

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUMBERLAND CELLULAR	)	
PARTNERSHIP FOR ISSUANCE OF A	)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE	)	2005-00445
AND NECESSITY TO CONSTRUCT A CELL	)	
SITE (FRAZER) IN THE RURAL SERVICE	)	
AREA #5 (WAYNE) OF THE COMMONWEALTH	)	
OF KENTUCKY	)	

O R D E R

On December 16, 2005, Cumberland Cellular Partnership (“Cumberland”)<sup>1</sup> filed an application requesting the issuance of a Certificate of Public Convenience and Necessity (“CPCN”) to construct, maintain, and operate a wireless telecommunications facility (“Cell Facility”) located off of Scenic State Route 90 and Old Ky. Loop #3, approximately 12 miles northeast of Monticello, Wayne County, Kentucky, near the community of Frazer.

There were multiple written requests for intervention. Some requests were from property owners who own and occupy real estate near the Cell Facility. These requests were granted by the Commission, naming the property owners as full intervenors. Other requests for intervention were made by individuals residing outside the immediate

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<sup>1</sup> The Cumberland Cell Facility is entirely maintained, managed, and operated by Bluegrass Cellular, Inc.

area of the Cell Facility. These individuals were granted limited intervention, pursuant to 807 KAR 5:001, Section 3(8)

On August 29, 2006, an informal conference was conducted at the Commission's offices to ascertain the nature of the interest and objections of the intervenors. The intervenors and applicant discussed several options of settlement, but ultimately it was determined that the matter could not be resolved between the parties. This matter should be set for hearing.

Full intervenors and limited intervenors who give proper notice to appear at the hearing, as set out herein below, shall have full rights to participate in the conduct of the hearing, as would the applicant or other parties.

If any intervenor wishes to appear at the hearing in opposition to the application and the proposed Cell Facility, he or she must, within 10 days of the date of this Order, so notify the Commission in writing. A copy of such notice shall be mailed or delivered to all parties of record. If no statement of intent to appear at the hearing and present evidence against the proposed Cell Facility is received by that date, the hearing will be cancelled and the matter will be submitted to the Commission for a decision based upon the written record without further Order herein.

All intervenors are notified that, if they choose to do so, they have a period of 30 days from the date of this Order to submit to the Commission and the applicant, Cumberland, a list, with supporting technical information and evidence, of specific potential and suitable alternative locations or sites where the proposed Cell Facility might be collocated or constructed, other than the proposed site named in the application. No intervenor may introduce evidence regarding any other alternative

location or site at hearing except in regard to the specific locations or sites of record as described in this Order.

Responses by the applicant to the intervenors' potential suitable alternative locations or sites should be filed with the Commission and intervenors within 60 days of the date of this Order. Applicant should include in its response a report of its view of each location or site, supported by information and evidence concerning the availability and technical feasibility of such location or site.

The issues to be addressed at the hearing include: (1) the public convenience and necessity for the construction and the operation of the Cell Facility; (2) the design, engineering, and construction of the proposed Cell Facility (jurisdictional safety issues); (3) character of the general area concerned and the likely effects of the installation of the new Cell Facility on nearby land uses and values; (4) any acceptable alternative or collocation site, other than the site proposed in the CPCN application as ordered herein; and (5) any other issues that may arise in the course of the hearing.<sup>2</sup>

Intervenors are hereby advised that they may not introduce evidence at the hearing regarding any alternate location or site to collocate or construct an alternative cell tower, unless they present such suitable alternative locations or sites that are supported by direct testimony of experts in the field of telecommunications that shall be additionally supported by written reports showing the technical feasibility of why a

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<sup>2</sup> The Federal Communications Commission ("FCC") has exclusive jurisdiction over radio transmission, including radio frequency interference. The Commission is not authorized to consider the "environmental effects of radio frequency emissions" (including health issues) that comply with FCC standards. See 47 U.S.C. § 332(c)(7). See also Southwest Bell Wireless, Inc. v. Johnson County Board of Education, 199 F.3d 1185 (10<sup>th</sup> Circ. 1999). Accordingly, this issue will not be considered at any hearing.

proposed alternative site is a better location than the site proposed in the application. This testimony with written supporting information may be received into evidence at the discretion of the hearing officer pursuant to the prior orders herein and is subject to cross-examination by the applicant.

IT IS THEREFORE ORDERED that:

1. All intervenors, full and limited, shall be entitled to the full rights of a party at hearing in this matter. Full intervenors shall be entitled to be served with the Commission Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties after the date of this Order.

2. Should any intervenor file any documents of any kind with the Commission during the course of these proceedings, he/she shall also serve a copy of said documents on all parties of record.

3. A hearing on the proposed Cell Facility is scheduled for February 7, 2007, beginning at 10:00 a.m., Eastern Standard Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

4. Any intervenor who intends to appear at the hearing and present evidence against the construction of the tower shall file a statement of intent to appear in opposition to the proposed Cell Facility within 10 days of the date of this Order. If no statements are filed within 10 days of the date of this Order, the hearing shall be cancelled and the matter shall be submitted to the Commission on the existing record without further order herein.

5. Intervenors shall have 30 days, pursuant to the terms of this Order, to file with the Commission, if they so desire, a list of specific potential and suitable alternative

locations or sites, with supporting information, evidence, and technical rationale, where the proposed Cell Facility might be collocated or constructed, other than the proposed site named in the application.

6. Applicant shall have a period of 60 days from the date of this Order to respond to the intervenors' proposed alternative locations or sites in the paragraph above. The response shall provide information and evidence of the availability and technical feasibility related to each proposed location or site detailing whether it is an acceptable and suitable alternative location or site as described herein above in this Order. No intervenor shall produce evidence regarding acceptable alternative sites at hearing except as to those locations or sites of record referred to above in paragraph 5.

7. On or before the 15<sup>th</sup> day prior to the date of the hearing, the parties shall file with the Commission a list of witnesses they propose to produce at hearing to testify, together with a brief summary as an offer of proof for each witness.

8. The applicant shall appear at hearing and shall be prepared, at a minimum, to address the following issues:

a. Public necessity for the construction and operation of the Cell Facility.

b. Jurisdiction of safety issues of design, engineering, and construction, including the suitability and preparation of the Cell Facility.

c. Character of the general area concerned and the likely effects of the Cell Facility on nearby land uses and values.

d. Proposed alternative locations or sites that have been filed in the record by the intervenors pursuant to this Order.

9. The FCC has exclusive jurisdiction over issues regarding radio frequency, interference, and radio frequency emissions. The Commission will not receive any evidence regarding this matter in the proceedings herein because it is without authority to consider such evidence, subject to the hearing officer's ruling.

10. Opening statements shall not be permitted at the hearing in this matter.

11. Any interested persons shall have the opportunity to present testimony or comment on the proposed Cell Facility.

Done at Frankfort, Kentucky, this 29<sup>th</sup> day of November, 2006.

By the Commission

ATTEST:



Executive Director