

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. 94-411
KENTUCKY FOR THE PROVISION OF DOMESTIC)
PUBLIC CELLULAR RADIO TELECOMMUNI-)
CATIONS SERVICE TO THE PUBLIC IN)
JEFFERSON COUNTY, KENTUCKY)

O R D E R

On November 2, 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"). The proposed cell site consists of a monopole antenna tower not to exceed 129 feet in height, with attached antennas, to be located at 2213 South Preston Street, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 00.25" by West Longitude 85° 44' 38.86".

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/Jefferson County 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. Both applications are 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.

The Commission received numerous protests from area residents, and three property owners requested and were granted full intervention in this proceeding. By Order dated January 17, 1995 the Commission scheduled a hearing for February 16, 1995, and requested that all parties wishing to appear in opposition to the proposed construction file a statement of intent to appear at said hearing. The Order further stated that in the event the Commission did not receive any statements expressing the intent of a party to appear at the hearing, the hearing would be canceled and the case submitted to the Commission for a decision. The only response received by the Commission from an intervenor was a letter filed February 1, 1995, which expanded on the intervenor's reasons for opposing the proposed construction but did not express any intent

to attend the scheduled hearing. Therefore, pursuant to the January 17, 1995 Order, the Commission canceled the scheduled hearing and the case was submitted for a decision by Order dated February 8, 1995.

When feasible, the Commission encourages the location of cellular facilities in areas consistent with such uses which preserve the safety of the public and, to the extent possible, limit aesthetic impact on surrounding property. According to the record, the proposed cell site is located on commercially zoned property for which commercial towers are a permitted use. Although there are dwellings in the immediate vicinity of the proposed construction, there is no evidence to suggest that the facility would compromise the public's safety.

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 monopole antenna tower not to exceed 129 feet in height, with attached antennas, to be located at 2213 South Preston Street, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 00.25" by West Longitude 85° 44' 38.86".

2. Kentucky CGSA 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. 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 14th day of March, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director