

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EVANSVILLE MSA LIMITED)	
PARTNERSHIP FOR THE ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY TO CONSTRUCT A NEW CELL FACILITY)	CASE NO. 89-297
FOR ITS DOMESTIC PUBLIC CELLULAR RADIO)	
TELECOMMUNICATIONS SERVICE IN THE)	
OWENSBORO, KENTUCKY, METROPOLITAN)	
STATISTICAL AREA)	

O R D E R

On October 13, 1989, Evansville MSA Limited Partnership ("Evansville") applied for a Certificate of Public Convenience and Necessity to construct and operate a new cell facility for its domestic public cellular radio telecommunications service in the Owensboro, Kentucky Metropolitan Statistical Area. The proposed facility would include a 198-foot tower.

On November 20, 1989, the Commission ordered Evansville to give notice of its application, including a map showing the location of the proposed tower, to every resident and property owner who lives or owns property within 500 feet of the tower site. The Commission required this notice to be effected by December 10, 1989. On December 8, 1989, Evansville requested an extension of time to January 5, 1990 in which to comply with the Order entered November 20, 1989. The Commission granted the extension of time by Order of December 21, 1989. On January 5, 1990, Evansville filed a motion to vacate the Commission's Order of November 20, 1989.

Evansville's motion alleges that sufficient notice of its application to construct the facility, including the tower, already has been given. Evansville notified the Owensboro Metropolitan Planning Commission of the plan to build the tower, and the Owensboro Metropolitan Board of Adjustments ("Board") held a public hearing on that plan on April 13, 1989. The Board required Evansville to publish a general notice of the hearing in the local newspaper, to post a notice on the property where the tower would be erected, and to notify all adjoining landowners of the hearing by mail. Evansville alleges it complied with the Board's requirements, that no one appeared at the hearing in opposition to the tower, and that the Board received no objections, either in writing or by telephone.

Evansville also alleges in its motion that the notice required in the Commission's Order of November 20, 1989 contravenes the Commission's policy of having a cellular telecommunications utility go before a local planning and zoning commission for a public hearing on the proposed construction.¹ Evansville states that the Commission should accept the public notice the planning and zoning commission had required for its hearing as sufficient and not require additional notice. Evansville argues that retroactive application of the Commission's notice requirements set out in the Order of November 20, 1989 will cause financial loss to the utility. Evansville purchased the tower site

¹ Under KRS 100.324 the local planning and zoning commissions have no jurisdiction over proposed utility construction.

contingent on approval of the construction by the local planning and zoning authority, rather than on approval by this Commission.

The Commission disagrees with these allegations. In regard to the sufficiency of notice, the Commission's intent in this case, and all cases like it, is to have persons who will be living in the shadow of this tower aware of the proposed construction and to offer those affected persons an opportunity to comment on the proposed construction. In addressing whether Evansville's application merits approval under KRS 278.020(1), the Commission must address the issue of the safety of Evansville's proposed tower.

To that end the concerns of all of the tower's neighbors, whether freeholders or leaseholders, should be taken into account. The Board's notice did not do this, making no provision for directly notifying persons who live near the site of the tower but do not own their residences, nor for contacting property owners whose property is near but not adjoining the site. Posting the notice on the proposed site will reach only persons who happen to pass where the notice is posted and realize what the notice is. Publication of notice in the newspaper may be missed by affected persons and this matter of constructing a 198-foot tower in the midst of a residential area is too serious to cavalierly disregard those who, for whatever reason, unluckily failed to read the notice in the newspaper. The notice required in the Order of November 20, 1989 will achieve the type of notification that the Commission believes is necessary and reasonable.

As to the Commission's policy, Evansville cites no cases to show the policy it alleges to exist. In fact, in Case No.

10381² and Case No. 89-020³ the Commission required the utilities to identify to the Commission the names and addresses of all persons who lived or owned property within a 500-foot radius of the proposed towers so those persons could be notified of the utilities' plans to construct the towers. That is what the Commission seeks to accomplish in this case. The requirements of the Commission's Order of November 20, 1989 do not contravene Commission policy and are not a retroactive application of a new policy; on the contrary, our November 20, 1989 Order is in lockstep with Commission policy.

IT IS THEREFORE ORDERED that:

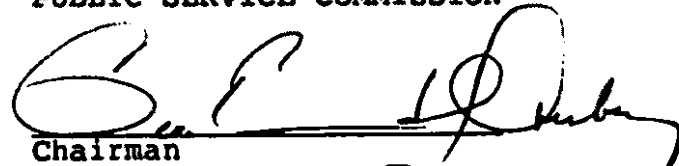
1. The motion to vacate the Commission's Order dated November 20, 1989 shall be and hereby is denied.
2. Evansville shall comply with the Commission's Order of November 20, 1989 in all respects no later than 30 days after the date of this Order.

² Case No. 10381, The Application of Kentucky CGSA, Inc., for an Ordinary Course of Business Extension, or Alternatively, for Issuance of a Certificate of Public Convenience and Necessity to Construct a New Cell Site for the Benefit of the Public in Greater Lexington, Kentucky, Metropolitan Statistical Area Including All, or Parts of, Bourbon, Clark, Fayette, Jessamine, Scott, and Woodford Counties, Kentucky.

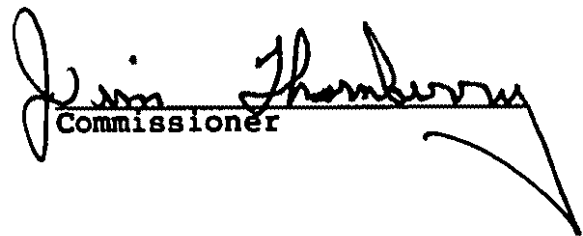
³ Case No. 89-020, Application of West Virginia Cellular Telephone Company for Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in the Kentucky Portion of the Huntington-Ashland WV/KY/OH Metropolitan Statistical Area, for Approval of Financing, and for Establishment of Initial Rates.

Done at Frankfort, Kentucky, this 16th day of February, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director