

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SPRINTCOM, INC., )  
FOR ISSUANCE OF A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY ) CASE NO. 97-460  
TO CONSTRUCT A PERSONAL )  
COMMUNICATIONS SERVICES FACILITY )  
IN THE CINCINNATI MAJOR TRADING AREA)

O R D E R

On November 6, 1998, the PSC issued its decision in this matter granting a certificate of public convenience and necessity to SprintCom, Inc. ("SprintCom") to construct and operate a personal communications services ("PCS") facility at 115 McDonald Lane, Highland Heights, Campbell County, Kentucky (the "Facility"). In its Order of November 6, the PSC found that SprintCom had demonstrated that the Facility is needed in the area to provide adequate coverage and that there is no more suitable site reasonably available from which it could provide adequate service. KRS 278.020; 807 KAR 5:063.

On November 30, 1998, Carol Ernst, an intervenor in this case, filed a petition requesting rehearing pursuant to KRS 278.400. Ms. Ernst alleges she has newly discovered evidence that could not with reasonable diligence have been offered during the hearing on this matter as set forth in an affidavit executed by her attorney. The affidavit in question alleges, among other things, that the site acquisition witness who had testified for SprintCom during the hearing has since informed Ms. Ernst's attorney and other intervenors in this

matter that a nearby AT&T facility and a pump station site would both have been "acceptable" alternatives to the site for which the CPCN was granted in the November 6 Order. The affidavit reports that SprintCom's site acquisition witness refused to permit the conversation to be taped.

SprintCom has responded to the petition for rehearing, stating, among other things, that the site acquisition witness quoted in the affidavit is a "disgruntled former representative of SprintCom;" that an attorney cannot testify as a witness; that the petition is supported only by hearsay; that the attorney who prepared the affidavit has violated Kentucky Supreme Court rule 3.130(4.2) and should consequently be disqualified from representing Ms. Ernst any further in this matter; and that no evidence, competent or otherwise, is offered to demonstrate that there exists a "more" suitable site than the one for which the CPCN was granted. In addition, SprintCom has submitted affidavits from persons with first hand knowledge of its investigation of the alternative sites discussed in the affidavit of Intervenor Ernst's attorney. Of greatest importance is an affidavit sworn to by Dominic Stevens, a radio frequency design engineer who worked on the site at issue here. Mr. Stevens states that the pump station site would offer radio frequency coverage inferior to the site for which the CPCN was granted. The AT&T monopole, he says, also would provide degraded coverage. SprintCom's effective height on the AT&T monopole would be 65 feet below the height required, reducing the signal to 33 percent of the original design. The affidavit of Dan Garber, a SprintCom Implementation Manager responsible for construction related matters, states that there is methane gas at

the pump station site and that, at any rate, there is insufficient space at that site for the facility needed.

Both Intervenor Ernst and SprintCom, once again, argue the issue of whether SprintCom should locate facilities in a flood plain. The affidavit of Intervenor Ernst implies that SprintCom has misled the Commission about the possibility of its locating in a flood plain. However, the record demonstrates that SprintCom has never claimed it is impossible to locate a wireless facility in a flood plain. Indeed, it would make little sense to make such a claim, since the AT&T monopole at issue here is located in a flood plain. The Commission has no reason to doubt that SprintCom's policy is to avoid locating in a flood plain if possible. The flood plain issue is, in any event, of little import in comparison with the engineering evidence offered by SprintCom demonstrating that the specific alternatives suggested are inferior to its chosen site.

The Commission finds that Intervenor Ernst in her petition for rehearing has failed to offer competent evidence or, indeed, any evidence, that any alternative suggested is superior to the site chosen. While collocation is preferable to new construction when radio frequency coverage remains adequate, collocation on the AT&T monopole here is not even alleged by the hearsay-based affidavit to be an option that would provide radio frequency coverage equal to the coverage that will be provided from the site for which the CPCN was granted.

The Commission having been sufficiently advised, IT IS HEREBY ORDERED that the petition for rehearing be, and it hereby is, denied.

Done at Frankfort, Kentucky, this 21st day of December, 1998.

PUBLIC SERVICE COMMISSION

B. J. Helton  
Chairman

E. J. O'Donnell  
Vice Chairman

Darryl R. Palmer  
Commissioner

ATTEST:

Helen C. Chaffon  
Executive Director