

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW PAR, A DELAWARE)	
PARTNERSHIP, D/B/A AIRTOUCH CELLULAR, FOR)	CASE NO. 97-180
A CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

O R D E R

On April 21, 1997, New Par d/b/a AirTouch Cellular ("AirTouch Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a facility in the Cincinnati Metropolitan Statistical Area. The proposed facility consists of a self-supporting antenna tower not to exceed 289 feet in height, with attached antennas, to be located at 100 Fairground Lane, Alexandria, Campbell County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 57' 40" by West Longitude 84° 22' 51.5".

AirTouch Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. 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 facility's construction is exempt from local zoning ordinances. However, AirTouch Cellular has notified the City of Alexandria Planning and Zoning Commission ("Planning Commission") of the proposed construction.

The Planning Commission filed comments in this proceeding and ultimately intervened. AirTouch 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 facility. Both decisions are pending.

AirTouch Cellular has filed notices verifying that each person who owns property or resides within 500 feet of the proposed facility 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, AirTouch Cellular has posted notice of the proposed construction in a visible location for at least two weeks after filing its application. The Commission received numerous letters protesting the proposed construction and several letters in support of the proposal. Two property owners, the City of Alexandria (the "City"), and the Planning Commission (collectively, the "Intervenors") intervened in opposition to the proposed construction. A hearing on this matter was held at the Commission's offices on September 23, 1997.

During the hearing, AirTouch Cellular provided extensive evidence in support of the proposed construction including the necessity of the facility, the absence of any impact on property values, and safety design of the proposed structure. AirTouch Cellular discussed the alternative locations considered for the construction and asserted that the proposed site would provide the best service and was the most appropriate of all alternative sites reviewed.

The Intervenors argued that the proposed property is zoned residential and therefore is inappropriate for the construction. The Intervenors further claim that adequate service could be provided from multiple locations throughout the area as opposed to one large

tower as proposed. Other issues raised by the Intervenor's included the potential impact on property values and safety concerns.

Subsequent to the hearing, the Commission issued an order requiring AirTouch Cellular to investigate fully the feasibility of using existing structures in the area and to determine if the combined use of existing structures could satisfy the requirements of AirTouch Cellular's system. AirTouch Cellular filed a report of its investigation on February 2, 1998 which includes, inter alia, propagation maps prepared by its engineers and an explanation as to why the structures of the Ohio Valley Electric Corporation are not reasonably available. AirTouch Cellular's report concludes that the use of existing structures would not provide adequate service to the area and would result in wasteful duplication of facilities.

The City and the Planning Commission subsequently filed a response which terms the AirTouch report "self-serving" and urges the Commission and its staff to scrutinize the report closely.¹ However, the Intervenor's offer no evidence to support their position that the proposed construction is unnecessary. The Commission does not accept the Intervenor's unsupported assertion that, taken to its local conclusion, AirTouch's report indicates that "co-location would never be feasible."² AirTouch offers fact-specific evidence that in this instance co-location is not feasible. In general terms, co-location is feasible when existing structures are reasonably available, when engineering reports indicate that antenna mounted on those structures would provide adequate utility service, and when co-

¹ Intervenor's Motion for Leave to File Response and Comments to AirTouch's Report of Investigation ("Intervenor's Motion") at 1.

² Intervenor's Motion at 1.

location prevents unnecessary duplication of facilities. See Kentucky Utilities Co. v. Public Service Com'n, Ky., 252 S.W.2d 885, 890 (1952) (discussing appropriate standards for analysis of public convenience and necessity, including factor regarding unnecessary duplication of facilities).

Having reviewed the application, the evidence presented during the hearing, AirTouch Cellular's investigation report and the response thereto, the Commission finds that it is undisputed that there exists a need for additional cellular coverage in the subject area. The Commission also finds that the selected site is the most appropriate of those considered to maintain adequate utility service.

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, AirTouch Cellular should notify the Commission if it does not use this antenna tower to provide service 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 AirTouch Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that AirTouch Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed facility.

IT IS THEREFORE ORDERED that:

1. AirTouch Cellular is granted a Certificate of Public Convenience and Necessity to construct and operate a self-supporting antenna tower not to exceed 289 feet

in height, with attached antennas, to be located at 100 Fairground Lane, Alexandria, Campbell County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 57' 40" by West Longitude 84° 22' 51.5".

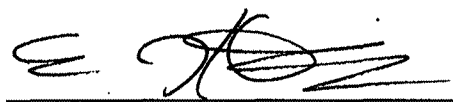
2. AirTouch Cellular shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the proposed construction within 10 days of receiving these decisions.

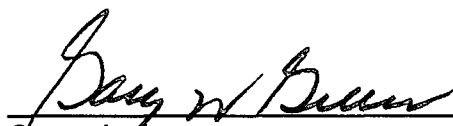
3. AirTouch Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 21st day of May, 1998.

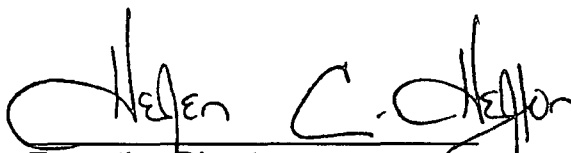
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director