full reading of KRS 100.985 to KRS 100.987 supports the construction of KRS 278.650 set forth above. Accordingly, the Commission is without jurisdiction to consider the application.

The Commission, having reviewed the record herein and being otherwise sufficiently advised, finds that Bluegrass’s request to dismiss this case for lack of jurisdiction should be granted.

IT IS THEREFORE ORDERED that:

1. The request of Bluegrass to dismiss this case for lack of jurisdiction is granted.

2. This case is dismissed and is removed from the Commission’s docket.

Done at Frankfort, Kentucky, this 27th day of June, 2006.

By the Commission

ATTEST:


Executive Director