

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CONTEL CELLULAR OF)
KENTUCKY, INC. FOR ISSUANCE)
OF A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO CONSTRUCT AN) CASE NO. 94-216
ADDITIONAL CELL FACILITY IN THE)
LEXINGTON METROPOLITAN STATISTICAL)
AREA (EAST HICKMAN CELL FACILITY))

O R D E R

On May 31, 1994, Contel Cellular of Kentucky, Inc. ("Contel Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower to serve the Lexington Metropolitan Statistical Area ("Lexington MSA"). The Lexington MSA includes Bourbon, Clark, Fayette, Jessamine, Scott, and Woodford counties in Kentucky. Contel Cellular has requested authorization to construct a cell site in Fayette County, Kentucky. Contel Cellular was previously granted authority to operate a cellular radio telecommunications system in the Lexington MSA in Case No. 10169.¹

¹ Case No. 10169, The Application of Louisville Cellular Telephone Company, Bluegrass Cellular Telephone Partners and Central Kentucky Cellular Telephone Company for Approval of the Transfer of Ownership and Control of the Public Service Businesses of Louisville Cellular Telephone Company and Bluegrass Cellular Telephone Partners to Central Kentucky Cellular Telephone Company.

Contel withdrew its initial request and proposed another site in an amended application filed August 9, 1994. The proposed cell site consists of a self-supporting antenna tower, not to exceed 185 feet in height, to be located at 4771 Tates Creek Road, Lexington, Fayette County, Kentucky (the "East Hickman cell site"). The coordinates for the East Hickman cell site are North Latitude 37° 56' 46" by West Longitude 84° 29' 53".

Contel Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the East Hickman cell site. Based upon the application, the design of the tower and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code, with reference to earthquakes, winds, and tornadoes.

Pursuant to KRS 100.324(1), the East Hickman cell site's construction is exempt from local zoning ordinances. However, Contel Cellular has notified the Lexington-Fayette Urban County Government Planning Commission of the proposed construction. Contel Cellular has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the East Hickman cell site. The FAA and KAZC applications are still pending.

Contel Cellular has notified all property owners and residents within 500 feet of the East Hickman cell site. The notice solicited comments and informed the property owners and residents

of their right to intervene. On June 20, 1994, the Commission received intervention letters from Kentucky Utilities Company and the Lexington-Fayette Urban County Government ("LFUCG"). On June 27, 1994, the Commission granted both intervention requests. On August 2, 1994, the Commission notified both parties of their right to request a hearing. On August 9, 1994, the Commission received a request from the LFUCG to schedule a hearing. On the same date, the LFUCG withdrew its request for a hearing. The proposed site contained in the amended application did not necessitate additional notification. The property owners within 500 feet of the new location were the same as those for the original location. To date, no additional hearing requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine the proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Contel Cellular should notify the Commission if it does not use this antenna tower to provide cellular telecommunications services in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Contel Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Contel Cellular

should be granted a Certificate of Public Convenience and Necessity to construct and operate the East Hickman cell site under its currently approved tariff.

IT IS THEREFORE ORDERED that:

1. Contel Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the East Hickman cell site.

2. Contel Cellular shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the East Hickman cell site construction within 10 days of receiving these decisions.

3. Contel Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 9th day of September, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director