

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") filed an application to construct a cellular facility in Russell County, Kentucky.

On July 12, 2006 and July 19, 2006, Janice Grider requested intervention in this case and requested a hearing. She was granted full intervention by Order dated August 9, 2006. A public hearing is scheduled for November 14, 2006.

In Ms. Grider's initial correspondence with the Commission, she stated that she lives "across the fence from the site and had not been given notice." 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), and, 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.

The Order of August 9, 2006 included a procedural schedule and also ordered Ms. Grider to notify the Commission in writing within 10 days of the date of the Order of her intent to appear at hearing, to describe the evidence to be presented, and to list the witnesses to be called along with a summary of testimony to be presented by each witness. Ms. Grider timely filed her notice on August 16, 2006. Although she had an additional 30 days from August 16, 2006 to file a list of alternative locations or sites, she included a list of alternative sites in her August 16, 2006 filing. Ms. Grider also included in her filing a number of questions which we will consider as a data request pursuant to ordering paragraph 9 of the August 9, 2006 Order. Applicant should respond to those questions and, in particular, to the questions relating to the partnership entity.

We note that Ms Grider, in her filing and list of witnesses, has indicated that she intends to raise health issues regarding radio frequency waves. We remind the parties again that this is an issue the Commission cannot consider. The Federal Communications Commission (“FCC”) has exclusive jurisdiction over radio transmissions, including radio frequency interference. The Commission is not authorized to consider the “environmental effects of radio frequency emissions” (including health issues) that comply with FCC standards.¹

However, Ms. Grider has raised a different question about the notice given for the location of the proposed tower site. Ms. Grider points out in her filing that the notice given to her states that the tower is proposed for construction at 728 Damron Creek Spur, Russell Springs, Kentucky, but that the site is actually adjacent to her property on

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

Damron Creek Road. In all notices including the newspaper notice, with the exception of the notice to the Russell County Judge/Executive (Exhibit F and Exhibit G), the location is stated as 728 Damron Creek Spur. Applicant's site map (Exhibit E) shows the proposed tower site to be on Damon Creek Road not Damon Creek Spur. We do not consider this to be sufficient notice of the proposed construction as required by KRS 278.665(2). Applicant will be required to amend its application and to give proper notice pursuant to the requirements of KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(q), as to the location of the proposed tower.

IT IS THEREFORE ORDERED that:

1. Within 10 days of the date of this Order, Applicant shall provide proof to the Commission that it has complied with the filing requirements contained in KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(q).

2. Applicant shall file with its response to Ms. Grider's questions all documents required to be filed by limited partnerships with the Kentucky Secretary of State pursuant to KRS 362.415 and KRS 362.55.

Done at Frankfort, Kentucky, this 23rd day of August, 2006.

By the Commission

ATTEST:


Executive Director