

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 MIDDLETOWN, KENTUCKY FOR THE)
PROVISION OF DOMESTIC PUBLIC) CASE NO. 95-507
CELLULAR RADIO TELECOMMUNICATIONS)
SERVICE TO THE PUBLIC IN JEFFERSON)
COUNTY, KENTUCKY AND THE LOUISVILLE)
MSA)

ORDER

The Commission has received the attached letters from J. Robert Westerman, Larry Watson, Greg and Lex Shircliffe, and Kit Shaughnessy (hereinafter referred to collectively as "Petitioners") regarding the proposed cellular telecommunications facility to be located at 11509 Shelbyville Road, Middletown, Jefferson County, Kentucky.

IT IS THEREFORE ORDERED that:


1. Kentucky CGSA, Inc. ("Kentucky CGSA") shall respond to the Petitioners' concerns by certified letter, within 10 days of the date of this Order.
2. Kentucky CGSA shall file a copy of the certified letter and dated receipt, within 7 days of the date on the receipt.

Done at Frankfort, Kentucky, this 13th day of December, 1995.

ATTEST:


Executive Director

PUBLIC SERVICE COMMISSION


For the Commission

RECEIVED

DEC 04 1995

PUBLIC SERVICE
COMMISSION



December 1, 1995

Executive Director's Office
Public Service Commission of Kentucky
Post Office Box 615
Frankfort, Kentucky 40602

Case No. 95-507

To Whom it May Concern:

To say the least, I am opposed to any type of structure that protrudes 159' into the air while adjacent to 163 residential apartment homes. I feel this tower would be a safety hazard because of falling ice and by appearance alone, devalue my property. The apartment homes near subject property would not be desirable to a prospective tenant, therefore, the rental income would be negatively affected.

Why not strike a deal with the Middletown Fire Department to erect subject tower next to their existing tower and thereby keeping the nuisance factor concentrated in one area. The fire department is almost across the street from the proposed site. Recently a tower was proposed for the Lyndon, Ky. area and was also adamantly opposed by the surrounding neighbors. Consequently a deal was made with the Lyndon Fire Department and everybody was a winner.

I would like for a public hearing to be arranged to discuss this matter and that the Public Service commission intervene on my behalf.

Respectfully,

A handwritten signature in cursive script that reads "J. Robert Westerman".
J. Robert Westerman

JRW/pl

Heritage Hill Apartments
201 Heritage Hill Way
Louisville, Kentucky 40223
(502) 245-1600

Datson
11/30/95

RECEIVED

DEC 01 1995

PUBLIC SERVICE
COMMISSION

EXECUTIVE DIRECTOR'S OFFICE
PUBLIC SERVICE COMMISSION OF KENTUCKY
P.O. BOX 615
FRANKFORT, KY 40602
RE : CASE NO. 95-507

DEAR SIRs:

PLEASE BE ADVISED OF MY OPPOSITION TO THE PROPOSED TOWER AT 11509 SHELBYVILLE RD., A INCORRECT ADDRESS THAT HAS CAUSED MUCH CONFUSION, MIDDLETOWN, KY (CASE #95-507) I AM IN OPPOSITION TO THIS PROJECT BECAUSE OF HEALTH, SAFETY, ENVIRONMENTAL CONCERNS AND BECAUSE OF THE POTENTIAL OF LOWER PROPERTY VALUES IN THE AREA IF THIS TOWER IS ERECTED. MY PROPERTY AT 11519 SHELBYVILLE RD. IS LESS THAN 200 FEET FROM THE PROPOSED SITE AND I FEEL MY INTEREST, AS WELL AS OTHER PROPERTY OWNERS IN THE AREA AND THE PUBLIC IN GENERAL, WOULD BE BETTER SERVED IF THIS APPLICATION WAS DENIED.

I REQUEST BOTH INTERVENTION AND A PUBLIC HEARING BY THE PUBLIC SERVICE COMMISSION.

