

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SHARED SITES, LLC )  
AND AMERICAN CELLULAR CORPORATION )  
FOR ISSUANCE OF A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY )  
TO CONSTRUCT A WIRELESS )  
COMMUNICATIONS FACILITY AT ) CASE NO. 2007-00321  
910 OLD PERRYVILLE LOOP, )  
SPRINGFIELD, KENTUCKY 40069 )  
IN THE WIRELESS COMMUNICATIONS )  
LICENSE AREA IN THE )  
COMMONWEALTH OF KENTUCKY )  
IN THE COUNTY OF WASHINGTON )

O R D E R

On November 2, 2007, Shared Sites, LLC as the ultimate owner and American Cellular Corporation ("Shared Sites") 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 at 910 Old Perryville Loop, Springfield, Kentucky, in an area that is unzoned and outside the jurisdiction of a planning commission. By Commission Order dated January 23, 2008, Susan K. Breeding 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, Susan K. Breeding, or anyone granted intervention 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, so notify the Commission in writing. A copy of that notice from the Intervenor 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 existing record.

All Intervenors are notified that, if they choose to do so, they have a period of 10 days from the date of this Order or the date of the Order granting them intervention to submit to the Commission and Shared Sites 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 list 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 Shared Sites to any Intervenor's potentially suitable and acceptable alternative locations shall be filed with the Commission and the Intervenors within 25 days of the date of this Order. Shared Sites 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 Shared Sites and the Commission; and (5) any other issues that might arise during the course of the hearing.<sup>1</sup>

Shared Sites, pursuant to applicable law, must be represented before the Commission by an attorney licensed to practice in Kentucky. Shared Sites is a West Virginia Limited Liability Company and is authorized to conduct business in Kentucky. Kamal Doshi and Timothy J. Duffy filed the application on behalf of Shared Sites; however, neither Mr. Doshi nor Mr. Duffy is an attorney licensed to practice in Kentucky.<sup>2</sup>

No person may engage in the practice of law in Kentucky without first obtaining a license to practice. The practice of law is:

[A]ny service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties,

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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.

<sup>2</sup> The directory of the Kentucky Bar Association does not list any licensed attorneys with the names of Kamal Doshi or Timothy Duffy. See <http://www.kybar.org/Default.aspx?tabid=26> (last visited Apr. 2, 2008).

obligations, liabilities, or business relations of one requiring the services.<sup>3</sup>

It includes the representation of a corporation before a state administrative agency.<sup>4</sup>

As to its own proceedings, this Commission has adopted a similar position and has required that those representing the interests of others before us be licensed attorneys. In a previous case, the Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the Kentucky Bar Association.<sup>5</sup>

It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman. Therefore, in order for this case to proceed, an attorney licensed to practice in Kentucky must make an entry of appearance on Shared Sites' behalf.

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 or other parties to this action.

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<sup>3</sup> Kentucky Supreme Court Rule 3.020.

<sup>4</sup> Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967).

<sup>5</sup> Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. PSC June 15, 1981) at 2. See also Case No. 2004-00348, Howard Keen v. Carroll County Water District # 1 (Ky. PSC Oct. 15, 2004).

2. A hearing on the proposed Cell Facility is scheduled for June 11, 2008, beginning at 10:00 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.

4. If they so desire, Intervenors shall file with the Commission, within 10 days of the date of this Order or the date of the Order granting them intervention, 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. Shared Sites shall have a period of 25 days from the date of this Order 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. On or before May 12, 2008, 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. Shared Sites shall appear at the 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, design, engineering, and construction, including the suitability and preparation of the Cell Facility.

c. 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. Proposed alternative locations or sites that have been filed in the record by the Intervenors 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. Any interested person shall have the opportunity to present comments on the proposed Cell Facility.

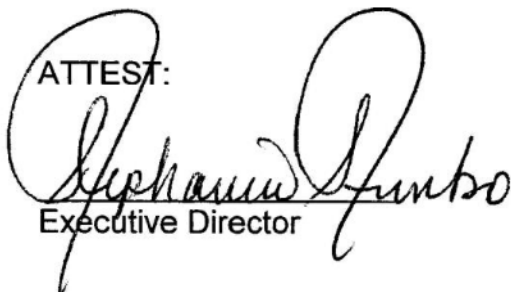
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<sup>2</sup> KRS 278.650 states, "In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values." (Emphasis added).

10. Within 10 days of the date of this Order, Shared Sites shall have an attorney licensed to practice law in Kentucky make an entry of appearance in this case. Failure to do so may result in cancellation of the hearing and dismissal of Shared Sites' application.

Done at Frankfort, Kentucky, this 9<sup>th</sup> day of April, 2008.

By the Commission

ATTEST:  
  
Executive Director