

CASE

NUMBER:

99 - 194

INDEX FOR CASE: 1999-194UAC
SPRINT SPECTRUM, L.P. AGENT FOR WIRELESSCO., L.P.
Construct
CELL SITE - 189 SWIGERT ROAD - LEXINGTON

IN THE MATTER OF THE APPLICATION OF WIRELESSCO., L.P., BY
AND THROUGH ITS AGENT AND GENERAL PARTNER SPRINT SPECTRUM,
L.P., AND SBA TOWERS KENTUCKY, INC., JOINTLY, FOR ISSUANCE
OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO
CONSTRUCT A PERSONAL COMMUNICATIONS SERVICES FACILITY IN THE
LEXINGTON MAJOR TRADING AREA
(SWIGERT ROAD FACILITY)

SEQ NBR	ENTRY DATE	REMARKS
M0001	05/26/1999	CAROLE WHALEN CITIZEN-REQUEST FOR INTERVENTION
M0003	05/27/1999	MR & MRS JOHN MILLER CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0004	05/27/1999	SUSAN DURANT CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0002	05/28/1999	MARY MINERS CITIZEN-LETTER OF CONCERN TO SITE
M0005	06/01/1999	JOSEPH MURPHY CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0006	06/01/1999	STEVE KRAMAN, DEBORAH AMINOFF-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0007	06/01/1999	DAN BROCK CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER & REQUEST TO BE PLACED
M0008	06/01/1999	CAROLE WHALEN CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0009	06/01/1999	ROBERT GOOD & PAULINE GOOD-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0010	06/01/1999	PHILIP SALYERS CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0011	06/01/1999	JENNIFER WRIGHT CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0012	06/01/1999	ELISA SALYERS CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0013	06/01/1999	CARL & NETTIE GENTRY CITIZENS-LETTER OF CONCERN TO PLACEMENT OF TOWER, & REQUEST TO INTERVEN
M0014	06/02/1999	KAREN NIELSON CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0015	06/02/1999	JOSEPH MURPHY CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0016	06/07/1999	FLORA GUTER CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
M0017	06/09/1999	HUGH THOMAS CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
0001	06/22/1999	Application.
0002	06/28/1999	Acknowledgement letter.
M0018	06/28/1999	ANDREW SLONE CITIZEN-REQUEST FOR COPIES & INTERVENTION
0005	06/30/1999	Response to Susan Durant's letter dated 5/27/99.
0006	06/30/1999	Response to Mr. & Mrs. John Miller's letter dated 5/27/99.
0007	06/30/1999	Response to Mary Miners' letter dated 5/28/99.
0008	06/30/1999	Response to Elisa Salyers' letter dated 6/01/99.
0009	06/30/1999	Response to Jennifer Wright's letter dated 6/01/99.
0010	06/30/1999	Response to Philip Salyers' letter dated 6/01/99.
0011	06/30/1999	Response to Steve Kraman's letter dated 6/01/99.
0012	06/30/1999	Response to Joseph Murphy's letters dated 6/02/99.
0013	06/30/1999	Response to Flora Guter's letter dated 6/07/99.
0014	06/30/1999	Response to Hugh Thomas' letter dated 6/09/99.
M0019	06/30/1999	SANDRA KEENE SPRINT SPECTRUM-NOTICE OF FILING
0003	07/01/1999	Filing deficiencies letter, response due 7/16/99.
M0020	07/06/1999	TED BATES CITIZEN-LETTER OF CONCERN TO LOCATION OF TOWER
M0022	07/06/1999	SANDRA KEENE WIRELESSCO-CONFIDENTIAL,NOTICES SENT TO PROPERTY OWNERS
M0021	07/07/1999	WIRELESSCO SANDRA KEENE-RESPONSE TO PSC NOTICE OF FILING DEF
0004	07/09/1999	Order granting the Petitioners full intervention.
0015	07/13/1999	Response sent to Ted Bates citizen letter of concern.
M0023	07/22/1999	DAN ATKINSON CITIZEN-LETTER OF CONCERN TO PLACEMENT OF TOWER
0016	07/28/1999	Response sent to Dan Atkinson/Joyland Neighborhood Assos. letter of concern.
M0024	07/30/1999	SANDRA KEENE WIRELESSCO-AGREEMENT BETWEEN APPLICANTS & LEX FAY URBAN CO GOV PLANNING COMM
M0025	08/27/1999	LUCAS,PLANNING COMM LEX,FAY, URBAN-NOTICE OF DISAPPROVAL OF LOCATION OF CELL FACILITY
M0026	09/02/1999	ROSILYN LUCAS LEX FAY URBAN CO GOV-FINDINGS PERTAINING TO LOCATION OF CELL FACILITY
0017	09/03/1999	Deficiencies cured letter
0018	09/07/1999	Order scheduling 10/13 hearing



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-194 UAC
SPRINT SPECTRUM, L.P. AGENT FOR WIRELESSCO., L.P.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on December 21, 1999.

See attached parties of record.

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

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IN THE MATTER OF THE APPLICATION OF WIRELESSCO., L.P., BY
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CONSTRUCT A PERSONAL COMMUNICATIONS SERVICES FACILITY IN THE
LEXINGTON MAJOR TRADING AREA
(SWIGERT ROAD FACILITY)

SEQ NBR	ENTRY DATE	REMARKS
M0027	09/14/1999	SANDRA KEENE WIRELESSCO-APPLICANTS DATA REQ PROPOUNDED TO HON. DAN BROCK
M0028	09/14/1999	SANDRA KEENE WIRELESSCO-APPLICANTS DATA REQ PROPOUNDED TO CAROLE WHALEN
M0029	09/14/1999	SANDRA KEENE WIRELESSCO-APPLICANTS DATA REQ PROPOUNDED TO CARL & NETTIE GENTRY
M0030	09/14/1999	SANDRA KEENE WIRELESSCO-APPLICANTS DATA REQ PROPOUNDED TO LEX FAY URBAN CO GOV PLANNING COM
M0031	09/14/1999	SANDRA KEENE WIRELESSCO-APPLICANTS DATA REQ PROPOUNDED TO ANDREW SLONE
M0032	09/21/1999	SANDRA KEENE WIRELESSCO-APPLICANTS MOTIN TO LIMIT ISSUES TO BE ADDRESSED BY THE PSC AT HEAR
M0033	09/27/1999	LARRY HORNSBY/LEX. FAYETTE URBAN GOV-MOTION TO INTERVENE
0019	10/01/1999	Order granting motion of the Lex-Fayette Urban County Pl. Com. to intervene.
M0034	10/01/1999	TRACY JONES LEXINGTON FAY URBAN CO G-REQ PROPOUNDED TO THE APPLICANTS, RESPONSE TO APPLICANT
M0037	10/06/1999	CAROLE WHALEN-NOTIFICATION OF LETTER SENT TO SANDRA KEENE
M0035	10/07/1999	SANDRA KEENE WIRELESSCO-MOTION TO REQUIRE INTERVENOR TO RESPOND TO DATA REQ NO LATER THAN M
0020	10/11/1999	Order denying Applicants' Motion to Limit Issues to be addressed at the Hearing.
M0038	10/11/1999	TRACY JONES LEX FAY URBAN CO GOV-RESPONSE & OBJECTION TO APP MOTION TO LIMIT ISSUES TO BE A
M0039	10/11/1999	LARRY HORNSBY LEX FAY URBAN CO GOV-RESPONSE TO APPLICANTS DATA REQUEST
M0040	10/11/1999	MARK DOBBINS APPLICANT-RESPONSE TO LEX FAY URBAN CO GOV REQUEST FOR INFORMATION
M0036	10/12/1999	DAN BROCK CAROL WHALEN-RESPONSE TO UNIFORM APPLICATION TO DATA REQ
M0041	10/13/1999	WIRELESSCO SANDRA KEENE-SUPP RESPONSE TO LEX FAY URBAN CO GOV REQUEST FOR INFORMATION
M0042	11/01/1999	VIVIAN LEWIS/COURT REPORTER-TRANSCRIPT FOR HEARING HELD 10/13/99
M0043	12/06/1999	SANDRA KEENE WIRELESSCO-MOTION FOR DECISION
0021	12/21/1999	Final Order granting a Certificate to construct the Swigert Road site.

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO. 64112

Edward W. Gardner
Tracy W. Jones
Larry R. Hornsby
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Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, KY. 40505

Carole A. Whalen
157 Swigert Avenue
Lexington, KY. 40505

Honorable Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, KY. 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, KY. 40511

Mr. Robert L. Good
260 Swigert Avenue
Lexington, KY. 40505

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO, L.P. BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY FOR ISSUANCE OF A) CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND) 99-194-UAC
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LOUISVILLE MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

O R D E R

On July 6, 1999, WirelessCo., L.P., by and through its agent and general partner, Sprint Spectrum, L.P. and SBA Towers Kentucky, Inc., ("the applicants") filed a joint application seeking a Certificate of Public Convenience and Necessity to build a wireless radio telecommunications facility for the Louisville Major Trading Area ("MTA"). The proposed site is to be located at 189 Swigert Road, Lexington, Fayette County, Kentucky (the "Swigert Road site"). The coordinates for the Swigert Road site are North Latitude 38° 5' 31.24" by West Longitude 84° 26' 22.59".

The applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Swigert Road site. Based upon the application, the design of the tower and foundation conforms to applicable nationally

recognized building standards, and a Registered Professional Engineer has certified the plans.

Notices were filed verifying that each person who owns property within 500 feet of the Swigert Road site has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to intervene. Several property owners requested and were granted intervention. Pursuant to KRS 100.987(2), the uniform application was submitted to the Fayette County Planning and Zoning Commission ("FCPZC") for the proposed construction and the FCPZC rejected the site, stating that it did not fall within the guidelines of the comprehensive planning document. Subsequently, a hearing was scheduled for October 13, 1999.

At the hearing, the applicants demonstrated that public convenience and necessity required construction of a tower for wireless service and that no specific suitable alternative sites within the search ring had been recommended by the intervenors or the FCPZC. In addition, the record contains a letter from Doug Whitley, Site Acquisition Project Manager of Powertel, Inc. ("Powertel") indicating that Powertel also will locate its antennas on the facility proposed by the Applicants in this case. The Commission may override a planning commission rejection pursuant to KRS 100.987(5) if the public convenience and necessity require the construction and if no suitable alternative exists. The record does not contain evidence of any such suitable alternative; whereas, it appears that two utilities will use the proposed facility to provide necessary service to their customers.

The applicants filed and received approval from the Federal Aviation Administration and the Kentucky Airport Zoning Commission for the construction and operation of the Swigert Road site.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, the applicants should notify the Commission if they do not use this antenna tower to provide wireless radio telecommunications services in the manner set out in their application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by the applicants.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the applicants should be granted a Certificate of Public Convenience and Necessity to construct and operate the Swigert Road site in the Louisville MTA.


IT IS THEREFORE ORDERED that:

1. SBA is granted a Certificate of Public Convenience and Necessity to construct the Swigert Road site.
2. SBA shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 21st day of December, 1999.

By the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO., L.P., BY)
THROUGH ITS AGENT AND GENERAL)
PARTNER SPRINT SPECTRUM, L.P., AND)
SBA TOWERS KENTUCKY, INC., JOINTLY,)
FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY IN)
THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

CASE NO. 99-194 UAC

RECEIVED
OCT 13 1999
PUBLIC SERVICE
COMMISSION

**APPLICANTS' SUPPLEMENTAL RESPONSE TO LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT'S REQUEST FOR INFORMATION**

Come the Applicants, WirelessCo, LP and SBA, Inc., by counsel, and provide the following supplement to its Responses of October 8, 1999 to the Intervenor, Lexington-Fayette Urban County Government Planning Commission's Request for Information.

1. Please describe any/all contacts between the Applicants or their representatives and the Planning Commission, and with residents falling within the search ring.

RESPONSE: Applicants' representatives either made contact with (or attempted to make contact with) residents within the search ring regarding their willingness to lease space for construction of the proposed facility. Specifically, Applicants' representatives contacted Mr. Elmer Whitaker and/or his representatives on several occasions regarding the possibility of co-locating Sprint's antenna equipment on his existing radio tower. Applicants' representatives contacted Northside Baptist Church on at least two (2) occasions regarding availability of the Church property for construction of the proposed facility. Applicants' representatives spoke with owners of various

**residences in the neighborhood but
received no interest.**

2. Please advise by address and/or business name, if applicable, all locations failing within
the Applicants' search ring.

**RESPONSE: Locations falling within the Applicants' search
ring are as follows:**

**Frank Sweeney
189 Swigert Road
Lexington, Kentucky 40505**

**Scott & S. Ahlschwede
197 Swigert Avenue
Lexington, Kentucky 40505**

**Elmer Whitaker
P.O. Box 14037
Lexington, Kentucky 40512**

**Edith Fisher and Sharlene B. Lynch
235 Swigert Avenue
Lexington, Kentucky 40505**

**Ralph and Donna Balltrip
237 Swigert Avenue
Lexington, Kentucky 40505**

**Joseph and Jaquelin Murphy
247 Swigert Avenue
Lexington, Kentucky 40505**

**Northside Baptist Church
257 Swigert Avenue
Lexington, Kentucky 40505**

**Wayne & Virginia Hiler
271 Swigert Avenue
Lexington, Kentucky 40505**

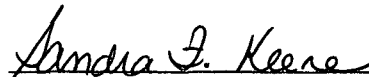
**John Paul Miller
277 Swigert Avenue
Lexington, Kentucky 40505**

**Dan W. Scott
2470 Russell Cave Road
Lexington, Kentucky 40505**

**Pillar Property Services
2650 Russell Cave Road
Lexington, Kentucky 40505**

**Goldbow Ltd.
2700 Russell Cave Road
Lexington, Kentucky 40505**

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

1400 One Riverfront Plaza

Louisville, Kentucky 40202

(502) 584-6137

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served upon the Lexington-Fayette Urban County Government via facsimile and U.S. Mail, postage pre-paid and by U.S. Mail, postage pre-paid, upon the following individuals this 12 day of October, 1999.

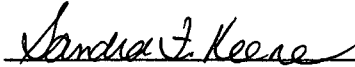
Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505



Sandra F. Keene

0:\OFFICE\MWD\SPRINTS\BA\SWIG2\SUPPREP.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
OCT 12 1999
PUBLIC SERVICE
COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
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COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

RESPONSE BY DAN D. BROCK AND CAROL WHALEN
TO UNIFORM APPLICATION:
APPLICANT'S CONFIDENTIAL AND PROPRIETARY
DATA REQUESTS

INTERROGATORY NO. 1: Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.

RESPONSE: None

INTERROGATORY NO. 2: For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each option.

RESPONSE: N/A

INTERROGATORY NO. 3: Please provide any and all documentation and/or facts which support your assertion that the proposed site is not an appropriate site for placement of the wireless telecommunications facility proposed herein.

RESPONSE:

1. Prior ruling of LFUCG Planning Commission.
2. Another tower presently visible and in immediate area.
3. LFUCG Ordinance limiting development on Swigert Avenue in Fayette County, Kentucky.
4. Danger to helicopter flights originating on adjacent farm and no light on tower..
5. Close proximity to residence
6. Danger to livestock in the event of collapse.

INTERROGATORY NO. 4: Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

RESPONSE:

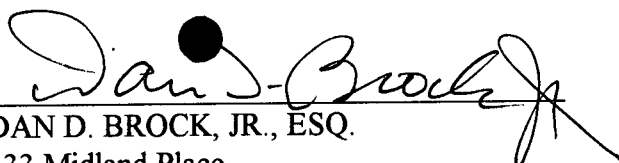
1. Near I-75 in Northend in Fayette County, Kentucky.
2. Possibility of two smaller, less obtrusive towers within radius.
3. Number of churches in area are willing to have smaller tower located on property and incorporated into church architecture. See Exhibit "A".

INTERROGATORY NO. 5: For each "alternative site" described in your response to Request #5 herein, please provide all documentation and/or facts demonstrating the point in time you made Applicants aware of such "alternative site."

RESPONSE: See Exhibit "A".

INTERROGATORY NO. 6: Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

RESPONSE: See Answer to Interrogatory No. 3 above.


DAN D. BROCK, JR., ESQ.
333 Midland Place
Lexington, Kentucky

CAROL WHALEN
By DAN D. BROCK, JR.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served, via U.S. Mail, postage pre-paid, and / or FAX upon the following individuals this 11th day of October, 1999:

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

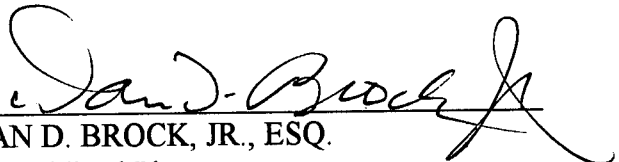
Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Sandra F. Keene, Esq.
Tilford, Dobbins, Alexander, Buckway & Black
1400 One Riverfront Plaza
Louisville, Kentucky 40202
FAX (502) 584-6137

LFUCG, Department of Law
200 East Main Street
Lexington, KY 40507


DAN D. BROCK, JR., ESQ.
333 Midland Place
Lexington, Kentucky

157 Swigert Avenue
Lexington, KY 40505
September 27, 1999

Rick Monk, Pastor
Russell Cave Baptist church
3179 Russell Cave Road
Lexington, KY

*293-0250
very interested -
my women church discussions on Wed. evening*

Dear Pastor Monk:

I am writing to ask if you would be interested in having Sprint build a steeple on your church which would house one of their communication towers. Attached is a copy of a photograph taken of a church in Massachusetts where this was done. Sprint got their communications facility and the church got a lovely steeple plus a monthly income from Sprint for housing their communications equipment.

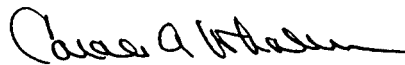
My interest in this matter is to establish an alternative to constructing a 190-foot monopole tower in our neighborhood. Sprint is pursuing the construction of a monopole on Swigert Avenue. Having personal knowledge of the church steeple constructed in Massachusetts, I contacted the Northside Baptist Church to see if they would be receptive to placing a steeple on their church to house the tower. Pastor Jones enthusiastically embraced the idea, but Sprint advised that the tower had to be 190 feet tall, the cost would be prohibitive, and the end result would not be at all attractive. The computer illustration they presented was a Washington Monument-type structure next to the church. Nothing at all like the picturesque steeple on the Massachusetts church.

Sprint explained at the hearing in August that the height required for the tower is determined by the distance between that tower and the towers to which it is transmitting waves. That being the case, I am trying to establish that there are churches in this community that would welcome the addition of a steeple. The more churches that would do so, the lower the height requirement of each structure.

If you are receptive to the idea of a 100-foot church steeple being constructed on your church (similar in appearance to the attached photograph) which would house Sprint communications equipment, please place your signature and date on the bottom of the attached copy of this letter and return it to me as soon as possible. Responding to this query places no commitment on you at all. This is merely to show Sprint that there is interest by local churches and that this is a viable alternative to an unsightly 190-foot monopole in a residential neighborhood.

Thank you for your consideration of this matter. If you would like to discuss this with me, please call me after 7:00 p.m. at 299-1967.

Sincerely,



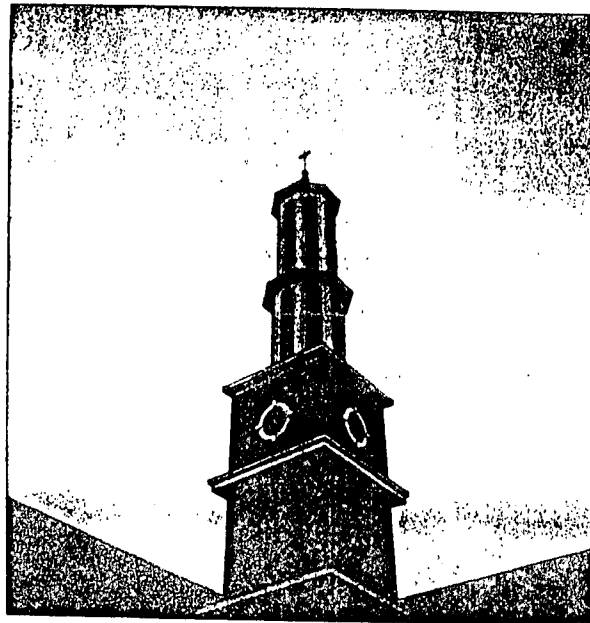
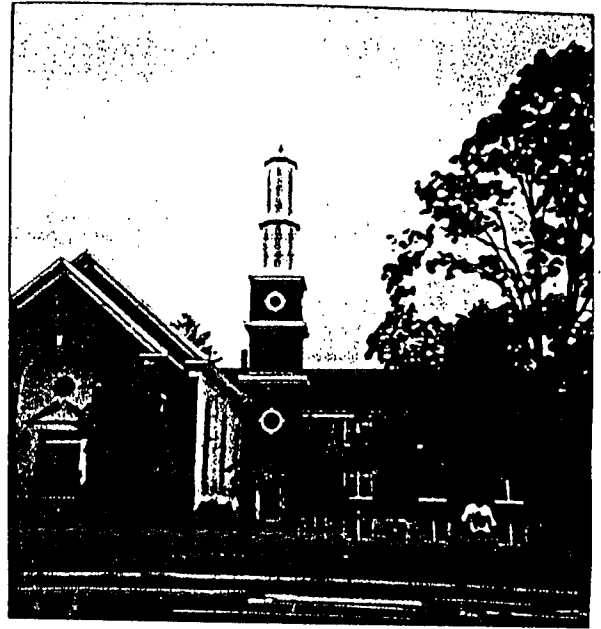
Carole A. Whalen

I am very interested in pursuing this matter and would welcome discussions with Sprint about the construction of a communications tower contained in a steeple on my church.

(Signature)

(Date)

EXHIBIT A



Whalen
1 Ave
KY 40505

7:00 pm Thurs. Kingston
Church - at Kingston

Garrol Finch, Pastor
Faith Assembly of God
107 Kingston Road
Lexington, KY 40505

299-7447
Call back Friday night
very interested

Whalen
1 Ave
KY 40505

Maddoxtown Baptist Church
3439 Huffman Mill Road
Lexington, KY 40511

299-4953
ans. machine - call back

Whalen -
1 Ave
KY 40505

299-3694

Church of God
1859 Old Paris Road
Lexington, KY 40505

Whalen
ert Ave
n, KY 40505

Scott and Susan Winkler, Ministers
Old Union Christian Church
6748 Russell Cave Road
Lexington, KY 40508

Carole A. Whalen
157 Swigert Ave
Lexington, KY 40505

Al Gormley, Pastor
Bryan Station Baptist Church
Briar Hill Road (Rt. 57)
Lexington, KY 40505

299-1430
Machine

Carole A. Whalen
157 Swigert Ave
Lexington, KY 40505

Terry Murphy, Pastor
North View Baptist Church
1742 Bryan Station Road
Lexington, KY 40505

299-1556
Machine

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

**APPLICATION OF WIRELESSCO., L.P., BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
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NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])**

RESPONSE BY DAN D. BROCK AND CAROL WHALEN
TO UNIFORM APPLICATION:
APPLICANT'S CONFIDENTIAL AND PROPRIETARY
DATA REQUESTS

INTERROGATORY NO. 1: Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.

RESPONSE: None

INTERROGATORY NO. 2: For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each option.

RESPONSE: N/A

INTERROGATORY NO. 3: Please provide any and all documentation and/or facts which support your assertion that the proposed site is not an appropriate site for placement of the wireless telecommunications facility proposed herein.

RESPONSE:

1. Prior ruling of LFUCG Planning Commission.
2. Another tower presently visible and in immediate area.
3. LFUCG Ordinance limiting development on Swigert Avenue in Fayette County, Kentucky.
4. Danger to helicopter flights originating on adjacent farm and no light on tower..
5. Close proximity to residence
6. Danger to livestock in the event of collapse.

INTERROGATORY NO. 4: Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

RESPONSE:

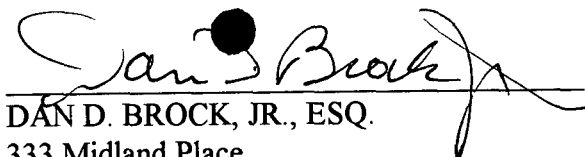
1. Near I-75 in Northend in Fayette County, Kentucky.
2. Possibility of two smaller, less obtrusive towers within radius.
3. Number of churches in area are willing to have smaller tower located on property and incorporated into church architecture. See Exhibit "A".

INTERROGATORY NO. 5: For each "alternative site" described in your response to Request #5 herein, please provide all documentation and/or facts demonstrating the point in time you made Applicants aware of such "alternative site."

RESPONSE: See Exhibit "A".

INTERROGATORY NO. 6: Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

RESPONSE: See Answer to Interrogatory No. 3 above.


DAN D. BROCK, JR., ESQ.
333 Midland Place
Lexington, Kentucky

CAROL WHALEN
By DAN D. BROCK, JR.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served, via U.S. Mail, postage pre-paid, and / or FAX upon the following individuals this 17th day of October, 1999:

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

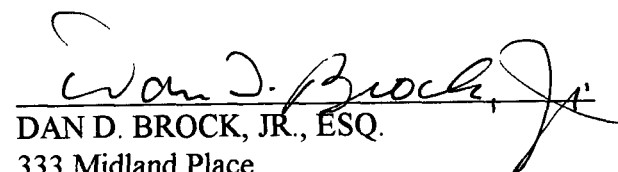
Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Sandra F. Keene, Esq.
Tilford, Dobbins, Alexander, Buckway & Black
1400 One Riverfront Plaza
Louisville, Kentucky 40202
FAX (502) 584-6137

LFUCG, Department of Law
200 East Main Street
Lexington, KY 40507


DAN D. BROCK, JR., ESQ.
333 Midland Place
Lexington, Kentucky

157 Swigert Avenue
Lexington, KY 40505
September 27, 1999

Rick Monk, Pastor
Russell Cave Baptist church
3179 Russell Cave Road
Lexington, KY

293-0250
very interested -
info w/ other church deacons on Wed. evening

Dear Pastor Monk:

I am writing to ask if you would be interested in having Sprint build a steeple on your church which would house one of their communication towers. Attached is a copy of a photograph taken of a church in Massachusetts where this was done. Sprint got their communications facility and the church got a lovely steeple plus a monthly income from Sprint for housing their communications equipment.

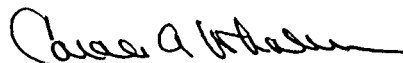
My interest in this matter is to establish an alternative to constructing a 190-foot monopole tower in our neighborhood. Sprint is pursuing the construction of a monopole on Swigert Avenue. Having personal knowledge of the church steeple constructed in Massachusetts, I contacted the Northside Baptist Church to see if they would be receptive to placing a steeple on their church to house the tower. Pastor Jones enthusiastically embraced the idea, but Sprint advised that the tower had to be 190 feet tall, the cost would be prohibitive, and the end result would not be at all attractive. The computer illustration they presented was a Washington Monument-type structure next to the church. Nothing at all like the picturesque steeple on the Massachusetts church.

Sprint explained at the hearing in August that the height required for the tower is determined by the distance between that tower and the towers to which it is transmitting waves. That being the case, I am trying to establish that there are churches in this community that would welcome the addition of a steeple. The more churches that would do so, the lower the height requirement of each structure.

If you are receptive to the idea of a 100-foot church steeple being constructed on your church (similar in appearance to the attached photograph) which would house Sprint communications equipment, please place your signature and date on the bottom of the attached copy of this letter and return it to me as soon as possible. Responding to this query places no commitment on you at all. This is merely to show Sprint that there is interest by local churches and that this is a viable alternative to an unsightly 190-foot monopole in a residential neighborhood.

Thank you for your consideration of this matter. If you would like to discuss this with me, please call me after 7:00 p.m. at 299-1967.

Sincerely,



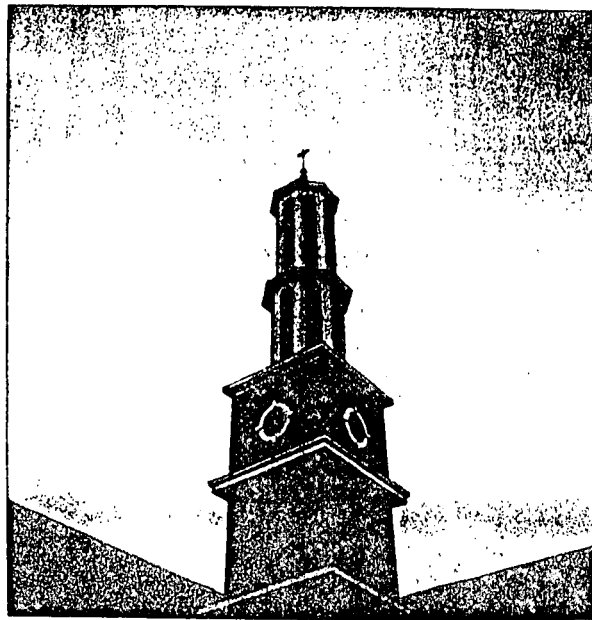
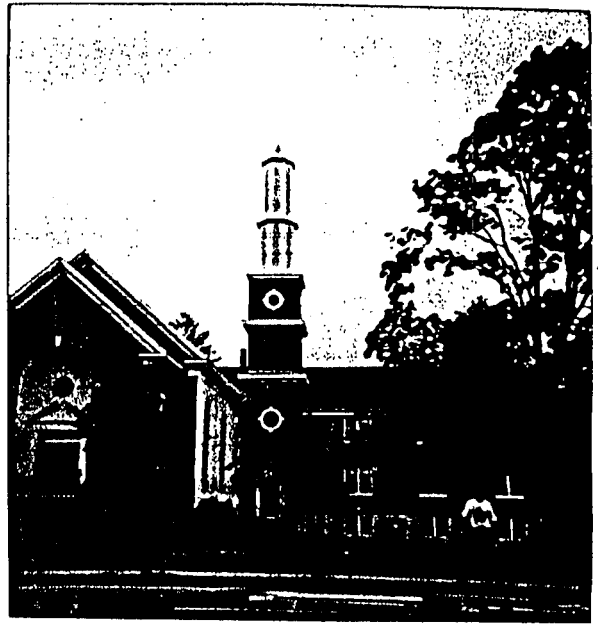
Carole A. Whalen

I am very interested in pursuing this matter and would welcome discussions with Sprint about the construction of a communications tower contained in a steeple on my church.

(Signature)

(Date)

EXHIBIT A



Whalen
rt Ave
KY 40505

7:00 pm Thurs.
Church - at Kingston

Garrol Finch, Pastor
Faith Assembly of God
107 Kingston Road
Lexington, KY 40505

299-7447
Call back Friday night
very interested

Whalen
rt Ave
KY 40505

Maddoxtown Baptist Church
3439 Huffman Mill Road
Lexington, KY 40511

299-4953
cons. machine - call back

Whalen -
rt Ave
KY 40505

299-3694

Church of God
1859 Old Paris Road
Lexington, KY 40505

Whalen
ert Ave
n, KY 40505

Scott and Susan Winkler, Ministers
Old Union Christian Church
6748 Russell Cave Road
Lexington, KY 40508

Carole A. Whalen
157 Swigert Ave
Lexington, KY 40505

299-1430
Machine

Al Gormley, Pastor
Bryan Station Baptist Church
Briar Hill Road (Rt. 57)
Lexington, KY 40505

Carole A. Whalen
157 Swigert Ave
Lexington, KY 40505

299-1556
Machine

Terry Murphy, Pastor
North View Baptist Church
1742 Bryan Station Road
Lexington, KY 40505

Lexington
Fayette
Urban
County
Government



October 8, 1999

DEPARTMENT OF LAW

Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, Kentucky 40601

RE: Case No. 99-194 UAC

Dear Ms. Helton:

Please find enclosed an original and ten copies of the Lexington Fayette Urban County Planning Commission's Response to Applicants' Data Request. Please file it accordingly and contact me if you have any questions. In addition, I have enclosed an extra copy for you to stamp filed and a self-addressed-stamped-envelope for you to return the extra copy to me.

Sincerely,

A handwritten signature in cursive script that reads "Larry R. Hornsby".

Larry R. Hornsby
Corporate Counsel

ENCLOSURES

LRH/sp/Let017

RECEIVED
OCT 11 1999
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO., L.P., BY)
THROUGH ITS AGENT AND GENERAL)
PARTNER SPRINT SPECTRUM, L.P., AND)
SBA TOWERS KENTUCKY, INC., JOINTLY,)
FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY IN)
THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

CASE NO. 99-194 UAC

RECEIVED
OCT 11 1999
PUBLIC SERVICE
COMMISSION

UNIFORM APPLICATION: CONFIDENTIAL AND PROPRIETARY

**THE LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT PLANNING COMMISSION'S RESPONSE
TO APPLICANTS' DATA REQUEST**

Comes the Lexington-Fayette Urban County Government Planning Commission, (hereinafter "LFUCG") by counsel, and provides the following responses to the Applicants' Data Request. Notwithstanding the fact that the Planning Commission contests that discovery requests are provided for as part of the regulations contained in 807 KAR 5:001, and without waiving any objection to said requests, the LFUCG provides the following information in response:

1. Please list any and all specific locations within the Applicant's search ring, a copy of which was provided to the LFUCG in the Uniform Application, and in the Public Record Information filed with the LFUCG on July 12, 1999 and which also is attached hereto as Exhibit 2, which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.


ANSWER: The Planning Commission's review of Applicants' Uniform Application did not focus on the appropriateness of other locations within Applicants' search ring for the proposed facility. Rather, in accordance with KRS 100.987(4)(a), the Planning Commission reviewed the application "in light of its agreement with the Comprehensive Plan. . . ."


2. For each "alternative site" described in your response to Request #5 herein, please provide all documentation and/or facts demonstrating the point in time the LFUCG by or through any of its representatives made Applicants aware of such "alternative site."

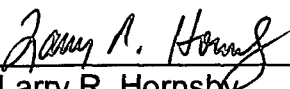
ANSWER: Not applicable.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
Telephone: (606) 258-3500

BY: 
Edward W. Gardner
Director of Litigation

BY: 
Tracy W. Jones
Corporate Counsel

BY: 
Larry R. Hornsby
Corporate Counsel

ATTORNEYS FOR PLANNING COMMISSION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on this 8th day of
October, 1999, by mailing same to the following:

Hon. Sandra F. Keene
Tilford, Dobbins, Alexander, Buckaway and Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl and Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Hon. Dan D. Brock
333 Midland Place
Lexington, KY 40505

Robert and Pauline Good
260 Swigert Avenue
Lexington, KY 40505

Carole Whalen
157 Swigert Avenue
Lexington, KY 40505

Andrea P. Slone
200 Blue Ribbon Lane
Lexington, KY 40505



ATTORNEY FOR PLANNING COMMISSION

LH/resp001



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

October 11, 1999

To: All parties of record

RE: Case No. 99-194 UAC

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO 64112

Edward W. Gardner
Tracy W. Jones
Larry R. Hornsby
Lexington-Fayette Urban County
Government, Department of Law
200 East Main Street
Lexington, KY 40507

Sandra F. Keene
Tilford, Dobbins, Alexander
Buckaway & Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Carole A. Whalen
157 Swigert Avenue
Lexington, KY 40505

Honorable Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, KY 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, KY 40511

Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, KY 40505

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF WIRELESSCO., L.P.,)	
BY AND THROUGH ITS AGENT AND GENERAL)	
PARTNER SPRINT SPECTRUM, L.P., AND SBA)	
TOWERS KENTUCKY, INC., JOINTLY, FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO CONSTRUCT)	99-194-UAC
A PERSONAL COMMUNICATIONS SERVICES)	
FACILITY IN THE LEXINGTON MAJOR TRADING)	
AREA (SWIGERT ROAD FACILITY))	

O R D E R

On September 7, 1999, the Commission scheduled a hearing in this case to determine whether it should override the decision of the Planning Commission of the Lexington-Fayette Urban County Government ("Planning Commission") to reject the application in this case. On August 27, 1999, the Planning Commission filed its decision, with written record of the meetings in which this matter was considered, into the record. On September 21, 1999, the Applicants, WirelessCo. L.P. and SBA Towers Kentucky, Inc. (the "Applicants"), filed a motion to alter the scope of the proceeding set by the Commission's Order. Specifically, the Applicants ask that the issues to be considered at the hearing be limited to service and safety. As grounds for their motion, the Applicants state that the Planning Commission failed to notify them "in writing of its final decision" as required by KRS 100.987(4). Accordingly, the Applicants contend, the application is "presumed" to have been approved.

For the following reasons, the Applicants' motion to alter the scope of the hearing as described in the September 7 Order is denied.

The first sentence of KRS 100.987(4) requires the Planning Commission to advise this Commission, as well as the Applicant, "in writing of its final decision." However, no presumption of approval as the result of failure to so advise an applicant is prescribed. The "presumption" cited by the Applicants appears in the second sentence of KRS 100.987(4), which states that the application is "presumed" to have been approved by the planning commission "[i]f the planning commission fails to issue a final decision within sixty (60) days" or within the time agreed to by the applicant and the planning commission. The Planning Commission minutes appear to indicate that the Applicants and the Planning Commission entered into an agreement for an extension of time. Moreover, the Applicants do not argue that the presumption applies because of a Planning Commission failure to meet the statutory deadline. The Applicants argue that the presumption applies because they were not notified in writing of the Planning Commission's final decision.

Most presumptions are, in any event, rebuttable. See Bartlett v. Com. ex rel. Calloway, Ky., 705 S.W.2d 470, 472 (1986). The Planning Commission's decision filed with this Commission, along with its active opposition in this proceeding, surely is rebuttal enough. However, even assuming, arguendo, that the presumption referred to in KRS 100.987(4) is a conclusive one, the presumption does not even appear to come into play unless the decision is not "issued" within the statutory timeframe. The Applicants have not alleged that no

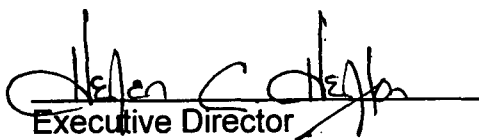
decision was issued; they simply allege that they were not sent a written copy of that decision.

The Commission having been sufficiently advised, IT IS THEREFORE ORDERED that Applicants' Motion to Limit Issues to be Addressed By the Commission at the October 13, 1999 Hearing is denied.

Done at Frankfort, Kentucky, this 11th day of October, 1999.

By the Commission

ATTEST:


Executive Director

Lexington
Fayette
Urban
County
Government



RECEIVED
OCT 11 1999
PUBLIC SERVICE
COMMISSION

October 8, 1999

DEPARTMENT OF LAW

Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, Kentucky 40601

RE: Case No. 99-194 UAC

Dear Ms. Helton:

Please find enclosed an original and ten copies of the Lexington Fayette Urban County Planning Commission's Response and Objection to Applicants' Motion to Limit Issues to be Addressed by the Commission at the October 13, 1999 hearing. Please file it accordingly and contact me if you have any questions. In addition, I have enclosed an extra copy for you to stamp filed and a self-addressed-stamped-envelope for you to return the extra copy to me.

Sincerely,

Tracy W. Jones (LRAH)

Tracy W. Jones
Corporate Counsel

ENCLOSURES

TWH/sp/Let048

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO., L.P., BY)
THROUGH ITS AGENT AND GENERAL)
PARTNER SPRINT SPECTRUM, L.P., AND)
SBA TOWERS KENTUCKY, INC., JOINTLY,)
FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY IN)
THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

CASE NO. 99-194 UAC

RECEIVED
OCT 11 1999
PUBLIC SERVICE
COMMISSION

UNIFORM APPLICATION: CONFIDENTIAL AND PROPRIETARY

**THE LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT PLANNING COMMISSION'S RESPONSE
AND OBJECTION TO APPLICANTS' MOTION TO LIMIT
ISSUES TO BE ADDRESSED BY THE COMMISSION
AT THE OCTOBER 13, 1999 HEARING**

Comes the Lexington-Fayette Urban County Government Planning Commission, (hereinafter "LFUCG") by counsel, and objects and responds to the Applicants' Motion to Limit Issues To Be Addressed by the Commission at the October 13, 1999 hearing. As grounds for this objection and response, the Planning Commission states as follows.

The Planning Commission objects to this motion on two grounds. First, the Planning Commission submits that the correct interpretation of this statute is not as represented in the Motion by the Applicants, and secondly the applicants received actual notice of the Findings of the Planning Commission and, therefore, were not prejudiced by the inadvertent oversight of the Planning Commission to send a copy of its final decision to the Applicants.

In its motion, the Applicant states that pursuant to KRS 100.987(4) because the Urban County Government failed to notify the Applicant "in writing of its final decision," that it is presumed to have approved the proposed construction. KRS 100.987(4)(c) actually states that if the Planning Commission fails to issue a final decision within sixty days of the receipt of the Application that it is presumed that the local Planning Commission has approved the utility's uniform application. It does not say that if the Planning Commission fails to advise the utility in writing, that the Planning Commission has approved the utility's uniform application.

The Planning Commission entered into an agreement with the Applicant on July 23, 1999 whereby both parties agreed to extend the deadline to submit a written decision to the Public Service Commission to August 27, 1999. On August 19, 1999 the Planning Commission held a hearing on this matter. At that meeting, the Planning Commission voted to disapprove the application based on the fact that it did not believe it was in agreement with the goals and objectives of the adopted Comprehensive Plan of the Lexington-Fayette Urban County Government. A written decision of this disapproval was sent to the Public Service Commission within the prescribed time pursuant to the agreement between the parties which included a statement of the disapproval and the minutes from the meeting that set forth the specific reasons included in the staff report as to why the application was disapproved. Therefore, the Planning Commission did comply with KRS 100.987(4)(c) by submitting its written final decision to the Public Service Commission within sixty days and the applicant's application for construction should not be deemed approved.

The Planning Commission concedes that it did fail to provide service of its final written decision to the utility. However, the Planning Commission takes issue with the applicant's position in its motion because Applicant had actual notice of the disapproval at the Planning Commission. Specifically, in the minutes of the August 19, 1999 meeting, which were attached to the written disapproval submitted to the Public Service Commission, it is noted that the attorney for the Applicant, Ms. Sandra Keene, was present at the meeting. Also, present were Ms. Jennifer Sturgeon, a property specialist for SBA and Mr. Oliver Fiebel, a radio frequency engineer for Sprint. These individuals were present during the entire hearing and witnessed the actual vote taken by the Planning Commission disapproving this application. Furthermore, counsel for the Applicant was provided, at the hearing, the staff report that specifically noted the staff was recommending disapproval of the request and enumerated the reasons why. In its vote to disapprove, the Planning Commission disapproved based on the reasons provided by the staff in its report. Arguably, the Applicant had in its hand, in writing, the reasons for disapproval. Further, Applicant witnessed the vote for disapproval at the hearing on August 19, 1999.

The Planning Commission complied with the statute in providing its written decision to the Public Service Commission disapproving this application. Furthermore, Applicant had actual notice in writing of the disapproval of its application at the time it left the hearing. Through inadvertence the Planning Commission did not send the Applicant a copy of its Findings which the Applicant witnessed. This mere technicality does not override the fact that the Applicant had actual notice. Therefore, the Applicant's Motion to Limit the Issues and that the proposed construction has been

approved should be overruled and this hearing should go forward under KRS 100.987(5)(a) on the issue of whether there is no acceptable alternate site and whether public convenience and necessity requires the proposed construction.

WHEREFORE, the Planning Commission respectfully request that the Applicant's motion to limit issues to be addressed by the Commission be overruled.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
Telephone: (606) 258-3500

BY: Edward W. Gardner by [Signature]
Edward W. Gardner
Director of Litigation

BY: Tracy W. Jones
Tracy W. Jones
Corporate Counsel

BY: Larry R. Hornsby
Larry R. Hornsby
Corporate Counsel

ATTORNEYS FOR PLANNING COMMISSION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on this 8 day of

September, 1999, by mailing same to the following:

Hon. Sandra F. Keene
Tilford, Dobbins, Alexander, Buckaway and Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl and Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Hon. Dan D. Brock
333 Midland Place
Lexington, KY 40505

Robert and Pauline Good
260 Swigert Avenue
Lexington, KY 40505

Carole Whalen
157 Swigert Avenue
Lexington, KY 40505

Andrea P. Slone
200 Blue Ribbon Lane
Lexington, KY 40505



ATTORNEY FOR PLANNING COMMISSION

TWJ/resp002

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

OCT 07 1999

PUBLIC SERVICE
COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
THROUGH IT AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A) Case No. 99-194 UAC *
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

MOTION TO REQUIRE INTERVENOR
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
TO RESPOND TO DATA REQUESTS BY NO LATER THAN
MONDAY, OCTOBER 11, 1999

** ** * * * * *

Come the Applicants, by counsel, and move this Commission to require that the Lexington-Fayette Urban County Government ("LFUCG") provide the following information, by Monday, October 11, 1999. According to LFUCG, in its Response to the Data Requests of the Applicants severed upon LFUCG on September 13, 1999 and responded to by LFUCG on September 30, 1999, LFUCG was unable to respond to questions concerning the Applicants' search ring because no copy was attached to the Data Requests. The Applicants apologize if such was inadvertently omitted. However, LFUCG has had the search ring in its possession since July 12, 1999 (see Exhibit 1 hereto¹). Therefore, LFUCG should not have been prejudiced by any such omission. Moreover, LFUCG had such Data Requests in its possession for roughly seventeen

¹Furthermore, Applicants' search ring was included as an Exhibit to the Uniform Application submitted to the LFUCG on June 23, 1999.

*Not Conf.
per PSC Legal Div. HV

(17) days before it responded and common professional courtesy should have dictated that LFUCG notify counsel for the Applicants of the omission rather than seize upon such in order to avoid answering data requests.

The Movants also would request that all Response be served upon their counsel by fax in order to expedite their receipt of such information.

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,

BUCKAWAY & BLACK

1400 One Riverfront Plaza

Louisville, Kentucky 40202

(502) 584-6137

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
THROUGH IT AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A)Case No. 99-194 UAC
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

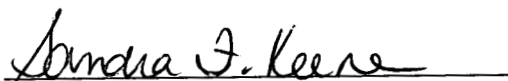
**APPLICANTS' SECOND SET OF DATA REQUESTS PROPOUNDED
TO THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
PLANNING COMMISSION**

1. Please list any and all specific locations within the Applicants' search ring, a copy of which was provided to the LFUCG in the Uniform Application, and in the Public Record Information filed with the LFUCG on July 12, 1999 and which also is attached hereto as Exhibit

2, which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

2. For each "alternative site" described in your response to Request # 5 herein, please provide all documentation and/or facts demonstrating the point in time the LFUCG by or through any of its representatives made Applicants aware of such "alternative site."

Respectfully submitted,



Mark W. Dobbins
Sandra F. Keene
TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK
1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served upon the Lexington-Fayette Urban County Government via facsimile and U.S. Mail, postage pre-paid and by U.S. Mail, postage pre-paid, upon the following individuals this 6 day of October, 1999.

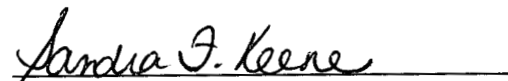
Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505


Sandra F. Keene

RECEIVED
APPROVED
DRAFT

file stamp

COPY

JUL 12 1999

FOR THE PUBLIC RECORD

CURRENT PLANNING

COMMONWEALTH OF KENTUCKY
BEFORE THE PLANNING COMMISSION
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

In the matter of:

APPLICATION OF WIRELESSCO, L.P. BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) PSC
NECESSITY TO CONSTRUCT A PERSONAL) CASE NO. 99-194UAC
COMMUNICATIONS SERVICES FACILITY)
IN THE LOUISVILLE MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

WirelessCo., L.P., by and through its agent and general partner, Sprint Spectrum, L.P., and SBA Towers Kentucky, Inc., have filed a joint application to construct a wireless telecommunications facility at 189 Swigert Road, Lexington, Fayette County, Kentucky.

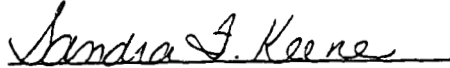
In order to provide more detail to the public regarding the proposed telecommunications facility, Applicants hereby submit the following information for the public record.

1. A reduced-size copy of the Applicant's site development plan and survey of the proposed site.
2. A copy of the tower design/spec drawings for the proposed monopole.
3. A diagram of the Applicants' "search ring" for the area surrounding the proposed site.
4. A copy of a letter from the Kentucky Heritage Council stating that the proposed facility will have no impact upon the Paris Pike Historic District.
5. A copy of the response from Mr. Elmer Whittaker regarding Applicants' inquiries into the availability of Mr. Whittaker's existing radio tower for co-location of telecommunications

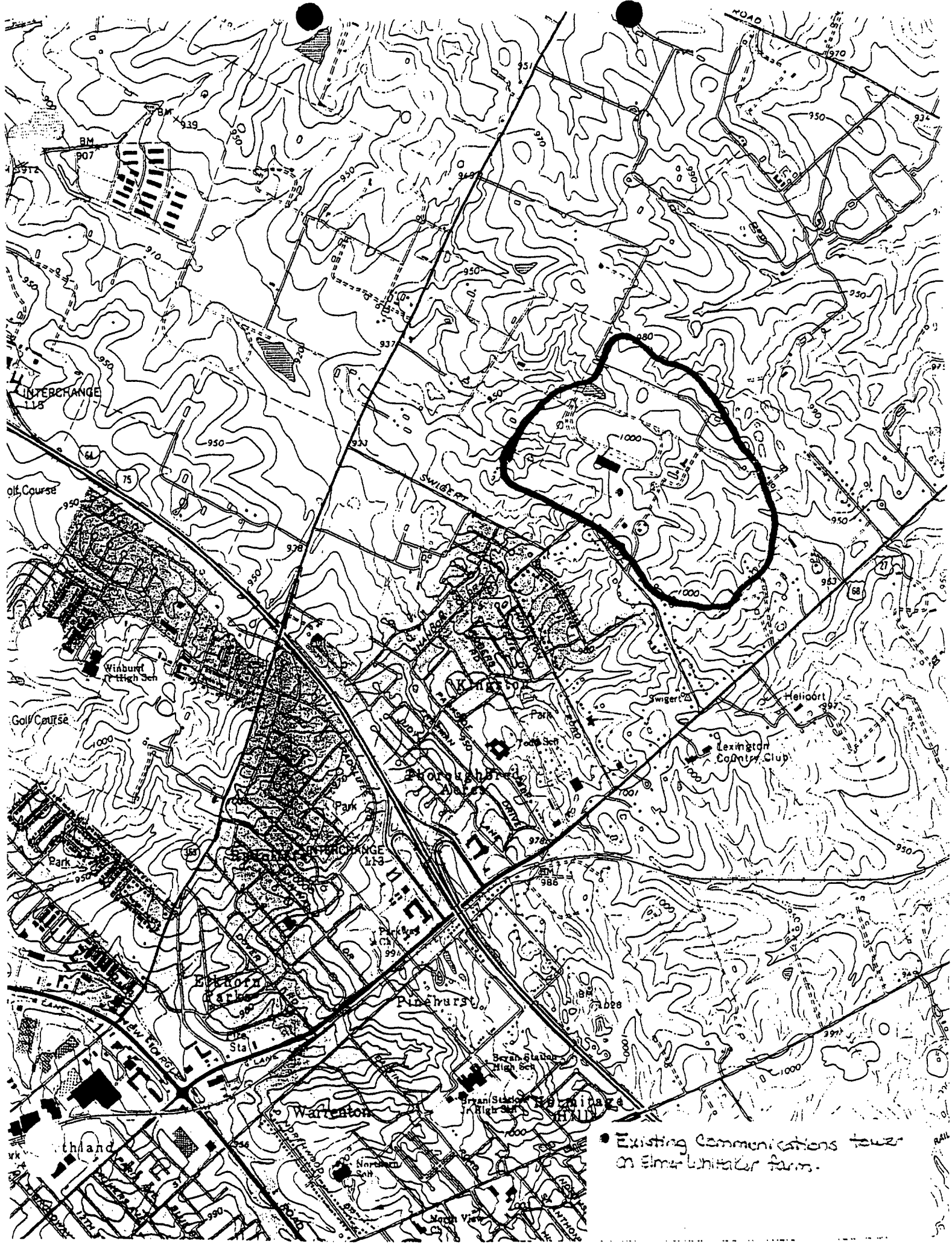
antennas.

6. A set of photo-simulations demonstrating the approximate appearance of the facility, as proposed, on the proposed site.

Respectfully submitted,



Sandra F. Keene
TILFORD, DOBBINS, ALEXANDER
BUCKAWAY & BLACK
1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137



● Existing Communications tower on Elm-Whittaker farm.



Education, Arts and Humanities Cabinet

KENTUCKY HERITAGE COUNCIL

The State Historic Preservation Office

Paul E. Patton
Governor
Roy Peterson
Cabinet Secretary

David L. Morgan
Executive Director
and SHPO

March 5, 1999

Ms. Amanda J. Lehmann
Natural Resources Specialist
Ogden Environmental and Energy Services
690 Commonwealth Center
11003 Bluegrass Parkway
Louisville, Kentucky 40299

Re: Telecommunications Tower
SBA, Inc./Sprint PCS
Site #LV04XCO42
Swigert Avenue
Lexington, Fayette County, Kentucky

Dear Ms. Lehmann:

We have reviewed the above referenced project and have the following findings. The project is located within an area that has been determined eligible for the National Register as an historic district. The Paris Pike Historic District is located on both sides of US 68 between Lexington and the east side of Paris. However, a site visit revealed that the proposed project site is located well away from the road, and is shielded from view by several large stands of trees. Therefore, the proposed project will have no effect upon the Paris Pike Historic District, and I have no further comment.

If you have any questions, feel free to contact Jayne H. Fiegel of my staff at (502) 564-7005.

Sincerely,

David L. Morgan, Director
Kentucky Heritage Council and
State Historic Preservation Officer



FORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

ATTORNEYS AT LAW

1400 ONE RIVERFRONT PLAZA
LOUISVILLE, KENTUCKY 40202

(502) 584-6137

STUART E. ALEXANDER, JR.
LIAM A. BUCKAWAY, JR.
CHARLES W. DOBBINS, JR.
ERRELL L. BLACK
JOHN M. NADER¹
MARK W. DOBBINS
STUART E. ALEXANDER, III
JOHN A. WILMES
SANDRA F. KEENE
THOMAS J. B. HURST
H. KEVIN EDDINS¹

CAROLYN K. BALLEISEN²

RANDOLPH NOE¹
MICHAEL G. KAREM⁴
* Of Counsel

HENRY J. TILFORD (1880-1968)
CHARLES W. DOBBINS (1916-1992)
DONALD H. BALLEISEN (1924-1993)
LAWRENCE W. WETHERBY (1908-1994)

TELECOPIERS
(502) 584-2318
(502) 587-1806

¹ Also admitted in Indiana

² Also admitted in New York
³ Also admitted in District of Columbia
and Maryland

⁴ Also admitted in District of Columbia

June 9, 1999

Mr. Jack Whittaker
c/o P.O. Box 14037
Lexington, Kentucky 40512

Re: Co-location of telecommunications equipment

Dear Mr. Whittaker:

The undersigned represent WirelessCo., L.P., doing business in Kentucky as Sprint PCS. As you may be aware, Sprint and SBA Towers Kentucky, Inc., are in the process of making application to the Lexington-Fayette Urban County Government for construction of a wireless telecommunications tower near your property on Swigert Road.

We have been informed by Tim Gilliam, one of Sprint's Operations Engineers, that you may be interested in allowing Sprint to either co-locate its equipment on the existing tower on your Swigert Road property or in allowing SBA towers to rebuild your tower such that it could hold up to three wireless carriers, including Sprint. Mr. Gilliam apparently has attempted several times to reach you by telephone to discuss this but has been unable to contact you.

Sprint has reached the point that it simply cannot delay further securing a facility for its equipment. Please indicate your position on this matter by checking the appropriate statement below and returning this letter to the undersigned in the enclosed self-addressed stamped envelope. If we do not receive some communication from you by June 17, 1999, we will assume that you have no interest in placement of wireless telecommunications equipment or facilities on your property. Thank you for your consideration.

Sincerely,



Mark W. Dobbins
Sandra F. Keene

Mr. Jack Whittaker

June 9, 1999

Page 2

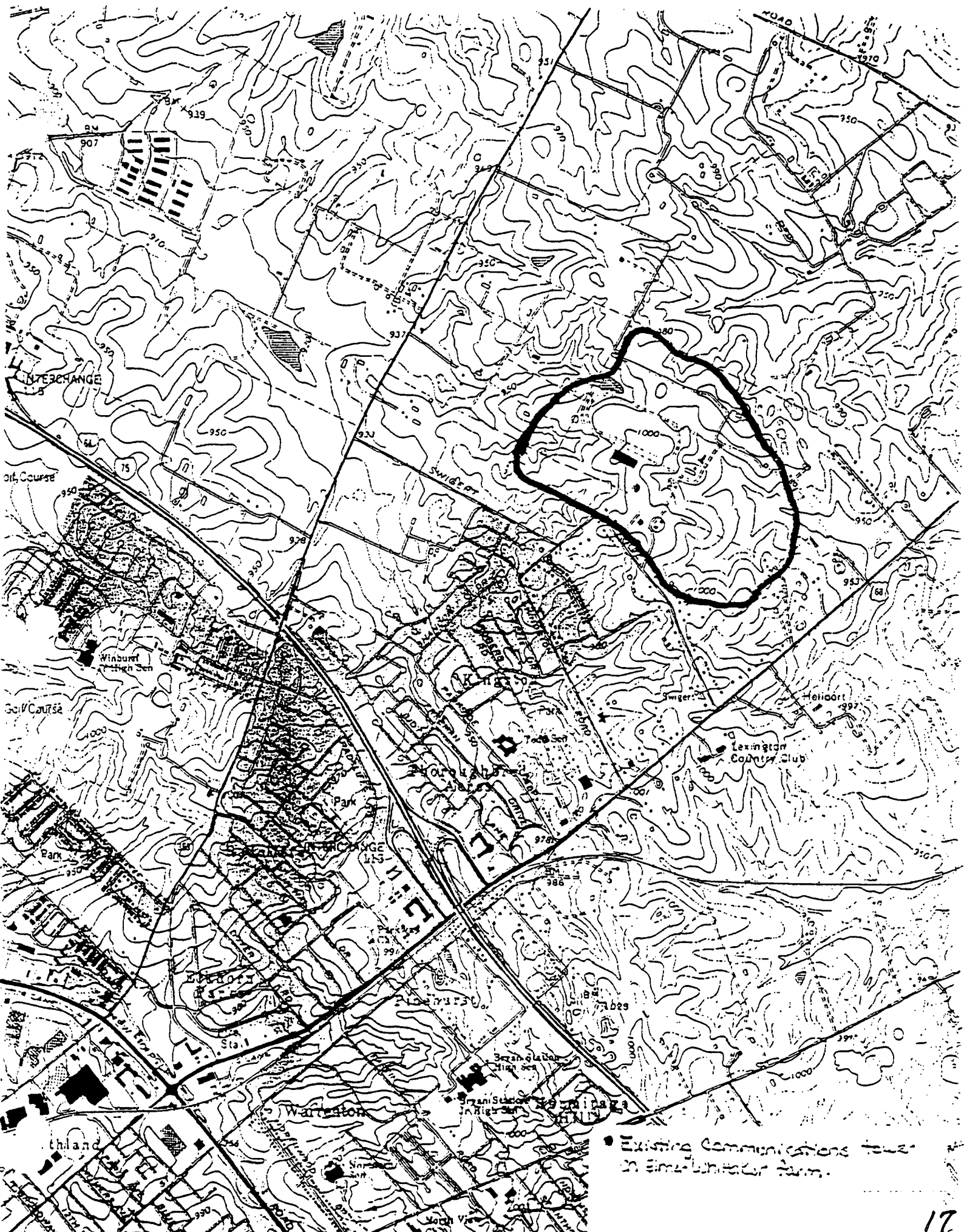
I am interested in discussing the placement of Sprint's wireless telecommunications equipment and/or SBA's tower on my property located on Swigert Road.

I am not interested in placement of wireless telecommunications equipment or facilities on my property.

~~Jack Whittaker~~

Elmer Whittaker

G:\OFFICE\MWD\SPRINT\SBA\SWIG2\WHITAKE.1



Existing Communications Towers
in Simonsville Farm.

Lexington
Fayette
Urban
County
Government



RECEIVED

OCT 01 1999

PUBLIC SERVICE
COMMISSION

September 30, 1999

DEPARTMENT OF LAW


Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, Kentucky 40601

RE: Case No. 99-194 UAC

Dear Ms. Helton:

Please find enclosed an original and ten copies of the Lexington Fayette Urban County Planning Commission's Response to Applicants' Data Request and an original and ten copies of the Intervenor's Request Propounded to the Applicants. I have enclosed an extra copy to be stamped filed along with a stamped self-addressed envelope. Please file it accordingly and contact me if you have any questions.

Sincerely,


Tracy W. Jones
Corporate Counsel

ENCLOSURES

TWJ/sp/Let045

RECEIVED
OCT 01 1999
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO., L.P., BY)
THROUGH ITS AGENT AND GENERAL)
PARTNER SPRINT SPECTRUM, L.P., AND)
SBA TOWERS KENTUCKY, INC., JOINTLY,)
FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY IN)
THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

CASE NO. 99-194 UAC

UNIFORM APPLICATION: CONFIDENTIAL AND PROPRIETARY

INTERVENOR'S REQUEST PROPOUNDED
TO THE APPLICANTS

Comes the Intervenor, Lexington-Fayette Urban County Government Planning Commission, by counsel, and requests that the Applicants provide the following information at least five days prior to the hearing or by October 8, 1999.

1. Please list the name, title and business address of the person(s) supplying the responses to the Data Requests set forth herein.

2. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.

3. For any witnesses identified in Requests # 1 or # 2 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.

4. Please provide any and all documentation and/or facts which support the Applicants' assertion that the proposed site is the only site available for public convenience and necessity for purposes of a monopole tower for wireless telephone service.

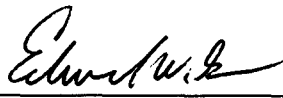
5. Please describe any/all contacts between the Applicants or their representatives and the Planning Commission, and with residents falling within the search ring.

6. Please advise by address and/or business name, if applicable, all locations falling within the Applicants' search ring.

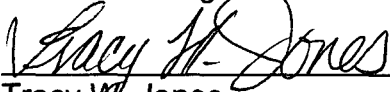
7. Please provide the factual legal basis for the claim you intend to make before the Public Service Commission that would support your position that this is the only site available as required for public necessity and convenience.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
Telephone: (606) 258-3500

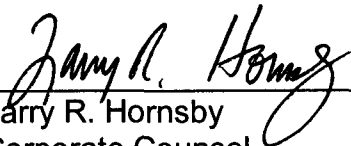
BY: 

Edward W. Gardner
Director of Litigation

BY: 

Tracy W. Jones
Corporate Counsel

BY:


Larry R. Hornsby
Corporate Counsel

ATTORNEYS FOR PLANNING COMMISSION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on this 30 day of
September, 1999, by mailing same to the following:

Hon. Sandra F. Keene
Tilford, Dobbins, Alexander, Buckaway and Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl and Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Hon. Dan D. Brock
333 Midland Place
Lexington, KY 40505

Robert and Pauline Good
260 Swigert Avenue
Lexington, KY 40505

Carole Whalen
157 Swigert Avenue
Lexington, KY 40505

Andrea P. Slone
200 Blue Ribbon Lane
Lexington, KY 40505


ATTORNEY FOR PLANNING COMMISSION

TWJ/req001

RECEIVED

COMMONWEALTH OF KENTUCKY

OCT 01 1999

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO., L.P., BY)
THROUGH ITS AGENT AND GENERAL)
PARTNER SPRINT SPECTRUM, L.P., AND)
SBA TOWERS KENTUCKY, INC., JOINTLY,)
FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY IN)
THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

CASE NO. 99-194 UAC

UNIFORM APPLICATION: CONFIDENTIAL AND PROPRIETARY

**THE LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT PLANNING COMMISSION'S RESPONSE
TO APPLICANTS' DATA REQUEST**

Comes the Lexington-Fayette Urban County Government Planning Commission, (hereinafter "LFUCG") by counsel, and provides the following responses to the Applicants' Data Request. Notwithstanding the fact that the Planning Commission contests that discovery requests are provided for as part of the regulations contained in 807 KAR 5:001, and without waiving any objection to said requests, the LFUCG provides the following information in response:

1. Please list the name, title, and business address of the person(s) supplying the responses to the Data Requests set forth herein.

ANSWER: Edward W. Gardner, Director of Litigation, Tracy Jones, Corporate Counsel, Larry Hornsby, Corporate Counsel, Department of Law, Susan Skillman,

Administrative Officer, Division of Planning, 200 East Main Street, Lexington, Kentucky 40507.

2. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.

ANSWER: LFUCG does not expect to call any witnesses at this time to the hearing but rather intends to rely on the record and certified records, but retains the right to call witnesses as necessary.

3. For any witnesses identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.

ANSWER: See answer to number 2, above.

4. Please provide any and all documentation and/or facts which support your assertion that the proposed site is inconsistent with the Lexington-Fayette Urban County Comprehensive Plan.

ANSWER: Documents supporting the assertion that the proposed site is inconsistent with the Lexington-Fayette Urban County Comprehensive Plan are referred to in the staff report and have been provided pursuant to an open records request made by these Applicants.

5. Please describe any/all contacts between the Planning Commission's representatives and either the undersigned or the Applicants herein.

ANSWER: This information is contained in documents that have been provided pursuant to the open records request made by this Applicant, to the extent it is available.

6. Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

ANSWER: No copy of the Applicants' search ring was attached as referred to in this request.

7. For each "alternative site" described in your response to Request # 5, herein, please provide all documentation and/or facts demonstrating the point in time the LFUCG by or through any of its representatives made Applicants aware of such "alternative site."

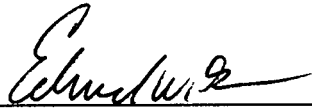
ANSWER: Not applicable.

8. Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

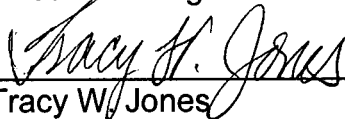
ANSWER: At this time, LFUCG does not intend to make any other claims before the PSC but reserves its right to do so.

Respectfully submitted,


LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
Telephone: (606) 258-3500

BY: 

Edward W. Gardner
Director of Litigation

BY: 

Tracy W. Jones
Corporate Counsel

BY: 

Larry R. Hornsby
Corporate Counsel

ATTORNEYS FOR PLANNING COMMISSION

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on this 30 day of

September, 1999, by mailing same to the following:

Hon. Sandra F. Keene
Tilford, Dobbins, Alexander, Buckaway and Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl and Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Hon. Dan D. Brock
333 Midland Place
Lexington, KY 40505

Robert and Pauline Good
260 Swigert Avenue
Lexington, KY 40505

Carole Whalen
157 Swigert Avenue
Lexington, KY 40505

Andrea P. Slone
200 Blue Ribbon Lane
Lexington, KY 40505



ATTORNEY FOR PLANNING COMMISSION

TWJ/resp001



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

October 1, 1999

To: All parties of record

RE: Case No. 99-194 UAC

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell
Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO 64112

Edward W. Gardner
Tracy W. Jones
Larry R. Hornsby
Lexington-Fayette Urban County
Government, Department of Law
200 East Main Street
Lexington, KY 40507

Sandra F. Keene
Tilford, Dobbins, Alexander
Buckaway & Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Carole A. Whalen
157 Swigert Avenue
Lexington, KY 40505

Honorable Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, KY 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, KY 40511

Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, KY 40505

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO, L.P., BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A) CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND) 99-194-UAC
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
(SWIGERT ROAD FACILITY))

O R D E R

This matter arising upon the motion of the Lexington-Fayette Urban County Planning Commission ("Planning Commission") for full intervention, and it appearing to the Commission that the Planning Commission has a special interest which is not otherwise adequately represented, and that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, and this Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

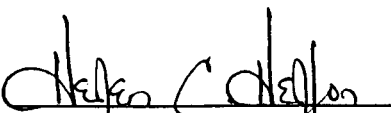
1. The motion of the Planning Commission to intervene is granted.
2. The Planning Commission shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Should the Planning Commission file documents of any kind with the Commission in the course of these proceedings, it shall also serve a copy of said documents on all other parties of record.

Done at Frankfort, Kentucky, this 1st day of October, 1999.

By the Commission

ATTEST:


Executive Director

Lexington
Fayette
Urban
County
Government



RECEIVED
SEP 27 1999
PUBLIC SERVICE
COMMISSION

September 24, 1999

DEPARTMENT OF LAW

Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, Kentucky 40601

RE: Case No. 99-194 UAC

Dear Ms. Helton:

Please find enclosed an original and ten copies of the Lexington Fayette Urban County Planning Commission's motion to intervene. Please file it accordingly and contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Larry R. Hornsby".

Larry R. Hornsby
Corporate Counsel

ENCLOSURES

LRH/sp/Let014

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

REC'D
SEP 27 1993
PUBLIC SERVICE
COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)	
THROUGH IT AGENT AND GENERAL PARTNER)	
SPRINT SPECTRUM, L.P., AND SBA TOWERS)	
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND)	99-194 UAC
NECESSITY TO CONSTRUCT A PERSONAL)	
COMMUNICATIONS SERVICES FACILITY)	
IN THE LEXINGTON MAJOR TRADING AREA)	
[SWIGERT ROAD FACILITY])	

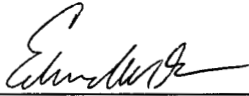
MOTION TO INTERVENE

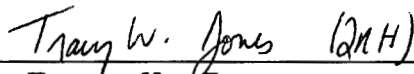
Comes the Lexington-Fayette Urban County Planning Commission ("Planning Commission") by and through counsel and hereby moves to intervene in the above styled preceding. The construction and operation of the cellular telephone tower at the proposed location raises serious public concerns regarding preservation, protection and enhancement regarding the neighborhoods and physical features of the Bluegrass Area. The Planning Commission therefore requests that it be permitted to intervene to the fullest extent allowed by law including the right to a public hearing on behalf of itself as a governmental entity and on behalf of all residents in its jurisdiction who may be affected by the proposed tower.

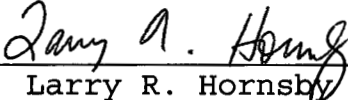
Respectfully submitted,

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT
Department of Law

200 East Main Street
Lexington, KY 40507
(606) 258-3500

BY: 
Edward W. Gardner
Director of Litigation

BY: 
Tracy W. Jones
Corporate Counsel

BY: 
Larry R. Hornsby
Corporate Counsel

ATTORNEYS FOR PLANNING COMMISSION

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion to Intervene was mailed, first-class, postage prepaid, on this the 24th day of September, 1999, to the following:

Hon. Sandra F. Keene
TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK
1400 One Riverfront Plaza
Louisville, Kentucky 40202
COUNSEL FOR THE APPLICANT


Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505



ATTORNEY FOR PLANNING COMMISSION

TWJ/Mot006

RECEIVED

SEP 21 1999

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
THROUGH IT AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

Case No. 99-194 UAC * see below.

UNIFORM APPLICATION: ~~CONFIDENTIAL AND PROPRIETARY~~
APPLICANTS' MOTION TO LIMIT ISSUES TO BE ADDRESSED
BY THE COMMISSION AT THE OCTOBER 13, 1999 HEARING

Come the Applicants, by counsel, and move the Commission to limit the issues to be addressed at the hearing on the Application herein, scheduled for October 13, 1999, to those addressing service and safety. As grounds for said Motion, Applicants state that the Lexington-Fayette Urban County Government failed to notify the Applicants "in writing of its final decision" denying Applicants' proposed facility as required by KRS 100.987(4); and, thus, is presumed to have approved the proposed construction.

Respectfully submitted,

Sandra F. Keene
Mark W. Dobbins
Sandra F. Keene
TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK
1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137

* Per PSC Legal Division
place this document
in the public records.
HV
9-27-99

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served, via U.S. Mail, postage pre-paid, upon the following individuals this 20th day of September, 1999.

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

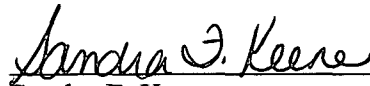
Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505

In addition, a courtesy copy hereof was mailed to: Lexington-Fayette Urban County Government Planning Commission, c/o Hon. Tracey Jones, Law Department, 200 East Main Street, Lexington, Kentucky 40507.



Sandra F. Keene

RECEIVED

SEP 14 1999

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
 THROUGH IT AGENT AND GENERAL PARTNER)
 SPRINT SPECTRUM, L.P., AND SBA TOWERS)
 KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A) Case No. 99-194 UAC *
 CERTIFICATE OF PUBLIC CONVENIENCE AND)
 NECESSITY TO CONSTRUCT A PERSONAL)
 COMMUNICATIONS SERVICES FACILITY)
 IN THE LEXINGTON MAJOR TRADING AREA)
 [SWIGERT ROAD FACILITY])

UNIFORM APPLICATION: CONFIDENTIAL AND PROPRIETARY
APPLICANTS' DATA REQUESTS PROPOUNDED TO
HON. DAN D. BROCK

** ** ** ** **

Come the Applicants, by counsel, and request that Hon. Dan D. Brock provide the following information, at least ten (10) days prior to the hearing scheduled for October 13, 1999.

1. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.
2. For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.
3. Please provide any and all documentation and/or facts which support your assertion that the proposed site is not an appropriate site for placement of the wireless telecommunications facility proposed herein.

* Per PSC Legal Division
 place this document
 in the public record. HV
 9-29-99

4. Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

5. For each "alternative site" described in your response to Request # 5 herein, please provide all documentation and/or facts demonstrating the point in time you made Applicants aware of such "alternative site."

6. Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,

BUCKAWAY & BLACK

1400 One Riverfront Plaza

Louisville, Kentucky 40202

(502) 584-6137

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served, via U.S. Mail, postage pre-paid, upon the following individuals this 13 day of September, 1999.


Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505



Sandra F. Keene

RECEIVED

SEP 14 1999

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
THROUGH IT AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

Case No. 99-194 UAC *

UNIFORM APPLICATION: ~~CONFIDENTIAL AND PROPRIETARY~~
APPLICANTS' DATA REQUESTS PROPOUNDED TO
CARL AND NETTIE R. GENTRY

** ** * * * ** **

Come the Applicants, by counsel, and request Carl and Nettie R. Gentry provide the following information at least ten (10) days prior to the hearing scheduled for October 13, 1999.

1. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.
2. For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.
3. Please provide any and all documentation and/or facts which support your assertion that the proposed site is not an appropriate site for placement of the wireless telecommunications facility proposed herein.

* Per PSC Legal Division
place this document
in the public record. HV
9-29-99

4. Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

5. For each "alternative site" described in your response to Request # 5 herein, please provide all documentation and/or facts demonstrating the point in time you made Applicants aware of such "alternative site."

6. Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

1400 One Riverfront Plaza

Louisville, Kentucky 40202

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Lexington, Kentucky 40505



Sandra F. Keene

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COMMONWEALTH OF KENTUCKY

SEP 14 1999

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
 THROUGH IT AGENT AND GENERAL PARTNER)
 SPRINT SPECTRUM, L.P., AND SBA TOWERS)
 KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A) Case No. 99-194 UAC *
 CERTIFICATE OF PUBLIC CONVENIENCE AND)
 NECESSITY TO CONSTRUCT A PERSONAL)
 COMMUNICATIONS SERVICES FACILITY)
 IN THE LEXINGTON MAJOR TRADING AREA)
 [SWIGERT ROAD FACILITY])

UNIFORM APPLICATION: ~~CONFIDENTIAL AND PROPRIETARY~~
APPLICANTS' DATA REQUESTS PROPOUNDED TO
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
PLANNING COMMISSION

** ** ** ** **

Come the Applicants, by counsel, and request that the Planning Commission for the Lexington-Fayette Urban County Government ("LFUCG") provide the following information, at least ten (10) days prior to the hearing scheduled for October 13, 1999.

1. Please list the name, title, and business address of the person(s) supplying the responses to the Data Requests set forth herein.
2. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.
3. For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.

* Per PSC Legal Division
 place this document
 in the public record. HU
 9/29/99

4. Please provide any and all documentation and/or facts which support your assertion that the proposed site is inconsistent with the Lexington-Fayette Urban County Comprehensive Plan.

5. Please describe any/all contacts between the Planning Commission's representatives and either the undersigned or the Applicants herein.

6. Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

7. For each "alternative site" described in your response to Request # 5 herein, please provide all documentation and/or facts demonstrating the point in time the LFUCG by or through any of its representatives made Applicants aware of such "alternative site."

8. Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137

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Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505



Sandra F. Keene

RECEIVED

SEP 14 1999

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
 THROUGH IT AGENT AND GENERAL PARTNER)
 SPRINT SPECTRUM, L.P., AND SBA TOWERS)
 KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A)Case No. 99-194 UAC *
 CERTIFICATE OF PUBLIC CONVENIENCE AND)
 NECESSITY TO CONSTRUCT A PERSONAL)
 COMMUNICATIONS SERVICES FACILITY)
 IN THE LEXINGTON MAJOR TRADING AREA)
 [SWIGERT ROAD FACILITY])

UNIFORM APPLICATION: ~~CONFIDENTIAL AND PROPRIETARY~~
APPLICANTS' DATA REQUESTS PROPOUNDED TO
ANDREW P. SLONE

** ** * * * ** **

Come the Applicants, by counsel, and request that Andrew P. Slone provide the following information, at least ten (10) days prior to the hearing scheduled for October 13, 1999.

1. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.
2. For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.
3. Please provide any and all documentation and/or facts which support your assertion that the proposed site is not an appropriate site for placement of the wireless telecommunications facility proposed herein.

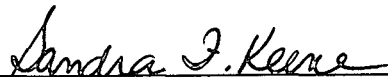
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4. Please list any and all specific locations within the Applicants' search ring, a copy of which is attached hereto which you assert to be a more appropriate location for the proposed facility, along with the basis for such opinion.

5. For each "alternative site" described in your response to Request # 5 herein, please provide all documentation and/or facts demonstrating the point in time you made Applicants aware of such "alternative site."

6. Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137

CERTIFICATE OF SERVICE

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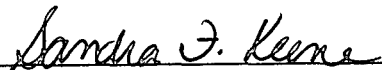
Carl & Nettie R. Gentry
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Carole Whalen
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Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505



Sandra F. Keene

RECEIVED

SEP 14 1999

COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO., L.P., BY AND)
 THROUGH IT AGENT AND GENERAL PARTNER)
 SPRINT SPECTRUM, L.P., AND SBA TOWERS)
 KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A) Case No. 99-194 UAC *

CERTIFICATE OF PUBLIC CONVENIENCE AND)
 NECESSITY TO CONSTRUCT A PERSONAL)
 COMMUNICATIONS SERVICES FACILITY)
 IN THE LEXINGTON MAJOR TRADING AREA)
 [SWIGERT ROAD FACILITY])

UNIFORM APPLICATION: ~~CONFIDENTIAL AND PROPRIETARY~~
APPLICANTS' DATA REQUESTS PROPOUNDED TO
CAROLE A. WHALEN

** ** * * **

Come the Applicants, by counsel, and request that Carole A. Whalen provide the following information, at least ten (10) days prior to the hearing scheduled for October 13, 1999.

1. Please provide a list of witnesses you expect to call to testify at the hearing before the Public Service Commission scheduled for October 13, 1999.
2. For any witness identified in Request #1 herein which you intend to offer as an expert witness in this matter, please provide the name and address of each said witness, state the subject matter upon which the expert is expected to testify, and a summary of the grounds for each opinion.
3. Please provide any and all documentation and/or facts which support your assertion that the proposed site is not an appropriate site for placement of the wireless telecommunications facility proposed herein.

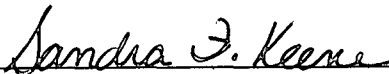
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 9-29-99

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5. For each "alternative site" described in your response to Request # 5 herein, please provide all documentation and/or facts demonstrating the point in time you made Applicants aware of such "alternative site."

6. Please provide the factual and legal basis for any other claims you intend to make before the Public Service Commission that would support your opinion that the proposed facility should not be approved.

Respectfully submitted,



Mark W. Dobbins

Sandra F. Keene

TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

1400 One Riverfront Plaza

Louisville, Kentucky 40202

(502) 584-6137

CERTIFICATE OF SERVICE

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Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, Kentucky 40505

Carole Whalen
157 Swigert Avenue
Lexington, Kentucky 40505

Hon. Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, Kentucky 40505

Andrew P. Slone
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Lexington, Kentucky 40505

Robert L. And Pauline M. Good
260 Swigert Avenue
Lexington, Kentucky 40505

Sandra F. Keene
Sandra F. Keene



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

September 7, 1999

To: All parties of record

RE: Case No. 99-194 UAC

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO 64112

Sandra F. Keene
Tilford, Dobbins, Alexander
Buckaway & Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Carole A. Whalen
157 Swigert Avenue
Lexington, KY 40505

Honorable Dan D. Brock
Attorney at Law
333 Midland Place
Lexington, KY 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, KY 40511

Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, KY 40505

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO., L.P., BY)	
AND THROUGH ITS AGENT AND GENERAL)	
PARTNER SPRINT SPECTRUM, L.P., AND)	
SBA TOWERS KENTUCKY, INC., JOINTLY,)	
FOR ISSUANCE OF A CERTIFICATE OF)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY)	99-194 UAC
TO CONSTRUCT A PERSONAL)	
COMMUNICATIONS SERVICES FACILITY)	
IN THE LEXINGTON MAJOR TRADING)	
AREA (SWIGERT ROAD FACILITY))	

O R D E R

On July 6, 1999, WirelessCo., L.P., by and through its agent and general partner, Sprint Spectrum, L.P., and SBA Towers Kentucky ("Applicants") filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a telecommunications facility at 189 Swigert Road, Lexington, Fayette County, Kentucky. Pursuant to KRS 100.987(2), Applicants submitted the uniform application to the Planning Commission of the Lexington-Fayette Urban County Government ("Planning Commission"). In accordance with the staff report submitted to it, and subsequent to a public hearing on the matter, the Planning Commission disapproved the proposed construction. The Planning Commission's finding and written record of the meeting in which the finding was made have been filed into the record in this case. This Commission may override the decision of the Planning Commission only if the public convenience and necessity require the construction and if there is no acceptable alternative site from which service can be provided. KRS 100.987(5).

Several persons living near the proposed site have requested and have been granted intervention in this case. Accordingly, the Commission, on its own motion, has scheduled a hearing to assist it in determining whether the circumstances presented in this case require it to override the decision of the Planning Commission. The hearing will be held on October 13, 1999, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 2 of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky.

IT IS THEREFORE ORDERED that:

1. A hearing on the proposed construction is scheduled for October 13, 1999, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 2 of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky.

2. Applicants shall appear at the hearing and be prepared to present testimony on the need to construct a facility to serve wireless telecommunications customers and on their efforts made to locate a facility at other, more suitable locations.

3. Neither opening statements nor witnesses' summaries of prefiled testimony shall be permitted.

4. Any interested person shall have the opportunity to present testimony or comment on the proposed cell site.

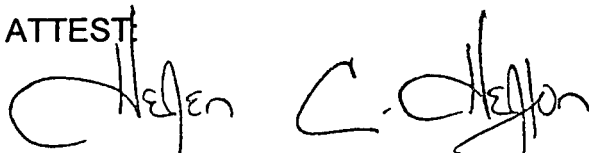
5. Prefiled testimony, if any, shall be filed by September 30, 1999.

6. Pursuant to KRS 100.324, a copy of this Order is being sent to the Lexington-Fayette Urban County Planning Commission for the purpose of notification that the above-scheduled hearing may affect locations or relocations of service facilities within the planning unit's jurisdiction.

Done at Frankfort, Kentucky, this 7th day of September, 1999.

By the Commission

ATTEST:

A handwritten signature in cursive script, appearing to read "Helen C. Shelton". The signature is written over a horizontal line.

Executive Director



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

September 3, 1999

To: All parties of record

RE: Case No. 99-194 UAC
SPRINT SPECTRUM, L.P. AGENT FOR WIRELESSCO., L.P.

The Commission staff has reviewed your response of July 6, 1999 and has determined that your application in the above case now meets the minimum filing requirements set by our regulations. Enclosed please find a stamped filed copy of the first page of your filing. This case has been docketed and will be processed as expeditiously as possible.

If you need further information, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO. 64112

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260 Swigert Avenue
Lexington, KY. 40505

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SEP 2 1999

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

GENERAL COUNCIL

Case No. 99-194UAC

In the matter of :

APPLICATION OF WIRELESS., L.P., BY AND THROUGH IT AGENT AND GENERAL PARTNER SPRINT SPECTRUM, L.P., AND SBA TOWERS KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A PERSONAL COMMUNICATIONS SERVICES FACILITY IN THE LEXINGTON MAJOR TRADING AREA [SWIGERT ROAD FACILITY]

FINDINGS OF THE PLANNING COMMISSION OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

The Planning Commission of the Lexington-Fayette Urban County Government disapproves the abovementioned application for the following reasons:

1. The proposed location is not in agreement with the goals and objectives of the adopted Comprehensive Plan.

A written record of the meeting in which these findings were made is attached hereto.

Respectfully submitted

Robert Lucas
Chairman, Planning Commission

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SEP 02 1999
PUBLIC SERVICE
COMMISSION

MINUTES FOR THE AUGUST 19, 1999, PLANNING COMMISSION MEETING

(Subdivision Items)

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:07 p.m. on Thursday, August 19, 1999, in the Council Chamber, Second Floor, 200 East Main Street, Lexington, Kentucky. Commission Members in attendance were Eugene Ballentine, Ben P. Bransom, Jr., Thomas M. Cooper, Anne D. Davis, Sarah Gregg, Dallam B. Harper, Jr. (arrived @ 1:10 p.m.), George L. Logan, Keith Mays, and Rose M. Lucas, Chair. Carolyn Bratt and Don Robinson were absent.

Planning Staff in attendance were Director Dale Thoma, Bill Sallee, Joe Lenney, Jimmy Emmons, Chris Riegert, Doug Greene, David Swenk, Linden Smith, Susie Skillman, and Rose Carver. Also in attendance were Chris Westover and Tracy Jones, Department of Law; Bob Bayert, Division of Engineering; Howard Huggins, Traffic Engineering Division; and Belinda Labadie, Building Inspection Division.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the past meetings of September 17, 1998; June 24, July 8, and July 22, 1999 were distributed with this agenda and were ready for Commission consideration.

Action - A motion was made by Mrs. Gregg, seconded by Mr. Bransom, and carried 8-0 (Harper, Bratt, Robinson absent), to approve the minutes for the past meetings of September 17, 1998; June 24, July 8, and July 22, 1999, as distributed.

- III. **SOUNDING THE AGENDA** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals and items requiring no discussion.

A. **Postponements or Withdrawals** - The Chair asked for any items where postponement or withdrawal is being requested. For any such items, the Chair inquired as to any opposition, and the Commission voted on the request.

1. **PLAN 99-180P: WATERFORD-MAHAN PHASE II** - Nicholasville Road.

Representation -Mr. Tony Barrett, EA Partners, requested a postponement to the September meeting.

Action - A motion was made by Mr. Bransom, seconded by Mr. Ballentine and carried 8-0 (Harper, Bratt, Robinson absent), to postpone Plan99-180P, to the September 16 meeting.

(Mr. Harper arrived at this time.)

2. **DP 99-93: NDC PROPERTY UNIT 1 (P-1 AREA) (WELLINGTON)** - Bull Lea Road.

Representation -Ms. Sara Tuttle, Parrott-Ely-Hurt Engineers, requested a postponement to the September meeting.

Action - A motion was made by Mrs. Gregg, seconded by Mr. Logan and carried 9-0 (Bratt, Robinson absent), to postpone DP 99-93, to the September 16, 1999 meeting.

3. **PLAN 98-220P: ENGLISH STATION, UNIT 3 (AMD)** - English Station.

Representation -No representative was present. However, Mr. Lenney reported that the engineer asked that this plan again be postponed to the September 16th meeting.

Action - A motion was made by Mr. Ballentine, seconded by Mr. Logan and carried 9-0 (Bratt, Robinson absent), to postpone Plan 98-220P, to the September 16, 1999 meeting.

- B. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion was needed...that is, (1) all recommendations were in agreement, (2) the petitioner agreed with the recommendations, and (3) no one present objected to the Commission acting on the matter at this time without further discussion. For any such items, they proceeded to take action.

* Denotes date by which Commission must either approve or disapprove plan.

** Denotes at least a portion of the property contains an environmentally sensitive area.

- V. **COMMISSION ITEMS** - The Chair announced that the Commission would hold a continued hearing on the following cellular tower request.

Note: The following matter was postponed by the Planning Commission at its July 20, 1999 hearing, and was considered today immediately following "Sounded" items.

- A. **CELLULAR ANTENNA TOWER AT 189 SWIGERT AVENUE** - a continued hearing of a request by Wireless Co. to construct a cellular antenna tower at 189 Swigert Avenue.

REPRESENTATION:

Staff - Ms. Susan Skillman, Administrative Officer; Ms. Tracy Jones, Legal Counsel

Applicant - Ms. Sandra Keene, attorney for the applicant (Sprint & SBA); Ms. Jennifer Sturgeon, Property Specialist for SBA; and Mr. Oliver Fiebel, Radio Frequency Engineer for Sprint.

STAFF REPORT - Ms. Skillman noted that since this was a continued hearing, no new staff report would be presented. The report presented at last month's hearing summarized the staff's position, and it was distributed again today. (A copy of the staff report is attached as an appendix to these minutes.) The staff was recommending disapproval of this request, for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular, the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.
- G. Promote human scale, pedestrian friendly neighborhoods.
- H. Maintain, preserve and revitalize existing neighborhoods.
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY.

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.

2. To better accomplish the Goals and Objectives of the Comprehensive Plan, the tower should be located in an area that does not adjoin residential uses.

The continuation was to give the neighborhood an opportunity to meet with other persons in the area who might have a potential location for a cell tower. Ms. Skillman understood that the attorney for the cell company attempted to meet with Mr. Whitaker (adjoining owner to the north) about using his property for the cell tower; that is, to co-locate it with the existing tower on Mr. Whitaker's property. The staff did not arrange for that meeting and others would report on what transpired.

APPLICANT REPORT - Ms. Keene reported that during last month's hearing, SBA and Sprint outlined the efforts they had made since the fall of 1997 to secure a tower location in the Paris Pike/Swigert Avenue area. Those efforts included constant involvement of the Commission's staff in trying to find a location within Sprint's coverage area that would have the least impact on the homes in the area. She asked that all statements and exhibits presented at the July 20th hearing be incorporated by reference herein.

Following that meeting, Sprint, SBA and the Commission executed an agreement which allowed them to extend the time in which the Commission had to make a decision. They followed up with a letter to the neighbors stating their willingness to meet, but did not hear from the neighbors until Jennifer Sturgeon contacted Mr. Whitaker's representative. She reported that Mr. Whitaker had not changed his mind, he still did not want Sprint to co-locate on his existing tower, and he was not interested in pursuing that meeting.

Ms. Keene further reported that SBA has offered to pay to disassemble Mr. Whitaker's existing lattice tower, upon approval and construction of the proposed monopole. This would result in still having only one tower in the area. She also pointed out that theirs would be an unlit monopole tower less than 200 feet,

* Denotes date by which Commission must either approve or disapprove plan.

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whereas the Whitaker structure is a lattice tower over 200 feet high and is lit. (Towers 200 feet or higher have to be lit.) Mr. Whitaker would have to agree with that, but SBA would be willing to pay for its removal.

She also emphasized that they had exhausted every possibility in this area, and they believe the proposed site is the most appropriate location for the monopole. In minimizing the visual impact of the tower, SBA has located it toward the rear of 189 Swigert Avenue (Sweeney property). In addition, there is a treeline for screening and fewer houses are in the immediate vicinity of that location than elsewhere in the Swigert Avenue area. Their engineers prepared balloons and strung them 200 feet in the air and drove along Paris Pike to see if they would be visible from that roadway. They were unable to see them; therefore, they did not believe the monopole would be visible from Paris Pike. Further, visibility from Swigert Avenue would be minimized by the distance it would be set back from that road.

OBJECTIONS/CITIZEN COMMENTS

Residents voicing opposition to this proposal were Ms. Carole Whalen, 157 Swigert Avenue, Mr. Dan Brock, 102 Swigert Avenue; Mrs. Polly Good, 260 Swigert Avenue, and Mrs. Theresa Thompson, 233 Swigert Avenue.

The above residents opposed the monopole proposal at 189 Swigert Avenue, which they felt would harm the residential character of their neighborhood. Mr. Brock said he didn't want a monopole in his back yard, and that the proposal was not in conformity with the Plan. (Mrs. Good and Mrs. Thompson also opposed an alternative location on Swigert Avenue, suggested next by Ms. Whalen.)

Ms. Whalen, whose property adjoins this site at the rear, thought there were other options to satisfy the Sprint requirements and yet maintain the character of the neighborhood. She had photographs of another tower on church property in Massachusetts. It was a Sprint tower and the steeple encased the technical equipment, making it unobtrusive and unseen. She discussed this possibility both with Sprint and the Pastor of the Northside Baptist Church; and while expensive, she thought something might be arranged to co-locate the tower with the church in a manner acceptable to the community. She added that the church does not have a steeple, and Rev. Jones was very receptive to this possibility as it would provide the church with needed additional income.

Ms. Whalen said she also spoke to the neighbors about this possibility. She presented a petition in opposition to the monopole at 189 Swigert, but in agreement to a church steeple to house the antennas. She added that everyone was interested in this concept.

She noted the unique character of Swigert Avenue with older, well-kept homes, horse fences and horses up and down the road. They wanted to maintain that character, and felt that placing an unsightly tower in the middle of a horse pasture was not something their neighborhood needs. She asked the Commission to deny this request and to give them an opportunity to look at other possibilities and other options.

Rev. Bob Jones, Northside Baptist Church, offered an alternative in which he would agree to a prayer tower or a regular tower to be constructed on the church property at 257 Swigert. He said the church has approximately 10 acres and their building is set back quite a distance from Paris Pike. Also, it adjoins the Whitaker property. He felt this offer could be a help to the community and to the church.

OBJECTION TO ALTERNATIVE PROPOSAL

Mrs. Good, 260 Swigert Avenue, lives across from the church and pointed out that there were 4 houses directly across from the church property. She did not know how the steeple would look, but emphasized that she and her neighbors did not want a monopole facing their properties, and they would be adversely affected by such a use. She maintained the same position as last month that a monopole should not be on Swigert Avenue.

REBUTTAL:

Applicant - Ms. Keene addressed the latest church property proposal, noting that they met at the church yesterday and brought with them a structural engineer who was involved in the Centenary Church steeple here in Lexington. That church had an existing foundation and structure, and the tower is only 115-125 feet, or so, high. The engineer explained what would be required on the Northside Baptist Church's prop-

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erty. Given the Northside Baptist Church's design, they could not just put an antenna on top of the building. In order to build a tower so it would not pose any risk to the public, the leased area would have to be about 80' x 80', it would be twice as tall as the Centenary Church tower, and it would have to be placed to the left of the church. A photo simulation was presented showing the tower on the church property, which Ms. Keene felt resembled the Washington Monument. Two more carriers would be required, and the height would exceed 200 feet. Structures 200 feet or higher require lighting. She presented this information to make the residents in this area aware that this would not be a little steeple on top of the church—that in order to meet the structural requirements and to accommodate the 3 carriers, it would be quite large. Further, she pointed out that this property is located closer to Swigert Avenue, which would make it appear very large to nearby residents. She did not know if the residents were aware that this was what they were agreeing to.

Aside from that, they also had their engineer run some numbers for them, and the cost of the tower on the church property would be about 1 million dollars, not including lease payments. The company would never recover the cost and that proposal is cost prohibitive. She said such a requirement would not be reasonable.

Objector - Mrs. Theresa Thompson, 233 Swigert, stated that she lived an equal distance from both sites, and this was one of the more brutal looking structures she had seen. It would not be acceptable to them, and she reiterated her opposition.

COMMISSION QUESTIONS - Mr. Mays asked why a shorter tower was not acceptable at this location and why the proposed tower had to be at 185 feet. Mr. Fiebel, radio frequency engineer, explained that in locations that are highly developed, the sites are a lot closer together and they do not require as tall a tower. But as they move out toward the country, towers are farther and farther apart, thus, taller towers are required.

There being no further comments from the audience, the hearing was closed at this time.

Dr. Cooper stated he would abstain from voting to avoid any appearance of impropriety, since he served as the chair on the committee that dealt with Sprint to do the prayer tower at Centenary Church.

Mr. Harper and Mr. Mays also abstained from voting since they did not attend last month's hearing on this matter. (Note: Abstentions go with the majority.)

Prior to action on this, the Commission briefly discussed its role in these matters, since this was the first cell tower hearing before the Commission. Ms. Jones, legal counsel, noted that their recommendation would be sent to the Public Service Commission whether they approved or disapproved this request. However, if disapproved, the Commission must have reasons for disapproval.

Ms. Skillman explained that even if the Commission disapproves the request, the Public Service Commission can still approve the location if it determines there is no acceptable alternative and that the public convenience and necessity requires the proposed construction. Thus, it is merely a recommendation to the Public Service Commission.

It was also noted that if approved, there would be two cell towers visible from Swigert Avenue (Whitaker and the proposed tower).

ACTION - A motion was made by Mrs. Gregg, seconded by Mr. Bransom, and carried 9-0 (Cooper, Harper, Mays abstained; Bratt & Robinson were absent), to disapprove the request to construct a cellular antenna tower at 189 Swigert Avenue, for the reasons listed by the staff.

VI. STAFF ITEMS

A. Office of Director

1. Franklin D. Thompson Retires as Planning Manager - Mr. Thompson, Planning Services Manager, has retired from the Division of Planning after 36 years of dedication to planning our community. Frank joined the Planning Commission staff in 1963 as a draftsman and steadily rose through the ranks to become Planner, Principle Planner, Planning Services Director and Planning Services Man-

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V. **COMMISSION ITEMS** – The Chair announced that any item the Commission members or Committee would like to present would be heard at this time.

1. **Cellular Antenna Tower** – A request by WirelessCo to construct a cellular antenna tower at 189 Swigert Avenue.

Representation – Ms. Sandra F. Keene, attorney, for SBA Towers and WirelessCo, L. P., aka as Sprint Spectrum, L. P.; Ms. Jennifer Sturgeon, SBA Towers; Mr. Oliver Fiebel, radio frequency engineer.

Staff Report – Mrs. Susan Skillman, Current Planning, presented the report. She distributed a staff report that contained pertinent facts of this case. It also contained a review of KRS 100.987 that was passed by the Kentucky state legislature in 1998. This statute gave the Planning Commission limited authority to review cellular antenna tower requests within its jurisdiction of Fayette County. In addition, Mrs. Skillman distributed a packet of exhibits that she used throughout her presentation.

Mrs. Skillman stated that a drawing of the proposed monopole was found on page 11 of the exhibit packet. The pole would be 180 feet high with a lightening rod at the top that would make the total height 191' 6".

Mrs. Skillman then went over the review of KRS 100.987 found in the staff report. She noted that, up to now, the Urban County Government would receive notice of cellular tower requests, and the Urban County Council would decide whether to intervene at the hearing before the Public Service Commission (PSC). This statute now allows that the Planning Commission to review the cellular tower requests. As they are received, the staff will review them and will present them to the Planning Commission.

Mrs. Skillman stated that cell towers are part of the process of creating an overall grid of antenna towers and transmitters. They cannot all be located in industrial areas because they need to be located near the users. Consequently, they are proposed for locations that the community might not desire.

Mrs. Skillman stated that under Federal and State law, cellular communication services are considered a utility, and come under the authority of the Kentucky Public Service Commission. This Commission also regulates electric services, gas companies, water companies, and the like. Mrs. Skillman stated that the application format and information is prescribed by statute. The staff can request, but cannot require, further information from the antenna company.

Mrs. Skillman stated that all of the information in the application is considered confidential and proprietary. She noted that the address and location of the tower were the only facts that are required to be made part of a public record. In this instance, however, the company had agreed to release a lot of information and make it available to the public. Most of this information was included in the exhibit packet.

Mrs. Skillman stated that the Planning Commission would have a limited review of this application. She noted that it could only be reviewed as to whether it would agree with the 1996 Comprehensive Plan and with the Zoning Ordinance. This particular request was filed on June 23rd and the Commission would have 60 days from that date to submit its recommendation in writing to the PSC. If the Commission does not make a recommendation within that time, the application will be deemed to be approved.

Mrs. Skillman stated that the Commission could consider how well the cell tower provider has tried to co-locate on existing towers. To do that, the Commission has to look at the search ring that had been established. A search ring is the area that the radio-frequency engineers have determined would be the most advantageous area for the cell tower location. The Commission could see if there are other towers in the area, and whether the applicant company had attempted to locate its transmitting facilities on an existing tower.

Mrs. Skillman stated that if the Planning Commission recommends disapproval of the request, it must give reasons for that recommendation. It also must provide to the PSC suggestions for how the goals and objectives of the Comprehensive Plan and/or the Zoning Ordinance could be accomplished in a better way. Ms. Skillman explained that, even if the Commission recommends disapproval of the request, the PSC could still approve the location if it determines that there is no acceptable alternate location, and that the public convenience and necessity requires the proposed location.

Mrs. Skillman referred Commission members to page 17 of the packet which was a copy of a map with a search ring drawn on it. This showed where the applicant, WirelessCo, had determined the tower should be located. Additional maps and photographs were displayed on an overhead projector to illustrate the location of the proposed tower. The property fronts on Swigert Avenue. A private street called Blue Ribbon Lane runs behind Swigert Road properties, but stops short of the subject property. The proposed monopole would be located in the rear of 189 Swigert Avenue.

The photographs showed views of the subject property and other properties along Swigert Avenue. They illustrated the fact that the land behind the subject property was farm land. They also showed the proposed location for the cell tower. One photograph showed a tower located on the Whitaker farm north of the subject property. A copy of a letter to Mr.

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Whitaker, owner of this tower, was found on page 19 of the exhibit packet. In this letter, Mr. Whitaker was asked to respond to a request from Sprint to utilize that tower, or to rebuild it. Page 20 was a copy of a response from Mr. Whitaker, indicating that he was not interested in having communications equipment placed on his tower. Mrs. Skillman concluded that Sprint had made an effort to contact the owner of a nearby tower within the search ring. Other photographs showed homes located on nearby properties.

Mrs. Skillman stated that the front of the subject property was zoned R-1B and the rear of the property where the monopole was proposed, is zoned A-R. She noted that radio, telephone, or television transmitting or relay facilities are permitted in the A-R zone as a conditional use. Four conditions for them being allowed are listed in the Zoning Ordinance (Article 8-1(d)14.a.b.c.d.), and were also listed on the staff report. Mrs. Skillman stated that information on the wind speed (Art. 8-1(d)14.b.) was not supplied, and the staff would like to know if the proposed tower would meet that condition.

Mrs. Skillman reviewed the co-location issues discussed in the staff report. The staff believed that the applicant had fulfilled the requirement to investigate co-locating on existing towers. She believed that the statute required that the applicant investigate other towers in the area, and not other properties where a tower might be located.

Mrs. Skillman then reviewed the Comprehensive Plan issues listed in the staff report. The staff's recommendation was as follows:

The Staff Recommends: **Disapproval** for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.
- G. Promote human scale, pedestrian friendly neighborhoods.
- H. Maintain, preserve and revitalize existing neighborhoods.
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY.

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.

2. To better accomplish the Goals and Objectives of the Comprehensive Plan the tower should be located in an area that does not adjoin residential uses.

Applicant's Presentation – Ms. Sandra Keene, attorney, stated that the staff report did not include a history of the efforts that the applicant had made to find a location for this tower. She noted that the applicant had spent much time with the staff and with neighbors in trying to find a suitable site. This case began in 1995 when the FCC decided to increase competition for wireless providers so that the cost would be brought down to an affordable price for the service. The FCC had auctioned a list of FCC licenses for a different frequency band other than the one used by cellular providers. Sprint is a Personal Communications Services (PCS) provider. This service operates with a different technology than the traditional wireless.

Ms. Keene stated that Sprint won the bid for these FCC licenses for many areas within the United States, including the Fayette County area. Sprint had entered the field later than the cellular companies. These cellular companies had already erected towers and had built out their networks. Consequently, the public became aware of what cellular towers looked like, and Sprint faced resistance to erecting more towers for its network.

Because of this circumstance, Sprint had initiated a co-location design. Company officials identified as many existing towers, water tanks, tall buildings, etc., on which the communications equipment could be installed. After those locations were secured, Sprint officials would complete the network with stand-alone towers. Ms. Keene stated that, in Kentucky, Sprint's co-location rate is approximately 70%. She noted that this co-location rate was unheard-of when cellular communication was first introduced.

Ms. Keene stated that, inevitably, the company must construct towers on some sites because there is no structure tall enough or available to serve the purpose. This inevitability has occurred in the area of the search ring. Sprint began working on a site in this area of Fayette County early in 1997, and knew that it would be tough because of its proximity to Paris Pike. Ms. Keene noted that most of the area in the search ring was owned by Mr. Whitaker who already had a tower on his property. A Sprint representative had contacted Mr. Whitaker about using his tower, or possibly

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constructing a stronger tower as a co-location project. Mr. Whitaker was not interested in either proposal. The Sprint representative was not able to find anyone within the search ring interested in having a tower constructed on his or her property.

Ms. Keene further reviewed the history of tower location in this area, noting that Sprint contracted with SBA Towers, an independent contractor that builds towers for this purpose. A site near the Waffle House restaurant on North Broadway was investigated by SBA Towers. The initial application filed with the PSC was for that site. Due to extensive public opposition to that site, SBA Towers and Sprint chose not to pursue that site. Ms. Keene then described attempts to work with the neighbors to find an appropriate site. These attempts were fruitless.

Ms. Keene stated that SBA had continued looking for sites in the community, including nearby commercial sites. None of the property owners were interested. Sprint officials had concluded that there were no sites in the area that would be pleasing to the neighbors. Therefore, SBA and Sprint reactivated the case with the PSC, and met with the Mr. King and Mrs. Skillman of the Current Planning staff. Mrs. Jean Sweeney, president of the Joyland Neighborhood Association was also present at that meeting.

Eventually, Mr. Sweeney offered to allow the structure on the back of his property where it would be less visible to the surrounding neighbors. The applicants had proposed a 180' monopole structure. Mrs. Keene stated that, originally, the radio frequency engineers had requested a 250' tower. Because of considerable neighborhood opposition, the applicants had reduced that size to avoid having to install lighting in compliance with FAA standards.

Mrs. Keene stated that the applicants had attempted once more in June, 1999 to contact Mr. Whitaker about using his tower, or allowing them to build a replacement tower on his property, but these efforts failed. This ruled out the only co-location opportunity available to the applicants. Finally, the application was filed, leading to this hearing. She asked Commission members to take note of the efforts that the applicants had taken to work with the neighbors. She contended that the applicants had been willing since 1997 to work with the neighbors and with the staff.

Mrs. Keene emphasized that the applicants had spent two years trying to obtain a site, and were at a loss to do so at this time. They believed that they had found the best site within the search ring on Mr. Sweeney's property, and that it would be as unobtrusive as possible.

Mrs. Keene summarized by stating the following:

1. The applicant had spent two years trying to find a site that would be agreeable to everyone.
2. The applicants had maintained contact with the Current Planning staff.
3. The applicants had delayed going forward on a site more than once in order to investigate other opportunities that were suggested by various neighbors.
4. SBA Towers had spent over \$75,000 trying to find a suitable site within this search ring.
5. The applicants hoped that the Commission would want to encourage this type of involvement with the community and not discourage it.
6. The monopole had been set back from the road a good distance. It probably would not be visible from Paris Pike.

Mrs. Keene stated that SBA had proposed to take down Mr. Whitaker's tower since he no longer uses it. If this were done, there would be only one tower in the area, and it would be shorter than Mr. Whitaker's existing tower. It would be a monopole rather than a lattice tower, and it would not have the required FAA lighting.

Mr. Oliver Feibel, radio frequency engineer, used two color-coded maps to show where the coverage was needed in the area. One map showed existing locations without the proposed site. Coverage, represented by green circular areas, was lacking in the area of the proposed site. The other map showed how the proposed site would fit into the coverage of the existing network.

To explain how a search ring was determined, Mr. Feibel stated that the engineers determined the latitude and longitude of where a site should be located. They then draw a circle within a certain distance of that point to determine the search ring. The ideal would be that good coverage areas would just touch. He explained that locating sites too close together would cause interference in overlap areas because the signal would be too strong. On the other hand, sites that were too far apart would cause weak coverage in areas where the coverage did not meet. The goal was to have coverage move smoothly from one search ring to another.

Ms. Keene then addressed issues raised in the staff report. She took issue with Mrs. Skillman's claim that the front portion of the property was zoned R-1B and the back portion was zoned A-R. She maintained that, according to her inquiries, all of the land in that general area was zoned A-R, and that the site did not abut residential zoning. She obtained that information from Mr. Sweeney.

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With respect to the wind speed, Ms. Keene stated noted that the engineers had stipulated on the application that the tower would withstand a wind speed of 70 mph on the application because that was what is required in this area. She stated that SBA would commit to a wind speed of 100 mph, and wanted the record to reflect that commitment.

With regard to the fall line issue, Ms. Keene stated that the proposed tower would not have a fall line that included a structure. She conceded that its fall line might include a property on which a structure was located.

With regard to the Goals and Policies from the Comprehensive Plan included in the staff report, Ms. Keene reiterated her claim that all adjacent properties in the area were zoned for agricultural use and not for residential use. She stated that the proposed tower was not being placed in a neighborhood, as they have tried to avoid doing that. This site in an agricultural area was chosen for that reason, and because of the earlier opposition from residents of a subdivision.

Ms. Keene disagreed that the proposed monopole would have an adverse affect on the character of a neighborhood, or would interfere with a pedestrian-friendly neighborhood. She also contended that the monopole would not interfere with public roads or sidewalks because it would be set back one-quarter of a mile from Swigert Avenue, and one-half mile away from Paris Pike. The nearest house was located one-quarter of a mile away. The site was heavily wooded and the trees would shield the visual impact of the tower.

Ms. Keene stated that the tower would be designed to hold up to three communication devices, and this would reduce the number of towers needed in the area.

Proponents – Mr. Frank Sweeney, 189 Swigert Avenue, stated that he wanted to explain his reasons for offering the rear of his farm for the monopole. He noted that four generations of his family had lived in Fayette County, and he had chosen to continue living in the County because of its beauty. He had purchased this 11-acre farm 22 years ago.

Mr. Sweeney stated that he had co-founded the Joyland Neighborhood Association 10 years ago, and was an officer of that Association for several years. He was also a member of the Bluegrass Nature Trust, and had led in the construction of the beautification of Paris Pike. He had appeared before the Commission a few times because of zone change applications and real estate construction.

Mr. Sweeney stated that he had led the opposition to the construction of this monopole next to the Super America station on North Broadway. He was the person who had caused 88 letters to be sent to the PSC in opposition to that site. He stated that he did not oppose the construction of communication towers, but was concerned that the company making that application had no sensitivity to the Joyland Neighborhood Association, or other neighbors in the area.

During that time, Mr. Sweeney had spoken with an attorney from the law firm representing Sprint at that time. The attorney had asked where the monopole could be located. He decided that he would rather be a person who sought solutions to problems of modern technology in his neighborhood rather than to simply oppose such technology. He suggested that the monopole be placed on the rear of an obscure farm in the area. It could be out of site of people driving up and down Swigert Avenue and on Paris Pike. When this possibility was investigated, the engineers determined that the best location for a tower of a shortened height was at the rear of his farm.

Mr. Sweeney described the process by which the exact location was determined so that it would not be visible from Swigert Avenue. He stated that he had spent \$2,000 on attorney fees to negotiate the terms of the contract. He noted that there would be no guy wires for the pole. He further noted that the company would have to remove the pole and its concrete footing if it was ever abandoned.

Mr. Sweeney stated that the opposition to the pole might be due to misinformation that had been spread. He had talked with both of his neighbors, and had showed them plans and drawings of the proposed monopole. None of them had expressed opposition to this monopole. He also had invited the current president of the Joyland Neighborhood Association to the site, and had showed plans and drawings to that person. He maintained that he had not heard one single person speak to him about opposing this site.

Mr. Sweeney stated that he had done everything in his power to ensure that SBA would maintain the tower and the landscaping around it. SBA must also maintain the driveway leading back to the monopole. If the company removes the monopole, the land must be returned to its original condition.

Objections – Mr. Robert Goode, 260 Swigert Avenue, stated that his family was not informed of this application. He had lived in the area for 30 years. He noted that the photographs shown by Mrs. Skillman showed how beautiful this area was. He acknowledged the existence of trees on the site, but pointed out that leaves fall from the trees during the winter. The remaining bare branches will not hide the monopole from view at that time.

Mr. Goode claimed that Mr. Whitaker refused to allow the use of his tower because he liked the quaint neighborhood and did not want this facility to disturb it. He claimed that the applicants could find a site further out.

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Ms. Laura Whalen was speaking for her mother, Carol Whelan, 157 Swigert Avenue, who was out of town. She stated that their property was adjacent to the Sweeney property, and was the same size as that property. She noted that the monopole would be adjacent to the rear of the proposed site. She stated that they keep horses and dogs on the property. She read a letter from her mother to the neighbors in which her mother had alerted neighbors who had not been notified of this application.

Ms. Whalen believed that the lack of opposition was due to the fact that few people had received letters of notification about this application. (Letters were sent to property owners within 500 feet of the proposed site.) She stated that the lack of opposition was due to the fact that most people did not know about this application. Her mother had written the letter to the neighbors two months ago. Ms. Whelan noted that the neighbors did not know that this proposal had been under consideration for the last two years.

Ms. Whalen stated that the current president of the Joyland Neighborhood Association, Mr. Dan Atkinson, had spoken with her mother the previous day about this issue. He had then written a letter to her mother stating that the Joyland Neighborhood Association was opposed to any and all cell-phone towers within the Joyland neighborhood, whatever form they take. He had stated in his letter that the Joyland neighbors did not approve of, or support, any such device.

Ms. Whalen stated that she was not sure how much communication the applicant had had with Mr. Whitaker. She also stated that she had spoken with a number of neighbors recently, and had found that most of them were opposed to the monopole. She wanted more time to talk with people and to find another solution. She questioned why Mr. Sweeney had not contacted his neighbors about the proposed site to see if they could agree to this site. She pointed out that Mr. Sweeney will get a monthly fee for allowing this structure on his property.

Mr. Dan Brock, 102 Swigert Avenue, stated that he lived some distance from the proposed site. He stated that he was offered the chance to have this monopole on his property, too. He was offered \$600 per month or \$7,200 per year. The company had also offered him the same conditions that Mr. Sweeney claimed to have negotiated; such as, landscaping, maintenance of the site, and clean-up if the site were abandoned. He noted that Mr. Sweeney's property had been for sale recently. He believed that this proposed site was about money, not the ethics that Mr. Sweeney had described.

Mr. Brock stated that he was not interested in the money because his family had lived on the property since 1942, and he planned to stay there as long as he could. Ultimately, the property would belong to his son. He noted that they had lived there for this long without such a structure in the neighborhood.

Mr. Brock stated that the monopole would not be seen at present, but would be seen after the leaves fell. The trees are bare for at least half the year. He noted that a lot of money had been spent beautifying Paris Pike, and then this monopole is proposed for the area. He was in favor of the Planning Commission postponing this matter for a month to see if the neighbors could work out some other arrangement.

Mrs. Theresa Thompson, 233 Swigert Avenue, stated that her family had lived in the vicinity of the proposed site since 1986. She stated that their property did not extend as deep as Mr. Sweeney's, but she noted that they had spent considerable money on home improvements. She further noted that they spend time in the back of their house tending their garden.

Mrs. Thompson emphasized that the proposed monopole would be a visual impairment in the area. She did not want to see it there. She did not believe that it would enhance anybody's property except Mr. Sweeney's. She stated that her family would not have spent what they did for their home if they had known that there would be a monopole standing next door, as they could have gotten a similar house in another area.

Mrs. Thompson stated that the neighbors were very emotional about this issue. She noted that people had been speaking with each other even if they had not spoken to Mr. Sweeney. She stated that a number of people were offered to have the monopole on their property. Most of them had declined the offer out of consideration for the neighbors. She noted that her family had not received notification because they live outside the notification area, even though they live close to the proposed site.

Mrs. Thompson stated that Sprint officials seemed to have gambled a great deal on the premise that they could obtain the grid network that they needed. She argued that Sprint was not engaging in good business practices when the company imposed its structures on fine neighborhoods. She stated that she did not own a cell phone, and was not a Sprint customer.

Mrs. Polly Goode, 260 Swigert, disagreed with Ms. Keene's statement that this monopole site was not in a "neighborhood." She assured the Commission that the Swigert Avenue area is a neighborhood, and is one of the unique streets in Lexington. She agreed with the objections made by others.

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Applicant's Rebuttal – Ms. Keene stated that applicants are required to notify property owners within 500 feet of a proposed site. This distance is dictated by the PSC, and is not an arbitrary distance determined by the applicant. She further stated that the PSC mandates the wording of the notification letter.

Ms. Keene maintained that neither Sprint nor the PSC are insensitive to the neighbors. She noted that someone will see an 180 foot monopole. Such structures cannot be made invisible. However, the company had tried to find a spot where it would be visible to the least number of people. She believed that this site fulfilled that purpose.

Ms. Keene apologized for implying that Swigert Avenue was not a neighborhood. Her point was that they had selected a site that was not zoned for residential purposes, and that was not near—or in the middle of—a subdivision. This had been the objection to the first application for a site on North Broadway.

Ms. Keene confirmed that several people were approached about this monopole, but they were not interested. She noted that they had explained the narrowness of the search ring. She emphasized that Sprint and SBA were under FCC requirements, as well as PSC requirements, to provide adequate service to their customers. There is a "hole" in that service grid. She argued that the Company has to have a facility in this area, and had worked to find a spot where it would be visible to only a few people. She argued that there is no place else for the company to go.

Staff Rebuttal – Mrs. Skillman clarified the confusion over the zoning issue. She stated that the proposed site is zoned A-R. The Urban Service Area splits the property, and the front portion of the property is zoned R-1B. She had checked the zoning the previous day, and it was checked by another staff person a few minutes ago.

Discussion – Dr. Cooper spoke in favor of offering mediation services to the parties in this case. He noted that it had been 26 days since the application was filed, and there would be over 30 days available for further discussion. He suggested that interested parties—particularly Mr. Whitaker who has a tower to which the neighbors are accustomed—sit down with a mediator to find a solution. He believed that they could come up with a solution that everyone could live with.

The Chair asked the Commission Counsel if this would be appropriate. Ms. Westover stated that under the mediation ordinance, the Commission would not have the authority to put this issue into mediation. The parties could mediate on their own, but the Commission cannot require that. The Chair stated that the Commission could postpone this matter for three weeks until the August 19th Planning Commission hearing. Since the application was filed June 23rd, a report and recommendation must be sent to the PSC within 60 days. She noted that she would only support this option if Mr. Whitaker could be brought into the discussion.

Dr. Cooper urged the neighborhood association to seek the services of the Kentucky Mediation Service. He stated that the mediation should include the neighborhood, Mr. Whitaker, and Sprint. The Commission could then postpone this matter to August 19th.

Mrs. Skillman stated that the Planning Commission's recommendation had to be in Frankfort at the PSC within 60 days, or by August 21st. The minutes would have to be prepared to submit with the recommendation. Ms. Bratt stated that a way should be found to get the minutes and report expedited so that the Commission could give the parties three weeks to work out this problem. She believed that there would be a solution if Mr. Whitaker could be brought to the table.

Ms. Tracy Jones, Department of Law, stated that under the Statute the time for submitting a recommendation could be extended by written agreement from all parties, including the applicant. This would be done by written agreement between the Planning Commission and the utility. This could extend the date beyond August 21st. Chair Lucas asked Ms. Keene if she would give the Planning Commission a few days in order to get the papers filed.

Ms. Jennifer Sturgeon, SBA Towers, stated that she would prefer working toward a resolution within the next couple of weeks. She stated that this had been delayed for so long. She stated that they would work with the neighbors and Mr. Whitaker if he can be brought to the table. Chair Lucas explained that the Planning Commission has public hearings on the third and fourth Thursday of each month. A work session is held on the second Thursday of the month, at which time the Commission could hold a special hearing. She noted that this would allow only two weeks for arbitration or negotiation. Commission members believed that allowing another week might be better.

Chair Lucas explained to Commission members that she favored a postponement in this matter because this was the first such case that the Commission had heard. She believed that they should proceed carefully.

Ms. Sturgeon consulted with Ms. Keene, and then stated her understanding that SBA Towers could apply to the PSC for an additional week by filing another motion with the PSC. She asked for an acceptable date. Chair Lucas noted that this would be a joint agreement rather than a request by the applicant. Ms. Sturgeon agreed to the joint agreement.

Action - A motion was made by Dr. Cooper, seconded by Mr. Ballentine, and carried 8-0 (Harper, Mays, Robinson absent), to postpone the SBA Towers and WirelessCo, L. P cellular tower application to the August 19th Planning

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Commission agenda, to allow the applicants and the neighbors time to contact Mr. Elmer Whitaker, a neighbor, in order to pursue mediation or further negotiations, and to authorize the Chair to sign a mutual agreement with the applicant to apply for an extension to August 27, 1999 for transmitting the Planning Commission's recommendation to the Public Service Commission along with appropriate attachments.

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99-194
uac

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
AUG 27 1999
PUBLIC SERVICE
COMMISSION

Case No. 99-194UAC

In the matter of :

APPLICATION OF WIRELESS... L.P., BY AND THROUGH IT AGENT AND GENERAL PARTNER
SPRINT SPECTRUM, L.P., AND SBA TOWERS KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A PERSONAL
COMMUNICATIONS SERVICES FACILITY IN THE LEXINGTON MAJOR TRADING AREA
[SWIGERT ROAD FACILITY]

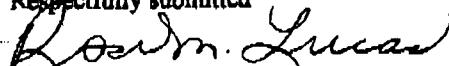
FINDINGS OF THE PLANNING COMMISSION OF THE LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

The Planning Commission of the Lexington-Fayette Urban County Government disapproves the
abovementioned application for the following reasons:

1. The proposed location is not in agreement with the goals and objectives of the adopted
Comprehensive Plan.

A written record of the meeting in which these findings were made is attached hereto.

Respectfully submitted



Chairman, Planning Commission

Urban County Planning Commission
200 East Main Street, Lexington, KY

Office of Director
Planning Commission Meeting

MINUTES FOR THE AUGUST 19, 1999, PLANNING COMMISSION MEETING
(Subdivision Items)

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:07 p.m. on Thursday, August 19, 1999, in the Council Chamber, Second Floor, 200 East Main Street, Lexington, Kentucky. Commission Members in attendance were Eugene Ballentine, Ben P. Bransom, Jr., Thomas M. Cooper, Anne D. Davis, Sarah Gregg, Dallam B. Harper, Jr. (arrived @ 1:10 p.m.), George L. Logan, Keith Mays, and Rose M. Lucas, Chair. Carolyn Bratt and Don Robinson were absent.

Planning Staff in attendance were Director Dale Thoma, Bill Sallee, Joe Lenney, Jimmy Emmons, Chris Riegert, Doug Greene, David Swenk, Linden Smith, Susie Skillman, and Rose Carver. Also in attendance were Chris Westover and Tracy Jones, Department of Law; Bob Bayert, Division of Engineering; Howard Huggins, Traffic Engineering Division; and Belinda Labadie, Building Inspection Division.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the past meetings of September 17, 1998; June 24, July 8, and July 22, 1999 were distributed with this agenda and were ready for Commission consideration.

Action - A motion was made by Mrs. Gregg, seconded by Mr. Bransom, and carried 8-0 (Harper, Bratt, Robinson absent), to approve the minutes for the past meetings of September 17, 1998; June 24, July 8, and July 22, 1999, as distributed.

- III. **SOUNDING THE AGENDA** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals and items requiring no discussion.

A. **Postponements or Withdrawals** - The Chair asked for any items where postponement or withdrawal is being requested. For any such items, the Chair inquired as to any opposition, and the Commission voted on the request.

1. **PLAN 99-180P: WATERFORD-MAHAN PHASE II** - Nicholasville Road.

Representation -Mr. Tony Barrett, EA Partners, requested a postponement to the September meeting.

Action - A motion was made by Mr. Bransom, seconded by Mr. Ballentine and carried 8-0 (Harper, Bratt, Robinson absent), to postpone Plan99-180P, to the September 16 meeting.

(Mr. Harper arrived at this time.)

2. **DP 99-93: NDC PROPERTY UNIT 1 (P-1 AREA) (WELLINGTON)** - Bull Lea Road.

Representation -Ms. Sara Tuttle, Parrott-Ely-Hurt Engineers, requested a postponement to the September meeting.

Action - A motion was made by Mrs. Gregg, seconded by Mr. Logan and carried 9-0 (Bratt, Robinson absent), to postpone DP 99-93, to the September 16, 1999 meeting.

3. **PLAN 98-220P: ENGLISH STATION, UNIT 3 (AMD)** - English Station.

Representation -No representative was present. However, Mr. Lenney reported that the engineer asked that this plan again be postponed to the September 16th meeting.

Action - A motion was made by Mr. Ballentine, seconded by Mr. Logan and carried 9-0 (Bratt, Robinson absent), to postpone Plan 98-220P, to the September 16, 1999 meeting.

- B. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion was needed...that is, (1) all recommendations were in agreement, (2) the petitioner agreed with the recommendations, and (3) no one present objected to the Commission acting on the matter at this time without further discussion. For any such items, they proceeded to take action.

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- V. **COMMISSION ITEMS** - The Chair announced that the Commission would hold a continued hearing on the following cellular tower request.

Note: The following matter was postponed by the Planning Commission at its July 20, 1999 hearing, and was considered today immediately following "Sounded" Items.

- A. **CELLULAR ANTENNA TOWER AT 189 SWIGERT AVENUE** - a continued hearing of a request by Wireless Co. to construct a cellular antenna tower at 189 Swigert Avenue.

REPRESENTATION:

Staff - Ms. Susan Skillman, Administrative Officer; Ms. Tracy Jones, Legal Counsel

Applicant - Ms. Sandra Keene, attorney for the applicant (Sprint & SBA); Ms. Jennifer Sturgeon, Property Specialist for SBA; and Mr. Oliver Fiebel, Radio Frequency Engineer for Sprint.

STAFF REPORT - Ms. Skillman noted that since this was a continued hearing, no new staff report would be presented. The report presented at last month's hearing summarized the staff's position, and it was distributed again today. (A copy of the staff report is attached as an appendix to these minutes.) The staff was recommending disapproval of this request, for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular, the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.
- G. Promote human scale, pedestrian friendly neighborhoods.
- H. Maintain, preserve and revitalize existing neighborhoods.
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY.

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.

2. To better accomplish the Goals and Objectives of the Comprehensive Plan, the tower should be located in an area that does not adjoin residential uses.

The continuation was to give the neighborhood an opportunity to meet with other persons in the area who might have a potential location for a cell tower. Ms. Skillman understood that the attorney for the cell company attempted to meet with Mr. Whitaker (adjoining owner to the north) about using his property for the cell tower; that is, to co-locate it with the existing tower on Mr. Whitaker's property. The staff did not arrange for that meeting and others would report on what transpired.

APPLICANT REPORT - Ms. Keene reported that during last month's hearing, SBA and Sprint outlined the efforts they had made since the fall of 1997 to secure a tower location in the Paris Pike/Swigert Avenue area. Those efforts included constant involvement of the Commission's staff in trying to find a location within Sprint's coverage area that would have the least impact on the homes in the area. She asked that all statements and exhibits presented at the July 20th hearing be incorporated by reference herein.

Following that meeting, Sprint, SBA and the Commission executed an agreement which allowed them to extend the time in which the Commission had to make a decision. They followed up with a letter to the neighbors stating their willingness to meet, but did not hear from the neighbors until Jennifer Sturgeon contacted Mr. Whitaker's representative. She reported that Mr. Whitaker had not changed his mind, he still did not want Sprint to co-locate on his existing tower, and he was not interested in pursuing that meeting.

Ms. Keene further reported that SBA has offered to pay to disassemble Mr. Whitaker's existing lattice tower, upon approval and construction of the proposed monopole. This would result in still having only one tower in the area. She also pointed out that theirs would be an unlit monopole tower less than 200 feet,

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whereas the Whitaker structure is a lattice tower over 200 feet high and is lit. (Towers 200 feet or higher have to be lit.) Mr. Whitaker would have to agree with that, but SBA would be willing to pay for its removal.

She also emphasized that they had exhausted every possibility in this area, and they believe the proposed site is the most appropriate location for the monopole. In minimizing the visual impact of the tower, SBA has located it toward the rear of 189 Swigert Avenue (Sweeney property). In addition, there is a treeline for screening and fewer houses are in the immediate vicinity of that location than elsewhere in the Swigert Avenue area. Their engineers prepared balloons and strung them 200 feet in the air and drove along Paris Pike to see if they would be visible from that roadway. They were unable to see them; therefore, they did not believe the monopole would be visible from Paris Pike. Further, visibility from Swigert Avenue would be minimized by the distance it would be set back from that road.

OBJECTIONS/CITIZEN COMMENTS

Residents voicing opposition to this proposal were Ms. Carole Whalen, 157 Swigert Avenue, Mr. Dan Brock, 102 Swigert Avenue; Mrs. Polly Good, 260 Swigert Avenue, and Mrs. Theresa Thompson, 233 Swigert Avenue.

The above residents opposed the monopole proposal at 189 Swigert Avenue, which they felt would harm the residential character of their neighborhood. Mr. Brock said he didn't want a monopole in his back yard, and that the proposal was not in conformity with the Plan. (Mrs. Good and Mrs. Thompson also opposed an alternative location on Swigert Avenue, suggested next by Ms. Whalen.)

Ms. Whalen, whose property adjoins this site at the rear, thought there were other options to satisfy the Sprint requirements and yet maintain the character of the neighborhood. She had photographs of another tower on church property in Massachusetts. It was a Sprint tower and the steeple encased the technical equipment, making it unobtrusive and unseen. She discussed this possibility both with Sprint and the Pastor of the Northside Baptist Church; and while expensive, she thought something might be arranged to co-locate the tower with the church in a manner acceptable to the community. She added that the church does not have a steeple, and Rev. Jones was very receptive to this possibility as it would provide the church with needed additional income.

Ms. Whalen said she also spoke to the neighbors about this possibility. She presented a petition in opposition to the monopole at 189 Swigert, but in agreement to a church steeple to house the antennas. She added that everyone was interested in this concept.

She noted the unique character of Swigert Avenue with older, well-kept homes, horse fences and horses up and down the road. They wanted to maintain that character, and felt that placing an unsightly tower in the middle of a horse pasture was not something their neighborhood needs. She asked the Commission to deny this request and to give them an opportunity to look at other possibilities and other options.

Rev. Bob Jones, Northside Baptist Church, offered an alternative in which he would agree to a prayer tower or a regular tower to be constructed on the church property at 257 Swigert. He said the church has approximately 10 acres and their building is set back quite a distance from Paris Pike. Also, it adjoins the Whitaker property. He felt this offer could be a help to the community and to the church.

OBJECTION TO ALTERNATIVE PROPOSAL

Mrs. Good, 260 Swigert Avenue, lives across from the church and pointed out that there were 4 houses directly across from the church property. She did not know how the steeple would look, but emphasized that she and her neighbors did not want a monopole facing their properties, and they would be adversely affected by such a use. She maintained the same position as last month that a monopole should not be on Swigert Avenue.

REBUTTAL:

Applicant - Ms. Keene addressed the latest church property proposal, noting that they met at the church yesterday and brought with them a structural engineer who was involved in the Centenary Church steeple here in Lexington. That church had an existing foundation and structure, and the tower is only 115-125 feet, or so, high. The engineer explained what would be required on the Northside Baptist Church's prop-

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erty. Given the Northside Baptist Church's design, they could not just put an antenna on top of the building. In order to build a tower so it would not pose any risk to the public, the leased area would have to be about 80' x 80', it would be twice as tall as the Centenary Church tower, and it would have to be placed to the left of the church. A photo simulation was presented showing the tower on the church property, which Ms. Keene felt resembled the Washington Monument. Two more carriers would be required, and the height would exceed 200 feet. Structures 200 feet or higher require lighting. She presented this information to make the residents in this area aware that this would not be a little steeple on top of the church—that in order to meet the structural requirements and to accommodate the 3 carriers, it would be quite large. Further, she pointed out that this property is located closer to Swigert Avenue, which would make it appear very large to nearby residents. She did not know if the residents were aware that this was what they were agreeing to.

Aside from that, they also had their engineer run some numbers for them, and the cost of the tower on the church property would be about 1 million dollars, not including lease payments. The company would never recover the cost and that proposal is cost prohibitive. She said such a requirement would not be reasonable.

Objector - Mrs. Theresa Thompson, 233 Swigert, stated that she lived an equal distance from both sites, and this was one of the more brutal looking structures she had seen. It would not be acceptable to them, and she reiterated her opposition.

COMMISSION QUESTIONS - Mr. Mays asked why a shorter tower was not acceptable at this location and why the proposed tower had to be at 185 feet. Mr. Fiebel, radio frequency engineer, explained that in locations that are highly developed, the sites are a lot closer together and they do not require as tall a tower. But as they move out toward the country, towers are farther and farther apart, thus, taller towers are required.

There being no further comments from the audience, the hearing was closed at this time.

Dr. Cooper stated he would abstain from voting to avoid any appearance of impropriety, since he served as the chair on the committee that dealt with Sprint to do the prayer tower at Centenary Church.

Mr. Harper and Mr. Mays also abstained from voting since they did not attend last month's hearing on this matter. (Note: Abstentions go with the majority.)

Prior to action on this, the Commission briefly discussed its role in these matters, since this was the first cell tower hearing before the Commission. Ms. Jones, legal counsel, noted that their recommendation would be sent to the Public Service Commission whether they approved or disapproved this request. However, if disapproved, the Commission must have reasons for disapproval.

Ms. Skillman explained that even if the Commission disapproves the request, the Public Service Commission can still approve the location if it determines there is no acceptable alternative and that the public convenience and necessity requires the proposed construction. Thus, it is merely a recommendation to the Public Service Commission.

It was also noted that if approved, there would be two cell towers visible from Swigert Avenue (Whitaker and the proposed tower).

ACTION - A motion was made by Mrs. Gregg, seconded by Mr. Bransom, and carried 9-0 (Cooper, Harper, Mays abstained; Bratt & Robinson were absent), to disapprove the request to construct a cellular antenna tower at 189 Swigert Avenue, for the reasons listed by the staff.

VI. STAFF ITEMS

A. Office of Director

1. Franklin D. Thompson Retires as Planning Manager - Mr. Thompson, Planning Services Manager, has retired from the Division of Planning after 36 years of dedication to planning our community. Frank joined the Planning Commission staff in 1963 as a draftsman and steadily rose through the ranks to become Planner, Principle Planner, Planning Services Director and Planning Services Man-

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V. **COMMISSION ITEMS** - The Chair announced that any item the Commission members or Committee would like to present would be heard at this time.

1. **Cellular Antenna Tower** - A request by WirelessCo to construct a cellular antenna tower at 189 Swigert Avenue.

Representation - Ms. Sandra F. Keene, attorney, for SBA Towers and WirelessCo, L. P., aka as Sprint Spectrum, L. P.; Ms. Jennifer Sturgeon, SBA Towers; Mr. Oliver Fiebel, radio frequency engineer.

Staff Report - Mrs. Susan Skillman, Current Planning, presented the report. She distributed a staff report that contained pertinent facts of this case. It also contained a review of KRS 100.987 that was passed by the Kentucky state legislature in 1998. This statute gave the Planning Commission limited authority to review cellular antenna tower requests within its jurisdiction of Fayette County. In addition, Mrs. Skillman distributed a packet of exhibits that she used throughout her presentation.

Mrs. Skillman stated that a drawing of the proposed monopole was found on page 11 of the exhibit packet. The pole would be 180 feet high with a lightning rod at the top that would make the total height 191' 6".

Mrs. Skillman then went over the review of KRS 100.987 found in the staff report. She noted that, up to now, the Urban County Government would receive notice of cellular tower requests, and the Urban County Council would decide whether to intervene at the hearing before the Public Service Commission (PSC). This statute now allows that the Planning Commission to review the cellular tower requests. As they are received, the staff will review them and will present them to the Planning Commission.

Mrs. Skillman stated that cell towers are part of the process of creating an overall grid of antenna towers and transmitters. They cannot all be located in industrial areas because they need to be located near the users. Consequently, they are proposed for locations that the community might not desire.

Mrs. Skillman stated that under Federal and State law, cellular communication services are considered a utility, and come under the authority of the Kentucky Public Service Commission. This Commission also regulates electric services, gas companies, water companies, and the like. Mrs. Skillman stated that the application format and information is prescribed by statute. The staff can request, but cannot require, further information from the antenna company.

Mrs. Skillman stated that all of the information in the application is considered confidential and proprietary. She noted that the address and location of the tower were the only facts that are required to be made part of a public record. In this instance, however, the company had agreed to release a lot of information and make it available to the public. Most of this information was included in the exhibit packet.

Mrs. Skillman stated that the Planning Commission would have a limited review of this application. She noted that it could only be reviewed as to whether it would agree with the 1998 Comprehensive Plan and with the Zoning Ordinance. This particular request was filed on June 23rd and the Commission would have 60 days from that date to submit its recommendation in writing to the PSC. If the Commission does not make a recommendation within that time, the application will be deemed to be approved.

Mrs. Skillman stated that the Commission could consider how well the cell tower provider has tried to co-locate on existing towers. To do that, the Commission has to look at the search ring that had been established. A search ring is the area that the radio-frequency engineers have determined would be the most advantageous area for the cell tower location. The Commission could see if there are other towers in the area, and whether the applicant company had attempted to locate its transmitting facilities on an existing tower.

Mrs. Skillman stated that if the Planning Commission recommends disapproval of the request, it must give reasons for that recommendation. It also must provide to the PSC suggestions for how the goals and objectives of the Comprehensive Plan and/or the Zoning Ordinance could be accomplished in a better way. Ms. Skillman explained that, even if the Commission recommends disapproval of the request, the PSC could still approve the location if it determines that there is no acceptable alternate location, and that the public convenience and necessity requires the proposed location.

Mrs. Skillman referred Commission members to page 17 of the packet which was a copy of a map with a search ring drawn on it. This showed where the applicant, WirelessCo, had determined the tower should be located. Additional maps and photographs were displayed on an overhead projector to illustrate the location of the proposed tower. The property fronts on Swigert Avenue. A private street called Blue Ribbon Lane runs behind Swigert Road properties, but stops short of the subject property. The proposed monopole would be located in the rear of 189 Swigert Avenue.

The photographs showed views of the subject property and other properties along Swigert Avenue. They illustrated the fact that the land behind the subject property was farm land. They also showed the proposed location for the cell tower. One photograph showed a tower located on the Whitaker farm north of the subject property. A copy of a letter to Mr.

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Whitaker, owner of this tower, was found on page 19 of the exhibit packet. In this letter, Mr. Whitaker was asked to respond to a request from Sprint to utilize that tower, or to rebuild it. Page 20 was a copy of a response from Mr. Whitaker, indicating that he was not interested in having communications equipment placed on his tower. Mrs. Skillman concluded that Sprint had made an effort to contact the owner of a nearby tower within the search ring. Other photographs showed homes located on nearby properties.

Mrs. Skillman stated that the front of the subject property was zoned R-1B and the rear of the property where the monopole was proposed, is zoned A-R. She noted that radio, telephone, or television transmitting or relay facilities are permitted in the A-R zone as a conditional use. Four conditions for them being allowed are listed in the Zoning Ordinance (Article 8-1(d)14.a.b.c.d.), and were also listed on the staff report. Mrs. Skillman stated that information on the wind speed (Art. 8-1(d)14.b.) was not supplied, and the staff would like to know if the proposed tower would meet that condition.

Mrs. Skillman reviewed the co-location issues discussed in the staff report. The staff believed that the applicant had fulfilled the requirement to investigate co-locating on existing towers. She believed that the statute required that the applicant investigate other towers in the area, and not other properties where a tower might be located.

Mrs. Skillman then reviewed the Comprehensive Plan issues listed in the staff report. The staff's recommendation was as follows:

The Staff Recommends: Disapproval for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.
- G. Promote human scale, pedestrian friendly neighborhoods.
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Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY.

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.

2. To better accomplish the Goals and Objectives of the Comprehensive Plan the tower should be located in an area that does not adjoin residential uses.

Applicant's Presentation - Ms. Sandra Keene, attorney, stated that the staff report did not include a history of the efforts that the applicant had made to find a location for this tower. She noted that the applicant had spent much time with the staff and with neighbors in trying to find a suitable site. This case began in 1995 when the FCC decided to increase competition for wireless providers so that the cost would be brought down to an affordable price for the service. The FCC had auctioned a list of FCC licenses for a different frequency band other than the one used by cellular providers. Sprint is a Personal Communications Services (PCS) provider. This service operates with a different technology than the traditional wireless.

Ms. Keene stated that Sprint won the bid for these FCC licenses for many areas within the United States, including the Fayette County area. Sprint had entered the field later than the cellular companies. These cellular companies had already erected towers and had built out their networks. Consequently, the public became aware of what cellular towers looked like, and Sprint faced resistance to erecting more towers for its network.

Because of this circumstance, Sprint had initiated a co-location design. Company officials identified as many existing towers, water tanks, tall buildings, etc., on which the communications equipment could be installed. After those locations were secured, Sprint officials would complete the network with stand-alone towers. Ms. Keene stated that, in Kentucky, Sprint's co-location rate is approximately 70%. She noted that this co-location rate was unheard-of when cellular communication was first introduced.

Ms. Keene stated that, inevitably, the company must construct towers on some sites because there is no structure tall enough or available to serve the purpose. This inevitability has occurred in the area of the search ring. Sprint began working on a site in this area of Fayette County early in 1997, and knew that it would be tough because of its proximity to Paris Pike. Ms. Keene noted that most of the area in the search ring was owned by Mr. Whitaker who already had a tower on his property. A Sprint representative had contacted Mr. Whitaker about using his tower, or possibly

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constructing a stronger tower as a co-location project. Mr. Whitaker was not interested in either proposal. The Sprint representative was not able to find anyone within the search ring interested in having a tower constructed on his or her property.

Ms. Keene further reviewed the history of tower location in this area, noting that Sprint contracted with SBA Towers, an independent contractor that builds towers for this purpose. A site near the Waffle House restaurant on North Broadway was investigated by SBA Towers. The initial application filed with the PSC was for that site. Due to extensive public opposition to that site, SBA Towers and Sprint chose not to pursue that site. Ms. Keene then described attempts to work with the neighbors to find an appropriate site. These attempts were fruitless.

Ms. Keene stated that SBA had continued looking for sites in the community, including nearby commercial sites. None of the property owners were interested. Sprint officials had concluded that there were no sites in the area that would be pleasing to the neighbors. Therefore, SBA and Sprint reactivated the case with the PSC, and met with the Mr. King and Mrs. Skillman of the Current Planning staff. Mrs. Jean Sweeney, president of the Joyland Neighborhood Association was also present at that meeting.

Eventually, Mr. Sweeney offered to allow the structure on the back of his property where it would be less visible to the surrounding neighbors. The applicants had proposed a 180' monopole structure. Mrs. Keene stated that, originally, the radio frequency engineers had requested a 250' tower. Because of considerable neighborhood opposition, the applicants had reduced that size to avoid having to install lighting in compliance with FAA standards.

Mrs. Keene stated that the applicants had attempted once more in June, 1999 to contact Mr. Whitaker about using his tower, or allowing them to build a replacement tower on his property, but these efforts failed. This ruled out the only co-location opportunity available to the applicants. Finally, the application was filed, leading to this hearing. She asked Commission members to take note of the efforts that the applicants had taken to work with the neighbors. She contended that the applicants had been willing since 1997 to work with the neighbors and with the staff.

Mrs. Keene emphasized that the applicants had spent two years trying to obtain a site, and were at a loss to do so at this time. They believed that they had found the best site within the search ring on Mr. Sweeney's property, and that it would be as unobtrusive as possible.

Mrs. Keene summarized by stating the following:

1. The applicant had spent two years trying to find a site that would be agreeable to everyone.
2. The applicants had maintained contact with the Current Planning staff.
3. The applicants had delayed going forward on a site more than once in order to investigate other opportunities that were suggested by various neighbors.
4. SBA Towers had spent over \$75,000 trying to find a suitable site within this search ring.
5. The applicants hoped that the Commission would want to encourage this type of involvement with the community and not discourage it.
6. The monopole had been set back from the road a good distance. It probably would not be visible from Paris Pike.

Mrs. Keene stated that SBA had proposed to take down Mr. Whitaker's tower since he no longer uses it. If this were done, there would be only one tower in the area, and it would be shorter than Mr. Whitaker's existing tower. It would be a monopole rather than a lattice tower, and it would not have the required FAA lighting.

Mr. Oliver Feibel, radio frequency engineer, used two color-coded maps to show where the coverage was needed in the area. One map showed existing locations without the proposed site. Coverage, represented by green circular areas, was lacking in the area of the proposed site. The other map showed how the proposed site would fit into the coverage of the existing network.

To explain how a search ring was determined, Mr. Feibel stated that the engineers determined the latitude and longitude of where a site should be located. They then draw a circle within a certain distance of that point to determine the search ring. The ideal would be that good coverage areas would just touch. He explained that locating sites too close together would cause interference in overlap areas because the signal would be too strong. On the other hand, sites that were too far apart would cause weak coverage in areas where the coverage did not meet. The goal was to have coverage move smoothly from one search ring to another.

Ms. Keene then addressed issues raised in the staff report. She took issue with Mrs. Skillman's claim that the front portion of the property was zoned R-1B and the back portion was zoned A-R. She maintained that, according to her inquiries, all of the land in that general area was zoned A-R, and that the site did not abut residential zoning. She obtained that information from Mr. Sweeney.

* - Denotes date by which Commission must either approve or disapprove plan.

** - Denotes at least a portion of the property contains an environmentally sensitive area.

With respect to the wind speed, Ms. Keene stated noted that the engineers had stipulated on the application that the tower would withstand a wind speed of 70 mph on the application because that was what is required in this area. She stated that SBA would commit to a wind speed of 100 mph, and wanted the record to reflect that commitment.

With regard to the fall line issue, Ms. Keene stated that the proposed tower would not have a fall line that included a structure. She conceded that its fall line might include a property on which a structure was located.

With regard to the Goals and Policies from the Comprehensive Plan included in the staff report, Ms. Keene reiterated her claim that all adjacent properties in the area were zoned for agricultural use and not for residential use. She stated that the proposed tower was not being placed in a neighborhood, as they have tried to avoid doing that. This site in an agricultural area was chosen for that reason, and because of the earlier opposition from residents of a subdivision.

Ms. Keene disagreed that the proposed monopole would have an adverse affect on the character of a neighborhood, or would interfere with a pedestrian-friendly neighborhood. She also contended that the monopole would not interfere with public roads or sidewalks because it would be set back one-quarter of a mile from Swigert Avenue, and one-half mile away from Paris Pike. The nearest house was located one-quarter of a mile away. The site was heavily wooded and the trees would shield the visual impact of the tower.

Ms. Keene stated that the tower would be designed to hold up to three communication devices, and this would reduce the number of towers needed in the area.

Proponents - Mr. Frank Sweeney, 189 Swigert Avenue, stated that he wanted to explain his reasons for offering the rear of his farm for the monopole. He noted that four generations of his family had lived in Fayette County, and he had chosen to continue living in the County because of its beauty. He had purchased this 11-acre farm 22 years ago.

Mr. Sweeney stated that he had co-founded the Joyland Neighborhood Association 10 years ago, and was an officer of that Association for several years. He was also a member of the Bluegrass Nature Trust, and had led in the construction of the beautification of Paris Pike. He had appeared before the Commission a few times because of zone change applications and real estate construction.

Mr. Sweeney stated that he had led the opposition to the construction of this monopole next to the Super America station on North Broadway. He was the person who had caused 88 letters to be sent to the PSC in opposition to that site. He stated that he did not oppose the construction of communication towers, but was concerned that the company making that application had no sensitivity to the Joyland Neighborhood Association, or other neighbors in the area.

During that time, Mr. Sweeney had spoken with an attorney from the law firm representing Sprint at that time. The attorney had asked where the monopole could be located. He decided that he would rather be a person who sought solutions to problems of modern technology in his neighborhood rather than to simply oppose such technology. He suggested that the monopole be placed on the rear of an obscure farm in the area. It could be out of site of people driving up and down Swigert Avenue and on Paris Pike. When this possibility was investigated, the engineers determined that the best location for a tower of a shortened height was at the rear of his farm.

Mr. Sweeney described the process by which the exact location was determined so that it would not be visible from Swigert Avenue. He stated that he had spent \$2,000 on attorney fees to negotiate the terms of the contract. He noted that there would be no guy wires for the pole. He further noted that the company would have to remove the pole and its concrete footing if it was ever abandoned.

Mr. Sweeney stated that the opposition to the pole might be due to misinformation that had been spread. He had talked with both of his neighbors, and had showed them plans and drawings of the proposed monopole. None of them had expressed opposition to this monopole. He also had invited the current president of the Joyland Neighborhood Association to the site, and had showed plans and drawings to that person. He maintained that he had not heard one single person speak to him about opposing this site.

Mr. Sweeney stated that he had done everything in his power to ensure that SBA would maintain the tower and the landscaping around it. SBA must also maintain the driveway leading back to the monopole. If the company removes the monopole, the land must be returned to its original condition.

Objections - Mr. Robert Goode, 260 Swigert Avenue, stated that his family was not informed of this application. He had lived in the area for 30 years. He noted that the photographs shown by Mrs. Skillman showed how beautiful this area was. He acknowledged the existence of trees on the site, but pointed out that leaves fall from the trees during the winter. The remaining bare branches will not hide the monopole from view at that time.

Mr. Goode claimed that Mr. Whitaker refused to allow the use of his tower because he liked the quaint neighborhood and did not want this facility to disturb it. He claimed that the applicants could find a site further out.

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Ms. Laura Whalen was speaking for her mother, Carol Whelan, 157 Swigert Avenue, who was out of town. She stated that their property was adjacent to the Sweeney property, and was the same size as that property. She noted that the monopole would be adjacent to the rear of the proposed site. She stated that they keep horses and dogs on the property. She read a letter from her mother to the neighbors in which her mother had alerted neighbors who had not been notified of this application.

Ms. Whalen believed that the lack of opposition was due to the fact that few people had received letters of notification about this application. (Letters were sent to property owners within 500 feet of the proposed site.) She stated that the lack of opposition was due to the fact that most people did not know about this application. Her mother had written the letter to the neighbors two months ago. Ms. Whelan noted that the neighbors did not know that this proposal had been under consideration for the last two years.

Ms. Whalen stated that the current president of the Joyland Neighborhood Association, Mr. Dan Atkinson, had spoken with her mother the previous day about this issue. He had then written a letter to her mother stating that the Joyland Neighborhood Association was opposed to any and all cell-phone towers within the Joyland neighborhood, whatever form they take. He had stated in his letter that the Joyland neighbors did not approve of, or support, any such device.

Ms. Whalen stated that she was not sure how much communication the applicant had had with Mr. Whitaker. She also stated that she had spoken with a number of neighbors recently, and had found that most of them were opposed to the monopole. She wanted more time to talk with people and to find another solution. She questioned why Mr. Sweeney had not contacted his neighbors about the proposed site to see if they could agree to this site. She pointed out that Mr. Sweeney will get a monthly fee for allowing this structure on his property.

Mr. Dan Brock, 102 Swigert Avenue, stated that he lived some distance from the proposed site. He stated that he was offered the chance to have this monopole on his property, too. He was offered \$600 per month or \$7,200 per year. The company had also offered him the same conditions that Mr. Sweeney claimed to have negotiated; such as, landscaping, maintenance of the site, and clean-up if the site were abandoned. He noted that Mr. Sweeney's property had been for sale recently. He believed that this proposed site was about money, not the ethics that Mr. Sweeney had described.

Mr. Brock stated that he was not interested in the money because his family had lived on the property since 1942, and he planned to stay there as long as he could. Ultimately, the property would belong to his son. He noted that they had lived there for this long without such a structure in the neighborhood.

Mr. Brock stated that the monopole would not be seen at present, but would be seen after the leaves fell. The trees are bare for at least half the year. He noted that a lot of money had been spent beautifying Paris Pike, and then this monopole is proposed for the area. He was in favor of the Planning Commission postponing this matter for a month to see if the neighbors could work out some other arrangement.

Mrs. Theresa Thompson, 233 Swigert Avenue, stated that her family had lived in the vicinity of the proposed site since 1986. She stated that their property did not extend as deep as Mr. Sweeney's, but she noted that they had spent considerable money on home improvements. She further noted that they spend time in the back of their house tending their garden.

Mrs. Thompson emphasized that the proposed monopole would be a visual impairment in the area. She did not want to see it there. She did not believe that it would enhance anybody's property except Mr. Sweeney's. She stated that her family would not have spent what they did for their home if they had known that there would be a monopole standing next door, as they could have gotten a similar house in another area.

Mrs. Thompson stated that the neighbors were very emotional about this issue. She noted that people had been speaking with each other even if they had not spoken to Mr. Sweeney. She stated that a number of people were offered to have the monopole on their property. Most of them had declined the offer out of consideration for the neighbors. She noted that her family had not received notification because they live outside the notification area, even though they live close to the proposed site.

Mrs. Thompson stated that Sprint officials seemed to have gambled a great deal on the premise that they could obtain the grid network that they needed. She argued that Sprint was not engaging in good business practices when the company imposed its structures on fine neighborhoods. She stated that she did not own a cell phone, and was not a Sprint customer.