VERY TRULY YOURS,
Larry Watson
LARRY WATSON

LARRY K. WATSON
3100 RUNNING DEER CIRCLE
LOUISVILLE, KY 40241

LOUISVILLE KY 400 PM #1 11/30/95

EXECUTIVE DIRECTOR'S OFFICE
PUBLIC SERVICE COMMISSION OF
KENTUCKY
P.O. BOX 615
FRANKFORT, KY 40602
RE : CASE NO. 95-507

RECEIVED

DEC 04 1995

**PUBLIC SERVICE
COMMISSION**

Executive Directors Office
Public Service Commission of Ky.
P. O. Box 615
Frankfort, Ky. 40602

Louisville, Ky.
November 30, 1995

Gentlemen:

Re: Public Notice
Case No. 95-507

As property owners in close proximity to the proposed tower at 11509 Shelbyville Rd. Middletown, Jefferson County, Ky., we strongly oppose this structure for the following reasons:

1. Unknown and unproven health concerns.
2. An obvious eyesore since it will be placed in direct view of Shelbyville Road.
3. This structure is proposed to be built within a very few feet of our joint property lines to which we object.
4. Possible interference with our receiving equipment (phones, TV's, radios etc).
5. Safety of children playing around this structure-the neighboring children tend to use the parking lot for play.
6. This tower was offered to us by KY CGSA, Inc. and we declined this offer for all the above mentioned reasons.

In view of our objections, we urge you to refuse a Certificate of Public Convenience and Necessity for construction of this cellular radio telecommunications tower at location requested.

Sincerely,

G & L AUTO MART INC
11501 Shelbyville Rd.
Louisville, Ky. 40243



Greg Shircliffe, President



Lox Shircliffe, Sec'y. Treas.

