

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BELLSOUTH)
MOBILITY, LLC D/B/A CINGULAR)
WIRELESS - KENTUCKY FOR)
ISSUANCE OF A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A)
WIRELESS COMMUNICATIONS) CASE NO. 2004-00241
FACILITY AT CROWN ROCK ROAD,)
BIG CLIFTY, KY 42712)
IN THE WIRELESS COMMUNICATIONS)
LICENSE AREA IN THE)
COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF GRAYSON)
SITE NAME: BIG CLIFTY)

O R D E R

On June 14, 2004, BellSouth Mobility, LLC d/b/a Cingular Wireless—Kentucky (“Cingular”) filed an application requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at Big Clifty, Grayson County, Kentucky. The tower and its support facilities will be located at Crown Rock Road in an area located entirely within the county of Grayson. The facility will consist of a 275-foot tower in addition to a 10-foot lightning arrester attached at the top, for a total height of 285 feet. A separate prefabricated cabinet will be constructed to contain transmitting and receiving equipment.

The proposed tower site is not within a jurisdiction that has adopted planning and zoning regulations in accordance with KRS Chapter 100. Gary Logsdon, the Grayson

County Judge/Executive, was properly notified of the pending application and construction.

The following individuals requested intervention: Rebecca and Paul Hughes, Opal and Henry Neff, Paul D. and Xaviera Hughes, Pauletta and James Gawarecki, Robert Harris, William and Martha Fletcher, Ralph and Candy Mattingly, Sherry Childress, Homer and Cathy Basham, Christine Armes, and Willie Haynes ("Intervenor(s)"). The Commission found that such interventions are likely to present issues and develop facts that will assist the Commission without unduly complicating or disrupting the proceedings. The Intervenors have been granted full intervention by Order dated August 12, 2004. Each Intervenor has requested that a local public hearing be conducted on the application pursuant to KRS 278.650. The Commission finds that the terms of the statute have been met and that a local public hearing will be held unless otherwise ordered.

In the normal course of reviewing an application for construction of a cellular tower, the Commission generally convenes an informal conference with all the parties, including Intervenors, at its offices. This conference is conducted to allow the Intervenors and all other parties the opportunity to clarify any procedural issues and to identify witnesses and testimony to be presented at public hearing. Often the parties and the applicant can resolve major objections that an Intervenor has against the construction of the originally proposed cell tower.

The Commission has directed Commission Staff to conduct an informal conference with all parties to discuss procedural issues and attempt to reach settlement. The informal conference is scheduled to be held on January 11, 2005 at

6:00 p.m., Central Standard Time, at the Community Building in Big Clifty, Kentucky. At this conference Commission Staff and Cingular personnel will be present to answer questions about the application and the cell tower and its facilities. In addition, testimony and evidence will be discussed. It is important that all interested parties, particularly the Intervenors, attend the conference. If opportunity for settlement develops, it requires agreement of all Intervenors.

The Intervenors are hereby notified that the local public hearing to be scheduled at a later date will be conducted pursuant to the evidentiary standards of KRS 278.650 which provides that "the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values." 807 KAR 5:063, Section 1(s), requires an applicant to state that it "has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to collocate." If any Intervenor can identify any other location or locations to construct the proposed tower and facilities, he or she should identify these proposed alternative sites in writing. The Intervenors may make requests for information and such requests must be in writing. If any Intervenor has identified specific alternative sites or places for collocation or has any requests for information, he or she shall submit same in writing to the Commission, with a copy to all parties of record, on or before January 31, 2005. Cingular's responses to any filed information request regarding potential alternative sites, collocations, or requests for information shall be filed on or before March 2, 2005, including in such responses a report concerning the feasibility of the alternative sites and collocation places suggested by the Intervenors.

In considering the application for the proposed cellular communications facility and tower during hearing, the following issues are likely to be addressed: (a) public necessity for the construction and operation of the facility, (b) the character of the general area concerned and the likely effects of the installation on nearby land uses and values, (c) alternative sites and/or collocation sites, if any, and (d) all jurisdictional safety issues relative to the design, engineering, construction, and safety of the cellular tower and facilities. The Federal Communications Commission ("FCC") has exclusive jurisdiction over radio emissions, including radio frequency interference. The Commission therefore will not consider the "environmental effects of radio frequency emissions" that comply with FCC standards. 47 U.S.C. § 332(c)(7).

IT IS THEREFORE ORDERED that:

1. An informal conference is scheduled for January 11, 2005, at 6:00 p.m., Central Standard Time, at the Community Building, in Big Clifty, Grayson County, Kentucky. The local public hearing will be scheduled at a later date.

2. Should any Intervenor file any documents of any kind with the Commission during the course of these proceedings, he or she shall also serve (mail) a copy of said documents to all parties of record.

3. Any Intervenor wishing to submit evidence or a reasonable suggestion regarding potential alternative sites and/or collocation sites for the proposed construction or any request for information shall be filed with the Commission, with a copy to all parties of record, on or before January 31, 2005.

4. No current Intervenors nor any person subsequently granted intervention herein may submit any evidence at hearing regarding alternative sites and/or

collocations for the proposed facility, except in regard to those specific alternative sites and/or collocations filed herein as set out on page 3.

5. Cingular shall respond in writing to information requests and potential alternative sites and/or collocation sites, if any, on or before March 2, 2005 and shall include in its responses information concerning the availability and feasibility of suggested alternative sites.

6. During this proceeding and during the public hearing, if any, it is understood and ordered that the FCC has exclusive jurisdiction regarding radio frequency, including radio frequency interference pursuant to 47 U.S.C. § 332(c)(7) and Southwest Bell Wireless, Inc. v. Johnson County Board of Education, 199 F.3d 1185 (10th Cir. 1999).

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

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

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

10. Prefiled testimony, if any, shall be filed within 40 days of the date of this Order.

Done at Frankfort, Kentucky, this 17th day of December, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:



Executive Director