

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF POWERTEL/KENTUCKY, )  
INC., A DELAWARE CORPORATION, FOR )  
ISSUANCE OF A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO CONSTRUCT ) CASE NO. 98-358  
A PERSONAL COMMUNICATIONS SERVICES )  
FACILITY IN B-263 BASIC TRADING AREA (THE L- )  
KY-090-149 FACILITY) )

O R D E R

On July 14, 1998, Powertel/Kentucky, Inc. ("Powertel/Kentucky") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 255 feet in height, with attached antennas, to be located at 720 South St. Gregory Church Road, Samuels, Nelson County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 53' 29" by West Longitude 85° 31' 56".

Powertel has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the proposed facility's construction is exempt from local zoning ordinances. However, Powertel has notified the Nelson County Planning and Zoning Commission ( Planning Commission ) of the proposed construction. To date, no

comments have been filed by the Planning Commission. Powertel 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 proposed facility. Both decisions are pending.

Powertel has filed notices verifying that each person who owns property within 500 feet of the proposed facility has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to request intervention. In addition, notice of the proposed construction has been posted in a visible location for at least two weeks after filing the application. The Commission received several protests regarding the proposed site. These protestors were informed in writing of their right to request intervention and a public hearing. The Commission also received a request for a public hearing made by Tim Hutchins, Magistrate of the 4<sup>th</sup> District. His request was made so that residents in the area of the tower could intervene. By letter dated February 16, 1999, this Commission informed Magistrate Hutchins of the proper procedures for requesting intervention and a public hearing. He was informed that the case would be submitted to the Commission if no requests were made within 10 days of the date of the letter. No such requests have been received. The Commission finds that without the participation of affected parties, a public hearing is not warranted.

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, Powertel should notify the Commission if it does not use this antenna tower to provide service 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 Powertel.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Powertel should be granted a Certificate of Public Convenience and Necessity to construct the proposed facility.

IT IS THEREFORE ORDERED that:

1. Powertel is granted a Certificate of Public Convenience and Necessity to construct a self-supporting antenna tower not to exceed 255 feet in height, with attached antennas, to be located at 720 South St. Gregory Church Road, Samuels, Nelson County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 53' 29" by West Longitude 85° 31' 56".

2. Powertel shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the proposed construction within 10 days of receiving these decisions.

3. Powertel 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 18<sup>th</sup> day of March, 1999.

ATTEST:

By the Commission

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Executive Director