

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WEST VIRGINIA CELLULAR TELEPHONE)	
CORP. FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO CONSTRUCT AN)	CASE NO.
ADDITIONAL CELL FACILITY IN THE KENTUCKY PORTION)	95-331
OF THE HUNTINGTON-ASHLAND WV/KY/OH METROPOLITAN)	
STATISTICAL AREA (THE OLIVE HILL CELL FACILITY))	

O R D E R

On August 2, 1995, West Virginia Cellular Telephone Corp. ("West Virginia Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications system for the Kentucky portion of the Huntington-Ashland WV/KY/OH Metropolitan Statistical Area ("the Huntington MSA"). The Huntington MSA includes Boyd, Carter, and Greenup counties in Kentucky. West Virginia Cellular has requested authorization to construct a cell site in Carter County. West Virginia Cellular was previously granted authority to operate a cellular radio telecommunications system in the Huntington MSA in Case No. 89-020.¹

The proposed cell site consists of a 180-foot or less self-supporting antenna tower to be located on U.S. Route 60 East, north

¹ Case No. 89-020, Application of West Virginia Cellular Telephone Corp., for Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public 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.

of I-64 (Exit No. 161) near Olive Hill, Carter County, Kentucky ("the Olive Hill cell site"). The coordinates for the Olive Hill cell site are North Latitude 38° 19' 39" by West Longitude 83° 06' 43.5".

West Virginia Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Olive Hill 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 Olive Hill cell site's construction is exempt from local zoning ordinances; however, West Virginia Cellular notified the Carter County Judge/Executive of the pending construction. West Virginia 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 Olive Hill cell site. Both applications are pending.

West Virginia Cellular has filed notices verifying that each person who owns property or who resides within 500 feet of the Olive Hill cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners or residents of their right to intervene. In addition, notice was posted in a visible location on the proposed site for at least two weeks after West Virginia Cellular's application was filed. On

August 17, 1995, a letter requesting intervention was received from Jeffrey Scott on behalf of Arthur Whitlock. On August 23, 1995, the Commission granted Mr. Whitlock intervention, informed him of his right to request a hearing, and ordered West Virginia Cellular to respond to Mr. Whitlock's concerns. By Order dated October 2, 1995, the Commission notified the parties that any requests for a hearing were due by October 12, 1995 or this case would stand submitted to the Commission for a discussion. To date, no hearing requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine 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, West Virginia Cellular should notify the Commission if it does not use this antenna tower to provide cellular radio 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 West Virginia Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that West Virginia Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Olive Hill cell site in the Huntington MSA under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. West Virginia Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Olive Hill cell site.

2. West Virginia Cellular shall file a copy of the final decisions regarding the pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.


3. West Virginia 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 26th day of October, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director