

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLUEGRASS WIRELESS,)
LLC FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO) CASE NO. 2007-00501
CONSTRUCT A CELL SITE (PRICETOWN) IN)
RURAL SERVICE AREA #6 (CASEY) OF THE)
COMMONWEALTH OF KENTUCKY)

O R D E R

On February 5, 2008, Bluegrass Wireless, LLC 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 269 Walnut Hill Road, Liberty, Kentucky 42539, near Pricetown, Kentucky, in an area that is unzoned and outside the jurisdiction of a planning commission. By Commission Order dated March 14, 2008, Terry Wilson, Mariea Jo Wilson, and Carl Wilson were granted full intervention, since their residences and properties were located near the tower and they might be able to assist in the development of issues before the Commission.

If any Intervenor 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 the 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 written 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, whichever is most recent, to submit to the Commission and Bluegrass Wireless 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. These are 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 Bluegrass Wireless to any Intervenors’ potentially suitable and acceptable alternative locations shall be filed with the Commission and the Intervenors within 25 days of the date of this Order. Bluegrass Wireless should include in its response a report of its opinion 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) the 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 Bluegrass Wireless and the Commission; and (5) any other issues that might arise during the course of the hearing.¹

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.

2. A hearing on the proposed Cell Facility is scheduled for August 27, 2008, beginning at 9:00 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, whichever is most recent, a list of specific, suitable, and acceptable alternative locations, other than the proposed site, for construction or collocation, with supporting technical radio

¹ 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 (10th Cir. 1999). Accordingly, this issue will not be considered at hearing.

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. Bluegrass Wireless 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 July 27, 2008, each party shall file with the Commission a list of witnesses it proposes to produce at hearing, together with a brief summary as an offer of proof for each witness.

7. Bluegrass Wireless 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.²

² 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).

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

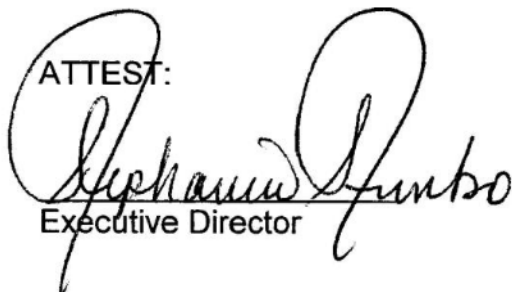
8. The FCC has exclusive jurisdiction over issues regarding radio frequency, interference, and radio frequency emissions. The Commission will not receive any evidence regarding this matter because it is without authority to consider such evidence.

9. Opening statements shall not be permitted at the hearing.

10. Any interested person shall have the opportunity to present comments on the proposed Cell Facility.

Done at Frankfort, Kentucky, this 9th day of July, 2008.

By the Commission

ATTEST:

Executive Director