

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY)	
NETWORK LIMITED LIABILITY COMPANY FOR)	CASE NO.
THE ISSUANCE OF A CERTIFICATE OF)	2009-00064
PUBLIC CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A TOWER IN LETCHER)	
COUNTY, KENTUCKY)	

O R D E R

On March 6, 2009, East Kentucky Network, LLC ("East Kentucky") 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 Dry Fork in Letcher County, Kentucky. By Commission Order dated April 20, 2009, Lee Etta Cummings was granted full intervention, since her properties are located near the tower, so that she may be able to assist in the development of issues before the Commission.

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

alternate or collocation site that has been filed with East Kentucky and the Commission in this case; 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. A hearing on the proposed Cell Facility is scheduled on October 6, 2009 at 9:00 a.m., Eastern Daylight Time, at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

2. On or before September 8, 2009, each party shall file with the Commission a list of witnesses it proposes to produce at hearing, together with prefiled testimony, in verified prepared form, for each witness.

3. On or before September 25, 2009, each party shall file with the Commission a list of exhibits it proposes to produce at hearing.

4. East Kentucky shall appear at the hearing and shall be prepared to address, at a minimum, the following issues:

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

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

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.

c. Character of the general area of concern and the likely effects of the Cell Facility on nearby land uses and values.²

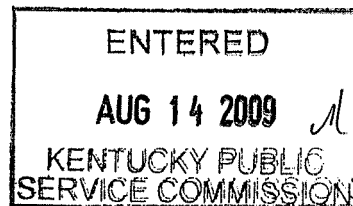
d. Proposed alternate locations or sites that have been filed in the record by Ms. Cummings.

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

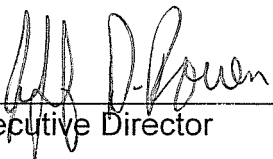
6. Opening statements shall not be permitted at the hearing.

7. Any interested person shall have the opportunity to present comments about the proposed Cell Facility.

By the Commission



ATTEST:



Executive Director

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.)

William S Kendrick
Francis, Kendrick and Francis First
Suite 504, 311 North Arnold Avenue
P.O. Box 268
Prestonsburg, KY 41653-0268

Gerald Robinette
General Manager
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

Janice Robinson
Technical Site Coordinator
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

Nora J Shepherd
Sword, Floyd & Moody, PLLC
218 West Main Street
Richmond, KY 40476