

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. 95-031
CELL FACILITY IN THE LOUISVILLE, KENTUCKY)
METROPOLITAN STATISTICAL AREA)
(BROWNSBORO ROAD CELL FACILITY))

O R D E R

On February 3, 1995, GTE Mobilnet of Kentucky Incorporated ("GTE Mobilnet"), formerly known as Contel Cellular of Kentucky, Inc., filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications facility in the Louisville Metropolitan Statistical Area ("the Louisville MSA"). The proposed cell site consists of a monopole antenna tower not to exceed 138 feet in height, with attached antennas, to be located in the Brownsboro Office Park at 1913 Rudy Lane, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 16' 54.25" by West Longitude 85° 38' 20.86".

GTE Mobilnet 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 conforms to applicable nationally recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the proposed cell site's construction is exempt from local zoning ordinances. However, GTE Mobilnet has notified the Louisville and Jefferson County Planning Commission ("Planning Commission") of the proposed construction. As discussed below, the Planning Commission intervened and fully participated in this proceeding. GTE Mobilnet 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 while the KAZC decision is pending.

GTE Mobilnet 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 numerous protests regarding the proposed construction. Ultimately, the Planning Commission, Rudy Lane, Inc., and the City of Winding Falls (hereinafter referred to collectively as "Intervenors") intervened in this proceeding. A hearing was held in this matter on June 27, 1995. On August 17, 1995, the Commission ordered GTE Mobilnet to investigate the availability of property, known as the Brownsboro Inn, adjacent to the Brownsboro Office Park that was introduced by the Intervenors during the hearing as a potential alternative location for a cell site. In response to the Order, GTE Mobilnet filed three alternative site plans. Two alternatives were located on the Brownsboro Inn property (Alternative Plans B and C). The third was located in the Brownsboro Office Park approximately 200 feet south-southeast of the originally proposed site (Alternative Plan A). GTE Mobilnet also notified the Commission that Alternative Plan

C on the Brownsboro Inn property was no longer acceptable to the owner. On November 7, 1995, the Commission ordered GTE Mobilnet to amend its application to reflect that the cellular facility would be constructed at the location identified as Alternative Plan A. The Commission required GTE Mobilnet to provide notice to all persons who own property or reside within 500 feet of the proposed alternative site's construction.

On November 29, 1995, the Intervenors filed a motion for rehearing of the Commission's November 7, 1995 Order. The Intervenors continued to object to locating the proposed cellular facility in the Brownsboro Office Park and offered to withdraw their objections if the facility was moved to the Brownsboro Inn property. The Commission denied the Intervenors' motion for rehearing on the grounds that its decision on the site was not final, and therefore the motion for rehearing was premature. However, the Commission added that requests for hearing would be entertained after the amended application had been filed and those persons not notified pursuant to the original application had been accorded an opportunity to state their concerns, if any, and to intervene.

As ordered, GTE Mobilnet amended its application on January 26, 1996. Rudy Lane, Inc. as well as some other Intervenors continued to oppose the proposed construction and a second hearing in this proceeding was scheduled for June 25, 1996. The hearing was subsequently canceled and all parties were notified that an informal conference would be held instead. No intervenor other than Rudy Lane, Inc. appeared at the informal conference. On July 16, 1996, Rudy Lane, Inc. and GTE Mobilnet filed a joint motion requesting that the amended application be submitted to the Commission for a decision on the record. Both stated that GTE Mobilnet had made numerous concessions to the Intervenors, modifying the style of the proposed facility and agreeing to provide

certain landscaping and other services to minimize any aesthetic impact of the monopole tower. The Commission granted the motion and notified all parties that if the Commission did not receive a written request for a hearing, the case would stand submitted to the Commission on the record. To date, no further comments have been filed. The Commission finds that the proposed construction is necessary and that GTE Mobilnet has attempted in several ways to minimize the aesthetic impact to the area.

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, GTE Mobilnet 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 GTE Mobilnet.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that GTE Mobilnet 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. GTE Mobilnet is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 138 feet in height, with attached antennas, to be located in the Brownsboro Office Park at 1913 Rudy Lane,

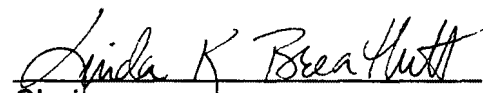
Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 16' 54.25" by West Longitude 85° 38' 20.86".


2. GTE Mobilnet shall file a copy of the final decision regarding its pending KAZC application for the proposed construction within 10 days of receiving the decision.

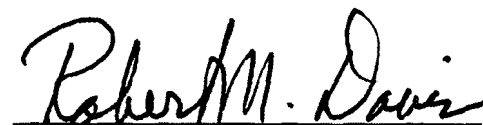
3. GTE Mobilnet shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 13th day of September, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director