

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CENTRAL KENTUCKY )  
CELLULAR TELEPHONE COMPANY FOR ISSUANCE )  
OF A CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO CONSTRUCT AN ) CASE NO. 92-330  
ADDITIONAL CELL FACILITY IN THE )  
LOUISVILLE, KENTUCKY METROPOLITAN )  
STATISTICAL AREA (BUECHEL CELL )  
FACILITY) )

O R D E R

On August 10, 1992, Central Kentucky Cellular Telephone Company ("Central Kentucky Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower in the Louisville Metropolitan Statistical Area ("Louisville MSA"). The application was amended on August 12, 1992. The Louisville MSA includes Bullitt, Jefferson, and Oldham counties of Kentucky. Central Kentucky Cellular has requested authorization to construct a cell site in Jefferson County, Kentucky. Central Kentucky Cellular was previously granted authority to operate a cellular radio telecommunications system in the Louisville MSA in Case No. 10169.<sup>1</sup>

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<sup>1</sup> 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.

The proposed cell site consists of a self-supporting tower with attached antennas, not to exceed 163 feet in height, and an equipment shelter to be located at 2226 Buechel Avenue, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 11' 34" by West Longitude 85° 38' 40".

Central Kentucky Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed 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 proposed cell site's construction is exempt from local zoning ordinances. However, Central Kentucky Cellular has notified the Louisville and Jefferson County Planning Commission of the proposed construction. Central Kentucky 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 proposed cell site. The FAA application has been approved, and the KAZC decision is pending. Application to the Federal Communications Commission is not required for the proposed cell site.

Central Kentucky Cellular has filed notices verifying that each property owner and/or resident within 500 feet of the proposed cell site has been notified of the proposed construction. The notice solicited any comments and informed the property owners

and/or residents of their right to intervene. The Commission received numerous protests from area residents objecting to the proposed cell site's construction, and four area residents requested and were granted intervention in this proceeding. The intervenors are: Mark and Kathleen Smith, Sarah-Jean McDowell, Thomas G. Smith, and Angela S. Haley ("Intervenors"). On April 8 and April 20, 1993, hearings were held during which counsel for the Intervenors presented their concerns.

The Intervenors' objection to the proposed cell site was based primarily on two issues: potential health risks associated with exposure to electromagnetic fields and microwave radiation, and the adverse affect the proposed cell site may have on property values in the immediate vicinity. The Intervenors filed video tapes of the depositions of two medical doctors who claimed that there has not been sufficient research to prove that certain radio frequency emissions, including those emitted by the proposed cell site, do not have an adverse impact on human health. One further concern of the Intervenors is that an alleged drainage problem may be worsened due to the proposed cell site's construction.

Central Kentucky Cellular offered extensive expert testimony asserting that the proposed cell site's maximum radio frequency emissions would fall substantially below any existing or proposed acceptable levels. In the most restrictive proposed standard, the acceptable level is over 700 times more than the maximum projected emissions of the proposed cell cite. Central Kentucky Cellular also offered expert testimony from a certified appraiser who

performed a market study that indicated there was no effect on comparable properties due to the construction of similar towers in the Louisville area. With regard to the alleged drainage problem, Central Kentucky Cellular responded by ensuring that the proposed construction will require a local building permit which would address, if necessary, the water drainage issue.

Central Kentucky Cellular has provided evidence supporting the necessity of the proposed cell site and has shown that its site selection process included numerous alternative locations that were either not available for sale or lease, or technically incapable of providing the desired coverage. The proposed cell site will be constructed and operated in accordance with all applicable standards, including those that pertain to radio frequency emissions. The site appears to be suitable for the proposed tower due to the property's commercial zoning and should not jeopardize the public's safety or property values.

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, Central Kentucky 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 Central Kentucky Cellular.

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

IT IS THEREFORE ORDERED that:

1. Central Kentucky Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower with attached antennas, not to exceed 163 feet in height, and an equipment shelter in the Louisville MSA to be located at 2226 Buechel Avenue, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 11' 34" by West Longitude 85° 38' 40".

2. Central Kentucky Cellular shall take all measures necessary to ensure that the construction of the proposed cell site will not worsen any drainage problems that may exist.

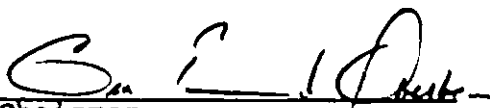
3. Central Kentucky Cellular shall file a copy of the final decision regarding its pending KAZC application for this cell site construction within 10 days of receiving this decision.

4. Central Kentucky Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and

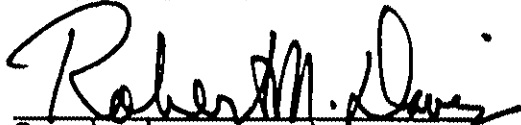
utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 2nd day of July, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director