

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE CINCINNATI SMSA LIMITED)	
PARTNERSHIP FOR THE ISSUANCE OF A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A)	CASE NO.
NEW CELL FACILITY FOR ITS DOMESTIC PUBLIC)	95-363
CELLULAR RADIO TELECOMMUNICATIONS SERVICE IN)	
ELSMERE, IN THE KENTUCKY PORTION OF THE)	
CINCINNATI MSA)	

O R D E R

On August 22, 1995, Cincinnati SMSA Limited Partnership ("Cincinnati SMSA") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications system for the Cincinnati Metropolitan Statistical Area ("Cincinnati MSA"). The Cincinnati MSA includes Boone, Campbell, and Kenton counties. Cincinnati SMSA has requested authorization to construct a cell site in Kenton County. Cincinnati SMSA was previously granted authority to operate a cellular radio telecommunications system in the Cincinnati MSA in Case No. 8916.¹

The proposed cell site consists of a 200-foot or less self-supporting antenna tower to be located at 202 Fuchs Road, Elsmere, Kenton County, Kentucky ("the Elsmere cell site"). The coordinates

¹ Case No. 8916, The Application of the Cincinnati SMSA Limited Partnership 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, and Kenton Counties in Kentucky.

for the Elsmere cell site are North Latitude 38° 59' 34" by West Longitude 84° 36' 22".

Cincinnati SMSA has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Elsmere 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 Elsmere cell site's construction is exempt from local zoning ordinances; however, Cincinnati SMSA notified the Kenton County Municipal Planning and Zoning Commission of the pending construction. Cincinnati SMSA 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 Elsmere cell site. Both applications are pending.

Cincinnati SMSA has filed notices verifying that each person who owns property or who resides within 500 feet of the Elsmere 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 Cincinnati SMSA's application was filed. To date, no intervention 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, Cincinnati SMSA 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 Cincinnati SMSA.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Cincinnati SMSA should be granted a Certificate of Public Convenience and Necessity to construct and operate the Elsmere cell site in the Cincinnati SMSA under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Cincinnati SMSA be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Elsmere cell site.
2. Cincinnati SMSA 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. Cincinnati SMSA 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 10th day of October, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director