

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE UNIFORM APPLICATION OF)	
CROWN COMMUNICATION INC. AND)	
WESTEL-MILWAUKEE COMPANY, LLC)	
D/B/A CINGULAR WIRELESS -)	
OWENSBORO FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO)	CASE NO. 2002-00057
CONSTRUCT A WIRELESS)	
COMMUNICATIONS FACILITY AT)	
699 BUSH ROAD, CADIZ, KENTUCKY 42211)	
IN THE WIRELESS COMMUNICATIONS LICENSE)	
AREA IN THE COMMONWEALTH OF KENTUCKY)	
IN THE COUNTY OF TRIGG)	
SITE NAME: MUDDY FORK)	

O R D E R

On April 11, 2002, Crown Communication Inc. and Westel-Milwaukee Company, LLC, d/b/a Cingular Wireless--Owensboro (Applicants) filed a joint application with the Commission, requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 699 Bush Road, Cadiz, Trigg County, Kentucky. Notice of the application was mailed to the Cadiz Planning and Zoning Commission (P&Z Unit) on April 19, 2002, informing the P&Z Unit of its right to intervene or comment on the application. At all times relevant to this proceeding, the P&Z Unit has not been registered with this Commission to plan for and regulate the siting of cellular antenna towers, and has not requested to intervene in this proceeding.

On April 29, 2002, Cordell Turner and Sheila Turner jointly filed a motion for full intervention in this proceeding and for a public hearing in Cadiz. On May 20, 2002, Walden Adams requested full intervention in this proceeding. The Commission finds that such interventions are 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 requests for full intervention and a hearing should be granted. However, the request that the hearing be held locally should be denied, for two reasons. First, House Bill No. 270, which will be codified in KRS Chapters 100 and 278, and which provides for local cell site hearings, was not yet in effect when the application was filed. Second, even if House Bill No. 270 governed this proceeding, it would not authorize a local public hearing, as, under its provisions, this Commission may conduct no proceedings at all if a planning commission has jurisdiction over the site in question.

IT IS THEREFORE ORDERED that:

1. A formal hearing in this matter is scheduled for July 29, 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. Cordell Turner, Sheila Turner, and Walden Adams are granted the right to intervene and shall be accorded the full rights of parties. From and after the date of this Order, the Commission shall serve upon them copies of its Orders, and Applicants and any other parties permitted to intervene shall serve upon them copies of testimony, exhibits, pleadings, correspondence and other documents filed in this proceeding.

3. Unless they are directed otherwise, Cordell Turner, Sheila Turner, and Walden Adams shall serve copies of any documents they file with the Commission during the course of this proceeding on the Applicants and on any other intervenor.

4. Within 10 days of the date of this Order, Cordell Turner, Sheila Turner, and Walden Adams may file a statement notifying the Commission that he or she intends to appear at the hearing and present evidence in opposition to the proposed wireless telecommunications facility. The statement shall contain a brief summary of the evidence he or she intends to present, shall identify all locations that he or she wishes to offer as alternative sites, and shall state why those sites are more suitable and appropriate than the site proposed by the Applicants. If such notification is not given within the time prescribed, the hearing shall be cancelled and the matter submitted to the Commission on the existing record without further Order herein.

5. In regard to this uniform application, proceeding, and hearing, it is understood and ordered that the Federal Communications Commission has exclusive jurisdiction over issues regarding radio frequency emissions, including radio frequency interference. 47 U.S.C. § 332(c) and *Southwestern Bell Wireless, Inc. v. Johnson County Bd. of Education Commissioners*, 199 F.3d 1185 (10th Cir., 1999). Therefore, neither the Applicants nor the Intervenors shall be permitted to present evidence on these issues.

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, jurisdictional safety, and the public necessity for the facility. All parties may prefile their direct testimony, including any supporting exhibits, on or before July 19, 2002. Written

objections to prefiled testimony, or any portions thereof, shall be filed on or before July 26, 2002. Prefiled testimony not timely objected to shall be admitted as evidence in the record of this proceeding without further Order herein.

7. Neither opening statements nor witnesses summaries of prefiled testimony shall be permitted at the hearing.

8. At the hearing, all interested persons shall have the opportunity to present comments on the proposed facility.

9. The request of Intervenors for a public hearing in Cadiz is denied.

10. Pursuant to KRS 100.324, a copy of this Order is being sent to the Cadiz Planning and Zoning Commission, Cadiz City Hall, 11 Marion Street, Post Office Box 1465, Cadiz, Kentucky 42211.

Done at Frankfort, Kentucky, this 1st day of July 2002.

By the Commission

ATTEST:


Executive Director