

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CROWN COMMUNICATION	)	
INC. AND KENTUCKY CGSA, LLC, D/B/A	)	
CINGULAR WIRELESS FOR ISSUANCE OF A	)	
CERTIFICATE OF PUBLIC CONVENIENCE AND	)	
NECESSITY TO CONSTRUCT A WIRELESS	)	CASE NO.
COMMUNICATIONS FACILITY AT 708 DOWNS	)	2001-268-UAC
AVENUE, LEXINGTON, KENTUCKY 40505, IN THE	)	
WIRELESS COMMUNICATIONS LICENSE AREA	)	
IN THE COMMONWEALTH OF KENTUCKY	)	
IN THE COUNTY OF FAYETTE	)	
SITE NAME: LAKEVIEW	)	
SITE NUMBER: 29532	)	

O R D E R

On September 14, 2001, Crown Communication Inc. and Kentucky CGSA, LLC, d/b/a Cingular Wireless (collectively Applicants ) filed an application requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 708 Downs Avenue, Lexington, Kentucky, also known as the Lakeview cell site. The proposed tower site is within the jurisdiction of the Lexington-Fayette Urban County Government Planning and Zoning Commission ( LFUCG ). LFUCG requested and was granted the status of full intervenor by Order dated October 2, 2001. A duplicate copy of the application was filed with the LFUCG, but LFUCG did not approve or disapprove the application in writing within 60 days, pursuant to KRS 100.987(4)(b)(c). Pursuant to the cited statute, it is presumed that the local planning commission has approved the Applicants uniform application.

The Commission has scheduled a hearing on the proposed wireless telecommunications facility for March 5, 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 the LFUCG wishes to appear at the hearing in opposition to the proposed facility, it 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 the application will be submitted to the Commission for a decision based on the written record without further Orders herein.

In light of the statutory presumption that the LFUCG has approved the uniform application, it appears that the two issues to be addressed by the Commission will concern jurisdictional safety relating to the facility (engineering, design, construction, and safety), and the public necessity for the construction and operation of the cellular tower facility. Issues that the Commission cannot address at the hearing are land use, zoning, general character of the surrounding area, and land value. In addition, the Federal Communications Commission ( FCC ) has exclusive jurisdiction over issues regarding radio frequency emissions, including the environmental effects of radio frequency emissions.

IT IS THEREFORE ORDERED that:

1. A hearing on the proposed wireless telecommunications facility is scheduled for March 5, 2002 at 9:00 a.m., Eastern Standard Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

2. In regard to the uniform application, proceedings, and hearing, the LFUCG shall file, within 10 days of the date of this Order, a statement of intent to appear at the hearing in opposition to the proposed wireless telecommunications facility. If no notice of intent to appear and present evidence in opposition to the proposed telecommunications facility is filed with the Commission by the LFUCG, the hearing shall be cancelled and this matter shall be submitted to the Commission on the existing record without further Orders herein.

3. In regard to this hearing, the FCC has exclusive jurisdiction regarding issues of radio frequency emissions and the environmental effects of radio frequency emissions 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.3<sup>rd</sup> 1185 (10<sup>th</sup> Cir. 1999). The issues to be considered and addressed at this hearing are jurisdictional safety issues relating to the facility (engineering, design, construction, and safety), and the public necessity for the construction and operation of the tower facility. The Applicants shall appear at the hearing prepared to present evidence and proof regarding these two issues.

4. Neither opening statements nor witnesses summaries of prefiled testimony shall be permitted at hearing. Any interested person shall have the opportunity to present testimony or comment on the proposed facility.

5. Prefiled testimony, if any, shall be filed within 15 days of the date of this Order.

6. Pursuant to KRS 100.324, a copy of this Order is being sent to the LFUCG at 200 East Main Street, Lexington, Kentucky 40507.

Done at Frankfort, Kentucky, this 10<sup>th</sup> day of January, 2002.

By the Commission

ATTEST:

  
Executive Director