

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EVANSVILLE MSA LIMITED)
PARTNERSHIP FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT) CASE NO.
AN ADDITIONAL CELL FACILITY IN THE OWENSBORO,) 94-225
KENTUCKY METROPOLITAN STATISTICAL AREA)
(OWENSBORO CELL FACILITY))

O R D E R

On June 13, 1994, Evansville MSA Limited Partnership ("Evansville Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications antenna tower for the Owensboro Metropolitan Statistical Area ("Owensboro MSA"). The Owensboro MSA includes Henderson and Daviess counties in Kentucky. Evansville Cellular has requested authorization to construct a cell site in Daviess County. Evansville Cellular was previously granted authority to operate a cellular radio telecommunications system in the Owensboro MSA in Case No. 10096.¹

The proposed cell site consists of 398-foot or less guyed antenna tower to be located at 2937 Newbolt Road, Daviess County,

¹ Case No. 10096, The Application of Evansville MSA Limited Partnership for the Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in Henderson County and Portions of Daviess and Union Counties, Kentucky and for Establishment of Initial Rates.

Owensboro, Kentucky ("the Owensboro cell site"). The coordinates for the Owensboro cell site are North Latitude 37° 43' 39" by West Longitude 87° 03' 15".

Evansville Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Owensboro 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 Owensboro cell site's construction is exempt from local zoning ordinances. Evansville 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 Owensboro cell site. It has received approval from the FAA, and the KAZC application is still pending.

Evansville Cellular has filed notices verifying that each property owner or resident within 500 feet of the Owensboro 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. To date, no intervention requests have been received.

The initial filing for this cell site had the tower located at North Latitude 37° 43' 58" by West Longitude 87° 03' 16". When Evansville MSA notified those who owned the property or resided

within 500 feet of the original tower site of the pending construction, Martin T. and Sarah Walker asked for and were granted intervention. The Walkers opposed the initial location as filed and requested that the tower site be relocated. Through numerous negotiations, Evansville Cellular arranged to relocate the tower, and the Walkers withdrew as intervenors in this case. Subsequently, on September 20, 1994, Evansville Cellular filed its amended application which reflected, among other changes, the proposed new location. Evansville Cellular also verified in its amended application that all persons who own property or reside within 500 feet of the proposed site have been notified of the pending construction.

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, Evansville 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 Evansville Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Evansville

Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Owensboro cell site in the Owensboro MSA under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Evansville Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Owensboro cell site.

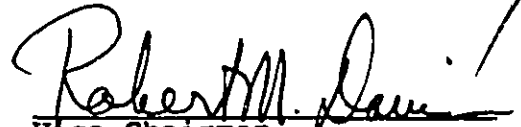
2. Evansville Cellular shall file a copy of the final decision regarding its pending KAZC application for this cell site construction within 10 days of receiving this decision.

3. Evansville 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 11th day of November, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director