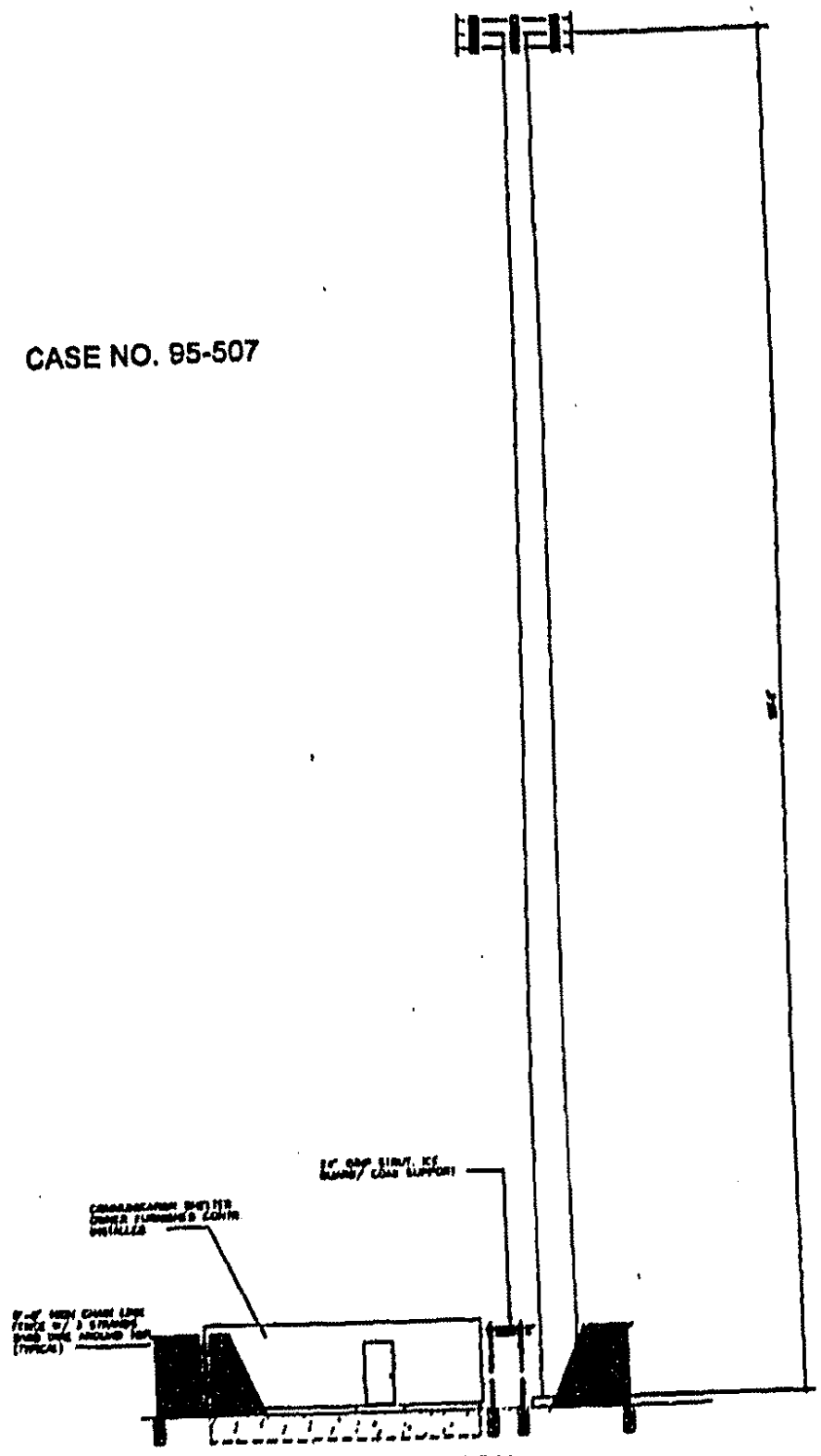
Dolson

RECEIVED

DEC 05 1995

PUBLIC SERVICE
COMMISSION

CASE NO. 95-507



ELEVATION
SCALE: 1/8" = 1'-0"



RECEIVED

DEC 05 1995

**PUBLIC SERVICE
COMMISSION**

December 4, 1995

Executive Director's Office
Public Service Commission of Kentucky
P.O. box 615
Frankfort, Kentucky
RE: Case No. 95-507

Dear Sir :

We have recently received a copy of the attached letter dated November 15, 1995 regarding Case No. 95-507 whereby Kentucky CGSA, Inc., has applied for a Certificate of Public Convenience and Necessity to construct and operate a new facility to provide cellular radio communications at 11509 Shelbyville Road, Middletown, Jefferson County, Kentucky.

Rye & Shaughnessy Properties believes that the above mentioned notice dated November 15, 1995 is defective. Rye & Shaughnessy Properties is located at 11509 Shelbyville Road. The property where the proposed cellular radio tower is to be installed is 11511 Shelbyville Road, directly north or behind Rye & Shaughnessy Properties at 11509 Shelbyville Road. In addition, the map used to identify the site was confusing and misleading. A sign used as a notice was placed on the wrong property. It is not in a position to be easily identified or read from the road or from the entrance. The 20 day notice period was insufficient because of the Thanksgiving Holiday allowing only 12 working days, at best, to respond. We therefore request the Public Service Commission to require that the public notice for Case No. 95-507 be reissued.

Secondly, we object to the construction of the cellular tower for several reasons. Rye & Shaughnessy Properties sold the land for the proposed cellular phone site to Mr. LaMont Rutledge in 1991 with a provision that the subject property be used as a "carpet and accessories retail sales and storage facility." To use the property for other purposes requires the permission of Rye & Shaughnessy Properties. Rye & Shaughnessy Properties has informed Mr. Rutledge by letter dated November 27, 1995 to Mr. Sam McNamara, counsel for BellSouth, that we

do not approve of the proposal to construct the cellular radio tower on the property owned by Mr. Rutledge at 11511 Shelbyville Road.

Because of all of the above, Rye & Shaughnessy Properties request the Public Service Commission to direct Kentucky CGSA, Inc, and BellSouth Mobility, Inc., to pay for all costs, including legal and otherwise, related to this defective notice.

As the adjoining landowner with six business tenants we also object on the following grounds.

1. **Concern for safety:** all six of our business tenants are within the radius of the tower if it should fall; and any medical effects and the extent thereof have not been fully discovered or assessed and this is compounded by the fact that Kentucky CGSA, Inc. has not limited what will be placed on the tower or what use it would have in the future, i.e., will it include antennas for ATT, Sprint, police department, television and computers, etc.?
2. **Wasteful duplication:** two other towers already exist within the area and there is no reason not to tower share.
3. **Transmission and reception within the area to be covered does not need improvement.** Kit Shaughnessy, of Rye & Shaughnessy Properties, is a BellSouth customer with equipment provided by BellSouth. This equipment registered full and complete power at 11509 Shelbyville Road proving that there is no need.
4. **Alternative sites exist within proximity of the proposed site.** The Mayor of Middletown has proposed two possible sites. Other sites to be considered include the corner of Shelbyville Road and Evergreen which has two water towers and has already been aesthetically destroyed; tower sharing with the Middletown Fire Department or placement at 12204 Shelbyville Road. These sites are on higher elevation and away from residential and medical sites.


