

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 ADDITIONAL) CASE NO. 94-002
CELL FACILITY IN THE LOUISVILLE,)
KENTUCKY METROPOLITAN STATISTICAL AREA)
(EASTERN PARKWAY CELL FACILITY))

O R D E R

On January 5, 1994, Contel Cellular of Kentucky, Inc. ("Contel Cellular") filed an application, subsequently amended by letter dated April 14, 1994, 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 Louisville MSA includes Bullitt, Jefferson, and Oldham counties of Kentucky. Contel Cellular has requested authorization to construct a cell site in Jefferson County, Kentucky. The proposed cell site consists of a monopole not to exceed 163 feet in height, with attached antennas, to be located at 1481 S. Shelby Street, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 29" by West Longitude 85° 44' 30".

Contel 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, Contel Cellular has notified the Louisville/Jefferson County 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 proposed cell site. The FCC determination is pending and the KAZC notified Contel Cellular that a permit was not required for the proposed construction.

Contel Cellular has filed notices verifying that each property owner and resident within 500 feet of the proposed cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners and residents of their right to intervene. Numerous letters protesting the proposed construction were received by the Commission. Requests for full intervention were granted to John and Cora May and Talmadge and Martha Embry ("Intervenors") and a hearing was scheduled for April 26, 1994. As a result of discussions between Contel Cellular and the Intervenors, Contel Cellular filed a proposed amendment to its January 5, 1994 application, requesting authority to construct a 150 foot monopole rather than a 150 foot self-supporting antenna tower, and a motion to cancel the scheduled hearing. The motion

was supported by statements from the Intervenor's that their issues and concerns had been addressed and further requesting to withdraw from participation in this case and cancellation of the hearing. By Order dated April 22, 1994, Contel Cellular's amended application was accepted, the hearing was canceled, and the motions of the Intervenor's to withdraw were granted.

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, Contel 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 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 proposed cell site in the Louisville MSA 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 a

monopole not to exceed 163 feet in height, with attached antennas, to be located at 1481 S. Shelby Street, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 29" by West Longitude 85° 44' 30".


2. Contel Cellular shall file a copy of the final decision regarding its pending FAA application for the proposed construction within 10 days of receiving this decision.

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 16th day of May, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director