

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTHERN OHIO TELEPHONE)
COMPANY TO CONSTRUCT FACILITIES FOR A) CASE NO. 91-312
CELL SITE IN FORT WRIGHT, KENTUCKY)

O R D E R

On August 29, 1991, Southern Ohio Telephone Company, d/b/a Cellular One ("SOTCO"), filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications tower in the Cincinnati, Ohio, Metropolitan Statistical Area ("Cincinnati MSA"). The Cincinnati MSA includes Boone, Campbell, and Kenton counties in Kentucky.

The Commission previously granted SOTCO authority to provide cellular services in the Cincinnati MSA by Order in Case No. 9462¹ on January 9, 1986. The instant application proposes a new cell site consisting of a 135 foot steel monopole tower, with an additional 15 foot cellular antenna mounted on top, to be located at 1720 Dixie Highway, Fort Wright, Kenton County, Kentucky.

¹ Case No. 9462, Application of the Southern Ohio Telephone Company for the Issuance of a Certificate of Public Convenience and Necessity to Provide a New Domestic Public Cellular Radio Telecommunications Service to the Public in the Greater Cincinnati Metropolitan Area Including All or Parts of Butler, Clermont, Hamilton, and Warren Counties in Ohio; Boone, Campbell, Gallatin, Grant, Kenton, Ohio, and Pendleton Counties in Kentucky and Dearborn, Franklin and Switzerland Counties in Indiana.

SOTCO has notified each property owner and/or resident within 500 feet of the proposed site and informed them that: (1) an application to construct a cellular tower was pending at the Commission; (2) comments on the proposed cell site were invited; and (3) intervention could be requested by contacting the Commission. Intervention was requested by and granted to: the City of Fort Wright, Kentucky ("Fort Wright"); Northern Kentucky Area Planning Commission ("NKAPC"); and Corporex, managing agent for the Lookout Corporate Center, an office building within 500 feet of the proposed cell site.

Many neighboring residents initially objected to the tower location, but their objections were subsequently withdrawn after SOTCO agreed to a number of modifications to the proposed cell site. Specifically, SOTCO agreed to: eliminate any microwave dish from the tower, thereby alleviating concerns of a potential health hazard from radiation; extensively landscape the cell site to enhance its aesthetic appearance; and modify the chain link fence that will surround the cell site so the fence will better blend with the existing foliage.

On October 8, 1991, the Commission ordered SOTCO to respond to comments filed by Rick and Pat Robinson, property owners and/or residents within 500 feet of the proposed cell site. On October 15, 1991, SOTCO filed its response. A hearing was held on November 12, 1991 at the Commission's offices in Frankfort, Kentucky at which SOTCO, Fort Wright, and NKAPC appeared. Corporex did not appear but submitted a letter setting forth its opposition to the proposed tower location.

Fort Wright and NKAPC questioned the aesthetics of the proposed facility and the effect it may have on Fort Wright's local planning and zoning scheme. Fort Wright and NKAPC testified that the proposed cellular facility did not conform to the goals outlined in the Kenton County Comprehensive Plan adopted by Fort Wright and asserted that the proposed facility did not adhere to Fort Wright's zoning restrictions. In addition, they objected to the aesthetics of the proposed facility and complained that the tower may have a negative effect on property values and Corporex's ability to lease its office space. Fort Wright and NKAPC also alleged that SOTCO did not prove a substantial need for the proposed cellular facility, or that the facility provided for the public convenience of Fort Wright.

SOTCO contends that the allegations made by Fort Wright and NKAPC regarding zoning issues are irrelevant because KRS 100.324(1) exempts the location or relocation of a public utility's service facilities from local planning and zoning requirements. SOTCO argues that the proposed cellular tower is needed because the current cellular system is near capacity and there are locations within the service area that are experiencing dropped calls and interference. SOTCO proposes that the construction of this cell site will eliminate these service problems, as well as provide for future expansion. SOTCO refutes the allegations challenging the tower's aesthetics and potential adverse impact on property values by stressing that comparable structures already exist in the immediate vicinity.

SOTCO has filed applications with the Federal Communications Commission ("FCC"), Federal Aviation Administration ("FAA"), and the Kentucky Airport and Zoning Commission ("KAZC") seeking approval for the operation and construction of the proposed cell site. The FCC and FAA have approved the applications. The KAZC issued a determination of no jurisdiction.

SOTCO has provided information regarding the structure of the tower, safety measures and antenna design criteria for the proposed Fort Wright monopole tower. Based upon this information, the tower and foundation appear to meet the criteria of the Building Officials and Code Administrators International, Inc., (BOCA) National Building Code, with reference to earthquakes, winds, and tornadoes.

Based on a review of the record and being sufficiently advised, the Commission hereby finds that the proposed cell site construction is exempt from local zoning ordinances, pursuant to KRS 100.324(1). Thus, SOTCO is not subject to the jurisdiction of the Kenton County Municipal Planning and Zoning Commission or any zoning ordinances enacted by Fort Wright. Oldham County Planning and Zoning Comm'n v. Courier Communications Corp., Ky.App., 722 S.W.2d 904, 906 (1987).

NKAPC, an area planning commission organized pursuant to KRS 147.610 et seq., operates in an advisory capacity to review proposals to construct public facilities that are of area-wide significance. SOTCO's proposed cellular tower is properly classified as a public facility due to its intended use in providing telecommunications service to and for the public. In

this case, NKAPC determined that the construction of this tower would be of area-wide significance and has recommended that the tower not be constructed in the location proposed due to its incompatibility with the comprehensive plan applicable to Fort Wright. While NKAPC's recommendation is not binding on the Commission, it is one factor to be considered in determining whether the public convenience and necessity require the proposed cellular tower.

The Commission recognizes the proposed cell site lies within the Dixie Highway corridor that has been designated by Fort Wright as its downtown business district. The proposed site is planned for use as a highway service, shopping center, or office type development. The comprehensive plan states that areas designated to provide goods and services should be designed and located in a manner that will maximize consumer safety and convenience, while minimizing any adverse environmental impacts. The proposed tower will have a visual impact on the Fort Wright business district and its use is one that does not integrate with the surrounding commercial uses.

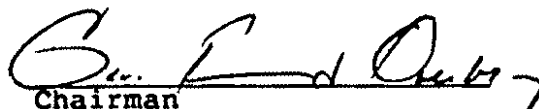
The Commission also finds that the tower is proposed to be located approximately 54 feet from Dixie Highway and only 50 feet from the sidewalk which parallels the highway. In the event that the tower should fall, its close proximity to this heavily traveled thoroughfare would pose a grave danger to the public.

Based on these findings, the Commission concludes that the public convenience and necessity do not require construction of the proposed tower at 1720 Dixie Highway.

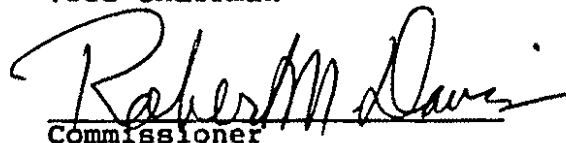
IT IS THEREFORE ORDERED that SOTCO's application for a Certificate of Public Convenience and Necessity to construct and operate a 150 foot cellular telecommunications antenna tower at 1720 Dixie Highway, Fort Wright, Kentucky, be and it hereby is denied.

Done at Frankfort, Kentucky, this 20th day of February, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director