

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CGSA, INC. FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
AN ADDITIONAL CELL SITE IN LOUISVILLE,) CASE NO. 94-061
KENTUCKY FOR THE PROVISION OF DOMESTIC)
CELLULAR RADIO TELECOMMUNICATIONS)
SERVICE TO THE PUBLIC IN JEFFERSON)
COUNTY, KENTUCKY)

O R D E R

On February 15, 1994, Kentucky CGSA, Inc. ("Kentucky CGSA") 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"). Kentucky CGSA has requested authorization to construct a cell site in Jefferson County, Kentucky. The proposed cell site consists of a self-supporting antenna tower not to exceed 194 feet in height, with attached antennas, to be located at 1301 N. Popelick Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 35.14" by West Longitude 85° 30' 22.10".

Kentucky CGSA 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, Kentucky CGSA has notified the Louisville and Jefferson County Planning Commission ("Planning Commission") of the proposed construction. Kentucky CGSA 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 has approved the construction of the proposed tower and the KAZC application is pending.

Kentucky CGSA 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. There are no dwellings within a radius of the height of the proposed tower. In response to Kentucky CGSA's notice, the Commission received several letters objecting to the proposed construction. David Dries, a joint owner of property adjacent to the proposed cell site, and the Planning Commission formally intervened in this proceeding.

At the request of the intervenors, a hearing was held on May 16, 1994.^o The primary objection of the intervenors was the lack of sufficient set-backs from the proposed tower to adjacent properties, the Gene Snyder Freeway ("Freeway"), and nearby

electric transmission lines. The Intervenor requested a minimum set-back of 200 feet from the Freeway and adjacent properties to adequately preserve the aesthetics and safety in the area. The Planning Commission offered evidence of local zoning codes that prescribe a 200 foot minimum set-back from the Freeway for advertising and business signs to ensure that areas adjacent to the Freeway are visually appealing. In addition, Mr. Dries asserts that locating the proposed tower within 200 feet of existing electric transmission lines is unwise and unnecessary.

Kentucky CGSA witnesses testified that geographic and technical requirements for the proposed cellular facilities preclude locating the cell site at any other location in the immediate vicinity. In its approval of the proposed cell site, the FAA limited the height of the proposed tower to 180 feet plus antennas which restricts the ability of Kentucky CGSA to increase the tower height to compensate for a less than optimum location. Furthermore, Kentucky CGSA's lessor specified the proposed location and showed no interest in leasing other portions of his property. Kentucky CGSA also testified that it has investigated numerous locations for the proposed cell site, including a location on a nearby radio tower, each of which proved to be technically or financially impractical.

Kentucky CGSA contends that the proposed tower will not significantly affect the safety or aesthetics of the surrounding area. The tower will be constructed in compliance with existing standards which are the same as those required for high-rise

buildings and other similar structures and which likely exceed the construction standards applied to the nearby electric transmission line towers. In addition, Louisville Gas and Electric, owner of the electric transmission facilities, was notified and did not object to the proposed construction. The electric transmission towers, the tallest of which is approximately 120 feet, are at least as close to the Freeway as the proposed tower and any visual impact on the surrounding area has already occurred. Therefore, the addition of the proposed tower does not appear to further diminish the aesthetics of the surrounding area.

The Commission finds that Kentucky CGSA has shown that the proposed location for the cell site is necessary, will not constitute a safety hazard, and will not unduly affect the aesthetics of surrounding property.

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, Kentucky CGSA 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 Kentucky CGSA.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Kentucky CGSA 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. Kentucky CGSA be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a self-supporting antenna tower not to exceed 194 feet in height, with attached antennas, to be located at 1301 N. Popelick Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 35.14" by West Longitude 85° 30' 22.10".

2. Kentucky CGSA shall file a copy of the final decision regarding its pending KAZC application for the proposed construction within 10 days of receiving this decision.

3. Kentucky CGSA 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 20th day of July, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director