

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

UNIFORM APPLICATION OF AT&T	)	
WIRELESS PCS, INC., ACTING BY	)	
AND THROUGH ITS AGENT,	)	
WIRELESS PCS, INC., FOR THE	)	
ISSUANCE OF A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY	)	CASE NO. 2001-020-UAC
TO CONSTRUCT A PERSONAL	)	
COMMUNICATIONS SERVICES	)	
NETWORK FACILITY IN VILLA HILLS,	)	
KENTUCKY AND CALLED THE VILLA	)	
HILLS/WOLTERING CELL SITE	)	

O R D E R

On January 30, 2001, AT&T Wireless PCS, Inc., acting by and through its agent, Wireless PCS, Inc. ( Applicant ) filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 706 River Road, Villa Hills, Kentucky 41017, commonly named Villa Hills/Woltering cell site. By Order of the Commission dated October 23, 2001, the following individuals were granted full intervention: Michael A. Schleper; Carol D. and John Kerr, Jr.; Jodie August Moore; Greg Schneider; Linda and Stanley L. Krumpelman; and Stella and Gale Elkins. On November 16, 2001, by separate motions, the Northern Kentucky Area Planning Commission ( NKAPC ) and the Kenton County & Municipal Planning & Zoning Commission ( KC&MP&ZC ) requested full intervention herein. On December 27, 2001, the City of Villa Hills requested full intervention herein. 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 motions of NKAPC, KC&MP&ZC, and City of Villa Hills for full intervention should be granted. The above-named individuals, NKAPC, KC&MP&ZC, and City of Villa Hills shall be known collectively as Intervenors.

At the informal conference on November 13, 2001, the above-named individual intervenors indicated that they plan to be represented by counsel regarding any public hearing.

On September 26, 2001, the NKAPC recommended to the KC&MP&ZC that it reject the application. The Applicant agreed in writing on three occasions to allow the KC&MP&ZC additional time: from March 3, 2001 to May 3, 2001; from May 3, 2001 to August 2, 2001; and from August 2, 2001 to October 4, 2001. On October 4, 2001, the KC&MP&ZC rejected the application for the construction of the cellular tower. Subsequently, Applicant moved the Commission to override the KC&MP&ZC's rejection of the application. Pursuant to KRS 100.987(5), the Commission may override the planning unit's rejection only if public convenience and necessity require the proposed construction and if no acceptable alternative site for the proposed construction exists. The Commission has scheduled a hearing on the proposed wireless telecommunications facility for March 14, 2002 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

If an Intervenor wishes to appear at the hearing in opposition to the proposed facility and present evidence, the Intervenor must, within 10 days of the date of this

Order, so notify the Commission in writing, with a copy to all parties. 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 this matter will be submitted to the Commission for a decision based on the written record without further Orders herein.

Intervenors are put on notice that evidence regarding potential alternative sites for the proposed construction, such as those discussed at the informal conference, and any requests for information must be filed with the Commission, with a copy to all parties of record, no later than 20 days from the date of this Order. No Intervenor may produce evidence regarding any other alternative site at the hearing except in regard to the specific sites of record as described in this Order.

Responses to information requests and site information regarding potential alternative sites, if filed by the Intervenor(s), shall be responded to by Applicant within 30 days of the date of this Order, and Applicant shall include in such responses a report of their view of the feasibility of the alternative sites presented by the Intervenor(s).

At the informal conference, two issues were raised by the parties which should be addressed at the public hearing. The Intervenors allege that, pursuant to KRS 100.987(7), there is an existing cellular tower facility located at 724 River Road approximately 400 feet from the Applicant's proposed construction site. Intervenors allege that it is feasible for the Applicant to collocate on said facility. The other issue was a potential cellular site located across the Ohio River in the state of Ohio. At the informal conference, Applicant agreed, at the request of the Intervenors, to examine the feasibility of the Ohio site as being an acceptable alternative site.

