

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WEST VIRGINIA PCS	)	
ALLIANCE, L.C. D/B/A NTELOS FOR A	)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE	)	2007-00124
AND NECESSITY TO CONSTRUCT A 195	)	
FOOT COMMUNICATIONS TOWER OFF	)	
DONTA ROAD, (KY 766) IN BOYD COUNTY	)	
(LAWHORN HOLLOW SITE)	)	

O R D E R

On April 10, 2007, West Virginia PCS Alliance, L.C. d/b/a NTELOS (“NTELOS”) 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 approximately 700 feet on an access easement road from and off of the Donta Road (Kentucky Highway 766) in Boyd County, Kentucky, known as the Lawhorn Hollow site, in an area that NTELOS states is unzoned and outside the jurisdiction of a local planning commission. By Commission Order dated May 9, 2007, Judith Ferguson was granted full intervention, since her residence and property are located near the tower and she might be able to assist in the development of issues before the Commission.

If the Intervenor, Judith Ferguson, or anyone allowed to intervene hereinafter wishes to appear at the hearing in opposition to the application for the proposed Cell Facility, he or she must, within 10 days of the date of this Order or an Order granting

intervention, so notify the Commission in writing. A copy of that notice from the Intervenor(s) shall be mailed or delivered to all the parties of record. If no statement of intent to appear at the hearing and to present evidence against the construction of the proposed Cell Facility is received by that date, the hearing will be canceled and the matter will be submitted to the Commission for a decision based on the written record.

All Intervenors are notified that, if they choose to do so, they have a period of 25 days from the date of this Order or 10 days from the date of the Order granting them intervention, if the original 25-day period has expired, to submit to the Commission and NTELOS a list, with supporting technical information and evidence, of specific potential and suitable alternative locations where the proposed Cell Facility might be located, other than the proposed site named in the application. This is commonly referred to as "suitable and acceptable sites." No Intervenor may introduce evidence during the hearing regarding any alternative location for the proposed tower, except in regard to the specific locations of record described in this Order.

Responses by NTELOS to the Intervenors' potentially suitable and acceptable alternative locations shall be filed with the Commission and the Intervenors within 15 days of the filing of any Intervenor's list of acceptable alternative locations. NTELOS should include in its response a report of its view of each location, supported by information of a technical nature and evidence concerning the availability and technical feasibility of such location.

The issues to be addressed at hearing include: (1) the public convenience and necessity for the construction and operation of the Cell Facility; (2) the design, engineering, and construction of the Cell Facility (jurisdictional safety issues);

(3) character of the general area concerned and the likely effects of the installation of the proposed Cell Facility on nearby land uses and values; (4) any suitable and acceptable alternative or collocation site, other than the proposed site in the CPCN application as ordered herein, that has been properly and timely filed with NTELOS and the Commission; and (5) any other issues that might arise during the course of the hearing.<sup>1</sup>

The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. All Intervenors shall be entitled to the full rights of a party at any hearing in this matter. Should any Intervenor file a document of any kind with the Commission during the course of this proceeding, said Intervenor shall also serve a copy of said document on all the parties of record and other parties to this action.

2. A hearing on the proposed Cell Facility is scheduled for September 26, 2007, beginning at 9:30 a.m., Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

3. Any Intervenor who intends to appear at the hearing and present evidence against construction of the proposed Cell Facility shall file, within 10 days of the date of this Order, a statement of intent to appear in opposition. If no statement is filed within 10 days of the date of this Order, the hearing shall be canceled and the matter shall be submitted to the Commission on the existing record.

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<sup>1</sup> The Federal Communications Commission ("FCC") has exclusive jurisdiction over radio transmissions, including radio frequency interference. The Commission is not authorized to consider the "environmental effects of radio frequency emissions" (including health issues) that comply with the 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> Cir. 1999). Accordingly, this issue will not be considered at hearing.

4. If they so desire, Intervenors shall file with the Commission, within 25 days of the date of this Order or 10 days from the date of the Order granting them intervention, if the original 25-day period has expired, a list of specific, suitable, and acceptable alternative locations, other than the proposed site, for construction or collocation, with supporting technical radio frequency information, evidence, and technical rationale, where the proposed Cell Facility might be located or constructed. No Intervenor shall produce evidence regarding any suitable and acceptable alternative site or sites at the hearing except as to those locations of record, properly identified in this paragraph.

5. NTELOS shall have a period of 15 days from the date of any Intervenor's filing of the information described in paragraph 4 above to respond to the Intervenors' proposed alternative locations. The response shall provide information and evidence of the availability and technical feasibility related to the proposed location described in this Order, detailing whether it is an acceptable and suitable alternative location.

6. By September 17, 2007, the parties shall file with the Commission a list of witnesses they propose to produce at hearing, together with a brief summary as an offer of proof for each witness.

7. NTELOS shall appear at the hearing and shall be prepared, at a minimum, to address the following issues:

a. The public necessity for the construction and operation of the Cell Facility.

b. The jurisdictional safety issues that include design, engineering, and construction, as well as the suitability and preparation of the Cell Facility.

c. The character of the general area of concern and the likely effects of the Cell Facility on nearby land uses and values.<sup>2</sup>

d. The proposed alternative locations or sites that have been filed in the record by the Intervenor pursuant to this Order.

8. 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 proceeding herein because it is without authority to consider such evidence.

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

Done at Frankfort, Kentucky, this 1<sup>st</sup> day of August, 2007.

By the Commission

ATTEST:



Executive Director

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<sup>2</sup> KRS 278.650 states, "In reviewing the application, 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." (Emphasis added)