Mrs. Polly Goode, 260 Swigert, disagreed with Ms. Keene's statement that this monopole site was not in a "neighborhood." She assured the Commission that the Swigert Avenue area is a neighborhood, and is one of the unique streets in Lexington. She agreed with the objections made by others.

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Applicant's Rebuttal - Ms. Keene stated that applicants are required to notify property owners within 500 feet of a proposed site. This distance is dictated by the PSC, and is not an arbitrary distance determined by the applicant. She further stated that the PSC mandates the wording of the notification letter.

Ms. Keene maintained that neither Sprint nor the PSC are insensitive to the neighbors. She noted that someone will see an 180 foot monopole. Such structures cannot be made invisible. However, the company had tried to find a spot where it would be visible to the least number of people. She believed that this site fulfilled that purpose.

Ms. Keene apologized for implying that Swiger Avenue was not a neighborhood. Her point was that they had selected a site that was not zoned for residential purposes, and that was not near—or in the middle of—a subdivision. This had been the objection to the first application for a site on North Broadway.

Ms. Keene confirmed that several people were approached about this monopole, but they were not interested. She noted that they had explained the narrowness of the search ring. She emphasized that Sprint and SBA were under FCC requirements, as well as PSC requirements, to provide adequate service to their customers. There is a "hole" in that service grid. She argued that the Company has to have a facility in this area, and had worked to find a spot where it would be visible to only a few people. She argued that there is no place else for the company to go.

Staff Rebuttal - Mrs. Skillman clarified the confusion over the zoning issue. She stated that the proposed site is zoned A-R. The Urban Service Area splits the property, and the front portion of the property is zoned R-1B. She had checked the zoning the previous day, and it was checked by another staff person a few minutes ago.

Discussion - Dr. Cooper spoke in favor of offering mediation services to the parties in this case. He noted that it had been 28 days since the application was filed, and there would be over 30 days available for further discussion. He suggested that interested parties—particularly Mr. Whitaker who has a tower to which the neighbors are accustomed—sit down with a mediator to find a solution. He believed that they could come up with a solution that everyone could live with.

The Chair asked the Commission Counsel if this would be appropriate. Ms. Westover stated that under the mediation ordinance, the Commission would not have the authority to put this issue into mediation. The parties could mediate on their own, but the Commission cannot require that. The Chair stated that the Commission could postpone this matter for three weeks until the August 19th Planning Commission hearing. Since the application was filed June 23rd, a report and recommendation must be sent to the PSC within 60 days. She noted that she would only support this option if Mr. Whitaker could be brought into the discussion.

Dr. Cooper urged the neighborhood association to seek the services of the Kentucky Mediation Service. He stated that the mediation should include the neighborhood, Mr. Whitaker, and Sprint. The Commission could then postpone this matter to August 19th.

Mrs. Skillman stated that the Planning Commission's recommendation had to be in Frankfort at the PSC within 60 days, or by August 21st. The minutes would have to be prepared to submit with the recommendation. Ms. Bratt stated that a way should be found to get the minutes and report expedited so that the Commission could give the parties three weeks to work out this problem. She believed that there would be a solution if Mr. Whitaker could be brought to the table.

Ms. Tracy Jones, Department of Law, stated that under the Statute the time for submitting a recommendation could be extended by written agreement from all parties, including the applicant. This would be done by written agreement between the Planning Commission and the utility. This could extend the date beyond August 21st. Chair Lucas asked Ms. Keene if she would give the Planning Commission a few days in order to get the papers filed.

Ms. Jennifer Sturgeon, SBA Towers, stated that she would prefer working toward a resolution within the next couple of weeks. She stated that this had been delayed for so long. She stated that they would work with the neighbors and Mr. Whitaker if he can be brought to the table. Chair Lucas explained that the Planning Commission has public hearings on the third and fourth Thursday of each month. A work session is held on the second Thursday of the month, at which time the Commission could hold a special hearing. She noted that this would allow only two weeks for arbitration or negotiation. Commission members believed that allowing another week might be better.

Chair Lucas explained to Commission members that she favored a postponement in this matter because this was the first such case that the Commission had heard. She believed that they should proceed carefully.

Ms. Sturgeon consulted with Ms. Keene, and then stated her understanding that SBA Towers could apply to the PSC for an additional week by filing another motion with the PSC. She asked for an acceptable date. Chair Lucas noted that this would be a joint agreement rather than a request by the applicant. Ms. Sturgeon agreed to the joint agreement.

Action - A motion was made by Dr. Cooper, seconded by Mr. Ballentine, and carried 8-0 (Harper, Mays, Robinson absent), to postpone the SBA Towers and WirelessCo, L. P. cellular tower application to the August 19th Planning

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Commission agenda, to allow the applicants and the neighbors time to contact Mr. Elmer Whitaker, a neighbor, in order to pursue mediation or further negotiations, and to authorize the Chair to sign a mutual agreement with the applicant to apply for an extension to August 27, 1999 for transmitting the Planning Commission's recommendation to the Public Service Commission along with appropriate attachments.

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** - Denotes at least a portion of the property contains an environmentally sensitive area.

FOR THE PUBLIC RECORD
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

FILED
JUL - 6 1999
PUBLIC SERVICE
COMMISSION

RECEIVED
JUN 30 1999
PUBLIC SERVICE
COMMISSION

In the matter of:

APPLICATION OF WIRELESSCO, L.P. BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A PERSONAL) CASE NO. 99-194UAC
COMMUNICATIONS SERVICES FACILITY)
IN THE LOUISVILLE MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

WirelessCo., L.P., by and through its agent and general partner, Sprint Spectrum, L.P., and SBA Towers Kentucky, Inc., have filed a joint application to construct a wireless telecommunciations facility at 189 Swigert Road, Lexington, Fayette County, Kentucky. The coordinates for the proposed facility are: Latitude: 38-05-31.24; Longitude: 84-26-22.59.

Respectfully submitted,

Sandra F. Keene
Mark W. Dobbins
Sandra F. Keene
TILFORD, DOBBINS, ALEXANDER
BUCKAWAY & BLACK
1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
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FRANKFORT, KENTUCKY 40602
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Fax (502) 564-3460

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

July 28, 1999

Mr. Dan Atkinson, President
Joyland Neighborhood Association
450 Kingston Road
Lexington, KY 40505

Re: Case No. 99-194 UAC

Dear Mr. Atkinson:

Thank you for your letter of July 19, stating your concerns regarding the utility construction proposed in the above-referenced case. Your letter has been placed in the official case file of this proceeding. Please be assured that the Commission will carefully scrutinize this matter before rendering a final decision.

If you wish to participate in the proceeding, including any hearing that may be held, you must file a motion to intervene with the Commission. Attached is a copy of Commission regulations concerning intervention. If you request limited intervention and your request is granted, you will receive copies of all Commission Orders entered in this case. You will not, however, be served with filed testimony, exhibits, pleadings, correspondence or other documents submitted by the parties. If you wish such information, you must request and be granted full intervention. If you are granted intervention and wish to request a hearing, you should file such a request with Helen C. Helton, the Commission's Executive Director.

Please be advised, however, that this Commission is prohibited by law from releasing information contained in this application other than "information that specifically identifies the proposed location of the cellular antenna tower then being reviewed by the applying utility." KRS 278.665. The statute states that such information is "deemed confidential and proprietary," and that the Commission "shall deny any public request for the inspection of this information ... except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree..." Id.



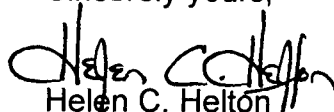
AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Mr. Dan Atkinson
July 26, 1999
Page 2 of 2

You may contact the applying utility and request additional information. Before supplying such information, the utility may require you to enter into an agreement specifying that you will not release the information to other persons. The attorney of record for the applying utility in this case is Jeffrey Pfaff, Legal Department, Sprint Spectrum, L.P., c/o Sprint PCS, 4900 Main Street, 11th Floor, Kansas City, MO, 64112.

Once again, thank you for your interest and concern.

Sincerely yours,


Helen C. Helton
Executive Director

/rlm
Enclosure



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Encls

SH

July 19, 1999

Joyland Neighborhood Assoc.
450 Kingston Road
Lexington, KY 40505
606-293-1216

Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY. 40602

RECEIVED
JUL 22 1999
PUBLIC SERVICES
COMMUNICATIONS

Re: Docket #99-194UAC

To the Executive Director,

We are opposed to ANY and ALL cell phone towers within the Joyland Neighborhood. Whatever form they take, whether a standard tower of some nature or a monopole, a cell phone tower is not something we desire to have within our boundaries. We do NOT approve or support any such device anywhere in our immediate area. There are many other sites equally desirable that are nearby which would not intrude on the neighborhood. Another site should be selected.

Respectfully submitted,

Dan Atkinson

Dan Atkinson, President
Joyland Neighborhood Assoc.

.cc Lexington Fayette Urban County Gvt., Div of Planning
Sprint PCS/SBA in Louisville, KY.



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

July 9, 1999

To: All parties of record

RE: Case No. 99-194 UAC

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/lnh
Enclosure

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO 64112

Sandra F. Keene
Tilford, Dobbins, Alexander
Buckaway & Black
1400 One Riverfront Plaza
Louisville, KY 40202

Carl & Nettie R. Gentry
117 Swigert Avenue
Lexington, KY 40505

Carole A. Whalen
157 Swigert Avenue
Lexington, KY 40505

Honorable Dan D. Brock,
Attorney at Law
333 Midland Place
Lexington, KY 40505

Andrew P. Slone
200 Blue Ribbon Lane
Lexington, KY 40511

Robert L. and Pauline M. Good
260 Swigert Avenue
Lexington, KY 40505

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO, L.P., BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., AND SBA TOWERS)
KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF A) CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND) 99-194-UAC
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LEXINGTON MAJOR TRADING AREA)
(SWIGERT ROAD FACILITY))

O R D E R

This matter arising upon the motions of Carl and Nettie R. Gentry, Carole A. Whalen, Dan D. Brock, Jr., Robert L. and Pauline M. Good, and Andrew P. Slone (hereinafter referred to collectively as "Petitioners") for full intervention, and it appearing to the Commission that Petitioners have a special interest which is not otherwise adequately represented, and that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, and this Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

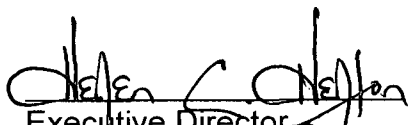
1. The motions of Petitioners to intervene are granted.
2. Each Petitioner shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Should any Petitioner file documents of any kind with the Commission in the course of these proceedings, said Petitioner shall also serve a copy of said documents on all other parties of record.

Done at Frankfort, Kentucky, this 9th day of July, 1999.

By the Commission

ATTEST:


Executive Director



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

July 1, 1999

Mr. Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P., c/o Sprint PCS
4900 Main Street, 11th Floor
Kansas City, MO 64112

Re: Case No. 99-194 UAC
Filing Deficiencies

Dear Mr. Pfaff:

The Commission staff has reviewed your application in the above case. This filing is rejected pursuant to 807 KAR 5:001, Section 2, for the reasons set forth below. These items are either required to be filed with the application or to be referenced in the application if they are already on file in another case or will be filed at a later date.

Filing deficiency pursuant to 807 KAR 5:063, Section 4(1):

A copy of the utility's application to Kentucky Airport Zoning Commission.

The statutory time period in which the Commission must process this case will not commence until the above-mentioned information is filed with the Commission. You are requested to file one copy of this information within 15 days of this letter. If you need further information, please contact Jeff Johnson of my staff at 502-564-3940, extension 417.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

hv
cc: Sandra F. Keene



TILFORD, DOBBINS, ALEXANDER,
BUCKAWAY & BLACK

ATTORNEYS AT LAW

1400 ONE RIVERFRONT PLAZA
LOUISVILLE, KENTUCKY 40202

(502) 584-6137

STUART E. ALEXANDER, JR.
WILLIAM A. BUCKAWAY, JR.
CHARLES W. DOBBINS, JR.
TERRELL L. BLACK
JOHN M. NADER³
MARK W. DOBBINS
STUART E. ALEXANDER, III
JOHN A. WILMES
SANDRA F. KEENE
THOMAS J. B. HURST
H. KEVIN EDDINS¹

CAROLYN K. BALLEISEN^{*2}

RANDOLPH NOE^{*1}
MICHAEL G. KAREM^{*4}
** Of Counsel*

HENRY J. TILFORD (1880-1968)
CHARLES W. DOBBINS (1916-1992)
DONALD H. BALLEISEN (1924-1993)
LAWRENCE W. WETHERBY (1908-1994)

TELECOPIERS
(502) 584-2318
(502) 587-1806

¹ Also admitted in Indiana

² Also admitted in New York

³ Also admitted in District of Columbia
and Maryland

⁴ Also admitted in District of Columbia

June 29, 1999

Hon. Helen Helton
Executive Director
Public Service Commission of Kentucky
P.O. Box 615
730 Schenkel Lane
Frankfort, Kentucky 40602

RECEIVED
JUN 30 1999
PUBLIC SERVICE
COMMISSION

RE: PSC Case No. 99-194 UAC/ Swigert Road Facility

Dear Ms. Helton:

Enclosed are an original and five (5) copies of WirelessCo's notice of filing for the public record for filing with the Public Service Commission. I have also included the Applicant's file copy for date stamping. For your convenience, I have enclosed a self-addressed stamped envelope for return of our date-stamped copy.

Thank you.

Sincerely,

Sandra F. Keene

MARK W. DOBBINS
SANDRA F. KEENE

Enclosure

G:\OFFICE\MWD\SPRINT\SBA\SWIG2\HELTON.1

FOR THE PUBLIC RECORD
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

FILED
JUL - 6 1999
PUBLIC SERVICE
COMMISSION

In the matter of:

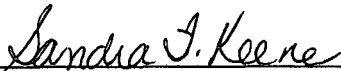
APPLICATION OF WIRELESSCO, L.P. BY AND)
THROUGH ITS AGENT AND GENERAL PARTNER)
SPRINT SPECTRUM, L.P., FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A PERSONAL)
COMMUNICATIONS SERVICES FACILITY)
IN THE LOUISVILLE MAJOR TRADING AREA)
[SWIGERT ROAD FACILITY])

RECEIVED
JUN 30 1999
PUBLIC SERVICE
COMMISSION

CASE NO. 99-194UAC

WirelessCo., L.P., by and through its agent and general partner, Sprint Spectrum, L.P., and SBA Towers Kentucky, Inc., have filed a joint application to construct a wireless telecommunciations facility at 189 Swigert Road, Lexington, Fayette County, Kentucky. The coordinates for the proposed facility are: Latitude: 38-05-31.24; Longitude: 84-26-22.59.

Respectfully submitted,



Mark W. Dobbins
Sandra F. Keene
TILFORD, DOBBINS, ALEXANDER
BUCKAWAY & BLACK
1400 One Riverfront Plaza
Louisville, Kentucky 40202
(502) 584-6137



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

June 28, 1999

Jeffrey M. Pfaff
Legal/Regulatory Department
Sprint Spectrum, L.P.
c/o Sprint PCS
4900 Main Street, 11th. Floor
Kansas City, MO. 64112

Sandra F. Keene
Tilford, Dobbins, Alexander
Buckaway & Black
1400 One Riverfront Plaza
Louisville, KY. 40202

RE: Case No. 99-194 UAC
SPRINT SPECTRUM, L.P. AGENT FOR WIRELESSCO., L.P.
(Construct) CELL SITE - 189 SWIGERT ROAD - LEXINGTON

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received June 22, 1999 and has been assigned Case No. 99-194. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/jc

260 Swigert Avenue
Lexington, KY 40505

May 27, 1999

Executive Director
Kentucky Public Service Commission
PO Box 615
Frankfort, KY 40602

RECEIVED

JUN 01 1999

PUBLIC SERVICE
COMMISSION

RE: Docket No. 99-194UAC
Opposition to Construction of Monopole at 189 Swigert Ave., Lexington, Kentucky

We have just been informed of the Application to the KPSC for a Certificate of Public Convenience and Necessity to construct and operate a personal communications telecommunications service - a 180 foot monopole with attached antennas for a maximum height of 190 feet on the property at 189 Swigert Avenue.

This letter is to oppose construction of same. As a longtime resident of Swigert, we do not want our unique neighborhood to be the site of such construction. Swigert Avenue is one of the few streets of its kind remaining in Lexington. A monopole would forever change and adversely impact our street. We feel that there are other more appropriate sites that should be considered. Our neighborhood is neither commercial nor industrial, and certainly not a place for such an unsightly tower. We also feel this would be the beginning of other non-residential encroachments of our street.

We feel that all residents should have been notified well in advance of such a drastic planned construction. I am sure our entire neighborhood would have opposed and intervened, had we had sufficient earlier notice. Our Neighborhood Association is opposed to any monopole in the neighborhood, and has voiced its opinion on this issue. We have been informed that the owner of the property at 189 Swigert opposed and participated in the efforts to stop construction of such a tower in another part of our neighborhood for many of the same reasons noted. Now, he plans to have a tower built on his own property without regard for the surrounding owners.

We, as property owners, are opposed to the tower. It is detrimental to our neighborhood, our property value, and the aesthetic value of Swigert Avenue and the Paris Pike Corridor. I feel there are other sites that would be more suitable and the companies should look elsewhere for a site.

We would like to be listed as a party of record.

Sincerely,

Robert L. Good Pauline M. Good

Robert L. Good
Pauline M. Good
Property Owners of 260 Swigert
Lexington, Kentucky 40505

June 25TH 1999

Kentucky Public Service Commission:

RECEIVED

JUN 28 1999

PUBLIC SERVICE
COMMISSION

RE: Docket No. 99-194 UAC

After receiving your correspondence as of June 21st, 1999. I noticed that you failed to attach ~~the~~ Mr. Whitaker's letter as your letter stated. Please send me a copy of his letter.

Please note me as an intervenor and in opposition to this location. There are better and more appropriate locations available.

One other thing your letter doesn't address and that is specifically where on 189 Swigert Road the tower and service building would be located. I am requesting a flat plan to understand what would be involved and concerns me. The property at 189 Swigert runs back several hundred feet and should the proposed tower be installed on back of property this would jeopardize my house and land on 220 Blue Ribbon Lane.

Please keep me informed of all hearings/meetings about this issue.

Thank you,

Andrew P. Stone
200 Blue Ribbon Lane
Lexington, Ky. 40511



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
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Fax (502) 564-3460

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Mr. Joseph B. Murphy
247 Swigert Avenue
Lexington, KY 40502

Re: Case No. 99-194 UAC

Dear Mr. Murphy:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

It may be helpful for you to know that authority, specifically that of the Public Service Commission, in this matter has been limited by federal law. For example, Section 704 of the federal Telecommunications Act of 1996 prohibits this Commission from regulating the placement of wireless facilities on the basis of environmental effects of radio frequency emissions to the extent the facilities comply with Federal Communications Commission regulations. Section 704 also prohibits a state or local government from prohibiting telecommunications facilities construction if such denial will have the effect of prohibiting service. In addition, this Commission is required by statute to ensure that utility service, including telecommunications service, is adequate and reliable. The Commission does, however, consider appropriate placement of necessary facilities within applicable engineering boundaries. It also pursues a policy of collocation of facilities whenever possible.

Thank you for your interest and concern in this matter.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

May 26, 1999

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RECEIVED
JUN 01 1999
PUBLIC SERVICE
COMMISSION

Re: Docket No. 99-194UAC

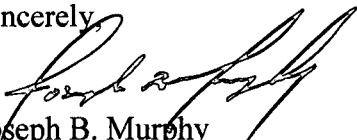
Executive Director:

I have been notified that there is an application pending for the construction of a monopole cellular antenna at 189 Swigert Road. I would like to voice my concern and objection to this application. My property is approximately 1000 feet or less from the proposed site, and as much as I am in favor of growth in the Fayette county area, I am strongly against the construction of such an object in my neighborhood.

I recently purchased property in another county that has a similar tower on its premises, and have seen how unsightly it can be and witnessed the long term negative aspect it has on the value of the adjacent properties. I am aware of the need for such equipment, but it does not belong in a setting such as ours on Swigert Road. The negative aspects of such a structure far outweigh any of the benefits my neighbor will procure. The impact this tower will have on this neighborhood will last for many years to come, especially the surrounding property's decline in value. I have worked hard for my property and have done the best I can to preserve the elegance of this neighborhood. It would be a great injustice to allow this tower to be constructed our neighborhood.

I urge you to strongly consider this matter and deny the pending application.

Sincerely,


Joseph B. Murphy
247 Swigert Avenue

cc: Albert Mitchell, LFUCG Council Member
Gloria Martin, LFUCG Council Member
Mark Dobbins

RECEIVED
JUN 02 1999
PUBLIC SERVICE
COMMISSION

May 26, 1999

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

Re: Docket No. 99-194UAC

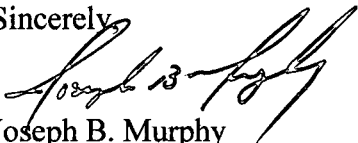
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I urge you to strongly consider this matter and deny the pending application.

Sincerely,



Joseph B. Murphy
247 Swigert Avenue
Lexington, ky

cc: Albert Mitchell, LFUCG Council Member
Gloria Martin, LFUCG Council Member
Mark Dobbins



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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Mr. Philip L. Salyers
168 Swigert Avenue
Lexington, KY 40505

Re: Case No. 99-194 UAC

Dear Mr. Salyers:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

/rlm



**Philip L. Salyers
168 Swigert Ave.
Lexington, Kentucky 40505**

RECEIVED

JUN 01 1999

**PUBLIC SERVICE
COMMISSION**

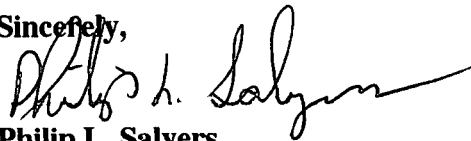
May 27, 1999

**Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602**

Re: Docket No. 99.194UAC

I reside at 168 Swigert Ave. I have lived at this resident, going on 3 years. I moved to this area because being partly in the country, quiet, peaceful, and beautiful, without all the city blitz. I received a letter from one of our neighbors about this tower going up at 189 Swigert Ave. This property is across from our house. We were not given the opportunity to intervene on this. I am completely opposed of this tower going up in our lovely neighborhood. I have to look at this eye sore everyday and didn't get the opportunity to voice my opinion or intervene. Only 4 families got a letter on this matter. Please stop this tower going up completely or until all residence can meet on this tower.

Sincerely,



Philip L. Salyers



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Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Ms. Jennifer G. Wright
168 Swigert Avenue
Lexington, KY 40505

Re: Case No. 99-194 UAC

Dear Ms. Wright:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

**Jennifer G. Wright
168 Swigert Ave.
Lexington, Kentucky 40505**

RECEIVED

JUN 01 1999

**PUBLIC SERVICE
COMMISSION**

May 27, 1999

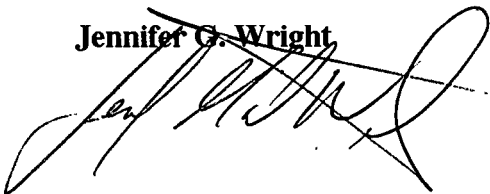
**Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602**

Re: Docket No. 99.194UAC

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Sincerely,

Jennifer G. Wright

A handwritten signature in black ink, appearing to read "Jennifer G. Wright", written over the typed name.



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Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Ms. Elisa Salyers
168 Swigert Avenue
Lexington, KY 40505

Re: Case No. 99-194 UAC

Dear Ms. Salyers:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

**Elisa Salyers
168 Swigert Ave.
Lexington, Kentucky 40505**

RECEIVED

JUN 01 1999

**PUBLIC SERVICE
COMMISSION**

May 27, 1999

**Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602**

Re: Docket No. 99.194UAC

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Sincerely,



Elisa Salyers



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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Ms. Karen Nielsen
101 Swigert Avenue
Lexington, KY 40505

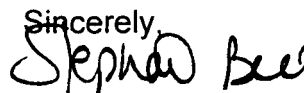
Re: Case No. 99-194 UAC

Dear Ms. Nielsen:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,


Stephanie Bell
Secretary of the Commission

/rlm



101 SWIGERT AVE.
LEXINGTON, KY 40505
MAY 26, 1999

EXECUTIVE DIRECTOR
KENTUCKY PUBLIC SERVICE COM.
P.O. BOX 615
FRANKFORT, KY 40602
RE: DOCKET NO. 99-194 YAC

RECEIVED
JUN 02 1999
PUBLIC SERVICE
COMMISSION

DEAR SIR:

I AM STRONGLY OPPOSED TO THE CONSTRUCTION OF THE "TOWER" PROPOSED FOR 189 SWIGERT. AS A RESIDENT OF SWIGERT AVE. I AM APPALLED AT THE IDEA OF THIS CONSTRUCTION ON THIS BEAUTIFUL STREET. I DON'T KNOW WHY OWNER, FRANK SWEENEY, WOULD DE-VALUE HIS PROPERTY WITH THIS TOWER.

WHAT REALLY IRRATES ME IS THE FACT THAT THIS CONSTRUCTION IS NOT NECESSARY. THERE ARE MANY CHURCHES IN THE AREA. THE "TOWER" COULD BE CONSTRUCTED IN A STEEPLE OR ON INDUSTRIAL PROPERTY.

PLEASE TAKE A DRIVE DOWN SWIGERT AND SAVE OUR BEAUTIFUL STREET.

SINCERELY,
Karen Nielsen
KAREN NIELSEN
(606) 299-3212



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Mr. Harold J. Meiners
Ms. Mary G. Meiners
262 Swigert Avenue
Lexington, KY 40505


Re: Case No. 99-194 UAC

Dear Mr. and Ms. Meiners:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,


Stephanie Bell
Secretary of the Commission



RECEIVED

MAY 28 1999

PUBLIC SERVICE
COMMISSION

262 Swigert Ave.
Lexington, Ky.
May 25, 1999

Dear Sir

Re. Docket No. 99-194 UAC

As long time residents of Swigert Ave., we are opposed to putting up a tower at 189 Swigert Ave.

This is a lovely residential, agriculture and horse farm area, a tower would be out of place. It also poses a threat to the farm animals in the area.

Sincerely,

Mary G. Meiners
Harold J. Meiners



COMMONWEALTH OF KENTUCKY
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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Mr. and Mrs. John Paul Miller
277 Swigert Avenue
Lexington, KY 40505


Re: Case No. 99-194 UAC

Dear Mr. and Mrs. Miller:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Ky 40602

MAY 25, 1999

RECEIVED
MAY 27 1999
PUBLIC SERVICE
COMMISSION

RE: Docket No. 99-194UAC

As a five year resident of Swigert Ave. in Lexington, I am very concerned about the proposed tower at 189 Swigert Ave. We strongly oppose this application, and urge you to deny this approval. This is one of the last neighborhoods in Lexington that borders the horse farms. It is a very scenic area, and we would like for it to continue without a 190 foot tower constructed here. Thank you for your consideration of this letter in OPPOSITION TO THE TOWER AT 190 SWIGERT AVE. LEX. KY.

Judy Miller *John Paul Miller*
Mr. and Mrs. JOHN PAUL MILLER
277 SWIGERT AVE.
LEXINGTON, KY 40505

COPIES:
MOYOR PAM MILLER
RUTH ANN PALUMBO
ELMER WHITAKER
GOV. PAUL PATTON



COMMONWEALTH OF KENTUCKY
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Ronald B. McCloud, Secretary
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Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Ms. Susan S. Durant
Mr. Dale Durant
109 Swigert Avenue
Lexington, KY 40505


Re: Case No. 99-194 UAC

Dear Mr. and Ms. Durant:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

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Thank you for your interest and concern in this matter.

Sincerely,

Stephanie Bell
Secretary of the Commission

/rlm



RECEIVED

MAY 27 1999

109 Swigert Ave.
Lexington, KY 40505
May 26, 1999PUBLIC SERVICE
COMMISSION

Executive Director
 Kentucky Public Service Comin
 P.O. Box 615
 Frankfort, KY 40602

I strongly object to the construction of a PCS tower at 189 Swigert Avenue. Swigert is a very residential street with an eclectic mixture of old and newer homes, small lots and small acreages. Such an eyesore would certainly ruin the neighborhood skyline. It is not a safe backyard structure.

Sincerely,
 Susan S Durant
 Dal Durant



COMMONWEALTH OF KENTUCKY
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Public Protection and
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Helen Helton
Executive Director
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Paul E. Patton
Governor

June 30, 1999

Ms. Deborah B. Aminoff
Mr. Steve S. Kraman
232 Swigert Avenue
Lexington, KY 40505

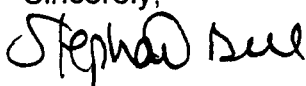
Re: Case No. 99-194 UAC

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Sincerely,

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

232 Swigert Ave.
Lexington, KY 40505

May 28, 1999

RECEIVED
JUN 01 1999
PUBLIC SERVICE
COMMISSION

Executive Director
Kentucky Public Service Commission
P. O. Box 615
Frankfort, Kentucky 40602

RE: Docket No. 99-194UAC

Dear Sir:

Take a drive down Swigert, and you take a drive down a unique avenue in Lexington. It has a neighborhood feel to it, yet there are no street lights and it is lined with horse farms. Last night we watched a family of screech owls in our tree. This is a residential neighborhood that has chosen to remain secluded from the hustle and bustle of the main city, and there is a sense of peace and tranquility as soon as you turn onto Swigert Avenue.

Yet, now we have been informed via one of our neighbors that an application has been filed to construct a 190-foot monopole and equipment shelter at 189 Swigert (the Sweeny's residence) – right across the street from us. This structure will tower above any tree on this road, and will be in the direct line of vision from our home.

We have been told that the Joyland Neighborhood Association recently opposed the construction of a similar tower on Paris Pike – because it would intrude upon the pastoral nature of this area. Yet now that he stands to benefit from it monetarily, Mr. Sweeny applies to have one constructed on his land.

We do not wish to have our attention detracted from the beauty and nature that exist on this avenue by an unsightly radio-telephone utility, and are writing to voice our opposition to it.

If you have any questions, please contact us at (606) 299-9748.

Sincerely,



Deborah (Debbie) B. Aminoff



Steve S. Kraman



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Mr. Hugh B. Thomas
105 Swigert Avenue
Lexington, KY 40502

Re: Case No. 99-194 UAC

Dear Mr. Thomas:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

It may be helpful for you to know that authority, specifically that of the Public Service Commission, in this matter has been limited by federal law. For example, Section 704 of the federal Telecommunications Act of 1996 prohibits this Commission from regulating the placement of wireless facilities on the basis of environmental effects of radio frequency emissions to the extent the facilities comply with Federal Communications Commission regulations. Section 704 also prohibits a state or local government from prohibiting telecommunications facilities construction if such denial will have the effect of prohibiting service. In addition, this Commission is required by statute to ensure that utility service, including telecommunications service, is adequate and reliable. The Commission does, however, consider appropriate placement of necessary facilities within applicable engineering boundaries. It also pursues a policy of collocation of facilities whenever possible.

Thank you for your interest and concern in this matter.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

RECEIVED

JUN 09 1999

PUBLIC SERVICE
COMMISSION

99-194 UAC

June 8, 1999

Executive Director
Kentucky Public Service Commission
PO Box 615
Frankfort, Ky. 40602

Dear Director et al,

This letter is in opposition to the proposed construction of a tower at 189 Swigert Avenue in Lexington. Why should our neighborhood be desecrated for the benefit of only one person.

Respectfully,
Hugh B. Thomas

Hugh B. Thomas
105 Swigert Avenue
Lexington, Ky. 40502



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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POST OFFICE BOX 615
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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

June 30, 1999

Ms. Flora-Lu Guter
238 Swigert Avenue
Lexington, KY 40505

Re: Case No. 99-194 UAC

Dear Ms. Guter:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

It may be helpful for you to know that authority, specifically that of the Public Service Commission, in this matter has been limited by federal law. For example, Section 704 of the federal Telecommunications Act of 1996 prohibits this Commission from regulating the placement of wireless facilities on the basis of environmental effects of radio frequency emissions to the extent the facilities comply with Federal Communications Commission regulations. Section 704 also prohibits a state or local government from prohibiting telecommunications facilities construction if such denial will have the effect of prohibiting service. In addition, this Commission is required by statute to ensure that utility service, including telecommunications service, is adequate and reliable. The Commission does, however, consider appropriate placement of necessary facilities within applicable engineering boundaries. It also pursues a policy of collocation of facilities whenever possible.

Thank you for your interest and concern in this matter.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Flora-Lu Guter
238 Swigert Avenue
Lexington, KY 40505

Tel:(606)293-0462 Fax:(606)293-0420

RECEIVED
JUN 07 1999
PUBLIC SERVICE
COMMISSION

June 2, 1999

Executive Director,
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Docket No. 99 - 194UAC

Gentlemen:

It has just been brought to my attention that WirelessCo, L.P., and its general partner, Sprint Spectrum, Inc. And SBA Towers Kentucky, Inc., are planning on constructing and operating a telecommunications tower on the residential land of Mr. Frank Sweeney at 189 Swigert Ave.

I do not understand why the State of Kentucky is allowing this to be done. This is a residential street, that is zoned prohibiting businesses and industry on this street. If the state does not allow people to run business out of their homes on this street, why is the State of Kentucky allowing a business to be built on the street with a 180 foot tower with attached antennas extending upto 190 feet and an equipment shelter building (for employees to store and work out of)

As a resident of Swigert Ave, who lives approximate 550- 600 feet from where the tower will be located, I object to the construction of the tower. I do not want this tower constructed near my property and house. The tower changes the neighborhood from residential to industrial and could be hazardous to our health and mental stability.

Mr. Frank Sweeney is having the tower constructed on his property, knowing that the neighborhood, especially his immediate neighbors, such as myself, object, because he wants earn the \$200 per month rent. Is it legal in a residential neighborhood, to lease land for commercial use?

Please do not allow this tower to be built.

Sincerely,



Flora-Lu Guter

117 Wigent
Lexington Ky
May 29, 1999

Exec. Director
Ky Pub. Serv. Comm.
P.O. Box 615
Frankfort Ky 40602

RECEIVED

JUN 02 1999

PUBLIC SERVICE
COMMISSION

Sir:

Re: Blocket #99-194 UAC

We are opposed to the construction of a tower at 189 Sargent Avenue. We wish to intervene and be considered parties of record.

Sincerely,

Carl Gentry

Kettie R. Gentry

May 19, 1999
RECEIVED
MAY 20 1999
PUBLIC SERVICE
COMMISSION

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Ky. 40502

RE: Kentucky Public Service Commission Case 99-194 UAC.

Please be informed that I and others are opposing the proposed located for this construction. Therefore, I am requesting Intervener Status.

Yours truly,

Andrew Stone
200 Blue Ribbon Lane
Lexington, Ky. 40511

DAN D. BROCK, JR.

Attorney at Law
333 Midland Place
Lexington, KY 40505
(606) 254-4055 • Fax (606) 255-4310

May 28, 1999

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

RECEIVED

JUN 01 1999

PUBLIC SERVICE
COMMISSION

Re: Docket No. 99-194UAC

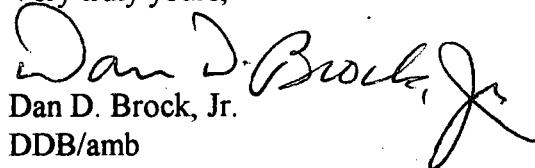
Dear Sir or Madam:

This letter is to register my objection to the construction of the 190-foot tower proposed to be located on real estate owned by Mr. Frank Sweeney, 189 Swigert Avenue, Lexington, Fayette County, Kentucky 40505. Application for the erection of the tower is presently pending before the Commission upon the joint application of WirelessCo., L.P., by and through its general partner, Sprint Spectrum, Inc. and SBA Towers Kentucky, Inc.

My residence is 102 Swigert Avenue, which real estate is presently in the name of the Estate of Azalea W. Brock and I am the Executor and sole beneficiary of her Will. Please advise me of any formal hearings on this application and I further request that I be placed on the mailing list to receive copies of all other papers and notices pertaining to this matter.

Thank you in advance for your cooperation.

Very truly yours,


Dan D. Brock, Jr.
DDB/amb

pc: Mark W. Dobbins, Esq.
Sandra F. Keene, Esq.
Ms. Carole Whalen
Mr. Frank Sweeney



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
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Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

July 13, 1999

Mr. Ted Bates
2937 Paris Pike
Lexington, KY 40511

Re: Case No. 99-194UAC

Dear Mr. Bates:

The Commission is in receipt of your letter concerning the above application for approval to construct a cell facility. The Commission will carefully analyze this application before rendering its final decision. If you wish to intervene in this matter, you must notify the Commission in writing. However, please be advised that property rights issues are not within the scope of the Commission's jurisdiction.

It may be helpful for you to know that authority, specifically that of the Public Service Commission, in this matter has been limited by federal law. For example, Section 704 of the federal Telecommunications Act of 1996 prohibits this Commission from regulating the placement of wireless facilities on the basis of environmental effects of radio frequency emissions to the extent the facilities comply with Federal Communications Commission regulations. Section 704 also prohibits a state or local government from prohibiting telecommunications facilities construction if such denial will have the effect of prohibiting service. In addition, this Commission is required by statute to ensure that utility service, including telecommunications service, is adequate and reliable. The Commission does, however, consider appropriate placement of necessary facilities within applicable engineering boundaries. It also pursues a policy of collocation of facilities whenever possible.

Thank you for your interest and concern in this matter.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

/rlm



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

TED
BATES
*Agency
Inc.*

RECEIVED
JUL - 6 1999
PUBLIC SERVICE
COMMISSION

July 1, 1999

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

Dear Sir/Madam:

This letter regards Docket No. 99-194UAC.

I have leased a farm adjacent to the property at 189 Swigert Road in Lexington, Kentucky. I understand that petition has been made to erect a 190 foot high monopole with attached antennas on this property on Swigert.

The field next to the tower site is one that at all times has horses in it, either mares and foals, weanlings, mares in foal or yearlings.

If the tower fell north, it would violate probably fifty (50) yards of this field. I, therefore, so here and now file with you my opposition to it being within 300 feet of the property that I lease in order that any damage to my thoroughbred horses be minimized.

May I hear from you promptly regarding this letter of opposition.

Sincerely,



Ted Bates
2937 Paris Pike
Lexington, KY 40511

July 19, 1999

Joyland Neighborhood Assoc.
450 Kingston Road
Lexington, KY 40505
606-293-1216

Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY. 40602

RECEIVED
JUL 22 1999
PUBLIC SERVICE
COMMISSION

Re: Docket #99-194UAC

To the Executive Director,

We are opposed to ANY and ALL cell phone towers within the Joyland Neighborhood. Whatever form they take, whether a standard tower of some nature or a monopole, a cell phone tower is not something we desire to have within our boundaries. We do NOT approve or support any such device anywhere in our immediate area. There are many other sites equally desirable that are nearby which would not intrude on the neighborhood. Another site should be selected.

Respectfully submitted,

Dan Atkinson

Dan Atkinson, President
Joyland Neighborhood Assoc.

.cc Lexington Fayette Urban County Gvt., Div of Planning
Sprint PCS/SBA in Louisville, KY.

RECEIVED

JUN 01 1999

PUBLIC SERVICE
COMMISSION

157 Swigert Avenue
Lexington, KY 40505
May 28, 1999

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

RE: Docket No. 99-194UAC

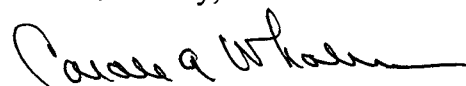
This is in furtherance of my letter of May 24, 1999, concerning the application for a 190 foot tower to be located at 189 Swigert Avenue in Lexington, Fayette County, Kentucky.

Between business travel and a planned vacation, I will be out of Kentucky for several weeks this summer and want to be sure that no hearings or meetings involving my presence will be scheduled for when I'm out of state. As you can appreciate, I desperately want to have the opportunity to voice my opposition to this tower before any final decision is made. As of now, I will be out of Kentucky on the following dates:

June 1 - 4
June 16 - 30
July 12-16

I realize it is difficult to schedule things this time of year, but this issue is far too important for me to miss. I plan on retiring and spending the rest of my life in my home on Swigert Avenue. This matter is of the utmost importance and of great concern to me. Thank you in advance for accommodating my travel in your scheduling.

Sincerely,



Carole A. Whalen

RECEIVED

MAY 26 1999

PUBLIC SERVICE
COMMISSION

157 Swigert Avenue
Lexington, KY 40505
May 24, 1999

Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

RE: Docket No. 99-194UAC

This is in response to your letter of May 12, 1999, concerning the application for a 190 foot tower to be located at 189 Swigert Avenue in Lexington, Fayette County, Kentucky.

I vehemently object to the construction of this tower. I do want to intervene and be considered a party of record.

Sincerely,



Carole A. Whalen

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-194 UAC

FILED

NOV 01 1999

PUBLIC SERVICE
COMMISSION

RE: WIRELESS CO., LP

Pursuant to notice duly given, the above-styled matter came to be heard October 13, at 9:00 a.m. in the Hearing Room of the Kentucky Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601; The Honorable Paul Shapiro presiding.

VIVIAN A. LEWIS
COURT REPORTER - PUBLIC STENOGRAPHER
101 COUNTRY LANE
FRANKFORT, KENTUCKY 40601
(502) 695-1373

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-194 UAC

RE: WIRELESS CO., LP

APPEARANCES:

Hon. Paul Shapiro
Hearing Officer
PUBLIC SERVICE COMMISSION

Hon. Amy Dougherty
Legal Counsel
PUBLIC SERVICE COMMISSION

Hon. Mark Dobbins
Hon. Sandra Keene
Tilford, Dobbins, Alexander,
Buckaway & Black
One Riverfront Plaza
Suite 1400
Louisville, Kentucky 40202
Legal Counsel
WIRELESS CO., L.P.

Hon. Tracy Jones
Hon. Larry Hornsby
Hon. Edward Gardner
200 East Main Street
Lexington, Kentucky 40507
Legal Counsel
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

Hon. Dan Brock
102 Swigert Avenue
Lexington, Kentucky 40505
Legal Counsel
ESTATE OF AZELEA BROCK

Ms. Carole A. Whalen
157 Swigert Avenue
Lexington, Kentucky 40505
Representing Herself

Robert and Pauline Good
260 Swigert Avenue
Lexington, Kentucky 40505
Representing Themselves

Ms. Teresa Thompson
233 Swigert Avenue
Lexington, Kentucky 40505
Representing Herself

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1 HEARING OFFICER SHAPIRO:

2 This is a hearing before the Kentucky Public
3 Service Commission in the matter of the
4 application of Wireless Co. to construct a
5 personal communication service facility in the
6 Lexington Major Trading Area, Docket Number
7 99-194. Is the applicant ready to proceed?

8 MR. DOBBINS:

9 Ready, Your Honor.

10 HEARING OFFICER SHAPIRO:

11 And we have several intervenors, it is my
12 understanding that Carl and Nettie R. Gentry, who
13 are intervening in this proceeding, and Andrew
14 Sloan are not present here today, but we have
15 Carole Whalen, are you ready to proceed?

16 MS. WHALEN:

17 Yes.

18 HEARING OFFICER SHAPIRO:

19 And we have Dan Brock, are you ready to proceed?

20 MR. BROCK:

21 Yes, sir.

22 HEARING OFFICER SHAPIRO:

23 Robert and Pauline Good, are you ready to proceed?
24

1 MR. GOOD:

2 Yes, sir.

3 HEARING OFFICER SHAPIRO:

4 And the Lexington-Fayette Urban County Government?

5 MR. HORNSBY:

6 Yes, Your Honor.

7 HEARING OFFICER SHAPIRO:

8 Let's have appearances of counsel of the parties
9 if we could at this time, first for the applicant,
10 Wireless Co.

11 MR. DOBBINS:

12 Your Honor, for--actually for the joint
13 Applicants, Wireless Co. LP, whom we will refer to
14 as Sprint, just for ease of identification
15 throughout the proceeding, and SBA, Incorporated,
16 I'm Mark Dobbins, D-o-b-b-i-n-s, with the law
17 firm of Tilford, Dobbins, Alexander, Buckaway and
18 Black, 1400 One Riverfront Plaza, Louisville,
19 Kentucky 40202.

20 MS. KEENE:

21 Also for the applicants, Sandra F. Keene,
22 K-e-e-n-e, with the lawfirm of Tilford, Dobbins,
23 Alexander, Buckaway and Black, 1400 One Riverfront
24 Plaza, Louisville, Kentucky 40202.

1 HEARING OFFICER SHAPIRO:

2 Ms. Whalen, could we have your full name and
3 address please?

4 MS. WHALEN:

5 Carole, C-a-r-o-l-e, A. Whalen, W-h-a-l-e-n, 157
6 Swigert Avenue, Lexington 40505.

7 HEARING OFFICER SHAPIRO:

8 And Mr. Brock?

9 MR. BROCK:

10 I live at 102 Swigert Avenue, Lexington, Kentucky
11 40505.

12 HEARING OFFICER SHAPIRO:

13 And Mr. and Mrs. Good?

14 MR. GOOD:

15 It's Robert and Pauline Good, G-o-o-d, 260
16 Swigert, Lexington, Kentucky 40505.

17 HEARING OFFICER SHAPIRO:

18 And we have one additional intervenor, Ms. Teresa
19 Thompson who has requested intervention at this
20 proceeding; is that correct?

21 MS. THOMPSON:

22 Yes, sir.

23 HEARING OFFICER SHAPIRO:

24 And what is your full name and address?

1 MS. THOMPSON:

2 Teresa Thompson, 233 Swigert Avenue, Lexington,
3 Kentucky 40505.

4 HEARING OFFICER SHAPIRO:

5 Let the record reflect that Ms. Thompson, prior to
6 the hearing, requested intervention and it is so
7 ordered. And who is appearing here on behalf of
8 the Lexington-Fayette Urban County Government?

9 MS. JONES:

10 I'm Tracy Jones, our address is 200 East Main
11 Street, Lexington, Kentucky 40507.

12 MR. HORNSBY:

13 Larry Hornsby, H-o-r-n-s-b-y, 200 East Main
14 Street, Lexington, Kentucky 40507 and, also, Ed
15 Gardner of the Urban County Government may appear
16 later. He is tied up in federal court this
17 morning, but his address will also be 200 East
18 Main Street, Lexington, Kentucky 40507.

19 HEARING OFFICER SHAPIRO:

20 And for the Commission Staff?

21 MS. DOUGHERTY:

22 Amy Dougherty.

23 HEARING OFFICER SHAPIRO:

24 Mr. Brock, I understand you are an attorney; is

1 that right?

2 MR. BROCK:

3 Yes, sir.

4 HEARING OFFICER SHAPIRO:

5 But the rest of the intervenors are not attorneys?

6 MR. BROCK:

7 About that, I'm actually here on my own behalf and
8 I did file one joint pleading with Ms. Whalen
9 because she wasn't able to get it prepared. I'm
10 actually the attorney for my mother's estate which
11 owns a sizable tract of land on Swigert Avenue.
12 I'm the sole heir and I live in that house, I
13 actually live in the house now, but I'm probably
14 best represented as the attorney for the estate of
15 Azelea Brock, who still has legal title to the
16 tract of land on Swigert.

17 HEARING OFFICER SHAPIRO:

18 Azelea Brock?

19 MR. BROCK:

20 Yes, just like the flower, A-z-e-l-e-a, middle
21 name Hyacinth, but don't put it down. That's what
22 was in bloom in South Carolina that spring
23 morning.

24

1 HEARING OFFICER SHAPIRO:

2 Let me briefly explain to the--

3 MS. DOUGHERTY:

4 Your Honor, other people have come in I don't know
5 if they are parties or not.

6 HEARING OFFICER SHAPIRO:

7 Early we asked if the people--if we have
8 intervenors in this proceeding and we named
9 several people who hadn't--weren't here at that
10 time, Carl and Nettie Gentry, and Andrew Sloan,
11 not here. Before we start the evidentiary portion
12 of the hearing I'm going to ask if there is
13 anybody here who would like--who is not a party to
14 the proceeding, that is, they have not filed any
15 request for intervention, but who are interested
16 in the proceeding, if they would wish to make a
17 statement for the record? If you do, if you will
18 so advise, is there anybody here that would like
19 to do that? Are there any preliminary matters
20 that we need to address?

21 MR. DOBBINS:

22 I don't believe so.

23 MS. JONES:

24 We have certified copies of the Planning

1 Commission's decision and Staff Report which is
2 what they relied on. I don't think there is an
3 objection to putting that in the record, I want to
4 do it.

5 HEARING OFFICER SHAPIRO:

6 The--are those the items that are in the record at
7 this--

8 MS. JONES:

9 I don't believe that the Staff Report was in the
10 record already, according to the document
11 information that we have. These Planning
12 Commission minutes and their decision may have
13 been in the record but I don't think the Staff
14 Report that was attached is in the record. We
15 would like for it to be.

16 HEARING OFFICER SHAPIRO:

17 Have you shown it to Mr. Dobbins?

18 MR. DOBBINS:

19 Can I just have a word with Ms. Jones, one second
20 Your Honor? Your Honor, I just had a conversation
21 with Ms. Jones and what she seeks to put in now,
22 as I understand it, is the denial itself and the
23 Minutes of the Lexington-Fayette Urban County
24 Government Planning Commission meeting at which

1 the denial was made. We don't have a problem with
2 either one of those two things. Now, there is a
3 third item attached to the package that is the
4 Staff Report, which apparently was made available
5 to the Planning Commission but was not part of the
6 Notice of Denial that went out to either--to this
7 Commission, in fact, we never did receive it.
8 And Your Honor may know and Staff counsel knows
9 that we have filed an objection to the process
10 because we never received written denial
11 ourselves, the applicants. Nonetheless, that
12 third item was never even made a part of the
13 package to this Commission. Now, we don't have a
14 problem with it coming in for what it is, but not
15 to demonstrate that it was part of the actual
16 denial because it wasn't.

17 MS. JONES:

18 And that would be--I mean, that is our intention,
19 that is why we brought certified copies. The
20 Staff Report was made available at the Planning
21 Commission hearing. And it just was not attached
22 to the denial when it was sent to the Public
23 Service Commission, but the Planning Commission
24 did rely on the Staff Report when they made their

1 --and that is reflected in the minutes. So, as
2 opposed to having someone that is going to testify
3 about that, we just wanted to provide these
4 certified copies that will be in the record what
5 the Planning Commission's decision was and what
6 they relied on to do that. It was not made a part
7 of the denial and so that is all it is, certified
8 copies.

9 HEARING OFFICER SHAPIRO:

10 Well, the objection is the submission into the
11 record?

12 MR. DOBBINS:

13 Well, just with the proviso that that third item
14 wasn't actually part of the package that went out.
15 Frankly, I don't remember right now off the top of
16 my head whether there was as reference to it in
17 the Planning Commission's decision or not. I
18 think the Commission says whatever it says and if
19 it references it, fine; if it doesn't, it doesn't.
20 I'd just like to reserve that for the possibility
21 of argument at some point and just--I don't have a
22 problem with it coming in but I just wanted it to
23 come in for what it really is, and that is that
24 that third item wasn't part of the package that

1 went out.

2 HEARING OFFICER SHAPIRO:

3 Well, you agree that it wasn't part of the package
4 that went out?

5 MS. JONES:

6 Yes.

7 HEARING OFFICER SHAPIRO:

8 We will let it be entered then as part of the
9 evidence in the proceeding. And let's mark it for
10 identification as LFUCG EXHIBIT 1.

11 (EXHIBIT SO MARKED: LFUCG Exhibit No. 1)

12 HEARING OFFICER SHAPIRO:

13 Let me explain the procedure that we will be
14 following here this morning. As you can see, we
15 have a court reporter, this is a formal hearing,
16 on the application that has been filed by Wireless
17 Co. The applicant will present evidence, will
18 present evidence in support of that application,
19 and I assume they will do it through the witnesses
20 that--how many witnesses are you going to have?

21 MR. DOBBINS:

22 Four I believe.

23 HEARING OFFICER SHAPIRO:

24 They will have four witnesses who will testify in

1 response to questions that Mr. Dobbins or Ms.
2 Keene will ask them. After each one of those
3 witnesses has testified on direct examination,
4 then the intervenors will have the right to cross-
5 examine them on any issue that is relevant to this
6 proceeding. After they cross--after you all
7 cross-examine, then Ms. Dougherty will also have
8 the opportunity to cross-examine the witness.
9 When all of the witnesses have testified on behalf
10 of the applicant, then the intervenors will be
11 permitted to present evidence on their behalf as
12 to why they oppose the application. After you
13 have made your statements, however, you will also
14 be subject to cross-examination this time by Mr.
15 Dobbins and by Ms. Dougherty and by the Lexington-
16 Fayette Urban County Government if they so choose.
17 And that is the procedure that will be used to
18 gather the evidence upon which the Commission will
19 make its decision. After all the evidence has
20 been presented you will also be given an
21 opportunity to make a closing statement, or
22 closing argument, telling the Commission why you
23 believe, on the basis of the evidence, that the
24 application should be denied. Mr. Dobbins then

1 will have an opportunity on behalf of the
2 applicant to make a statement as to why he
3 believes the application should be granted. And
4 that will be--and after the closing statements are
5 made that will be the end of the hearing, that
6 will conclude all of what we will be doing here
7 today. After the--after the hearing a transcript
8 of the proceeding will be prepared by the court
9 reporter and that will be filed with the
10 Commission and the matter then will be taken under
11 review by the Commissioners. My name is Paul
12 Shapiro, I'm a Hearing Examiner for the Commission
13 and I will be conducting the hearing. The final
14 decision, however, will be made by the three
15 Commissioners who are--who we all work for. Do
16 you have any questions about the proceeding here
17 today? At this point then I will ask Mr. Dobbins
18 to call his first witness.

19 MS. KEENE:

20 Applicant calls Oliver Feibel.

21 (WITNESS DULY SWORN)

22
23 The witness, OLIVER FEIBEL, having first been
24 duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. KEENE:

3 Q Please state your name and business address for
4 the record please?

5 A My name is Oliver Feibel, my business address
6 is 9401 Williamsburg Plaza, Suite 100,
7 Louisville, Kentucky--

8 COURT REPORTER:

9 Spell your last name?

10 A Feibel, F-e-i-b-e-l.

11 Q And Mr. Feibel, you are employed by whom?

12 A Sprint PCS.

13 Q And what is your position with Sprint PCS?

14 A I'm the Senior RF Engineer for Louisville and
15 Lexington.

16 Q And explain to the Commission what RF stands
17 for?

18 A Radio frequency.

19 Q Briefly explain your professional training
20 and your background in the wireless industry?

21 A I have a degree from Rankin College in St.
22 Louis, Missouri, in communication
23 electronics. I have been in the industry for
24 approximately eight years now, and with

1 Sprint PCS for about the last four.

2 Q Mr. Feibel, as a Radio Frequency Engineer are
3 you responsible for designing Sprint's
4 wireless network in the Louisville Major
5 Trading Area or MTA?

6 A Yes.

7 Q And does the Louisville MTA include the Lexington-
8 Fayette County area?

9 A Yes.

10 Q In general, how do you, as an RF engineer, go
11 about selecting sites for placement of
12 Sprint's wireless facilities?

13 A We put together a plan based on population,
14 where the population lives, where the traffic
15 is, we put together search rings of various
16 heights and locations and we submit that to
17 the site acquisition group for them to seek
18 out properties in those areas.

19 Q Is Sprint an FCC licensee?

20 A Yes.

21 Q And are there FCC license requirements for
22 Sprint to provide coverage within a licensed
23 area?

24 A We own the Louisville MTA which covers the

1 greater part of Kentucky, as well as portions
2 of Southern Indiana and a few counties in
3 Illinois. We--our goal is to cover certain
4 percentages of the population within a
5 certain number of years. There is several
6 tiers to that.

7 Q And is that an FCC requirement for retention
8 of your license?

9 A Yes.

10 Q Does your department use any sort of computer
11 program to help you select sites for
12 placement of your equipment?

13 A Yes. Yes, we use a program called Planet, it
14 is used by all of the Sprint PCS markets. I
15 believe other companies use it, also. What
16 it does is basically takes the tower height,
17 the terrain, also the--whether it is a
18 forest, the morphology of the area and it
19 determines how well each site will propagate.

20 Q And just so I'm clear, these factors that you
21 have talked about, tower height or elevation
22 and morphology of land, are these parameters
23 that are in that computer program?

24 A Yes.

- 1 Q And are they sites or area specific?
- 2 A Yes, the data is in approximately, I believe,
3 30 by 30 meter increments.
- 4 Q Okay. Explain the process, the process that
5 you, as the Radio Frequency Engineer, go
6 through. You have talked about this computer
7 program, is that the first step in the
8 process of site selection?
- 9 A One of the processes--well, we also when we
10 are first initially designing a network we
11 look for all the existing buildings and
12 towers in an area and we try to design around
13 which towers will work so that we can--
14 basically, it saves us money to go on
15 existing structures, if we don't have to
16 build our own site.
- 17 Q Do you have access to some sort of industry
18 data bases that tell you where the existing
19 tall structures are?
- 20 A Yes, we do get data bases from various
21 companies who own towers and other providers,
22 as well as going out and sometimes just
23 taking a visual look around to see what is
24 out there. And we usually take every one of

1 those towers, plug them in and see which ones
2 will work with what we are trying to
3 accomplish.

4 Q And once you have identified big collocation
5 possibilities within a given market, what do
6 you do next?

7 A We--after we plug all that stuff into the--
8 into Planet, or the computer program, we go
9 through and determine where else we need to
10 put or locate sites to, basically, fill in
11 the gaps between the--all the existing
12 structures.

13 Q And when you talk about plugging in
14 information to find other search rings or
15 other areas, are you referring to spots where
16 you will need to build a new facility?

17 A We either need to build a new facility or
18 find an existing structure to go on, such as
19 a building.

20 Q Is the use of the Planet program and these
21 other data bases that you referred to, is
22 that standard within the wireless industry?

23 A Yes, there are several programs out there,
24 there is approximately four programs, but

1 Planet is the chosen program for Sprint PCS.

2 Q Just so I'm clear, reliance on those programs
3 and the information you get from those, that
4 is standard for radio frequency engineers in
5 your field?

6 A Yes. Yes.

7 Q Once you have identified a specific search area,
8 what do you do with that information?

9 A The information is put on a map and given to
10 a site acquisition group or site development
11 group. They are given these search rings and
12 they are supposed to go out and find
13 locations within those search rings and
14 provide back candidates, potential
15 candidates, for a tower or a site.

16 Q In what form are they given this sort of
17 information?

18 A They are given a--a sheet of paper with a--
19 it's usually a map or a topo map with a
20 circle drawn around the area that we are
21 looking for something.

22 Q Are they given any other information?

23 A Tower height, exactly some of the specifics
24 of the site that we are looking for,

1 basically, an elevation that we are trying to
2 accomplish.

3 Q Are you familiar with the search ring or the
4 area that surrounds the proposed site on
5 Swigert Avenue?

6 A Yes, I am.

7 Q Let me show you a document. I'd like to mark
8 this as Applicant's 1. Mr. Feibel is this a
9 true copy of the search ring issued by
10 Sprint's RF Department for--to the site
11 acquisition people for selection of a site in
12 the Swigert Road area?

13 A Yes.

14 MS. KEENE:

15 We move to admit that as Applicant's 1.

16 HEARING OFFICER SHAPIRO:

17 Any objection? What is this again,
18 what is it again, Mr. Feibel?

19 A It is a search ring.

20 HEARING OFFICER SHAPIRO:

21 The search ring for the--

22 A Swigert Avenue site.

23 OFFICER SHAPIRO:

24 You are searching for the site that is

1 proposed, right?

2 (EXHIBIT SO MARKED: Applicant Exhibit No. 1)

3 A Proposed, yes.

4 Q Mr. Feibel, how large is this search ring?

5 A It is approximately--about 3/4 of a mile long
6 by approximately half a mile wide.

7 Q If I could have you take the microphone and
8 step up to the easel here with me for just a
9 moment.

10 A Okay.

11 Q Can you explain to the Commission what this
12 photograph shows?

13 A This is a photograph of the proposed search
14 ring area of the--

15 Q Is this an aerial photograph?

16 A Yes, it is an aerial photograph.

17 Q Does this photograph fairly and accurately
18 depict the area surrounding the proposed
19 site?

20 A Yes, it does.

21 Q Mr. Feibel, there is a clear overlay
22 attached to this photograph, can you tell the
23 Commission what this overlay shows?

24 A This overlay--the brown line in this overlay shows

1 the approximate location of that search ring.

2 Q And does this brown outline overlay fairly
3 and accurately represent the search ring that
4 applies to the proposed site?

5 A Yes, it does.

6 Q You may step down. Mr. Feibel, how did
7 Sprint's Radio Frequency Department determine
8 that a facility was needed within this search
9 ring?

10 A We choose search rings based on where
11 existing sites are currently located, as well
12 as our other proposed locations, so that all
13 the sites link together so we, basically,
14 don't have a region where when you pass from
15 one site to the next you drop a call. Our
16 goal is that you can have seamless coverage
17 between the two.

18 Q And what is the coverage objective for this
19 particular search ring?

20 A This search ring was designed to cover a
21 portion of the traffic on I-75, as well as
22 the traffic on Paris Pike, the Lexington
23 Country Club and the surrounding residents.

24 Q Mr. Feibel, do you know what size or type of

1 facility Sprint originally requested for this
2 search ring?

3 A Originally, we were requesting a 250 foot
4 self-support site.

5 Q And currently the application is for a 180
6 foot monopole?

7 A Correct.

8 Q And why was there a reduction in height?

9 A Based on where our surrounding sites ended
10 up, this is actually the last site in our
11 initial Lexington design. All of our sites
12 are built and on the air around this site,
13 and 180 foot site will provide adequate
14 connection to the existing sites.

15 Q Is the coverage at 180 feet as good as it
16 would have been had you gone ahead with the
17 250 foot lattice tower, or 250 foot facility?

18 A The 250 foot site would have worked, but it
19 is no longer necessary and it would also have
20 to be lit for FAA reasons, and at 180 foot
21 the site does not have to be marked or lit
22 for FAA.

23 Q You mentioned that this is one of the last
24 sites within Sprint's initial--did you refer

1 to it as a footprint?

2 A Initial footprint in Lexington.

3 Q Can you describe the significance of an
4 initial footprint for a geographic area?

5 A The initial footprint was designed to cover
6 the majority of the population in Lexington,
7 as well as provide adequate 911 service to
8 that region.

9 Q Okay. So, how critical is a site within an
10 initial footprint for a geographic area
11 versus a later phase structure, or later
12 phase facility?

13 A The initial site is very important to
14 basically complete the--a grade of service
15 that would be roughly the same throughout the
16 entire area. A later site, if you are
17 talking about like a capacity site, that is
18 strictly just to suck up extra traffic that
19 may have popped up in a certain region due to
20 sales growth.

21 Q You made reference to emergency 911 service a
22 while ago, is there an FCC mandate to provide
23 emergency 911 service--

24 A Yes.

1 Q --to wireless providers?

2 A Yes, within our footprint we have to provide
3 a, basically, like I said before, a similar
4 grade of service throughout our entire
5 footprint for 911 service so that it is--
6 basically, within our footprint you can make
7 a 911 call for safety reasons.

8 Q Is a wireless facility needed by Sprint
9 within this search ring in order to meet
10 those requirements for emergency 911 service?

11 A Yes, it is.

12 Q I'm going to show you--well, I believe that
13 you described the Planet computer program
14 that you used to generate coverage
15 predictions. Did you prepare coverage plots
16 for this search ring?

17 A Yes, we did.

18 Q Mr. Feibel, can you explain to us what this
19 map is and what it shows?

20 HEARING OFFICER SHAPIRO:

21 Mark it for identification as
22 Applicant's Exhibit 3.

23 MS. KEENE:

24 We'll mark it for identification as--

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MR. HORNSBY:

Just to clear up the record, could we
get the aerial marked as two?

HEARING OFFICER SHAPIRO:

Right.

MS. KEENE:

Do we need to mark the overlay
separately?

HEARING OFFICER SHAPIRO:

No, I think the overlay--it is all
attached, isn't it?

MS. KEENE:

It's all together. We could do it as 1
A and B if that will help.

HEARING OFFICER SHAPIRO:

One was the search ring, search--

MR. DOBBINS:

Search ring is one, small exhibit.

MS. KEENE:

Right.

HEARING OFFICER SHAPIRO:

And then the aerial photograph I have as
two, so this would be--this latest form
would be three.

1 MS. KEENE

2 Okay.

3 Q This map has been marked for identification
4 as Applicant's 3. Mr. Feibel, can you
5 explain to us what that is and what it shows?

6 A This map shows the northeast area of
7 Lexington and this shows all of our current
8 existing sites within that footprint.

9 Q So that it is clear on the record, explain
10 which sites on the map there are your current
11 existing sites?

12 A We have this site up here, is--it ends in
13 315, site 307, site 313 and site 303 are
14 current sites surrounding the proposed
15 location and need to connect to it.

16 Q And the numbers that you have referred to all
17 appear on this map as green areas; is that a
18 fair statement?

19 A Correct.

20 Q What is the significance of the colors that
21 we are seeing on this map?

22 A The colors, the green area obviously is for
23 good service, the yellow area is a little
24 lesser service, this--actually, the yellow

1 area is our design for good suburban
2 connection. The red area is a little lesser
3 coverage and then so on with the blue, and
4 the orange is our weakest coverage.

5 Q And the site that you have identified on this
6 map as your current network for this area,
7 are they constructed and on the air at the
8 present time?

9 A Yes, all these sites are constructed and on
10 the air.

11 Q And where is the proposed site in relation to
12 these existing sites?

13 A It is right here off of, I believe, Swigert
14 Avenue is this land right in here. There is
15 not a dot here, I can put one in if you so
16 desire. That is on the next map.

17 Q Okay.

18 HEARING OFFICER SHAPIRO:

19 Well, can you mark it on the exhibit so
20 it is readable?

21 A Yes, I can.

22 Q Mr. Feibel, we will ask you to mark the
23 location of the proposed site on Applicant's
24 Exhibit 3 with a yellow dot.

1 A Done.

2 Q Now, does this map show what the coverage is
3 without the proposed site?

4 A Yes, this shows coverage without the proposed
5 site, it shows it is weak in this area.

6 Q And is that what Sprint's coverage currently
7 is for this area?

8 A Correct.

9 Q Mr. Feibel, at the present time with Sprint's
10 coverage, what happens to a Sprint customer if
11 they drive or enter into the area around that
12 proposed site that you have marked with a yellow
13 dot?

14 A They will experience a lower grade of call
15 quality, the audio quality, and a higher
16 potential for a dropped call, as well as an
17 access failure if they are trying to place a
18 call.

19 Q And explain what an access failure is?

20 A An access failure is where you attempt to
21 originate a call and you get either a fast
22 busy tone, I mean, basically, it will not
23 allow the call to go through.

24 Q And then what does the red signify on this

1 map?

2 A A--the red signifies, basically, a less than
3 suburban level of coverage.

4 Q And the blue?

5 A The blue is more of an in-vehicle coverage
6 only, basically, no in-building coverage at
7 all. And then the orange is just a like
8 standing on the street type coverage.

9 Q And what would be the effect on a person who
10 was attempting to use emergency 911 service
11 within the area around the--that you have
12 marked with a yellow dot?

13 A It shows that they would have to be,
14 basically, outside of any structure and
15 possibly in the vehicle may work part of the
16 time. It is best if they were just standing
17 outside, otherwise, they would not be able to
18 use it inside the structures.

19 MS. KEENE:

20 We would move to admit this coverage
21 plot as Applicant's Exhibit 3.

22 HEARING OFFICER SHAPIRO:

23 You also want to move--

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MS. KEENE:

And two as well.

HEARING OFFICER SHAPIRO:

Any objections?

MR. HORNSBY:

(Nodded head indicating no.)

MS. JONES:

(Nodded head indicating no.)

HEARING OFFICER SHAPIRO:

So ordered.

(EXHIBITS SO MARKED: Applicant Exhibits Numbered
2 and 3)

Q Have you prepared a second coverage map Mr.
Feibel?

A Yes, we also have a coverage map showing
current coverage plus the Swigert Avenue
site, the proposed site.

MS. KEENE:

I'd like to mark this for identification
as Applicant's 4.

HEARING OFFICER SHAPIRO:

What is this again, this is a map?

MS. KEENE:

This is an additional coverage map.

1 A This is a map showing current coverage plus
2 the proposed site.

3 Q When you say plus the proposed site, are--is
4 this a coverage map showing what Sprint's
5 coverage would be if the proposed site were
6 constructed and approved?

7 A Yes.

8 Q And, again, explain the significance of the
9 colors that are showing up on the map to the
10 Commission?

11 A This map would show that we are--we would
12 now, with the proposed site, show that we
13 would have good service along the rest of
14 I-75, Paris Pike, the Lexington Country Club I
15 believe in this region here, as well as the--just
16 the surrounding community in that area. And it
17 show that we would, basically, have coverage all
18 the way out almost to the--the Fayette county
19 border, county line on Paris Pike.

20 Q And what does the color green signify on this
21 map?

22 A The color green signifies good in-building
23 coverage; the yellow signifies good suburban
24 coverage; the reds signifies a little less

1 than suburban coverage, more of a rural type
2 coverage; the blue signifies an in-vehicle
3 type coverage; and the orange at the very end
4 here signifies an on-street coverage.

5 Q How do these sites that you have identified
6 on this coverage map relate to one another?

7 A All these sites, as you can see, they all
8 link up, basically. We tried to provide
9 continuous coverage by having no worse than
10 preferably yellow with just small amounts of
11 red coverage in between.

12 Q What happens if you have got sites that are
13 too far apart?

14 A We would end up with dropped calls, we would
15 end up with possible holes, coverage holes,
16 and possible valleys and weaker in-building
17 coverage, basically, at the point in between
18 the existing sites.

19 Q And what happens if you have got two of those
20 sites that are too close together?

21 A Basically, they interfere with each other.
22 We try to keep them somewhat apart because if
23 we get them too close to each other they can
24 tend to interfere with one another.

1 Q And what is the effect of interference with one
2 another?

3 A The effect is you get poor audio and dropped
4 calls.

5 Q You may sit back down. We move to admit applicant
6 four.

7 HEARING OFFICER SHAPIRO:

8 Any objection?

9 MS. JONES:

10 (Nodded head indicating no.)

11 MR. HORNSBY:

12 (Nodded head indicating no.)

13 HEARING OFFICER SHAPIRO:

14 So ordered.

15 (EXHIBIT SO MARKED: Applicant Exhibit No. 4)

16 Q Mr. Feibel, does the proposed site at 189 Swigert
17 Avenue, in your opinion as a Radio Frequency
18 Engineer, the optimum location for construction of
19 this facility?

20 A Yes, it is.

21 Q Will the proposed site provide the optimum
22 coverage from a radio frequency standpoint
23 for Sprint's wireless network?

24 A Yes, it will.

1 Q Does the proposed location provide for
2 adequate spacing between Sprint's existing on
3 air facilities?

4 A Yes, it will.

5 Q And would that proposed site at 189 Swigert Avenue
6 provide for continuous and consistent coverage
7 within the Lexington-Fayette County area?

8 A Yes, it will.

9 Q Are there any existing structures within the
10 search ring that you are aware of or that
11 would handle Sprint's equipment?

12 A Yes, there is, there is one. I believe it is
13 a tower a couple of properties away, I
14 believe the land owner is the name of
15 Whitaker, if I'm not mistaken, but to my
16 knowledge the site has not been available for
17 collocation.

18 Q But from a radio frequency standpoint you are
19 saying that it would or wouldn't work?

20 A It would work.

21 Q Are there any other existing tall structures
22 within the search ring that you are aware of?

23 A Not that I'm aware of.

24 Q What is Sprint's policy regarding

1 collocation?

2 A We try to collocate on existing structures as
3 much as possible because it saves us time and
4 money from building a new site. We can get
5 on the air much faster and provide service
6 much quicker by going on an existing
7 structure. There is less order time and
8 delivery times.

9 Q Do you know what Sprint's current collocation
10 percentage is for the Louisville MTA?

11 A I believe it is approximately 70%.

12 Q Once sites are secured and constructed and
13 operational, what effect does that have on the
14 remaining search rings?

15 A It makes the search ring, the final search
16 ring location more important because the
17 other sites are built, they are not moving,
18 they are on the air providing coverage
19 already, so, especially, since this is the
20 last of our sites, it needs to link with all
21 of our existing sites.

22 Q From a radio frequency standpoint, how
23 important is it that the proposed facility be
24 located within the search ring that was

1 demonstrated on Exhibit 1?

2 A It is very important.

3 Q What would happen to Sprint's coverage if the
4 facility were moved outside that search ring?

5 A It is possible that we could have coverage
6 gaps on the--basically, the opposite
7 direction from the way it would be moved.

8 Q And how would Sprint have to compensate for
9 that loss of coverage?

10 A We would have to--probably have to build
11 another site to compensate for that, for the
12 hole that would occur.

13 Q Are you aware of any alternate sites within
14 the search ring that have been proposed by
15 anyone?

16 A Yes, where there is the existing structure,
17 the Whitaker tower.

18 Q Is there any other alternative site that you
19 have been made aware of?

20 A I believe there was a church that we could
21 put, basically, another tower there.

22 Q Are you referring to the North Side Baptist
23 Church on Swigert Avenue?

24 A Yes.

1 Q From as radio frequency standpoint, how would
2 location of the facility there work?

3 A From a radio frequency standpoint, that would
4 work also.

5 Q Would it be significantly different than
6 Exhibit 4?

7 A No, not significantly.

8 MS. KEENE:

9 We will tender Mr. Feibel for cross.

10 HEARING OFFICER SHAPIRO:

11 Lexington-Fayette County Government have any
12 questions of this witness?

13 MS. JONES:

14 If you want to call us LFUCG you can, that's what
15 everyone else does.

16 HEARING OFFICER SHAPIRO:

17 Who?

18 MS. JONES:

19 LFUGG, it's our acronym. We just have a couple of
20 questions.

21

22 CROSS EXAMINATION

23 BY MS. JONES:

24 Q Mr. Feibel, I'm not nearly as knowledgeable as you

1 are about this so I might have to ask you some
2 questions that may sound ridiculous to you, but I
3 just want to make sure that we are understanding
4 what you are stating correctly. Do you, when you
5 look at an area that you think needs to have an
6 additional tower for--to complete your service as
7 you have described or make it more efficient so
8 that you get more green areas like you have on
9 your map, do you come up with more than one search
10 ring or do you just come up with one?

11 A We tend to come up with one search ring and
12 it is broad enough that hopefully it
13 encompasses several pieces of property to fit
14 that need.

15 Q In your testimony you said that originally
16 you thought you were going to need a 250
17 tower, 250 foot tower, but now only 180 foot.
18 Is that going to be at the same--at the
19 Swigert Road site you were going to require a
20 250 foot tower?

21 A Correct. All of our--that was in an initial
22 design and not all the sites surrounding it
23 were complete at that time yet, and based on
24 their final location of where they actually

1 ended up it was determined that now we can go
2 with a smaller tower, a 180 foot tower.
3 Q So, that was based on the other facilities
4 being completed before this one?
5 A Correct. This is the last site.
6 Q As far as from a radio frequency standpoint,
7 anywhere in the search ring would have
8 accomplished your goal; is that fair?
9 A Correct.
10 Q Can this search ring be adjusted at all to
11 encompass any different areas and still
12 provide the same service that you have
13 described?
14 A No, not really. This search ring was chosen
15 based on the elevation of the ground in this
16 area.
17 Q Are there any other sites in this area that
18 you have looked at that wouldn't necessary be
19 within your search ring but they would have
20 accomplished the same goal?
21 A In this area?
22 Q Uh-huh.
23 A I believe we looked at one time at a site
24 down on Paris Pike, it was a bit out of the

1 search ring and that was back when the
2 network still was not--all the sites were not
3 pinned down at this time.

4 Q Would that site have accomplished your goal?
5 I mean, what I'm trying to figure out is how
6 big the search ring needs to be to accomplish
7 your goal, can it only be one size or is it
8 adjustable to get what you are looking for
9 from a radio frequency standpoint?

10 A Well, with all the sites finished, this is
11 the search ring, I mean, the search ring is a
12 more defined search ring. We do not want to
13 change the size or move the site further in
14 any direction because it would create a hole
15 between our current existing network as it
16 stands today.

17 Q Do you know how many--how many square miles
18 are encompassed in this search ring?

19 A In the search ring itself?

20 Q Uh-huh.

21 A It is approximately 3/4 by, long, by
22 approximately half a mile wide. So, it is a
23 fairly large area.

24 Q Is that--is there a standard size for a

1 search ring or do they vary depending on what
2 you are looking for?

3 A They vary depending on what we are looking
4 for. In a downtown area, for instance, it
5 might only be several blocks, a several block
6 search ring, several block area. Where as
7 when we get out in the more rural areas or
8 the more suburban areas, they get larger up
9 to about 3/4 of a mile, maybe upwards of a
10 mile in the--for, like, a highway connection
11 site.

