

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CROWN COMMUNICATION)	
INC. AND ACC OF KENTUCKY LLC FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY AT HIGHWAY 31 WEST,)	CASE NO.
ELIZABETHTOWN, KY 42701 IN THE)	2000-276-UAC
WIRELESS COMMUNICATIONS LICENSE)	
AREA IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF HARDIN)	
SITE NAME: RING ROAD)	
SITE NUMBER: 13272)	

O R D E R

On June 16, 2000, Crown Communication Inc. and ACC of Kentucky LLC (collectively "Applicants") filed an application requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at U.S. Highway 31 West, Elizabethtown, Hardin County, Kentucky. On June 19, 2000, a duplicate copy of the application was filed with the city of Elizabethtown Planning & Development ("Planning Unit"), which serves as the Planning and Zoning Commission of Elizabethtown and Hardin County, Kentucky.

By letters dated June 20 and September 26, 2000, the Planning Unit notified Commission Staff that the Applicants had not filed a development plan for review and approval according to the land use regulations pursuant to which the Planning Unit operates. In each letter, the Planning Unit stated that they "reserve the right to

intervene in this matter.” On October 24, 2000, Jimmie C. Lee and JoNell Lee, his wife, 901 Dullwood Drive, Elizabethtown, Kentucky 40701, by counsel, filed a motion for full intervention in this proceeding.

The Commission finds 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. Accordingly, the motion for full intervention should be granted.

In addition, the Commission, on its own motion, has scheduled a hearing on the proposed wireless telecommunications facility for February 13, 2001 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission’s offices at 211 Sower Boulevard, Frankfort, Kentucky.

If Jimmie C. Lee and JoNell Lee (“Intervenors”) wish to appear at the hearing in opposition to the proposed facility, they must, within 10 days of the date of this Order, so notify the Commission in writing, with a copy to all parties of record. If no statement of intent to appear at the hearing and present evidence against the proposed facility is received by that date, the hearing will be cancelled and submitted to the Commission for a decision based on the written record without further Orders herein.

Pursuant to KRS 100.987(1), the Planning Unit involved herein is properly registered with the Commission and therefore has the authority to approve or disapprove the application in writing within 60 days from the date that the uniform application was received by the Planning Unit pursuant to KRS 100.987(4)(b)(c). The Elizabethtown Planning Unit failed to make a final decision to approve or disapprove the application within 60 days and, as a result, it is presumed that the local commission has

approved the utilities' uniform application pursuant to KRS 100.987(4)(c). If the Elizabethtown Planning Unit desires to intervene in this matter, it shall do so within 10 days of the date of this Order. In addition, if the Elizabethtown Planning Unit desires to appear at the hearing and present evidence against the proposed facility, it must so notify the Commission within 10 days of the date of this Order.

In light of the statutory presumption that the Elizabethtown Planning Unit has approved the uniform application, it appears that the sole issues to be addressed by the Commission will concern engineering design and construction of the proposed facilities, as well as the jurisdictional safety issues relating to the facility, and the public necessity for the construction and operation of the cellular tower.

IT IS THEREFORE ORDERED that:

1. The motion of Jimmie C. Lee and JoNell Lee to fully intervene is granted.
2. The Intervenor shall be entitled to the full rights of a party and shall be served with Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties after the date of this Order.
3. Should an intervenor file documents of any kind with the Commission during the course of these proceedings, he or she shall also serve a copy of said documents on all parties of record.
4. A hearing on the proposed wireless telecommunications facility is scheduled for February 13, 2001, at 9:00 a.m., Eastern Standard Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky. The Elizabethtown Planning Unit shall have 10 days from the date of this Order in which to file a motion for

intervention in this proceeding. If such a motion to fully intervene is filed within the period allowed, the Elizabethtown Planning Unit shall also notify the Commission within 10 days of the date of this Order of their intent to appear in opposition to the proposed wireless telecommunications facility. Likewise, the Intervenor, Mr. and Mrs. Lee, shall also file within 10 days of the date of this Order a statement of intent to appear in opposition to the proposed wireless telecommunications facility. If no notice of intent to appear and present evidence in opposition to the proposed wireless telecommunications facility is filed with the Commission by any intervenor within 10 days of this Order, the hearing shall be cancelled and the matter submitted to the Commission on the existing record without further Orders herein.

5. In regard to this uniform application, proceeding, and hearing, it is understood and ordered that the FCC has exclusive jurisdiction over issues regarding radio frequency emissions, including radio frequency interference. 47 U.S.C. 332(c) and Southwest Bell Wireless, Inc. v. Johnson County Bd. of Education Commissioners, 199 F.3d 1185 (10th Cir. 1999).

6. The Applicants shall appear at the hearing and shall be prepared to present testimony on the engineering design and construction of the proposed facility, as well as the jurisdictional safety issues relating to the facility, and to the public necessity for the facility.

7. Pursuant to 807 KAR 5:063, the Commission will not admit evidence concerning land use and value issues as relating to the potential effects of the tower on the surrounding area, unless otherwise ordered at a later date by the Commission.

8. Neither opening statements nor witnesses' summaries of prefiled testimony shall be permitted at the hearing in this matter.

9. Any interested persons shall have the opportunity to present testimony or comment on the proposed facility.

10. Prefiled testimony, if any, shall be filed within 35 days of the date of this Order.

11. Pursuant to KRS 100.324, a copy of this Order is being sent to the Planning & Development Commission of the city of Elizabethtown at 200 West Dixie Avenue, Post Office Box 550, Elizabethtown, Kentucky 42702 for the purpose of notification that the above-scheduled hearing may affect locations or relocations of service facilities within the Planning Unit's jurisdiction and to allow them the opportunity to intervene as hereinabove set forth.

Done at Frankfort, Kentucky, this 5th day of December, 2000.

By the Commission

ATTEST:


Executive Director