

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUMBERLAND CELLULAR	)	
PARTNERSHIP FOR ISSUANCE OF A CERTIFICATE	)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY TO	)	2006-00146
CONSTRUCT A CELL SITE (SYCAMORE FLATS) IN	)	
RURAL SERVICE AREA #5 (RUSSELL) OF THE	)	
COMMONWEALTH OF KENTUCKY	)	

O R D E R

On July 11, 2006, Cumberland Cellular Partnership ("Cumberland") tendered for filing an application to construct a cellular facility in Russell County, Kentucky.

On July 12, 2006, Janice Grider notified the Commission that she lives "across the fence from the site and had not been given notice." Ms. Grider stated that she wants to intervene in this matter because of her concerns related to radiation and damage to her property. On July 24, 2006, Cumberland filed a response to Ms. Grider's letter addressing the lack of notice, the decrease in value of property, and the issue of health due to placement of the tower. Cumberland stated that it had notified Ms. Grider of the proposed construction of the cellular facility on July 15, 2006 in compliance with 807 KAR 5:063, Section 1(1)(l)(m). Cumberland's filing did not address Ms. Grider's request for intervention.

On July 19, 2006, Ms. Grider again requested intervention in this case and requested a hearing. In a supplemental filing on July 26, 2006, Cumberland amended its original application by including, as Exhibits E and F, a copy of the letter delivered to

Ms. Grider by certified mail, with a return receipt. This supplemental filing did not address Ms. Grider's request for intervention in the case or her request for a hearing.

Cumberland indicated in its supplemental filing that it is not a Kentucky limited liability company, but rather a Kentucky limited liability partnership, and that the application should be amended to show its proper status.

Having reviewed the requests for intervention and having received no objection thereto, the Commission finds that, since Ms. Grider owns property within 500 feet of the proposed tower, her intervention is likely to present issues and develop facts that will assist the Commission in fully considering this matter without unduly complicating or disrupting the proceedings and that full intervention should be granted.

If Ms. Grider wishes to appear at a hearing in opposition to the proposed facility, she must, within 10 days of the date of this Order, so notify the Commission in writing, with a copy to all parties of record. The statement of intent to appear at hearing must describe the evidence to be presented and list the witnesses to be called along with a summary of testimony to be presented by each witness. If the statement of intent is not received within 10 days of the date of this Order, the hearing will be cancelled and the matter will be submitted to the Commission for a decision based upon the written record without further Order herein.

The issues to be addressed at any hearing on this matter are as follows:

1. The public necessity for the construction and operation of the cellular facility.
2. The design, engineering, and construction of the proposed cellular facility (jurisdictional safety issues).

3. Character of the general area concerned and the likely effects of the installation of the new cellular facility on nearby land uses and values.

4. Any acceptable alternative or collocation sites, other than the site proposed by Cumberland in the application.

For the first three issues, Cumberland bears the burden of proof. Ms. Grider bears the burden of proof for the fourth issue. If Ms. Grider files a statement of intent to appear at hearing, she will have a period of 30 days from the date of that filing to submit to the Commission and Cumberland a list, with supporting information and evidence, of specific potential and suitable alternative locations or sites where the proposed cellular facility might be collocated or constructed, other than the proposed site named in the application. Ms. Grider may not introduce evidence regarding any other alternative location or site at hearing except in regard to the specific locations or sites in the list provided.

Responses by Cumberland to Ms. Grider's potential suitable alternative locations or sites should be filed with the Commission and Ms. Grider within 30 days of the date of Ms. Grider's filing. Cumberland shall include in its response a report of its opinion of each location or site supported by information and evidence concerning the availability and technical feasibility of each location or site.

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)).

IT IS THEREFORE ORDERED that:

1. Cumberland's application is amended to indicate that Cumberland is a Kentucky limited liability partnership.

2. Ms. Grider is granted full intervention herein and shall be entitled to the full rights of a party 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.

3. Should Ms. Grider, Cumberland, or any subsequent intervenors file any documents of any kind with the Commission during the course of these proceedings, they shall also serve a copy of said documents on all parties of record.

4. A hearing on the proposed cellular facility is scheduled for November 14, 2006, at 9:00 a.m., Eastern Standard Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

5. If Ms. Grider intends to appear at the hearing and present evidence against the proposed construction of the cellular facility as described in the application, she shall file a statement of intent to appear within 10 days of the date of this Order. If no statement of intent is filed within 10 days of the date of this Order, the hearing shall be cancelled and the case shall be submitted to the Commission on the existing record without further Order herein.

6. Ms. Grider shall have 30 days from the date of the filing of the statement of intent to file with the Commission a list of specific potential and suitable alternative locations or sites, with supporting information, evidence, and rationale, where the

proposed cellular facility might be collocated or constructed, other than the proposed site named in the application.

7. Cumberland shall have 30 days to respond to Ms. Grider's proposed alternative locations or sites. The response shall provide information and evidence of the availability and technical feasibility related to each proposed location or site, detailing whether it is an acceptable and suitable alternative location or site.

8. Ms. Grider shall not be permitted to produce evidence regarding acceptable alternative sites at hearing except as to those which she provided in a list filed pursuant to ordering paragraph 6 herein.

9. Each party shall have 20 days from the date of this Order to make written information requests to the other, and each party shall have 10 days to file responses to such information requests.

10. On or before the 15<sup>th</sup> day prior to the date of the hearing herein, the parties shall file with the Commission a list of witnesses they propose to testify at hearing together with a brief summary of an offer of proof for each witness.

11. Cumberland shall appear at hearing and shall be prepared, at a minimum, to address the following issues:

a. Public necessity for the construction and operation of the cellular facility.

b. Jurisdictional safety issues of design, engineering, and construction, including site suitability and preparation of the cellular facility.

c. Character of the general area concerned and the likely effects of the cellular facility on nearby land uses and values.

d. Proposed alternative locations or sites that have been filed in the record by Ms. Grider pursuant to this Order.

12. The FCC has exclusive jurisdiction over issues regarding radio frequency interference and radio emissions.<sup>1</sup> The Commission will not receive evidence regarding radio frequency in the proceeding herein because the Commission is without authority to consider such evidence.

13. Opening statements shall not be permitted at hearing in this matter.

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

Done at Frankfort, Kentucky, this 9<sup>th</sup> day of August, 2006.

By the Commission

ATTEST:

  
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Executive Director

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<sup>1</sup> 47 U.S.C. § 332(c)(7) and Southwest Bell Wireless, Inc. v. Johnson County Bd. of Education, 199 F.3d 1185 (10<sup>th</sup> Cir. 1999).