12 Q So, from a radio frequency point of view
13 only, with nothing else considered, any
14 location in your search ring would accomplish
15 the service goal you are looking for; is that
16 fair?

17 A Correct.

18 HEARING OFFICER SHAPIRO:

19 Mr. Brock, do you have any questions?

20 MR. BROCK:

21 Yes, Your Honor, I have some, I mean--

22 HEARING OFFICER SHAPIRO:

23 You need to come up to the mike.

24

1 CROSS EXAMINATION

2 BY MR. BROCK:

3 Q Mr. Feibel, have you visited the site?

4 A Yes, I have.

5 Q When was the first time you visited the site?

6 A The first time I personally visited the site
7 was approximately a couple of months ago.

8 Q And the last time you visited the site?

9 A Approximately a month ago.

10 Q You talked about the traffic and number of
11 individuals in that area, it is a rural area,
12 isn't it?

13 A It is on the verge--part of the area is
14 suburban and part of the area is rural as you
15 head out away from Lexington.

16 Q Do you know how many Sprint customers you
17 have at the Lexington Country Club since you
18 seem to mention that as a--

19 A That I am not sure.

20 Q But the fact that you are near Route 75 is
21 important in this area; is that right?

22 A Correct.

23 Q I suppose you are aware of the number of
24 cities that are thinking about enacting

1 ordinances against the use of cell phones in
2 cars?

3 A I have read articles.

4 Q How would that affect this application should
5 such an ordinance be passed?

6 A I believe in some areas it is--I think it was
7 Ohio, one of the towns in Ohio, developed an
8 ordinance that you couldn't actually drive
9 and be actually moving at the time you were
10 using it. You could actually pull over and
11 use it, you just couldn't be in motion and
12 drive at the same time and use the phone I
13 mean.

14 Q This computer program which you used to
15 select the sites, that is not designed by
16 Sprint, is it?

17 A No.

18 Q And who actually designs the program?

19 A The manufacturers name is MSI or Mobile
20 Systems International.

21 Q And they collect their data from, like,
22 government topographical maps and information
23 like that?

24 A Correct. And they also have satellite

1 information.

2 Q Would it be possible to serve this area if
3 you had two lower towers, in other words, two
4 towers which could possibly link up, say, in
5 church steeples that may not be 180 feet but
6 might be less than that?

7 A It is possible, I haven't done any design on
8 it, it is possible that it would even take
9 more sites at a lower elevation, depending on
10 how far down the elevation were to go, from
11 an RF standpoint.

12 Q Would then the factor be the expense and
13 cost? As far as you are concerned, it would
14 be a lot cheaper to put up one that was 180
15 feet than put up three that were 100 feet?

16 A That would be part of it, also, from the
17 traffic estimated from some of the
18 surrounding sites, we used a similar model to
19 determine how much traffic we are going to
20 have in that area which would also determine
21 how many sites we would need in that area.

22 Q How do you determine how much traffic you
23 have in an area?

24 A We pull off cost statistics off of a per

1 antenna basis using some programs that Sprint
2 has developed.

3 Q Would you have any idea off hand what the
4 frequency is in this particular area?

5 A The calls or the frequency on the site?

6 Q Of frequency on site?

7 A The frequency is around 1900 megahertz.

8 Q Okay. And then the number of calls?

9 A And the number of calls from our existing
10 sites surrounding it, each sector
11 approximately does 1000 to 2000 calls a day.

12 Q Had you met Mr. Sweeney before this particular
13 site selection began?

14 A Personally, no.

15 Q When did you first meet him?

16 A A couple of months ago.

17 Q Okay. With regard to Mr. Whitaker's site, is
18 that a private tower which he had erected on
19 his land?

20 A I believe Mr. Whitaker owns that tower.

21 Q So, it has not been obtained through some
22 kind of certificate of use for another phone
23 company?

24 A I don't believe so.

1 Q Are you aware that he plans to take that
2 tower down?

3 A I am not sure what his plans are.

4 Q And are you aware that he also has some
5 aircraft activity on his farm, helicopters,
6 to be precise?

7 A On his farm, I did not know that. I do know
8 there is a heliport on the other side of
9 Paris Pike.

10 Q Okay. But you were not aware that there was also
11 one on the other side on Mr. Whitaker's farm?

12 A Well, there is nothing registered with the
13 FAA over there.

14 Q Okay. But he has a private pad over there.

15 MR. DOBBINS:

16 Is that testimony, Your Honor, or is
17 that a question?

18 MR. BROCK:

19 A little of both, you can cross-examine
20 me.

21 HEARING OFFICER SHAPIRO:

22 Yes, we need to confine this to
23 questions and answers.

24

1 MR. BROCK:

2 Okay.

3 Q Was there an earlier attempt to locate this
4 tower up near the interchange of I-75 and
5 North Broadway?

6 A Yes, I believe that was at--there was a site
7 right off of Paris Pike or North Broadway
8 back when the initial designs were still
9 being completed and all the sites weren't
10 finished and built, all the surrounding
11 sites.

12 Q That is--would that prior location actually
13 be within the search ring?

14 A No.

15 Q About how far outside of the search ring is
16 it?

17 A I'm going to say approximately a mile.

18 Q If it were possible to relocate there, could
19 you make it work electronically?

20 A Not at this time based on where our final
21 sites, our surrounding sites ended up.

22 MR. BROCK:

23 I have no further questions.

24

1 HEARING OFFICER SHAPIRO:

2 Ms. Whalen, Ms. Good, do you have any questions?

3 MS. GOOD:

4 No, I don't.

5 HEARING OFFICER SHAPIRO:

6 Mr. Good?

7 MR. GOOD:

8 Nothing at this time, sir.

9 HEARING OFFICER SHAPIRO:

10 Ms. Whalen, do you have any questions?

11 MS. WHALEN:

12 Yes.

13 HEARING OFFICER SHAPIRO:

14 Okay. Do you want to come around.

15

16 CROSS EXAMINATION

17 BY MS. WHALEN:

18 Q I have here the photographs of a church in
19 Massachusetts that contains a Sprint
20 Communications tower within the steeple of the
21 church. Could I present that as--

22 HEARING OFFICER SHAPIRO:

23 Do you want to show it to the witness
24 and ask him--what do you want to ask

1 him, if that would be suitable for this
2 tower at this site?

3 MS. WHALEN:

4 Right.

5 HEARING OFFICER SHAPIRO:

6 Well, just show him the picture,
7 identify it as Whalen Exhibit 1. Okay,
8 you have shown him a picture which is--
9 Mr. Feibel, you have in front of you a
10 photograph where I guess it is a page of
11 three photographs; is that right?

12 A Correct.

13 HEARING OFFICER SHAPIRO:

14 And what do you see on that photograph,
15 what are they? Can you tell us what
16 they are?

17 A The three photographs are of a church and
18 church steeple.

19 Q And what--the steeple was on--

20 HEARING OFFICER SHAPIRO:

21 Why don't you ask him a question about
22 it? Just ask him questions, you will
23 have an opportunity to identify it and
24 explain it.

1 Q If--rather than a 180 foot tower, if Sprint
2 were to have a shorter tower, say, at 120
3 feet, how many would be required as opposed
4 to the one at 180 feet?

5 A Without having my computer program in front
6 of me I would have to roughly guess
7 approximately three, four, possibly five
8 locations depending on what the height
9 actually ends up being and their locations.

10 Q This area that you have seen it is basically
11 a treeless, structureless location, would
12 that indicate a lower height requirement?

13 A Around this, it shows that there is less
14 trees immediately around the site, but there
15 is no way of knowing exactly what trees are
16 in the region.

17 Q But in the region that we are discussing here
18 where the coverage reaches, there are no high
19 building structures or significant elevations
20 or trees?

21 A To my knowledge, there is actually quite a
22 bit of trees in this area. As you drive up
23 and down Swigert Avenue I do notice quite a
24 few trees, maybe not immediately surrounding

1 the site, but in order for the site to
2 propagate through the trees that are in the
3 surrounding area it needs to be at an
4 elevation of 180 feet so that it can shoot
5 down into and through the trees. As the site
6 would get lower, as the tower height would be
7 lower, it would have to basically propagate
8 through more trees, which would basically
9 diminish our service area, which would
10 require more sites.

11 Q You wouldn't say that most of that area is
12 open pasture, then, rather than wooded?

13 A Parts out to the northeast is less--is
14 pasture and trees, areas towards Paris Pike,
15 to my knowledge, is more--is quite a few
16 residences and more trees.

17 Q In terms of the coverage, would the--would
18 three towers, for instance, then provide
19 approximately the same--would they achieve
20 the same thing as one monopole tower of 180?

21 A It is hard to tell without plugging it into
22 my Planet program and knowing the actual
23 locations of--it depends on where the
24 proposed sites would end up being. It is

1 possible, that's about the best I can answer
2 that question.

3 Q And the sites could be located outside of the
4 ring?

5 A Yes, they would actually each get their own search
6 ring at that point.

7 Q Exactly.

8 A And it depends on where, like I said, once
9 again, it depends on where the sites would
10 end up. If--if--ideas for church steeples it
11 depends on where the churches are as to
12 whether or not--it is possible still that
13 with a couple of churches we would still
14 need to erect several towers, that's always
15 possible.

16 Q But that could be an alternative to give you
17 the same end result?

18 A Yes, we would just do--on Sprint's side the
19 cost may be prohibitive of the amount of
20 users in the region.

21 Q Are you aware that there is a restriction on
22 development of this area?

23 A I am unaware.

24 Q That the potential of the 5, 10, 20, 30-year

1 growth of this area is not--should not be
2 significant because of the minimum acreage zoning
3 in the area? It should remain, in fact, rural?

4 A I am not aware of that, I'm not a property
5 specialist.

6 MS. WHALEN:

7 I have nothing else.

8 HEARING OFFICER SHAPIRO:

9 Mr. Feibel, let me just ask you one question about
10 that photograph.

11 A Yes.

12 HEARING OFFICER SHAPIRO:

13 I believe you said they depict a church and a
14 steeple with some antenna devices attached to
15 them; is that correct?

16 A Correct.

17 HEARING OFFICER SHAPIRO:

18 And would such a--would such an arrangement work
19 for your purposes in this case?

20 A If this steeple was 180 feet tall.

21 HEARING OFFICER SHAPIRO:

22 You could use a similar type arrangement; is that
23 right?

24 A From an RF standpoint, yes.

1 HEARING OFFICER SHAPIRO:

2 But your testimony is that the steeple would have
3 to be still 180 feet tall or the antenna would
4 still have to be 180 feet high; is that right?

5 A Correct.

6 HEARING OFFICER SHAPIRO:

7 So, anything that is attached to the steeple would
8 have to reach a height of 180 feet?

9 A Correct.

10 HEARING OFFICER SHAPIRO:

11 And I take it from your testimony that if it is at
12 a lower height, then it will give you the coverage
13 you need and you would have to supplement it with
14 other towers?

15 A Correct.

16 HEARING OFFICER SHAPIRO:

17 Was there anything else you had?

18 MS. WHALEN:

19 Yes, sir, that was the point that you could have
20 two or three church steeples.

21 HEARING OFFICER SHAPIRO:

22 Well, this is an opportunity to just ask
23 questions. You will be able to make your point
24 later on, but right now we just want to know--we

1 just want to get his answers to your questions.
2 Okay? Then you can put it all together in a final
3 statement. Okay. Ms. Thompson, do you have any
4 questions?

5 MS. THOMPSON:

6 Yes, sir, I do.
7

8 CROSS EXAMINATION

9 BY MS. THOMPSON:

10 Q I'm sorry I've forgotten your name.

11 A It is Oliver Feibel.

12 Q Mr. Feibel, were you or any of your
13 colleagues at Sprint involved in the original
14 proposition for the construction of the mono
15 tower at Paris Pike?

16 A Nobody I currently have working for me was
17 here originally at that time.

18 Q Do you happen to know the date of that
19 proposition?

20 A That I'm not sure of.

21 Q Approximately?

22 A Two years ago.

23 Q Two years ago, okay, and was the original
24 proposed site on Paris Pike two years ago the

1 same height tower as is being proposed on our
2 residential street?

3 A I believe so.

4 Q That was outside of the search ring?

5 A Correct.

6 Q And you mentioned that current conditions
7 make that site no longer possible?

8 A Correct.

9 Q Now, what has transpired in the last two
10 years in terms of your building that make
11 that site no longer viable?

12 A All of our sites currently surrounding this
13 area have been leased and built, constructed
14 and are currently on the air.

15 Q How many monopoles have been built in the
16 last two years?

17 A Monopoles, I'm not sure.

18 Q Towers?

19 A Towers in this--

20 Q To fill your grid?

21 A In this--in Lexington I guess the question is
22 a little--

23 Q Since the proposed monopole on Paris Pike,
24 how many constructions have been erected and

1 are in use now that were not in use then?

2 HEARING OFFICER SHAPIRO:

3 Are you referring to in use here in the
4 Lexington area?

5 MS. WHALEN:

6 Yes, that are a part of this grid
7 question?

8 A I'm not sure, I'd have to look at a
9 construction schedule from two years ago to
10 see exactly where they--how many sites on the
11 other side of Lexington were completed.

12 Q So, my question also has to do with when that
13 site was no longer under consideration, the
14 original proposed site, I'm curious how that
15 was resolved in terms of the placement of
16 poles in the grid? Maybe I'm not asking this
17 very well.

18 A We have--all these sites actually--all these
19 search rings went in at the same time, all
20 the--it was the orig--initial footprint, they
21 were all under one big build plan at the
22 exact same time. They all went to our site
23 acquisition group at the same time. It is
24 just a matter of whatever leases came down

1 the line and which ones actually--some of
2 them take a little bit longer, like Swigert
3 Avenue here, obviously.

4 Q Mr. Feibel, the original monopole that was
5 proposed, which is, as you say, may be a mile
6 or a little more than a mile from our
7 residential street on the more busy street,
8 highway of Paris Pike, which I believe at
9 that particular place is four lanes, is it
10 not?

11 A I believe so.

12 Q Why was that monopole never constructed?

13 A I believe it was--it went through zoning and
14 I believe it wasn't--it was--I wasn't at the
15 zoning meeting at that time, I believe it
16 wasn't allowed because of high--of strong
17 public opposition.

18 Q And that would have been from whom?

19 A I'm not sure, I guess the community
20 surrounding the site immediately behind it.

21 Q It was, as a matter of fact, it was from our
22 Neighborhood Association?

23 A Okay.

24 Q In part at least. So, I'm wondering how it

1 came to be that from the original proposed
2 site which was objected to and then the
3 proposition was withdrawn, I'm wondering how
4 it came to be that you came back to the same
5 neighborhood to do this again?

6 A It was strictly based on the location of our
7 existing sites and the need for a site in
8 this location to provide an adequate
9 connection to our existing sites.

10 Q Mr. Feibel, do you think, and this is a
11 casual question, but do you think that all
12 the people who live in these areas are Sprint
13 users?

14 A I'm sure not everybody is a Sprint user. I
15 know our--I'm not sure of our market
16 penetration rates at this point, but it's
17 based on, also, on traffic that travels on
18 Paris Pike and on Lexington. And I do know
19 that our sales goals, our sales group
20 continuously is breaking their sales goals in
21 the Lexington area, so I do know they are out
22 selling what they are predicting.

23 Q Do you know the zoning law on our street, I
24 mean, are we zoned for business?

1 A I want to--I'm not a property specialist, I'm not
2 sure from an RF standpoint, radio frequency
3 standpoint, I'm not sure.

4 Q Does it appear to be a neighborhood, in your
5 vision, that looks like a place where there
6 would be industrial construction or business?

7 A I do know there is mainly residences and
8 there is an existing tower just behind some
9 of the houses on the Whitaker property.

10 Q That was a radio tower for his own use if I
11 can enter that in here.

12 HEARING OFFICER SHAPIRO:

13 Well, you'll have an opportunity to do
14 that later.

15 MS. WHALEN:

16 Thank you.

17 Q I'm curious about your aesthetic opinion
18 about our neighborhood, what your first
19 impressions were when you drove down our
20 street?

21 A As you drive down the street you see homes on
22 the--up closer to the street, you see there
23 is quite a few trees along the street, and
24 then as you drive towards--I guess towards

1 the church as you look to the right hand
2 side, if you are driving from Paris Pike, you
3 see the Whitaker tower, 265 feet Whitaker
4 tower in the background, and then you see
5 the--as you come up to the church.

6 Q Are you saying that you can see that tower
7 from Swigert Avenue from the front? I can't.

8 A I know you can see it from the church, I
9 believe, I know I've seen it from the--
10 possibly through the trees but I'm not sure
11 exactly how well I could have seen it.

12 Q Are you aware that the church is near the very end
13 of Swigert Avenue?

14 A Okay.

15 Q Near the very end of the actual designated
16 Swigert Avenue sign?

17 A Okay.

18 Q Back to intangibles, when you drove down our
19 street the first time, what did you--what was your
20 opinion, perhaps maybe you didn't think of it, but
21 what would you say would be an average value of a
22 home on our street?

23 MR. DOBBINS:

24 Your Honor, that is not why we have

1 offered this witness, he is not
2 qualified. I guess he can take a guess
3 if Your Honor wants him to.

4 HEARING OFFICER SHAPIRO:

5 Well, what is the purpose of the
6 question? I mean, this witness is just
7 simply testifying from a radio frequency
8 standpoint that this is a suitable
9 location.

10 MS. THOMPSON:

11 I suppose I don't know precisely who
12 else is here representing Sprint that
13 might be able to answer these questions,
14 that's why I'm asking him.

15 HEARING OFFICER SHAPIRO:

16 Well, the problem we have here is that
17 the Commission itself is kind of
18 restricting what he can consider in this
19 matter. Essentially, they have to
20 establish that the--that they require a
21 facility in order to meet their mandate
22 and that mandate is imposed upon them by
23 federal law. And if--as Mr. Feibel
24 pointed out, they have some requirements

1 of coverage that they have to provide in
2 the area and that is the whole purpose
3 of making a radio frequency analysis,
4 they try to determine what they need to
5 cover the area. And the next issue is
6 whether or not this site is less
7 appropriate, in effect, than other sites
8 that could be used. Now, I don't think
9 there is any question, I don't think
10 anybody disputes the fact that this is
11 what we would call a non-conforming use;
12 is that right? It would be a use that
13 is--that the Planning and Zoning
14 Commission has determined would not be a
15 proper use in this area. In other
16 words, you can't put a service station
17 in a residential area. But the federal
18 law overrides Planning and Zoning. You
19 can't--so, even though it is
20 inconsistent with the use of the land,
21 if there is no other appropriate use--or
22 no other more appropriate site then the
23 Commission doesn't really have much
24 choice. Now, you can ask him if--about

1 other sites which you feel would be a
2 more appropriate location for the tower.
3 But--and that is relevant to the
4 proceeding. But whether or not it is
5 inconsistent with what is in the area is
6 really not relevant unless you can show
7 that there is another area where the use
8 would be consistent or more consistent.

9 MS. THOMPSON:

10 Dr. Shapiro, may I ask--

11 HEARING OFFICER SHAPIRO:

12 I'm not Doctor.

13 MS. THOMPSON:

14 I'm sorry, Mr. Shapiro, may I ask you a
15 question?

16 HEARING OFFICER SHAPIRO:

17 Yes.

18 MS. THOMPSON:

19 I think probably a lot of us are not
20 trusting the situation very much because
21 the original proposed site is outside of
22 a ring that was earlier stated in these
23 proceedings was an absolute necessary
24 non-moving space. Since the original

1 proposed site was two years ago, or
2 less, it is unclear to me, and I haven't
3 really received an answer as to what has
4 happened in that intervening two years
5 to make the original proposed space,
6 which is on a public highway and maybe
7 because I'm not an attorney, none of us
8 on this end are, but it is not clear to
9 us accepting that within our
10 Neighborhood Association and within the
11 neighborhood certain things have
12 happened that certainly bring about
13 further questions as to how this
14 particular private property was given
15 into use to Sprint.

16 HEARING OFFICER SHAPIRO:

17 Okay. Let me see if I can ask him some
18 questions that will clarify that for you
19 and for the record. Mr. Feibel, let's
20 start even further back than that. Your
21 company had a--has a license or
22 franchise to construct or to operate a
23 wireless facility in a certain defined
24 area; is that right?

1 A Correct.

2 HEARING OFFICER SHAPIRO:

3 And I believe it is called the--in the
4 case application it is described as the
5 Lexington Major Trading Area; is that
6 right?

7 A Correct.

8 HEARING OFFICER SHAPIRO:

9 And what does that area consist of, how
10 large is that area?

11 A The area actually consists of--it is actually
12 the acronym is MTA, Major Trading Area, and
13 it consists of Louisville, Lexington, most of
14 Kentucky, parts of Indiana and a couple of
15 states in Illinois--or a couple of counties
16 in Illinois, I'm sorry.

17 HEARING OFFICER SHAPIRO:

18 Now, when you began planning to
19 construct your facilities in the
20 Lexington area, did you look at
21 Lexington by itself or was Lexington
22 designed in conjunction with these other
23 areas that you are talking about?

24 A It was designed as our phase two build after

1 the initial Louisville build.

2 HEARING OFFICER SHAPIRO:

3 So, you had an area, a defined area that
4 you were constructing the facilities in;
5 is that right?

6 A Correct.

7 HEARING OFFICER SHAPIRO:

8 And what was that defined area, what did
9 it consist of?

10 A It consisted of Interstate 64 stretching from
11 the edge of our Louisville coverage area
12 extending out through Frankfort down to
13 Lawrenceburg, Versailles and Lexington.

14 HEARING OFFICER SHAPIRO:

15 Was that all planned at one time?

16 A Yes.

17 HEARING OFFICER SHAPIRO:

18 So, when you use your computer program,
19 I think you called it Planet program?

20 A Correct.

21 HEARING OFFICER SHAPIRO:

22 Did it provide you with the locations of
23 all the towers that you would need to
24 provide coverage in that area?

1 A Yes.

2 HEARING OFFICER SHAPIRO:

3 And it gave you the actual sites for
4 each one of towers that you would need,
5 or the actual approximate sites, I
6 guess?

7 A Yes, the approximate locations.

8 HEARING OFFICER SHAPIRO:

9 And then from those approximate
10 locations you developed search rings?

11 A Correct.

12 HEARING OFFICER SHAPIRO:

13 To determine where specifically you
14 would need the tower?

15 A Correct.

16 HEARING OFFICER SHAPIRO:

17 And the search ring as you have defined
18 it is the area in which a tower must be
19 located in order to coordinate with
20 other towers in the system?

21 A Correct.

22 HEARING OFFICER SHAPIRO:

23 But it could be located anywhere within
24 that search ring?

1 A Correct.

2 HEARING OFFICER SHAPIRO:

3 Now, two years ago you were using that
4 same program, right?

5 A Correct.

6 HEARING OFFICER SHAPIRO:

7 And you had developed search rings which
8 you were trying to locate facilities in?

9 A Correct.

10 HEARING OFFICER SHAPIRO:

11 And one of those search rings included
12 the area of--

13 MS. THOMPSON:

14 --Paris Pike.

15 HEARING OFFICER SHAPIRO:

16 The Paris Pike area, where specifically
17 was that? Is that in a shopping center
18 off of I-75?

19 MS. THOMPSON:

20 It is off of I-75 adjacent to a service
21 station right on the highway.

22 HEARING OFFICER SHAPIRO:

23 Okay, where off I-75?

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MS. THOMPSON:

On the--

HEARING OFFICER SHAPIRO:

Is that where the--all those motels
and--

MS. THOMPSON:

Yes, sir, in that general vicinity.

HEARING OFFICER SHAPIRO:

Okay. So it's south of I-75?

MS. THOMPSON:

It is north of I-75.

HEARING OFFICER SHAPIRO:

It was north of I-75?

MS. THOMPSON:

Slightly.

HEARING OFFICER SHAPIRO:

Is that where I think there is a Gulf
service station there.

MS. THOMPSON:

There is a BP.

HEARING OFFICER SHAPIRO:

And a motel on--yes, a BP, and is a
motel behind that, right, Ramada Inn?

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MS. THOMPSON:

Yes, sir, in that general vicinity there is several gas stations and small--

HEARING OFFICER SHAPIRO:

Well, you know we are talking about the same thing, a Ramada Inn and I believe it once was a--

MS. THOMPSON:

It is a developed area.

HEARING OFFICER SHAPIRO:

It once was the--

MR. BROCK:

Mrs. Helmsley.

HEARING OFFICER SHAPIRO:

--Mrs. Helmsley's motel?

MS. THOMPSON:

Yes, yes, it was.

HEARING OFFICER SHAPIRO:

So, it is on the north side of I-75 just off of the Paris or the Broad--the Paris Pike or Broadway Exit; is that right?

A Correct.

HEARING OFFICER SHAPIRO:

And so your original--originally you had

1 located that as a possible site, so I
2 assume that was within a search ring?

3 A Probably not at that time, if you would like
4 me to explain.

5 HEARING OFFICER SHAPIRO:

6 Okay, go ahead.

7 A Okay. The step after the search rings was to
8 --as we looked at other existing structures
9 we would basically look to see how much, if
10 we moved one--if one structure, you know, if
11 there was an existing structure just outside
12 of one of our search rings, you know, if we
13 went on that, what would we have to do to the
14 other areas. I mean, if we moved things
15 around at that time it was as little bit of
16 a--to put it bluntly, like a living creature,
17 as you move a piece here, if you could move a
18 piece over there. But now all of our current
19 sites surrounding this location are--have
20 been pinned down and have been built and
21 constructed and are actually operating. At
22 that time they were all a little more fluid,
23 they were slightly moving here and there.
24 There was the ability to move, if one site

1 moved what would we have to do to another
2 site to move it. And at that time this
3 location probably would have worked.

4 HEARING OFFICER SHAPIRO:

5 But what you are saying is two years ago
6 if you had located a tower at that
7 particular location then another tower
8 that was--that has since been
9 constructed, within that two-year
10 period, would not have--might not have
11 worked where it is located and would
12 have had to have been moved also?

13 A Correct.

14 HEARING OFFICER SHAPIRO:

15 Was the site on Paris Pike that we are
16 talking about within a search ring at
17 that time or was the--apparently, from
18 what you are saying we--once one of
19 these sites was not in a search ring,
20 either the Paris Pike site or the
21 current site; is that right?

22 A Correct.

23 HEARING OFFICER SHAPIRO:

24 Which one was not in a search ring at

1 that time?

2 A The Paris Pike site.

3 HEARING OFFICER SHAPIRO:

4 The Paris Pike site was not?

5 A Correct.

6 HEARING OFFICER SHAPIRO:

7 But because other sites had not been
8 constructed you would be able to put a
9 site there again, reconfigure your grid
10 system to--so that it would work?

11 A Correct.

12 HEARING OFFICER SHAPIRO:

13 Or adjust your grid system so that it
14 would work?

15 A Correct.

16 HEARING OFFICER SHAPIRO:

17 Does that explain it?

18 MS. THOMPSON:

19 Mr. Shapiro, are witnesses in the
20 context of this hearing considered to be
21 sworn in or--

22 HEARING OFFICER SHAPIRO:

23 Yes, he is under oath.

24

1 MS. THOMPSON:

2 Okay. I guess I--that does clarify the
3 questions that I had. Thank you for
4 helping me to articulate that.

5 Q I would also like to ask you if in the course
6 of your building of these other pieces of
7 your grid why, for instance, would this last
8 one not be considered--why would they begin
9 building other poles without the grid being
10 filled? I mean, would it be just because you
11 would assume that you would fill the grid
12 eventually?

13 A Yes. At some point you have to start
14 building the network and working--we are
15 working simultaneously on all these sites, we
16 have to start building it at some point and,
17 you know, hope the rest is going to fall into
18 place. And as the sites get filled it really
19 effects where the other sites need to be
20 located.

21 Q Mr. Feibel, could you explain to me in just a
22 little bit more detail and to a layman why
23 there was no ring in the original proposed
24 construction, why there was no ring even

1 surrealy there was no ring that was--it
2 wasn't just put--you weren't just putting it
3 there with no grid work to fill at that time,
4 right?

5 A What we do is, actually, we plug the
6 coordinates into our Planet station and we
7 have all of our other sites in there, so as
8 we move things we can, without maybe
9 producing an actual piece of paper, we can
10 actually plug the information into our
11 program and see it with all the other current
12 locations and proposed locations and move
13 around as we go.

14 Q Did you have this program two years ago?

15 A Yes. This has been Sprint's program for the
16 last four years.

17 MS. THOMPSON:

18 I think that concludes my questions for
19 now. Oh, excuse me, may I ask one last
20 question.

21 Q Sir, has anyone ever asked you about the
22 health hazards concerning the construction of
23 cellular towers? There seems to be some
24 question among a lot of people that if people

1 have pacemakers that they can't live near
2 cellular towers. Is that anything that you
3 can address?

4 MS. KEENE:

5 We would object to it.

6 HEARING OFFICER SHAPIRO:

7 Yes, that's not an issue that we can
8 take up by statute.

9 Q But if it--

10 MR. DOBBINS:

11 I really don't mind him answering the
12 question because I know that the answer
13 is going to be favorable to us.

14 HEARING OFFICER SHAPIRO:

15 Well, I don't want to--we don't want
16 to--

17 MR. DOBBINS:

18 It is not something this Commission has
19 ever allowed to be delved into.

20 HEARING OFFICER SHAPIRO:

21 There's also a provision; isn't that
22 right.

23 MR. DOBBINS:

24 Federal.

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HEARING OFFICER SHAPIRO:

Federal provision.

MR. DOBBINS:

Federal Communications Act, Your Honor.

MS. DOUGHERTY:

Right, the Federal Telecommunications Act prohibits this state commission from addressing safety issues concerning electro--radio frequency emissions.

MS. THOMPSON:

What is our option in finding the answers to such questions?

HEARING OFFICER SHAPIRO:

Well, I don't know. But all I know is that it is being brought here today and I know by federal law we cannot take that into--this Commission cannot take that into consideration. The law has the--you know, you can ask him if it falls within their--if he knows whether it falls within their parameters or prescribed limits of--

MR. DOBBINS:

The prescribed limits of the

1 Telecommunications Act.

2 HEARING OFFICER SHAPIRO:

3 In other words, they are putting out
4 some electro-magnetic waves; is that
5 right?

6 A Correct.

7 HEARING OFFICER SHAPIRO:

8 And they have to--and there is a certain
9 level at which they cannot exceed. They
10 cannot exceed that level. If they don't
11 exceed that level then this Commission
12 can't consider the matter any further.
13 You can ask him--

14 MS. DOUGHERTY:

15 The Federal Congress has just considered
16 that if they fall within the levels that
17 have been set, then the safety issues
18 are not, as a matter of fact and law,
19 are not ones that other regulatory
20 agencies can take up. Seemingly obvious
21 presumption that there is not a big
22 safety concern even though there are
23 people who have concerns about it. But
24 the fact of the matter is that they

1 don't exist and that we are not allowed
2 to look into that any more.

3 MS. THOMPSON:

4 Does this also pertain to fall lines?

5 HEARING OFFICER SHAPIRO:

6 Well, he is not a structural engineer
7 and I assume that they are going to have
8 a fellow who or someone who will testify
9 on the structure.

10 MR. DOBBINS:

11 Yes.

12 MS. DOUGHERTY:

13 I know the prohibition doesn't extend to
14 fall lines.

15 HEARING OFFICER SHAPIRO:

16 They don't extend to fall lines.

17 MR. DOBBINS:

18 Right.

19 HEARING OFFICER SHAPIRO:

20 But they will have another witness that
21 will testify to that.

22 MR. DOBBINS:

23 We sure don't have a problem though, Mr.
24 Chairman, with him simply stating for

1 the record whether or not the emissions
2 that this facility will produce fall
3 within the prescribed levels.

4 HEARING OFFICER SHAPIRO:

5 You can ask him that.

6 Q Do they fall within the prescribed levels?

7 A Yes, they do.

8 MS. THOMPSON:

9 Those are all my questions.

10 HEARING OFFICER SHAPIRO:

11 Mr. Good, I think you said you had some questions?

12 MR. GOOD:

13 Yes, sir.

14

15 CROSS EXAMINATION

16 BY MR. GOOD:

17 Q If I may ask, in your grid, the perimeter, does it
18 go into the country club area?

19 A No, I believe the country club is on the other
20 side of Paris Pike.

21 Q Yes. But your perimeter doesn't cover, like,
22 the north area where there is no residents?

23 A Are you talking about the search ring?

24 Q And there is just tree lines back through

1 there, you know what I mean?

2 A Our search ring?

3 Q Yes, sir.

4 A Not to my knowledge, I'm not sure who all the
5 landowners are.

6 Q Wouldn't that be feasible for your frequency
7 to pick up in that area?

8 A The coverage area, the Lexington County Club
9 will be covered by this site, but the search
10 ring for the site is not in the Lexington
11 Country Club.

12 Q And you mentioned about basically the
13 majority of your customers in marketing would
14 be coming from the country club?

15 A Not the majority, just--it is one of the
16 areas that we are trying to cover.

17 Q I understand that you have many customers
18 there, Sprint does. Is it feasible that
19 someone has, may I ask, has contacted the
20 country club to see if it would be possible--
21 close to Paris Pike there, the country club,
22 where the tree line?

23 MR. DOBBINS:

24 We will have another witness that I

1 think that question may be better
2 directed to, Dr. Good, and we will
3 tender her for that question, Jennifer
4 Sturgeon, if that is all right.

5 Q My first premise was is that within your
6 perimeter of your grid?

7 A I don't know if it is in the search ring, I'm
8 not sure who all the landowners are within
9 the search ring. But from looking at our map
10 here, it says the Lexington Country Club on
11 the south side of Paris Pike, or south east
12 side of Paris Pike and our search ring is all
13 contained within the north--I guess northwest
14 of Paris Pike area.

15 Q My main interest was because there are no
16 residences to interfere at that point. There
17 would be tree lines to hide the tower, as
18 such, from the beautiful scenic area of Paris
19 Pike. The second thing is the air strip for
20 Mr. Whitaker, is it, would not be--

21 HEARING OFFICER SHAPIRO:

22 Well, what is the question, do you have
23 a question?

24

1 MR. GOOD:

2 That was my premise.

3 HEARING OFFICER SHAPIRO:

4 Okay, well, that's fine. Do you have
5 any questions of the witness?

6 MR. GOOD:

7 Just that about the perimeter and my
8 concern is that--

9 HEARING OFFICER SHAPIRO:

10 Okay, but he doesn't know.

11 HEARING OFFICER SHAPIRO:

12 Ms. Dougherty?

13 MS. DOUGHERTY:

14 Thank you.

15

16 CROSS EXAMINATION

17 BY MS. DOUGHERTY:

18 Q You testified about Mr. Whitaker's tower and it is
19 your understanding that it is privately owned. It
20 is your understanding, is it not, that it is
21 within the search area that you have prescribed
22 for this site?

23 A Yes, it is.

24 Q Do you know whether--it is apparently a 200

1 foot tower, aside from the issue of whether
2 it is strong enough to support your antennas,
3 do you know whether there is anything else
4 structurally or from a frequency viewpoint
5 that would make that an inappropriate site?

6 A No, I believe the site is appropriate from an
7 RF standpoint.

8 Q Okay. And I assume that your site
9 acquisition person--witness is the one that I
10 should ask questions about the contact with
11 Mr. Whitaker and the outcome of that;
12 correct?

13 A Correct.

14 Q The same thing about that church as a
15 possible alternative, you do agree from a
16 radio frequency standpoint that that church,
17 in combination with other structures within
18 this search area, could address your
19 company's needs for coverage?

20 A Yes, as long as it is 180 feet tall.

21 Q As long as what?

22 A As long as our antennas can be at 180 feet
23 within the search ring.

24 Q While you testified earlier, if I understood you,

1 that you could have maybe three at 120 or two at
2 120 rather than one at 180; is that accurate or
3 not?

4 A It would have--we would have to look at it on
5 our--in Planet, and it depends on their
6 locations as to what would work.

7 Q Is it your testimony that if you had one
8 tower at 180 feet anywhere within the search
9 area that your interest in radio frequency
10 coverage would be met?

11 A Correct.

12 Q Do you know of any towers associated with
13 church steeples that are at 180 feet or those
14 kinds of heights?

15 A I have not seen one that is 180 feet tall.

16 Q Do you know whether they exist at all?

17 A That I'm not sure, I--

18 Q Whether it is a visible construction?

19 A I'm--not being a structural engineer, I'm
20 sure anything is feasible, I just don't know
21 what it would look like.

22 Q When this proposed site was first filed it
23 was for a tower for 250 feet, or you had been
24 contemplating 250 feet; is that accurate?

1 A Correct.

2 Q If you were to construct a 250 foot tower,
3 where on the tower would you locate your
4 antennas to provide the good coverage?

5 A If we were going to build a 250 foot tower we
6 would have to look and see if we still needed
7 the 250 foot mark. We may not even need the
8 250 foot mark, like you said, a 180 foot will
9 satisfy us from an RF standpoint.

10 Q Okay. One more question about Mr. Whitaker's
11 tower, do you know what uses are made of that
12 tower?

13 A That I'm not sure of, I'm not sure what he
14 does with it.

15 Q You have no idea?

16 A I have no idea.

17 Q You have another proposed site in this area
18 and we talked about it some already today, I
19 guess we call it Paris Pike and--site, is
20 that matter still pending before this
21 Commission; are you aware of that?

22 A Not to my knowledge.

23 Q If it were, is it your testimony, from a
24 radio frequency viewpoint, that the coverage

1 is so off for that proposed site that you
2 would assume that that case should be
3 withdrawn?

4 A Yes.

5 Q And can you show us on this--your Exhibit 1--the
6 search ring where that other location was?

7 A Yes, it is--I'm trying to think how I can
8 describe this.

9 MR. DOBBINS:

10 Your Honor, I have a better exhibit that
11 we might be able to introduce right now
12 that would be helpful.

13 HEARING OFFICER SHAPIRO:

14 Well, it might be helpful just to show
15 it on here, too. Let's do that.

16 MR. DOBBINS:

17 I have a bigger--you want to just wait?

18 HEARING OFFICER SHAPIRO:

19 Everybody has got this.

20 MS. DOUGHERTY:

21 Is that something that we have a small
22 version of in the file?

23 MR. DOBBINS:

24 I don't have something to pass out but

1 we can put this up on the clipboard.

2 HEARING OFFICER SHAPIRO:

3 Well, let him show it to us on that.

4 Because everybody else has a copy of it.

5 MS. DOUGHERTY:

6 Fine.

7 A Would you like me to come around? I don't
8 know how--or just hold it up or--

9 HEARING OFFICER SHAPIRO:

10 Yes, just hold it up and just show where
11 it is.

12 A It is approximately--

13 HEARING OFFICER SHAPIRO:

14 Can everybody see this?

15 A --in this location down here, near the
16 intersection of Paris Pike and 75 heading, I
17 guess, northeast on Paris Pike,
18 approximately, I guess about an inch if you
19 are looking on the map, about an inch away
20 from 75 right in this region.

21 Q Okay. Now, you testified that that site is
22 no longer needed by your company because of
23 the construction of other sites in the area;
24 correct?

1 A Correct.

2 Q When you were first proposing the original
3 footprint or grid for Lexington I assume this
4 site on the Paris Pike that is not
5 constructed was in that grid and matched at
6 that time?

7 A At that time, yes.

8 Q What changes were made in the proposed sites
9 around this to alleviate the need for the
10 tower on Paris Pike or to change the search
11 ring on Paris Pike?

12 A Well, the search ring actually on Paris Pike
13 here--well, the search ring, okay, I thought
14 you meant the proposed site on Paris Pike,
15 the sites I guess on 75, we did get two 250
16 foot sites on 75 on either side of this
17 proposed location, as well as a site on the
18 other side of 75 heading in toward Lexington.
19 We did get a site in there that would
20 basically put the sites fairly close together
21 to the point of where they have the potential
22 of interfering with one another.

23 Q If I'm looking at the--I'm sorry, I thought
24 you were finished.

1 A Okay.

2 Q If I am looking at the coverage site that you
3 have up--I think that is Exhibit 4, is it?

4 MS. KEENE:

5 Yes.

6 Q There are three red, pardon me, three green
7 areas, the lower left hand, then up above
8 that and then to the right of that, are those
9 the three sites you are referring to now?

10 A Yes. It is actually--I think it is actually
11 a fourth, a little bit, kind of squeezed
12 between the two on the south side. It kind
13 of gets up there a little bit. Would you
14 like me to just point to them?

15 Q I think I understand. Now, did those sites change
16 from what you originally proposed in the original
17 grid that this Paris Pike site, that you are no
18 longer proposing, was part of? I mean, I'm
19 wondering what exactly changed to make this Paris
20 Pike site no longer necessary?

21 A Going back that far I'm not quite--I'm not
22 very--I'm not sure as to how much they
23 actually moved at that time from the original
24 search rings. I don't have all that data

1 with me.

2 Q So, your understanding is that you took the
3 grid map as you have depicted on Exhibit 4,
4 and I assume Exhibit 3, without that proposed
5 site that we are addressing today also, you
6 put those into your computer and the search
7 area that you propose today came up. And you
8 can't tell us why the search area that was
9 originally proposed on Paris Pike is no
10 longer part of that grid area?

11 A Yes. Actually, this search ring was the
12 original search ring, it was just that a
13 location came up on Paris Pike, I believe, or
14 to my knowledge a location came up on Paris
15 Pike that we just--that they looked into
16 fitting into where the existing sites were--
17 where all the other sites were going.

18 Q I'm sorry I didn't understand that, that answer.
19 I think there were too many pieces in there,
20 unidentified sites.

21 A Okay.

22 Q So, are you saying that you have a grid map with
23 all of these locations on it and one of those
24 locations changed to be collocated and that was

1 not in the original search ring but close enough,
2 so you built there and it changed the search rings
3 for everybody else?

4 A As they--they were a little more fluid at that
5 time, locations could be moved.

6 Q Okay. All I was asking you was which of the
7 locations did move?

8 A That I'm not sure of, which ones?

9 Q Do you know of anybody that would have that
10 information?

11 A I'm not sure, actually.

12 Q And you stated earlier that there was strong
13 opposition to the Paris Pike site?

14 A I believe so.

15 Q Now, that opposition, did that cause you to
16 relocate the search area or what effect did
17 that have?

18 A That's for--our site acquisition people would
19 be better to answer those questions.

20 Q If you don't know the answer just say so.
21 You don't know the answer?

22 A I'm not really sure, yes.

23 MS. DOUGHERTY:

24 Okay. Nothing further.

1 HEARING OFFICER SHAPIRO:

2 Any redirect?

3 MS. KEENE:

4 Yes.

5

6

REDIRECT EXAMINATION

7 BY MS. KEENE:

8 Q We'd like to see if we can clarify a little bit.

9 On this original site that we have been discussing
10 here for the last few minutes, Mr. Feibel, Exhibit
11 1, the search ring that we admitted into evidence
12 here, is this the original search ring issued by
13 the radio frequency department to the property
14 acquisition department?

15 A Yes, it is.

16 Q And this search ring has never changed; is
17 that correct?

18 A Correct.

19 Q Do you know whether your site acquisition
20 department was able to secure a site two years ago
21 within this search ring?

22 A I don't believe they were able to secure a
23 location.

24 Q Do you have any knowledge regarding the

1 opposition to the original site that was
2 located on Paris Pike?

3 A Other than there was opposition.

4 Q And do you know what the Lexington-Fayette
5 Urban County Government's position was with
6 regard to that site on Paris Pike?

7 A That I'm not sure.

8 Q Did you prepare a coverage plot showing what
9 the radio frequency coverage would be using
10 the original site on Paris Pike?

11 A Yes, I did.

12 MS. KEENE

13 I'd like to mark this for identification
14 as Applicant's 5.

15 Q Mr. Feibel, if you would point out where the
16 original site was there on Paris Pike?

17 A Right here. This is the one on Paris Pike.

18 Q And was that the Waffle House property?

19 A I believe so.

20 Q Explain the significance of the colors that
21 you are seeing on this coverage plot marked
22 as Applicant's 5?

23 A The green coverage here depicts our best
24 service; our more--our yellow coverage here

1 depicts our suburban coverage; the red
2 coverage here is a little less than suburban,
3 or lesser rural coverage; the blue area is
4 more of an in-vehicle type coverage; and,
5 then, the orange is more of an on-street type
6 coverage.

7 Q And, again, what is your coverage objective
8 for this search ring?

9 A Was to cover 75, the country club, Paris Pike
10 heading out toward the county boundary and
11 the residents in the--along that region,
12 along Paris Pike.

13 Q And show us where the search ring falls on
14 that map and where Paris Pike is?

15 A It falls in this region right in here.

16 Q Where is Paris Pike on that?

17 A It's this region right in here, yes. Excuse
18 me?

19 Q Can you point out Paris Pike?

20 A This is Paris Pike.

21 Q How does the coverage at the Waffle House
22 property compare with the site that we have
23 proposed on Swigert Avenue?

24 A This property actually doesn't--this site

1 actually doesn't give us very good coverage
2 as you get out on Paris Pike heading out
3 toward the county boundary. It doesn't cover
4 the rest of the entire county, this is just
5 an on-street--you know, standing out of your
6 vehicle type coverage. It is not very good,
7 it is not what we'd consider to find as our
8 coverage area. Actually, our service area is
9 more this red, this red region, so as you can
10 see it doesn't even stretch all the way out
11 to the county border.

12 Q And if Sprint were to proceed with that
13 original Waffle House property site, what
14 would be needed to allow you to meet your
15 coverage objective for this area?

16 A Well, we would probably actually need another
17 site out in this region to cover the rest of
18 Paris Pike outgoing, out toward the county,
19 fringe of the county.

20 Q I'm sorry, would the facility that you are
21 showing there at the Waffle House property,
22 is that a 180 foot monopole?

23 A Yes, this is a 180 foot monopole.

24 Q And would there be a similar type structure

1 needed further down Paris Pike in order to
2 meet your converge objective there?

3 A Yes.

4 Q And how does the Waffle House property relate
5 to the surrounding existing on-air sites?

6 A It would actually--you can see in this region
7 in here, it is actually getting fairly close
8 to our site number here, it is number 307,
9 which could cause some interference issues as
10 you get up here on 75, especially in this
11 region, and a little lesser down in this
12 region. But in this region we would have a
13 little more interference issues on--actually
14 on 75.

15 Q What interference, how would that affect
16 phone calls being placed within that area?

17 A It would be basically poor audio and the
18 possibility of a dropped call.

19 Q You can go ahead and sit down.

20 A Okay.

21 Q Mr. Feibel, you were asked by the Lexington
22 Urban County Government what effect moving
23 the site outside the search ring would have.
24 If you were to do that, what would you have

1 to do to compensate for moving outside the
2 search ring?

3 A We would probably have to build another tower
4 in a different location.

5 Q And you were also asked, I believe, by Mr
6 Brock about ordinance restricting cell phone
7 use, would such an ordinance have any effect
8 on your FCC license requirements?

9 A No.

10 Q And then you were questioned at some length
11 by Ms. Whalen about the possibility of using
12 multiple sites within this area. Given the
13 terrain along the--within the coverage
14 objective for this, what is the minimum
15 height such a facility would need to be?

16 A The minimum height probably would be around
17 120 feet. I would have to--my computer
18 program could probably shore that up a little
19 bit more.

20 Q And how many additional sites did you say
21 that would require, that height?

22 A This is just a guess, maybe three--three to
23 five.

24 Q Are there radio frequency concerns with utilizing

- 1 three to five sites versus one taller structure?
- 2 A It allows for more interference, especially
- 3 if you don't have the traffic there. And if
- 4 there is not a lot of traffic these sites
- 5 tend to interfere more with one another.
- 6 Q And what effect would that have on your
- 7 coverage for that area?
- 8 A It would be poor audio and higher drop call
- 9 percentage.
- 10 Q You were also asked about some aircraft
- 11 activity, I believe, on the Whitaker farm, as
- 12 part of the application process in--for this
- 13 site. Did Sprint make application to the
- 14 FAA?
- 15 A What Sprint does is they file with a company
- 16 called ASAC, which is basically a company
- 17 that provides FAA information. They have all
- 18 the FAA data basis and they pretty much tell
- 19 us exactly what we need to do, what we need
- 20 to file, what types would be a problem if we
- 21 had to light it, it gives us all the
- 22 specifics of that location from an FAA
- 23 standpoint and what needs to be done to
- 24 comply with the FAA.

1 Q And that is the ASAC, your consultant confers
2 with the FAA as far as whether it meets their
3 requirements or not?

4 A Correct.

5 Q And does this site meet the FAA requirements
6 regarding air space?

7 A Yes, it does.

8 MS. KEENE:

9 I have nothing further.

10 HEARING OFFICER SHAPIRO:

11 Thank you Mr. Feidel.

12 MS. DOUGHERTY:

13 I have a couple of questions to follow up on that.

14 HEARING OFFICER SHAPIRO:

15 On this?

16 MS. DOUGHERTY:

17 Yes.

18 HEARING OFFICER SHAPIRO:

19 On this particular--what about the rest of you?

20 MR. BROCK:

21 I just have one little item.

22 HEARING OFFICER SHAPIRO:

23 Well, let's take about five minutes give the court
24 reporter a break.

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(OFF THE RECORD)

HEARING OFFICER SHAPIRO:

I'll ask Ms. Jones, do you have any questions of Mr. Feibel?

MS. JONES:

I just have one, maybe.

RE CROSS EXAMINATION

BY MS. JONES:

Q Mr. Feibel, I just want to clear up because I was a little confused earlier and I know this has been some time ago when I questioned you, but is it your testimony that the search ring on--that includes the Swigert Road property--that we are talking about was the original search ring for this area?

A Correct.

Q So, when the property down on Paris Pike or Broadway at I-75, that was outside the search ring at that time?

A Correct.

Q So, the search ring didn't change, right?

A Correct.

Q So, is it a fair statement to say that

1 Sprint, on occasion, will go outside the
2 search ring if that is--if there is a
3 potential to construct a tower there that
4 will meet your service needs or come close to
5 meeting them?

6 A Yes, if the--if it links in with the other
7 sites and if, at that time, the other sites
8 weren't fixed down in maybe their approximate
9 location. So, if they went outside the
10 search ring, it would allow us to go outside
11 the search ring on this one.

12 Q If you had constructed the site there, would
13 you, looking at the maps that you have up
14 there, would you have had to build another
15 tower further out Paris Pike at a later time?

16 A Probably, yes.

17 MS. JONES:

18 That's all I have.

19 HEARING OFFICER SHAPIRO:

20 Mr. Brock?

21 MR. BROCK:

22 I don't have any further questions.

23 HEARING OFFICER SHAPIRO:

24 MS. GOOD?

1 MS. GOOD:

2 No questions.

3 HEARING OFFICER SHAPIRO:

4 Ms. Whalen? Ms. Thompson? Ms. Dougherty?

5 MS. DOUGHERTY:

6 Thank you.

7

8

RECROSS EXAMINATION

9 BY MS. DOUGHERTY:

10 Q If this Swigert Road location is in the original
11 search ring, then is it--then why did you propose
12 in another proceeding a search ring in which the
13 Paris Pike proposed tower was appropriate?

14 A Actually, it was a site outside the original
15 search ring, it wasn't--a new search ring was
16 not put together to encompass this location.
17 It was just that at the time the design was a
18 little more fluid and if the site went there
19 it was possible to possibly move some of the
20 other sites to make everything fit. It would
21 have fit, at that time, it would have fit in
22 that location.

23 Q When was the search ring that you testified
24 to today issued?

1 A I believe about two years ago, approximately.

2 Q And I assume that the Paris site, which
3 incidentally is in Case Number 97-360 pending
4 before the Commission, has a search ring
5 associated with that, too; is that a fair?

6 A My assumption that this is probably the same
7 search ring, it wasn't that the--it's
8 probably not a new search ring developed.

9 HEARING OFFICER SHAPIRO:

10 Well, haven't we gone over this? What
11 is new about this, I don't understand?

12 MS. DOUGHERTY:

13 I did not understand his use of the word
14 "original search ring" and I'm trying to
15 straighten that up, as to why in another
16 pending case here that is close by is
17 not currently more appropriate. I
18 understand his testimony about the
19 fluidity and about things that have
20 changed as the reason, I am trying to
21 understand exactly what it is that has
22 changed and I haven't gotten an answer
23 to that.

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HEARING OFFICER SHAPIRO:

Well, I don't think--do you know what has changed that you can no longer use the Paris Pike location, do you know the answer to that?

A Other than the way our existing sites--where our existing sites are currently at the Paris Pike location will not work as well as the other one.

Q And was the Paris Pike location second in time to the current search ring?

A Current search ring, current site?

Q Or the current proposal, yes, uh-huh, you said that today's--the search ring today is the original one, was the Paris Pike second in time to this one?

A I believe the--this is the original search ring. I believe there was a Paris Pike site that came second and now this is the third site which is back into the original search ring. The ring has always been in this location, it's just that the proposed site has moved.

Q And the ring as outlined on Exhibit 1 of your

1 testimony here today,--

2 A Correct.

3 Q --that has changed from its original
4 contours; is that true?

5 A The--I'm sorry, could you repeat that one
6 more time?

7 Q Well, the Paris Pike site is clearly outside of
8 the ring that you are discussing today.

9 A Correct.

10 Q And yet, if I understand you correctly, you are
11 saying that both of those sites were to fill the
12 same--the need of the same general area, and I was
13 trying to understand the--is the difference in the
14 search ring because of proposed sites that have
15 already been built?

16 A Yes.

17 Q On the proposed sites, pardon me, on the actually
18 approved and constructed sites that you has shown
19 on your other exhibits, were you proposing those
20 initially at 250 feet or--and you've got two of
21 them at 250 feet; is that true?

22 A Two of them are at 250 feet, the other ones
23 are not exactly sure, I don't have that
24 information with me. The one immediately

1 north, northwest and southeast, those two
2 sites are at 250 feet.

3 Q And had those only been 180 would you be
4 looking at a 250 on the proposed location, or
5 is that one of the factors that causes this
6 to change?

7 A Yes. I'm not sure--I'd have to do an
8 analysis on it, but my guess is yes, it would
9 be a 250--we would want 250 feet then at this
10 location.

11 MS. DOUGHERTY:

12 Okay, nothing further.

13 MS. KEENE:

14 Two short ones.

15 HEARING OFFICER SHAPIRO:

16 Okay, it has to deal with--

17 MS. KEENE:

18 It does, it goes directly to what Ms. Dougherty
19 was just asking.

20
21 REDIRECT EXAMINATION

22 BY MS. KEENE:

23 Q Mr. Feibel, if you know, was Mr. Sweeney's
24 property available for lease two years ago when

1 this search ring first issued?

2 A I don't believe so.

3 Q Was the Waffle House, which was the original
4 site on Paris Pike, was that property
5 available for lease to Sprint two years ago?

6 A Yes, it was.

7 Q From an RF standpoint, which of the two sites best
8 meets Sprint's coverage needs for--or coverage
9 objective for this area?

10 A The Sweeney site.

11 Q Is that the proposed site?

12 A The proposed site.

13 Q On Swigert Avenue?

14 A The proposed site on Swigert Avenue.

15 MS. KEENE:

16 Nothing further.

17 HEARING OFFICER SHAPIRO:

18 Anything else, anybody?

19 MR. BROCK:

20 I'd like to ask something.

21

22 RECROSS EXAMINATION

23 BY MR. BROCK:

24 Q Were you aware that Mr. Sweeney was leading the

1 opposition to the location of the tower on the
2 Waffle House site?

3 A No, I was unaware of that?

4 Q Have you later been made aware of that?

5 A Later, more recently, yes.

6 Q And now the tower is suggested to be located
7 on Mr. Sweeney's farm itself now; is that
8 correct?

9 A Correct.

10 Q Do you know how that came about?

11 A No, sir.

12 HEARING OFFICER SHAPIRO:

13 Thank you Mr. Feibel. Call your next witness.

14 Well, let me ask you first, though, do you wish to
15 introduce Applicant's Exhibit 5?

16 MS. KEENE:

17 Yes, we move to admit Exhibit 5.

18 HEARING OFFICER SHAPIRO:

19 Any objection?

20 MS. JONES:

21 (Nodded head indicating no.)

22 MR. HORNSBY:

23 (Nodded head indicating no.)

24

1 HEARING OFFICER SHAPIRO:

2 Okay. Next witness.

3 (EXHIBIT SO MARKED: Applicant Exhibit No. 5)

4 MR. DOBBINS:

5 Let me say, before I call my next witness, Mr.
6 Chairman, or Mr.--Your Honor, I forgot where I was
7 for a minute, that our next witness will be Martin
8 Brown who is a property value expert. I know that
9 this Commission perhaps has a different philosophy
10 about property value witnesses under this scheme
11 than under what I would call the old scheme,
12 before we had to go to the Planning Commission
13 first. I would call him now and if the Commission
14 has any comment or objection, I just wanted to let
15 you know that. Martin Brown.

16 MS. JONES:

17 Mr. Shapiro, we probably need to note an objection
18 for the record, I'm not sure that that is
19 relevant, just as he said, under the new law
20 criteria.

21 HEARING OFFICER SHAPIRO:

22 Let's take it up now then. You are calling Mr.
23 Brown and he is a--

24

1 MR. DOBBINS:

2 He's a property value witness just to establish
3 that this facility will have no impact on market
4 value of surrounding properties. We had one
5 letter, Your Honor, from someone whom I don't
6 believe is an intervenor, but there was a letter
7 which either went to this Commission or to the
8 Lexington-Fayette Urban County Government Planning
9 Commission expressing a concern that property
10 values would be affected by the construction of
11 the facility. For that reason and because it is
12 hard to break an old dog of old tricks, we have
13 done this in every case we have presented, we went
14 ahead and called Mr. Brown.

15 HEARING OFFICER SHAPIRO:

16 And your objection is?

17 MS. JONES:

18 Our objection is based on the new statute which I
19 thought limited the issues in front of the Public
20 Service Commission to the appropriate--no
21 alternative site being appropriate. Whereas that
22 issue may have been taken up at the Planning
23 Commission, I'm not sure it is appropriate here.
24 So, we just want our objection noted for the

1 record.

2 HEARING OFFICER SHAPIRO:

3 Well, I can see some relevancy in that if you have
4 one site where the location of the tower would
5 affect surrounding property values and another
6 site where the location of the tower would not
7 affect surrounding values, then it would seem to
8 me that the second site, all things being equal,
9 the second site would be the more appropriate
10 site. But in this case, and I'm judging from what
11 I've heard in other cases, the witness is likely
12 to testify, and you may correct me if I'm wrong,
13 that it is his opinion that the location of a
14 tower in an area does not affect property values
15 anywhere; is that right?

16 MR. DOBBINS:

17 Correct.

18 HEARING OFFICER SHAPIRO:

19 So, under that circumstance, is that testimony
20 relevant to the question of whether a site is more
21 appropriate than another site?

22 MR. DOBBINS:

23 It may not be, except to the extent that various
24 intervenors may have some feeling that their

1 property could be affected more than another, or
2 that the proposed site could affect their property
3 value more than another site might. If we could
4 have a stipulation that it is not relevant and the
5 tower is not going to affect property values.

6 HEARING OFFICER SHAPIRO:

7 Well, I'm not sure it is not relevant, I really
8 don't know and I'm going to--

9 MR. DOBBINS:

10 If everyone is willing to waive that issue--

11 HEARING OFFICER SHAPIRO:

12 I believe it might have some relevance, so I'm
13 going to let him testify. It could enter into it
14 as we get comments and other testimony, although
15 I'm really not certain that it has a whole lot of
16 relevance. I don't think anybody is. So, we will
17 just let him testify and if it is not relevant,
18 then the Commission can always exclude it and go
19 on.

20

21 The witness, MARTIN BROWN, having first been duly
22 sworn, testified as follows:

23

24

1 DIRECT EXAMINATION

2 BY MR. DOBBINS:

3 Q State your name for the record please?

4 A My name is Martin Brown.

5 Q Mr. Brown, what is your business address?

6 A My business address is 136 West Muhammad Ali
7 Boulevard, Louisville--

8 HEARING OFFICER SHAPIRO:

9 Oh, I'm Sorry.

10 (WITNESS DULY SWORN)

11 Q Were you telling the truth when you told us
12 your name?

13 A Yes, I was.

14 Q And what was your address please?

15 A It is 136 West Muhammad Ali Boulevard,
16 Louisville, Kentucky, Lower Level Suite G.

17 Q And what is your location--or profession?

18 A I'm Senior Associate with Galloway Appraisal
19 Company.

20 Q And what is your educational and professional
21 background?

22 A I have an undergraduate degree from the
23 University of Louisville and a law degree
24 also from the University of Louisville. I'm

1 state certified general appraiser and have
2 been since 1991.

3 Q Mr. Brown, in your work have you done market
4 value studies of proposed monopoles and other
5 cellular and PCS facilities?

6 A Yes, we have. We call those neighborhood
7 impact studies.

8 Q And have you done a neighborhood impact study
9 for this proposed facility on Swigert Avenue?

10 A Yes, we have.

11 Q And would you tell the Commission and the
12 other folks who are present here today what
13 the results of that study was?

14 A The conclusion is that there would be no
15 impact, no adverse or negative impact, on
16 property values of properties adjacent to or
17 in proximity to the proposed site.

18 Q And what sort of input do you consider or
19 data do you consider in arriving at that
20 conclusion?

21 A Our methodology is to, as far as the field
22 work is concerned, is to find existing
23 cellular towers or, in some cases, water
24 towers because they represent large objects

1 in the skyline, and then we track the sales
2 of properties in proximity to these existing
3 towers. And we try to find them in close
4 proximity to the proposed site if at all
5 possible. We then do a time graft chart
6 looking at the for sale--the most recent sale
7 date of properties and the prior sale date to
8 see whether or not there has been any
9 increase or decrease in the value of those
10 properties. So, it is just simply a question
11 of collecting data and looking at it from an
12 imperial basis--empirical basis. And, in the
13 instant case, I think we selected four or
14 five sites, we did the application of
15 tracking the sales and we found that for the
16 existing towers in the area there was no
17 diminution of value of property values either
18 in proximity or in the--adjacent to these
19 tower sites. As far as Swigert Road is
20 concerned, we found, I believe, it was five
21 sales on Swigert Road of homes which had sold
22 from the period 1996 through 1998. We did
23 back to back evaluations of those and found
24 that the rate of increase was approximately

1 2% to just over 5% per annum, on a per annum
2 basis. We also compared the listing date and
3 the sale date and we found that of the sales
4 on Swigert Road, the sales were consummated
5 within two to four months from the listing
6 date. This indicated to us that this was a
7 stable market, one that was not adversely
8 affected by any undue influences of any
9 particular nature. And we also found that in
10 one case one house sold for its listing price
11 and the others were all sold within 4% to 5%
12 of their listing price. This, again,
13 indicated a strong neighborhood with good
14 property values. And we have performed these
15 studies throughout the State of Kentucky. We
16 have done them in highly developed urban
17 areas, we have done these in such as the case
18 here, which is an agricultural area, we have
19 done them in small counties, big cities, and
20 we have found the same results in all of the
21 studies. There has not been a diminution of
22 value as a result of proximity to the towers.
23 Q And as a result of that, in your opinion,
24 that last comment you made in particular,

1 would there be any difference in market value
2 impact from the proposed site on Swigert Road
3 to, for example, the site that you have heard
4 some discussion about a little bit earlier on
5 Paris Pike?

6 A Is this the one by the Waffle House?

7 Q Yes, sir.

8 A I would expect to find no change at all from
9 either site. There would be no diminution of
10 value from either site.

11 MR. DOBBINS:

12 I tender the witness for cross-
13 examination.

14 MR. HORNSBY:

15 Just a few Your Honor.

16

17 CROSS EXAMINATION

18 BY MR. HORNSBY:

19 Q Mr. Brown, I know you said that you performed a
20 neighborhood impact study. When did you perform
21 that?

22 A Within the last couple of weeks, actually.

23 Q Do you have a copy of that for the Commission
24 or for our review today?

1 A No, I do not.

2 Q As I understand your testimony, you have
3 never performed a similar study where you
4 have found that the property values have been
5 diminished in the area?

6 A That's correct.

7 Q And you have performed studies in areas similar to
8 the Swigert Road, the historic value and the
9 agricultural land?

10 A That's correct.

11 Q Let me make sure I understand your testimony
12 exactly and, please, correct me if I'm wrong.
13 You are saying that a home with a 180 foot
14 monopole with the base and the service area
15 and the access that is necessary to maintain
16 that facility, the value of that property and
17 the surrounding property would not be
18 diminished whatsoever due to the existence of
19 that monopole?

20 A What I'm saying is that the result of all the
21 studies that we have done we have not found
22 an instance in a neighborhood where a
23 location of a cellular tower has any negative
24 impact. What we do find is that those things

1 which typically impact values, the location
2 of the property in reference to job centers,
3 employment centers, shopping opportunities,
4 schools, transportation corridors, the
5 condition of the particular house, those are
6 the things which influence value and the
7 towers themselves do not. That is our
8 conclusion.

9 Q So, you are saying that the market value of
10 the home and surrounding homes doesn't change
11 whether the tower is there or not, has no
12 effect?

13 A No, I didn't say that. No. What we have
14 found is that--we have not found in any of
15 the studies where there has been a decrease
16 over time in the value of properties around
17 these homes; conversely, we have found that
18 there has been, typically, an appreciation of
19 property values. So, our conclusion is that
20 the towers themselves play no part in the
21 market dynamics, that those things which I
22 just discussed are the market dynamics which
23 influence value. We have found neighborhoods
24 where there has been a tower within 500 feet

1 of some of these homes and the average annual
2 rate of increase has been anywhere from 6% to
3 8% per year. When you compare that to a
4 county-wide average that would be in excess
5 of the typical market average. For example,
6 in Fayette County I think we tracked sales in
7 subdivisions, some 40 subdivisions, and the
8 average rate of increase in value was between
9 1.76% and just over 5%. So, the Swigert Road
10 appeared to us to be within market
11 parameters. That is one of the reasons we
12 concluded there would not be a diminution of
13 value of properties along Swigert Road.

14 MR. HORNSBY:

15 Nothing further.

16 HEARING OFFICER SHAPIRO:

17 Mr. Brock?

18 MR. BROCK:

19 Your Honor, I have a couple of questions of Mr.
20 Brown.

21

22 CROSS EXAMINATION

23 BY MR. BROCK:

24 Q About how many appraisals have you conducted for

1 Sprint in the last year?

2 A We haven't conducted any appraisals for
3 Sprint.

4 Q Or whatever you call this, neighborhood impact
5 study?

6 A Neighborhood impact studies, yes.

7 Q Have you done others for Sprint?

8 A Yes, we have.

9 Q Specifically?

10 A Yes.

11 Q Approximately, how many in the last year?

12 A I may need some help from counsel but I'm
13 thinking probably five or six and there is a
14 number of different Sprints in various
15 combinations so they have been addressed to
16 different corporate entities, but I'd say
17 five or six anyway.

18 Q Have you been called upon to testify in
19 various cases before on behalf of the market
20 impact of these things?

21 A Yes, I have.

22 Q Did you visit this particular site?

23 A Yes, I did.

24 Q How many times?

1 A Once.

2 Q Once. Where do you get your comparable
3 information with regard to neighborhood impact?
4 For instance, did you get information from the
5 other realtors, did you get it from the Property
6 Valuation Office, what was your source of data?

7 A Galloway has an office here in Lexington and
8 we track their data, use their data in terms
9 of coming up with our conclusions and they
10 track the market there, same as we do in
11 Louisville.

12 Q Okay.

13 A Comes off the multiple listing service, for
14 one thing.

15 Q Yes, I suppose this kind of information is
16 maintained by real estate offices in a
17 computer system now, they have all the
18 comparable sales and areas?

19 A It's a matter of public record.

20 Q Yes, it is. So, you did contact some local
21 appraisers with regard to this property?

22 A Our office, yes.

23 Q Your own office. What was the average value per
24 acre of the real estate on Swigert Avenue?

1 A We did not do a per acre analysis, I did it
2 on the terms of homes sold so it was on a per
3 square foot basis.

4 Q But don't most of these homes also contain, you
5 know, more land than you would find in a
6 subdivision house and lot?

7 A That would depend upon the subdivision, but
8 I've seen some subdivisions with average of
9 five to ten acres, so it is not necessary an
10 the average. If you are talking about a
11 typical tract home in a large urban area
12 where you would have two or three lots per
13 acre then, yes, these would have larger lot
14 price ratios, or lot ratios.

15 Q Well, what comparable data, using five to ten
16 acre tracts with a tower, did you
17 investigate?

18 A I'm sorry, I didn't say that I used five to ten
19 acre tracts, I'm saying that you could find some
20 with large acreage. You could also find some with
21 small lots, so as far as Swigert Avenue is
22 concerned, when those homes are sold whoever is
23 buying them is translating that land value into
24 the value on a per square foot basis of the house.

- 1 And all that is factored in when somebody buys
2 that house or when somebody offers it for sale.
3 If they offer it for sale of \$100,000 they, the
4 seller, are taking into consideration their
5 estimate of the value of that additional land.
6 The buyer would also take into consideration his
7 value or opinion of the value of that excess land.
- 8 Q Are you aware that Mr. Sweeny had his house
9 listed for sale in the last two years?
- 10 A No, sir, I am not.
- 11 Q What is the zoning on that particular side of
12 Swigert?
- 13 A Agricultural.
- 14 Q What is the zoning on the other side?
- 15 A It's inside the urban services district but
16 I'm not quite sure exactly what it is. I
17 know in that area--
- 18 Q You don't know if it is the same or different
19 on the opposite--on the other side of
20 Swigert, do you?
- 21 A On the west side, I guess it would be the
22 west side of Swigert.
- 23 Q Well, south side of Swigert.
- 24 A Okay.

1 Q Mr. Sweeney would be on the north.

2 A No, I don't know if it is any different from
3 agricultural.

4 Q So, you didn't look into that part of it?

5 A I don't know if it is any different or not.

6 Q Okay. Would it have made any difference to
7 you if it was different?

8 A No.

9 Q Are you aware of if any of the land out there
10 is in the geological flood plain?

11 A No.

12 Q Hypothetically, let's say somebody is going
13 to get--lease their land for a tower, if they
14 go to sell that land is that going to be
15 something they take with them when they sell
16 it, take the lease payment or would it stay
17 with the land?

18 A That would be, I think, according to the
19 terms of the lease.

20 Q Do you know what the Sprint leases provide?

21 A I've never read one.

22 Q When you say that the sales on Swigert have
23 gone up between 1.7 and 5% per year,
24 something--

1 A I didn't say that. What I said was of the
2 subdivisions that we compared in Fayette
3 County the average of about 1.7% to just over
4 5%, that was these forty some odd
5 subdivisions that we looked at. On Swigert I
6 believe that the average was somewhere in
7 that same area 2% to 4%--2 to 4 1/2%, on a
8 per annum basis, which would be considered
9 typical for the market place.

10 Q How would you describe the difference in Swigert
11 Avenue and an average subdivision, isn't there a
12 difference?

13 A There are so many subdivisions of all
14 different types, going from equestrian to
15 subdivisions based around airplane runways.
16 But Swigert is different. Essentially,
17 Swigert Road is a little old farm to market
18 road, it has been there for years, obviously.
19 The homes have been there for a good many
20 years. It has a very quaint charming
21 atmosphere, very lovely street for the entire
22 length of it. But I, again, have done these
23 studies in areas similar to that, areas
24 just as quaint and just as attractive and just as

1 warm and comfy and found the same results. I've
2 done these things in highly developed urban areas
3 and the prices of the homes have ranged from
4 \$70,000 to \$80,000 to almost a million dollars and
5 the same results obtained. My conclusion is that
6 the towers simply are not a factor in market
7 dynamics of value.

8 Q Well, what if I own a piece of land out there
9 and I decide to put a double wide trailer out
10 on my back lot, would that have any affect on
11 the value of my land?

12 A I would think that would be a zoning issue
13 first, as whether or not you could do that.

14 Q Well, let's say I had enough land to do it,
15 you know, would a double wide trailer affect
16 the land values around me?

17 A It may or may not. I didn't do a study on double
18 wide trailers.

19 MR. BROCK:

20 Okay, I didn't know. No more questions.

21 HEARING OFFICER SHAPIRO:

22 Ms. Good, do you have any questions?

23 MS. GOOD:

24 None at the minute, sir.

1 HEARING OFFICER SHAPIRO:

2 Mr. Good? Ms. Whalen?

3 MS. WHALEN:

4 Just one.

5

6

CROSS EXAMINATION

7 BY MS. WHALEN:

8 Q A monopole tower constructed in a commercial area,
9 do you feel that that would--or are you stating
10 that that would have little or no impact on the
11 value of the commercial property?

12 A It would have the same effect it would have
13 on residential properties, which is none.

14 Q Which is none?

15 A None.

16 Q If you were going to purchase a home for yourself
17 and there were two very similar homes in one area,
18 there was a monopole next door and in another area
19 there was no monopole, as a typical buyer, which
20 way do you think you would lean in terms of making
21 a decision?

22 A Knowing what I know as a result of all the
23 studies I've done, the power--the tower makes
24 absolutely no difference. It would not

1 affect my decision based upon resale value.
2 I would look at the house itself and the
3 tower would not factor into it. I'm sorry,
4 it just would not.

5 Q So, you would purchase a home, a property
6 with a tower next to it?

7 A Yes, they just don't--they don't enter into
8 the marketplace. I guess the only way to try
9 to describe this to you is that years ago in
10 our cities we had the overhead lines for the
11 trolley cars and we had all the utilities on
12 the poles down the streets and the
13 marketplace then just simply said they have
14 to be there and we don't care. And I think
15 that that is what has happened today with
16 these towers. The marketplace just says we
17 have to have them, we don't care. And when
18 the dollar changes hands they do not have an
19 impact on value. So, to answer your
20 question, yes, I would buy the property if it
21 appealed to me.

22 Q And if on charming Swigert Avenue, as you
23 have described it, there were a church with a
24 120 foot steeple which contained the Sprint

1 antenna equipment that is needed, would you
2 be more willing to purchase that property or
3 being in the real estate business, would you
4 be more willing to own that property as
5 opposed to a similar, identical property,
6 actually, with a tower next to it? Which
7 would enhance the value of the home, the
8 church steeple down the street or the tower
9 next door?

10 A The steeple--or the tower would not enhance
11 the value, it doesn't detract from the value
12 either, it is a neutral. As far as the
13 church buyer is concerned, I don't know that
14 that--are you talking about an actual just a
15 regular steeple and it has a cell tower in
16 it?

17 Q Yes.

18 A I've never encountered that. I would think
19 that a church with a steeple would be
20 something that would be normal to be seen in
21 the skyline and it would be probably just
22 another church with a steeple and it wouldn't
23 have any bearing on anything.

24 Q Do you think that it would be more in keeping

1 with the personality of the neighborhood as
2 you are driving down Swigert Avenue?

3 A Well, I know the church that you are talking
4 about, I mean, I actually turned around in
5 the driveway there. It does not have a
6 steeple as I recall.

7 Q No, it doesn't. We would like to have a
8 steeple.

9 A Well, that's not for me to comment on.

10 Q No.

11 A The fact that it doesn't have would indicate
12 to me that it is more of an abnormal, that
13 than one that would be normal because most
14 churches have steeples. I would expect to
15 see a steeple there. The fact that it
16 doesn't doesn't really make any difference
17 either. The fact that it did would be
18 normal, so I wouldn't think that a steeple on
19 a church would have any effect on value
20 either.

21 Q But would you agree that it would be more pleasing
22 to the eye, as you are traveling down the street,
23 to see a quaint church steeple on a quaint country
24 road as opposed to a monopole tower?

1 A You are talking about the opinion of my personal
2 aesthetics as opposed to one of value, and I
3 thought I was called here to question--to answer
4 questions about value.

5 MR. DOBBINS:

6 Yes, I would adopt Mr. Brown's
7 objection, Your Honor.

8 Q Well, value I guess is in the eyes of the
9 beholder, though, isn't it? It's--some of us
10 would consider it an influence in value, but
11 we don't dispute that.

12 HEARING OFFICER SHAPIRO:

13 Well, let's--you can make your point
14 later. At this point, at this time do
15 you have any more questions of the
16 witness?

17 MS. WHALEN:

18 I have no more questions.

19 HEARING OFFICER SHAPIRO:

20 Ms. Thompson?

21 MS. THOMPSON:

22 No.

23 HEARING OFFICER SHAPIRO:

24 Ms. Dougherty?

1 MS. DOUGHERTY:

2 None.

3 HEARING OFFICER SHAPIRO:

4 I just have a few. You testified, I think, in
5 response to Mr. Brock--Mr. Hornsby's I think
6 questions that you--no, I'm sorry Mr. Brock's
7 questions, that you had made several of these
8 neighborhood impact studies.