5. **It is our understanding that certain businesses are required to have a certain number of parking spaces based on the square footage of the business site. Lack of parking sites has always been a major and constant concern of Mr. Rutledge, owner of the currently proposed site. The placement of the proposed cellular tower may eliminate some of the existing parking sites. Loss of parking sites needs to be approved by planning and zoning.**
6. **The proposed site involves granting and naming an easement. Based on our prior experience, this requires approval by the planning and zoning commission. We are unaware of any effort to secure that approval. The proposed easement does not meet the minimum width requirements of the Middletown Fire Department.**
7. **The applicant does not have utilities available for the required usage. Rye & Shaughnessy will not grant an utility easement and the site is landlocked.**
8. **Kentucky CGSA did not notify the City of Middletown of the proposed cellular tower construction.**
9. **The business operations of our existing tenants may be disrupted. Two tenants are medical providers who extensively use xray equipment and other high technology equipment. We can not assure them that they will suffer no adverse effects from either the cellular radio tower or the increased electrical usage required by the tower.**
10. **Several of our tenants service customers who have pacemakers. We can not assure them that they will suffer no adverse effects.**
11. **It is expected that the construction of the propose radio tower will involve the use of large cranes, heavy equipment and large trucks. It is likely that this will be disruptive to some of our tenants as the access route will impair the use of some our parking sites, including a**

handicapped parking site. This is expected to prove especially burdensome to one of our medical provider tenants whose clients typically use this handicapped parking site.

12. Our parking lot was not built or designed for use by construction cranes, concrete trucks and heavy equipment. The parking lot will have to be completely repaved at the cost to Kentucky CGSA. Interference with any tenant's operation of normal business will also have to be reimbursed.
13. The pool of possible tenants for us likely will diminish due to perceived risks. Reimbursement is expected for any loss incurred.
14. Esthetics. A 15 story tower with all kinds of junk at the top would be unattractive and not conducive to the residential and business area.
15. Diminishment of our property value is certainly possible based on perceived risks and loss of esthetics. Reimbursement is expected for any loss incurred.

Rye & Shaughnessy Properties requests the Public Service Commission to hold a public hearing on the above matter. Rye & Shaughnessy Properties further requests that the Commission deny the application for Case No. 95-507.

We also request that the Commission provide Rye & Shaughnessy Properties with copies of all information regarding this matter.

Rye & Shaughnessy Properties

Kit Shaughnessy
Candace Shaughnessy
Noble Rye
Evelyn Rye

Sam G. McNamara
ATTORNEY AT LAW
P.O. Box 916
315 High Street
Frankfort, Kentucky 40602
Phone: 502-875-8808
Fax: 502-223-1043

November 15, 1995

Re: Public Notice - Public Service Commission of KY
Case No. 95-507

Kentucky CGSA, Inc. has applied to the Public Service Commission of Kentucky for a Certificate of Public Convenience and Necessity to construct and operate a new facility to provide cellular radio telecommunication service. The facility will include a 150' monopole tower, with nine (9) antennas for a total height of 158 feet, and an equipment shelter to be located at 11509 Shelbyville Road, Middletown, Jefferson County, Kentucky. A map showing the location of the proposed new facility is enclosed. This notice is being sent to you because you own property or reside within a 500' radius of the proposed tower.

The Commission invites your comments regarding the proposed construction. You also have the right to intervene in this matter. Your initial communication to the Commission must be received by the Commission within twenty (20) days of the date of this letter as shown above.

Your comments and request for intervention should be addressed to: Executive Director's Office, Public Service Commission of Kentucky, Post Office Box 615, Frankfort, Kentucky 40602. Please refer to Case No. 95-507 in your correspondence.

Sincerely,



Sam G. McNamara
Attorney for Kentucky CGSA,
Inc.

SGM/j

Enclosure

Blue Ridge
Almas

Middletown

PROPOSED SITE
38° 14' 46.26"
085° 32' 37.86"
NAD 83

Douglas
Hills

JEFFERSONTOWN, KY.

NE 1/4 LOUISVILLE 15' QUADRANGLE

38085-85-17-024

1984

PHOTOREVISED 1987

DMA 3800 II NE-SERIES Y853

Radio Tower

SkyView
Park

Tucker
Station

Sucker
Lan

JEFFERSONTOWN

Tully
Sen.

CINCHILL

Sheet 38085-85-17-024

STITES & HARBISON

Sam G. McNamara, Esq.

November 27, 1995

Page 2

If we have not received from you written confirmation that the request is being withdrawn by December 1, 1995, we will assume your client is proceeding with the request, and our clients will proceed accordingly.

