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April 17, 2006

RECEIVED

Ms. Beth O'Donnell, Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40602-0615

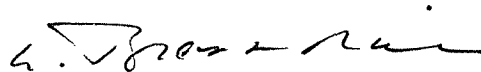
APR 19 2006
PUBLIC SERVICE
COMMISSION

RE: **Application of Celco Partnership d/b/a Verizon Wireless for Issuance of a Certificate of Public Convenience and Necessity to Construct an Additional Cell Facility on Burdette Road, Renfro Valley, Rockcastle County, Kentucky PSC Case No. 2004-00508 (Renfro II Site)**

Dear Ms. O'Donnell:

Enclosed please find the original and ten copies of Applicant's Motion to Submit on the Record for Final Determination in the above-referenced case. Please file same with the Commission at your earliest convenience. Thank you for your assistance in this matter.

Sincerely,



W. Brent Rice

WBR/dkw
Enclosures

cc: Amy Harper/Verizon Wireless

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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APR 19 2006

PUBLIC SERVICE
COMMISSION

In the matter of:

APPLICATION OF CELLCO PARTNERSHIP)
D/B/A VERIZON WIRELESS FOR ISSUANCE)
OF A CERTIFICATE OF PUBLIC CONVENIENCE) Case No. 2004-00508
AND NECESSITY TO CONSTRUCT AN)
ADDITIONAL CELL FACILITY ON BURDETTE)
ROAD, RENFRO VALLEY, ROCKCASTLE,)
KENTUCKY (“RENFRO II CELL FACILITY”))

*** **

**APPLICANT’S MOTION TO SUBMIT ON THE
RECORD FOR FINAL DETERMINATION**

Comes now the Applicant Cellco Partnership d/b/a Verizon Wireless (“Applicant”), by counsel, and moves the Public Service Commission (“Commission”) to submit this matter on the record for a final determination. In support thereof, Applicant states that Intervenors did not file a list of proposed alternative locations within sixty (60) days, as ordered by the Commission in its Order dated February 1, 2006; and as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

On September 2, 2004, Applicant submitted its Application for Certificate of Public Convenience and Necessity to construct and operate an additional cell facility to serve the customers of its cellular radio communications network in the Commonwealth of Kentucky (“Application”). Specifically, this proposed cellular facility will be located on Burdette Road, Renfro Valley, Rockcastle County, Kentucky (“the Cell Facility”). The Cell Facility will be comprised of a 300 foot self-supporting tower. Copies of the Project Description Drawings, survey, and vertical tower profile and foundation were attached to the Application.

On January 6, 2005, Loretta Stevens Rowe, an individual owning real property within the vicinity of the proposed Cell Facility, intervened in this proceeding and objected to the Application and proposed Cell Facility. On that date, Applicant received correspondence from Loretta Stevens Rowe (“Ms. Rowe”), from Knoxville, Tennessee, by counsel, her daughter Honorable Rachael A. Rowe. By letter dated January 12, 2005, counsel for Applicant responded to Ms. Rowe’s objections. A copy of that letter has been filed in the record. Subsequently, the Commission permitted Loretta Rowe to intervene in this matter.

As a result of Ms. Rowe’s objections, on February 24, 2005, the Commission scheduled an Informal Conference for March 16, 2005. However, the day before the scheduled hearing, on March 15th, counsel for Ms. Rowe notified the Commission that she would be unable to attend the Informal Conference scheduled for the next day. Based upon this representation, the Commission cancelled the initial Informal Conference.

Thereafter, on April 1, 2005, Major Jeffrey Stevens, through the same counsel as Ms. Rowe, filed a motion for full intervention. The Commission also granted this motion.

On May 23, 2005, the Commission again noticed a second Informal Conference for June 2, 2005. Again, by letter dated May 30, 2005 (but faxed to the Commission on May 31, 2005), counsel for Ms. Rowe, and Major Stevens, indicated that she would be unavailable on June 2, 2005, as she would be out of the country from June 1 through June 12. Counsel therefore requested that the Informal Conference again be temporarily continued. The Commission deemed the letter a formal pleading, granted the request and cancelled the Informal Conference scheduled for June 2, 2005.