9 A Correct.

10 HEARING OFFICER SHAPIRO:

11 And you have made five or six for Sprint?

12 A Yes, I'm not sure of the number but I think
13 it is something like that.

14 HEARING OFFICER SHAPIRO:

15 If I'm not mistaken, you made others for other
16 companies as well; is that correct?

17 A That's correct.

18 HEARING OFFICER SHAPIRO:

19 And in making those other impact studies, did you
20 use the same--or in making this impact study, did
21 you use the same methodology that you used in
22 making all those other impact studies?

23 A The methodology has been the same throughout.

24

1 HEARING OFFICER SHAPIRO:

2 That's all I have, Mr. Dobbins?

3 MR. DOBBINS:

4 No further questions.

5 HEARING OFFICER SHAPIRO:

6 Thank you Mr. Brown. How many more witnesses do
7 you have?

8 MR. DOBBINS:

9 Two, Your Honor, one short, one long. I mean, I
10 don't know that it will be--when I say short, I
11 mean it should be maybe a little longer than Mr.
12 Brown, not a lot. Then the other one will be the
13 property acquisition specialist who will be quite
14 a while.

15 HEARING OFFICER SHAPIRO:

16 Okay. Let's take the short one now and then we
17 will probably take a break for lunch.

18 MS. KEENE:

19 Applicants call Dennis Cravens.

20 HEARING OFFICER SHAPIRO:

21 Spell your name for the reporter?

22 MR. CRAVENS:

23 D-e-n-n-i-s C-r-a-v-e-n-s.

24 (WITNESS DULY SWORN)

1 The witness, DENNIS CRAVENS, having first been
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. KEENE:

5 Q Please state your name and business address for
6 the record?

7 A My name is Dennis Cravens, 423 Clinton Road,
8 Lexington, Kentucky, our business address is on
9 Prosperous Avenue, Prosperous Place, Lexington,
10 Kentucky.

11 Q And what is your profession sir?

12 A I'm a Professional Engineer.

13 Q Could you briefly describe for the Commission
14 your experience in the wireless
15 telecommunications industry?

16 A I'm a registered Structural Engineer and I
17 have an office in with CKC who builds the--a
18 lot of these towers, tower sights all over
19 the United States and I do do a lot of their
20 --done a lot of their engineering and some of
21 their estimating. I've been doing that for
22 about 10 or 12 years.

23 Q At the request of SBA, Inc., one of the
24 applicants in this matter, have you reviewed

1 the tower design drawings for the proposed
2 site on Swigert Avenue?

3 A I did.

4 Q And does that--the tower design for the tower
5 to be located at 189 Swigert Avenue meet all
6 the applicable engineering and safety
7 standards for such a structure in that area?

8 A Yes. I checked it against the Kentucky
9 building code, what they had, and it meets or
10 exceeds the Kentucky building code as
11 designed. If it is built as designed, it is
12 a very stable monopole.

13 Q How many wireless telecommunications
14 facilities has your company been involved
15 with constructing?

16 A Well, the company that I have the office
17 there in, they have--I asked them yesterday
18 and they said they had put in about 71 of
19 these monopoles.

20 Q In your experience in this industry, Mr.
21 Cravens, do you know of any instances in
22 which one of these monopole structures has
23 fallen?

24 A No.

1 Q Not one?

2 A Not one.

3 Q Mr. Cravens, were you involved in an
4 augmentation of an existing church steeple at
5 the Centenary Church in Lexington?

6 A Yes.

7 Q Can you describe what was done--was that a
8 Sprint facility, by the way?

9 A Well, it has about four facilities in there
10 but Sprint is involved.

11 Q Okay. Can you describe what was done at the
12 Centenary Church?

13 A Well, originally they had a prayer tower that
14 set outside of the--in a little area away
15 from the main church building and it was
16 about 52 feet high.

17 Q Now, was that an existing structure of the
18 church?

19 A Well, it was built just about the time the
20 church was built, it is about 52 feet high
21 and it was about 14 foot square and had some
22 decorative block work on it. It had a base
23 on it of about 14 feet down and underneath it
24 was four caissons 48 inches down into rock.

1 The facility was built to use a taller tower
2 but they finally put a steeple on it, there
3 is a difference between a tower and a
4 steeple. A tower is that base part that goes
5 up that the steeple sets on. And the
6 steeple, they put a small steeple on there
7 because they was kind of short of money.
8 When the opportunity came by to bring these
9 cellular systems on line in there, they opt
10 to go ahead and maybe do that. So, I
11 redesigned the structure, the basic
12 structure, and Campbellsville Industries is
13 taking the steeple from that part on up. The
14 steeple will be 123--well, the top of it will
15 be 123 feet, when I got through with our base
16 design we were up 55 feet, so they are going
17 the rest of the way with the steeple. The
18 steeple is being constructed now, and that
19 steeple will be ten foot square. It is a
20 stiff material around an eight foot steel
21 jacket that sets on the base that we designed
22 for it.

23 Q And will the wireless telecommunication
24 facility be inside the--is this the existing

1 structure that was there?

2 A No, just the cables come down through the--
3 there is four. Like there is Sprint, there
4 is Powertel, there is Tritel and there is
5 GTE, and they will be spaced at about 10 foot
6 segments down through from about 123 feet
7 down to wherever that ends up at. Those--
8 they each one have three antenna and most of
9 them have the same azimuth, but one does
10 differ. And those--the antenna will fit
11 between the eight foot steel structure and
12 the ten foot skin that is on the--that the
13 structure supports.

14 Q Just so I'm clear you--

15 A And there's a cross on top of that.

16 Q --you mentioned initially when you went to
17 see the structure there was an existing--I
18 think you referred to it as a prayer tower
19 there was about 50 some odd feet--

20 A That's right.

21 Q --high. Is what was done at Centenary an
22 addition to the existing structure that was
23 there?

24 A The existing structure there was renovated in

1 that I put a jacket, a steel jacket, around--
2 it already had a steel jacket and it was
3 built in the wall or the concrete of the
4 brick masonry, about an 18 inch wall. And
5 then we put a steel jacket out there making
6 that structure 14 feet square.

7 Q And how much additional height to that
8 original 50 some odd feet?

9 A About a couple of beams, about 18 to two
10 foot, and then there is a concrete base on
11 top of that, probably up around about two
12 feet, we are up to about 55 feet.

13 Q Okay. At the request of SBA, Inc., did you
14 evaluate the feasibility of doing a steeple
15 type structure at the North Side Baptist
16 Church on Swigert Avenue?

17 A I met over there, yes, and did look into it.
18 I didn't go into a depth, I just--at that
19 time they were talking about a structure 200
20 feet high. And I mentioned to them that it
21 would probably take a base of about 20 feet.
22 Now, I haven't gone into direct engineering
23 on the size of it, but somewhere in that
24 neighborhood, 180 would be--may be a little

1 bit less. I would assume they would want to
2 go up with a structure--what we were talking
3 about was outside the church, it was out in
4 the field there.

5 Q Does the church, North Side Baptist Church
6 there on Swigert Avenue, have an existing
7 prayer tower of any kind like the Centenary
8 Church facility had?

9 A No, it did not.

10 Q And if you were to assume that the testimony
11 here today has been that Sprint's antennas
12 needed to be located at 180 feet, describe
13 what the structure that would have to be
14 built to house that, what it would look like?

15 A Wherever you put it, if you put in the--on the
16 church you would still have to take about an area
17 20 or 30 feet and knock--tear it out, if you were
18 putting it in the church. And you have got to go
19 down with the caissons that would support 180
20 foot--well, probably you would want to go up as
21 far as the church framing is now and bring your
22 base structure up that high. And then from there
23 on up it would probably be a steeple or up above
24 that roof line maybe a few feet, I don't know how

1 high, I didn't notice how high the church was.
2 That might be 30 or 40 feet. The rest of it would
3 have to be a steeple that would be manufactured by
4 a steeple company like Campbellsville Industries
5 or there is a few others.

6 Q Could the roof of that church support a
7 structure of the size that would be needed to
8 get those antennas up to 180 feet?

9 A Oh, no, that's the reason I say you would
10 have to go down underneath--you would have to
11 go down in the ground probably--down into
12 solid rock. And then you have got a big
13 heavy, probably, two foot to three foot
14 concrete base on top of your caissons to
15 anchor a structure that tall.

16 Q Can you give an estimate as to what the base
17 diameter would be of that kind of structure?

18 A Probably, just based on what we would use and
19 what--it would probably be 18 to 20 feet.

20 Q Mr. Cravens, did you do any sort of cost
21 estimate on what it would cost to construct
22 such a facility?

23 A Just kind of a quick off the top of my head
24 based on structures that we have done, I

1 would think probably in the neighborhood of
2 five to six hundred thousand dollars.

3 Q Would that include the cost of the antenna
4 equipment itself?

5 A Oh, no, no that's the--just your tower and
6 the structure for it. That is a rough
7 estimate.

8 MS. KEENE:

9 I have nothing further at this time.

10 HEARING OFFICER SHAPIRO:

11 Any questions?

12 MR. HORNSBY:

13 No, sir.

14 HEARING OFFICER SHAPIRO:

15 Mr. Brock?

16

17

CROSS EXAMINATION

18 BY MR. BROCK:

19 Q Mr. Cravens, I just have one or two here.
20 Assuming this thing is made according to all the
21 necessary engineering requirements, what would
22 cause this thing to fall or tumble?

23 A The structure is so designed and the criteria you
24 use in the design of any kind of tower or building

1 has a system--has a criteria, like the basic wind
2 speed in this area is 70 miles an hour, it has a
3 gust factor, it has a height factor, maybe two of
4 them might be involved, and then the final factor
5 is an importance factor. Now, buildings that are
6 an emergency or communications lines and
7 telecommunications lines have an importance
8 factor, everything else is one, that has an
9 importance factor of 1.15. So, that if everything
10 else--if you had a storm come through here and
11 everything else was wiped out, your antenna--your
12 monopole would still be standing up there. And
13 the fall radius, if one were to fall, and I don't
14 know how it would, it would fall not like this.
15 It would bend over like you would take a rod and
16 bend it because it is steel, and it would probably
17 have a radius of maybe 75 feet that it could--if
18 it would fail, maybe fail down about 75% of that.
19 It would just kind of bend over like that. And it
20 would not reach out--I don't know the Sweeney
21 place, I don't know exactly where that is being
22 placed in accordance to property lines or what
23 their compound size is, but more than likely it
24 wouldn't reach out of it.

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MR. BROCK:

That's all, thank you.

HEARING OFFICER SHAPIRO:

Ms. Good, do you have any questions?

MS. GOOD:

No.

HEARING OFFICER SHAPIRO:

Mr. Good? Ms. Whalen?

CROSS EXAMINATION

BY MS. WHALEN:

Q Mr. Cravens, your estimate of five to six hundred thousand for a steeple on the church, North Side Baptist Church, if the steeple were not 180 feet, if there were two or three or four steeples at 120, what would that price drop to, approximately?

A That's kind of difficult, I don't know how much--in the church--the one I just said was five or six hundred thousand was sitting outside. If you are going to put that on the church, you have got to think about tearing out part of the church and building it back in. I still think you would be up in that neighborhood.

1 Q So, there wouldn't be a significant cost
2 difference?

3 A It will come down some, yes, but it wouldn't
4 be--you wouldn't have to have as much
5 structure underneath it. But as I say, these
6 are just rough estimates based on what we
7 spent at Centenary, what the underground--you
8 see, we didn't have to put that in, that was
9 already in.

10 Q Uh-huh.

11 A And the exploratory conditions and engineering
12 and, you know, whether you're on rock or how deep
13 it is and how much rock you have got to go into,
14 all makes a big difference in the cost of it.
15 That is just an off the top of my head based on
16 experience and not on figuring it--

17 Q Right.

18 A --item by item.

19 Q Would you consider that pretty much a maximum
20 cost, though, as opposed to a minimum?

21 A I would consider that kind of a top figure.

22 Q Top, I see. If there were some of the
23 churches in the area north of I-75 and
24 between Russell Cave and Bryan Station, many

1 of them do have existing steeples, by what
2 percentage do you think the cost would drop
3 if you are working from existing steeple as
4 opposed to a church with no steeple?

5 A Well, I don't know how high the steeples
6 would be on those churches that you are
7 talking about and what the base structure is.
8 You know, when you--you add about three
9 thousand pounds of cable in a tower like
10 that, handling several different companies,
11 but I don't know of any steeple along Paris
12 Pike that you could put three different--and
13 that is what they want to put, probably,
14 three different companies in--that would--
15 would have to be built taller than what they
16 are. I don't think you could get them in any
17 steeple that is there. Plus the fact the
18 steeple has to have material on the outside
19 that will not affect the rays or the beams of
20 the antenna, and it can't be metal.

21 Q At the very top?

22 A It has to be--well, wherever the antenna is
23 setting, it either has to be on the outside.
24 If it is inside the skin, it has to be a

1 different--it can't be metal, it has to be
2 like a stiff material or fiberglass or
3 something of that nature.

4 Q But if it--

5 A So, it's just a big renovation job if you
6 put--and we put a lot of rooftop units on,
7 steeples are the most difficult ones.

8 MS. WHALEN:

9 Okay, that's all.

10 HEARING OFFICER SHAPIRO:

11 Ms. Dougherty?

12

13 CROSS EXAMINATION

14 BY MS. DOUGHERTY:

15 Q Can you give us an estimate of how much the
16 project was at Centenary in comparison to what you
17 are saying the North Side Baptist project would
18 be?

19 A I could have if I had known you was going to
20 ask the question, but I didn't handle the--I
21 did the estimate on part of it that we had to
22 renovate and, as I say, part of that was
23 already there or we would had to go into the
24 ground and do all of the soil work and all

1 that. I think what the steeple people--I
2 expect we are up to four hundred thousand.
3 I'm just guessing.

4 Q How does that compare, roughly, to the
5 construction of a monopole?

6 A I don't know. I didn't--I don't price the
7 monopoles, I just do the engineering on what
8 part ever I have to do.

9 Q Is it your understanding from your assignment
10 given to you by the applicant that the price
11 of the structure to--that may have to be done
12 at Northside Baptist entered into the
13 decision to propose the Sweeney property
14 instead?

15 A Now say that again, I didn't quite catch your
16 point there.

17 Q Is it your understanding from the discussions
18 you have had with Sprint that the different
19 price associated with constructing a tower at
20 the church site entered into the decision to
21 propose the Sweeney site instead of the
22 church site?

23 A I couldn't tell you that, I didn't even know
24 about the Sweeney site when I met them out

1 there.

2 MS. DOUGHERTY:

3 Nothing further.

4 HEARING OFFICER SHAPIRO:

5 Any redirect?

6 MS. KEENE:

7 No, thank you.

8 HEARING OFFICER SHAPIRO:

9 Thank you Mr. Cravens. Why don't we--

10 MS. KEENE:

11 Can Mr. Cravens be excused for the day?

12 HEARING OFFICER SHAPIRO:

13 Yes. Why don't we recess until one o'clock.

14 (OFF THE RECORD)

15 (WITNESS DULY SWORN)

16

17 The witness, JENNIFER STURGEON, having first been
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DOBBINS:

21 Q Would you state your name for the record please?

22 A My name is Jennifer Sturgeon.

23 Q And what is your business address?

24 A 2310 Valletta Lane, Louisville, Kentucky.

- 1 Q Ms. Sturgeon, by whom are you employed?
- 2 A SBA, Inc.
- 3 Q And with SBA for how long please?
- 4 A I've been with SBA approximately a year and a
5 half.
- 6 Q What do you do for them?
- 7 A I'm a property specialist.
- 8 Q Which means what for the benefit of the
9 Commission and everyone else here?
- 10 A I'm a site acquisition person for wireless
11 carriers.
- 12 Q It is your job to identify prospective sites
13 for facilities such as that we are here on
14 today?
- 15 A Yes, for carriers, right.
- 16 Q You said you have been with Sprint for about
17 a year and a half?
- 18 A SBA.
- 19 Q I mean SBA, pardon me, for about a year and a
20 half.
- 21 A Uh-huh.
- 22 Q Whom were you with before that?
- 23 A I was with Sprint PCS.
- 24 Q Same job with Sprint PCS?

1 A Yes. I was actually property specialist and
2 property manager.

3 Q And were you the primary site acquisition
4 specialist for this search ring--

5 A Yes.

6 Q --when you were with Sprint?

7 A Yes, I was.

8 Q You have seen the exhibit that was introduced
9 as number one, the search ring.

10 A Uh-huh.

11 Q Were you provided that site by the radio
12 frequency department of Sprint back when you
13 were with Sprint?

14 A Yes.

15 Q And at that point was it your job to go out
16 and find a site based upon that search ring?

17 A Yes.

18 Q Tell the Commission, if you wouldn't mind, exactly
19 how you went about that process?

20 A We are given a search ring that has GPS
21 coordinates.

22 Q Which are what?

23 A The lat and long coordinates, specifying
24 exactly where the site is. They give you an

1 approximate elevation required and an
2 approximate height required. This
3 approximate height on that search ring was
4 250 feet. I don't remember the elevation but
5 I think most of the elevation in the search
6 ring was basically the same.

7 Q By that you mean the ground elevation?

8 A Yes. And then once they give me the search
9 ring, attached to it is a topo map and I go
10 out there with the map and try to find
11 whatever I can find, something that would
12 meet their requirements.

13 Q And the topo map would have the ground
14 elevations--

15 A Yes.

16 Q --and various other things within that area?

17 A Yes.

18 Q In fact, was Exhibit Number 1 with the search
19 ring on it what you would call a topo map?

20 A Yes, yes, it is, 7 1/2 minute map.

21 Q And it has all of the various elevations and
22 the topography of the area on it?

23 A Yes.

24 Q When you were working with Sprint and assigned the

1 duty of going out and finding a site that would
2 work for this particular search ring, what was the
3 policy of Sprint with regard to collocations?

4 A Sprint always collocated whenever possible.
5 I believe in the Louisville MTA, in the first
6 build out we were probably a little over 70%
7 collocation ratio to new build.

8 Q When you say the Louisville MTA?

9 A The Louisville MTA consisted of what Oliver
10 had stated earlier. It consists of Kentucky,
11 some counties in Illinois and southern
12 Indiana. We were definitely directed to find
13 whatever collocation, so I would have to go
14 out to a search ring and try to locate any
15 visible structures that there may be in that
16 area.

17 Q What are the benefits of collocation for a
18 carrier such as Sprint?

19 A Well, the collocation obviously is easier, a
20 lease is usually obtainable much easier
21 because you are collocating on an existing
22 structure. Usually, when you have an
23 existing structure like this, you may have
24 other carriers on it, on buildings you may

1 have other lessees, on rooftops for one
2 reason or another, and it is much easier, it
3 is faster, there is no access road, it is
4 just a much easier, less expensive way to
5 provide coverage.

6 Q Now, I interrupted you a minute ago, you were
7 talking about Sprint's collocation
8 percentage--

9 A Uh-huh.

10 Q --in the Louisville MTA which has been
11 defined as including all of Kentucky--

12 A Right.

13 Q --or most of Kentucky, some of Indiana, some of
14 Illinois.

15 A Uh-huh.

16 Q What about the collocation percentage in the
17 Lexington area, do you know what that is?

18 A Yes. The Lexington area consists of
19 approximately 26 sites, we have built three
20 towers within Fayette County, but in the
21 Lexington market there are actually five
22 towers that have been built, one in Scott
23 County and one in Jessamine County. So, our
24 collocation, I think it puts it up around 80

1 --at least 80, maybe to 84% in the Lexington
2 area.

3 Q So, only five--what we would call new build
4 towers or structures within that total of 25
5 or so sites?

6 A Yes.

7 Q Now, when you were first given this site by
8 Sprint, or this search ring by Sprint, to find a
9 site, what did you do to find one?

10 A Well, I came down with my search ring and a
11 map, a road map, and try to locate exactly--
12 try to drive the entire search ring, try to
13 figure out according to the map where I am
14 and try to see exactly what parameters have
15 been defined on the search ring. So, I try
16 to drive the whole thing, I try to get around
17 it because I want to see what is outside of
18 it too.

19 Q You look for collocation structures?

20 A Yes, uh-huh.

21 Q Is that the most important job at that point?

22 A Yes, yes.

23 Q And when you came and made this drive, did
24 you find any collocatable structures?

1 A Yes, I found a tower located directly behind
2 the church on the Whitaker property.

3 Q I think we have referred to it as the
4 Whitaker tower throughout this proceeding?

5 A Yes, uh-huh.

6 Q How tall is that tower?

7 A It is 265 feet.

8 Q What efforts did you make--and this was when,
9 let's establish exactly?

10 A This was in--I was given a search ring in
11 November of '96.

12 Q And what efforts, then, did you make after
13 you identified the Whitaker tower to see
14 whether it was available for collocation or
15 not?

16 A Well, I contacted him, I found out actually
17 through Northside Baptist Church who owned it,
18 because I couldn't get back to it.

19 Q How did you happen to find out through
20 Northside Baptist Church?

21 A Well, another thing that Sprint has done in
22 Lexington, as well as in the Louisville area,
23 is that when we are driving search rings we
24 like to locate if there are any churches and

1 schools. Sprint has a master lease agreement
2 with Jefferson County Public Schools, we will
3 try to work with those types of entities, you
4 know, just because sometimes you can be of
5 more a community service in that respect, if
6 you will. We have replaced structures on
7 schools for their telecommunication net and,
8 also, churches, we have provided, like Mr.
9 Cravens had said, the steeple.

10 Q At Centenary?

11 A At Centenary Church, yes. So, I do try to
12 locate those types of entities. So, I did
13 see the Northside Church and that was the
14 only way that I could really get very close
15 to the Whitaker tower. So, I drove back in
16 their parking lot and I did take some
17 pictures of it.

18 Q Does their property adjoin the Whitaker
19 property?

20 A Yes, it does, uh-huh, uh-huh. And then I got
21 the address of the Northside Baptist Church
22 and then when I went back to my office I
23 called the Northside Baptist Church because I
24 couldn't figure out to get to that tower. I

1 couldn't figure out who owned it, I didn't
2 see any roads leading into it or any drives
3 leading back to that site. So, I called the
4 Northside Baptist Church when I returned to
5 the office and I talked to Mr. Jones, the
6 pastor there, and I asked him do you know who
7 owns the tower outside your window in the
8 back of your church? And he said what tower
9 and I said, well, there is a big tower that
10 adjoins your property and you can see it out
11 your window. And he said hold on a minute,
12 he came back on the phone and he says, well,
13 there really is a tower out there, I didn't
14 know there was one there. And he told me who
15 the owner was.

16 Q And that was Mr. Whitaker?

17 A That was Mr. Whitaker, it was Jack and Elmer.
18 I think he just--

19 Q Are they father and son?

20 A Yes, and he just gave me the name Whitaker so
21 at least I had a name to start with. And he
22 did tell me that the Whitakers did own the
23 Whitaker banks here in Lexington. And I knew
24 there was one right down the street, I'd seen

1 it on the way in. So, I went down to the
2 Whitaker Bank and asked somebody how I would
3 get in touch with Jack or Elmer Whitaker and
4 they gave me their phone number and I called
5 Jack Whitaker at that time and asked him if
6 he would be interested in allowing up to
7 collocate on that tower.

8 Q What was his response?

9 A He said no.

10 Q Did he explain why?

11 A He did. He explained that the value of their
12 horses and the nature of their business would
13 not allow a lease of that kind to allow
14 people to enter and actually be on the
15 property 24 hours, seven days a week, which
16 was one of our requirements that we need to
17 be able to get to the site. So, he was not
18 interested.

19 Q Just to clarify that, these towers are not
20 actually manned or staffed 24 hours a day,
21 seven days a week?

22 A No, no.

23 Q You just need to be able to get to them?

24 A You need to be able to get to them if a

1 sector were to go down during the middle of
2 the night or something happened to it, and to
3 perform regular maintenance.

4 Q And he said he had horses?

5 A He said he had horses of great value, he also
6 has a car collection, he just has a lot of
7 valuable assets he said on the property and
8 would not be interested in allowing anyone
9 near that.

10 Q And was that the only collocatable structure
11 within the search ring--

12 A Yes.

13 Q --or the immediate vicinity of the search
14 ring that you were able to find?

15 A Yes, it was.

16 Q At that point, what was the next step, what
17 do you do when you find that there is no
18 collocatable structure?

19 A Well, when there is no collocatable structure
20 I start looking at pieces of property in
21 order to construct a tower. I called back
22 at the North Side Baptist Church and talked to the
23 pastor again and asked him if he would be
24 interested in having a tower at that point on his

1 property and he said no.

2 Q Just to clarify, did you offer a steeple or
3 did you offer--

4 A I offered a tower.

5 Q You didn't get specific on the steeple issue?

6 A No, no, no, no, I offered a tower.

7 Q At that point he was not interested?

8 A At that point he was not interested and my
9 search ring, also, was a 250 foot structure.

10 Q Okay.

11 A I needed some property.

12 Q I'm sorry, go ahead.

13 A And I just started visibly looking at
14 properties up and down Swigert Avenue to see
15 how large some of the properties were, trying
16 to get a feel of how large the properties
17 were. I know there were some residents along
18 the road but then there were some other
19 properties that seemed to be a little bit
20 back off the road. At that point I went to
21 the Property Evaluation Office in Lexington
22 and pulled some maps to try to determine who
23 owned those pieces of property that I had
24 written the addresses off the mailbox.

1 Q And did you make contact with any of the people
2 that you identified through the tax maps?
3 A Yes, I did.
4 Q Did you--do you remember specifically who
5 some of those people were?
6 A Yes, I do. I contacted, just through
7 reviewing my notes on that file, there is a
8 piece of property--Swigert used to go all the
9 way through to Russell Cave Road, when I
10 first started identifying this search ring,
11 Russell Cave or Swigert went all the way
12 through to Russell Cave and now I believe it
13 is called Faulkner. There is a piece of
14 property there at the corner of Swigert and
15 Russell Cave Road that runs all the way out
16 to Swigert Avenue before you make the first
17 left turn, and that property belonged to a F.
18 W. Davis, I believe, and Alice Davis and I
19 contacted them and they weren't interested.
20 I contacted a Flora Guten, I believe, G-u-t-
21 e-n, and she was not interested. I contacted
22 the Murphy's which own property just adjacent
23 to the Northside Baptist Church and I
24 couldn't get anyone interested.

1 Q Let me interrupt you for a second. What I'm
2 going to have you do in just a few minutes,
3 not right this minute, is to identify various
4 people you have spoken with on the aerial
5 photograph. And maybe it will be easier if
6 we get to that rather than ask you to
7 remember all these things as we are moving
8 along. But let me ask you some other
9 questions first, and then we will get to
10 that. Were you able to secure a site in the
11 search ring or within the vicinity of the
12 search ring at that point back in late 1996?

13 A No.

14 Q So, what happens then when you can't find a
15 site, what did Sprint do?

16 A Well, Sprint at that time--there is a site
17 acquisition company called SBA, there are a
18 few different firms of that nature and there
19 are site acquisition firms that are able to
20 send people in-house, they will come in, they
21 will acquire the site, take it through zoning
22 and what have you.

23 Q Is it unusual for telecommunications
24 companies such as Sprint to hire professional

1 site acquisition firms to help them find
2 difficult sites?

3 A No. Actually, in Phase One of the Sprint
4 build-out there was a site acquisition firm
5 that did all of it.

6 Q Phase One was--

7 A Louisville.

8 Q --primarily the Louisville area?

9 A Yes, it was Louisville and Southern Indiana.

10 Q And Sprint had a professional site
11 acquisition firm to help it with that build-
12 out, if you will?

13 A Yes.

14 Q So, SBA was hired to--

15 A SBA was contracted to come in and try to
16 identify a site where I was not able to. I
17 gave them my history of looking, gave them my
18 notes of who I had contacted and what I had
19 seen and they immediately realized that, you
20 know, I think we are beating our head against
21 the wall in this effort, let's try to take a
22 different approach. So, what they decided to
23 do is they decided to look on Paris Pike,
24 closer to the freeway, in a commercial zoned

1 area, which they did. And they proposed the
2 Waffle House site, at that point, as a
3 candidate.

4 Q Let me show you this and ask you to step up
5 and bring the microphone with you. Let's
6 have this marked please. And it is our
7 Exhibit 6, I believe. Ms. Sturgeon, let me
8 ask you to identify this exhibit that has
9 been marked as number six, our number six?

10 A It's a vicinity map that includes the search
11 ring.

12 Q Okay. It doesn't actually have the search
13 ring marked on it does it?

14 A No, it doesn't but it locates the entire
15 area.

16 Q There is a triangle there that is marked as
17 the proposed site?

18 A Right.

19 Q Is that the site we are here seeking approval
20 for today?

21 A Yes, it is.

22 Q Can you also point out on the map the initial
23 site or the site that you just mentioned that
24 SBA secured on--

1 A The site proposed by SBA.

2 Q --or SBA proposed on Paris Pike, right?

3 A Yes, SBA proposed this site here, this is
4 Paris Pike and this was the proposed site.

5 Q You're talking about that little fan shaped
6 piece of property?

7 A Yes, yes, it is right over in this corner, I
8 believe.

9 Q Okay. All right, now, let me ask you a
10 question, ironically enough, by whom are you
11 currently employed?

12 A Now, I'm currently employed by SBA.

13 Q Okay. So, how did that happen?

14 A Well, in March of '98 Sprint decided to
15 regionalize and perform their engineering
16 functions from a regional office. So, all of us
17 in property, construction, networks ops, a lot of
18 those positions, we were all laid off, and they
19 retained an RF engineer and the operations people
20 that are located at the switch facility. So, I
21 was laid off for a couple of months.

22 Q That was the point that Sprint had completed
23 most of its initial build out and was sort of
24 switching its operation over to actually

1 running a telephone company?

2 A Yes. And at that time Sprint--we had
3 actually performed the site acquisition
4 functions in the Phase 2, which consisted of
5 Lexington, so most of those leases were all
6 leased at the time. So, most of our services
7 were completed.

8 Q Now, you have seen the SBA proposed site down
9 here on Paris Pike; is that right?

10 A Uh-huh, yes.

11 Q How would you describe that site, just in terms of
12 its surroundings and the topography and its
13 proximity to the road and that sort of thing, as
14 compared to the proposed site?

15 A Well, to me, the site is favorable because it was
16 commercial, and it was favorable because it was
17 easy to construct, didn't have an access road, you
18 didn't have to go through any properties to get
19 there. The property was literally on Paris Pike.
20 However, from another standpoint you have nothing
21 but residential areas located directly behind the
22 site and you also have visibility from Paris Pike
23 as well.

24 Q Was there concern about visibility from Paris

1 Pike and, if so, why?

2 A Yes, there was concern from Paris Pike,
3 visibility from Paris Pike.

4 Q On the part of whom?

5 A On the part of LFUCG, they had told us once--
6 we had set up a meeting with them about this
7 proposed site--that there was definitely some
8 concern because Paris Pike Historic Committee
9 doesn't like to see anything of that nature
10 and they are very particular about what you
11 can see, you know, from Paris Pike. So,
12 there definitely was some concern. And they
13 were also concerned because there were
14 residences, so many residents located
15 directly behind the site.

16 Q Did Sprint set up meetings with LFUCG
17 representatives to discuss that initially
18 proposed site?

19 A Yes, we did.

20 Q Do you know how many meetings there were?

21 A Let's see, initially, when this site was
22 proposed there was a large public meeting
23 which consisted of a lot of the property
24 owners surrounding the area and then there

1 was another meeting with LFUCG, SBA, legal
2 counsel and I believe the Joyland
3 Neighborhood Association at that time, which
4 very much opposed the site. And we had a
5 meeting with them and discussed what our
6 alternatives would be.

7 Q Did Sprint receive letters in opposition to
8 that site?

9 A We quit counting at about 88 letters, so
10 there was very, very high opposition.

11 Q With whom were the LFUCG meetings held? What
12 LFUCG representatives were there at those
13 meetings?

14 A The representatives from LFUCG? That would have
15 been Chris Keen and Susan Skillman at the time.

16 Q And what was your understanding of their
17 feelings about the initial site?

18 A Their feelings, as far as this initial site,
19 was basically get off Paris Pike, there is
20 going to be so much opposition. They didn't
21 want to see it on Paris Pike, neither did the
22 residents in the surrounding areas, neither
23 did the Paris Pike historic committee. Their
24 feeling was and their directive to us was

1 just get it off Paris Pike.

2 Q Did Sprint hear opposition directly from the
3 historic Paris Pike council?

4 A Yes.

5 Q In fact, at one point Sprint did make
6 application to the Public Service Commission
7 for approval for a site there at the initial
8 --what we will call the initial site; is that
9 right?

10 A Yes, we did.

11 Q Was a hearing scheduled?

12 A A hearing was scheduled and then a hearing
13 was, I guess, put on hold, if you will, for a
14 while while we tried--

15 Q At whose request?

16 A LFUCG and SBA said that we would look.

17 Q The applicants, in fact, moved to continue
18 hearings; is that right?

19 A Yes, yes, yes. We wanted to look at some
20 alternative sites because of the number of
21 oppositions.

22 Q At some point in time Jennifer Sturgeon gets
23 involved, or reinvented in the project?

24 A Yes.

1 Q Is that right?

2 A Yes.

3 Q Sort of like a bad penny, it just never went
4 away?

5 A Yes, its back.

6 Q Tell us how that happened?

7 A Well, I went home for a couple of months after
8 Sprint was finished and thought I would take the
9 summer off, and SBA was contacted by Sprint--

10 Q You can go back and sit down, I'm sorry.

11 A Okay. So, I was going to take the summer off
12 and SBA was contacted by Sprint PCS to see if
13 they would be interested in finishing out the
14 build-out. Because of the mass lay off there
15 was no one physically here in this area any
16 more to do site acquisition of any kind. So,
17 SBA, obviously, called me and said would you
18 be interested in taking this over, would you
19 be interested in your old job back? So, I
20 was able to go back to work after a couple of
21 months and finish the rest of this build-out
22 that I had originally started with Sprint as
23 a contractor.

24 Q Okay. When Sprint first got a clear

1 indication that there was a lot of opposition
2 to the initial site, the Paris Pike site,
3 were any other sites suggested by anyone else
4 or did Sprint or SBA identify any other
5 possible sites?

6 A There weren't in the meetings, there were no
7 alternatives mentioned during the meetings
8 that, you know, it was more or less directed
9 just get off Paris Pike. There were no
10 options. And then a few days later after
11 that meeting we were contacted by Frank
12 Sweeney saying that he would look in--you
13 know, he would consider having us propose his
14 site for a tower.

15 Q Okay. Let me ask you a few questions about
16 that, but before we get to that let me ask
17 you about a couple of interim possibilities
18 that I understand might have been considered.
19 Are you familiar with a Councilman Al
20 Mitchell?

21 A Yes, yes.

22 Q Who is he, or who was he, I'm not sure if he
23 is still occupies that same position? Is he
24 a City of Lexington council member?

1 A Yes, he was at the meeting.

2 Q At the public meeting?

3 A He was at the public meeting. And he
4 identified--I believe he asked us to look at
5 the Bob Brown house, which is I believe a
6 home for maybe people with some sort of brain
7 injuries, of that nature.

8 Q It is a group home of some sort?

9 A Yes, yes.

10 Q Was that site considered?

11 A It was--well, it was considered from the site
12 acquisition aspect, someone from SBA at that
13 time contacted the Bob Brown house and they
14 were not interested, and also said that a
15 lease of that nature wouldn't be possible
16 because of their funding. They are a non-
17 profit organization.

18 Q Was that in a more dense residential area?

19 A Yes, it was just a little bit off of Paris
20 Pike, about a block or so, but it was still
21 surrounded by residences. And there was also
22 another consideration that SBA had looked at
23 as well as the Waffle House which was a
24 bowling alley. And that was looked at as

1 well.

2 Q What was the result on the bowling alley?

3 A They weren't interested. And the Shell--I
4 believe it was the Shell Station next to the
5 Waffle House--

6 Q Was it a BP station?

7 A Or maybe a BP station, I don't remember
8 which, it was a gas station with a tall sign,
9 and they were approached to replace the sign
10 and let us locate antennas on there and they
11 weren't interested.

12 Q In any event, after that point you indicated
13 that Mr. Sweeney had contacted your company
14 to indicate that his property might be
15 available?

16 A Right.

17 Q Follow that out for the Commission please?

18 A At that time the property specialist working
19 with Mr. Sweeney thought, you know, he later
20 passed that on to me that this was a good
21 viable site. We had not proposed this site
22 in our initial search, or I hadn't proposed
23 it in my initial search just because everyone
24 I had called on Swigert Avenue was not

1 interested, so I assumed that. And once I
2 gave it to SBA they wanted to go for the
3 easier zoning in the commercial. This site,
4 however, was a deep piece of property, had a
5 separate entrance to the rear of the property
6 to the left of the residence, so the
7 residence still had a driveway to enter to
8 his residential home. And then there is, I
9 guess, almost like an access easement that
10 goes down the left side of his property to
11 get to an additional ten acres located behind
12 the residence. It was back off the road, it
13 was far enough away from Paris Pike where it
14 was not in the Paris Pike Historical
15 Committee's area. It did have somewhat of a
16 tree buffer towards the back of the property,
17 so I didn't think that would be visible from
18 Paris Pike, nor that visible from Swigert
19 Avenue.

20 Q And that's the site that is identified on
21 this vicinity map, our Exhibit 6, as the
22 proposed site?

23 A Right.

24 Q Step back up here, if you wouldn't mind, I

1 didn't give you much of a break there.

2 A No, you didn't.

3 Q Just, if you will, identify where Swigert Avenue
4 runs off Paris Pike back to Mr. Sweeney's house?

5 A Okay. This is Swigert Avenue.

6 Q And Paris Pike is the bold black line right
7 there.

8 A And then this is Paris Pike, yes, and this is
9 Swigert Avenue.

10 Q And Mr. Sweeney's property is right there?

11 A Mr. Sweeney's property is here. His
12 residence sets up here in front and there is
13 a drive that comes in and goes to his
14 residence and then there is a drive that goes
15 straight back to a garage.

16 Q Mr. Sweeney's property looks like it has a
17 couple of smaller lots carved out of it in
18 front?

19 A Yes, it does, yes, yes, there are two homes
20 there, two parcels.

21 Q Do you know who the individuals are who own
22 those two homes?

23 A Let's see, I believe there is a Ruth Ellis
24 and I can't remember the name of the other

1 person here.

2 Q Neither one of those persons are here today
3 to intervene in this case, have they?

4 A No.

5 Q How about the neighbor to the--I guess it is
6 to the north of Mr. Sweeney?

7 A This way?

8 Q Yes.

9 A The Ahlschwedes?

10 Q That's the Ahlschwedes?

11 A Yes.

12 Q Mr. Ahlschwede is not here today nor has he
13 intervened; is that right?

14 A Correct.

15 Q Let's take another look at this area, which
16 is introduced as Applicant's Exhibit Number 2
17 and, if you will, show us on that where
18 Swigert Avenue is and where Mr. Sweeney's
19 property is?

20 A Okay. This is Swigert Avenue here in this
21 tree line here, so this is Swigert Avenue,
22 this is Sweeney's house, you enter right
23 here.

24 Q The bottom left hand corner of that lot?

1 A Yes, and then you enter this way and there is
2 the garage and the proposed site is back here
3 at the rear.

4 Q Okay. Now, in your opinion as someone who
5 has been in--well, let me ask you this first.
6 You have been in the property acquisition--
7 site acquisition business for several years.

8 A For telecommunications four years and real
9 estate license since '94 but related fields
10 for about three years before that.

11 Q Okay. How many telecommunication sites have
12 you been involved with?

13 A Let's see, probably about 200.

14 Q As someone who has been involved with
15 approximately 200 of these sorts of sites
16 explain, if you will, what makes this a good
17 site for a telecommunications facility such
18 as the monopole we are proposing?

19 A Well, in this area, the--over 60% of the search
20 ring is Whitaker's farm which was not interested.
21 This site, I looked at it as a good site that was
22 chosen, you do have trees here. The elevation--
23 I'm sorry--the elevation here dips down some, so
24 you don't have a high elevation, you don't have

1 this proposed monopole on top of a hill, if you
2 will. The elevation drops a little bit, there are
3 some buffers by trees, there is enough tree buffer
4 between here and Paris Pike that it wouldn't be
5 visible. You have got a separate access back to
6 the site, I mean, an access road would have to be
7 constructed, but at least I'm not going down
8 someone's driveway to get actually to the proposed
9 site. And this site also did not have any
10 livestock in it. It didn't have any horses or
11 anything like some of the adjoining farms did.

12 Q Are there any residences within the fall zone
13 of the proposed monopole?

14 A There are no houses within the fall zone, no.

15 Q Are there even any residences within 500 feet
16 of the proposed monopole?

17 A No.

18 Q What is the closest residence if you can
19 point it out on that?

20 A The closest residence would be back here at
21 the end of Blue Ribbon Lane.

22 Q And Blue Ribbon Lane runs off of Paris Pike
23 parallel to Swigert?

24 A Paris Pike--yes.

- 1 Q It is the next street that would be north?
- 2 A Yes, yes, it is a small street that dead ends
3 back here.
- 4 Q It does not then run across the back of Mr.
5 Sweeney's property?
- 6 A No.
- 7 Q Now, stay up there, if you wouldn't mind.
8 Okay. Ms. Sturgeon, I've handed you an
9 exhibit which has now been marked as our
10 Exhibit Number 7, and I'd like to ask you to
11 identify what that is, if you wouldn't mind?
- 12 A This is the properties that lie within the
13 search ring.
- 14 Q By name of owner?
- 15 A Yes.
- 16 Q Is this an exhibit that was compiled at your
17 direction based upon information that you
18 provided?
- 19 A Yes.
- 20 Q This is just a summary of all of the
21 properties within the search ring; is that
22 right?
- 23 A Yes.
- 24 Q Okay. Let me ask you to try to stand back

1 just a little so Mr. Shapiro can see, and
2 let's just talk about each one of these
3 sites, if you wouldn't mind.

4 A Okay.

5 Q Number one is listed as the Sweeney site, is that
6 the proposed site?

7 A Yes.

8 Q Number two we have identified as Whalen, and I
9 apologize Mrs. Whalen for not including your first
10 name on there, I apologize for that, but that is
11 Carole Whalen's property?

12 A Yes, it is.

13 Q And Ms. Whalen is here today of course.

14 A Yes.

15 Q Did you speak to Ms. Whalen, did anyone approach
16 Ms. Whalen about the possibility of locating this
17 facility on her property?

18 A No.

19 Q Are there any advantages to Ms. Whalen's property
20 as compared to the proposed site?

21 A No, the property isn't as wide as Mr. Sweeney's
22 property is and, also, there are horses on Ms.
23 Whalen's property.

24 Q And that's a negative from Sprint's point of

1 view?

2 A Yes, yes.

3 Q Is that also typically a negative from a
4 property owner's point of view?

5 A Sure.

6 Q Is that because of the access, again, the 24--

7 A Yes, and there is also security involved, you
8 don't want, you know, anything happening to
9 the horses or a gate left open, things of
10 that nature.

11 Q Now, property number three we have identified as
12 the Scott Ahlschwede property?

13 A Yes, that's here.

14 Q And, by the way, we have identified each one
15 of these properties with a small red dot with
16 a number in the middle; is that right?

17 A A number coinciding with the names.

18 Q Nobody can see in here except you, probably,
19 but at least it is on the exhibit for
20 reference purposes. Did you speak with Mr.
21 Ahlschwede about locating on his property?

22 A No, I did not.

23 Q Why not, and are there any advantages to his
24 property as compared to Mr. Sweeney's

1 property?

2 A No, there really are no advantages to his
3 property. What I see on his property are
4 still some trees in the back area, but as I
5 remember, his property goes up just a tad, it
6 is a little bit higher elevation, there is
7 not a separate entrance, obviously, to the
8 rear of his property and he uses his property
9 for livestock.

10 Q Does he has horses on his property?

11 A Yes, uh-huh, and dogs.

12 Q Now, property number four we have identified
13 that as the Elmer Whitaker property, can you
14 point that out to us?

15 A Right, the Whitaker property encompasses all
16 of this area.

17 Q In fact, it goes all the way out to Paris Pike,
18 doesn't it?

19 A Yes, he does, he goes out to Paris Pike.

20 Q And you have already testified about Mr.
21 Whitaker?

22 A Yes.

23 Q Disinterest, I guess, in this facility?

24 A Yes.

1 Q Let's stop and talk about Mr. Whitaker a little
2 bit more right now. Now, you testified earlier
3 that you spoke to him back in the fall of 1996
4 when you first went out and drove around this area
5 and tried to find a site; is that correct?

6 A Right.

7 Q Has any contact been made with Mr. Whitaker
8 since that time?

9 A Yes. After SBA became involved in the site
10 in the spring of '97, this site was proposed
11 and--

12 Q And by this site you are referring now to the
13 Paris Pike Waffle House site?

14 A This Waffle House, yes, yes, the Paris Pike
15 Waffle House. And then during the interim
16 between that site and Mr. Sweeney coming
17 forward with his site, the site acquisition
18 group with SBA again notified Mr. Whitaker,
19 and we have also notified Mr. Whitaker at the
20 request of the LFUCG hearing and the
21 opposition that we contact him again, which
22 we have. So, he has been contacted at least
23 three to four times and I believe even some
24 of the surrounding residents have tried to

1 contact him.

2 Q Have you spoken with Mr. Elmer Whitaker, the
3 property owner, each time?

4 A No, I've only spoken with Jack Whitaker and
5 his business manager, Wallace Warfield.

6 Q And you contacted Mr. Whitaker or Wallace Warfield
7 as recently as when?

8 A Within the last month and a half.

9 Q Same answer, no thank you?

10 A Exactly.

11 Q There is a facility or tower on Mr.
12 Whitaker's property; is that correct?

13 A Yes, there is.

14 Q And I believe you testified earlier that was
15 a 265 foot tower?

16 A 265 feet.

17 Q Can you find that on the aerial photograph?

18 A Yes.

19 Q I know we had a lot of difficulty doing that?

20 A It is basically back in this area near these
21 buildings. And he used that as a link between his
22 banks at that time.

23 Q Would that facility have worked for Sprint
24 from a radio frequency point of view?

1 A Absolutely. It was in the middle of the
2 search ring.

3 Q And we were prepared to negotiate lease terms
4 for that facility?

5 A Yes, I had even told Mr. Whitaker that we
6 would rebuild the tower if the tower wasn't
7 structurally stable enough, that we would
8 rebuild it at our cost.

9 Q There are advantages, I assume, to Mr.
10 Whitaker's property for a facility like this,
11 what are those advantages?

12 A Well, those advantages are--it's a little bit
13 higher elevation, not a lot of difference,
14 but it is out where you don't have a lot of
15 tree cover. You have a good clear shot to
16 Paris Pike. The height would have been able
17 to be much higher than we have proposed now.
18 And there was already an existing structure
19 which I would think zoning would have been
20 much, much easier.

21 Q Is that--we'll call it the Whitaker tower--
22 visible from Paris Pike?

23 A It is--yes, in a few areas.

24 Q You have to look for it a little bit?

- 1 A Yes, you have to look for it.
- 2 Q Did Sprint make any attempt to determine
3 whether our proposed 180 foot monopole would
4 be visible from Paris Pike?
- 5 A Yes, we do, we actually performed a balloon
6 test. We went out with a few big balloons
7 and tied off 185 feet of fishing line and
8 sent the balloons up and then went to Paris
9 Pike to photograph it and see if we could see
10 the balloons and you couldn't see the
11 balloons where the proposed site was.
- 12 Q Never were able to see it?
- 13 A We never were able to see it, no.
- 14 Q Move on to what we have identified as number
15 6, Northside Baptist Church.
- 16 A Northside Baptist Church is this area right
17 here.
- 18 Q Excuse me, I apologize, I skipped one.
19 Number five, Joseph B. and Jacqueline Murphy,
20 show us that one first.
- 21 A Oh, yes. That's the property located here
22 next to Northside Baptist Church.
- 23 Q That property fronts on Swigert Avenue; is
24 that right?

- 1 A Yes, it does and backs up, also, to the
2 Whitaker farm.
- 3 Q Did you speak to the Murphy's?
- 4 A Yes, I did, I had called them in my initial
5 search.
- 6 Q Were they interested?
- 7 A No.
- 8 Q Is--point now to the Murphy's home on there if you
9 would?
- 10 A Their home is here, it is further off Swigert
11 Avenue more towards the rear of the property
12 which obviously would have been--
- 13 Q Is that the Northside Baptist Church parking
14 lot immediately adjacent to that home?
- 15 A Yes, it is, this is the parking lot and this
16 is the actual structure.
- 17 Q Okay. And we have identified that on this
18 list as number six; is that correct?
- 19 A Yes.
- 20 Q Northside Baptist Church?
- 21 A Yes.
- 22 Q I believe we have already heard your
23 testimony that you contacted them during your
24 initial search back in 19--late 1996--

1 A Uh-huh.

2 Q --and they were not interested at that time?

3 A Yes.

4 Q I'm going to ask you some more questions
5 about the steeple issue in a few minutes, but
6 let's move ahead through this and we will get
7 to that in a little bit. Number seven, Wayne
8 and Virginia Hiler, can you point that out on
9 the map?

10 A Yes, their property runs beside of the church
11 property.

12 Q Did you contact them?

13 A No.

14 Q Why not?

15 A In my initial search trying to find properties
16 that seemed large, their area seems--or their lot
17 seems to be somewhat narrow, so I did not contact
18 them.

19 Q This is a much shallower lot than Mr.
20 Sweeney's, isn't it?

21 A Yes, yes, and their home sits back there
22 close to where their actual pasture land is.

23 Q If a monopole were located on the Hiler's
24 property, would it be within 500 feet of any

1 residences?

2 A Yes, it would.

3 Q More than one?

4 A I'm not sure if it was located here, it would
5 definitely be within the 500 radius here, but
6 I don't see any other homes.

7 Q As far as you can tell, is it within 500 feet
8 of the church and the church parking area?

9 A In the church parking area it is, yes.

10 Q Okay. Number eight, John Paul Miller, show
11 us where that is on the aerial photograph
12 please?

13 A That is here, he has the corner house and
14 property before you make the turn at the end
15 of Swigert.

16 Q Okay. And did you speak with the Millers?

17 A No.

18 Q Would the same basic reasons apply for that
19 that applied on the Hiler property?

20 A Yes, there is--there doesn't seem to be a lot
21 of room and it is kind of a short piece of
22 property that I believe anything would have
23 been visible from Swigert Avenue.

24 Q Both those properties are much, much smaller

1 than Sweeney's, aren't they?

2 A Yes, uh-huh, they get more narrow as you go
3 up Swigert Avenue.

4 Q Narrower and shallower, right?

5 A Narrower--well, not really narrower but
6 shallower, yes.

7 Q Now, number nine looks like a nice big piece
8 of property.

9 A Uh-huh.

10 Q Looks like the search ring carves off a piece of
11 that?

12 A Yes, it does.

13 Q Now, that's D. W. and Alice Scott; is that
14 right?

15 A Yes, it is.

16 Q Let me ask you this, did you get these names
17 --how did you get these names?

18 A I got these names from the tax maps of
19 Property Evaluation Department.

20 Q Did you confirm these with the mail boxes and
21 that sort of thing?

22 A Yes, yes, RFD mail boxes.

23 Q Did you speak with the Scotts?

24 A Yes, I did. Their residence is actually over

1 here on Russell Cave Road.

2 Q So, their property runs--show us how?

3 A From Russell Cave Road, this is southwest, I
4 guess, towards Swigert Avenue, and it is here
5 at Swigert Avenue.

6 Q Okay. So, then, not only this one sort of
7 dark green parcel but the parcel next to it?

8 A Right, exactly.

9 Q And you did speak to them?

10 A Yes, I did.

11 Q And that was early on in the process back in
12 1996?

13 A That was early on in the process, early 1997
14 when I was still looking for something out
15 here.

16 Q And what was their reaction?

17 A They were not interested.

18 Q Number 10, show us number 10, Pillar Stud
19 Farm?

20 A Yes, that is here.

21 Q And it sort of looks like the search ring
22 just carves off the back corner of that?

23 A Just carves off a piece, yes.

24 Q Did you speak with representatives of Pillar Stud

1 Farm?

2 A Yes, I did and they are not interested as
3 well, based on the same reasons that Mr.
4 Whitaker was not interested, they have a
5 horse farm, they have horses there, it is
6 high value.

7 Q And the 24-hour access?

8 A Security, yes.

9 Q Okay. Sit back down and take a break, not
10 from testifying but for your feet. I have
11 some additional photographs I'd like to show
12 you and I apologize, I don't have copies of
13 these, I have only some foam core mounted
14 ones. Let me ask you to hold these up after
15 we get them marked. If you could hold that
16 up for everyone here and identify what we are
17 looking at I'd appreciate it.

18 A These are pictures that I have taken from
19 standing, actually, on Mr. Whitaker's
20 property looking back towards the proposed
21 site. This is looking northeast, standing at
22 the rear of where his residential parcel is
23 looking back at the ten acres and the
24 proposed site over the fence.

1 Q And would that be, Ms. Sturgeon, roughly
2 where the search ring cuts across the back of
3 his property?
4 A Yes.
5 Q In front of his property, I guess?
6 A Uh-huh.
7 Q Looking backward toward the site?
8 A Right, standing more toward the left side at
9 the end of the access road as you are coming
10 off of Swigert Avenue. This is just another
11 view looking northeast as well, just a little
12 bit closer on the opposite side of the fence.
13 This is looking--I'm taking the picture,
14 basically, from here turning around and
15 taking a picture at the back of Mr.
16 Whitaker's residence, as well as--
17 Q Do you mean Mr. Sweeney's?
18 A I mean Mr. Sweeney's residence and Ms.
19 Ellis's residence.
20 Q Ms. Ellis, that is Mr. Sweeney's next door
21 neighbor?
22 A Yes.
23 Q It's one of the two lots that are carved out of
24 the front of his parcel?

1 A Yes, uh-huh.

2 HEARING OFFICER SHAPIRO:

3 Was that from the site itself?

4 MR. DOBBINS:

5 It's on site, actually on the site
6 itself. I move to admit these all as a
7 group when we get finished, if that is
8 all right, give everybody a chance to
9 take a look.

10 Q Ms. Sturgeon, I'm now handing you some
11 additional photographs that have been marked
12 as Applicant's Exhibit Number 9, could you
13 identify for the record and for the people
14 that are here what those photographs are?

15 A Okay. This is also standing by Mr. Sweeney's
16 property just on the residence side of the
17 fence where the ten acres are here, behind.
18 And I'm looking north northwest towards the
19 Murphy house. This is the Murphy residence.

20 Q The Murphy residence, again, is right here on
21 the parcel we have identified as number five
22 on the aerial photograph; is that right?

23 A Yes.

24 Q And that house is the one that is right next to

1 the Northside Baptist Church?

2 A Yes, and you can see that it is closer
3 towards the rear of these properties, it is
4 visible from his pasture.

5 Q Okay.

6 A The next picture is taken, actually, from the
7 site looking southwest towards Mr. Sweeney's
8 house, looking up towards his barn. And the
9 following picture is just another picture
10 taken, basically, the same area as the first
11 picture was, only on the back side of the
12 fence where you can actually see the
13 Northside Baptist Church in the photograph,
14 as well as the Murphy home.

15 Q I'm handing you another photograph and I'll
16 ask you to identify this, it has been marked
17 as Applicant's Exhibit Number 10?

18 A This is a picture taken from kind of hanging
19 over the fence of Mr. Sweeney's property as
20 it adjoins Ms. Whalen's property and looking
21 back towards the site that you can kind of
22 make out there towards the rear.

23 Q That was actually--

24 A There is a little bit of a tree buffer there

1 about a third of the way down that property
2 line.

3 Q I'm sorry, that was actually taken from Mr.
4 Sweeney's property; is that correct? You are
5 standing on it--

6 A Yes, right.

7 Q --shooting down the line towards the site?

8 A Towards the site, looking towards where the
9 site is located.

10 Q Can you see the site location from that
11 picture?

12 A Yes, it is right there in the corner.

13 Q Right in the corner?

14 A Uh-huh.

15 Q Okay.

16 A A little bit.

17 Q I'm handing you another set of photographs
18 that have been marked as Applicant's Exhibit
19 Number 11 and I'd like to ask you to identify
20 those please?

21 A This top picture is a picture of the
22 Northside Baptist Church taken from Swigert
23 Avenue looking directly at the church. This
24 picture is taken from the rear of Northside

1 Baptist Church in their parking lot looking
2 southwest towards Swigert Avenue. So, this
3 is the rear of their parking lot in the rear
4 of the church. And this photograph is taken
5 from Swigert Avenue looking towards the
6 Northside Baptist Church, as well as the
7 Murphy property from Swigert Avenue.

8 Q Can you see both the church and the Murphy house
9 in those pictures?

10 A Yes.

11 MR. DOBBINS:

12 I'd move to admit all of those Your
13 Honor.

14 HEARING OFFICER SHAPIRO:

15 What about the--

16 MR. DOBBINS:

17 Six through 11, I think we need to get
18 back to number six, I move to admit all
19 of those.

20 HEARING OFFICER SHAPIRO:

21 Any objections?

22 MS. JONES:

23 No.

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HEARING OFFICER SHAPIRO:

So ordered.

(EXHIBITS SO MARKED: Applicant Exhibits
Numbered 6 through 11)

Q Let's talk about the Northside Baptist Church a little bit. You have heard a number of questions asked about the Northside Baptist Church, particularly by Ms. Whalen and about whether it would be possible to construct a steeple at that church to hold the antennas?

A Yes.

Q You also heard Mr. Craven's testimony about the proposed or prospective cost of that sort of a structure. Have you done any independent investigation as to whether something like that is what we would consider a feasible alternative for this particular site?

A Yes, I did. We looked in, obviously, to the structural steel cost, an actual prayer tower that would hold at least three carriers. We wouldn't want to propose anything that--only one carrier, obviously, in this area. You wouldn't want another carrier coming along

1 and proposing another site, so we would try
2 to build it for three carriers.

3 Q Let me interrupt you for just a second, too.

4 A Okay.

5 Q The monopole that we have proposed will be
6 able to accommodate how many carriers?

7 A Three. So, the prayer tower, obviously,
8 would need to fit that as well. We did look
9 into those costs with the help of Mr.
10 Cravens' company and, also, some past
11 experience with Sprint. I had Sprint try to
12 check on a prayer tower that Ms. Whalen had
13 seen up in Massachusetts, I believe, and we
14 couldn't find that exact tower. I called the
15 name and number of the person that I had been
16 given as a reference for that site, and he
17 said that the person that he worked with was
18 from--was long gone, much like we all were
19 after the first phase was built out. So,
20 those people were no longer there. In
21 checking with Sprint currently in Atlanta
22 they sent a request out over the e-mail, has
23 anyone done a steeple, blah, blah, blah.
24 Some of the information came back, no

1 steeples were constructed or no prayer towers
2 were constructed from the ground up by Sprint
3 anywhere. However, a couple of MTAs had
4 added steeple structures on the top of
5 existing prayer towers or steeples to raise
6 the height of the steeples and those costs
7 were well into the hundreds of thousands.
8 One, I think, added only about 25 feet and it
9 was, I think the latest cost on that was like
10 \$91,000 just to add 25 feet.

11 Q To an existing prayer tower and steeple?

12 A To an existing structure, yes.

13 Q You heard Mr. Craven's testimony that
14 building this sort of structure would fall
15 within 500 to 600 thousand dollar range?

16 A Right.

17 Q Do you have any reason to think that that is
18 not accurate?

19 A No, that sounds about accurate.

20 Q And a question was posed to Mr. Cravens, I
21 think, by Ms. Dougherty, about how that cost
22 would compare to the cost of construction of
23 a 180 foot monopole, did you hear that
24 question?

1 A Yes.

2 Q Can you tell us how it would compare, what
3 the cost of constructing a monopole such as
4 that which we have proposed would be?

5 A Well, a monopole for a three carrier site,
6 just the monopole itself, is in the
7 neighborhood of around 60 to 80 thousand
8 dollars and then you have the cost of the
9 access road.

10 Q Which--

11 A To which still would make it maybe \$120,000
12 site, at the most.

13 Q So, we are talking about roughly five times that?

14 A Yes, difference.

15 Q That's expensive?

16 A Yes.

17 Q In your opinion, as a site acquisition
18 specialist, based upon what you know of the
19 Northside Baptist Church and the probable
20 costs of constructing a facility there
21 sufficient to serve as a substitute for the
22 monopole that we proposed, is that a
23 reasonable or feasible alternative?

24 A No, it's not reasonable or feasible from our

1 standpoint.

2 Q From a cost standpoint?

3 A Yes, from a cost standpoint.

4 Q Have you heard any objections from anyone,
5 from any neighbors or anyone else, about the
6 possibility of constructing the facility at
7 the Northside Baptist Church?

8 A Yes, at the LFUCG hearing there was some
9 concern raised about building a prayer tower
10 of this height and of this magnitude because
11 the structure itself would be so large. Like
12 Mr. Cravens testified, it is roughly a 20 by
13 20 foot base and it would have to be straight
14 up to the height that Sprint would need to
15 locate their antennas, which would put it at
16 about 180 or 185 feet before you put the
17 steeple on top of it, which would probably
18 make it in excess of at least 200 feet or
19 greater. And there were some questions about
20 the size and how that structure would look at
21 the last hearing.

22 Q I'm handing you what has been identified and
23 entered as Applicant's Exhibit Number 11,
24 which actually is the series of photographs

1 of the Northside Baptist Church. Can you
2 state for the record or tell us for the
3 record how, approximately, how tall that
4 church is?

5 A It is a two story church, my guess was I
6 usually allow about 12 feet for each story
7 and then you have got a little bit of a pitch
8 roof, my guess would be maybe 28 feet.

9 Q So, we have got 28 feet high--

10 A 30 feet, 30.

11 Q --church.

12 A Uh-huh.

13 Q And the kind of prayer tower and steeple
14 facility that we would need would be,
15 roughly, eight or nine times taller than the
16 church?

17 A Times the height of the church, yes. And
18 then you would have the actual size of the
19 prayer tower itself wouldn't fit here
20 adjacent to or next to the church. It would
21 either have to removed a portion of the
22 church, you can't put it in the front yard,
23 because you have to have a compound to hold
24 the carriers. And if you build it strong

1 enough for three carriers you have got,
2 roughly, a minimum, of the 60 by 80 foot
3 compound. So, the only place that a prayer
4 tower that size would be able to be built
5 would probably be in the field on the church
6 property on the other side of their drive.

7 Q And if you built the prayer tower in the
8 field on the other side of the church drive,
9 you would be over here next to property
10 number seven, who was Mr. and Mrs. Hiler; is
11 that correct?

12 A Yes.

13 Q If you move the prayer tower to the rear of
14 the church, you'd be right next to Mr. and
15 Mrs. Murphy's home; is that correct?

16 A Yes.

17 Q And, again, are these residences right across
18 Swigert Avenue from the church?

19 A Yes, they are.

20 Q I believe Mr. and Mrs. Good may live in one
21 of these residences; is that correct?

22 A Yes, they do.

23 Q And they are here today?

24 A Yes.

1 Q In your opinion, then, based upon all you
2 know about the Northside Baptist Church, the
3 cost of building a facility there where you
4 would have to locate the facility, the size
5 of the facility, it's proximity to the
6 Hiler's and/or the Murphy's, and possibly
7 even the residences on the other side of
8 Swigert Avenue, how does that compare to the
9 proposed site on the Sweeney farm?

10 A I look at it as an inferior site because of
11 the proximity to Swigert Avenue. It is
12 closer to Swigert Avenue than the rear of Mr.
13 Sweeney's property, and the size of the
14 prayer tower would be so large it would
15 probably resemble the Washington monument
16 from Swigert Avenue it would be so large.

17 Q Is it closer as well to residences?

18 A Yes, it is.

19 Q Is it even--is the comparison between the two
20 sites even close in your mind?

21 A Not to me, no.

22 Q There has been some testimony about the
23 decision to move from what we have been
24 calling the initial site, the Waffle House

1 site,--

2 A Uh-huh.

3 Q --to the proposed site, the Sweeney site?

4 A Yes.

5 Q Let's elaborate on that a little bit. Mrs.

6 Dougherty asked Mr. Fiebel some questions

7 earlier and you were here during his

8 testimony weren't you?

9 A Yes.

10 Q About whether the search ring had ever moved, do

11 you remember those questions?

12 A Yes, I do.

13 Q Has this search ring ever moved?

14 A No, the search ring itself has never moved.

15 Q But the initial site was outside the search

16 ring; is that correct?

17 A Yes, it was and it was proposed at a time

18 when, as Mr. Feibel also stated, that

19 surrounding sites were not yet solidified,

20 leases not entered into or built as of yet.

21 Q And he testified that those, what I will call

22 radio frequency issues, had something to do

23 with Sprint's ability to move from that

24 initial site back to the Sweeney site; is

1 that correct?

2 A Yes.

3 Q And, again, I think you testified earlier,
4 and let me ask you again, were there some
5 non-radio frequency issues that caused Sprint
6 to move from the initial site back to the
7 Sweeney site?

8 A Yes, because of the opposition from LFUCG as
9 well as local residents, Paris Pike
10 Historical Committee.

11 Q When you couple those radio frequency issues
12 with the, what we will call, the site issues
13 you just mentioned,--

14 A Uh-huh.

15 Q --how do you compare the initial site to the
16 proposed Sweeney site?

17 A Well, the initial site having that much
18 opposition and setting right on Paris Pike,
19 as the proposed site now with much less
20 opposition, back off Paris Pike where you
21 can't see the proposed tower, I believe it is
22 a much better site. You know, we were glad
23 to have it offered.

24 Q And you--when you first received the offer to

1 move to--to evaluate Mr. Sweeney's site, were
2 you involved with that evaluation?

3 A Yes.

4 Q And when you got to his site and took a look at it
5 and weighed all the things that a site acquisition
6 specialist weighs in making a decision, what was
7 your attitude about that site compared to the
8 initial site?

9 A My attitude of that site as compared to the
10 initial site was I was much more optimistic
11 about this site, the proposed site than the
12 initial site. It seemed to meet the criteria
13 that was largely raised during the meetings
14 and the opposition that we had met, that
15 criteria, we had gotten off of Paris Pike, we
16 had found tree buffers, we were not close to
17 that many residences. So, from a property
18 specialist standpoint, it met a lot of the
19 criteria.

20 Q Now, you still have some opposition to this
21 site--

22 A Yes, yes.

23 Q --or, obviously, we wouldn't be here, right?

24 A Yes.

1 Q Compared to the initial site, do we have more or
2 less people opposed to this site?
3 A We have less people opposed to this site than the
4 initial site.

5 Q You participated in a lot of what we will
6 call new builds or construction of new
7 facilities, how often do you build a new site
8 or propose building a new site that you get
9 no opposition at all?

10 A Quite a bit.

11 Q Do you?

12 A Yes. Some, yes, it just kind of depends
13 where. We haven't built that many new sites,
14 I haven't really been to that many hearings
15 for a proposed new build. We are usually
16 fortunate enough to find a collocation in the
17 search ring back--when you can't make them
18 invisible.

19 Q Okay. And I think you testified that in the
20 Lexington area you have only had to build
21 about five new facilities; is that right?

22 A Three in Fayette County, five if you include
23 the Scott County and the Jessamine County
24 sites. And those are all on the outside of

1 the freeways as well, they set outside either
2 71 or 75 and, obviously, way outside New
3 Circle Road.

4 Q Now, were you at the Lexington-Fayette Urban
5 County Government Planning Commission
6 meetings concerning this proposed site, the
7 Sweeney site?

8 A The meetings or the hearings?

9 Q I'm talking about the actual Planning
10 Commission meetings when we went in and
11 sought approval for this proposed site?

12 A On this proposed site, yes, I was.

13 Q Are you familiar with the reasons for LFUCG's
14 denial of the site?

15 A Yes.

16 Q I understand that one reason, or primary--perhaps
17 the primary and maybe only reason was the
18 proximity of the site to adjoining residential
19 uses?

20 A Right.

21 Q Is there another site within the search ring
22 that would not run afoul of that same
23 problem?

24 A No, they would all--they would all be located

1 adjacent to a residential property.

2 Q I believe you have already testified that the
3 site itself, the monopole itself, is not
4 within the fall zone of a residence; is that
5 right?

6 A Right.

7 Q Nor is a residence within a 500 foot radius;
8 is that correct?

9 A Right. But it adjoins where a residence is
10 located but far enough away not to be within
11 the fall zone.

12 Q I believe you testified that the Lexington--
13 excuse me, the Paris Pike Historical Council
14 or commission was opposed to the initial
15 site. Have we heard any opposition from them
16 concerning the proposed site?

17 A No.

18 Q Is there another site anywhere within this
19 search ring that you think is a better site
20 than Mr. Sweeney's site?

21 A No.

22 Q Other than the Whitaker tower, I suppose?

23 A Other than the Whitaker tower.

24 Q Which I think you testified was not available.

1 A But that is not available, so that is not a
2 candidate.

3 MR. DOBBINS:

4 I tender the witness for cross Your
5 Honor.

6
7 CROSS EXAMINATION

8 BY MS. JONES:

9 Q Ms. Sturgeon, I have several questions for you.
10 I'm going to try to put them in some type of an
11 order, but I think we all understand now that this
12 search ring was the ring that was in place
13 initially?

14 A Right.

15 Q And you said back in 1996 you went out and looked,
16 actually drove this search ring?

17 A Yes.

18 Q We have got this list of properties that are
19 within this search ring, do you know is that list
20 exhausted, are there other properties in the
21 search ring or is this list all of them?

22 A As far as I know, that list comprises all of
23 the residents, all the properties.

24 Q Okay. And so, when you went out and looked

1 at those and you approached the ones that you
2 told us about today,--

3 A Uh-huh.

4 Q --is it your testimony that you decided at
5 that point that that area was going to be a
6 problem and that is why you all called SBA?

7 A Yes.

8 Q Okay. Now, at the time that SBA came into
9 this, were you still employed by Sprint or
10 were you employed by SBA?

11 A I was employed by Sprint until I was laid off
12 in March.

13 Q And the timing on this, I'm just trying to
14 get straight, when--in November of '96 is
15 when you first started looking at--

16 A Yes.

17 Q --the search ring which includes the Swigert Road
18 area?

19 A Right.

20 Q At what point did--well, you indicated at
21 some point most of the build-out had taken
22 place for Sprint and that's why you were laid
23 off?

24 A Yes.

- 1 Q At what point was that as far as date?
- 2 A That was between January and March of '98.
- 3 Q Okay. You say between--so, at that point was
- 4 this, say, the final site in this building
- 5 area for you alls grid?
- 6 A Yes.
- 7 Q Okay.
- 8 A All the other sites surrounding this and all
- 9 the sites within Lexington had been leased at
- 10 that point.
- 11 Q Okay. So, when SBA came in it was after that?
- 12 A Yes.
- 13 Q Okay. When they came in and they were
- 14 looking, you shared with them your
- 15 information about what you found on the
- 16 Swigert Road area?
- 17 A Yes.
- 18 Q When they came in some time in 1998 they went
- 19 outside the search ring to the Waffle House
- 20 area?
- 21 A Yes, and their reason for doing that was
- 22 based on my previous findings and my
- 23 conversations with land owners at that point.
- 24 They wanted to see if they could propose a

1 site that may pass zoning, so they went to
2 the commercial.

3 Q Did you all anticipate at that point, since
4 the other towers were already or the other
5 structures were either collocated or already
6 built--

7 A Well, they were leased. Now, I'm not saying
8 that they were built, I don't think there
9 were some sites in Lexington that had been
10 built but when SBA came I was still an
11 employee of Sprint and I remained an employee
12 of Sprint--wait a minute, it was '96, we gave
13 that to them in '97. Now, when I was laid
14 off in '98 the sites were probably, I'm sure
15 all of them were leased at that point in '98.
16 In '97 when SBA came in, February or March of
17 '97 is when they started proposing the Waffle
18 House. The actual sites in Lexington at that
19 point had not been solidified as of yet.
20 Another property specialist and I continued
21 to work on those sites while SBA handled this
22 and some other sites. We continued to work
23 on those sites, so they were still fluid at
24 that point.

1 Q In '97?

2 A Yes, up through the next year.

3 Q Now, when you all started looking at the
4 Waffle House site, did that anticipate--I
5 think Mr. Feibel told us that that
6 anticipated possibly another tower further
7 out somewhere?

8 A It would have if something would have been
9 proposed and agreed to, leased and zoned.

10 Q Let me ask you this question, if Mr. Sweeney
11 hadn't offered this property to you after you
12 all looked at the opposition on the Waffle
13 House site, do you have any idea what your
14 plans were as far as how you were going to
15 proceed in this area?

16 A No. We would have continued to look and
17 probably gone back to our initial search ring
18 again. Sometimes property owners change, you
19 don't know what happens, you know, within a
20 search ring over a given period of a year.

21 Q What would happen if you had dropped the site
22 at the Waffle House and gone back to this
23 search ring and contacted the owners that you
24 didn't approach initially and the owners you

1 did approach initially and the answers that
2 you got were still no? In those type of
3 situations, if there is nothing in your
4 search ring available, what does Sprint do?
5 A We usually try to choose a site much like the
6 Sweeney property or another site and just
7 propose it and we end up here discussing it.
8 Q I just want to make sure I'm understanding
9 that when you went to Swigert Road initially
10 because of the fact that no one seemed really
11 interested that you talked to, is that why--
12 that's why SBA got involved in the site down
13 at the Waffle House started becoming a--
14 A There were only two property specialist,
15 there was another property specialist and
16 myself that were handling all of Lexington.
17 I knew this was going to take a lot of time
18 given where it was and the possible number of
19 meetings and what have you, we were working
20 on other Lexington sites, as well, that we
21 were trying to meet within a given time
22 period. So, I passed that one off.
23 Q And part of the reason that you did that was
24 because there was just not any interest being

1 expressed in the area that you were looking at?

2 A Right.

3 Q Is--you have referred to the Ellis property today,
4 is that property within the search ring or not?

5 A The Ellis property, I don't believe she is in the
6 actual search ring.

7 Q How does she relate to Mr. Sweeney's
8 property?

9 A She is next door.

10 Q Where is she, you can either show us on the
11 aerial or on this vicinity map whichever
12 would be easier for you. I'm just having a
13 hard time.

14 A Her house is right there. This is Sweeney's
15 brick house and she is right there.

16 Q Okay. So, actually, if you are looking at
17 that area, Mr. Sweeney's actual residence
18 isn't in the search ring either, it is just
19 his property, his lot?

20 A Correct, yes.

21 Q Do you--are--we have a listing of information
22 we asked for about what addresses fell in
23 this search ring and there are some
24 individuals listed here that are not on the

1 list that you have today and I just wanted to
2 ask you about those. Are the Edith Fisher
3 and Charlene Lynch, are those houses that you
4 ever looked at or approached, to your
5 knowledge, that were in the search ring?

6 A I don't recall those names.

7 Q Okay. What about the Balltrips?

8 A I don't recall that name either.

9 Q And was there an entity on Russell Cave Road
10 called Gold Bow, Limited, did you ever talk
11 to anyone there?

12 A No, I didn't. There is--I did see their
13 property but I didn't talk to anyone there.
14 I believe that is a portion of a horse farm
15 as well. And in looking at the tax records
16 it looks like it is affiliated with the
17 Pillar Stud Farm.

18 Q Okay. And you did talk to them?

19 A Yes, I did.

20 Q Is it a fair statement to say that after you
21 identified your initial search ring on
22 Swigert and you made some approaches to
23 people there and received responses that were
24 negative, that you believed at that time that

1 it would be more viable to go outside your
2 search ring and look at a different site and
3 that is why you all went to the Waffle House
4 site?
5 A SBA felt that it would be better to propose a
6 site in a commercial use zone.
7 Q And if that site had gone through, then there
8 would have been a site, even though it was
9 outside your search ring, that would have
10 been meeting with the radio frequency
11 requirements to some degree that you all
12 needed to provide the service that you hoped
13 to provide?
14 A That would be a question for Oliver, but from
15 my perspective, we were outside the search
16 ring at that time. As Oliver explained, some
17 of these surrounding sites were fluid. It
18 would have met the objective there but,
19 however, in the long term range I believe to
20 cover Fayette County there would have
21 inevitably been another site proposed on out
22 Paris Pike. But I'm a property specialist, I
23 don't make those decisions.
24

1 MS. JONES:

2 I don't think we have anything else.

3 HEARING OFFICER SHAPIRO:

4 Mr. Brock?

5 MR. BROCK:

6 Yes, sir, let's see.

7

8

CROSS EXAMINATION

9 BY MR. BROCK:

10 Q You said there was opposition to the Waffle House
11 location by the Lexington-Fayette Urban County
12 Government; is that correct?

13 A Yes, sir.

14 Q And, of course, that is the same today?

15 A Yes, sir.

16 Q The big difference is you have more residents
17 close to the Waffle House than you have on
18 Swigert Avenue, is that a fair statement?

