

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

UNIFORM APPLICATION OF WEST)
VIRGINIA CELLULAR TELEPHONE)
CORPORATION D/B/A AT&T)
WIRELESS SERVICES, FOR THE)
ISSUANCE OF A CERTIFICATE OF) CASE NO. 2001-120-UAC
PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A)
WIRELESS COMMUNICATIONS)
SERVICES NETWORK FACILITY)
IN ASHLAND, KENTUCKY)

O R D E R

On May 18, 2001, West Virginia Cellular Telephone Corporation d/b/a AT&T Wireless Services (Applicant) filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 4849 East Ridge Street, Ashland, Boyd County, Kentucky. At the written request of the city of Ashland, an Order was issued on July 25, 2001, granting full intervention to the city of Ashland (Intervenor).

The proposed site is in a jurisdiction in which the planning unit has adopted planning and zoning regulations in accordance with KRS Chapter 100, but the planning unit did not plan for and regulate the setting of cellular antenna towers by officially registering with the Commission pursuant to KRS 100.987(1).

The Intervenor filed a response to the application on June 5, 2001. The response states that communication towers must receive a conditional use permit from the Board of Zoning Adjustments in order to construct and operate a cellular tower. The

Board of Zoning Adjustments held a public hearing on the application and voted to table the matter until further information could be received from the Applicant. The Intervenor alleges that the application is premature and not ripe to decide by the Public Service Commission. Further, the Intervenor alleges that the Commission would circumvent the Intervenor's zoning ordinance and powers granted to it by the Kentucky Constitution and the General Assembly. However, as stated above, the Intervenor's planning unit has not registered with the Commission and does not have the authority to review the application herein.

The Commission, on its own motion, has scheduled a hearing in this matter for May 16, 2002 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

Further, the Commission, on its own motion, has scheduled an informal conference on March 26, 2002 at 2:00 p.m., Eastern Standard Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

If the Intervenor wishes to appear at the informal conference in opposition to the application for the proposed facility, it must, within 10 days of the date of this Order, so notify the Commission in writing. If no statement of intent to appear at the informal conference is received by that date, the conference will be cancelled, the hearing set for May 16, 2002 will be cancelled, and this matter will be submitted to the Commission based on the written record without further Orders herein.

The Intervenor is hereby notified that the hearing will be conducted pursuant to the evidentiary standards of KRS 278.650(2) and KRS 278.650(4).

If the Intervenor is present at the informal conference and desires that the hearing scheduled for May 16, 2002 be conducted, the Intervenor shall have 20 days

from the date of the informal conference to file information concerning any acceptable alternative sites for the proposed construction. Any request for information must be filed with the Commission in writing. No Intervenor may produce evidence at the hearing regarding any other alternative site except in regard to the specific sites filed of record.

Applicant s responses to any information requests and site information regarding potential acceptable alternative sites shall be filed within 30 days of the date of the informal conference, including in such responses a report concerning the feasibility of the alternative sites.

Issues to be addressed at the hearing by testimony and evidence are those relating to the above-named statutes, which include any potential acceptable alternative sites, jurisdictional safety issues (engineering, design, safety, construction, and operation of the tower), the public necessity for construction and operation of the facility, the general character of the area where the tower is to be located, and the likely effects of the installation on nearby land uses and values. In this proceeding and hearing, the Federal Communications Commission (FCC) has exclusive jurisdiction over radio frequency emissions, including radio frequency interference. The Commission will not consider the environmental effects of radio frequency emissions that comply with the FCC standards. 47 U.S.C. § 332(c)(7) and Southwestern Bell Wireless, Inc. v. Johnson County Board of Education Commissioners, 199 F.3d 1185 (10th Cir. 1999).

IT IS THEREFORE ORDERED that:

1. A hearing on the application for the proposed wireless telecommunications facility is scheduled for May 16, 2002 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission s offices at 211 Sower Boulevard, Frankfort, Kentucky.

2. An informal conference is scheduled for March 26, 2002 at 2:00 p.m., Eastern Standard Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

3. If the Intervenor intends to appear at the informal conference, it shall file a statement of intent to appear within 10 days of the date of this Order. If no statement is filed within 10 days of the date of this Order, the informal conference and the hearing shall be cancelled and the matter shall be submitted to the Commission on the existing record without further Order.

4. Within 20 days of the date of the informal conference, the Intervenor may submit evidence regarding potential acceptable alternative sites for the proposed facility, with a copy to all parties of record.

5. The Intervenor or any person subsequently granted intervention herein may not submit evidence at the hearing regarding alternative sites for the proposed facility, except in regard to those specific alternative sites filed herein within 20 days of the date of the informal conference.

6. The Applicant shall respond in writing to a filing regarding information requests and potential acceptable alternative sites, if any, within 30 days of the date of the informal conference, and shall include in its response information concerning the availability and technical feasibility of such proposed acceptable alternative sites.

7. During this proceeding and hearing, the 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 standards. 47 U.S.C. § 332(c)(7) and Southwestern Bell Wireless, Inc. v. Johnson County Board of County Commissioners, 199 F.3d 1185 (10th Cir. 1999).

8. The issues to be addressed at the hearing by testimony and evidence are those related to KRS 278.650(2) and KRS 278.650(4), including acceptable alternative sites, if any, jurisdictional safety issues relating to the facility (design, location, safety, construction, and operation), the public necessity for the construction and operation of the facility, the character of the general area concerned, and the likely effects of the installation on nearby land uses and values.

9. Applicant shall appear at the hearing and shall be prepared to present testimony and evidence regarding the matters set out herein, including the safety and public necessity issues.

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 45 days of the date of this Order.

Done at Frankfort, Kentucky, this 18th day of January, 2002.

By the Commission

ATTEST:


Executive Director