

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SPRINTCOM, INC. FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT ) CASE NO.  
A PERSONAL COMMUNICATIONS SERVICE FACILITY IN THE ) 98-001  
CINCINNATI MAJOR TRADING AREA )  
[LODER CREEK FACILITY] )

O R D E R

On January 7, 1998, SprintCom, Inc. ("SprintCom") filed an application seeking a Certificate of Public Convenience and Necessity ("CPCN") to build and operate a personal communications system ("PCS") for the Cincinnati Major Trading Area. SprintCom has requested authorization to construct a PCS site in Boone County. SprintCom was previously granted the authority to operate in Case No. 97-294.<sup>1</sup>

The proposed PCS site consists of a 150-foot or less monopole antenna tower to be located at 255 North Bend Road, Hebron, Boone County, Kentucky ("the Loder Creek PCS site"). The coordinates for the Loder Creek PCS site are North Latitude 39° 07' 19" by West Longitude 84° 44' 26".

SprintCom has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Loder Creek PCS site. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a Licensed Professional Engineer has certified the plans.

---

<sup>1</sup> Case No. 97-294, The Application of SprintCom, Inc. for Operating Authority and Issuance of Certificate of Public Convenience and Necessity to Construct Personal Communications Services Facilities in Kentucky.

SprintCom notified the Boone County Planning Commission of the pending construction. SprintCom, through the Airspace Safety Analysis Corporation ("ASAC"), filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the Loder Creek PCS site. ASAC determined that approvals were not required from the agencies.

SprintCom has filed notices verifying that each person who owns property within 500 feet of the Loder Creek PCS site has been notified of the pending construction. The notice solicited any comments and informed the property owners or residents of their right to intervene. In addition, notice was posted in a visible location on the proposed site for at least two weeks after SprintCom's application was filed.

Duncan Builders – Phil and Janet Duncan - and Arlinghouse Builders requested and were granted intervenor status. A hearing was subsequently scheduled for June 16, 1998. At the hearing, numerous questions arose involving collocation. SprintCom was ordered to further investigate its collocation options.

On March 1, 1999, the Commission reconvened and discussed collocation options further. SprintCom was ordered September 1, 1999 to provide more information, concerning, among other things, antenna extension and tower design structural integrity, to substantiate its argument.

On November 30, 1999, the Commission ordered SprintCom to file the information ordered September 1, 1999 within 90 days. On February 24, 2000, the Commission granted an additional 30-day extension of time to SprintCom.

On March 17, 2000, SprintCom filed structural analysis testimony from Ryan Vaillancourt, an engineer with Tectonic Engineering Consultants, which appeared to

demonstrate that Cinergy's towers were not structurally capable of handling additional loads. The Commission subsequently set a hearing for July 13, 2000.

On June 16, 2000, SprintCom requested that the Commission reschedule the hearing, and the hearing was, accordingly, reset for August 18, 2000.

On August 18, 2000, SprintCom filed a motion requesting that the Commission place the case in abeyance as it attempted to secure collocation.

On December 13, 2000, the Commission ordered SprintCom to file a final report on the case by January 31, 2001.

On January 31, 2001, SprintCom filed, among other things, a letter prepared by Michael Jones, Director of Tower Development for Lattice Towers, the entity handling collocation issues for Cinergy. His letter stated that "Lattice Towers has no plans to develop these towers due to various considerations including, accessibility to the tower, underlying ground lease, ability to get utilities to the site, etc." The filing indicated that Lattice Towers was interested in pursuing "other options" in the area and that SprintCom would keep the Commission informed.

On March 23, 2001, SprintCom moved to submit its application for decision, stating that collocation was not an option on the Cinergy towers and that Lattice Towers had not submitted a request for a tower in the vicinity. On April 17, 2001, Arlinghouse Builders submitted a motion requesting the Commission enforce the finding in its November 20, 1998 Order, in which the Commission had refused to grant the certificate on the basis of the sparse information available to it. Arlinghouse Builders believes that the Commission should simply repeat its finding of 1998, that "the public interest and convenience is not served by granting this certificate," deny the certificate, and dismiss SprintCom's

application.

On May 1, 2001, the Commission issued an Order giving the parties 15 days to file a memorandum brief containing a statement of the facts, a statement of the issues, and a brief summary of the law. It informed the parties that the case would stand submitted after that period.

The intervenors filed a motion relying on their assertion that SprintCom has had numerous attempts to settle the collocation issue and has failed. Once again, they asked this Commission to enforce the finding in its November 20, 1998 Order.

Staff spoke with all parties and Michael Jones of Lattice Towers, attempting to gather information pertaining to plans to erect a "multi-tenant" tower. This option would be preferable to granting a certificate for a monopole – a structure with minimal collocation options - and then, in the near future, dealing with yet another tower application for the area. The current record does not, however, demonstrate that a multi-tenant tower will be available for SprintCom's use in the near future.

The Commission is not unsympathetic to the concerns stated by the intervenors. Nevertheless, state and federal law alike require the issuance of a CPCN in this matter. SprintCom has, at last, demonstrated that the public convenience and necessity require the construction and that the record does not reflect the existence of a reasonably available alternative site from which SprintCom can provide service to its customers.<sup>2</sup> The law does not support a denial of a site if this showing is made and is unrebutted.<sup>3</sup> We must, however, express our displeasure with the manner in which the applicant has conducted this case. This proceeding has had an unnecessarily protracted existence. It appears that,

---

<sup>2</sup> See KRS 278.020; KRS 278.650; KRS 278.987; 47 U.S.C. 332(c).

but for the reluctance of some of the agents of the applicant to be more forthcoming, this proceeding could have been concluded more expeditiously. The record demonstrates that SprintCom has failed time and again to respond in an adequate and timely manner to legitimate inquiries. As a result, we initially refused to grant the certificate. In the many months since our initial Order, upon rehearing, SprintCom has cured the inadequacies of its case. Accordingly, we grant the certificate but strongly caution SprintCom that, in the future, its responses must be timely and its investigations into potential alternative sites thorough.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, HEREBY ORDERS that:

1. SprintCom is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility located at 255 North Bend Road, Hebron, Boone County, Kentucky. The coordinates for the Loder Creek PCS site are North Latitude 39° 07' 19" by West Longitude 84° 44' 26".

2. SprintCom 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.

---

<sup>3</sup> Telespectrum, Inc. v. Public Service Comm'n of Kentucky, 43 F.Supp.2d 755 (E.D. Ky. 1999), aff'd, 227 F.3d414 (6<sup>th</sup> Cir. 2000).

Done at Frankfort, Kentucky, this 22<sup>nd</sup> day of August, 2001.

By the Commission

ATTEST:

  
Executive Director