The Commission is particularly interested in hearing testimony and proof from the Applicant and owners/manufacturers of the existing tower concerning what efforts, if any, have been made to collocate on the existing tower. In addition, the Commission desires to hear testimony and proof concerning any discussions or negotiations that have been conducted relative to razing the existing tower and constructing a tower at the same location to accommodate the existing tower's needs as well as the Applicant's needs.

In addition to the above-named issues, the Commission finds that the issues to be addressed by the Commission at public hearing shall be engineering, design, and construction of the proposed facility (jurisdictional safety issues), the public necessity for construction and operation of the tower, and any proposed acceptable alternative site for location of the tower.

IT IS THEREFORE ORDERED that:

1. The status of full intervenor is granted to NKAPC, KC&MP&ZC, and City of Villa Hills.
2. A hearing on the proposed wireless telecommunications facility is scheduled for March 14, 2002 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.
3. If no Intervenor files a statement of intent to appear and present evidence in opposition to the proposed telecommunications facility within 10 days of the date of this Order, the hearing shall be cancelled and the matter submitted to the Commission on the existing record without further Orders herein.

4. Intervenor shall file with the Commission evidence regarding potential and acceptable alternative sites for the proposed construction, if any, and any requests for information no later than 15 days from the date of this Order, with a copy to all parties of record. No Intervenor may produce evidence regarding acceptable alternative sites at the hearing except in regard to the specific sites of record as described in this Order.

5. The Applicant shall respond in writing to information requests and filings concerning potential alternative sites, if any, within 30 days of the date of this Order, and shall include in their response information concerning the availability and technical feasibility of such sites.

6. No Intervenor nor any person subsequently granted intervention herein may submit evidence regarding acceptable alternative sites for the proposed facility at the hearing in this matter, except in regard to those specific sites for which information has been filed, pursuant to the terms of this Order.

7. The Applicant shall appear at the hearing and shall be prepared to present testimony regarding the jurisdictional safety issues relating to the facility (construction, design, location, and safety). In addition, Applicant shall appear at the hearing and shall be prepared to present testimony and evidence regarding the proposed acceptable alternative sites filed in the record and proposed by the Intervenor herein. The Applicant is not obligated to respond to any additional or other alternative site that might be proposed during hearing in this matter. In regard to the uniform application, proceedings and hearing, it is ordered that the Federal Communications Commission ( FCC ) has exclusive jurisdiction over issues regarding radio frequency emissions,

including environmental effects of radio frequency emissions, and radio frequency interference that comply with the FCC's standards. 47 U.S.C. § 332(c)(7) and Southwestern Bell Wireless, Inc. v. Johnson County Board of County Commissioners, 199 F.3d 1185 (10<sup>th</sup> Cir. 1999).

8. The Commission will not take into consideration matters exclusively within the jurisdiction of the local planning and zoning commissions relating to the character of the general area in which the tower is to be constructed and any likely effects of the installation on nearby land uses and values.

9. Issues to be addressed at hearing by testimony and evidence are those relating to KRS 278.650(2) for potential acceptable alternative sites, if any, jurisdictional safety issues (engineering, design, construction, and safety as related to the facility) and the public necessity for the construction and operation of the facility.

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

11. Any interested person shall have the opportunity to present testimony or comment on the proposed facility.

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

13. Pursuant to KRS 100.324, a copy of this Order is being sent to: Northern Kentucky Area Planning Commission, 2332 Royal Drive, Fort Mitchell, Kentucky 41017-2088, Kenton County & Municipal Planning & Zoning Commission, 2332 Royal Drive, Fort Mitchell, Kentucky 41017-2088; and to Villa Hills City Attorney Michael A.

Duncan, Ziegler & Schneider, PSC, Post Office Box 175710, Covington, Kentucky  
41017-5710.

Done at Frankfort, Kentucky, this 14<sup>th</sup> day of January, 2002.

By the Commission

ATTEST:

  
Executive Director