

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUMBERLAND CELLULAR)	
PARTNERSHIP FOR ISSUANCE OF A)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE)	2006-00052
AND NECESSITY TO CONSTRUCT A CELL)	
SITE (ALLIGATOR) IN RURAL SERVICE AREA)	
#5 (RUSSELL) OF THE COMMONWEALTH OF)	
KENTUCKY)	

O R D E R

On March 3, 2006, Cumberland Cellular Partnership d/b/a Bluegrass Cellular, Inc. ("Applicant") 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") located at 57 Missionary Drive, Russellville, Kentucky, or lots numbered 12-W, 13-W, 14-W, and 15-W of the Kirk Corlett Subdivision, commonly referred to as "Indian Hills," at Alligator Cove on Cumberland Lake in Russell County, Kentucky. By Commission Orders dated March 31, 2006 and September 29, 2006, David A. Gnadinger and Gabrielle M. Gnadinger (husband and wife) and Carlie Bowmer were granted full intervention.

Although there were several attempts to settle this matter without public hearing by the Applicant, the Intervenor, and other parties residing or owning property in the vicinity of the proposed Cell Facility, settlement discussions have been unsuccessful. Given that the matter could not be resolved between the parties, this matter should be set for hearing. The Intervenor herein shall have the right to appear at hearing with full

participation in the conduct of the hearing, as would the Applicant and its representative or any other of the parties.

If any Intervenor wishes to appear at the hearing in opposition to the application and proposed Cell Facility, he or she must, within 10 days of the date of this Order, so notify the Commission in writing. A copy of such notice shall be mailed or delivered to all parties of record. If no statement of intent to appear at the hearing and to present evidence against the construction of the proposed Cell Facility is received by that date, the hearing will be canceled and the matter will be submitted to the Commission for a decision based on the written record without further Orders herein.

All Intervenors are notified that, if they choose to do so, they have a period of 15 days from the date of this Order to submit to the Commission and the Applicant a list, with supporting technical information and evidence, of specific potential and suitable alternative locations where the proposed Cell Facility might be collocated or constructed, other than the proposed site named in the application. This is commonly referred to as "suitable and acceptable alternative sites." No Intervenor may introduce evidence regarding any other alternative location at or during the hearing except in regard to the specific locations of record as described in this Order.

Responses by the Applicant to the Intervenors' potentially suitable and acceptable alternative locations should be filed with the Commission and Intervenors within 30 days of the date of this Order. Applicant should include in its response a report of its view of each location, supported by information of a technical nature and evidence concerning the availability and technical feasibility of such location.

The issues to be addressed at the hearing include: (1) the public convenience and necessity for the construction and operation of the Cell Facility; (2) the design, engineering, and construction of the proposed Cell Facility (jurisdictional safety issues); (3) character of the general area concerned and the likely effects of the installation of the new proposed Cell Facility on nearby land uses and values; (4) any suitable and acceptable alternative or collocation site, other than the proposed site in the CPCN application as ordered herein; and (5) any other issues that may arise in the course of the hearing.¹

Intervenors are hereby advised that they may not introduce evidence at hearing regarding any suitable alternative location to collocate or construct an alternative cell tower, unless they present such suitable alternative locations that are supported by direct testimony of experts in the field of telecommunications and radio frequencies and additionally supported by written reports showing the technical feasibility of why a proposed alternative site is a better location than the proposed site in the application. This testimony, with written supporting information, may be received into evidence at the direction of the hearing officer pursuant to the prior Orders herein and subject to cross-examination.

The Commission being otherwise sufficiently advised, IT IS HEREBY ORDERED that:

¹ 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. See 47 U.S.C. § 332(c)(7). See also Southwest Bell Wireless, Inc. v. Johnson County Board of Education, 199 F.3d 1185 (10th Cir. 1999). Accordingly, this issue will not be considered at hearing.

1. All Intervenors shall be entitled to the full rights of a party at any hearing in this matter. Should any Intervenor file any documents of any kind with the Commission during the course of these proceedings, said Intervenor shall also serve a copy of said documents on all parties of record.

2. A hearing on the proposed Cell Facility is scheduled for June 12, 2007, beginning at 9:00 a.m., Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

3. Any Intervenor who intends to appear at the hearing and present evidence against the construction of the proposed Cell Facility shall file, within 10 days of the date of this Order, a statement of intent to appear in opposition. If no statements are filed within 10 days of the date of this Order, the hearing shall be canceled and the matter shall be submitted to the Commission on the existing record without further Order herein.

4. Intervenors shall file with the Commission, within 15 days of the date of this Order, if they so desire, a list of specific suitable and acceptable alternative locations, other than the proposed site, for construction or collocation, with supporting technical radio frequency information, evidence, and technical rationale, where the proposed Cell Facility might be located or constructed. No Intervenor shall produce evidence regarding any suitable and acceptable alternative site or sites at hearing except as to those locations of record properly identified herein.

5. Applicant shall have a period of 30 days from the date of this Order to respond to the Intervenors' proposed alternative locations. The response shall provide information and evidence of the availability and technical feasibility related to each

proposed location detailing whether it is an acceptable and suitable alternative location, as described herein above in this Order.

6. On or before May 28, 2007, the parties shall file with the Commission a list of witnesses they propose to produce at hearing, together with a brief summary as an offer of proof for each witness.

7. The Applicant 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 Cell Facility.

b. Jurisdiction of safety issues of design, engineering, and construction, including the suitability and preparation of the Cell Facility.

c. Character of the general area of concern and the likely effects of the Cell Facility on nearby land uses and values.²

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

8. The FCC has exclusive jurisdiction over issues regarding radio frequency, interference, and radio frequency emissions. The Commission will not receive any evidence regarding this matter in the proceedings herein because it is without authority to consider such evidence.

² KRS 278.650 states, "In reviewing the application, the Commission **may** take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values."

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

10. Any interested person shall have the opportunity to present comments on the proposed Cell Facility.

Done at Frankfort, Kentucky, this 3rd day of May, 2007.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director