On September 12, 2005, counsel for Applicant having received no additional communications from Intervenors or their counsel indicating dates or times for an Informal Conference which would be convenient to their schedule, Applicant requested an Informal Conference date from the Commission. Major Stevens, through counsel, objected to any hearing or further proceedings because he was, at that time, apparently serving overseas in Kuwait, and, in the alternative, sought a hearing date after his return to the United States, which he asserted was “scheduled to occur in or about December 2005.” Applicant replied on September 23, 2005, pointing out that Major Steven’s counsel’s objections were based on an improper interpretation of the Commission’s May 26, 2005 Order.

In response to these competing requests, on November 14, 2005, the Commission set an Informal Conference for November 29, 2005 and requested that all parties brief the issue regarding the applicability of the Servicemembers’ Relief Act of 2004. Applicant filed its Memorandum on the inapplicability of that Act on November 21, 2005. That same day, counsel for Major Stevens for the first time notified counsel for Applicant that Major Stevens had already returned from Kuwait, thus obviating prior objections to an Informal Conference.

Notwithstanding Intervenors’ dilatory notice, the Commission conducted an Informal Conference on November 29, 2005. During that conference, counsel for Intervenors, Hon. Rachel A Rowe, presented their *sole* remaining objection to the Cell Facility – requesting that it be located at a different site.

As a result, the Commission gave Intervenors sixty (60) days from the date of a to-be-entered Order to compile a list of specific suitable alternative locations and to file

that list with the Commission.¹ Applicant was given thirty (30) days after receipt of that list to file objections and explain why each purported alternative location would or would not be suitable.² On February 1, 2006, the Commission entered an Order in accordance with the November 29, 2005 Informal Conference and the December 12, 2005 Memorandum.³ That Order gave Intervenors 60 days to file their proposed list, with supporting bases, of potential alternative locations for construction of the Cell Facility.

II. INTERVENORS HAVE HAD MULTIPLE OPPORTUNITIES, AND OVER ONE (1) YEAR, TO FILE SUBSTANTIVE OBJECTIONS TO THE APPLICATION, AND THEY HAVE FAILED TO DO SO. AS A RESULT, THIS MATTER SHOULD BE SUBMITTED ON THE RECORD.

Not only have Intervenors had at least four (4) opportunities to present their objections to the Application, each of which they successfully got continued as discussed above, but *they have failed to file any proposed alternative location for the construction of the Cell Facility as directed by the Commission.* This failure is dispositive of Applicant's position - that the proposed location is best suited for the Cell Facility.

Specifically, the location proposed by Applicant is essential to improve service to Applicant's customers and to eliminate certain "weak spots" in transmission.⁴ In fact, a computer program was utilized to locate sites that would enable the Cell Facility to serve the territory approved by the Federal Communications Commission (FCC), to not extend beyond the FCC's approved boundary, and to satisfy other requirements of the

¹ See Commission's Inter-Agency Memorandum, dated December 12, 2005, a true and accurate copy of which is attached hereto and made a part hereof as **Exhibit A.**

² **Id.**

³ A true and accurate copy of this Order is attached hereto and made a part hereof as **Exhibit B.**

⁴ See Application, ¶ 9.

Commission.⁵ The proposed site is optimum in terms of both elevation and location to provide the best quality services to Applicants customers.⁶

The Cell Facility will serve an area that is completely confined within Applicant's currently licensed service area.⁷ The proposed site is rural and not currently zoned.⁸ Finally, and most importantly, Applicant considered the likely effects of the installation of the Cell Facility upon nearby land uses and values, and concluded that there is no more suitable location reasonably available by which the foregoing criteria can be satisfied.⁹ Applicant even attempted to co-locate the proposed Cell Facility on existing towers, but was precluded from this approach.¹⁰ Thus, clearly, the location proposed by Applicant is best suited for the installation of the Cell Facility.

