

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUMBERLAND CELLULAR)	
PARTNERSHIP FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY TO CONSTRUCT A)	2009-00120
WIRELESS COMMUNICATIONS FACILITY)	
(COOPERSVILLE) IN RURAL SERVICE AREA)	
#5 (WAYNE) OF THE COMMONWEALTH OF)	
KENTUCKY)	

O R D E R

By this Order, the Intervenor, Mr. Jerry Neal, shall have 10 days from the date of this Order to state, in writing, whether he requests that the Commission hold a formal hearing in this proceeding. If Mr. Neal requests a formal hearing before the Commission, he shall be required to appear before the Commission in Frankfort, Kentucky for the duration of that hearing. The purpose of a formal hearing shall be to allow the Applicant, Cumberland Cellular Partnership ("Cumberland"), and Mr. Neal to put forward evidence in support of their respective arguments.

In order to go forward with a formal hearing, Intervenors to a cell facility construction case are required to submit to the Commission and the Applicant a list of specific potential and suitable alternative locations where the wireless communications facility might be located, other than the proposed site named in the application. This is commonly referred to as "suitable and acceptable sites." Intervenors are prohibited

from introducing evidence during a formal hearing regarding any alternative locations for the proposed communications facility, except in regard to the specific suitable and acceptable sites provided to the record and the Applicant prior to the hearing. The other issues that would be addressed at a formal hearing include: (1) the public convenience and necessity for the construction and operation of the communications facility; (2) the design, engineering, and construction of the communications facility (jurisdictional safety issues); (3) the character of the general area concerned and the likely effects of installation of the proposed communications facility on nearby land uses and values; and (4) any other issues that might arise during the course of the hearing.¹

If, within 10 days of the date of this Order, Mr. Neal files a statement with the Commission and Cumberland stating that he requests a formal hearing, the Commission will issue a subsequent Order outlining the dates for Mr. Neal's submission of supporting information and evidence on suitable and acceptable sites. If, within 10 days of the date of this Order, Mr. Neal does not provide a response or states that he does not desire to have a formal hearing, the matter shall be submitted to the Commission on the existing record.

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 would not be considered at a formal hearing.

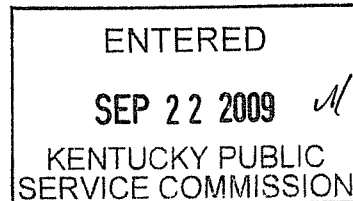
IT IS HEREBY ORDERED that:

1. Within 10 days of the date of this Order, Mr. Neal shall provide to the Commission and to Cumberland a statement indicating whether he desires a formal hearing in this proceeding.

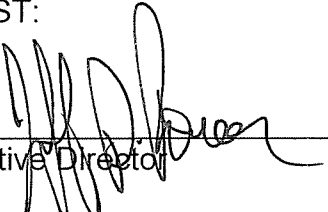
2. If, within 10 days of the date of this Order, Mr. Neal does not provide a response or states that he does not desire to have a formal hearing, the matter shall be submitted to the Commission on the existing record.

3. Mr. Neal shall file five copies of his written statement with the Commission, in addition to serving one copy on counsel for Cumberland.

By the Commission



ATTEST:



Executive Director

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