

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 LOUISVILLE,)
KENTUCKY FOR THE PROVISION OF DOMESTIC) CASE NO. 96-139
PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN JEFFERSON COUNTY, KENTUCKY AND)
THE LOUISVILLE MSA)

O R D E R

On April 10, 1996, 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 Louisville Metropolitan Statistical Area ("the Louisville MSA"). The proposed cell site consists of a monopole antenna tower not to exceed 190 feet in height, with attached antennas, to be located at 5700-5708 Outer Loop, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 8' 16.07" by West Longitude 85° 39' 20.59".

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 Louisville and Jefferson County Planning Commission of the proposed construction. To date, no comments have been filed by the Planning Commission. BellSouth Mobility 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. 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 protests in this matter and three interested parties were granted intervention. Jean Shindlebower, President of Shamrock Hills Subdivision, a nearby residential area, intervened due to concerns regarding the general safety of the proposed facility, interference with household equipment, and impact on property values. Irv Maze, Jefferson County Commissioner for the "B" District, intervened due to concerns regarding the utility's notifications of residents and the lack of FAA or KAZC approvals. The third intervenor was Representative of the 46th District, Larry Clark, House Speaker Pro Tempore, who opposed the construction due to its close proximity to frequently populated areas including residential property, schools, churches and shopping centers.

A hearing was held on July 11, 1996 and was attended by all parties to this proceeding. At the hearing, BellSouth Mobility presented testimony in support of the

proposed construction including the necessity of the proposed cell site, the structural design and integrity of the proposed monopole tower, and the availability of suitable property in the prescribed search area. BellSouth Mobility testified that the proposed cell site property is zoned C-1 Commercial for which commercial towers are permitted uses and therefore would not require local planning approval, if such approval were necessary. BellSouth Mobility asserted that no other towers were available for the service and that the proposed tower would be located in the search area as far from residential property as possible. In addition, BellSouth Mobility introduced approvals from the FAA and the KAZC for the proposed construction.

BellSouth Mobility addressed the intervenors' concerns regarding the general safety of the proposed cellular facility by citing Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996 that precludes the regulation of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent such facilities comply with the Federal Communications Commission's regulations concerning such emissions.

The Intervenor argued that more suitable sites could be found and were concerned that children in the area would be enticed by the structure. BellSouth Mobility testified that an eight-foot fence would surround the site and that no leg bolts would be installed on the monopole tower below 20-25 feet from the ground, thereby reducing the chances of unauthorized access of the monopole tower. BellSouth Mobility also offered to install 45 degree barbed-wire arms atop the eight-foot fence for added security if requested by the Intervenor. Finally, the intervenors continued to take issue with the adequacy of notice to the public indicating that residents in the Shamrock Hills Subdivision should have been notified.

The Commission finds that the proposed construction is necessary and that the proposed cell site, though near residential areas, is located on commercial property that should minimize any impact from the cellular facility. The notice requirements for cellular tower construction are intended to inform those individuals most likely to be impacted. Although none of the intervenors were individually notified of the proposed construction, they did become aware through other means. As a result, the intervenors were afforded an opportunity to present their concerns and they fully participated in the hearing.

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 the Louisville MSA under its currently approved tariff.

IT IS THEREFORE ORDERED that:

1. BellSouth Mobility is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 190 feet in

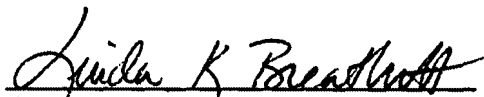
height, with attached antennas, to be located at 5700-5708 Outer Loop, Louisville, Jefferson County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 8' 16.07" by West Longitude 85° 39' 20.59".

2. BellSouth shall install 45 degree barbed-wire arms atop the fencing which surrounds the site if requested by an intervenor.


3. 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 16th day of September, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director