Furthermore, as demonstrated above, Intervenors have been unable to propose any alternative locations at all, much less any that would satisfy all of the factors already considered by Applicant. As a result, they should be precluded from raising any issue of alternative locations because they have failed to comply with the Commission's Order, and their baseless objections should now be overruled and dismissed. Furthermore, pursuant to the December 12, 2005 Memorandum and February 1, 2006 Order, the Commission should now resolve for a final determination the *remaining* issues involved with adjudication application, to wit, those items expressly listed in the December 12, 2005 memorandum. Of course, none of these *remaining* issues involves any matter raised by Intervenors or alternative locations.

⁵ Id.

⁶ Id.

⁷ Id. at ¶ 10.

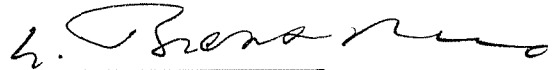
⁸ Id. at ¶ 17.

⁹ Id. at ¶ 18.

¹⁰ Id. at ¶ 18.

Accordingly, Applicant respectfully moves the Commission to: (i) dismiss Intervenors' objections as not having been filed as directed, (ii) preclude Intervenors from introducing evidence regarding, or objecting on grounds of, alternative locations, and (iii) submit this matter on the record for a final determination.

Respectfully Submitted,



W. Brent Rice, Esq.

John N. Billings, Esq.

MCBRAYER, MCGINNIS, LESLIE &
KIRKLAND, PLLC

201 East Main Street, Suite 1000

Lexington, Kentucky 40507

COUNSEL FOR CELLCO

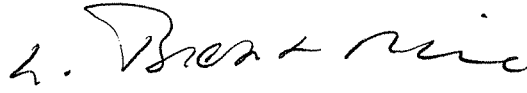
PARTNERSHIP d/b/a

VERIZON WIRELESS

CERTIFICATE OF SERVICE

I certify to mailing a true and accurate copy of the foregoing, prepaid, first-class United States post, this 7 day of April, 2006, to the following:

Ms. Rachael A. Rowe
Keating Muething & Klekamp, PLLC
One East Fourth Street
Suite 1400
Cincinnati, Ohio 45202-3752



W. Brent Rice, Esq.
John N. Billings, Esq.

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INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2004-00508

FROM: Dale Wright, Staff Attorney

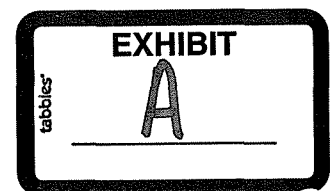
DATE: December 12, 2005

SUBJECT: Case No. 2004-00508
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
CPCN: ROCKCASTLE COUNTY, KENTUCKY
(RENFRO II CELL FACILITY)

On November 29, 2005, an informal conference was held at the Commission's offices. Those in attendance representing the PSC were Dale Wright and Eric Bowman. Those representing Cellco Partnership d/b/a Verizon Wireless ("Verizon") were Attorney Brent Rice, Amy Harper, and Tami Pike, with Craiglan Associates, a wireless facility site location specialist. Present by conference telephone was Attorney Rachel A. Rowe who represented Intervenor, Loretta Stevens Rowe and Major Jeffrey Stevens. Attorney Rowe, in addition, represents Jan Stevens, Jan Eyvan Stevens III, and Tammy Stevens, although they are not intervenors herein.

The meeting began by reviewing the status of the case. Intervenor, Major Jeffrey Stevens, was last known to be on active duty, stationed in Kuwait. For this reason, the Applicant and the Intervenor were requested by the Commission to file a memorandum of law prior to the conference on the issue of the applicability of the Servicemembers Relief Act of 2004. The relevant issue is continuing the prosecution of the case and discovery and hearing in the absence of Major Stevens. Verizon filed a memorandum prior to discovering that Major Stevens returned to Kentucky in early November. Attorney Rowe did not file a memorandum because the issue was then moot and she did not learn of the Major's return until just days prior to the conference.

The issues to be addressed at hearing were briefly discussed as follows: (1) Is there a public necessity for the construction of a new wireless facility. KRS 278.020(1); (2) The jurisdictional safety issues inherent in KRS 278.020(1) (i.e., is the facility properly and safely designed, engineered, and constructed, and will the facility provide proper service); (3) The Commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values. KRS 278.650; and (4) Are there any suitable alternative locations where the tower can be collocated or constructed? KRS Chapter 100 and 807 KAR 5:063, Section 1(s).