Very truly yours,

STITES & HARBISON


William H. Haden, Jr.

WHH/jlv

Enclosure

cc: Mr. Lamont Rutledge

BY015/002BY
11/28/95 11:53 AM
McNamara L1

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

18. Survival of Warranties. Each and all of the express warranties and indemnifications made and given by Seller to Buyer herein shall survive the execution and delivery of the General Warranty Deed by Seller to Buyer, the payment of all consideration in regard thereto, and the recording thereof.

19. Possession. At the time that Seller delivers possession of the property to Buyer, it shall be with all keys known to Seller of and to the property, and every door and lock thereof.

20. Additional Acts. From time to time, either before or after closing, and as an obligation of Seller which shall survive closing and shall not be merged, Seller or Buyer, upon reasonable request, shall without charge, perform such acts, execute, acknowledge and furnish such other instruments, documents, materials, and information, and shall obtain and deliver to Buyer or Seller such other consents, approvals, estoppel certificates and affidavits as may be requested by Buyer or Seller in order to effectuate the transaction contemplated by this Agreement.

21. Additional Documents. Seller and Buyer agree that such other documents as may be requested by Buyer or Seller or their counsel to evidence and effectuate the transaction con-

completed by this Agreement shall be executed, delivered and accepted by the parties at closing.

22. Property Use Restriction. It is understood and agreed between the parties hereto that Buyer intends to use the property as a carpet and accessories retail sales and storage facility. If Buyer or Buyer's successors and assigns or tenants or subtenants desire to change the use of the property, permission shall be first obtained from Seller by written approval which permission shall not be unreasonably withheld, and for purposes of such approval, if the proposed use shall be in competition with any tenant or subtenant or use by anyone of the adjoining premises to the property being sold herein, it shall be unreasonable for Seller to withhold approval on that basis alone.

23. First Right of Refusal on Adjoining Premises. With regard to the adjoining premises and all improvements thereon as shown on Exhibit "A", hereinafter referred to as the "adjoining premises", Seller hereby grants to Buyer the right of first refusal to purchase the adjoining premises.

a) Seller agrees that Seller will not sell the adjoining premises without the prior written consent of Buyer, unless Buyer shall have first been made the offer to sell hereinafter set forth.

1) Seller shall deliver a written offer to Buyer specifying the name and address of the prospective purchaser, the proposed price and the other terms of the sale.

STITES & HARBISON

400 WEST MARKET STREET
SUITE 1800

LOUISVILLE KENTUCKY 40202-0828

(606) 587-6400
FAX/TELE (606) 587-0871

COURT HOUSE PLAZA
300 EAST COUNTY AVENUE
FIRST OFFICE SUITE 2-40
JEFFERSONVILLE, INDIANA 47131
1-800-522-7500
FAX/TELE (317) 224-6010

2000 LEVINSON FINANCIAL CENTER
LEVINSON, MASSACHUSETTS 02007
(603) 226-2200
FAX/TELE (603) 226-2144

400 WEST MAIN STREET
FRANKFORT, KENTUCKY 40601
(502) 522-2477
FAX/TELE (502) 522-2424

WILLIAM H. HADEN, JR.

DIRECT DIAL (606) 681-0478

November 30, 1995

Sam G. McNamara, Esq.
P.O. Box 916
315 High Street
Frankfort, Kentucky 40602

Via: Telefax (502) 223-1043

Re: Public Notice - Public Service Commission of Kentucky
Case No. 95-507 (Kentucky CGSA, Inc.)

Dear Mr. McNamara:

Thanks very much for your telephone call of November 29, 1995. Based upon your communication that your client was reconsidering whether to move forward with this matter as a result not only of our expressed concerns, but apparent objections being made by other parties, we understand that it may be a week or so before you receive instructions from your client on whether it will be proceeding before the Public Service Commission.

Accordingly, we have agreed to recommend to our client to refrain from taking any adversarial steps in this matter, pending word from you in approximately one week. We note, however, that objections, if any, before the Public Service Commission in response to its Notice dated November 15, 1995, mailed to our clients, must be filed by December 5, 1995. Accordingly, it may be necessary for our clients to take appropriate procedural steps in a timely manner in that regard. Our firm has a conflict with reference to the PSC procedure, and other counsel would be involved before that body on behalf of our clients.

Very truly yours,

STITES & HARBISON


William H. Haden, Jr.

cc/klt