

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 EMINENCE,)
HENRY COUNTY, KENTUCKY FOR THE PROVISION) CASE NO. 95-446
OF DOMESTIC PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO THE PUBLIC)
IN THE B-1 PORTION OF RURAL SERVICE AREA)
NO. 7)

O R D E R

On October 10, 1995, Kentucky CGSA, Inc. d/b/a BellSouth Mobility, Inc. ("BellSouth Mobility") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower in the B-1 portion of Rural Service Area No. 7 ("RSA No. 7"). The proposed cell site consists of a guyed antenna tower not to exceed 412 feet in height, with attached antennas, to be located at 474 Elm Street, Eminence, Henry County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 22' 32.25" by West Longitude 85° 10' 5.84".

BellSouth Mobility 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, BellSouth Mobility has notified the Henry County Planning and Zoning Commission of the proposed construction. BellSouth Mobility has filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed cell site. Both applications have been approved.

BellSouth Mobility 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. In addition, BellSouth Mobility has posted notice of the proposed construction in a visible location for at least two weeks after filing its application. The Commission received several protest letters regarding the proposed construction from surrounding property owners and the City of Eminence. Three protestors requested and were granted intervention in this matter (the "Intervenors"). A hearing was held February 21, 1996 at the Commission's offices in Frankfort.

The Intervenors consist of two adjacent property owners and one of the property owner's son. The primary concerns expressed by the Intervenors are the tower's impact on property values and the availability of alternative sites. One Intervenor also questioned the potential effect on cattle production.

The City of Eminence initially intervened in this proceeding but later withdrew its opposition after it was agreed that a separate application to construct a tower by the competing cellular service provider, Contel Cellular of Kentucky, Inc. now GTE Mobilnet of Kentucky, Inc. d/b/a Cellular One ("Cellular One"),¹ would be withdrawn if BellSouth Mobility's application was approved. Cellular One has agreed to collocate its facilities on BellSouth Mobility's tower if it is constructed, thereby eliminating the need for multiple towers in or near the City of Eminence.

The Henry County Planning Commission declined to participate in the proceeding but opposes the construction and proposes that the site be located at least one mile from the city limits or any residential development or residential expansion as outlined by the Comprehensive Plan.

During the hearing, BellSouth Mobility presented testimony in support of the proposed construction that included the necessity of the cell site and the structural design and integrity of the proposed tower. In addition, BellSouth Mobility introduced Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996 which precludes the regulation of personal wireless service facilities on the basis of environmental effects of radio frequency

¹ Case No. 95-381, Application of Contel Cellular of Kentucky, Inc. For Issuance of a Certificate of Public Convenience and Necessity to Construct an Additional Cell Facility in the Kentucky Rural Service Area No. 7 which includes Trimble, Carroll, Gallatin, Henry, Franklin, Owen, Grant, Pendleton, Harrison and Shelby Counties in Kentucky (The Eminence Cell Facility).

emissions to the extent such facilities comply with the Federal Communications Commission's regulations concerning such emissions.

The Intervenors argued that more suitable sites could be found. An Intervenor offered a map depicting several alternative sites based upon relative elevations throughout Henry County. A witness for BellSouth Mobility eliminated all but one alternative site due to technical limitations. BellSouth Mobility filed supplemental information after the hearing in which it attests that the one suitable alternative site was not available for lease or purchase.

The Commission finds that the proposed construction is necessary and should not unduly impact the health, safety and welfare of nearby residents or property.

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, BellSouth Mobility 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 BellSouth Mobility.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that BellSouth Mobility should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed cell site in RSA No. 7 under its currently approved tariff.

IT IS THEREFORE ORDERED that:

1. BellSouth Mobility be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a guyed antenna tower not to exceed 412 feet in height, with attached antennas, to be located at 474 Elm Street, Eminence, Henry County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 22' 32.25" by West Longitude 85° 10' 5.84".

2. BellSouth Mobility 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 7th day of May, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Hill
Executive Director