

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