19 A Yes, sir.

20 Q And so, you figure it is a little bit easier
21 to, possibly, get this matter approved over
22 the objection of three or four people as
23 opposed to however many showed up at the
24 other one, which I suppose was a dozen or

1 more; is that right?

2 A Yes, sir.

3 Q Can you sit here and tell me that that
4 monopole in that bucolic setting is going to
5 be an addition to that neighborhood? I mean,
6 that thing is going to be ugly, isn't it,
7 stuck out in all those fields.

8 A From a property specialist standpoint?

9 Q You have shown all these beautiful pictures of
10 this landscape and you want to stick this big 180
11 foot obelisk or monopole up in the middle of the
12 country side. That only benefits Sprint, right,
13 and Mr. Sweeney, I suppose?

14 MR. DOBBINS:

15 I object, Your Honor. The FCC requires
16 us to do this.

17 HEARING OFFICER SHAPIRO:

18 Well, that's kind of argumentative.

19 Q Okay. Are aesthetics shown consideration in your
20 site selection?

21 A Yes, sir.

22 Q Would it be fair to say that is why you see
23 if you can collocate?

24 A Yes, sir.

1 Q I mean, that is the first thing you really try to
2 do?

3 A From aesthetics, but also costing and ease of
4 building a site, yes.

5 Q Assuming this site is granted in this
6 particular search ring, you don't have to
7 redraw this thing, will you allow others to
8 collocate on this tower?

9 A Yes, sir. It is built capable to hold three.

10 Q Who gets that money? Does Mr. Sweeney get that
11 money or do you get that money?

12 A Should I answer proprietary information?

13 MR. DOBBINS:

14 I don't think it is relevant, Your
15 Honor, frankly.

16 MR. BROCK:

17 It's a fair question, it is all about
18 money.

19 HEARING OFFICER SHAPIRO:

20 Well, what is the relevance of it?

21 MR. BROCK:

22 Well, the relevancy is that somebody is
23 profiting from this in our back yard and
24 we'd like you--

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MR. DOBBINS:

Your Honor, we will stipulate that our--

HEARING OFFICER SHAPIRO:

Wait a minute--let him finish. Go ahead.

MR. BROCK:

Yes, I just would like to know what the economics of this deal were. This thing possibly would have worked at the Waffle House and maybe could go back to the Waffle House. That's not out of the realm of probability.

HEARING OFFICER SHAPIRO:

Well, the issue, of course, is whether there is a more appropriate site.

MR. BROCK:

Right, and this--

HEARING OFFICER SHAPIRO:

They--I mean, the economics of it that doesn't--the economics of it doesn't affect that issue. I mean, I assume that they build a tower at the Waffle House, they are going to also build it to hold three towers because, you are

1 right, the economics--I would assume
2 that they could get some of their
3 investment back by leasing space on it,
4 they are going to try to do it and it is
5 also consistent with Commission policy
6 that you build these towers so that they
7 do accommodate other carriers. Of
8 course, the Commission is also trying to
9 reduce the number of carriers--number of
10 towers and facilities that are out
11 there. So, to that extent, and I don't
12 think they are doing anything that the
13 Commission would look upon with
14 disapproval. I mean, if it is a 180
15 feet it will still be--if it wasn't 180
16 feet it might still be 150 or 160 feet,
17 it is still going to stick up in the
18 air. So, I don't see what--I don't see
19 how that is relevant as to whether or
20 not there is a more appropriate site
21 than this location.

22 Q If a site was not granted within this search
23 ring, what would you do?

24 A That would be a decision left up to Sprint

1 PCS.

2 Q You mentioned something about if a section goes
3 down that is why you have to have 24 hour access
4 to a lot, how many sections are you aware of that
5 have gone down since your association with Sprint?

6 A After the property is acquired I'm not kept
7 abreast of the actual operations of the
8 sectors or the equipment.

9 Q Well, do you have any--have there been any
10 actual towers even gone down?

11 A I mean, the service gone down?

12 Q Collapsed, no, I mean collapsed, I know you
13 have service calls.

14 A Oh, no, I have never heard of a tower going
15 down.

16 Q No structure to your knowledge?

17 A No, sir. Actually, there were some pictures
18 printed over the Internet that I was able to
19 look at once during the Oklahoma tornado, and
20 there were some structures still standing in
21 the Oklahoma tornado.

22 MR. BROCK:

23 That's all the questions I have.

24

1 HEARING OFFICER SHAPIRO:

2 Ms. Whalen? Well, let me ask Mr. Good? Ms.
3 Whalen?

4

5

CROSS EXAMINATION

6 BY MS. WHALEN:

7 Q Ms. Sturgeon, you said that 84% of your towers are
8 collocations?

9 A 80 to 84 in the Lexington area.

10 Q In the Lexington area?

11 A Yes, ma'am.

12 Q So, you were able to piggy back on--in 84% of
13 the sites?

14 A Yes.

15 Q Of existing towers?

16 A Yes, ma'am.

17 Q So, do you have any idea what the average
18 monopole tower costs?

19 A The average monopole tower, and I'm not in
20 construction so I'm merely estimating, but I
21 believe it is anywhere between \$60,000 and
22 \$80,000, but it depends on the height as well. It
23 depends--there are different circumstances that
24 have to be taken into consideration like the

1 soils. There is a phase one environmental soil
2 boring test. On some structures you may have to
3 go down an additional 15 to 20 feet before you hit
4 rock, so there is a lot of circumstances.

5 Q Plus access roads like you mentioned?

6 A Access roads, a lot of things enter
7 consideration, yes, clearing an area, you
8 know.

9 Q So, it could be a \$100,000 to \$150,000 per
10 site?

11 A If it were maybe a 250 foot lattice, but I
12 don't know if a monopole would end up being
13 quite that much.

14 Q Again, I'm trying to push for the church
15 steeple.

16 A Well, let's talk about that.

17 Q Although a 180 foot steeple is out of the
18 question, it would appear to be the
19 Washington Monument.

20 A It is big.

21 Q So, we would have to go, to make it
22 reasonable, we would have to go to a 120 foot
23 on several churches.

24 A Yes.

1 Q But my thought is if in 84% of the cases you are
2 not paying construction costs.

3 A Uh-huh.

4 Q That, and I know the cost of the steeples are
5 of concern to Sprint, I guess--

6 HEARING OFFICER SHAPIRO:

7 Well, what is the question?

8 Q Well, I guess my question is that should the cost
9 be that much of a concern if you have saved in 84%
10 of your sites you have no construction cost,
11 wouldn't that compensate for putting a church on a
12 steeple in 16% of the cases.

13 A Sprint doesn't start out with a dollar figure
14 allowing it to build a structure in each
15 case. As Oliver was saying, when a network
16 is planned they have identified most of the,
17 hopefully, collocations, rooftops in
18 Lexington, you have a lot of rooftops, you
19 have a lot of structures, radio towers that
20 are located around here, so the network is
21 planned around those collocations. From, as
22 I believe is true, from that initial plan and
23 network design, a budget of sort, I would
24 assume, to receive a purchase order or a

1 purchase acquisition is planned, generally,
2 to pay for this MTA to have this amount of
3 money allocated to build out this area of the
4 network to encompass Lexington. So, in the
5 Lexington area there were very, very many
6 collocations already identified. So, to
7 come back in this area and build another five
8 sites, that would involve a structure, that
9 would involve soils boring test that you
10 don't have on a collocation, to involve phase
11 one environmental that you don't have on a
12 collocation, surveys, site plans, engineering
13 cost, access roads and the additional
14 equipment. Each site has to have a BTS unit
15 along with all the other equipment involved
16 in putting up a cell site. It would be a
17 significant increase to give this area
18 another three to five cell sites that it
19 didn't already have planned.

20 Q Okay. Does Sprint SBA do they--they must
21 have a pool of money to cover such unexpected
22 expenses?

23 A I don't know.

24 Q Or extended expenses?

1 A I don't know what Sprints is, I can't speak
2 on behalf of Sprint, but on behalf of SBA
3 there is a budget put together to build in
4 this area a certain height monopole to a
5 given height.

6 Q Were you aware that the Joyland Neighborhood
7 Association has gone on record with its
8 opposition to the pole on Sweeney's property?

9 A Yes, ma'am.

10 Q Okay, you are aware of that?

11 A Yes.

12 Q So, you are aware that the 80 people or so
13 who opposed the Waffle House site also have
14 reaffirmed their opposition to the Sweeney
15 site?

16 MR. DOBBINS:

17 I object, Your Honor. I don't think we
18 have any indication of that whatsoever.

19 HEARING OFFICER SHAPIRO:

20 We have some testimony from the witness
21 on that.

22 MR. DOBBINS:

23 Not that 80--

24

1 HEARING OFFICER SHAPIRO:

2 Yes, she said 80--

3 MR. DOBBINS:

4 This witness?

5 HEARING OFFICER SHAPIRO:

6 Yes.

7 MR. DOBBINS:

8 No, this witness testified--wait just a
9 second.

10 HEARING OFFICER SHAPIRO:

11 She said they had 80 letters.

12 MR. DOBBINS:

13 Opposed--80 letters on the original
14 site.

15 A On the original site.

16 MR. BROCK:

17 She is now asking if we are aware that
18 just that many people again--

19 HEARING OFFICER SHAPIRO:

20 Well--

21 MS. WHALEN:

22 That those same people--

23 HEARING OFFICER SHAPIRO:

24 I'm going to overrule the objection,

1 let's go on, let her answer the
2 question.

3 Q Are you aware that those same people and the
4 Joyland Neighborhood Association are opposed to
5 the construction of the monopole on the Sweeney
6 site?

7 A I have not been made aware of letters from
8 residents, 80, I believe there is a letter,
9 correct me if I'm wrong--

10 HEARING OFFICER SHAPIRO:

11 Well, the question is are you aware that
12 the same people oppose--do you know
13 whether the same people who opposed the
14 Paris Pike site or the Waffle House site
15 also oppose this site?

16 A No, not those people.

17 HEARING OFFICER SHAPIRO:

18 Are you aware of that or do you know
19 that, do you know whether it is true or
20 not?

21 A I don't know if it is true.

22 HEARING OFFICER SHAPIRO:

23 She doesn't know. Next question.

24

1 MS. WHALEN:

2 Can I present something?

3 HEARING OFFICER SHAPIRO:

4 No, not at this point. You will have an
5 opportunity later.

6 Q All right. The historical committee, when
7 they said that, and you used the term several
8 times, get it off Paris Pike, okay, when they
9 instructed, you know, to do so, what was the
10 basis for their getting it off Paris Pike?

11 A They didn't want to be able to see it from
12 Paris Pike.

13 Q Was it the aesthetics?

14 A Yes, it was setting right on Paris Pike in
15 that commercial area.

16 Q Because they are trying to preserve--

17 A In the opposition that was proposed.

18 Q Okay. They are trying to preserve the
19 historical nature of that area and,
20 therefore, they wanted you to remove it?

21 A The committee, as I know it, I've gone up and
22 looked at their map, but it has been quite a
23 while since I've seen it, they actually have
24 an area that they represent, if you will, up

1 and down Paris Pike, yes.

2 Q Right. They are watch dogs for any--

3 A And they wanted us to remove it from that
4 area.

5 MS. WHALEN:

6 Right. Okay, I've no questions.

7 HEARING OFFICER SHAPIRO:

8 Ms. Thompson?

9 MS. THOMPSON:

10 Mr. Shapiro, can I, as a non-lawyer, can I make an
11 objection to anything before I begin asking
12 questions because it is relevant to the map?

13 HEARING OFFICER SHAPIRO:

14 What is the objection?

15 MS. THOMPSON:

16 I object to this map.

17 HEARING OFFICER SHAPIRO:

18 Why?

19 MS. THOMPSON:

20 Because Sprint's using this map to support their
21 assertion that the tower proposed for Swigert
22 would be no less offensive, or less offensive than
23 the tower on Mr. Whitaker's property. But the
24 point of view that this photograph was taken

1 dramatically foreshortens the background of this--
2 of these properties, which I have walked and
3 ridden horses on and everything else. When you
4 get back into Mr. Whitaker's property it is much
5 deeper than this picture indicates because this is
6 taken from the south looking north and so the
7 paddocks in the rear are squashed flat by a
8 perspective. It is not an accurate map in terms
9 of actual footage or mileage. So, I can tell you
10 that the Whitaker tower is back considerably
11 further visually than the tower at the rear of
12 Sweeney's property. And it doesn't appear so.

13 HEARING OFFICER SHAPIRO:

14 Well, why don't you say that, instead of objecting
15 to it why don't you just point that out when you
16 make your statement.

17 MS. THOMPSON:

18 Okay.

19

20

CROSS EXAMINATION

21 BY MS. THOMPSON:

22 Q I'm going to go way back. Mr. Fiber, what was his
23 name?

24 A Fiebel.

1 Q Fiebel, sorry, Mr. Fiebel pointed out that
2 the need for this monopole had to do with
3 expanding north toward Bourbon County and out
4 Paris Pike further and the need for it from
5 the--and he mentioned the country club and,
6 you know, the people that use cell phones
7 there and so forth. I would like to know,
8 since you are the telecommunications person
9 and site adventurer out there doing all that
10 work, have you driven down Paris Pike to
11 Bourbon County?

12 A No, not all the way to Bourbon County, I
13 don't think I have.

14 Q So, you would have no way of knowing how
15 sparsely populated that really is?

16 A No.

17 Q Would you say that from your experience,
18 however far you have gone on it, that it
19 becomes less and less populated from the
20 Lexington Country Club north towards Bourbon
21 County?

22 A I haven't driven on the side roads off of
23 Paris Pike.

24 Q No, this is main Paris Pike.

1 A Oh, main Paris Pike, it looks like big farms
2 and there is a riding stable place, yes.

3 Q Which is not a resident?

4 A That is about as far as I've gone.

5 Q So, I mean, my question is, who is actually
6 going to benefit from the use of this
7 expanded service?

8 A That's not directly related--

9 Q In a very slightly populated area?

10 A That's not directly related to me, that would
11 be Sprint. I'm the property--

12 MR. DOBBINS:

13 That is more along the lines of the
14 radio frequency testimony, Your Honor.

15 HEARING OFFICER SHAPIRO:

16 Just if you know.

17 A I don't know.

18 Q And, also, going back just a little way, I
19 asked the previous witness, previous two, you
20 and the--let's see, I forget his name again.

21 A Feibel.

22 Q I'm so sorry, Mr. Feibel, where in Lexington
23 have, precisely, the other cell towers been
24 built which have in the last two years filled

1 this grid which the tower proposed for our
2 street is supposed to complete?

3 A There is one, let's see, I guess that is
4 going south on 75.

5 MR. DOBBINS:

6 Let me just say one thing, just a very
7 minor objection, just to clear up the
8 record. It wasn't just the towers that
9 were built, it was all the towers--it
10 was all the facilities that have been
11 located whether on new towers or as
12 collocations. I believe that was Mr.
13 Fiebel's testimony.

14 MS. THOMPSON:

15 The point being with my question is ours
16 seems to be the--

17 HEARING OFFICER SHAPIRO:

18 Well, go ahead and ask your question.

19 Overruled, ask you question.

20 Q Yes. I just want to know where the other
21 towers really are?

22 A The other towers, the new towers, not the
23 collocations?

24 Q In the last two years since the change up?

1 A The collocation or the new built towers, we
2 have only build three in Fayette County.

3 Q The ones that work with the ones that you
4 need us for?

5 A Okay. There is one south on 75 at the Athens
6 exit, and there is one up at the 71-75
7 junction off--on Georgetown Road on the north
8 side of 71 and 75, right there at the
9 junction where you have 75 that comes around
10 like this and 64 goes on, 75 goes north. It
11 is up in the north east corner.

12 Q Well--so, is it true that there is a great
13 deal more mileage between the one at Athens
14 Boonesboro than the one on 64-75 split than
15 what would be between us and the 64-75 split
16 and why?

17 A Is there more space--let's see, I'm trying to
18 understand what you are asking. Taking into
19 consideration this site, you are asking is
20 there more space between this site and the
21 north site, up at the split, than there is
22 here to Athens?

23 Q No. What I'm asking you is, is it not true
24 that there is a lot more distance between the

1 65-74(sic) tower and the tower at Athens
2 Boonesboro than there would be between us and
3 the 65--64-75 split tower? Why are the--why
4 is there--why are the two towers very close
5 together and one tower very far removed?

6 A Because those were the search rings, that was
7 the network that was prepared and given to
8 the site specialist to find sites?

9 HEARING OFFICER SHAPIRO:

10 Are you asking why they--why the towers
11 are--you are asking why the towers are
12 closer together--why are the towers
13 closer together between, if you know,
14 why are the towers closer together
15 between Athens Boonesboro Road and the
16 I-64-I-75 split than the tower that is
17 being proposed would be to the I-64-I-75
18 split?

19 MS. THOMPSON:

20 No, sir, that's not quite it.

21 A You didn't get it either.

22 Q The Athens Boonesboro tower, if it is close
23 to that exit, is very far removed from the
24 64-75 split tower that exists presently.

1 HEARING OFFICER SHAPIRO:

2 So, why are they further apart?

3 Q And so, why do they need one very close in
4 our neighborhood as opposed that exists
5 currently between two already existing
6 monopoles?

7 A Well, I believe the propagation map, and I'll turn
8 that over to Mr. Feibel, I think he can show that
9 there is not adequate coverage between that tower
10 and the Athens tower to adequately cover what
11 Sprint's objective was.

12 Q So, some can be far apart and some can be close
13 together and still be in a grid or still be in a
14 working arrangement with one another?

15 MR. DOBBINS:

16 Your Honor, she is not really qualified
17 to give RF testimony.

18 HEARING OFFICER SHAPIRO:

19 Well, if the witness doesn't know she
20 can simply say I don't know.

21 A I don't know.

22 Q How would we know?

23 A That would be an RF question.

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HEARING OFFICER SHAPIRO:

Okay, this is not--this witness doesn't know that, this witness is simply a site acquisition expert. She is the person who goes out and tries to find suitable locations based upon what she is told by the RF engineer. The RF engineer is the one who determines where these sites should be located and the site acquisition person then is the person that goes out and tries to get the property upon which to locate them. But he is the one who makes that determination where they should be located. Now, he was the one you should have asked that question. I don't know that it is really relevant to this--why is that relevant to whether or not this is an appropriate site?

MS. THOMPSON:

Because I question whether or not it is necessary if they can be that far away from each other and work in tandem.

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HEARING OFFICER SHAPIRO:

Well, you should--the testimony is that the grid is going to work the way it is has been configured. Now, there also has been testimony that this grid could have been configured in numerous ways. As I understand what Mr. Fiebel has told us earlier, when you start out--when you start out designing a grid or a system of towers, you can put the first one apparently any place you want to within reason. I'm sure you couldn't put it in a hole, but you can put it anything--the proper elevation what have you, you can put that tower anywhere. The next tower that you locate you have some flexibility, also, but you are going to be kind of limited a little bit by where the first tower is located. The more towers you put in place the more limited you are in where you can select a site. And so, when you get down to the last site you are extremely limited because it has to work with the others. That's

1 his testimony. Now, why one tower is
2 further apart then from the other is--I
3 assume that is because the way it was
4 designed and it probably has something--
5 it may have something to do with
6 topography and other--I don't know, I'm
7 not an RF engineer.

8 MS. THOMPSON:

9 But he has someone to be able to answer
10 these questions?

11 HEARING OFFICER SHAPIRO:

12 You had Mr. Fiebel.

13 MS. THOMPSON:

14 I asked Mr. Fiebel a number of questions
15 he couldn't answer.

16 HEARING OFFICER SHAPIRO:

17 Well, then it is up to them to prove
18 their case. If they don't prove their
19 case, then the application should fail.

20 A It may have something to do, if I can interject
21 here, I mean, I'm definitely not an RF--

22 HEARING OFFICER SHAPIRO:

23 Well, no, don't speculate, if you know
24 answer it, if you don't know--

1 A I know that there are different heights of
2 towers and facilities. All the locations,
3 when I get search rings, those search rings
4 can range in heights, if that helps you at
5 all. They are not all the same height, I get
6 different requests on those search rings.

7 Q Ms. Sturgeon, you said that when you were
8 walking the sites and surveying, I suppose,
9 to some extent, that you noted a dip in the
10 rear of Mr. Sweeney's property that you
11 thought would make it visually more
12 appealing; is that correct?

13 A I noticed that it--the elevation went down
14 just a little bit in the rear and there were
15 some trees back in that right side.
16 Originally, we had looked at the left side of
17 his property because it goes straight back,
18 that would have been easier. But there
19 weren't any trees over there, so we moved it
20 over to the right side. There is a few more
21 tree buffers over there and because the
22 elevation went down a little bit I thought
23 that just a little bit may help.

24 Q Can you tell me what the degree of the dip was--

1 is currently?

2 A No, I have no idea.

3 Q And what difference it might make visually,
4 since you brought it up, in the overall
5 perception of the monopole from our
6 properties or part of that street?

7 A I'm thinking more from Swigert Avenue and
8 Paris Pike, the closer it is to the tree line
9 the more that tree line is going to buffer
10 the visual impact of the tower.

11 Q It occurs to me, being a resident, that, and
12 I will ask a question, that the distance from
13 Paris Pike is less than half a mile to Mr.
14 Sweeney's front door and probably less than a
15 half mile from his--the front of his property
16 to the proposed site, so it is all equal,
17 essentially. So, I really am curious if you
18 think that this dip in the land really makes
19 a significant difference in how you think it
20 will look?

21 A I personally thought it would help.

22 Q More than--

23 A It was closer to the trees and it was down a
24 little bit more.

1 Q Did you happen to notice any trees that were
2 over a 180 feet tall?

3 A No.

4 Q Do you--did you happen to note in that area
5 any trees that are not deciduous?

6 A No.

7 Q So, even though they are buffered by trees it
8 is very possible and probably likely that the
9 monopole will be quite easily seen when the
10 summer blooms are gone?

11 A It could be.

12 Q Ms. Sturgeon, when you put your balloon up in
13 the air--

14 A Uh-huh.

15 Q --could you tell me how big your balloon was?

16 A Well, they were--I had three about this big
17 around.

18 Q Would you say that is--

19 A I don't know big that is.

20 HEARING OFFICER SHAPIRO:

21 Well, you have to give us a figure.

22 A I do, okay.

23 MR. DOBBINS:

24 Let the record reflect maybe about two

1 or three feet wide, does that sound
2 about right?

3 A Yes.

4 Q Almost a yard, perhaps, wide?

5 MR. DOBBINS:

6 Roughly.

7 A Yes. And I had three of those,
8 approximately--

9 Q And what color were your balloons?

10 A They were--I got the brightest ones because I
11 didn't want to get anything light colored
12 that would blend in too much with the sky, so
13 I think they were bright purple and bright
14 pink.

15 Q Have you ever seen a crow's wing span, Ms.
16 Sturgeon?

17 A A what?

18 Q A crow's wing span?

19 A No.

20 Q Do you think that standing from Paris Pike
21 you could see a crow that was on the back of
22 Mr. Sweeney's property?

23 A I don't know what a crow's wing span would
24 be, so I wouldn't know.

1 Q It would be larger than your balloon. Were the
2 trees leafed out when you had your balloon in the
3 air?

4 A Yes.

5 Q Did you check to see if you could see the balloon
6 from the front of Mr. Sweeney's house?

7 A Yes.

8 Q Could you see it?

9 A No, I couldn't.

10 MS. THOMPSON:

11 No further.

12 HEARING OFFICER SHAPIRO:

13 Ms. Dougherty?

14 MS. DOUGHERTY:

15 Thank you.

16

17

CROSS EXAMINATION

18 BY MS. DOUGHERTY:

19 Q Have you discussed developing a tree screen in
20 front of the tower, of the proposed site, with the
21 intervenors and has that been well received if you
22 have?

23 A We haven't discussed it with the intervenors,
24 however the property owner, Frank Sweeney,

1 has requested that we do screen it with
2 landscaping around the compound.

3 Q So, if this Commission does approve the site,
4 then you will be doing a tree screening on
5 the front side, I assume, or the side that
6 doesn't have it right now?

7 A Yes, ma'am.

8 MS. DOUGHERTY:

9 I don't think I have any further
10 questions.

11 HEARING OFFICER SHAPIRO:

12 I just have one point I want to ask you about, Ms.
13 Sturgeon. How far behind the church property--
14 well, let me--no, let me ask you this. What is
15 the closest property to the Whitaker property, is
16 it the church property?

17 A The closest?

18 HEARING OFFICER SHAPIRO:

19 I mean, not the Whitaker property but the Whitaker
20 tower?

21 A Could you repeat that?

22 HEARING OFFICER SHAPIRO:

23 Okay. Whose property is closest to the Whitaker
24 tower, is it the church property?

1 A It's the church and the Murphy property and
2 the house next to that.

3 HEARING OFFICER SHAPIRO:

4 And how close to the church property is the
5 Whitaker tower?

6 A Maybe not quite a football field.

7 HEARING OFFICER SHAPIRO:

8 About a 100 yards?

9 A Yes.

10 HEARING OFFICER SHAPIRO:

11 Okay, that's all I have. Any redirect?

12 MR. DOBBINS:

13 We have two, Your Honor.
14

15 REDIRECT EXAMINATION

16 BY MR. DOBBINS:

17 Q Just a follow up on Mr. Shapiro's question, Ms.
18 Sturgeon, the Whitaker tower is in this vicinity;
19 is that right?

20 A Yes.

21 Q You said you thought it was about a football
22 field, maybe 300 feet, 100 yards away from the
23 Murphy house and the church. In any event, is it
24 closer than the proposed site would be, for

1 example, to Ms. Whalen's home?

2 A It looks like the Whitaker tower may be a
3 little bit closer to the Murphys and church
4 property.

5 Q Than the proposed site would be to Ms.
6 Whalen's home?

7 A A little bit.

8 Q And I believe you testified earlier that the
9 pastor of the Northside Baptist Church was
10 not even aware of the Whitaker tower when you
11 first mentioned it to him; is that right?

12 A No.

13 Q Is that right, yes, that's right?

14 A Oh, yes, that's right, he wasn't aware of it.

15 Q You have testified that Sprint has had to
16 construct three new facilities in Fayette
17 County only; is that right?

18 A Yes. Yes.

19 Q All the rest have been collocations?

20 A Yes, they have.

21 Q So, to build three new church steeple
22 facilities would double the number of new
23 facilities that Sprint had to build; is that
24 right?

1 A Yes.

2 Q Are there any other churches within the search
3 area?

4 A No.

5 Q Or in very close proximity, even, to the
6 search area?

7 A Not that I'm aware of.

8 MR. DOBBINS:

9 No more.

10 HEARING OFFICER SHAPIRO:

11 Thank you Ms. Sturgeon. Is that the case for the
12 Applicant?

13 MR. DOBBINS:

14 That's the case, Your Honor.

15 HEARING OFFICER SHAPIRO:

16 Let's take about ten minutes.

17 MR. GOOD:

18 She had another question.

19 HEARING OFFICER SHAPIRO:

20 Well, it wasn't anything that he asked that hadn't
21 been covered. That's okay. What was the
22 question?

23 MS. WHALEN:

24 The question was the statement she just made about

1 the pastor not being aware that there was as tower
2 in the back of the field.

3 HEARING OFFICER SHAPIRO:

4 Well, what's that got to do with it, I mean, I
5 don't even know the point of the question? I
6 mean, she was asked that on redirect and he asked
7 it on cross and then he just followed up on--I
8 mean, we can't keep going back and forth on the
9 same questions unless you have something new that
10 you want--do you think he raised something that
11 wasn't raised before on cross-examination, would
12 that be with respect to that?

13 MS. WHALEN:

14 Well, I think by asking if the pastor is aware of
15 the tower, the pastor also was not aware of the
16 first conversation that Ms. Sturgeon had with him.
17 That was going to be my question.

18 HEARING OFFICER SHAPIRO:

19 Well, that has nothing--

20 MS. WHALEN:

21 Does he have any recollection of ever having
22 talked to her?

23 HEARING OFFICER SHAPIRO:

24 Well, wait a minute, don't ask the question, that

1 would not be proper rebuttal, that would not be
2 proper recross.

3 MR. DOBBINS:

4 We don't have a problem with that.

5 HEARING OFFICER SHAPIRO:

6 Well, maybe other people would. Let's move on.

7 We'll take a ten minute recess.

8 (OFF THE RECORD)

9 HEARING OFFICER SHAPIRO:

10 Back on the record. I noted in the file that the
11 Lexington-Fayette Urban County Government does not
12 have any witnesses to present; is that correct?

13 MS. JONES:

14 (Nodded head indicating yes.)

15 HEARING OFFICER SHAPIRO:

16 Let me call--let me ask--start with Mr. Brock, do
17 you wish to make a statement, Mr. Brock?

18 MR. BROCK:

19 No, I'd like to reserve any statement until--and I
20 don't have any witnesses.

21 HEARING OFFICER SHAPIRO:

22 Do you have any testimony you want to offer?

23 MR. BROCK:

24 No, I don't have any testimony.

1 HEARING OFFICER SHAPIRO:

2 Ms. Whalen, do you have any testimony you want to
3 offer?

4 MS. WHALEN:

5 Yes.

6 HEARING OFFICER SHAPIRO:

7 Okay. Come around here please.

8 (WITNESS DULY SWORN)

9

10 The witness, CAROLE WHALEN, having first been
11 duly sworn, testified as follows:

12 DIRECT TESTIMONY OF

13 MS. WHALEN:

14 HEARING OFFICER SHAPIRO:

15 Let me get you started Ms. Whalen. You
16 are Carole Whalen?

17 A Yes.

18 HEARING OFFICER SHAPIRO:

19 And you are the same Carole Whalen who
20 entered your appearance in this
21 proceeding when we began?

22 A Yes.

23 HEARING OFFICER SHAPIRO:

24 Ms. Whalen, you have filed, or you have

1 been granted intervenor's status in this
2 proceeding, and I believe you have
3 intervened in opposition to the
4 application; is that correct?

5 A Yes.

6 HEARING OFFICER SHAPIRO:

7 Would you like to tell the Commission at
8 this point or at this time why you
9 oppose the granting of the application?

10 A Yes, sir. I am in opposition to the monopole
11 as is most of the people in the neighborhood.
12 And I am here, I'd like to present as an
13 Exhibit, if I may. This is a letter from the
14 President of the Joyland Neighborhood
15 Association also stating that they are in
16 opposition to any and all cell phone towers
17 in the neighborhood, and that includes the
18 tower on Mr. Sweeney's property.

19 HEARING OFFICER SHAPIRO:

20 Have you shown that letter to Mr.
21 Dobbins or Ms. Keene?

22 MR. DOBBINS:

23 I would object on the basis of hearsay,
24 Your Honor.

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HEARING OFFICER SHAPIRO:

Well, let me ask a few questions about the letter, you say you have--it is a letter from the President of the Joyland Neighborhood Association?

MS. DOUGHERTY:

There is a letter in the file from him dated July 19, is this that one?

A This is it.

MS. DOUGHERTY:

Oh, it's already in the record, Your Honor.

HEARING OFFICER SHAPIRO:

Well, let me just ask her--she wants to make it a part of her testimony, however.

MR. DOBBINS:

It does say, Mr. Shapiro, that it is cc to Sprint SBA, Sprint PCS SBA, Louisville, Kentucky. We'll say that we never saw this until I believe it was Mr. Brock and Ms. Whalan gave us some data responses that did include that. We have seen it before today but I think

1 last--it might have been from LFUCG that
2 we received it, and that is the first
3 time we have seen it. And I just object
4 for what it is worth, Your Honor, on the
5 basis of hearsay. Mr. Atkinson is (a)
6 not here to cross-examine and (b) not an
7 attorney and not really capable of
8 representing the Association.

9 HEARING OFFICER SHAPIRO:

10 Well, let me ask you, Ms. Whalen, do you
11 know--who is the letter from?

12 A Mr. Atkinson, who had heart surgery--

13 HEARING OFFICER SHAPIRO:

14 Wait a minute; wait a minute.

15 A All right.

16 HEARING OFFICER SHAPIRO:

17 Just listen to the question. What is
18 the man's name?

19 A Dan Atkinson.

20 HEARING OFFICER SHAPIRO:

21 Do you know Mr. Atkinson?

22 A Yes, sir.

23 HEARING OFFICER SHAPIRO:

24 And have you known him long?

1 A I've known him as I've gone through this
2 process with the monopole.

3 HEARING OFFICER SHAPIRO:

4 And you have found that he is someone
5 that you can trust as far as making
6 statements upon which you can rely?

7 A Absolutely.

8 HEARING OFFICER SHAPIRO:

9 I'll overrule the objection, I think it
10 can be admitted into evidence as part of
11 this witness's testimony and I think the
12 objection goes more to the weight than
13 it does to the admissibility. Okay, go
14 ahead.

15 (EXHIBIT SO MARKED: Whalen Exhibit No. 2)

16 A And the reason Mr. Atkinson is not here--

17 HEARING OFFICER SHAPIRO:

18 Well, that's okay, you can just start.

19 A Oh, I don't have to say that, okay. So, he has
20 given me that to show where the Association is
21 coming from and the opposition voiced by the
22 individual neighbors of the Association carries on
23 with a monopole in the neighborhood. It is not
24 site specific, the opposition, it is in the

1 neighborhood that they are opposed to it. The
2 other matter I wanted to bring up, the church
3 steeples, not to belabor it, but Ms. Sturgeon went
4 on about the difficulty she encountered in
5 approaching all these people about a monopole and
6 it was one negative response after the other. I
7 took it upon myself several weeks ago to go out in
8 the car, much as she did, and do a site visit,
9 just looking for churches in the area. I took
10 down their addresses and I wrote them letters and
11 I have a copy of that letter that Mr. Brock has
12 included with our prehearing material. Basically,
13 I asked them if they would be interested, again,
14 rather than one Washington monument, if we could
15 convince Sprint that it is in their behalf and
16 would be welcomed by the neighbors to have a
17 church tower containing their communications
18 equipment, would they be receptive to that idea?
19 Every church, and we are talking Baptist and
20 Methodist and every kind of church said yes,
21 absolutely. We would more than welcome it, they
22 would welcome income for the church, they would
23 welcome the aesthetic improvement that you are
24 making to the church facility, if you could just

1 envision Kentucky landscape. You indicated
2 earlier that the Commission is opposed to building
3 new towers which is why you encourage collocation
4 of these facilities. If instead of these
5 monopoles, if we were to drive through the area
6 and see these lovely churches with their steeples
7 accomplishing the same things, the churches are
8 happy, the residents are happy and Sprint is happy
9 and it may cost more. But Sprint, in the recent
10 MCI-Sprint merger, I mean, we are talking about
11 millions and millions and millions of dollars that
12 this corporation has, so to talk about a few
13 hundred thousand dollars involved in a church
14 steeple when the public service that Sprint would
15 be giving the community, which Ms. Sturgeon also
16 mentioned, that they are interested in community
17 relations, this would just do so much and it would
18 keep Kentucky unique. It would not make it look
19 like every other city in America with these ugly
20 monopoles everywhere. The Paris Pike people are
21 adamantly against it because of what it does to
22 the historic view and nature of Paris Pike. Our
23 neighborhood--my home was built in 1909. I mean,
24 it is a beautiful old house and it needs a lot of

1 work but, I mean, it is like a labor of love, you
2 know. And this is why we live in those
3 neighborhoods, this is why we don't live in these
4 developments where everyone has got the two car
5 garages in front of the house, you know. And it
6 is something that we--it is so important to us to
7 maintain and every neighbor on my street--now, I
8 went to all the churches and every church, without
9 an exception, said we want to talk to Sprint, we
10 are very interested in this. I went separately to
11 all my neighbors with a petition, I don't have it
12 with me because I turned it in at the Fayette
13 County hearing, but the petition said that if the
14 church were to have a steeple, and I enclosed
15 photographs of the steeple that is in
16 Massachusetts, would you be opposed to having a
17 Sprint tower contained in a steeple comparable to
18 this. Each--my daughter took one end of the
19 street, I took the other, we canvased all the
20 neighbors, not one neighbor refused to sign that
21 they would be in support of this approach. So,
22 you have the churches, you have the residents and
23 Sprint gets what they want. The other thing I
24 would like to give you, this is a letter from

1 Andrew Sloan, I would like to enter this into the
2 record as well. Andrew Sloan could not be here.

3 HEARING OFFICER SHAPIRO:

4 Show it to Mr. Dobbins.

5 A He faxed it, all right.

6 HEARING OFFICER SHAPIRO:

7 Let's mark this, by the way, as Whalen 2
8 and 3.

9 A Mr. Shapiro, could I--

10 HEARING OFFICER SHAPIRO:

11 Wait just a minute before I forget it.

12 A Okay.

13 HEARING OFFICER SHAPIRO:

14 You wanted to offer that into evidence,
15 Ms. Whalen, the letter from Mr. Sloan?

16 A Yes, please.

17 HEARING OFFICER SHAPIRO:

18 Any objection?

19 MR. DOBBINS:

20 I would just offer the same objection
21 toward the weight of the evidence, it
22 does appear that this is something that
23 perhaps went to the LFUCG Planning
24 Commission back in July. It is dated in

1 July, Your Honor.

2 HEARING OFFICER SHAPIRO:

3 Well, let me ask the witness a question.

4 Ms. Whalen how long have you known Mr.

5 Sloan?

6 A Again, through this monopole business.

7 HEARING OFFICER SHAPIRO:

8 And you've found that you can rely upon

9 what he tells you as being--you can rely

10 upon him as a trustworthy source in

11 discussing matters with him--

12 A Yes.

13 HEARING OFFICER SHAPIRO:

14 --related to this or anything?

15 A Yes, sir.

16 HEARING OFFICER SHAPIRO:

17 I'm going to overrule the objection and

18 let it be admitted.

19 (EXHIBIT SO MARKED: Whalen Exhibit No. 3)

20 HEARING OFFICER SHAPIRO:

21 Let me ask you while I'm thinking about

22 it, too, you are--you have shown us--you

23 questioned a witness about these

24 photographs which we have marked as

1 Whalen Exhibit Number 1. Could you tell
2 us what these photographs show?

3 A Yes, sir.

4 HEARING OFFICER SHAPIRO:

5 Just tell us.

6 A The--

7 HEARING OFFICER SHAPIRO:

8 Well, let me first ask you, where did
9 you get the photographs?

10 A I took them.

11 HEARING OFFICER SHAPIRO:

12 And where did you take them?

13 A In Lynn, Massachusetts.

14 HEARING OFFICER SHAPIRO:

15 And what are they photographs of?

16 A The Broadway Methodist Church.

17 HEARING OFFICER SHAPIRO:

18 And what is the purpose of showing
19 these--what specifically in the
20 photographs do you wish to point out as
21 being relevant to these proceedings?

22 A Yes, sir. This summer--well--

23 HEARING OFFICER SHAPIRO:

24 Just tell us what it is in the

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photographs that you--

A Home--my mother--I was telling my mother about this monopole business and so she said, well, you know, Carole, there is a church down the street that also has a Sprint tower, because they had a similar problem up there of opposition. So, I went down there and, first of all, I telephoned the church people and then I went down there and saw for myself what Sprint did. They came in, this--the first two tiers of the steeple of the tower were already in existence and it had a short little spire to it. Sprint went in and extended it to double the height. The height went from about a 50 foot tower to a 120 feet. The first section is brick and it has got a round opening with slats in it. The extension above that, as Mr. Cravens talked about, is a material through which the airwaves can pass. So, the antenna is housed in the top and next to the top sections of the tower. And that is where all the antenna frequency goes back and forth.

HEARING OFFICER SHAPIRO:

Okay, and--

A And it is not at all visible from the street.

1 HEARING OFFICER SHAPIRO:

2 And does that--does those pictures
3 accurately depict what you saw?

4 A Oh, absolutely.

5 HEARING OFFICER SHAPIRO:

6 Is there any objection to these being
7 admitted into evidence?

8 MR. DOBBINS:

9 No objection, Your Honor.

10 HEARING OFFICER SHAPIRO:

11 So ordered.

12 (EXHIBIT SO MARKED: Whalen Exhibit No. 1)

13 HEARING OFFICER SHAPIRO:

14 Go on with your statement then.

15 A Yes. And, as I said, each of the 12 churches
16 I spoke with were very, very receptive to
17 having a similar arrangement done with them.
18 As far as the pastor of the church on Swigert
19 Avenue, the fact that he was not aware that
20 there was a tower out back, the pastor does
21 not live on Swigert Avenue. They rent the
22 church or they go to the church on Sundays
23 and Wednesdays, otherwise they are not there.
24 He is not a resident, the other thing is that

1 not only did he not know there was a tower,
2 he had absolutely no recollection of ever
3 having discussed the matter with Ms.
4 Sturgeon, when he met her, he didn't remember
5 her or the conversation. So, I don't know
6 the fact that he hadn't observed the tower if
7 that is really significant. My feeling is
8 that if we had several 120 foot church
9 steeples, we would just do so much for the
10 area, for the state of Kentucky, for the
11 communities and for Sprint. It is such a
12 win/win situation. I just don't understand
13 why we are not going in that route and why we
14 are fighting each other over putting it in an
15 old fashioned, charming neighborhood. What I
16 would like to do, and I don't know if this is
17 possible, but could I ask Mr. Sweeney some
18 questions? You can't do that, ask him to
19 take the stand?

20 HEARING OFFICER SHAPIRO:

21 No.

22 A No.

23 HEARING OFFICER SHAPIRO:

24 I believe the prehearing order directed

1 the parties to list their witnesses and
2 I don't believe we have anything that
3 you--

4 A Well, my concern--

5 HEARING OFFICER SHAPIRO:

6 You didn't file anything that listed him
7 as a witness did you?

8 A No. But I would like to express my concern
9 about the 24-hour access that Sprint will
10 require on the property next to mine. There
11 was a lot of talk about the valuable
12 livestock that Mr. Whitaker has. Well, I
13 have some as well and I've got three brood
14 mares, they are in foal now, I've got
15 weanlings on the ground. This is, you know,
16 they are valuable, they have got good
17 pedigrees and they may someday make me rich,
18 but the point is that during foaling season
19 with people coming and coming, if it happens,
20 it could be upsetting. I have two black labs
21 and if they hear noise, if they hear people
22 coming and going at night they may start
23 barking and upset people or whatever. I know
24 there was an instance in my house, I got a

1 phone call from my daughter at work telling
2 me that Mr. Sweeney was trying to shoot my
3 dog, he was on his back porch and my 11-month
4 old black lab puppy got onto his property and
5 he had a shotgun and was trying to shoot the
6 dog. And I don't know if this would happen
7 with you Sprint people if they were coming to
8 check on their tower. I mean--

9 MR. DOBBINS:

10 We will stipulate that they not bring a
11 shotgun on to the premises.

12 A No, Mr. Sweeney has a shotgun, it is not you
13 people I'm worried about. This is a concern
14 and, you know, we are concerned about the
15 safety of the residents, as well, so I think
16 perhaps people should be aware of this. I
17 came home from work, I called the police, I
18 was cautioned by the police not to deal
19 directly with Mr. Sweeney ever, always go
20 through a police officer, and I have done
21 that for the last nine years. The dog is now
22 11 years old, she survived it, so--I don't
23 know--I am concerned about my animals, I'm
24 concerned about my child and I'm concerned

1 Mr. Brock with, from my count, six churches that
2 you contacted about this steeple idea. I just
3 heard you mention 12, is this an incomplete list
4 that you filed?

5 A No--it may be. I'm sorry, there should be 12.

6 Q There are copies of envelopes and there are,
7 by my count, six addresses.

8 A I'm sorry, I perhaps neglected to include a
9 couple, another page of envelopes. I can
10 provide those afterwards if that is all
11 right.

12 Q From your inspection of these churches and
13 the request to them about the opinions of the
14 steeple, can you tell us were any of these
15 churches within the search area that has been
16 described here?

17 A Thank you for asking that. No, they were not
18 within that half mile or 3/4 mile area but,
19 again, the search area would change if--that
20 search area is based on a 180 foot height
21 requirement. Now, if the steeples are at 125
22 feet it would no longer be that area, it
23 would be an area to the east and west of it,
24 you see. So, it would put it in a different

1 search area. There are churches, there are
2 so many churches out there, little country
3 churches throughout the area. It is not
4 within that ring but that ring would no
5 longer be relevant.

6 Q Do you know how far out from the given search
7 area these churches are located, I mean, we
8 do have addresses for six of them here.

9 A Yes.

10 Q But I don't know where they are.

11 A Yes. They are all--I could point them out on
12 a map, I could--actually, what I'd hoped to
13 do was to bring a map with me with flagging
14 where these churches are. But, again, I
15 wasn't sure where the towers were that they
16 were to be connecting to. So, between Athens
17 Boonesboro Road and then 71-75 cutoff there
18 are hundreds--there has to be hundreds of
19 churches out there that would fall into that,
20 you know, that range for consideration. But
21 the important thing was that every church,
22 not one church said we don't want a steeple.
23 We don't want a Sprint tower, we don't want
24 the Sprint income for our church.

1 MS. DOUGHERTY:

2 Thank you.

3 HEARING OFFICER SHAPIRO:

4 Mr. Dobbins?

5 MR. DOBBINS:

6 No questions, Your Honor.

7 HEARING OFFICER SHAPIRO:

8 Thank you Ms. Whalen. Ms. Good, you say you have
9 a statement you want to make?

10 MS. GOOD:

11 Yes.

12 HEARING OFFICER SHAPIRO:

13 All right, come around here please.

14 (WITNESS DULY SWORN)

15

16 The witness, PAULINE GOOD, having first been duly
17 sworn, testified as follows:

18 DIRECT TESTIMONY

19 OF MS. GOOD:

20 HEARING OFFICER SHAPIRO:

21 Let me get your started, Ms. Good, you
22 are Pauline Good?

23 A Yes.

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HEARING OFFICER SHAPIRO:

And your are the same Pauline Good that entered your appearance at the beginning of this proceeding?

A Yes, sir.

HEARING OFFICER SHAPIRO:

Ms. Good, you have intervened in opposition to the application; is that correct?

A Yes, sir.

HEARING OFFICER SHAPIRO:

Would you like to tell the Commission at this time why you are opposed to the granting of the application?

A Well, I came with this letter on behalf of the surrounding neighbors. And I think Ms. Sturgeon addressed mostly to the issues in this letter. We have all been opposed to the entire monopole at Sweeney's. Then when it was suggested at the church at the last meeting, I think Ms. Sturgeon showed us pictures that the--if that would be a probably alternative site, it would be a large monument type structure, not a steeple

1 on top of the church because of the way the
2 church is built. It is an abnormal
3 structure. Well, the neighbors surrounding
4 the church, we live directly across from the
5 church, there are four houses. Our houses
6 are directly around the church in close
7 proximity, which they work and some of these
8 people are elderly. So, after the last
9 meeting then I told them what Sprint said,
10 they could not construct the steeple-type
11 that it would be a large monument-type
12 structure. Well, there is more houses around
13 that structure, there is more people, we
14 would--that is the structure at the church
15 would be closer to Swigert Avenue. The
16 church doesn't have that much property. If
17 that--

18 HEARING OFFICER SHAPIRO:

19 Well, let me see if I understand, you
20 are opposed to construction of a
21 structure on the church property; is
22 that right?

23 A Yes.

24

1 HEARING OFFICER SHAPIRO:

2 And the people you spoke to who live in
3 the immediate vicinity of the church
4 also are opposed to it; is that correct?

5 A Yes, it would be closer to the road, more
6 visible, there are more houses and we are
7 actually all opposed to the entire monopole
8 for the neighborhood, but especially at that
9 church. If you look on that map and see the
10 close houses near that church, there are more
11 houses around that church. That church is
12 still in the neighborhood which would house a
13 monopole. And we object to that large
14 monument type monopole.

15 HEARING OFFICER SHAPIRO:

16 Your position is you just don't want
17 anything out there?

18 A Well, I guess you might say that. And if it
19 is not appropriate at Mr. Sweeney's, his
20 address is 189, the church's address is 257,
21 and that is only a few doors down. It is
22 still in our neighborhood, see, but I'm
23 speaking on behalf, now, of all the
24 surrounding neighbors, I have gone to their

1 homes. And I thank you very much.

2 HEARING OFFICER SHAPIRO:

3 Well, wait a minute, Mr. Brock?

4 MR. BROCK:

5 No questions.

6 HEARING OFFICER SHAPIRO:

7 Ms. Whalen?

8 MS. WHALEN:

9 I have one question.

10

11

CROSS EXAMINATION

12

BY MS. WHALEN:

13

Q Ms. Good.

14

A Yes.

15

Q If they were able to put a steeple comparable to the one in the photograph, not a monument, but looking like the photograph, would you and the other neighbors be opposed to it?

16

17

18

19

A Well, I would have to ask them, if it would look like that.

20

21

Q Right, if it would look like that, would you be opposed to it?

22

23

A Well, we'd still have all the activity around the church from Sprint. I mean, it would

24

1 still be that access. I mean, the people,
2 the church property see, they are not at the
3 church, they don't live there, that is what
4 I'm saying, is why they don't object, because
5 they only go to church there about twice a
6 week. We see that every day, we would be the
7 ones that would have to watching them in and
8 out, children and grandchildren around, small
9 children. But according to what they said,
10 now, it couldn't look like that. Mr. Cravens
11 said it was an abnormal structure and it
12 would not look like that steeple.

13 Q But if it could you would--would you find
14 it--

15 A Well, I didn't sign the petition and neither
16 did the neighbor next door down the street.

17 HEARING OFFICER SHAPIRO:

18 What Ms. Whalen wants to know is if it
19 was a steeple, I mean, we understand
20 that you are opposed to an independent
21 structure of the nature--of the type
22 that Mr. Cravens proposed or described,
23 but are you personally opposed to the
24 construction of a steeple similar to the

1 steeple that is shown in the photograph?

2 Yes or no, or do you have an opinion?

3 A Well, I have an opinion.

4 HEARING OFFICER SHAPIRO:

5 Is it yes or no, or do you--what is it?

6 A It had a statement with it, we would still be
7 confronted with all the access of Sprint, I
8 would say--I'm just saying no, nowhere on
9 Swigert.

10 HEARING OFFICER SHAPIRO:

11 Is there anything else?

12 MS. WHALEN:

13 No.

14 HEARING OFFICER SHAPIRO:

15 Ms. Thompson, do you have any questions?

16 MS. THOMPSON:

17 No, sir.

18 HEARING OFFICER SHAPIRO:

19 Mr. Hornsby, Ms. Jones?

20 MR. HORNSBY:

21 No, sir.

22 MS. JONES:

23 No, sir.

24

1 HEARING OFFICER SHAPIRO:

2 Ms. Dougherty?

3 MS. DOUGHERTY:

4 We just have one question.

5

6

CROSS EXAMINATION

7 BY MS. DOUGHERTY:

8 Q If you were given the choice, I do understand your
9 testimony you don't want any towers anywhere in
10 your neighborhood, but if given a choice,
11 hypothetically, between the structure at the
12 church and the structure on Sweeney's property,
13 which would you prefer?

14 A Now, you put me in the middle, I said
15 neither.

16 Q Well, if you don't care to give an opinion
17 about it, that's fine.

18 A I mean, I live--we live right across from the
19 church, we look at that every day.

20 Q So, that means that you would prefer
21 Sweeney's, is that accurate or not?

22 A Well, not really, I wouldn't prefer either.

23 I mean, for the other neighbors benefit I
24 wouldn't want to prefer Sweeney's, but for my

1 own I don't want to look at it every day. It
2 is right in my front door, that church is,
3 see. It is large enough to be in four front
4 doors and side homes, that's a huge church.

5 MS. DOUGHERTY:

6 Okay.

7 HEARING OFFICER SHAPIRO:

8 Mr. Dobbins, do you have any questions?

9 MR. DOBBINS:

10 No, questions Your Honor.

11 HEARING OFFICER SHAPIRO:

12 Okay, thank you Ms. Good.

13 HEARING OFFICER SHAPIRO:

14 Mr. Good, do you have any statement you would like
15 to make?

16 MR. GOOD:

17 Just that I've put up with her for 45 years and
18 she's still stubborn.

19 HEARING OFFICER SHAPIRO:

20 That's not evidence in this proceeding. Ms.
21 Thompson?

22 MS. THOMPSON:

23 Yes.

24 (WITNESS DULY SWORN)

1 The witness, TERESA THOMPSON, having first
2 been duly sworn, testified as follows:

3 DIRECT TESTIMONY

4 OF MS. THOMPSON:

5 HEARING OFFICER SHAPIRO:

6 Okay. You are Teresa Thompson?

7 A Yes, sir.

8 HEARING OFFICER SHAPIRO:

9 And you are the same Teresa Thompson who
10 entered your appearance at the beginning
11 of this proceeding?

12 A Yes, sir.

13 HEARING OFFICER SHAPIRO:

14 Ms. Thompson, you have intervened in
15 opposition to the application of--for
16 the construction of the tower; is that
17 correct?

18 A Yes.

19 HEARING OFFICER SHAPIRO:

20 Would you like to tell the Commission at
21 this time why you oppose the tower?

22 A Yes. Before I do say that I would like to
23 enter my official objection on the audio
24 visual aid here, the map, on the basis that

1 the map is out of perspective and does not
2 accurately represent the visual scale
3 presented by Sprint.

4 HEARING OFFICER SHAPIRO:

5 Mr. Dobbins?

6 MR. DOBBINS:

7 Your Honor, it is an aerial photograph
8 that was commissioned by Sprint to be
9 taken objectively and without skewing or
10 distorting the property. I think the
11 Commission can see from--

12 HEARING OFFICER SHAPIRO:

13 But you can't--there is nobody here that
14 can verify as to its accuracy, is it?

15 MR. DOBBINS:

16 Ms. Sturgeon can testify who did this.

17 A Sir, I've been a drawing teacher for 20 years.

18 HEARING OFFICER SHAPIRO:

19 Well, let him finish.

20 MR. DOBBINS:

21 Ms. Keene kindly reminds me that Mr.
22 Fiebel testified that it fairly and
23 accurately depicts this area. This is a
24 photograph, that's all it is, taken from

1 the air and, Your Honor, when coupled
2 with Sprint Exhibit--or Applicant's
3 Exhibit Number 6, which is the map, the
4 vicinity map of the area, it is pretty
5 easy for the Commission to see, I think,
6 just where the property lines fall. And
7 the purpose of this is to give a rough
8 overview of the whole area. It is
9 surely not intended to distort anyone's
10 perception of the area.

11 HEARING OFFICER SHAPIRO:

12 Well, I'm going to admit the--I'll allow
13 it to remain in evidence but only to the
14 extent that it shows the relevant
15 locations of the various landmarks--but
16 only to the extent that it shows the
17 relative location of the various
18 landmarks that are referenced in the
19 testimony. Okay.

20 A Earlier the point was made that the Paris
21 Pike District is an historic district. And
22 this was made in reference to the beginning
23 of Paris Pike, the beginning of Paris Pike
24 starting at New Circle Road and crossing by

1 the Waffle House, the original proposed site
2 for the monopole. And the historic area
3 actually does not begin at this point. The
4 historic area begins at the junction of
5 Swigert and Paris Pike where the signs have
6 been erected by the Historic Society stating
7 that it is an historic area with stone fences
8 and other such structures that are very old
9 and touristy. So, I just wanted to be clear
10 on that. The area of Paris Pike where the
11 Waffle House is, the old site, would not
12 actually fall into the category of historic
13 preservation since it is already a corrupted
14 area in terms of industry and fast food
15 restaurants and so forth. I also want to
16 talk about our street in terms of a sign at
17 the beginning of our street which says no
18 through trucks, that sign has been there for,
19 I would say, at least a year. So, we take it
20 pretty seriously and I should imagine that it
21 would not--when do we start making exceptions
22 to such things as that? So, that is a
23 question that I still have. The reason that
24 we opposed the monopole and this is, I'm

1 speaking for myself and my family, my husband
2 and I moved to Swigert in 1986. We were
3 looking for a country setting but was not too
4 far from the city and a place for my brother
5 to live with us. My brother is paralyzed
6 from the neck down and enjoys the outdoors
7 and the back of our home where we have a
8 deck. And we also have livestock, animals
9 and garden, flowers and so forth. He spends
10 his days out there and we chose the place
11 where we live because of it aesthetic appeal
12 and because it looked like a decent
13 investment. Unlike--well, in disagreement
14 with some previous testimony, we happen to
15 absolutely believe that the site of the
16 monopole would diminish our property value
17 and we are not in a position to move. So, I
18 speak on behalf of my brother, Thomas Herald,
19 who has attended previous meetings relative
20 to the monopole, and my husband Bret
21 Thompson, who has also attended meetings
22 relative to the monopole issue. We think it
23 is the beginning of the corruption of our
24 neighborhood and the neighborhood association

1 in past years has fought against such things
2 as street lights, city sewer, various other
3 things, the lowering of the speed limits so
4 that animals or children cannot be hurt. So,
5 we only have a 25 mile an hour speed limit.
6 The lawns and homes are well maintained, I
7 have pictures to present of various homes at
8 the appropriate time whenever that is. Thank
9 you.

10 HEARING OFFICER SHAPIRO:

11 You say you have photographs? Have you
12 shown them to Mr. Dobbins?

13 A No, sir, I didn't know when the appropriate
14 time to enter them would be.

15 HEARING OFFICER SHAPIRO:

16 Are you going to make them a part of your
17 testimony? Well, I think everybody
18 would agree--I think we can all
19 stipulate that the homes are well
20 maintained and this is a pretty
21 neighborhood. If you--if that was--

22 A In fact, a very unique neighborhood. When we
23 moved there our appraiser said that he had
24 difficulty even making an appraisal because it has

1 such unique qualities and characters. It is not
2 just a matter of nice homes, we are not farmers
3 either, so it is not--we are not raising corn on
4 the streets.

5 HEARING OFFICER SHAPIRO:

6 Well, show the photographs then to Mr.
7 Dobbins and see if he has any objection?

8 A Right now?

9 HEARING OFFICER SHAPIRO:

10 Yes.

11 MR. DOBBINS:

12 I don't think I object, but let me
13 reserve my objections until she tells us
14 where they are.

15 HEARING OFFICER SHAPIRO:

16 Okay. Just what do these photographs
17 represent?

18 A They are just pictures that I took wandering
19 down the street one day with an instant
20 camera. This is the driveway that comes into
21 Mr. Brock's house.

22 MR. DOBBINS:

23 May I come over, too?

24

1 HEARING OFFICER SHAPIRO:

2 You are going to have to mark all these.

3 A Oh, I do.

4 HEARING OFFICER SHAPIRO:

5 Yes.

6 A Well, I don't think I can give you house
7 numbers.

8 HEARING OFFICER SHAPIRO:

9 Well, let's put numbers on them.

10 HEARING OFFICER SHAPIRO:

11 Can you give us approximate locations?

12 A It's within--it's less than half a mile--

13 HEARING OFFICER SHAPIRO:

14 Wait a minute, wait a minute. That's
15 about nine or ten photographs, you want
16 to start with this one first. This will
17 be Thompson--let me help you get through
18 this. Okay. I'm going to show you a
19 photograph which has been marked for
20 identification as Thompson's Exhibit 1,
21 can you tell us what that shows?

22 A This shows the entrance way from Swigert into Mr.
23 Brock's driveway up to Mr. Brock's house.

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HEARING OFFICER SHAPIRO:

Okay. Are you offering this to show the
--are you offering this picture to show
the character of the neighborhood?

A This is the first house on the street.

HEARING OFFICER SHAPIRO:

But is it--is your purpose to show the
character of the neighborhood?

A Yes, sir, it is.

HEARING OFFICER SHAPIRO:

And does this accurately depict what
you--Mr. Brock's driveway.

A Yes, sir, as of yesterday.

MR. DOBBINS:

Could I ask just a quick voir dire of
each one so I can establish where it is
and to know where to put that. Is that
at the corner of Paris Pike and Swigert
Avenue?

A No, it is the corner of Swigert and Mr.
Brock's driveway.

MR. DOBBINS:

Does his property--is his property on
the corner of Swigert and Paris Pike?

1 A Yes, sir, it is.

2 MR. DOBBINS:

3 No objections.

4 HEARING OFFICER SHAPIRO:

5 Mark that, so ordered. I want to show
6 you a photograph which has been marked
7 for identification as Thompson Exhibit
8 Number 2 and ask you what that shows?

9 A That shows the view from Paris Pike looking
10 west on Swigert.

11 HEARING OFFICER SHAPIRO:

12 And the view from Paris Pike?

13 A Almost from the very beginning of the street.

14 HEARING OFFICER SHAPIRO:

15 Do you have any questions?

16 MR. DOBBINS:

17 No, no objection to that either.

18 HEARING OFFICER SHAPIRO:

19 I'll show you a photograph which is
20 marked for identification as Thompson's
21 Exhibit 3 and could you tell us what
22 that shows?

23 A This shows a paddock with three horses across
24 the street from my house.

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MR. DOBBINS:

Is that on Swigert Avenue?

A Yes, sir.

MR. DOBBINS:

May I ask your address on Swigert?

A 233.

MR. DOBBINS:

Are you closer to Paris Pike than
Sweeney's property or further away?

A Further away by two properties. Earlier I
said one property so I want to correct that.

MR. DOBBINS:

On the same side of the street?

A On the same side as Mr. Sweeney.

MR. DOBBINS:

No objection.

HEARING OFFICER SHAPIRO:

I'll show you the photograph that has
been marked for identification as
Thompson's Exhibit 4 and ask you what
that shows?

A This shows a house--

HEARING OFFICER SHAPIRO:

Whose house?

1 A Oh, may I ask Mr. Brock? Mr. Brock, the gray
2 house behind your mother's house?

3 MR. BROCK:

4 That's the architect.

5 MS. WHALEN:

6 Rankin residence.

7 MR. DOBBINS:

8 This will be the first house on the
9 right side of Swigert as you move down
10 the Swigert and Paris Pike; is that
11 right?

12 A Yes, sir.

13 HEARING OFFICER SHAPIRO:

14 Let me show you a photograph which is
15 marked for identification as Thompson
16 Exhibit Number 5 and ask you what that
17 shows?

18 A That is the Doctors Calamary's house.

19 HEARING OFFICER SHAPIRO:

20 And where is that located?

21 A On the south side of Swigert about 1/3 of a mile
22 down.

23 MR. DOBBINS:

24 A third of a mile?

25 A From Paris Pike.

1 MR. DOBBINS:

2 Okay, before you get to the Sweeney
3 property?

4 A Yes, but very close.

5 MR. DOBBINS:

6 Okay, but no objections, it's on the
7 opposite side of the street, you said,
8 right?

9 A Yes, it is.

10 HEARING OFFICER SHAPIRO:

11 Let me show the photograph that has been
12 marked for identification as Thompson
13 Exhibit 6 and ask you what that shows?

14 A It's Mr. Jones house on the corner of Swigert
15 and Paris Pike.

16 MR. DOBBINS:

17 No objection.

18 HEARING OFFICER SHAPIRO:

19 Let me show you the photograph that is
20 marked for identification as Thompson
21 Exhibit 7 and ask you what that shows?

22 A This shows the residents on the south side of
23 the street and I don't know their names, do
24 you?

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HEARING OFFICER SHAPIRO:

Where is the house located?

A Approximately--

HEARING OFFICER SHAPIRO:

Whose house is it next to?

A Oh, gosh, I don't know, I was walking everywhere.

MS. BROCK:

I think it's Mr. Rankin's house, isn't it?

MS. WHALEN:

Yes, it's between--they have got Rankin on one side and Calamary's on the other side. It is right between them.

A It is about a 1/3 of the mile down the road, no, not even that far, I'm sorry, it's not that far. It is about a quarter of a mile down the road.

MR. DOBBINS:

Now, this is on the opposite side of the street from Mr. Sweeney's property; is that correct?

A Yes.

MR. DOBBINS:

Maybe not quite midway from Paris Pike

1 to the Sweeney property, is that about
2 right?

3 A That's correct.

4 MR. DOBBINS:

5 No objection.

6 HEARING OFFICER SHAPIRO:

7 Okay. We'll show you the photograph
8 that has been marked for identification
9 as Thompson Exhibit Number 8 and ask you
10 what that shows?

11 A This is a residence on Swigert Avenue one-
12 half mile down the road. This is Dr.--I'm
13 sorry, I'm nervous--Dr. Kamann's house.

14 HEARING OFFICER SHAPIRO:

15 Okay, and where is it located?

16 A On Swigert Avenue, south side.

17 MR. DOBBINS:

18 Where is this in relation to Mr.
19 Sweeney's property now, opposite side of
20 the street?

21 A Opposite side of the street.

22 MR. DOBBINS:

23 Closer to Paris Pike?

24 A Yes. These are mostly the people who would

1 have to look at the monopole.

2 MR. DOBBINS:

3 I would object to the characterization
4 but I don't object to the actual
5 photograph.

6 HEARING OFFICER SHAPIRO:

7 I'll show you a photograph that has been
8 marked for identification as Thompson
9 Exhibit 8 and ask you what that shows?

10 A This shows the--I'm standing on Paris Pike
11 taking a picture of a driveway next to the
12 Kingston's house.

13 MS. WHALEN:

14 You're standing on Swigert Avenue?

15 A Yes, I'm standing on Swigert Avenue, I'm
16 sorry.

17 HEARING OFFICER SHAPIRO:

18 This is a driveway into someone's home.

19 A Yes.

20 MR. DOBBINS:

21 Where is that now, I'm sorry?

22 A I don't know.

23 MS. WHALEN:

24 On the north side of the Swigert.

1 MR. DOBBINS:

2 How far off Paris Pike?

3 A I couldn't say, it's not very far.

4 MS. WHALEN:

5 One-third of a mile.

6 MR. DOBBINS:

7 Closer to Paris Pike next to Mr.

8 Sweeney's property?

9 A Yes.

10 MR. DOBBINS:

11 No objection.

12 HEARING OFFICER SHAPIRO:

13 Okay. I'll show you a photograph that
14 is marked as Thompson Exhibit Number 10
15 and ask you to tell us what that shows?

16 A This is a picture taken from the west side of
17 Swigert looking towards Paris Pike.

18 MR. DOBBINS:

19 No objection.

20 HEARING OFFICER SHAPIRO:

21 And this is--the final picture is
22 Thompson Exhibit Number 11 and ask you
23 what it shows?

24 A It shows Mr. Brock's house that sits on the

1 corner of Paris Pike and Swigert.

2 MR. DOBBINS:

3 Does that face Paris Pike or Swigert?

4 A That view faces Paris Pike.

5 HEARING OFFICER SHAPIRO:

6 And you want to offer those into
7 evidence; is that correct?

8 A Yes, thank you.

9 HEARING OFFICER SHAPIRO:

10 And the purpose of the offer is to show
11 the general character of the
12 neighborhood?

13 A And I would also like to--

14 HEARING OFFICER SHAPIRO:

15 Is that the purpose of it?

16 A Yes, that is the purpose.

17 HEARING OFFICER SHAPIRO:

18 Okay.

19 A I would also because so often our properties have
20 been referred to as sites and perspective sites
21 and grid parts and pieces of a map, I would like
22 to maybe present a little more intimate look at
23 the neighborhood in terms of actual places where
24 people live and raise their children and their

1 families and their animals and places where most
2 of us want to retire.

3 HEARING OFFICER SHAPIRO:

4 Let it be entered into the record for
5 that purpose.

6 (EXHIBITS SO MARKED: Thompson Exhibits Numbered 1
7 through 11)

8 A Thank you.

9 HEARING OFFICER SHAPIRO:

10 Anything else Ms. Thompson?

11 A No, sir.

12 HEARING OFFICER SHAPIRO:

13 Mr. Brock, do you have any questions?

14 MR. BROCK:

15 No.

16 HEARING OFFICER SHAPIRO:

17 Ms. Thompson, I mean Ms. Whalen? Mr. Good, Ms.

18 Good, Mr. Hornsby?

19 MS. GOOD:

20 No.

21 MR. HORNSBY:

22 No, sir.

23 HEARING OFFICER SHAPIRO:

24 Ms. Dougherty?

1 MS. DOUGHERTY:

2 I might just have one.

3

4

CROSS EXAMINATION

5 BY MS. DOUGHERTY:

6 Q Can you identify for us on this map where you
7 live?

8 A Yes.

9 Q You do agree it is outside the search area as
10 designated; is that right?

11 A It is within the ring.

12 Q Okay. But it is not within 500 feet of the
13 unit?

14 A I would not think so.

15 Q Okay. I'm sorry, so if you could show that
16 to me I'd appreciate it.

17 HEARING OFFICER SHAPIRO:

18 How are you going to--

19 A I'm behind these trees.

20 HEARING OFFICER SHAPIRO:

21 Wait a minute, she can't hear you here.

22 A Oh, I'm sorry, I'm two doors down behind the
23 trees on the aerial map.

24 Q Where does your property extend to?

1 HEARING OFFICER SHAPIRO:

2 Amy, she can't hear you.

3 Q Please verbally describe your property as
4 compared to the brown line on that exhibit
5 which is Applicant's Exhibit 2 as designating
6 the search area?

7 A Our actual house is in front of the search
8 area.

9 Q Which would be outside of the search area?

10 A I believe so, as much as I can tell. I
11 believe our house would actually set probably
12 just to the front of that line, but it could
13 be that the back field--we only have one acre
14 so it could be that the back field could
15 overlap into that, but I can't really tell.

16 HEARING OFFICER SHAPIRO:

17 Okay, that's good, I think you've
18 answered her question.

19 MS. DOUGHERTY:

20 That's all I have Your Honor.

21 HEARING OFFICER SHAPIRO:

22 Mr. Dobbins, Ms. Keene, any questions?

23 MR. DOBBINS:

24 No questions.

1 MS. KEENE:

2 No questions.

3 HEARING OFFICER SHAPIRO:

4 Thank you Ms. Thompson. Mr. Brock, I think you
5 said you wanted to make a closing statement?

6 MR. BROCK:

7 I think I'd like to reserve my closing statement
8 until after the city. I probably will just adopt
9 the legal arguments the city makes. I'm not going
10 to dwell on emotional aesthetic arguments with
11 regard to the location of the tower.

12 HEARING OFFICER SHAPIRO:

13 And I assume that the other intervenors would
14 have--would you have anything by way of argument
15 that you would like to make in addition to what
16 you have said in your testimony or do you want
17 your testimony to be also considered as argument?
18 Does that make any sense to you? Do you have
19 anything additional that you would like to say as
20 a closing statement, Ms. Whalen?

21 MS. WHALEN:

22 No.

23 HEARING OFFICER SHAPIRO:

24 Mr. Good?

1 MR. GOOD:

2 No.

3 HEARING OFFICER SHAPIRO:

4 Ms. Thompson?

5 MS. THOMPSON:

6 (Nodded head indicating no.)

7 MR. GOOD:

8 I believe I would like to say a few words.

9 HEARING OFFICER SHAPIRO:

10 Do you want to say it under oath? Do you want it
11 as part of the testimony?

12 MR. GOOD:

13 I'd tell the truth anyway.

14 (WITNESS DULY SWORN)

15

16 The witness, ROBERT GOOD, having first been duly
17 sworn, testified as follows:

18 DIRECT TESTIMONY

19 OF MR. GOOD:

20 HEARING OFFICER SHAPIRO:

21 Let me get you started off Mr. Good.

22 Your name is--

23 A Robert Good.

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HEARING OFFICER SHAPIRO:

And you are the same Robert Good who entered your appearance earlier in this proceeding; is that correct?

A Yes, sir.

HEARING OFFICER SHAPIRO:

And you have intervened in opposition to the application; is that correct?

A If that refers to having--

HEARING OFFICER SHAPIRO:

You are opposed to it?

A Across at the church, yes, at the church, I oppose the church site.

HEARING OFFICER SHAPIRO:

That's the only opposition you have?

A Yes, that's the only opposition.

HEARING OFFICER SHAPIRO:

You're not opposed to the site on Mr. Sweeney's property?

A No, I have no problem with that at all.

HEARING OFFICER SHAPIRO:

Would you like to tell the Commission-- well, just explain your position to the Commission?

1 A Well, as has been pointed out emotionally,
2 factually, that it is a beautiful
3 neighborhood. We have been there nearly 30
4 years. I'm now retired and as brought out,
5 it is a beautiful area to retire, raise your
6 children. I've also walked my grandchildren
7 down that road and that lane and admired the
8 beauty. Ms. Thompson's home where she has
9 her animals, my grandchildren admire that
10 area and her brother who is a beautiful,
11 beautiful person that enjoys the scenery back
12 there, and his conversation just sparks
13 myself personally and professionally, in
14 dealing with human beings all my life and
15 usually those that have had problems. So,
16 his love and his caring and my grandchildren
17 being raised there, it is beautiful. And,
18 yes, I will agree that a lot of neighbors
19 don't care for the tower going up. I can't
20 speak for everyone in the neighborhood, I've
21 talked to those people when the mention came
22 up about the church and they are opposed to
23 the church having this monument or whatever
24 you want to call it. I appreciate my wife's

1 view points, I haven't always appreciated her
2 view points, but in this case I back her up
3 that she is right, which she usually is. The
4 neighbors I respect very highly and also Ms.
5 Whalen from where I--

6 HEARING OFFICER SHAPIRO:

7 Well, what are the reasons--wait a
8 minute--what--why--what is your
9 opposition to the alternate site that
10 has been proposed by some other
11 intervenors?

12 A Because it would be very visible is one, and
13 it would destroy the unique beautiful area.
14 The other point being on Sweeney's place, and
15 as I mentioned, I've walked my grandchildren
16 down that road--

17 HEARING OFFICER SHAPIRO:

18 Are you speaking in favor of that site?
19 A I would say because of the tree line, yes.
20 And it is hidden, well hidden except in the
21 winter time. And being a former recon
22 officer in the military I would--I've
23 observed the area and this Paris Pike, you
24 cannot see that area at all. And on Swigert

1 it is well hidden, so that is why I said that
2 Mr. Sweeney, if he has volunteered to have
3 the opportunity to have it on his property, I
4 feel that is his prerogative. And it doesn't
5 destroy the image of the neighborhood except
6 a few people brought out a few other points,
7 but I appreciate that and respect their
8 viewpoints. But I just wanted to mention
9 that, I feel the beauty will not be destroyed
10 at Sweeney's place, but would be destroyed at
11 the church area.

12 HEARING OFFICER SHAPIRO:

13 Mr. Brock, do you have any questions?

14 MR. BROCK:

15 I have no questions.

16 HEARING OFFICER SHAPIRO:

17 Ms. Whalen?

18 MS. WHALEN:

19 No.

20 HEARING OFFICER SHAPIRO:

21 Ms. Thompson?

22 MS. THOMPSON:

23 No.

24

1 HEARING OFFICER SHAPIRO:

2 Ms. Good, this is your opportunity.

3 MS. GOOD:

4 Yes.

5

6

CROSS EXAMINATION

7 BY MS. GOOD:

8 Q I'd like to know why you went against what I had
9 to say?

10 A Well, I respect--as I mentioned I respect
11 your view point, I respect every one's
12 viewpoints that were brought out here today.

13 Q I'm looking out for the whole neighborhood.

14 A But I needed to bring out my view points and
15 my feelings about the neighborhood and just
16 where the site should be, possibly, as I see
17 it. And being a walker in that neighborhood
18 with my children and grandchildren I feel
19 that I gave my answer.

20 HEARING OFFICER SHAPIRO:

21 Mr. Hornsby?

22 MR. HORNSBY:

23 No, sir.

24

1 HEARING OFFICER SHAPIRO:

2 Ms. Dougherty?

3 MS. DOUGHERTY:

4 No questions, thank you.

5 HEARING OFFICER SHAPIRO:

6 Mr. Dobbins?

7 MR. DOBBINS:

8 No questions, Your Honor.

9 HEARING OFFICER SHAPIRO:

10 Okay, thank you Mr. Good. Do you wish to make a
11 closing statement?

12 MS. JONES:

13 Yes, we do. Your Honor, we will make this very
14 brief. First, I just want to reiterate that we
15 are here on behalf of the Lexington-Fayette Urban
16 County Government's Planning Commission that
17 disapproved this application. And for the record,
18 their reasons were specifically that the
19 application did not meet the goals and objectives
20 of the Comprehensive Plan and, specifically, that
21 this application did not meet the goal of
22 preserving, protecting and enhancing the existing
23 neighborhoods and, also, preserving, protecting
24 and enhancing the nature and physical features

1 that give the bluegrass its unique identity. And
2 those reasons are contained in the Staff Report
3 that was submitted with the certified records
4 earlier and are also in the minutes that were part
5 of the disapproval of the application that is
6 already on file. It was also submitted with the
7 certified records earlier today. In addition to
8 that, based on the testimony that we have heard
9 here today, we would support that decision that
10 was made by the Planning Commission, but also note
11 that for purposes of the Public Service Commission
12 that it appears that the applicant has not met
13 their burden of showing that there is no alternate
14 or more appropriate site, and this is indicated by
15 the fact that the very initial site was outside of
16 the initial search ring. That has been set forth
17 today here in the testimony. And, also, it seems
18 that when the initial search ring was investigated
19 on Swigert Road that because of the reaction with
20 the neighbors there and the fact that all those
21 that were approached, although it wasn't all of
22 the neighbors that were within the search ring,
23 each of them had a negative response and didn't
24 want it on their property. And it appears from

1 the testimony that was given by the site
2 acquisition person for Sprint that that appeared
3 to be, even though it was within the search ring,
4 a problem area because of the fact that no one
5 wanted to make their site available. These same
6 neighbors were involved with the overall
7 neighborhood association in which their streets
8 encompassed in opposing the site of the Waffle
9 House. The only reason the site on Swigert became
10 available after that was because one of the
11 neighbors that had opposed it offered his site.
12 And as you heard testimony today, if he had not
13 done that, this site would still be--this whole
14 site on Swigert that encloses the search ring
15 would still be unavailable. So, we submit that
16 since Sprint looked at going outside their search
17 ring initially that that means there are alternate
18 sites available that may again be outside the
19 search ring, may require the possibility of
20 another monopole somewhere further out which they
21 had apparently contemplated before. So, we don't
22 think the burden has been met that there is no
23 alternate or more appropriate site. And that
24 combined with the reasons given by the Planning

1 Commission that this doesn't meet the
2 Comprehensive Plan of the Lexington-Fayette Urban
3 County Government we submit that this application
4 should not be approved.