Attorney Rowe requested that Verizon research and examine whether the tower could be disguised or camouflaged as a large tree of the fir or evergreen variety or something else less aesthetically offensive than a plain tower.

The procedural matters were discussed. It was agreed by the parties that Attorney Rowe would have 60 days from the date of the proposed Order to compile a list of specific suitable alternative sites which she will file with the Commission. Verizon would have 90 days from the date of filing of Ms. Rowe's alternative site list to respond to each specific location, explaining the reasons why each site or location would or would not be a suitable alternative site to collocate or construct the facility. Verizon's alternative site report should address the technical feasibility of each proposed site.

This procedural step necessitates canceling the tentative December 15, 2005 hearing date. Staff counsel will prepare and present to the Commission a procedural Order as outlined above.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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APPLICATION OF CELLCO PARTNERSHIP)
D/B/A VERIZON WIRELESS FOR ISSUANCE)
OF A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO CONSTRUCT AN) CASE NO. 2004-00508
ADDITIONAL CELL FACILITY ON BURDETTE)
ROAD, RENFRO VALLEY, ROCKCASTLE)
COUNTY, KENTUCKY (RENFRO II CELL FACILITY))

O R D E R

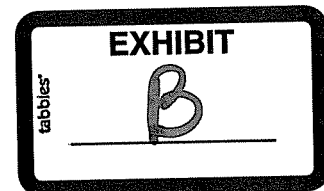
On December 20, 2004, Cellco Partnership d/b/a Verizon Wireless applied for a Certificate of Public Convenience and Necessity ("CPCN") to construct and operate a wireless telecommunications facility, including a 325-foot-high tower in Rockcastle County, Kentucky. The Commission subsequently permitted Loretta Rowe and Jeffrey Stevens, persons owning real estate within the vicinity of the tower, to intervene in this proceeding.

The Intervenors, through their counsel, have raised the issue of identifying other locations or sites which may be suitable alternative locations to the site proposed in the application.¹ Although this issue of examining suitable alternative sites was in the past a statutory mandate,² the General Assembly has eliminated this requirement.³ The

¹ 807 KAR 5:063, Section 1(s).

² See 1996 Kentucky Acts Chapter 383, Section 2.

³ See 2002 Kentucky Acts Chapter 346, Section 222.



existence of suitable alternative locations, however, remains a factor that the Commission considers in reaching its decision in an application for a CPCN.

The Commission finds that the Intervenors should have 60 days in which to identify specific locations or sites where the proposed facility might be collocated or constructed. We further find that the Applicant should respond to the Intervenors' potential alternative locations or sites within 30 days of the filing of the Intervenors' list. Applicant should include in its response information regarding the technical feasibility of the alternative locations or sites.

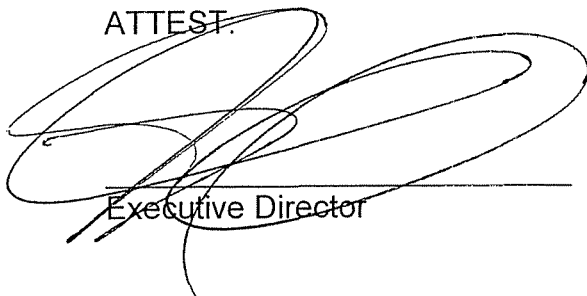
The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. Intervenors shall file with the Commission, within 60 days of the date of this Order, a list, with supporting rationale, of specific potential suitable alternative locations or sites on which the Applicant's proposed wireless facility can be collocated or constructed.
2. Within 30 days of the filing of the Intervenors' list of alternative locations with the Commission, the Applicant shall file with the Commission a written response addressing the availability and technical feasibility of each of the alternative locations that the Intervenors have identified.

Done at Frankfort, Kentucky, this 1st day of February, 2006.

By the Commission

ATTEST.



Executive Director