

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| APPLICATION OF CONTEL CELLULAR OF |) | |
| KENTUCKY, INC. FOR ISSUANCE OF A |) | |
| CERTIFICATE OF PUBLIC CONVENIENCE AND |) | |
| NECESSITY TO CONSTRUCT AN ADDITIONAL |) | CASE NO. 95-031 |
| CELL FACILITY IN THE LOUISVILLE, |) | |
| KENTUCKY METROPOLITAN STATISTICAL AREA |) | |
| (BROWNSBORO ROAD CELL FACILITY) |) | |

O R D E R

On February 3, 1995, Contel Cellular of Kentucky, Inc. ("Contel Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct an additional cellular radio telecommunications facility at 1913 Rudy Lane in Louisville, Jefferson County, Kentucky. Dozens of protest letters were received, and those granted intervention include the Louisville and Jefferson County Planning and Zoning Commission, the City of Winding Falls, the City of Robinswood, three individuals, and Rudy Lane, Inc., developer of Ashwood Bluffs Condominiums, which are located adjacent to the proposed site.

An informal conference was held on June 7, 1995 and a hearing was held on June 27, 1995. Subsequent to the informal conference, Rudy Lane, Inc. discovered that the new owners of adjacent property known as the Brownsboro Inn, formerly the Ramada Inn, would be willing to discuss with Contel Cellular the possibility of locating the facility on their property. Rudy Lane, Inc.'s counsel informed

Contel Cellular that the alternative site might be available.¹ Contel Cellular has not discussed the matter with the Brownsboro Inn owners, although its engineer testified at the hearing that the Brownsboro Inn site would be acceptable from a coverage standpoint.²

The Commission recognizes Contel Cellular's need for an additional cell site in the area and, as it has explained in previous orders,³ cell site construction is exempt from local zoning ordinances. However, in considering the public interest in regard to such construction, the Commission cannot simply decline to consider the concerns of residents and landowners in the vicinity of the proposed site. Here, it appears that many of those concerns may be resolved should the Brownsboro Inn property be available. Accordingly, the Commission finds that the availability of an alternative site on the Brownsboro Inn property should be investigated and that a final decision on this application should not be made until the results of such investigation have been reported to the Commission.

IT IS THEREFORE ORDERED that:

¹ Transcript of Evidence at 152-53.

² Tr. at 56.

³ See, e.g., Case No. 94-022, Application of Kentucky RSA 4 Cellular General Partnership for Issuance of a Certificate of Public Convenience and Necessity to Construct a Cell Site in Rural Service Area #4 (Campbellsville III) of the Commonwealth of Kentucky, Order Dated July 29, 1994, at 2.

1. Contel Cellular shall immediately investigate the availability of an alternative site on the Brownsboro Inn property.

2. If the property is not available, Contel Cellular shall file information pertaining to its contact with the owners of Brownsboro Inn including copies of all written correspondence and summaries of all conversations.

3. If the property is available, Contel Cellular shall file any preliminary site information and a list of all property owners and residents within 500 feet of the alternative site. Contel Cellular shall list the property owners and residents in the following order: (1) those not previously notified in the initial application; (2) those previously notified but closer to the alternative site; and (3) those previously notified but further from the alternative site.

4. If the availability of the Brownsboro Inn property is not determined within 30 days of the date of this Order, Contel Cellular shall notify the Commission of the status of the investigation.

Done at Frankfort, Kentucky, this 17th day of August, 1995.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director