5 HEARING OFFICER SHAPIRO:

6 Mr. Brock?

7 MR. BROCK:

8 If Your Honor please, I would want to adopt that
9 argument made by the Lexington-Fayette Urban
10 County Government.

11 HEARING OFFICER SHAPIRO:

12 Mr. Dobbins:

13 MR. DOBBINS:

14 Thank you Your Honor. I have to say, first of
15 all, that my client is disappointed that
16 Lexington-Fayette Urban County Government saw the
17 need to first deny this and then to intervene in
18 the case because of the extreme effort that my
19 client put into working with LFUCG to find this
20 site. You heard the testimony of Ms. Sturgeon
21 about the meetings that first she, as a Sprint
22 representative, and then the SBA representative
23 who took over the site selection process from her,
24 and then her again, once she became an SBA

1 employee, went to to work with Lexington-Fayette
2 Urban County Government to find a good site and to
3 explore the opportunities in this particular area.
4 The Lexington-Fayette Urban County Government,
5 that's hard to spit out, made it very clear to our
6 client from the outset that the site on Paris Pike
7 next to the Waffle House was not a good site and
8 they did not favor it. Because of that my client
9 went to extreme lengths to look for another site,
10 went so far as to hold public meetings with the
11 neighborhood representatives and neighborhood
12 members, and to hold additional meetings with the
13 Lexington municipal officials. And at one of
14 those meetings at which Mr. Sweeney's spouse was
15 present apparently a spark was created that caused
16 her to speak to Mr. Sweeney and Mr. Sweeney later
17 volunteered the property that we now have our site
18 on. We had additional discussions with Lexington
19 about that site, believed that it would be
20 appropriate and that they would not opposes it.
21 And we were concerned and wanted to make sure that
22 we work with the local government because that is
23 something we always do. And as it turned out, as
24 this Commission knows and it has been testified to

1 and it is already in the record, in any event, the
2 Lexington Planning Commission recommended denial
3 of this site, or did deny this site, thus causing
4 us to have to appeal to be here today. They cited
5 two particular goals and objectives that this site
6 doesn't conform to. But the bottom line is if you
7 read the denial and the Staff Report and the
8 minutes that what their suggestion was, in order
9 to come into compliance, was that we find a site
10 that doesn't adjoin a residential use. Now, Your
11 Honor has heard the testimony of Jennifer Sturgeon
12 that there is not a site, not a single site within
13 the search area or even immediately adjacent there
14 to that doesn't adjoin a residential use. So, we
15 are left with trying to meet an unreachable goal,
16 really. There is no opportunity for us within the
17 search ring to come into compliance with all of
18 the Lexington-Fayette Urban County Government
19 Planning Commission guidelines. And so, we are
20 here today to try to demonstrate to this
21 Commission that it should override the Lexington
22 decision. And, of course, there are two things
23 that we must prove to this Commission for it to be
24 able to do that. And one is that the public

1 convenience and necessity demonstrates the need
2 for this facility and I think we have clearly done
3 that through the testimony of Mr. Feibel, who has
4 testified that this is the last site in what we
5 would call the Lexington grid, the first phase of
6 the Lexington market to be constructed, that at
7 the present time we have inadequate service on I-
8 75 in the vicinity of Paris Pike, that we have
9 inadequate service on Paris Pike as it proceeds
10 north from I-75 towards Bourbon County. There has
11 been no testimony to the contrary whatsoever. So,
12 burden number one, to me, seems easy. Burden
13 number two is that we must show that there is no
14 acceptable alternate site. Now, Your Honor has
15 interpreted or enunciated that the same way that
16 we do and that is that we have got to show you
17 that there is not a better site out there. And,
18 in fact, what I think we've shown is not only is
19 there not a better site, but there is not another
20 site which is as good. We've looked at the--all
21 of the other sites within the search ring, we have
22 heard testimony that the Whitaker property and the
23 Whitaker tower would clearly be acceptable to our
24 clients, the applicants, if it were available.

1 Unfortunately, Mr. Whitaker has chosen not to make
2 it available and that is not something that we can
3 do anything about. We approached him on several
4 occasions, the neighborhood has been free to do
5 that, certainly, Lexington has been free to do
6 that, he has simply not made that property
7 available to us. We would love to have collocated
8 on his 265 foot tower. If we had we would have
9 been up and on the air over two years ago. But
10 that wasn't available. We heard about the other
11 properties that fall within the search ring mostly
12 on the southern part of it. For one reason or
13 another, either the sites were too small or the
14 owners were not interested, but for one reason or
15 another they simply were not available. We heard
16 about the Bob Brown house, the halfway house that
17 had been suggested by Councilman Al Mitchell. You
18 heard the testimony of Ms. Sturgeon that that was
19 not available, that the non-profit group that
20 owned that facility was not interested in leasing
21 it. And we have heard about various other sites,
22 but I guess we have heard mostly about the church
23 and the Waffle House, the Paris Pike site. The
24 church is simply not feasible. Ms. Whalen,

1 particularly, has taken the burden upon herself to
2 try to demonstrate why we ought to use the church.
3 I certainly sympathize with Ms. Whalen and all the
4 other neighbors who don't want the tower. We
5 don't expect everyone to stand up and cheer for
6 something like this, but it's for the public
7 convenience and necessity and not simply to
8 satisfy the needs of a few neighbors, and for that
9 we apologize to them, but not to the community as
10 a whole. What the statute says is that we must
11 demonstrate that there is no acceptable alternate
12 site. It doesn't require us to demonstrate that
13 it is inappropriate or infeasible or even
14 economically unrealistic for us to build a whole
15 new network of church steeples or smaller
16 facilities that might suffice where this one site
17 otherwise would, or this one tower otherwise
18 would. You heard the testimony of Mr. Cravens
19 that the cost to construct a steeple-style antenna
20 structure at the church would run somewhere in the
21 five to six hundred thousand dollar range. You
22 heard Ms. Sturgeon's testimony, as well as Mr.
23 Cravens, that the cost of the monopole on the
24 Sweeney site would be roughly one fifth of that,

1 somewhere in the 80 to 100 thousand dollar range.
2 You also heard Ms. Sturgeon testify that the cost
3 of the church steeple is simply economically out
4 of--unfeasible. It is outside of the realm of
5 reason for Sprint. You also heard testimony that
6 in the entire Fayette County area, even if you go
7 out to Georgetown and beyond, Sprint had to
8 construct only five towers, or five new facilities
9 and only three in Fayette County itself. What Ms.
10 Whalen suggests would cause Sprint to have to
11 double, fully double the number of new facilities
12 that it has had to construct in this county, not
13 this county but in Fayette County. You've also
14 heard what I consider the extremely courageous
15 testimony of Dr. Good who comes up here and
16 testifies to something that is probably going to
17 get him in trouble with his neighbors, that the
18 church doesn't make a lot of sense to him and that
19 he frankly prefers the Sweeney site to the church.
20 You heard his testimony that as you walk down
21 Swigert, because of the tree line and the
22 obstructions on Swigert Avenue, you can't really--
23 you probably won't be able to see the proposed
24 monopole in any event. As far as the Waffle House

1 site or the Paris Pike site is concerned, we have
2 heard testimony that that site is clearly inferior
3 to the proposed site. The level of opposition to
4 it was higher, we had over 80 letters filed with
5 this Commission in opposition to that site. It is
6 right on top of Paris Pike, literally, right on
7 top of Paris Pike, it would be visible to every
8 single person who drives up and down Paris Pike.
9 And this is the thing we heard from the City of
10 Lexington, or Lexington-Fayette Urban County
11 Government when we first talked about this site.
12 Move it away from Paris Pike, move it away from
13 Paris Pike, get the historic Paris Pike Council
14 people out of this case by moving it further away
15 so they aren't concerned about it and that, in
16 fact, happened, they were opposed to the first
17 site, we haven't heard a thing from them with
18 regard to this site. Our proposed site would not
19 be visible to anyone except perhaps a few of these
20 good neighbors who would see it--who might see it,
21 I'm not sure that they would, who might see it at
22 some point during the winter when the leaves are
23 dead. And if Your Honor takes a look at this
24 aerial photograph you can see that it has strong

1 tree cover along Swigert Avenue. There are--this
2 is strong tree cover, there are structures,
3 houses, barns between Swigert Avenue and the
4 monopole. Really, just about the only person who
5 can see this monopole with any absolute degree of
6 certainty was Mr. Whitaker. And Mr. Whitaker is
7 not here, he is not opposed to this from what we
8 have been able to tell. He simply doesn't want to
9 lease us his property. Yes, we did move outside
10 of the search ring early on during this process,
11 we moved to the Waffle House site. That was
12 because we simply couldn't find a site within the
13 search ring, we took what we could get even though
14 it wasn't a good site. We heard testimony that it
15 probably, had we built there, would have
16 necessitated construction of an additional site at
17 some point down Paris Pike toward Bourbon County.
18 Two towers are not better than one, in my opinion,
19 under any circumstances and that is the argument
20 that we always hear from people, keep your
21 towers--keep tower proliferation down, give us
22 one, not two, certainly one is better than three.
23 When Sprint was presented with the opportunity
24 from Mr. Sweeney to move its site to his property

1 it jumped at the chance. You heard the testimony
2 of Ms. Sturgeon that it is better in every respect
3 from a land use point of view. You heard from Mr.
4 Feibel that it is far better from a radio
5 frequency point of view. What you did hear is
6 that it will be more expensive for Sprint and SBA
7 to build than the Waffle House site would have
8 been. We will have to construct a longer access
9 road, so it will be a little bit more painful
10 financially, but from every other point of view it
11 is a better site. We have heard no testimony that
12 there is a better site anywhere out there and we
13 have heard testimony on the other hand that this
14 is the best site that we have been able to find
15 and that is available within this area. Thank
16 you.

17 HEARING OFFICER SHAPIRO:

18 That will conclude the hearing, the court reporter
19 will prepare a transcript of the proceedings, when
20 the transcript has been prepared and filed, then
21 the Commission will take this matter under review.
22 Hearing is adjourned.

23 (OFF THE RECORD)

24

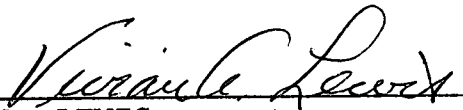
CERTIFICATE

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STATE OF KENTUCKY)
COUNTY OF FRANKLIN)

I, VIVIAN A. LEWIS, a Notary Public in and for the state and county aforesaid, do hereby certify that the foregoing testimony was taken by me at the time and place and for the purpose previously stated in the caption; that the witnesses were duly sworn before giving testimony; that said testimony was first taken down in shorthand by me and later transcribed, under my direction, and that the foregoing is, to the best of my ability, a true, correct and complete record of all testimony in the above styled cause of action.

WITNESS my hand and seal of office at Frankfort, Kentucky, on this the 1st day of November, 1999.


VIVIAN A. LEWIS
Notary Public
Kentucky State-at-Large

My commission expires: 7-23-01

Vivian A. Lewis

COURT REPORTER - PUBLIC STENOGRAPHER
101 COUNTRY LANE
FRANKFORT, KENTUCKY 40601

To: This transcript cover has been sealed to protect the transcript's integrity. Breaking the seal will void the reporter's certification page. To purchase a copy of this transcript, please call the phone number listed on the bottom of the cover sheet.



App
 EXHIBIT NO. 1
 99-194
 V. LEWIS 10-13-99

APPLICANTS' EXHIBIT

PROPERTIES WITHIN SEARCH RING

1. Sweeney Site
2. Whalen
3. Scott Ahlschwede
4. Elmer Whitaker
5. Joseph B. and Jacquelin Murphy
6. Northside Baptist Church
7. Wayne and Virginia Hiler
8. John Paul Miller
9. D.W. and Alice Scott
10. Pillar Stud Farm

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

Case No. 99-194UAC

In the matter of :

APPLICATION OF WIRELESS., L.P., BY AND THROUGH IT AGENT AND GENERAL PARTNER
SPRINT SPECTRUM, L.P., AND SBA TOWERS KENTUCKY, INC., JOINTLY, FOR ISSUANCE OF
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A PERSONAL
COMMUNICATIONS SERVICES FACILITY IN THE LEXINGTON MAJOR TRADING AREA
[SWIGERT ROAD FACILITY]

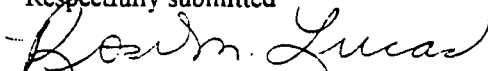
FINDINGS OF THE PLANNING COMMISSION OF THE LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

The Planning Commission of the Lexington-Fayette Urban County Government disapproves the
abovementioned application for the following reasons:

1. The proposed location is not in agreement with the goals and objectives of the adopted
Comprehensive Plan.

A written record of the meeting in which these findings were made is attached hereto.

Respectfully submitted



Chairman, Planning Commission

MINUTES FOR THE AUGUST 19, 1999, PLANNING COMMISSION MEETING
(Subdivision Items)

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:07 p.m. on Thursday, August 19, 1999, in the Council Chamber, Second Floor, 200 East Main Street, Lexington, Kentucky. Commission Members in attendance were Eugene Ballentine, Ben P. Bransom, Jr., Thomas M. Cooper, Anne D. Davis, Sarah Gregg, Dallam B. Harper, Jr. (arrived @ 1:10 p.m.), George L. Logan, Keith Mays, and Rose M. Lucas, Chair. Carolyn Bratt and Don Robinson were absent.

Planning Staff in attendance were Director Dale Thoma, Bill Sallee, Joe Lenney, Jimmy Emmons, Chris Riegert, Doug Greene, David Swenk, Linden Smith, Susie Skillman, and Rose Carver. Also in attendance were Chris Westover and Tracy Jones, Department of Law; Bob Bayert, Division of Engineering; Howard Huggins, Traffic Engineering Division; and Belinda Labadie, Building Inspection Division.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the past meetings of September 17, 1998; June 24, July 8, and July 22, 1999 were distributed with this agenda and were ready for Commission consideration.

Action - A motion was made by Mrs. Gregg, seconded by Mr. Bransom, and carried 8-0 (Harper, Bratt, Robinson absent), to approve the minutes for the past meetings of September 17, 1998; June 24, July 8, and July 22, 1999, as distributed.

- III. **SOUNDING THE AGENDA** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals and items requiring no discussion.

A. **Postponements or Withdrawals** - The Chair asked for any items where postponement or withdrawal is being requested. For any such items, the Chair inquired as to any opposition, and the Commission voted on the request.

1. **PLAN 99-180P: WATERFORD-MAHAN PHASE II** - Nicholasville Road.

Representation -Mr. Tony Barrett, EA Partners, requested a postponement to the September meeting.

Action - A motion was made by Mr. Bransom, seconded by Mr. Ballentine and carried 8-0 (Harper, Bratt, Robinson absent), to postpone Plan99-180P, to the September 16 meeting.

(Mr. Harper arrived at this time.)

2. **DP 99-93: NDC PROPERTY UNIT 1 (P-1 AREA) (WELLINGTON)** - Bull Lea Road.

Representation -Ms. Sara Tuttle, Parrott-Ely-Hurt Engineers, requested a postponement to the September meeting.

Action - A motion was made by Mrs. Gregg, seconded by Mr. Logan and carried 9-0 (Bratt, Robinson absent), to postpone DP 99-93, to the September 16, 1999 meeting.

3. **PLAN 98-220P: ENGLISH STATION. UNIT 3 (AMD)** - English Station.

Representation -No representative was present. However, Mr. Lenney reported that the engineer asked that this plan again be postponed to the September 16th meeting.

Action - A motion was made by Mr. Ballentine, seconded by Mr. Logan and carried 9-0 (Bratt, Robinson absent), to postpone Plan 98-220P, to the September 16, 1999 meeting.

- B. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion was needed...that is, (1) all recommendations were in agreement, (2) the petitioner agreed with the recommendations, and (3) no one present objected to the Commission acting on the matter at this time without further discussion. For any such items, they proceeded to take action.

* Denotes date by which Commission must either approve or disapprove plan.

** Denotes at least a portion of the property contains an environmentally sensitive area.

- V. COMMISSION ITEMS - The Chair announced that the Commission would hold a continued hearing on the following cellular tower request.

Note: The following matter was postponed by the Planning Commission at its July 20, 1999 hearing, and was considered today immediately following "Sounded" items.

- A. CELLULAR ANTENNA TOWER AT 189 SWIGERT AVENUE - a continued hearing of a request by Wireless Co. to construct a cellular antenna tower at 189 Swigert Avenue.

REPRESENTATION:

Staff - Ms. Susan Skillman, Administrative Officer; Ms. Tracy Jones, Legal Counsel

Applicant - Ms. Sandra Keene, attorney for the applicant (Sprint & SBA); Ms. Jennifer Sturgeon, Property Specialist for SBA; and Mr. Oliver Fiebel, Radio Frequency Engineer for Sprint.

STAFF REPORT - Ms. Skillman noted that since this was a continued hearing, no new staff report would be presented. The report presented at last month's hearing summarized the staff's position, and it was distributed again today. (A copy of the staff report is attached as an appendix to these minutes.) The staff was recommending disapproval of this request, for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular, the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.
- G. Promote human scale, pedestrian friendly neighborhoods.
- H. Maintain, preserve and revitalize existing neighborhoods.
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY.

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.

2. To better accomplish the Goals and Objectives of the Comprehensive Plan, the tower should be located in an area that does not adjoin residential uses.

The continuation was to give the neighborhood an opportunity to meet with other persons in the area who might have a potential location for a cell tower. Ms. Skillman understood that the attorney for the cell company attempted to meet with Mr. Whitaker (adjoining owner to the north) about using his property for the cell tower; that is, to co-locate it with the existing tower on Mr. Whitaker's property. The staff did not arrange for that meeting and others would report on what transpired.

APPLICANT REPORT - Ms. Keene reported that during last month's hearing, SBA and Sprint outlined the efforts they had made since the fall of 1997 to secure a tower location in the Paris Pike/Swigert Avenue area. Those efforts included constant involvement of the Commission's staff in trying to find a location within Sprint's coverage area that would have the least impact on the homes in the area. She asked that all statements and exhibits presented at the July 20th hearing be incorporated by reference herein.

Following that meeting, Sprint, SBA and the Commission executed an agreement which allowed them to extend the time in which the Commission had to make a decision. They followed up with a letter to the neighbors stating their willingness to meet, but did not hear from the neighbors until Jennifer Sturgeon contacted Mr. Whitaker's representative. She reported that Mr. Whitaker had not changed his mind, he still did not want Sprint to co-locate on his existing tower, and he was not interested in pursuing that meeting.

Ms. Keene further reported that SBA has offered to pay to disassemble Mr. Whitaker's existing lattice tower, upon approval and construction of the proposed monopole. This would result in still having only one tower in the area. She also pointed out that theirs would be an unlit monopole tower less than 200 feet,

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whereas the Whitaker structure is a lattice tower over 200 feet high and is lit. (Towers 200 feet or higher have to be lit.) Mr. Whitaker would have to agree with that, but SBA would be willing to pay for its removal.

She also emphasized that they had exhausted every possibility in this area, and they believe the proposed site is the most appropriate location for the monopole. In minimizing the visual impact of the tower, SBA has located it toward the rear of 189 Swigert Avenue (Sweeney property). In addition, there is a treeline for screening and fewer houses are in the immediate vicinity of that location than elsewhere in the Swigert Avenue area. Their engineers prepared balloons and strung them 200 feet in the air and drove along Paris Pike to see if they would be visible from that roadway. They were unable to see them; therefore, they did not believe the monopole would be visible from Paris Pike. Further, visibility from Swigert Avenue would be minimized by the distance it would be set back from that road.

OBJECTIONS/CITIZEN COMMENTS

Residents voicing opposition to this proposal were Ms. Carole Whalen, 157 Swigert Avenue, Mr. Dan Brock, 102 Swigert Avenue; Mrs. Polly Good, 260 Swigert Avenue, and Mrs. Theresa Thompson, 233 Swigert Avenue.

The above residents opposed the monopole proposal at 189 Swigert Avenue, which they felt would harm the residential character of their neighborhood. Mr. Brock said he didn't want a monopole in his back yard, and that the proposal was not in conformity with the Plan. (Mrs. Good and Mrs. Thompson also opposed an alternative location on Swigert Avenue, suggested next by Ms. Whalen.)

Ms. Whalen, whose property adjoins this site at the rear, thought there were other options to satisfy the Sprint requirements and yet maintain the character of the neighborhood. She had photographs of another tower on church property in Massachusetts. It was a Sprint tower and the steeple encased the technical equipment, making it unobtrusive and unseen. She discussed this possibility both with Sprint and the Pastor of the Northside Baptist Church; and while expensive, she thought something might be arranged to co-locate the tower with the church in a manner acceptable to the community. She added that the church does not have a steeple, and Rev. Jones was very receptive to this possibility as it would provide the church with needed additional income.

Ms. Whalen said she also spoke to the neighbors about this possibility. She presented a petition in opposition to the monopole at 189 Swigert, but in agreement to a church steeple to house the antennas. She added that everyone was interested in this concept.

She noted the unique character of Swigert Avenue with older, well-kept homes, horse fences and horses up and down the road. They wanted to maintain that character, and felt that placing an unsightly tower in the middle of a horse pasture was not something their neighborhood needs. She asked the Commission to deny this request and to give them an opportunity to look at other possibilities and other options.

Rev. Bob Jones, Northside Baptist Church, offered an alternative in which he would agree to a prayer tower or a regular tower to be constructed on the church property at 257 Swigert. He said the church has approximately 10 acres and their building is set back quite a distance from Paris Pike. Also, it adjoins the Whitaker property. He felt this offer could be a help to the community and to the church.

OBJECTION TO ALTERNATIVE PROPOSAL

Mrs. Good, 260 Swigert Avenue, lives across from the church and pointed out that there were 4 houses directly across from the church property. She did not know how the steeple would look, but emphasized that she and her neighbors did not want a monopole facing their properties, and they would be adversely affected by such a use. She maintained the same position as last month that a monopole should not be on Swigert Avenue.

REBUTTAL:

Applicant - Ms. Keene addressed the latest church property proposal, noting that they met at the church yesterday and brought with them a structural engineer who was involved in the Centenary Church steeple here in Lexington. That church had an existing foundation and structure, and the tower is only 115-125 feet, or so, high. The engineer explained what would be required on the Northside Baptist Church's prop-

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erty. Given the Northside Baptist Church's design, they could not just put an antenna on top of the building. In order to build a tower so it would not pose any risk to the public, the leased area would have to be about 80' x 80', it would be twice as tall as the Centenary Church tower, and it would have to be placed to the left of the church. A photo simulation was presented showing the tower on the church property, which Ms. Keene felt resembled the Washington Monument. Two more carriers would be required, and the height would exceed 200 feet. Structures 200 feet or higher require lighting. She presented this information to make the residents in this area aware that this would not be a little steeple on top of the church—that in order to meet the structural requirements and to accommodate the 3 carriers, it would be quite large. Further, she pointed out that this property is located closer to Swigert Avenue, which would make it appear very large to nearby residents. She did not know if the residents were aware that this was what they were agreeing to.

Aside from that, they also had their engineer run some numbers for them, and the cost of the tower on the church property would be about 1 million dollars, not including lease payments. The company would never recover the cost and that proposal is cost prohibitive. She said such a requirement would not be reasonable.

Objector - Mrs. Theresa Thompson, 233 Swigert, stated that she lived an equal distance from both sites, and this was one of the more brutal looking structures she had seen. It would not be acceptable to them, and she reiterated her opposition.

COMMISSION QUESTIONS - Mr. Mays asked why a shorter tower was not acceptable at this location and why the proposed tower had to be at 185 feet. Mr. Fiebel, radio frequency engineer, explained that in locations that are highly developed, the sites are a lot closer together and they do not require as tall a tower. But as they move out toward the country, towers are farther and farther apart, thus, taller towers are required.

There being no further comments from the audience, the hearing was closed at this time.

Dr. Cooper stated he would abstain from voting to avoid any appearance of impropriety, since he served as the chair on the committee that dealt with Sprint to do the prayer tower at Centenary Church.

Mr. Harper and Mr. Mays also abstained from voting since they did not attend last month's hearing on this matter. (Note: Abstentions go with the majority.)

Prior to action on this, the Commission briefly discussed its role in these matters, since this was the first cell tower hearing before the Commission. Ms. Jones, legal counsel, noted that their recommendation would be sent to the Public Service Commission whether they approved or disapproved this request. However, if disapproved, the Commission must have reasons for disapproval.

Ms. Skillman explained that even if the Commission disapproves the request, the Public Service Commission can still approve the location if it determines there is no acceptable alternative and that the public convenience and necessity requires the proposed construction. Thus, it is merely a recommendation to the Public Service Commission.

It was also noted that if approved, there would be two cell towers visible from Swigert Avenue (Whitaker and the proposed tower).

ACTION - A motion was made by Mrs. Gregg, seconded by Mr. Bransom, and carried 9-0 (Cooper, Harper, Mays abstained; Bratt & Robinson were absent), to disapprove the request to construct a cellular antenna tower at 189 Swigert Avenue, for the reasons listed by the staff.

VI. STAFF ITEMS

A. Office of Director

1. Franklin D. Thompson Retires as Planning Manager - Mr. Thompson, Planning Services Manager, has retired from the Division of Planning after 36 years of dedication to planning our community. Frank joined the Planning Commission staff in 1963 as a draftsman and steadily rose through the ranks to become Planner, Principle Planner, Planning Services Director and Planning Services Man-

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V. **COMMISSION ITEMS** – The Chair announced that any item the Commission members or Committee would like to present would be heard at this time.

1. **Cellular Antenna Tower** – A request by WirelessCo to construct a cellular antenna tower at 189 Swigert Avenue.

Representation – Ms. Sandra F. Keene, attorney, for SBA Towers and WirelessCo, L. P., aka as Sprint Spectrum, L. P.; Ms. Jennifer Sturgeon, SBA Towers; Mr. Oliver Fiebel, radio frequency engineer.

Staff Report – Mrs. Susan Skillman, Current Planning, presented the report. She distributed a staff report that contained pertinent facts of this case. It also contained a review of KRS 100.987 that was passed by the Kentucky state legislature in 1998. This statute gave the Planning Commission limited authority to review cellular antenna tower requests within its jurisdiction of Fayette County. In addition, Mrs. Skillman distributed a packet of exhibits that she used throughout her presentation.

Mrs. Skillman stated that a drawing of the proposed monopole was found on page 11 of the exhibit packet. The pole would be 180 feet high with a lightning rod at the top that would make the total height 191' 6".

Mrs. Skillman then went over the review of KRS 100.987 found in the staff report. She noted that, up to now, the Urban County Government would receive notice of cellular tower requests, and the Urban County Council would decide whether to intervene at the hearing before the Public Service Commission (PSC). This statute now allows that the Planning Commission to review the cellular tower requests. As they are received, the staff will review them and will present them to the Planning Commission.

Mrs. Skillman stated that cell towers are part of the process of creating an overall grid of antenna towers and transmitters. They cannot all be located in industrial areas because they need to be located near the users. Consequently, they are proposed for locations that the community might not desire.

Mrs. Skillman stated that under Federal and State law, cellular communication services are considered a utility, and come under the authority of the Kentucky Public Service Commission. This Commission also regulates electric services, gas companies, water companies, and the like. Mrs. Skillman stated that the application format and information is prescribed by statute. The staff can request, but cannot require, further information from the antenna company.

Mrs. Skillman stated that all of the information in the application is considered confidential and proprietary. She noted that the address and location of the tower were the only facts that are required to be made part of a public record. In this instance, however, the company had agreed to release a lot of information and make it available to the public. Most of this information was included in the exhibit packet.

Mrs. Skillman stated that the Planning Commission would have a limited review of this application. She noted that it could only be reviewed as to whether it would agree with the 1996 Comprehensive Plan and with the Zoning Ordinance. This particular request was filed on June 23rd and the Commission would have 60 days from that date to submit its recommendation in writing to the PSC. If the Commission does not make a recommendation within that time, the application will be deemed to be approved.

Mrs. Skillman stated that the Commission could consider how well the cell tower provider has tried to co-locate on existing towers. To do that, the Commission has to look at the search ring that had been established. A search ring is the area that the radio-frequency engineers have determined would be the most advantageous area for the cell tower location. The Commission could see if there are other towers in the area, and whether the applicant company had attempted to locate its transmitting facilities on an existing tower.

Mrs. Skillman stated that if the Planning Commission recommends disapproval of the request, it must give reasons for that recommendation. It also must provide to the PSC suggestions for how the goals and objectives of the Comprehensive Plan and/or the Zoning Ordinance could be accomplished in a better way. Ms. Skillman explained that, even if the Commission recommends disapproval of the request, the PSC could still approve the location if it determines that there is no acceptable alternate location, and that the public convenience and necessity requires the proposed location.

Mrs. Skillman referred Commission members to page 17 of the packet which was a copy of a map with a search ring drawn on it. This showed where the applicant, WirelessCo, had determined the tower should be located. Additional maps and photographs were displayed on an overhead projector to illustrate the location of the proposed tower. The property fronts on Swigert Avenue. A private street called Blue Ribbon Lane runs behind Swigert Road properties, but stops short of the subject property. The proposed monopole would be located in the rear of 189 Swigert Avenue.

The photographs showed views of the subject property and other properties along Swigert Avenue. They illustrated the fact that the land behind the subject property was farm land. They also showed the proposed location for the cell tower. One photograph showed a tower located on the Whitaker farm north of the subject property. A copy of a letter to Mr.

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Whitaker, owner of this tower, was found on page 19 of the exhibit packet. In this letter, Mr. Whitaker was asked to respond to a request from Sprint to utilize that tower, or to rebuild it. Page 20 was a copy of a response from Mr. Whitaker, indicating that he was not interested in having communications equipment placed on his tower. Mrs. Skillman concluded that Sprint had made an effort to contact the owner of a nearby tower within the search ring. Other photographs showed homes located on nearby properties.

Mrs. Skillman stated that the front of the subject property was zoned R-1B and the rear of the property where the monopole was proposed, is zoned A-R. She noted that radio, telephone, or television transmitting or relay facilities are permitted in the A-R zone as a conditional use. Four conditions for them being allowed are listed in the Zoning Ordinance (Article 8-1(d)14.a.b.c.d.), and were also listed on the staff report. Mrs. Skillman stated that information on the wind speed (Art. 8-1(d)14.b.) was not supplied, and the staff would like to know if the proposed tower would meet that condition.

Mrs. Skillman reviewed the co-location issues discussed in the staff report. The staff believed that the applicant had fulfilled the requirement to investigate co-locating on existing towers. She believed that the statute required that the applicant investigate other towers in the area, and not other properties where a tower might be located.

Mrs. Skillman then reviewed the Comprehensive Plan issues listed in the staff report. The staff's recommendation was as follows:

The Staff Recommends: Disapproval for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.
- G. Promote human scale, pedestrian friendly neighborhoods.
- H. Maintain, preserve and revitalize existing neighborhoods.
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY.

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.

2. To better accomplish the Goals and Objectives of the Comprehensive Plan the tower should be located in an area that does not adjoin residential uses.

Applicant's Presentation – Ms. Sandra Keene, attorney, stated that the staff report did not include a history of the efforts that the applicant had made to find a location for this tower. She noted that the applicant had spent much time with the staff and with neighbors in trying to find a suitable site. This case began in 1995 when the FCC decided to increase competition for wireless providers so that the cost would be brought down to an affordable price for the service. The FCC had auctioned a list of FCC licenses for a different frequency band other than the one used by cellular providers. Sprint is a Personal Communications Services (PCS) provider. This service operates with a different technology than the traditional wireless.

Ms. Keene stated that Sprint won the bid for these FCC licenses for many areas within the United States, including the Fayette County area. Sprint had entered the field later than the cellular companies. These cellular companies had already erected towers and had built out their networks. Consequently, the public became aware of what cellular towers looked like, and Sprint faced resistance to erecting more towers for its network.

Because of this circumstance, Sprint had initiated a co-location design. Company officials identified as many existing towers, water tanks, tall buildings, etc., on which the communications equipment could be installed. After those locations were secured, Sprint officials would complete the network with stand-alone towers. Ms. Keene stated that, in Kentucky, Sprint's co-location rate is approximately 70%. She noted that this co-location rate was unheard-of when cellular communication was first introduced.

Ms. Keene stated that, inevitably, the company must construct towers on some sites because there is no structure tall enough or available to serve the purpose. This inevitability has occurred in the area of the search ring. Sprint began working on a site in this area of Fayette County early in 1997, and knew that it would be tough because of its proximity to Paris Pike. Ms. Keene noted that most of the area in the search ring was owned by Mr. Whitaker who already had a tower on his property. A Sprint representative had contacted Mr. Whitaker about using his tower, or possibly

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constructing a stronger tower as a co-location project. Mr. Whitaker was not interested in either proposal. The Sprint representative was not able to find anyone within the search ring interested in having a tower constructed on his or her property.

Ms. Keene further reviewed the history of tower location in this area, noting that Sprint contracted with SBA Towers, an independent contractor that builds towers for this purpose. A site near the Waffle House restaurant on North Broadway was investigated by SBA Towers. The initial application filed with the PSC was for that site. Due to extensive public opposition to that site, SBA Towers and Sprint chose not to pursue that site. Ms. Keene then described attempts to work with the neighbors to find an appropriate site. These attempts were fruitless.

Ms. Keene stated that SBA had continued looking for sites in the community, including nearby commercial sites. None of the property owners were interested. Sprint officials had concluded that there were no sites in the area that would be pleasing to the neighbors. Therefore, SBA and Sprint reactivated the case with the PSC, and met with the Mr. King and Mrs. Skillman of the Current Planning staff. Mrs. Jean Sweeney, president of the Joyland Neighborhood Association was also present at that meeting.

Eventually, Mr. Sweeney offered to allow the structure on the back of his property where it would be less visible to the surrounding neighbors. The applicants had proposed a 180' monopole structure. Mrs. Keene stated that, originally, the radio frequency engineers had requested a 250' tower. Because of considerable neighborhood opposition, the applicants had reduced that size to avoid having to install lighting in compliance with FAA standards.

Mrs. Keene stated that the applicants had attempted once more in June, 1999 to contact Mr. Whitaker about using his tower, or allowing them to build a replacement tower on his property, but these efforts failed. This ruled out the only co-location opportunity available to the applicants. Finally, the application was filed, leading to this hearing. She asked Commission members to take note of the efforts that the applicants had taken to work with the neighbors. She contended that the applicants had been willing since 1997 to work with the neighbors and with the staff.

Mrs. Keene emphasized that the applicants had spent two years trying to obtain a site, and were at a loss to do so at this time. They believed that they had found the best site within the search ring on Mr. Sweeney's property, and that it would be as unobtrusive as possible.

Mrs. Keene summarized by stating the following:

1. The applicant had spent two years trying to find a site that would be agreeable to everyone.
2. The applicants had maintained contact with the Current Planning staff.
3. The applicants had delayed going forward on a site more than once in order to investigate other opportunities that were suggested by various neighbors.
4. SBA Towers had spent over \$75,000 trying to find a suitable site within this search ring.
5. The applicants hoped that the Commission would want to encourage this type of involvement with the community and not discourage it.
6. The monopole had been set back from the road a good distance. It probably would not be visible from Paris Pike.

Mrs. Keene stated that SBA had proposed to take down Mr. Whitaker's tower since he no longer uses it. If this were done, there would be only one tower in the area, and it would be shorter than Mr. Whitaker's existing tower. It would be a monopole rather than a lattice tower, and it would not have the required FAA lighting.

Mr. Oliver Feibel, radio frequency engineer, used two color-coded maps to show where the coverage was needed in the area. One map showed existing locations without the proposed site. Coverage, represented by green circular areas, was lacking in the area of the proposed site. The other map showed how the proposed site would fit into the coverage of the existing network.

To explain how a search ring was determined, Mr. Feibel stated that the engineers determined the latitude and longitude of where a site should be located. They then draw a circle within a certain distance of that point to determine the search ring. The ideal would be that good coverage areas would just touch. He explained that locating sites too close together would cause interference in overlap areas because the signal would be too strong. On the other hand, sites that were too far apart would cause weak coverage in areas where the coverage did not meet. The goal was to have coverage move smoothly from one search ring to another.

Ms. Keene then addressed issues raised in the staff report. She took issue with Mrs. Skillman's claim that the front portion of the property was zoned R-1B and the back portion was zoned A-R. She maintained that, according to her inquiries, all of the land in that general area was zoned A-R, and that the site did not abut residential zoning. She obtained that information from Mr. Sweeney.

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With respect to the wind speed, Ms. Keene stated noted that the engineers had stipulated on the application that the tower would withstand a wind speed of 70 mph on the application because that was what is required in this area. She stated that SBA would commit to a wind speed of 100 mph, and wanted the record to reflect that commitment.

With regard to the fall line issue, Ms. Keene stated that the proposed tower would not have a fall line that included a structure. She conceded that its fall line might include a property on which a structure was located.

With regard to the Goals and Policies from the Comprehensive Plan included in the staff report, Ms. Keene reiterated her claim that all adjacent properties in the area were zoned for agricultural use and not for residential use. She stated that the proposed tower was not being placed in a neighborhood, as they have tried to avoid doing that. This site in an agricultural area was chosen for that reason, and because of the earlier opposition from residents of a subdivision.

Ms. Keene disagreed that the proposed monopole would have an adverse affect on the character of a neighborhood, or would interfere with a pedestrian-friendly neighborhood. She also contended that the monopole would not interfere with public roads or sidewalks because it would be set back one-quarter of a mile from Swigert Avenue, and one-half mile away from Paris Pike. The nearest house was located one-quarter of a mile away. The site was heavily wooded and the trees would shield the visual impact of the tower.

Ms. Keene stated that the tower would be designed to hold up to three communication devices, and this would reduce the number of towers needed in the area.

Proponents – Mr. Frank Sweeney, 189 Swigert Avenue, stated that he wanted to explain his reasons for offering the rear of his farm for the monopole. He noted that four generations of his family had lived in Fayette County, and he had chosen to continue living in the County because of its beauty. He had purchased this 11-acre farm 22 years ago.

Mr. Sweeney stated that he had co-founded the Joyland Neighborhood Association 10 years ago, and was an officer of that Association for several years. He was also a member of the Bluegrass Nature Trust, and had led in the construction of the beautification of Paris Pike. He had appeared before the Commission a few times because of zone change applications and real estate construction.

Mr. Sweeney stated that he had led the opposition to the construction of this monopole next to the Super America station on North Broadway. He was the person who had caused 88 letters to be sent to the PSC in opposition to that site. He stated that he did not oppose the construction of communication towers, but was concerned that the company making that application had no sensitivity to the Joyland Neighborhood Association, or other neighbors in the area.

During that time, Mr. Sweeney had spoken with an attorney from the law firm representing Sprint at that time. The attorney had asked where the monopole could be located. He decided that he would rather be a person who sought solutions to problems of modern technology in his neighborhood rather than to simply oppose such technology. He suggested that the monopole be placed on the rear of an obscure farm in the area. It could be out of site of people driving up and down Swigert Avenue and on Paris Pike. When this possibility was investigated, the engineers determined that the best location for a tower of a shortened height was at the rear of his farm.

Mr. Sweeney described the process by which the exact location was determined so that it would not be visible from Swigert Avenue. He stated that he had spent \$2,000 on attorney fees to negotiate the terms of the contract. He noted that there would be no guy wires for the pole. He further noted that the company would have to remove the pole and its concrete footing if it was ever abandoned.

Mr. Sweeney stated that the opposition to the pole might be due to misinformation that had been spread. He had talked with both of his neighbors, and had showed them plans and drawings of the proposed monopole. None of them had expressed opposition to this monopole. He also had invited the current president of the Joyland Neighborhood Association to the site, and had showed plans and drawings to that person. He maintained that he had not heard one single person speak to him about opposing this site.

Mr. Sweeney stated that he had done everything in his power to ensure that SBA would maintain the tower and the landscaping around it. SBA must also maintain the driveway leading back to the monopole. If the company removes the monopole, the land must be returned to its original condition.

Objections – Mr. Robert Goode, 260 Swigert Avenue, stated that his family was not informed of this application. He had lived in the area for 30 years. He noted that the photographs shown by Mrs. Skillman showed how beautiful this area was. He acknowledged the existence of trees on the site, but pointed out that leaves fall from the trees during the winter. The remaining bare branches will not hide the monopole from view at that time.

Mr. Goode claimed that Mr. Whitaker refused to allow the use of his tower because he liked the quaint neighborhood and did not want this facility to disturb it. He claimed that the applicants could find a site further out.

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Ms. Laura Whalen was speaking for her mother, Carol Whelan, 157 Swigert Avenue, who was out of town. She stated that their property was adjacent to the Sweeney property, and was the same size as that property. She noted that the monopole would be adjacent to the rear of the proposed site. She stated that they keep horses and dogs on the property. She read a letter from her mother to the neighbors in which her mother had alerted neighbors who had not been notified of this application.

Ms. Whalen believed that the lack of opposition was due to the fact that few people had received letters of notification about this application. (Letters were sent to property owners within 500 feet of the proposed site.) She stated that the lack of opposition was due to the fact that most people did not know about this application. Her mother had written the letter to the neighbors two months ago. Ms. Whelan noted that the neighbors did not know that this proposal had been under consideration for the last two years.

Ms. Whalen stated that the current president of the Joyland Neighborhood Association, Mr. Dan Atkinson, had spoken with her mother the previous day about this issue. He had then written a letter to her mother stating that the Joyland Neighborhood Association was opposed to any and all cell-phone towers within the Joyland neighborhood, whatever form they take. He had stated in his letter that the Joyland neighbors did not approve of, or support, any such device.

Ms. Whalen stated that she was not sure how much communication the applicant had had with Mr. Whitaker. She also stated that she had spoken with a number of neighbors recently, and had found that most of them were opposed to the monopole. She wanted more time to talk with people and to find another solution. She questioned why Mr. Sweeney had not contacted his neighbors about the proposed site to see if they could agree to this site. She pointed out that Mr. Sweeney will get a monthly fee for allowing this structure on his property.

Mr. Dan Brock, 102 Swigert Avenue, stated that he lived some distance from the proposed site. He stated that he was offered the chance to have this monopole on his property, too. He was offered \$600 per month or \$7,200 per year. The company had also offered him the same conditions that Mr. Sweeney claimed to have negotiated; such as, landscaping, maintenance of the site, and clean-up if the site were abandoned. He noted that Mr. Sweeney's property had been for sale recently. He believed that this proposed site was about money, not the ethics that Mr. Sweeney had described.

Mr. Brock stated that he was not interested in the money because his family had lived on the property since 1942, and he planned to stay there as long as he could. Ultimately, the property would belong to his son. He noted that they had lived there for this long without such a structure in the neighborhood.

Mr. Brock stated that the monopole would not be seen at present, but would be seen after the leaves fell. The trees are bare for at least half the year. He noted that a lot of money had been spent beautifying Paris Pike, and then this monopole is proposed for the area. He was in favor of the Planning Commission postponing this matter for a month to see if the neighbors could work out some other arrangement.

Mrs. Theresa Thompson, 233 Swigert Avenue, stated that her family had lived in the vicinity of the proposed site since 1986. She stated that their property did not extend as deep as Mr. Sweeney's, but she noted that they had spent considerable money on home improvements. She further noted that they spend time in the back of their house tending their garden.

Mrs. Thompson emphasized that the proposed monopole would be a visual impairment in the area. She did not want to see it there. She did not believe that it would enhance anybody's property except Mr. Sweeney's. She stated that her family would not have spent what they did for their home if they had known that there would be a monopole standing next door, as they could have gotten a similar house in another area.

Mrs. Thompson stated that the neighbors were very emotional about this issue. She noted that people had been speaking with each other even if they had not spoken to Mr. Sweeney. She stated that a number of people were offered to have the monopole on their property. Most of them had declined the offer out of consideration for the neighbors. She noted that her family had not received notification because they live outside the notification area, even though they live close to the proposed site.

Mrs. Thompson stated that Sprint officials seemed to have gambled a great deal on the premise that they could obtain the grid network that they needed. She argued that Sprint was not engaging in good business practices when the company imposed its structures on fine neighborhoods. She stated that she did not own a cell phone, and was not a Sprint customer.

Mrs. Polly Goode, 260 Swigert, disagreed with Ms. Keene's statement that this monopole site was not in a "neighborhood." She assured the Commission that the Swigert Avenue area is a neighborhood, and is one of the unique streets in Lexington. She agreed with the objections made by others.

* - Denotes date by which Commission must either approve or disapprove plan.

** - Denotes at least a portion of the property contains an environmentally sensitive area.

Applicant's Rebuttal – Ms. Keene stated that applicants are required to notify property owners within 500 feet of a proposed site. This distance is dictated by the PSC, and is not an arbitrary distance determined by the applicant. She further stated that the PSC mandates the wording of the notification letter.

Ms. Keene maintained that neither Sprint nor the PSC are insensitive to the neighbors. She noted that someone will see an 180 foot monopole. Such structures cannot be made invisible. However, the company had tried to find a spot where it would be visible to the least number of people. She believed that this site fulfilled that purpose.

Ms. Keene apologized for implying that Swigert Avenue was not a neighborhood. Her point was that they had selected a site that was not zoned for residential purposes, and that was not near—or in the middle of—a subdivision. This had been the objection to the first application for a site on North Broadway.

Ms. Keene confirmed that several people were approached about this monopole, but they were not interested. She noted that they had explained the narrowness of the search ring. She emphasized that Sprint and SBA were under FCC requirements, as well as PSC requirements, to provide adequate service to their customers. There is a "hole" in that service grid. She argued that the Company has to have a facility in this area, and had worked to find a spot where it would be visible to only a few people. She argued that there is no place else for the company to go.

Staff Rebuttal – Mrs. Skillman clarified the confusion over the zoning issue. She stated that the proposed site is zoned A-R. The Urban Service Area splits the property, and the front portion of the property is zoned R-1B. She had checked the zoning the previous day, and it was checked by another staff person a few minutes ago.

Discussion – Dr. Cooper spoke in favor of offering mediation services to the parties in this case. He noted that it had been 26 days since the application was filed, and there would be over 30 days available for further discussion. He suggested that interested parties—particularly Mr. Whitaker who has a tower to which the neighbors are accustomed—sit down with a mediator to find a solution. He believed that they could come up with a solution that everyone could live with.

The Chair asked the Commission Counsel if this would be appropriate. Ms. Westover stated that under the mediation ordinance, the Commission would not have the authority to put this issue into mediation. The parties could mediate on their own, but the Commission cannot require that. The Chair stated that the Commission could postpone this matter for three weeks until the August 19th Planning Commission hearing. Since the application was filed June 23rd, a report and recommendation must be sent to the PSC within 60 days. She noted that she would only support this option if Mr. Whitaker could be brought into the discussion.

Dr. Cooper urged the neighborhood association to seek the services of the Kentucky Mediation Service. He stated that the mediation should include the neighborhood, Mr. Whitaker, and Sprint. The Commission could then postpone this matter to August 19th.

Mrs. Skillman stated that the Planning Commission's recommendation had to be in Frankfort at the PSC within 60 days, or by August 21st. The minutes would have to be prepared to submit with the recommendation. Ms. Bratt stated that a way should be found to get the minutes and report expedited so that the Commission could give the parties three weeks to work out this problem. She believed that there would be a solution if Mr. Whitaker could be brought to the table.

Ms. Tracy Jones, Department of Law, stated that under the Statute the time for submitting a recommendation could be extended by written agreement from all parties, including the applicant. This would be done by written agreement between the Planning Commission and the utility. This could extend the date beyond August 21st. Chair Lucas asked Ms. Keene if she would give the Planning Commission a few days in order to get the papers filed.

Ms. Jennifer Sturgeon, SBA Towers, stated that she would prefer working toward a resolution within the next couple of weeks. She stated that this had been delayed for so long. She stated that they would work with the neighbors and Mr. Whitaker if he can be brought to the table. Chair Lucas explained that the Planning Commission has public hearings on the third and fourth Thursday of each month. A work session is held on the second Thursday of the month, at which time the Commission could hold a special hearing. She noted that this would allow only two weeks for arbitration or negotiation. Commission members believed that allowing another week might be better.

Chair Lucas explained to Commission members that she favored a postponement in this matter because this was the first such case that the Commission had heard. She believed that they should proceed carefully.

Ms. Sturgeon consulted with Ms. Keene, and then stated her understanding that SBA Towers could apply to the PSC for an additional week by filing another motion with the PSC. She asked for an acceptable date. Chair Lucas noted that this would be a joint agreement rather than a request by the applicant. Ms. Sturgeon agreed to the joint agreement.

Action - A motion was made by Dr. Cooper, seconded by Mr. Ballentine, and carried 8-0 (Harper, Mays, Robinson absent), to postpone the SBA Towers and WirelessCo, L. P cellular tower application to the August 19th Planning

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** - Denotes at least a portion of the property contains an environmentally sensitive area.

Commission agenda, to allow the applicants and the neighbors time to contact Mr. Elmer Whitaker, a neighbor, in order to pursue mediation or further negotiations, and to authorize the Chair to sign a mutual agreement with the applicant to apply for an extension to August 27, 1999 for transmitting the Planning Commission's recommendation to the Public Service Commission along with appropriate attachments.

* - Denotes date by which Commission must either approve or disapprove plan.
** - Denotes at least a portion of the property contains an environmentally sensitive area.

Staff Report
Cellular Antenna Request
189 Swigert Avenue

Applicant

WirelessCo, L.P., by and through its agent and general partner, Sprint Spectrum, L.P. and SBA Towers Kentucky, Inc.

Location

189 Swigert Avenue

Staff Report

In 1998, the state legislature made changes in KRS 100 to give the Planning Commission limited authority to review cellular antenna tower requests within their jurisdiction.

Since this is the first request to be heard by the Planning Commission, it may be helpful to review the new provisions of the KRS 100.

Review of KRS 100.987

1. The provision of cellular communication services is considered a utility and as such is under the authority of the Kentucky Public Service Commission.
2. The application information is prescribed by Statute. A Uniform Application is established by the Public Service Commission and local planning commissions may not require additional information. Further, all information in the uniform application, except for information that identifies the proposed location of the tower, is deemed confidential and proprietary. Such information may not be released except when ordered to do so by a court of competent jurisdiction.
3. The review by the Planning Commission is limited. The Commission may only review of the request in light of its agreement with the Comprehensive Plan and the Zoning Ordinance.
4. The Planning Commission is given only 60 days from the date of filing to approve or disapprove the request and forward its recommendation, in writing, to the Public Service Commission. Should the Planning Commission fail to complete its review within the 60-day period, the request is deemed approved.
4. The Planning Commission may require the utility to attempt to locate on existing towers if there is space available, if the co-location does not interfere with the structural integrity of the tower and does not require the owner of the tower to make substantial alterations to the tower. The Commission may disapprove a request based on the utility's unwillingness to attempt to co-locate on new or existing towers.

4. If the Planning Commission disapproves the request, it must state the reasons for the disapproval and provide suggestions that better accomplish the objectives of the Comprehensive Plan and the Zoning Ordinance.
5. If the Planning Commission disapproves request, the Public Service Commission may still approve the location if it determines that there is no acceptable alternative site and that the public convenience and necessity requires the proposed construction.

Comprehensive Plan Issues

The Goals and Objectives of the Comprehensive Plan provide statements of the overall vision for the physical development that community hopes to achieve. They provide guidance to shape land-use decisions and guide future development.

The staff has, therefore, relied upon the Goals and Objectives to determine if the requested tower location is in agreement with the Comprehensive Plan and has concluded that the proposed tower would be in conflict with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.**
- G. Promote human scale, pedestrian friendly neighborhoods.**
- H. Maintain, preserve and revitalize existing neighborhoods.**
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.**

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.**

Zoning Ordinance Issues

The proposed tower location is in an Agricultural-Rural (A-R) Zone. The following is a conditional use in the A-R zone:

14. Radio, telephone or television transmitting or relay facilities including line of sight relays and towers, except as permitted by KRS 100.324 and only under the following conditions:
 - a. Such facilities shall be operated at all times in compliance with applicable Federal, State, and local laws and regulations, including

- all standards of the Federal Aviation Administration and the Federal Communications Commission.
- b. No transmitting or relay tower shall be located closer than the height of the tower from another lot under different ownership, or any public or private street or highway unless the tower is constructed to withstand a minimum wind speed of one hundred (100) miles per hour.
 - c. The plans for the tower construction shall be certified by an engineer registered in the State of Kentucky.
 - d. All towers shall be equipped with an anti-climbing device or fence to prevent unauthorized access.

The conditions attached to this use were closely studied by the Planning Commission and the Urban County Council when these provisions of the Zoning Ordinance were adopted. Although towers rarely fall, the setback and other requirements were deemed necessary to ensure the safety and welfare of the public. Information on the wind speed design was not submitted. The Commission should seek this information from the applicant to ensure basic safety.

Co-Location Issues

The Planning Commission may consider attempts by the applicant to locate the transmission equipment on an existing tower. There is an existing tower on the Whitaker property, located to the north of the subject property, which is within the search ring for the subject tower. However, the applicant has submitted a letter from the owner of the Whitaker property indicating that he is not interested in locating additional equipment on that tower.

Other Policies of the Urban County Government

In October of 1994 the Urban County Council approved **Criteria for the Review of Cellular Tower Applications**. The complete text of these policies is attached. While the request meets most of the criteria, the proposed tower would violated the following two criteria:

1. The proposed location would be located within or immediately adjacent to an existing residential neighborhood.
2. The proposed tower would have a fall line that extends to premises containing a residential structure.

These criteria are fully consistent with the Goals of the Comprehensive Plan. Further, they reinforce the underlying Objectives.

Recommendation

The Staff Recommends **Disapproval** for the following reasons:

1. The proposed location is not in agreement with the Goals and Objectives of the adopted Comprehensive Plan. In particular the request is in disagreement with the following Goals and Objectives:

Goal IX. TO PRESERVE, PROTECT AND ENHANCE EXISTING NEIGHBORHOODS.

Objectives:

- B. Retain the character, identity and appearance of existing residential and non-residential areas.**
- G. Promote human scale, pedestrian friendly neighborhoods.**
- H. Maintain, preserve and revitalize existing neighborhoods.**
- I. Support and maintain existing neighborhoods to ensure the character and quality of urban life.**

Goal XVII. PRESERVE, PROTECT, AND ENHANCE THE NATURAL AND PHYSICAL FEATURES THAT GIVE THE BLUEGRASS ITS UNIQUE IDENTITY

Objectives:

- B. Preserve, protect and enhance the greenspace elements that give the Bluegrass Region its unique identity, including natural areas, scenic areas, scenic vistas, environmentally sensitive areas, geologic hazard areas and water resources.**

2. To better accomplish the Goals and Objectives of the Comprehensive Plan the tower should be located in an area that does not adjoin residential uses.

POLICIES FOR REVIEW OF CELLULAR TOWER REQUESTS

1. The Urban County Government shall oppose towers which are located within, or immediately adjacent to (within tower fall line) of:
 - existing residential neighborhoods
 - undeveloped areas zoned for residential uses
 - areas designated for residential uses on the adopted Comprehensive Plan

2. The Urban County Government shall oppose towers which have a fall line which extends to any premises containing a:
 - residential structure
 - public or private school
 - child care center and its required outdoor play area
 - park or other public open space

3. The Urban County Government shall oppose towers which have a fall line which extends to any structure used for the following purposes:
 - hospital
 - nursing home or rest home

4. The Urban County Government shall oppose towers which have a fall line which extends to any "street" as defined in the Zoning Ordinance and Land Subdivision Regulations.

5. The Urban County Government strongly endorses the use of monopole towers in cases where the tower would be near to and/or highly visible from residential areas, historic districts, and scenic roadway corridors. The Council shall consider opposing non-monopole towers in such instances.

6. The Urban County Government strongly discourages the siting of towers within or adjacent to significant local historic, cultural, or scenic premises or areas. The Urban County Government shall oppose towers which it determines would have a negative impact on such community resources.

233-2658

attn: Carole Whalen

PLANNING AND ZONING COMMITTEE

JULY 19, 1999

RE: CELLULAR ANTENNA TOWER, 189 SWIGERT AVE.

Dear Sirs:

I am opposing the proposed location of the Antenna at 189 Swigert Ave. My reasons for these objections are:

I- Actual physical location of Antenna, because I understand that its height is 200 feet, and should it fall for any reason, it would reach my house where my daughter and grandson live and could possibly do them bodily harm.

II- My opposition is not based solely on the aesthetics of the landscape of my horse farm and the other adjoining horse farms, my objection is based on safety standards and height of the Antenna.

III- I would consent to the possibility of erecting the Cellular Antenna if it would be located anywhere at least 200 feet from my property lines.

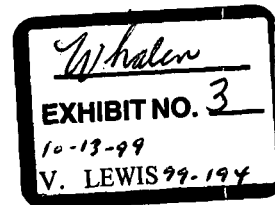
IV- It is my understanding that there are other places available in less than one half mile from where the proposed Antenna is to be erected.

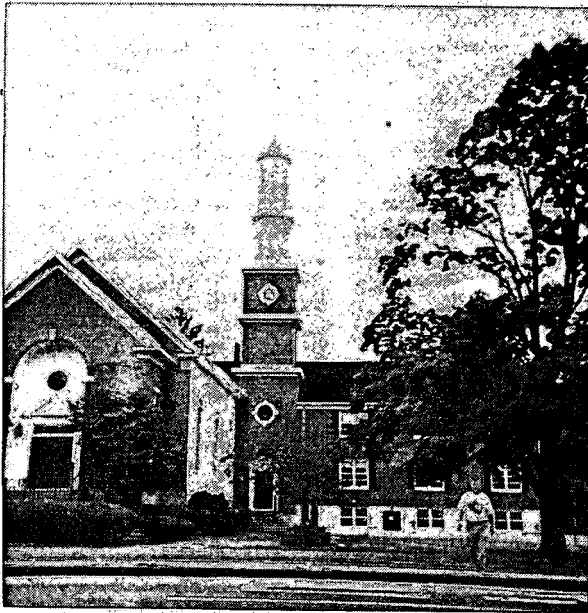
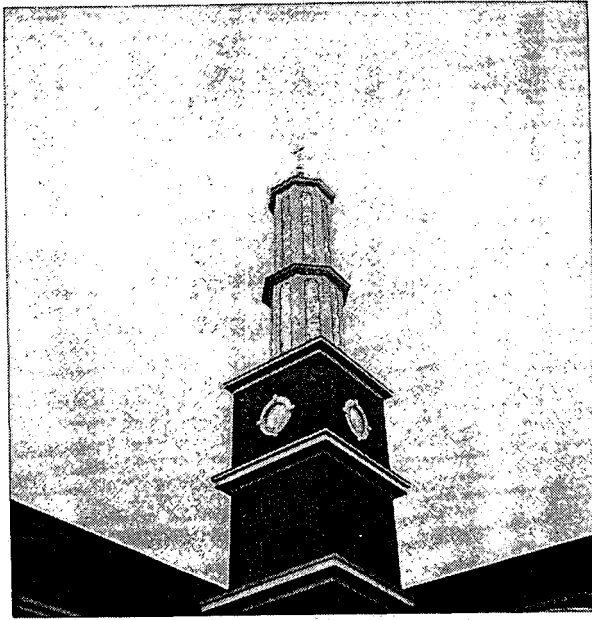
Please give this safety factor and my concern for the welfare of my children, grandchildren, and animals your utmost attention.

Sincerely,

Andrew Slone
Andrew Slone

Property Owner





July 19, 1999

Joyland Neighborhood Assoc.
450 Kingston Road
Lexington, KY 40505
606-293-1216

LFUCG
Div. of Planning
200 E. Main Street
Lexington, KY. 40507
258-3160

Re: Cellular Antenna Tower, 189 Swigert Ave.

To the Division of Planning,

We are opposed to ANY and ALL cell phone towers within the Joyland Neighborhood. Whatever form they take, whether a standard tower of some nature or a monopole, a cell phone tower is not something we desire to have within our boundaries. We do NOT approve or support any such device anywhere in our immediate area. There are many other sites equally desirable that are nearby which would not intrude on the neighborhood. Another site should be selected.

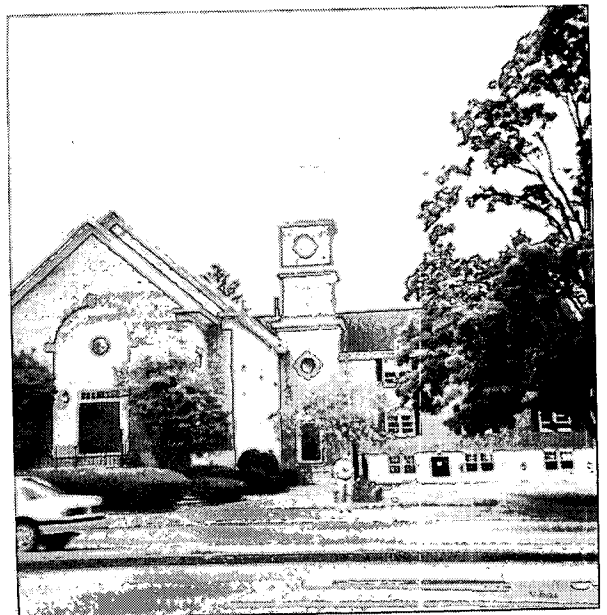
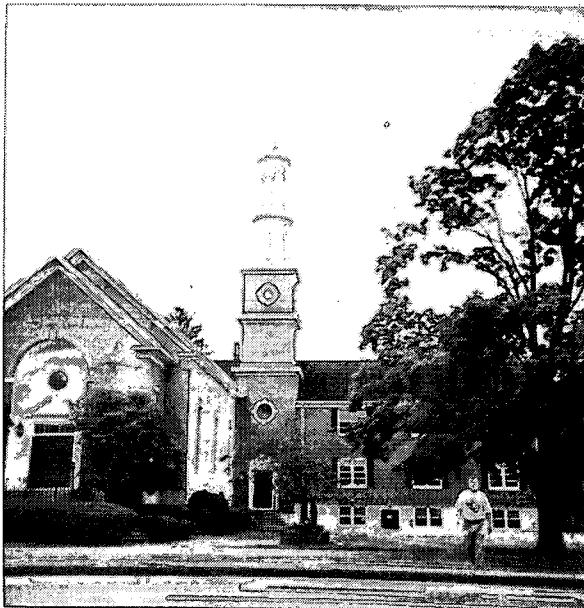
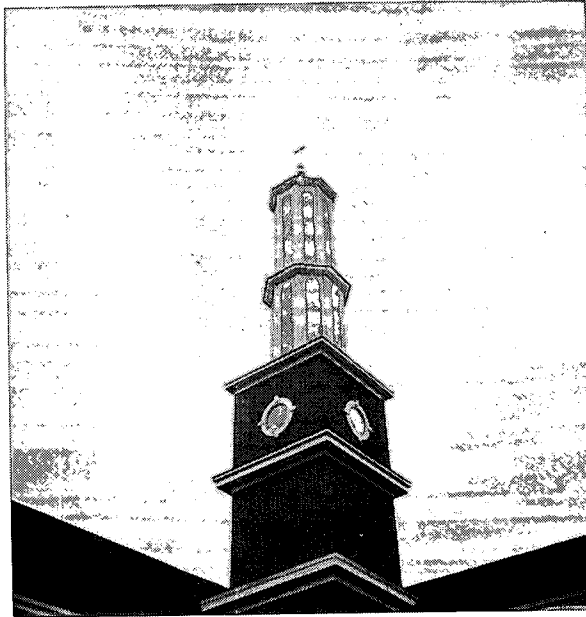
Respectfully submitted,

Dan Atkinson

Dan Atkinson, President
Joyland Neighborhood Assoc.

.cc Sprint PCS/SBA in Louisville, KY
Public Service Commission in Frankfort, KY.





Whelan
EXHIBIT NO. L
89-194
V. LEWIS 10-13-97

Wivan A. Lewis

COURT REPORTER — PUBLIC STENOGRAPHER
101 COUNTRY LANE
FRANKFORT, KENTUCKY 40601

Thompson Exhibits 1-11

CASE NO. 99-194

October 13, 1998⁹

EXHIBITS ENCLOSED:

Applicant's Exhibits Numbered 1, 3, 4, 5, 6, and 7

Whalen Exhibits Numbered 1, 2, and 3

Thompson Exhibits Numbered 1 through 11

LFUCG Exhibit No. 1

7/6-1217



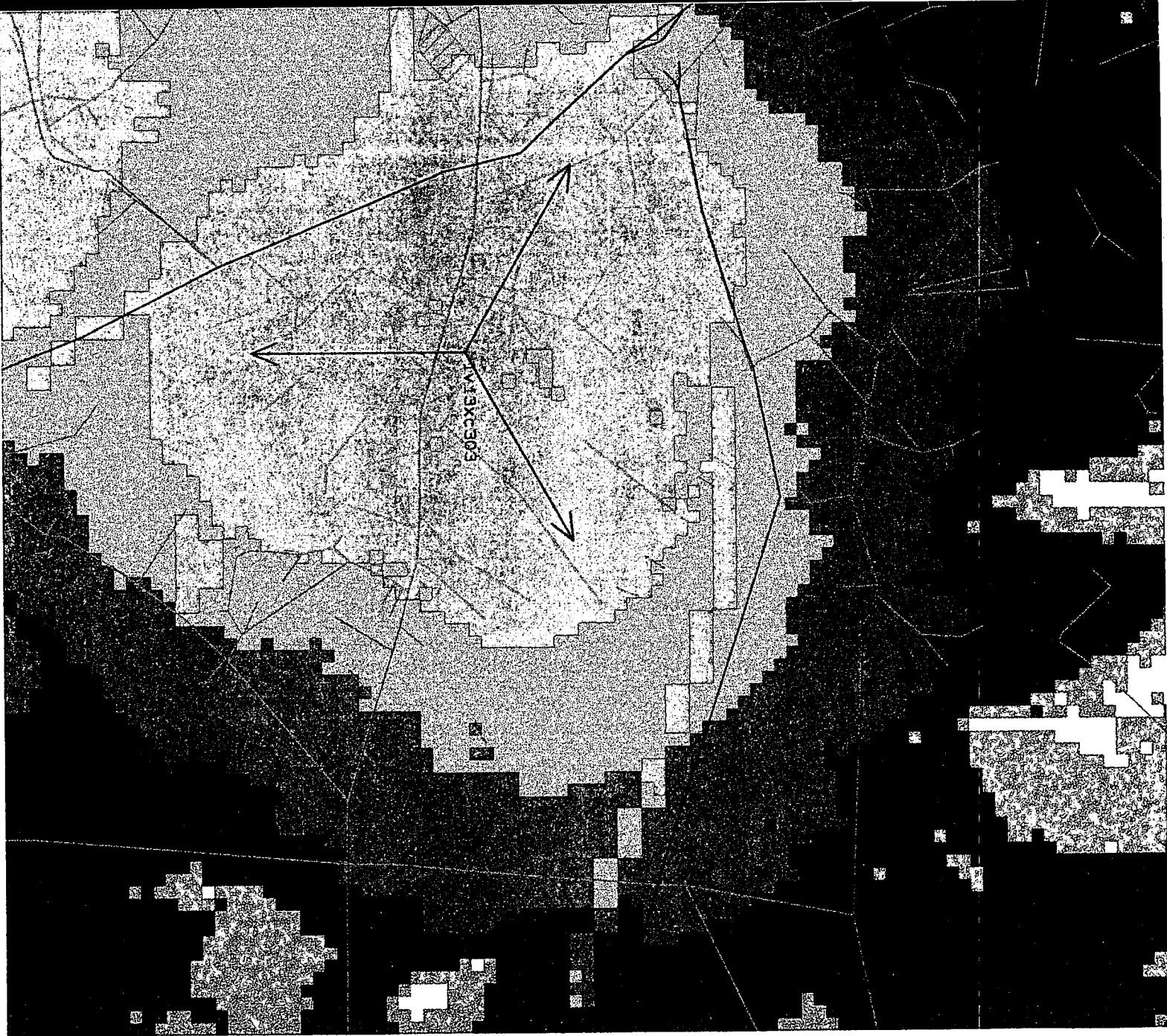




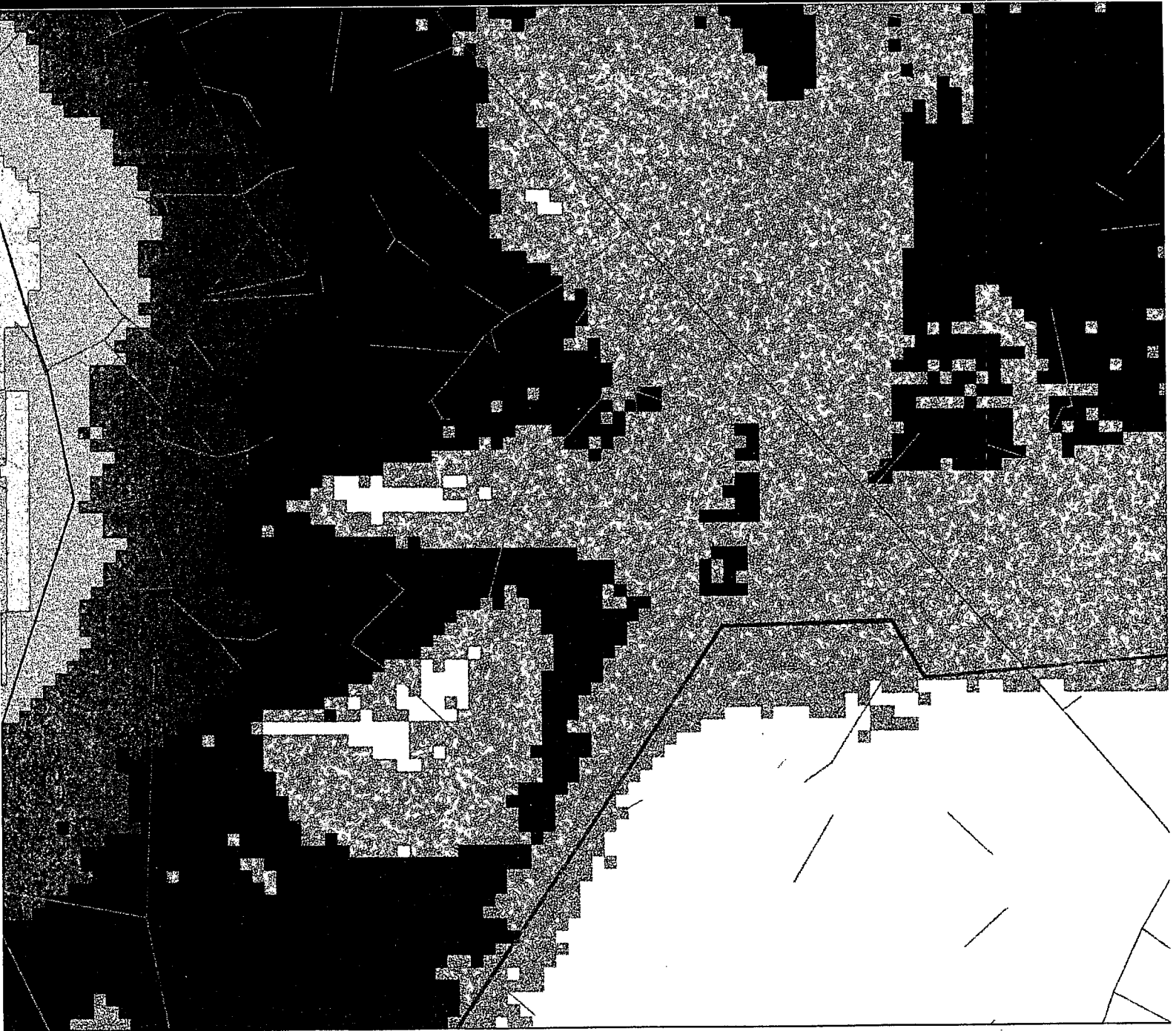




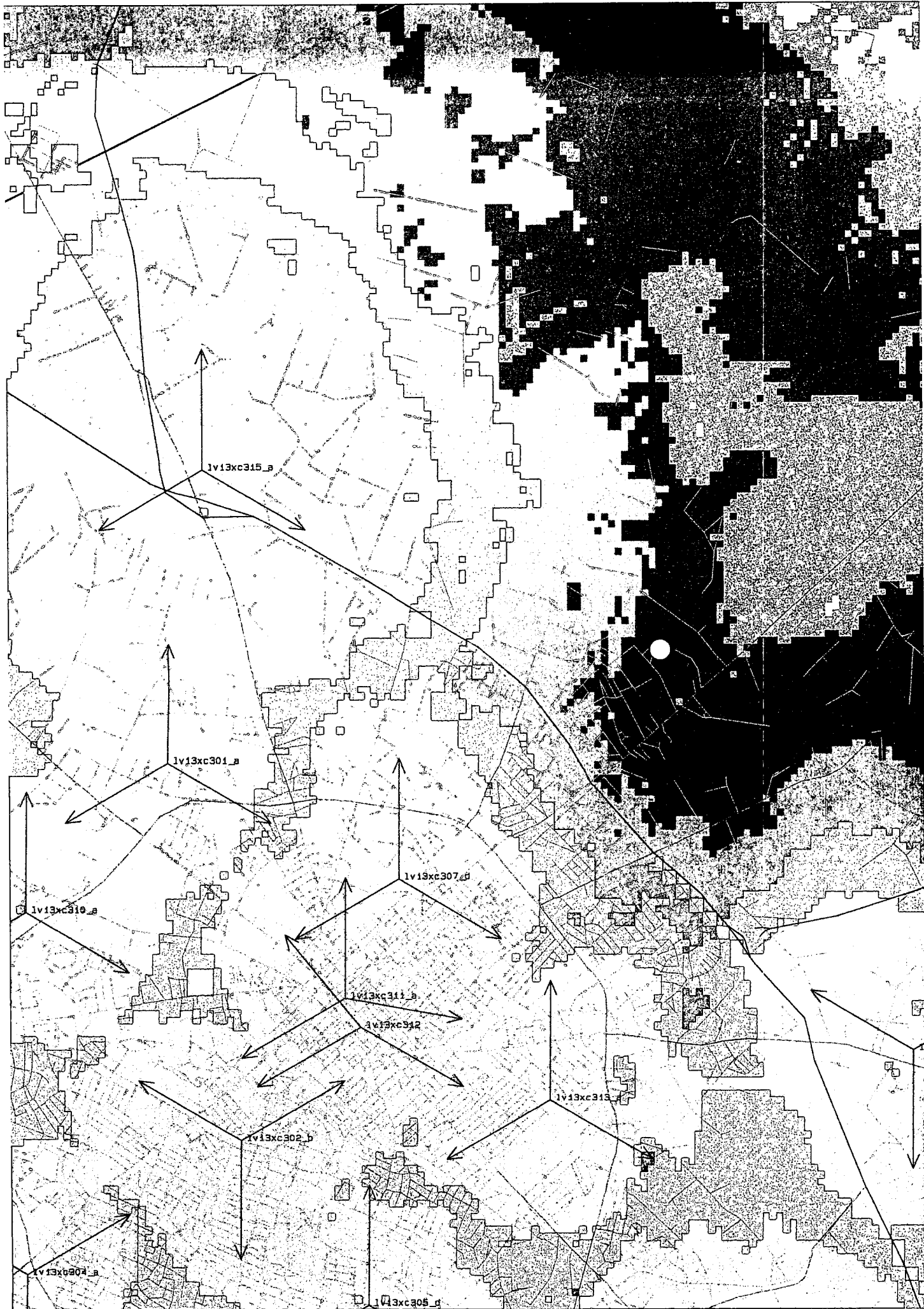


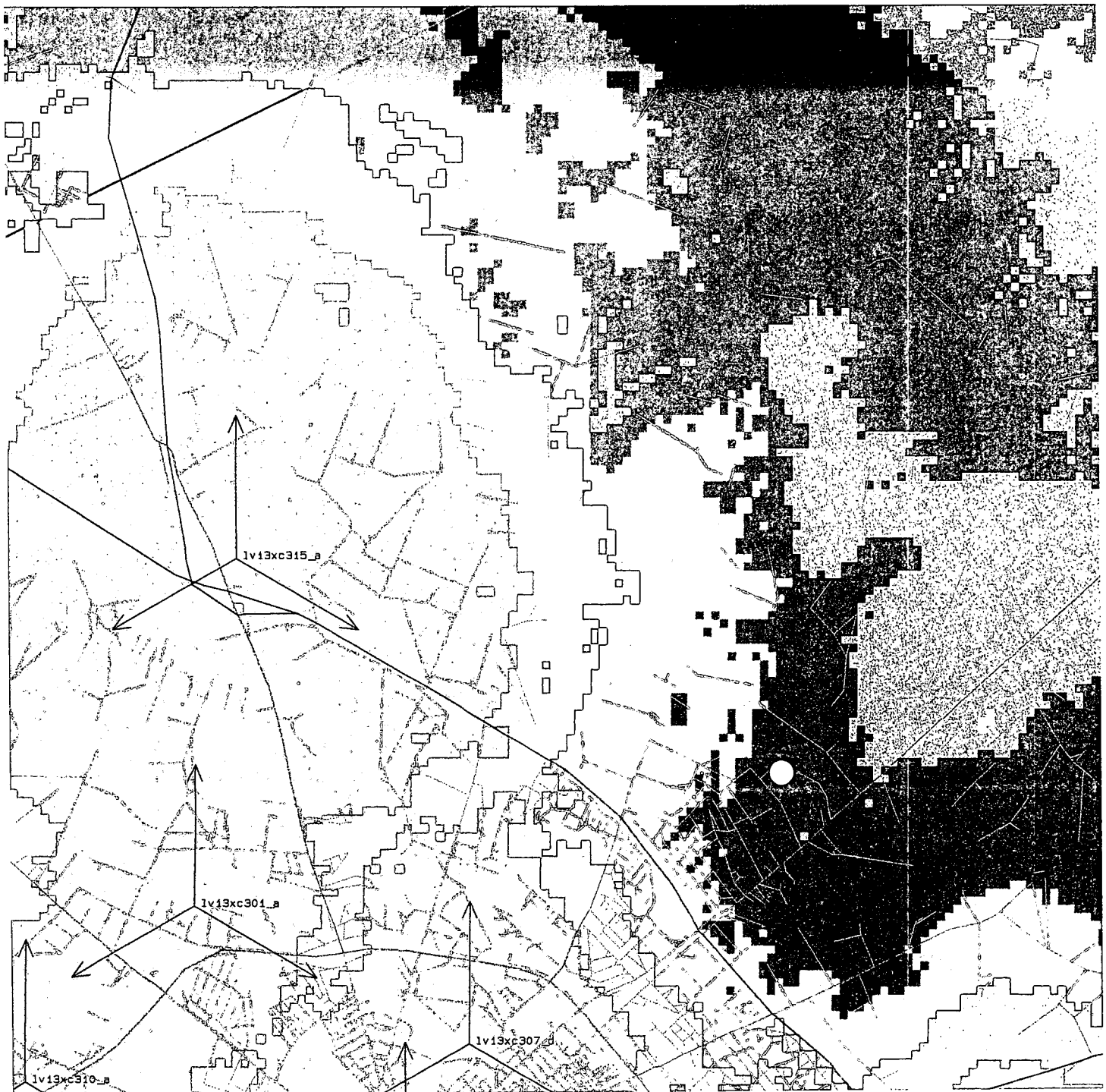


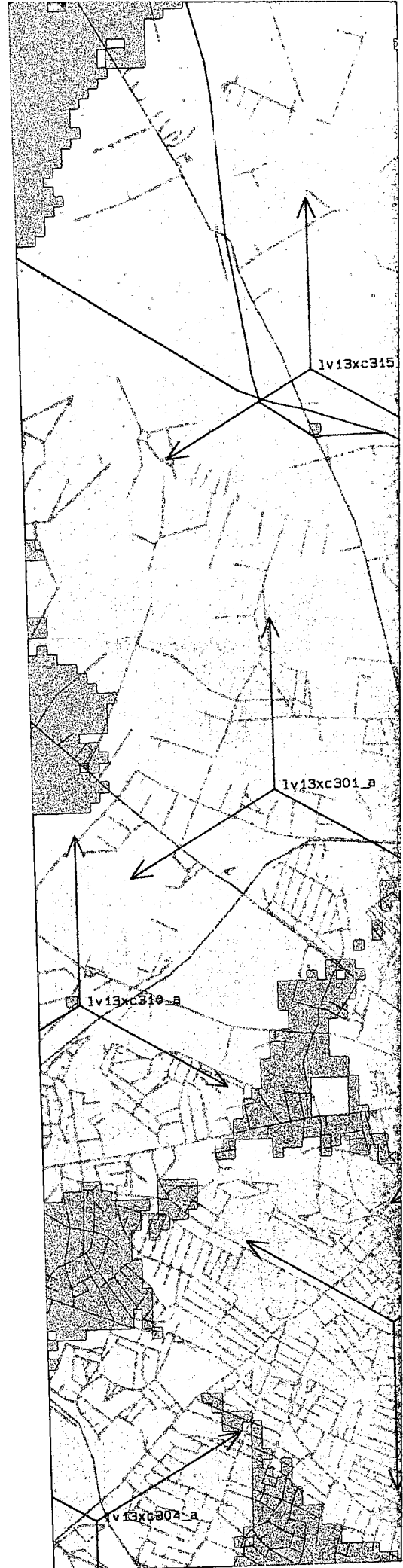
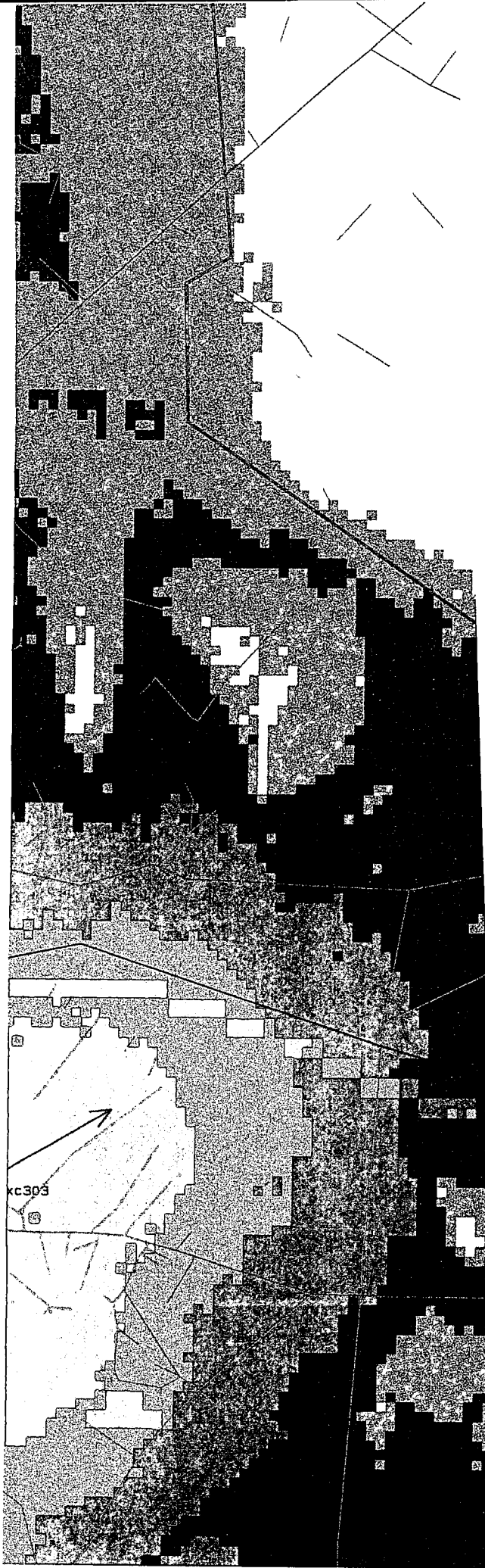
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99-194
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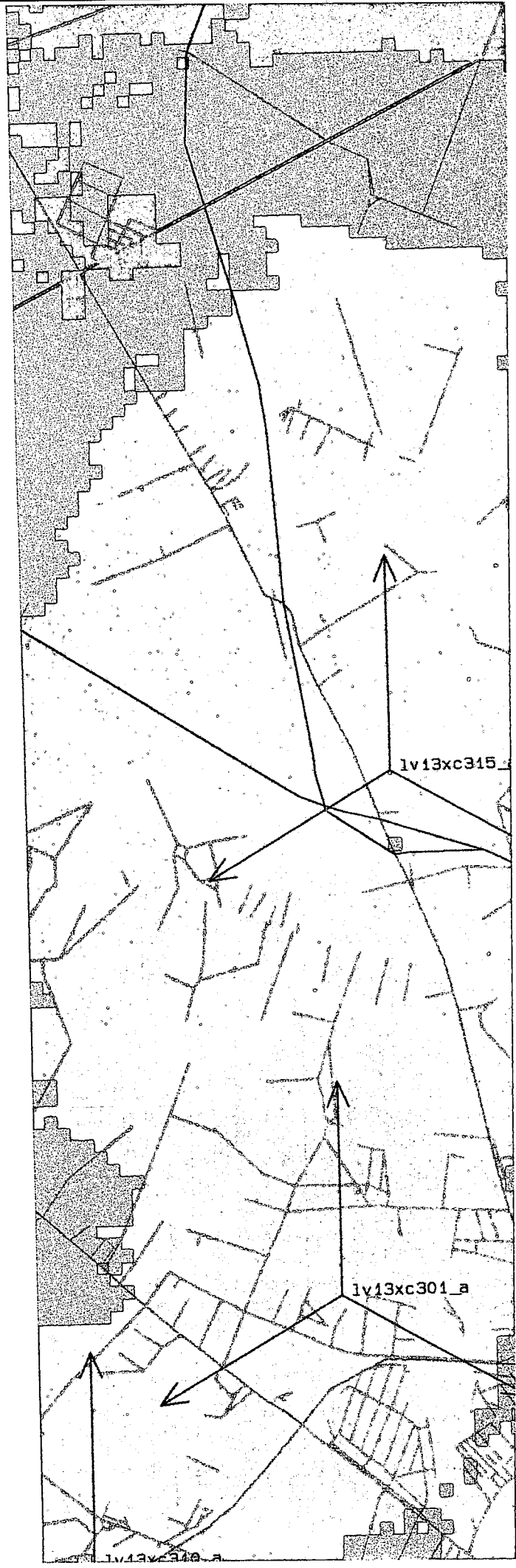
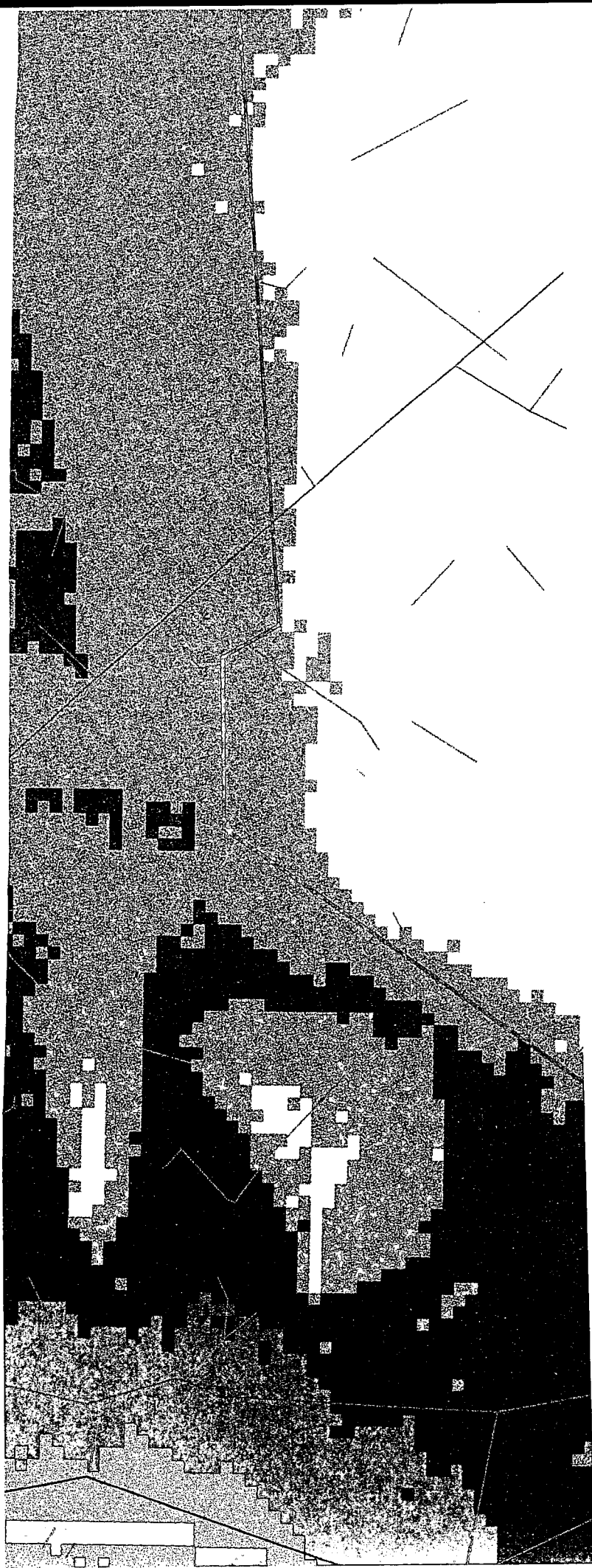


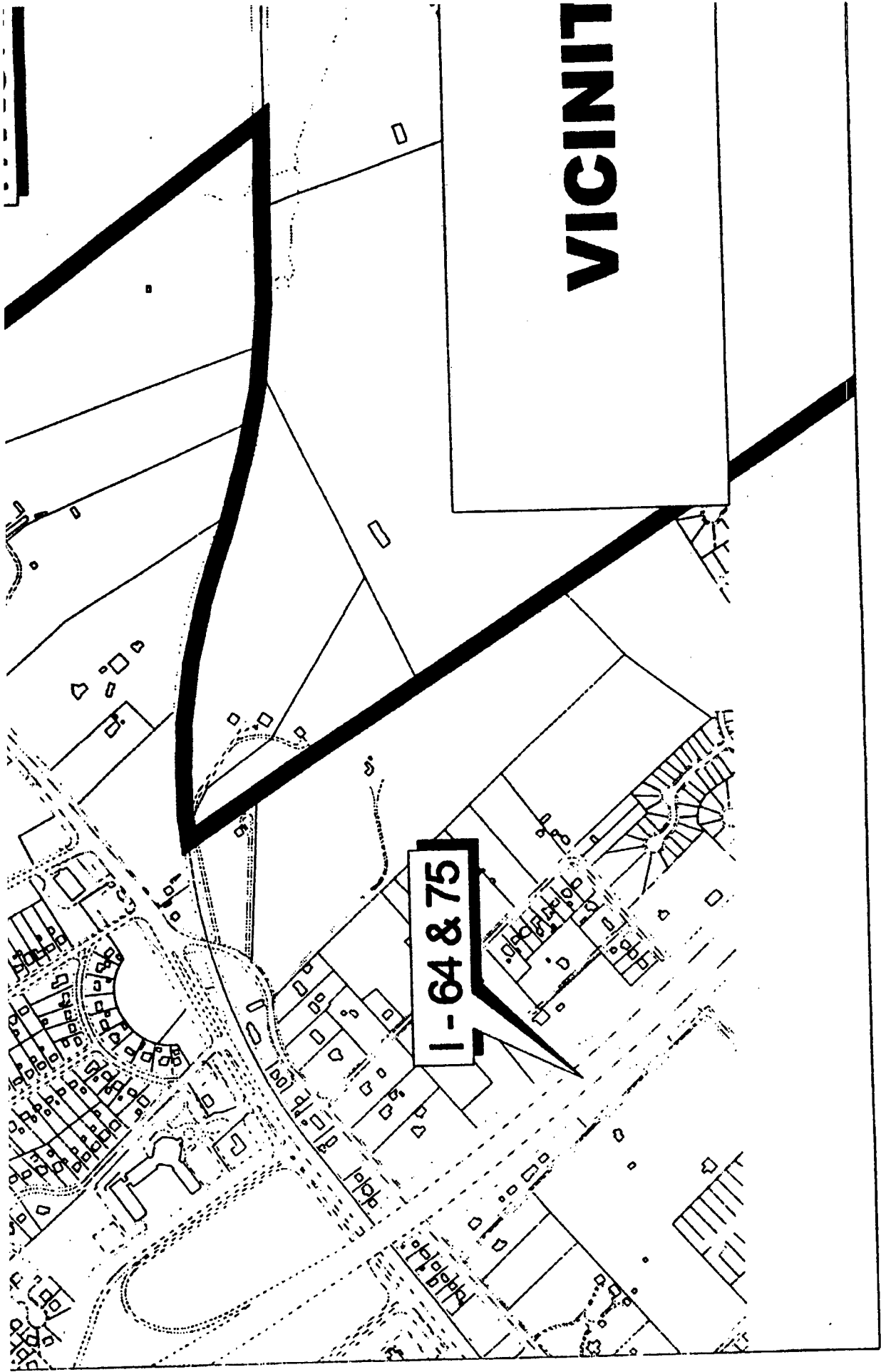
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 - Primary-Road
 - County Boundaries
- Coverage
- Port On-Street Level: -103dBm
 - Port In-Vehicle Level: -97dBm
 - Port In-Building Level: -90dBm
 - Port In-Building Level: -85dBm
 - Port In-Building Level: -80dBm





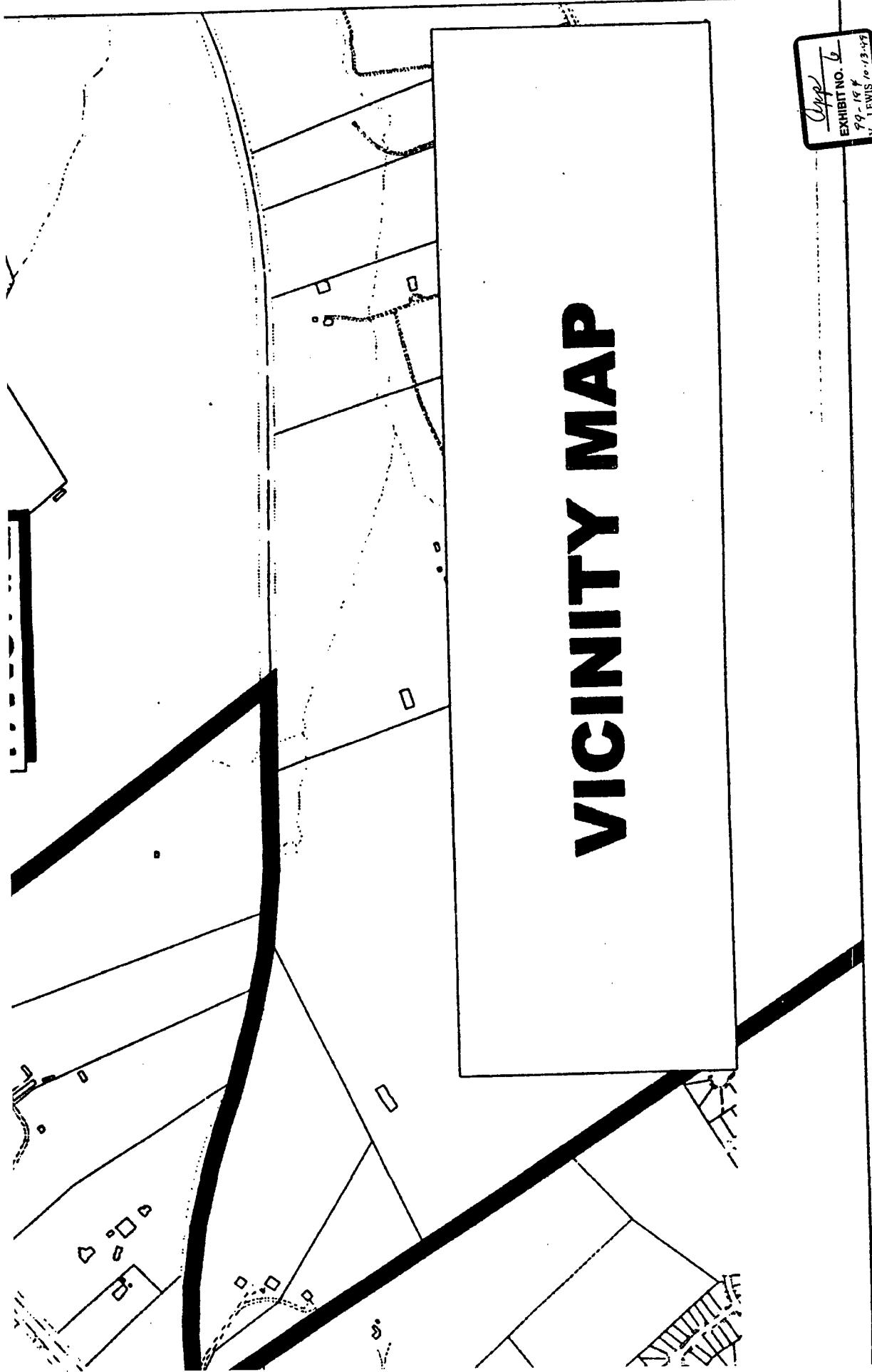






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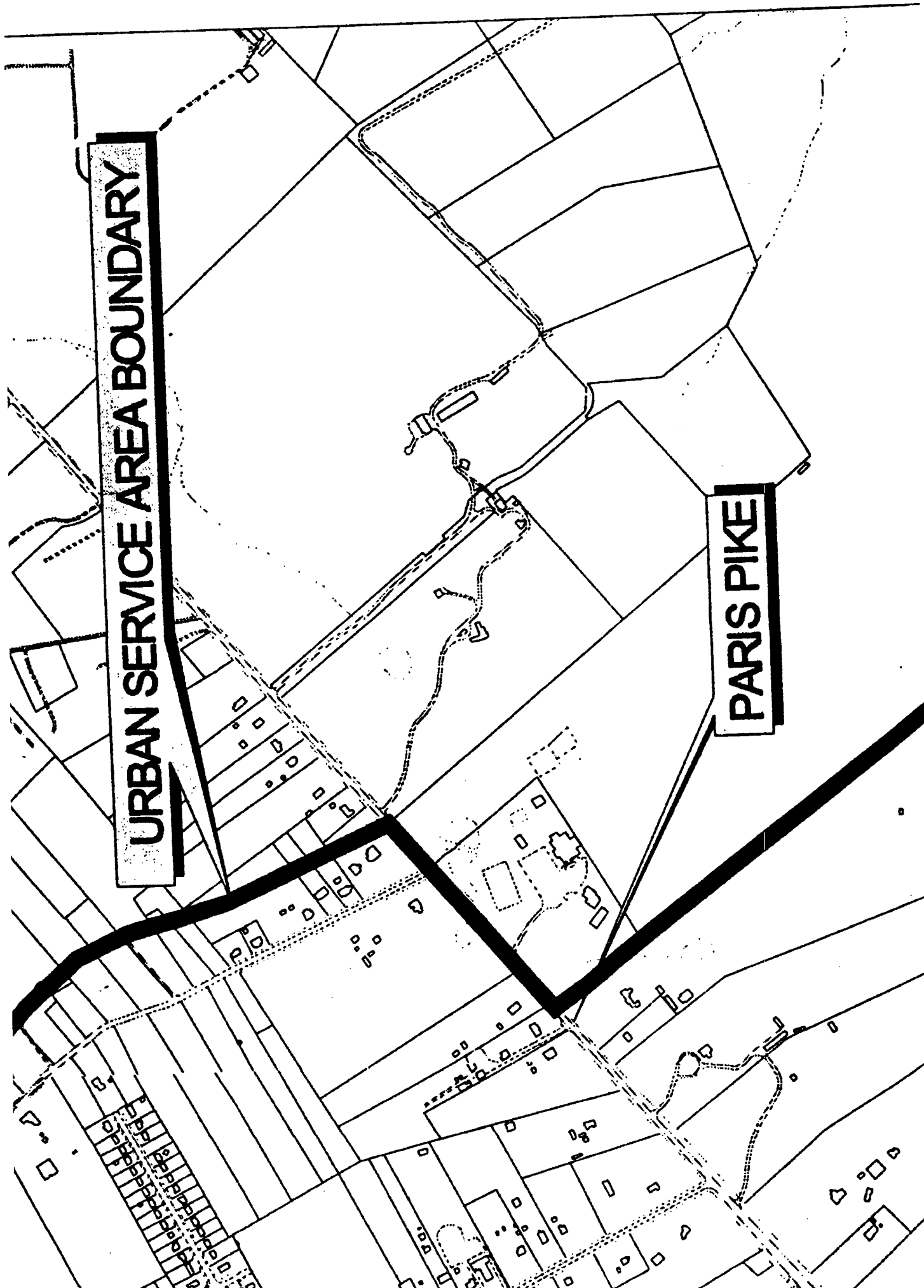


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VICINITY MAP

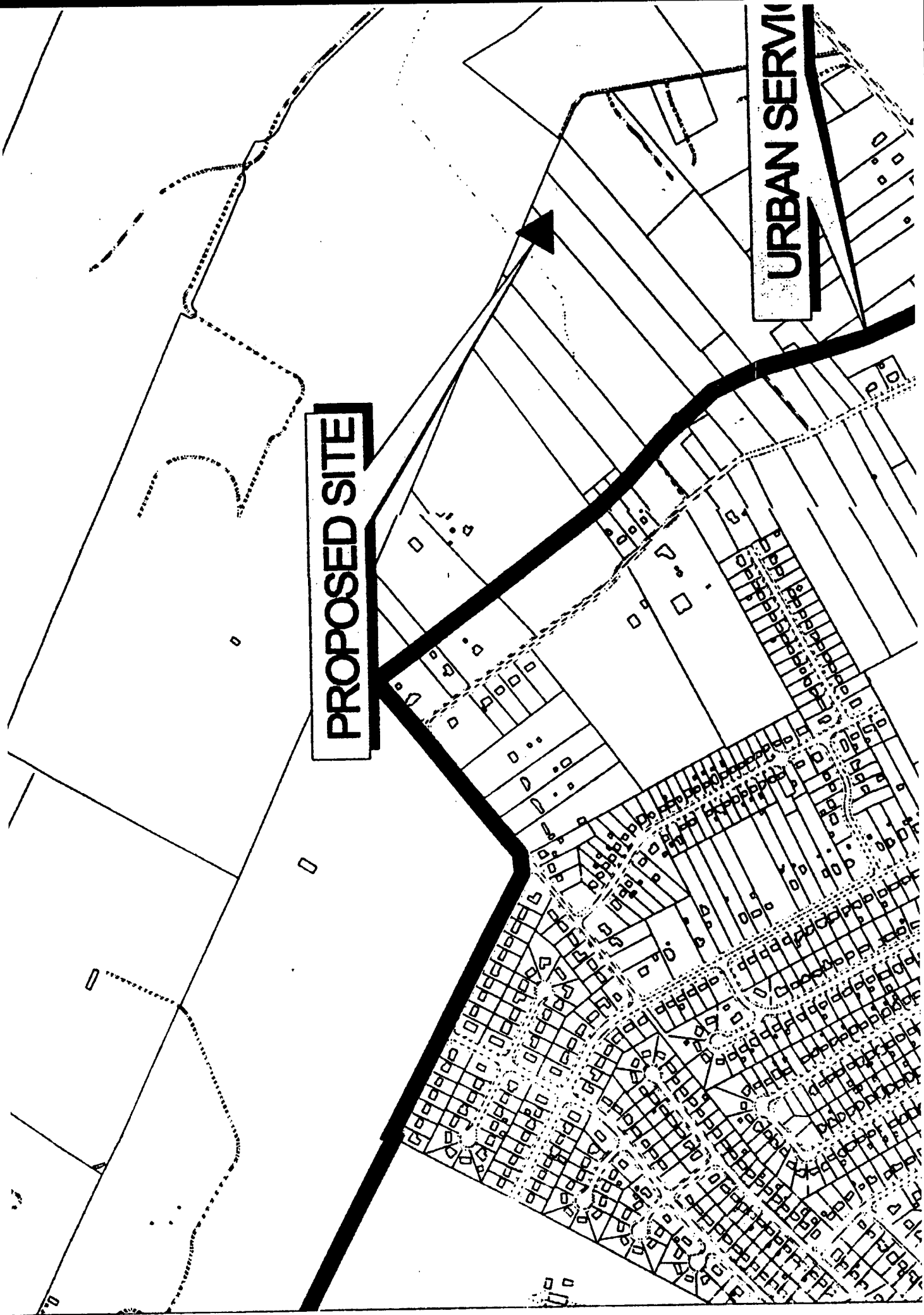
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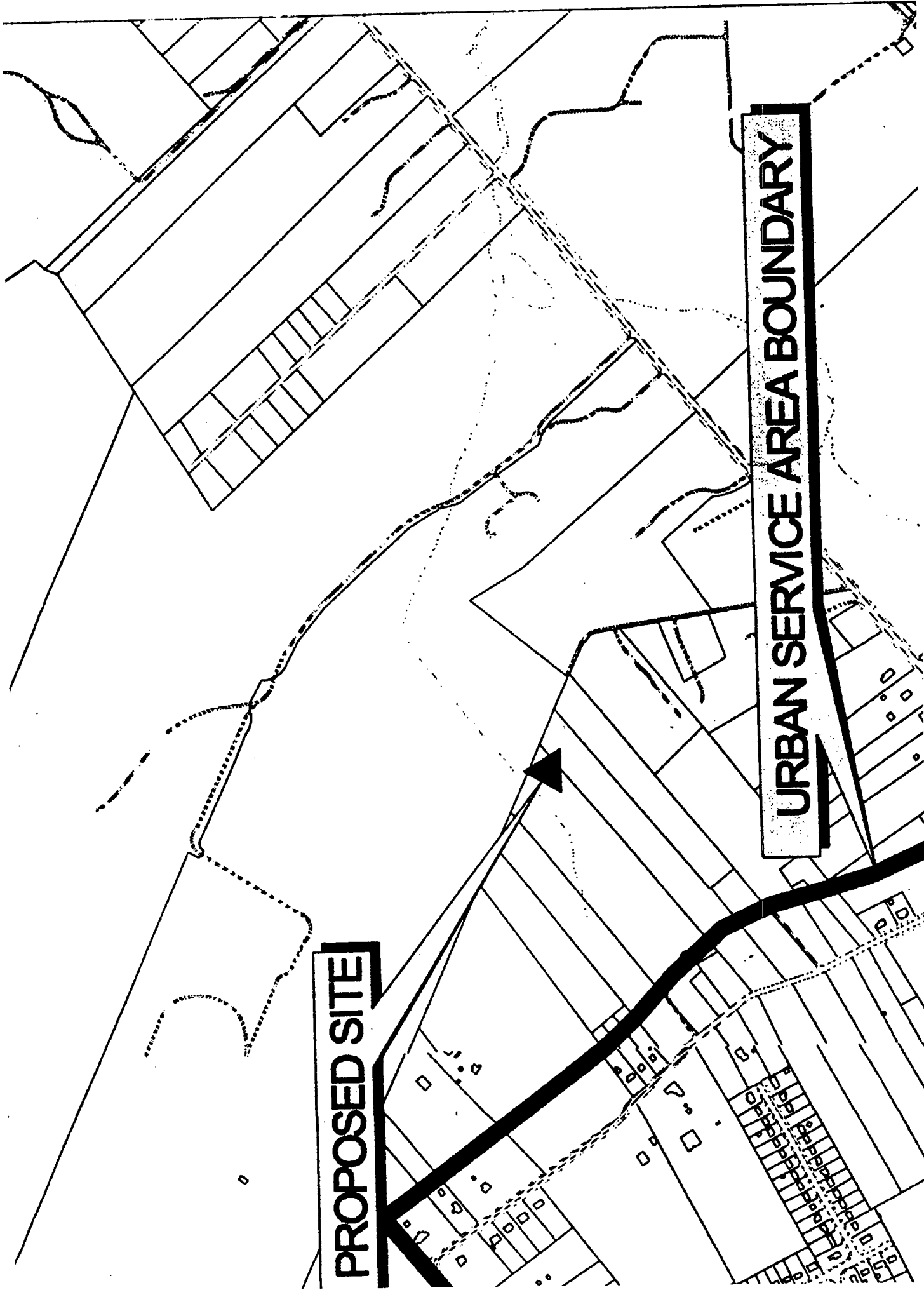
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PROPOSED SITE

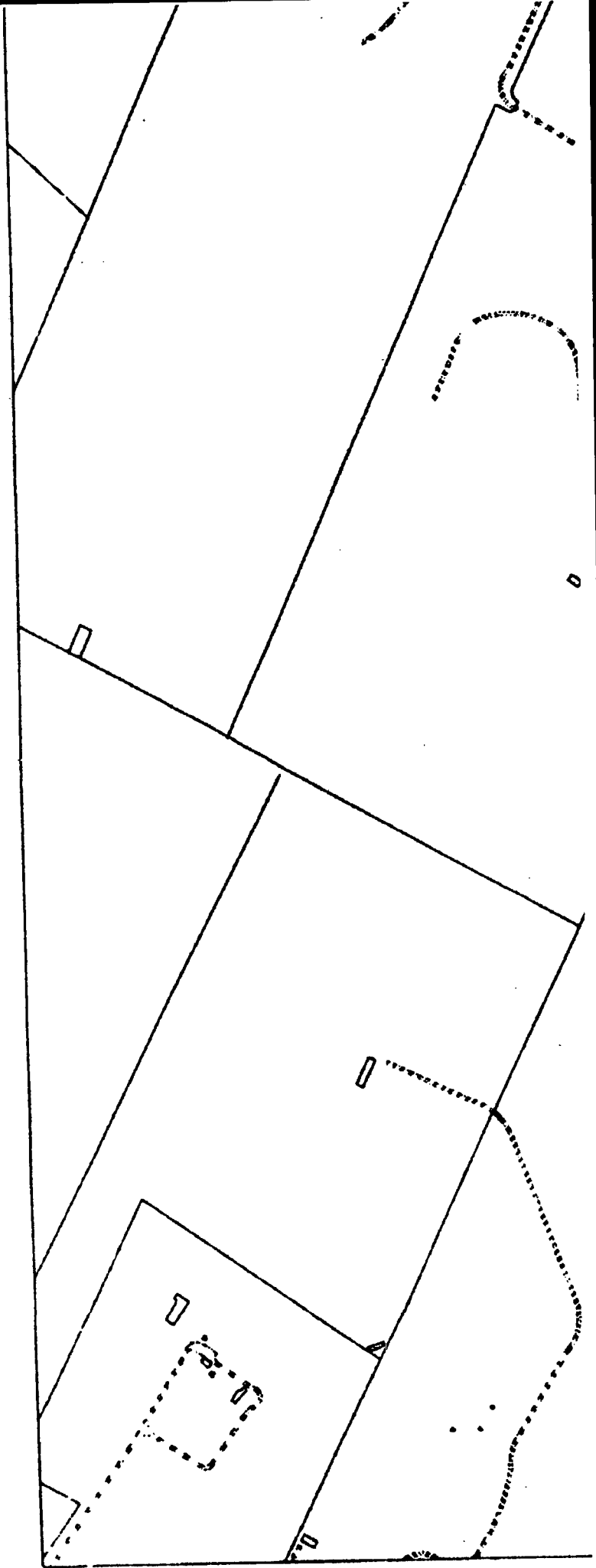
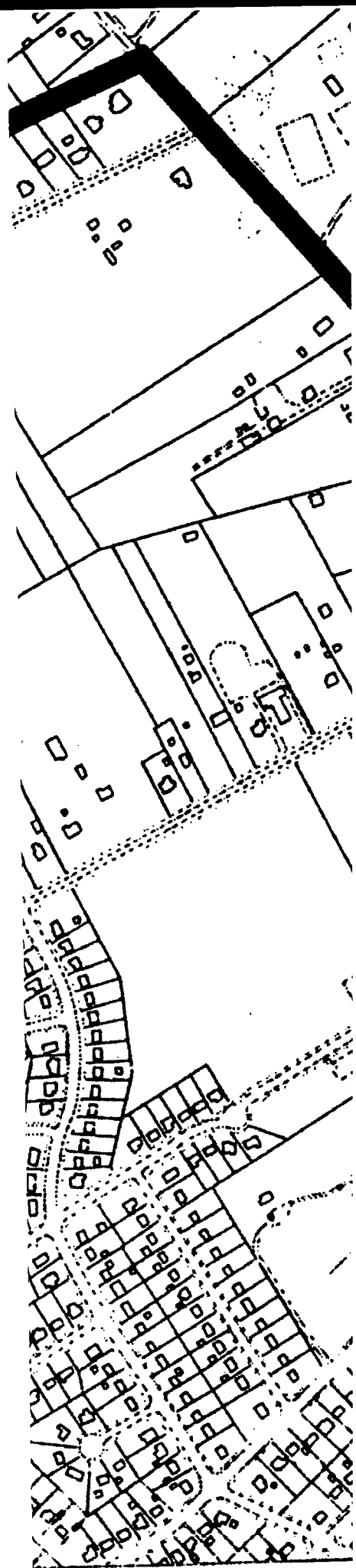
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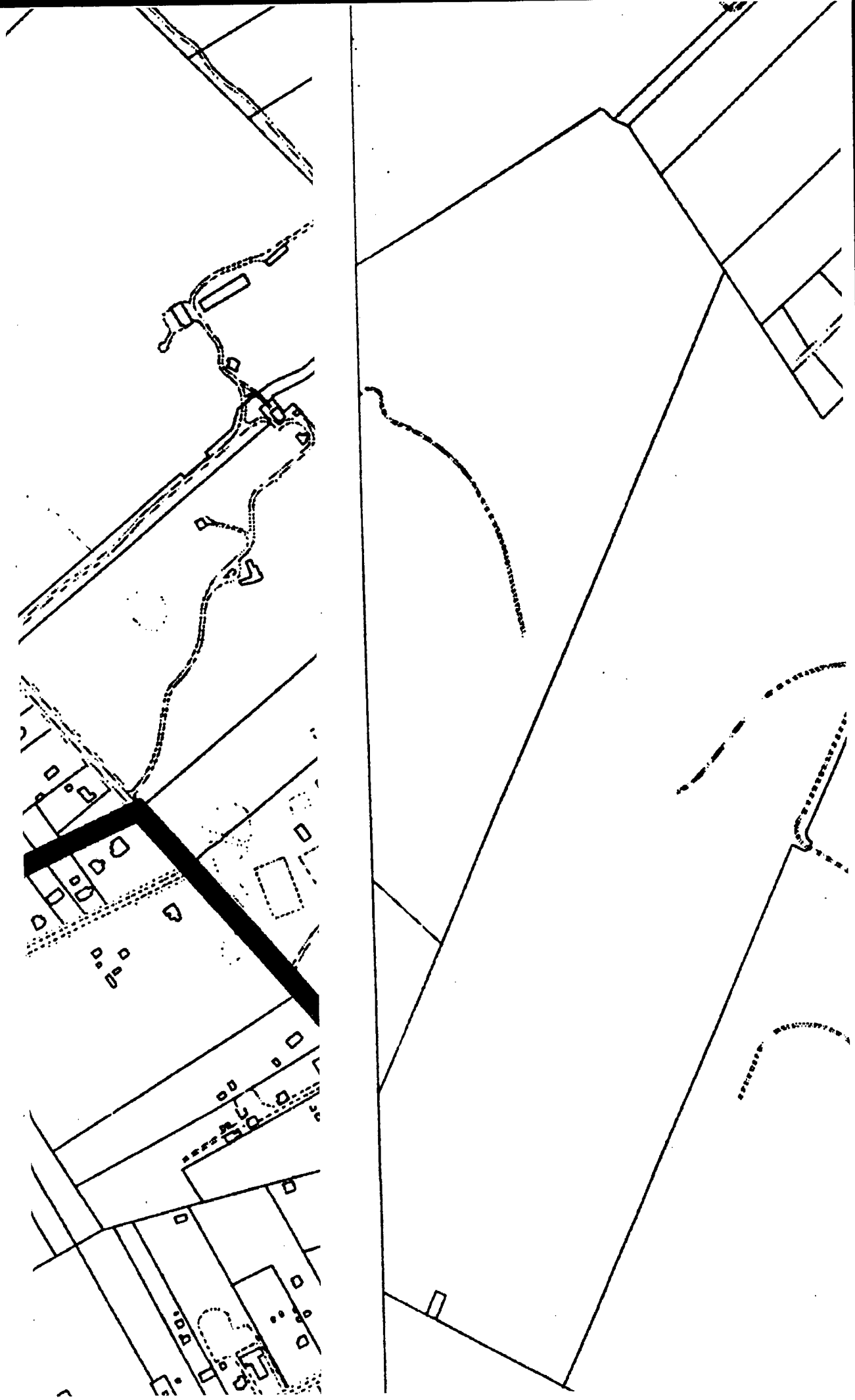




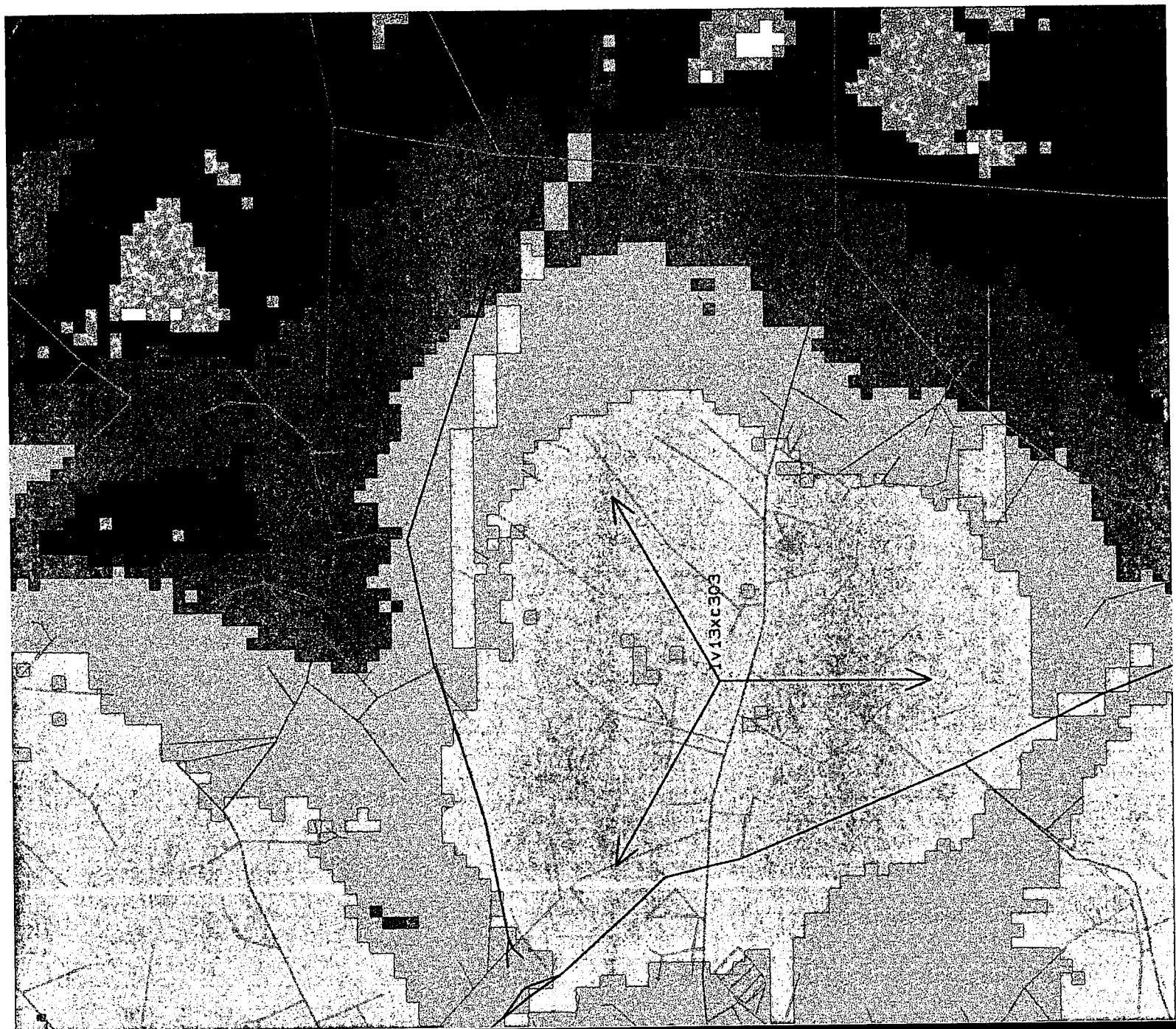
PROPOSED SITE

URBAN SERVICE AREA BOUNDARY





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EXHIBIT NO. *I*
99-194
V. LEWIS 10-13-99

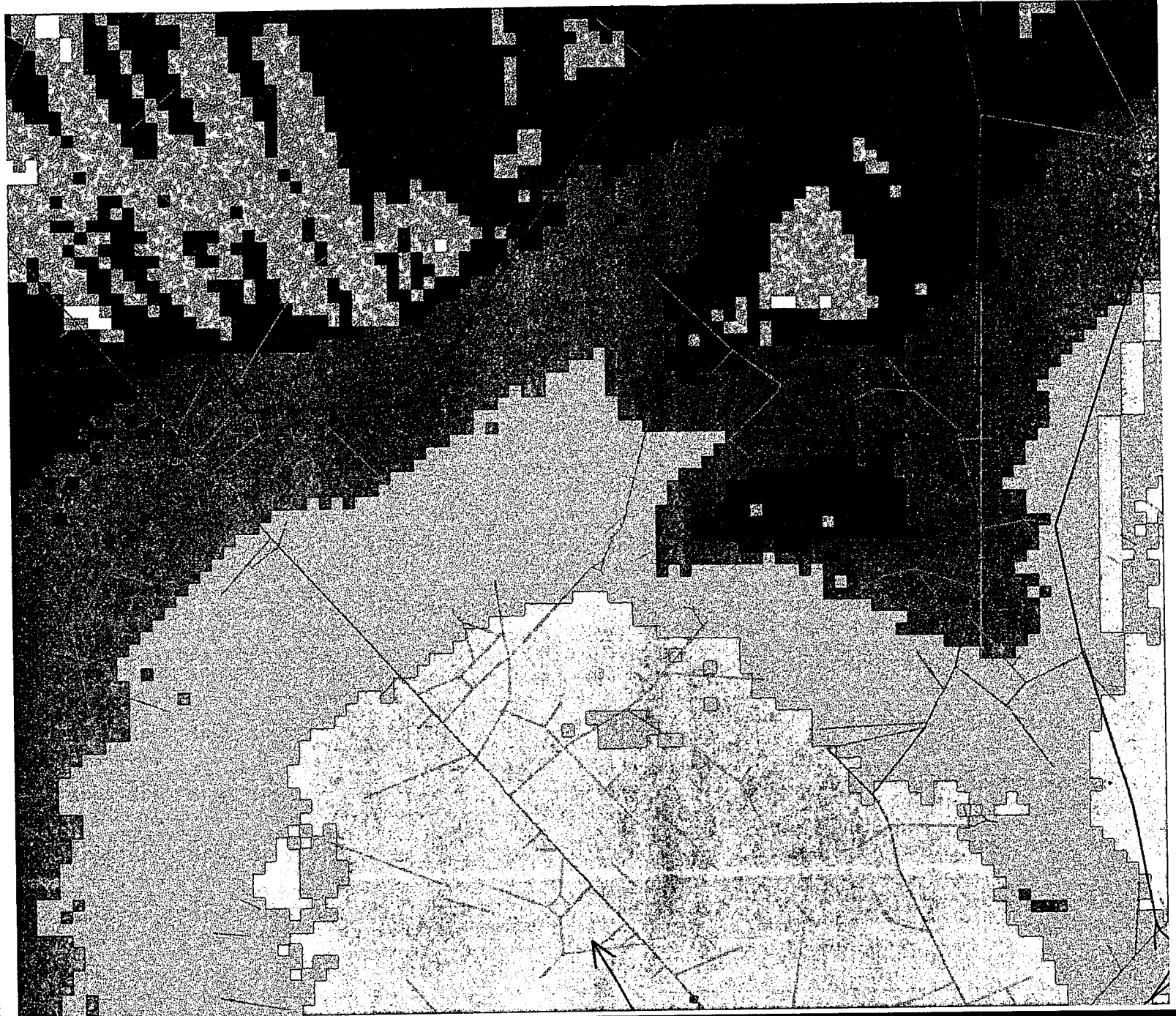


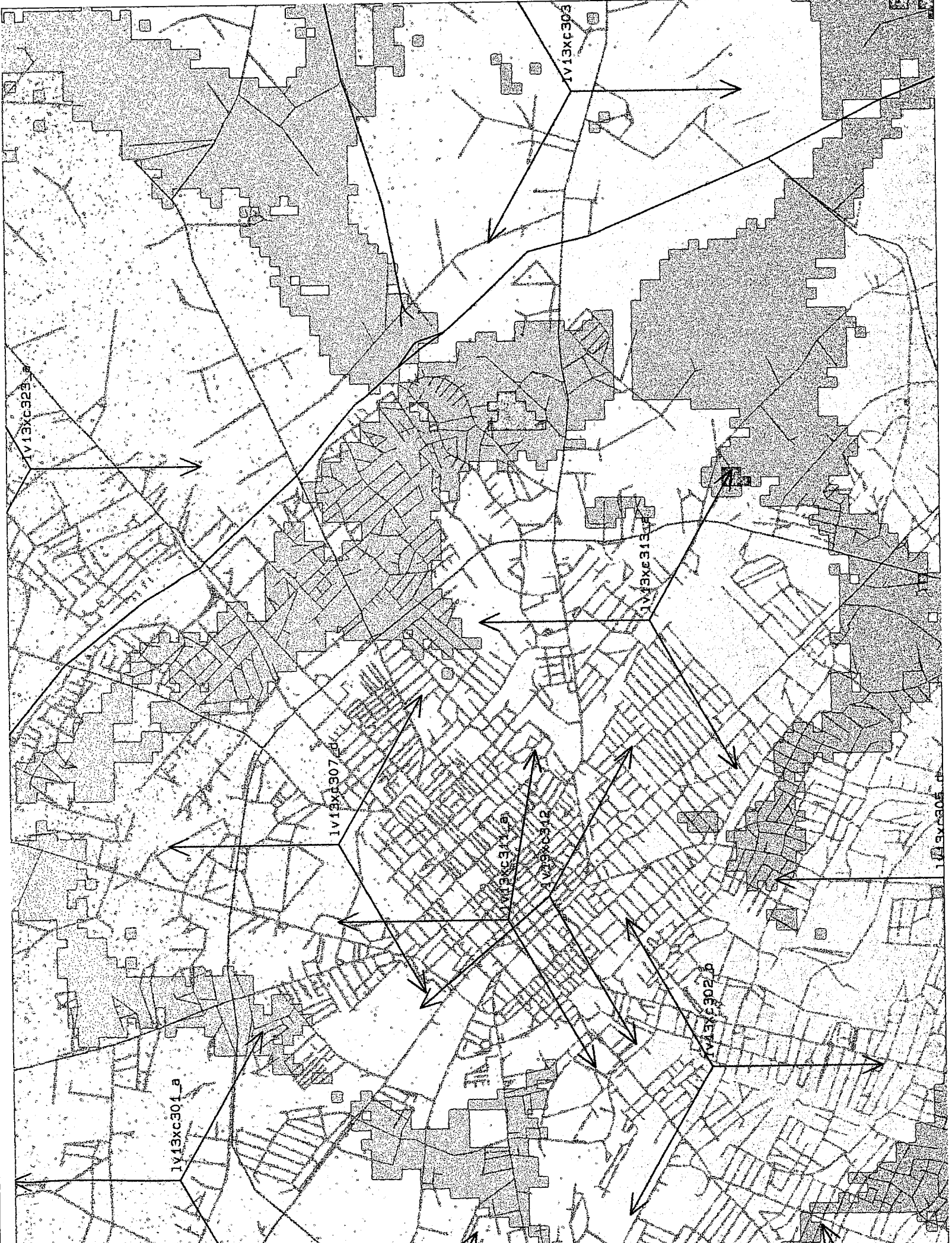
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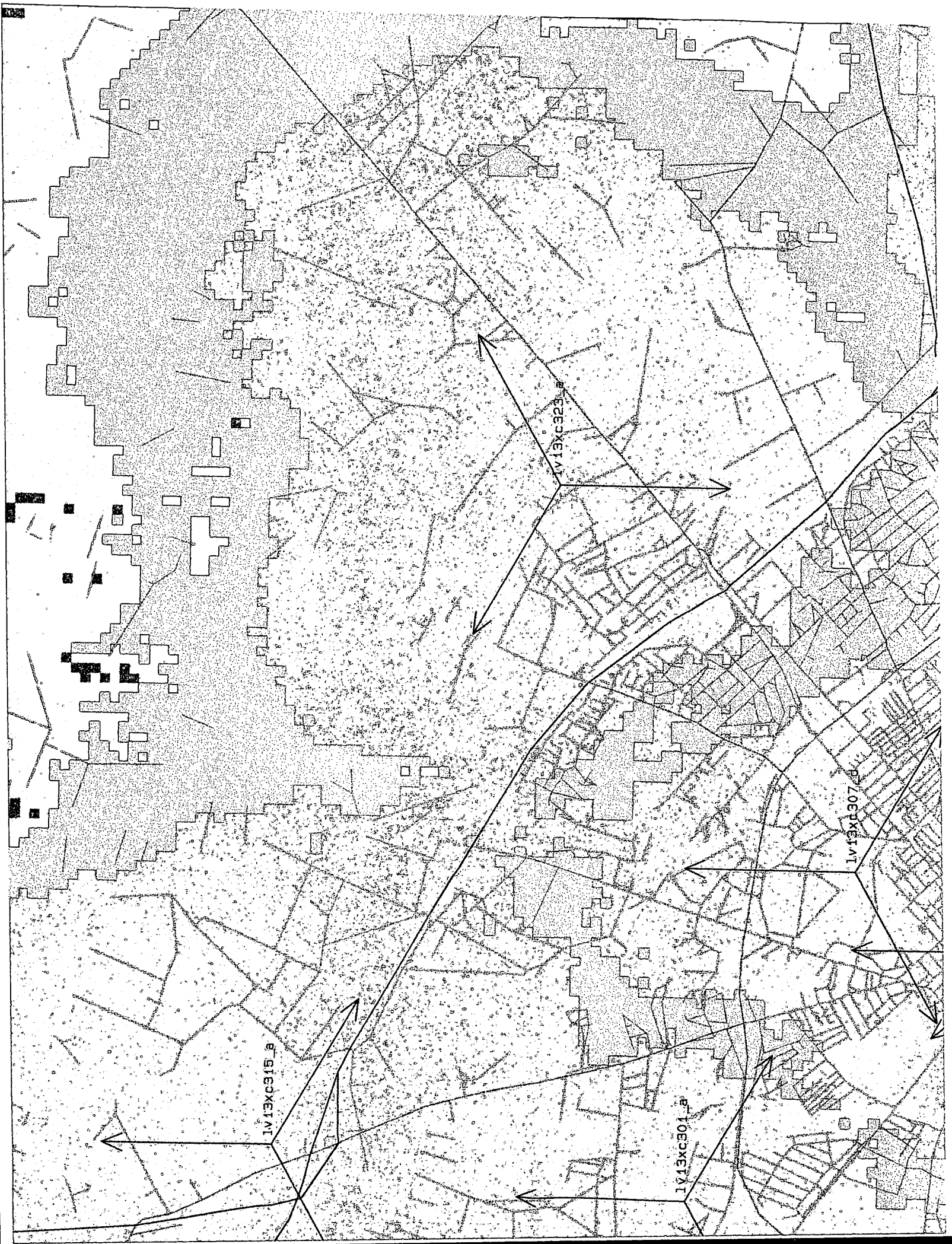
County Boundaries

Coverage

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- Port In-Vehicle Level: -97dBm
- Port In-Building Level: -90dBm
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- Port In-Building Level: -80dBm





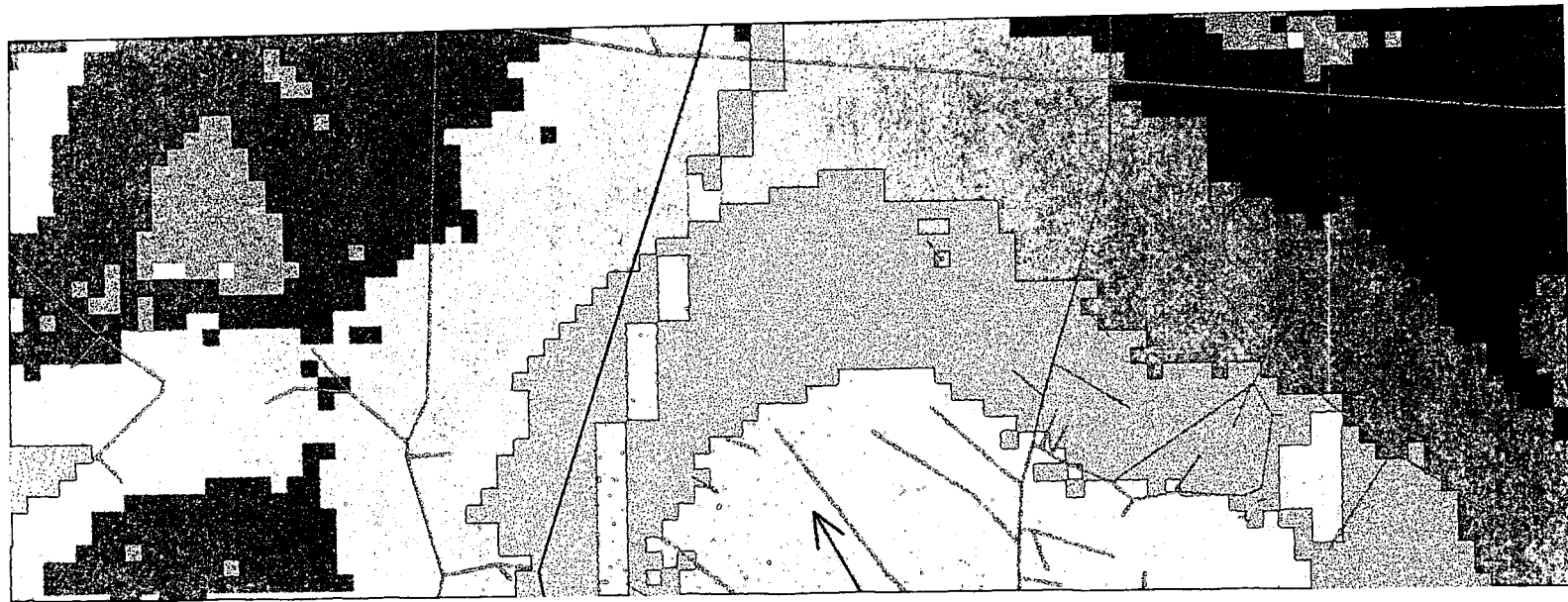
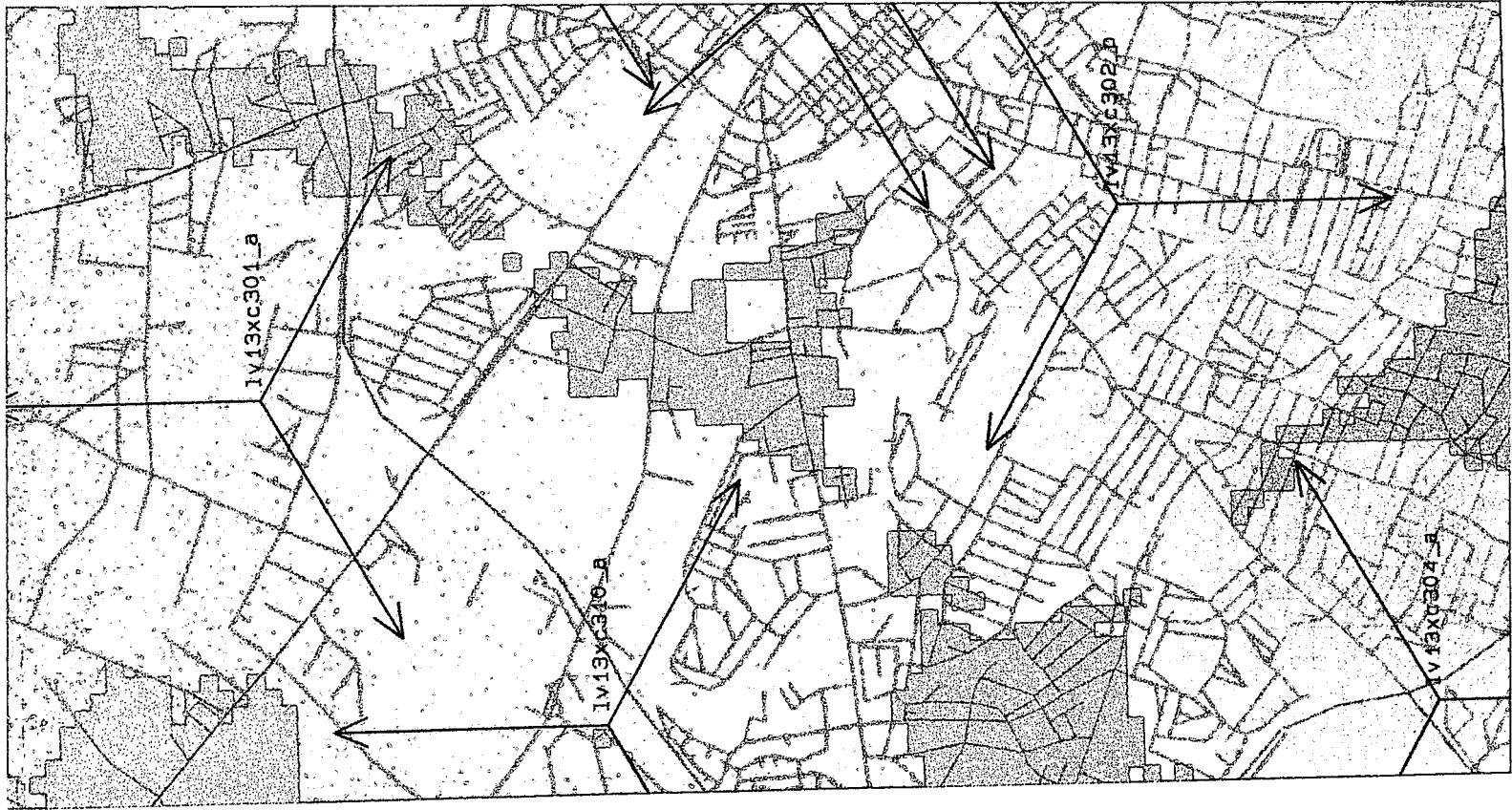


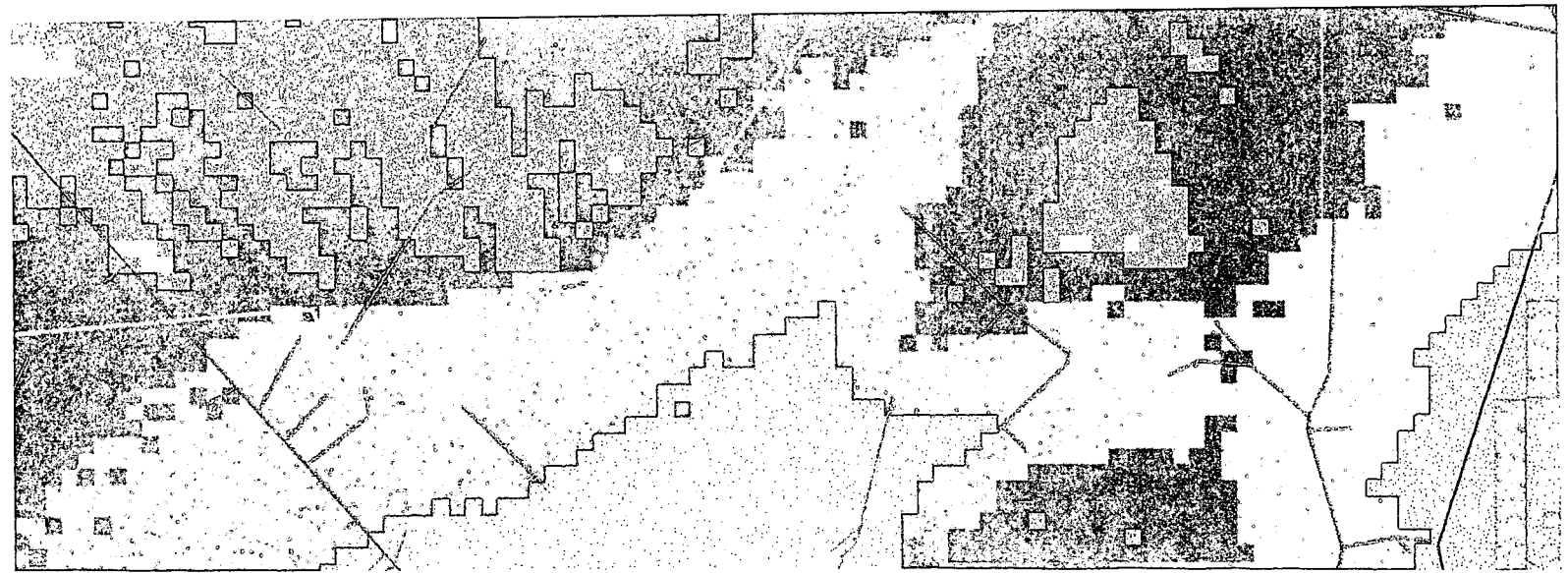
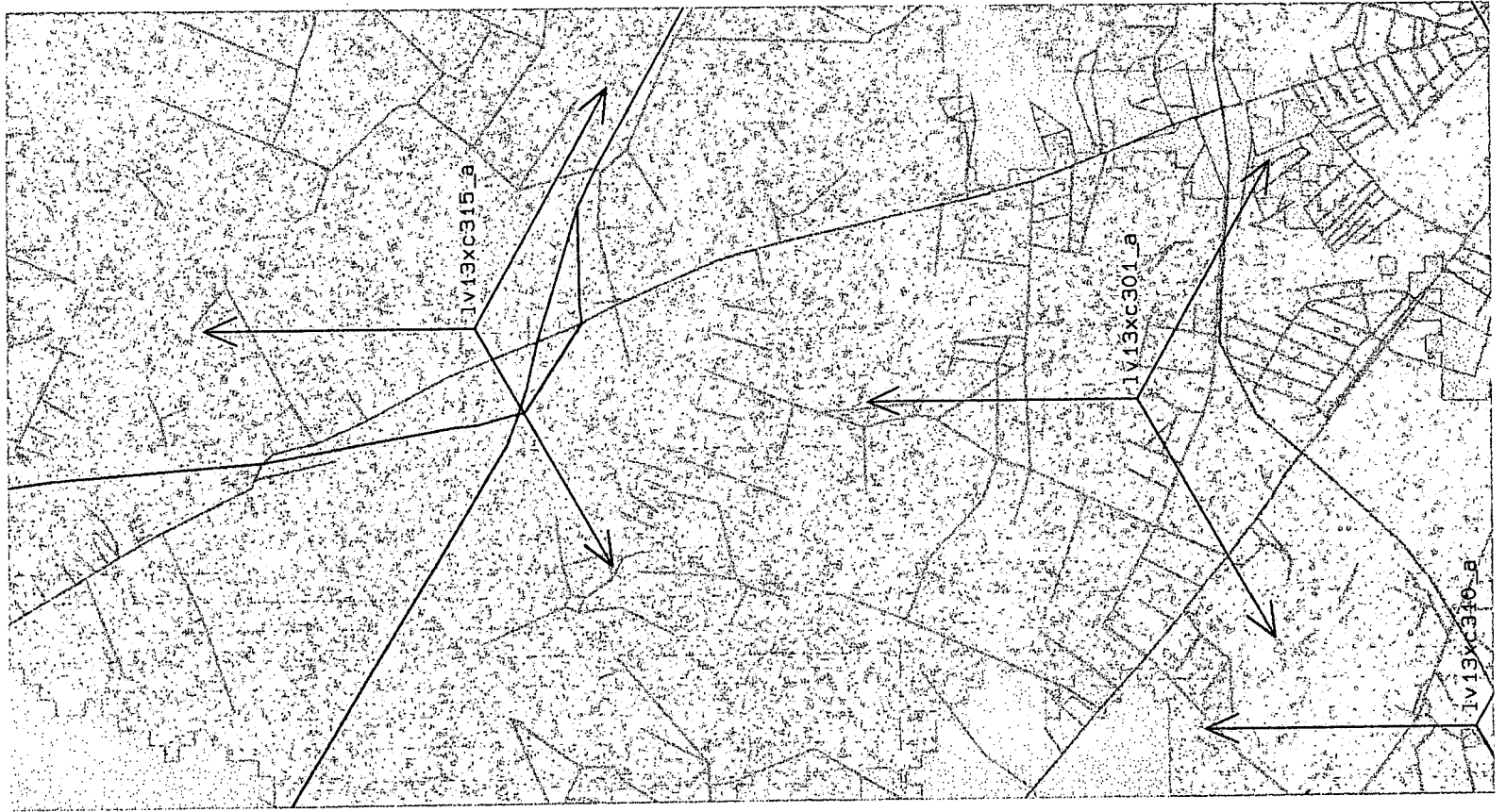
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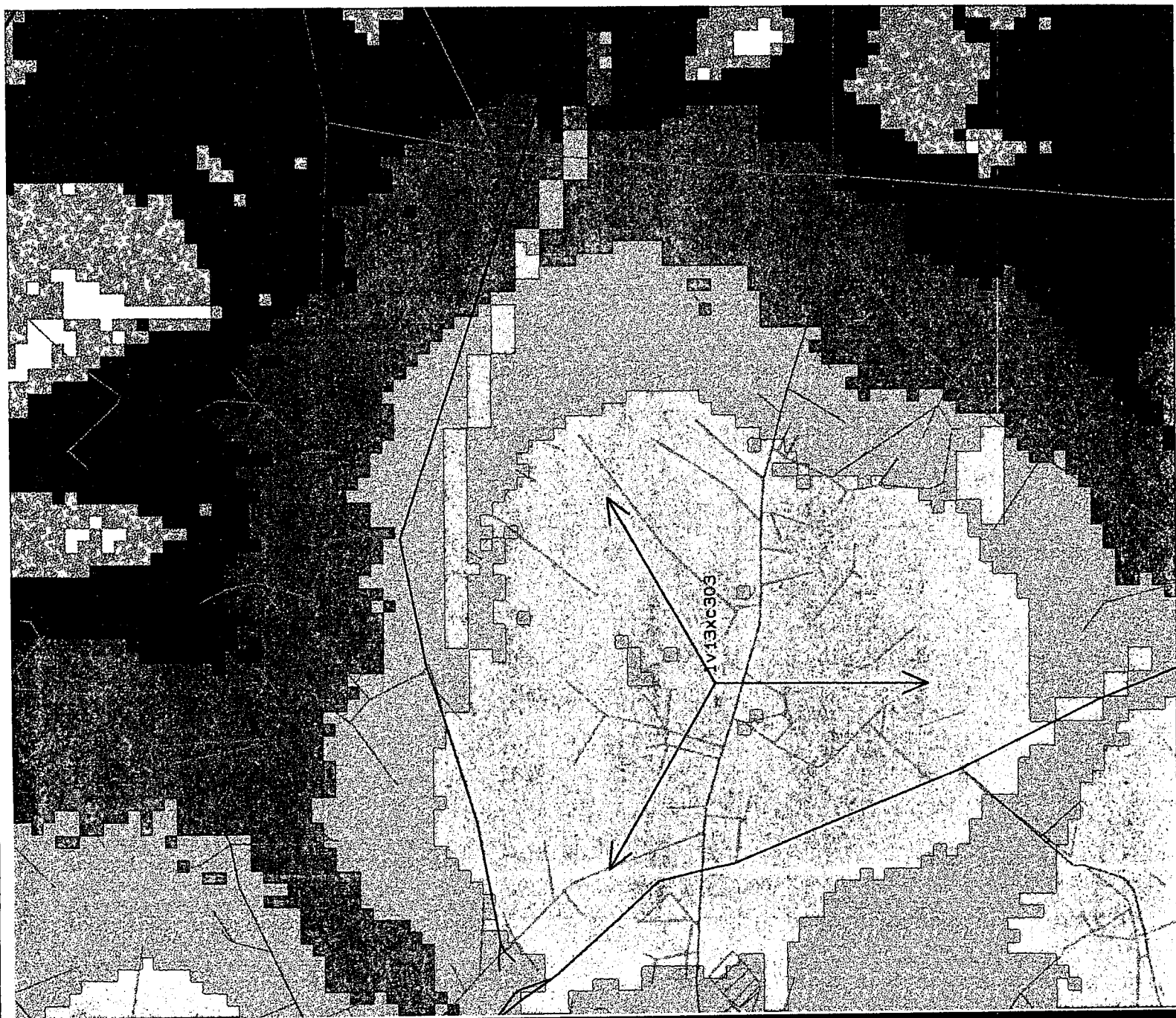
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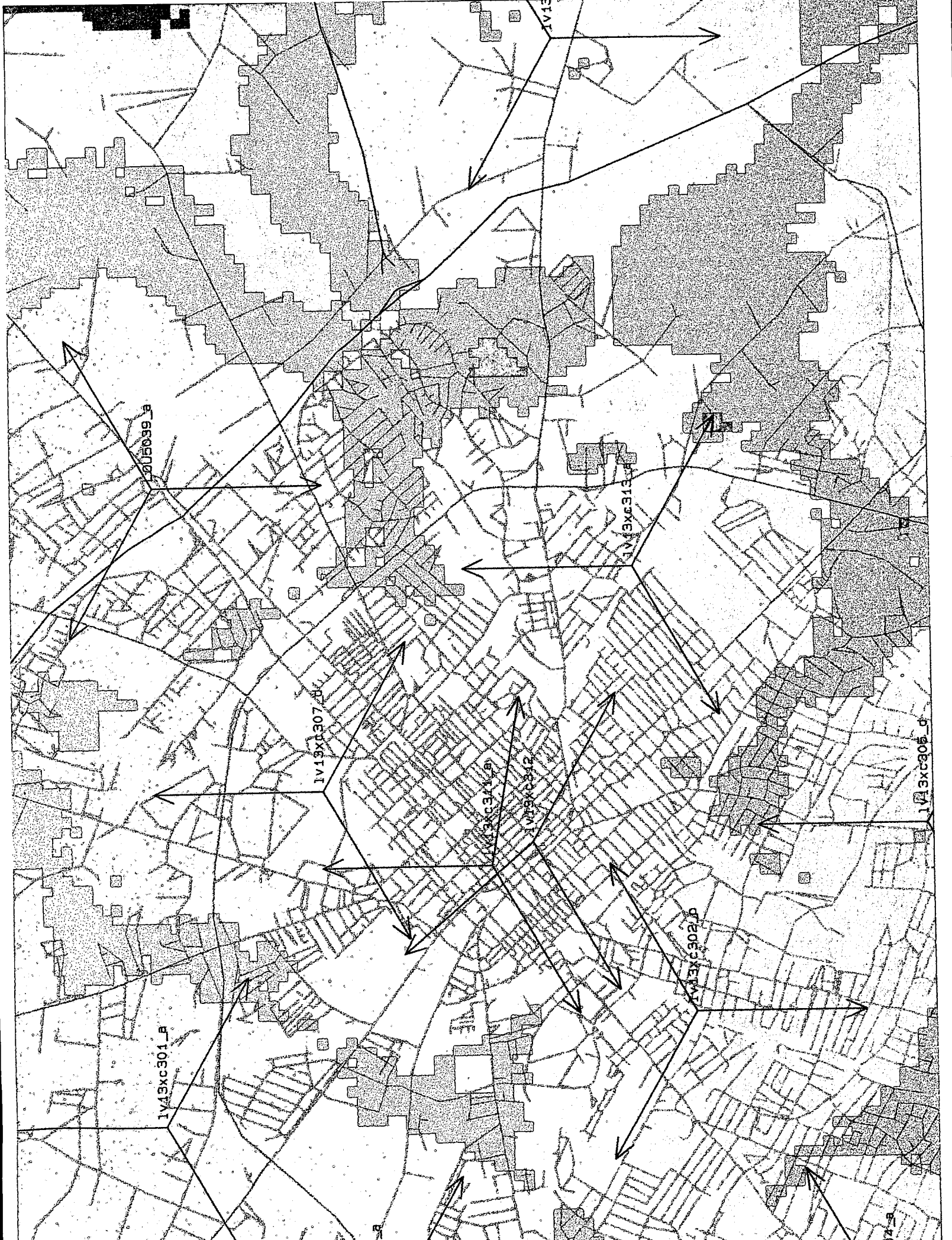
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V. LEWIS 10-23-99



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