

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CONTEL CELLULAR OF)
KENTUCKY, INC. FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT AN ADDITIONAL) CASE NO. 95-004
CELL FACILITY IN THE LOUISVILLE,)
KENTUCKY METROPOLITAN STATISTICAL AREA)
(ST. REGIS PARK CELL FACILITY))

O R D E R

On January 6, 1995, Contel Cellular of Kentucky, Inc. ("Contel Cellular") 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 not to exceed 163 feet in height, with attached antennas, to be located at 4308-U Taylorsville Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 6.21" by West Longitude 85° 36' 38.95".

Contel Cellular 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, Contel Cellular has notified the Louisville and Jefferson County Planning Commission of the proposed construction. Contel 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 proposed cell site. The FAA application has been approved and the KAZC decision is pending.

Contel Cellular has filed notices verifying that each person who owns property or resides 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 hundreds of protest letters regarding the proposed construction from area residents, community organizations, neighborhood associations and others. Many of the protestors requested and were granted intervention in this matter.

As ordered by the Commission, Contel Cellular corresponded with the parties in this proceeding. Contel Cellular also began participating in meetings with local public officials and concerned citizens in an attempt to reach mutually acceptable solutions. On November 6, 1995, Contel Cellular filed an amendment to its application ("Amendment") which incorporated several suggestions proposed by the intervenors. Contel Cellular plans, among other things, to locate the facility nearer to the Southeast Church (the

lessor of the cell site property); to construct a wooden privacy fence at least as tall as the equipment shelter around that shelter; to install certain landscaping and screening; and to construct a less obtrusive facility, a monopole, rather than a self-supporting tower. Contel Cellular also states that utility service to the monopole or its equipment shelter will be routed underground from their sources. Several intervenors filed statements in support of the Amendment.

The Commission scheduled a public hearing on September 6, 1995 and notified each intervenor that if no statements of intent to appear at the hearing and to present evidence against the proposed facility were received by the Commission, the hearing would be cancelled and the matter submitted to the Commission for a decision based on the record. The Commission received one such statement from Ruth F. Walker ("Walker") and the hearing was held as scheduled. Ruth Walker did not in fact attend. Her son, Lee Walker, attended the hearing on her behalf and spoke in opposition to the proposed construction. Mr. Walker is neither a party to the case nor a licensed attorney. In addition, Counsel for the Frank E. Simon Trust attended the hearing in support of the amended application.

During the hearing, Contel Cellular presented testimony in support of the proposed construction that included the necessity of the cell site, the scarcity of available property in the search area, and the structural design and integrity of the proposed monopole.

Mr. Walker stated that the proposed construction will devalue property and that he believes his mother should receive compensation for the alleged economic impact.

Contel Cellular, on its own initiative, has attempted to mitigate concerns of area residents by amending its application. The Commission finds that the proposed construction is necessary to provide adequate utility service in the affected area and should not have any adverse impact on the health and safety of area residents. Mr. Walker's request for financial compensation for his mother is beyond the scope of this Commission's jurisdiction.

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, Contel 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 Contel Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Contel Cellular 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. Contel Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 163 feet in height, with attached antennas, to be located at 4308-U Taylorsville Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 13' 6.21" by West Longitude 85° 36' 38.95".

2. Contel Cellular 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. Contel 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 3rd day of April, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner