

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SPRINTCOM, INC. FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT ) CASE NO.  
A PERSONAL COMMUNICATIONS SERVICE FACILITY IN THE ) 97-460  
CINCINNATI MAJOR TRADING AREA )  
[CONEY ISLAND FACILITY] )

O R D E R

On December 18, 1997, SprintCom, Inc. ("SprintCom") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a personal communications system ("PCS") for the Cincinnati Major Trading Area. SprintCom has requested authorization to construct a PCS site in Campbell County. SprintCom was previously granted the authority to operate in Case No. 97-294.<sup>1</sup>

The proposed PCS site consists of a 150-foot or less monopole antenna tower to be located at 115 McDonald Lane, Highland Heights, Campbell County, Kentucky ("the Coney Island PCS site"). The coordinates for the Coney Island PCS site are North Latitude 39° 03' 10" by West Longitude 84° 26' 01".

SprintCom has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Coney Island PCS site. Based upon the

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<sup>1</sup> Case No. 97-294, The Application of SprintCom, Inc. for Operating Authority and Issuance of Certificate of Public Convenience and Necessity to Construct Personal Communications Services Facilities in Kentucky.

application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a Registered Professional Engineer has certified the plans.

Pursuant to KRS 100.324(1), the Coney Island PCS site's construction is exempt from local zoning ordinances; however, SprintCom notified the Highland Heights Planning and Zoning Commission of the pending construction. SprintCom, through the Airspace Safety Analysis Corporation, filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the Coney Island PCS site. The FAA concluded the proposed construction would not exceed FAA obstruction standards, while the KAZC determined that a structure height of 200' does not need approval.

SprintCom has filed notices verifying that each person who owns property within 500 feet of the Coney Island PCS site has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to intervene. In addition, notice was posted in a visible location on the proposed site for at least two weeks after SprintCom's application was filed.

Carol Ernst, Franklin Losey, and the City of Highland Heights (the "City") requested and were granted intervenor status. A hearing was subsequently scheduled for April 27, 1998. At the hearing, which continued for several days, SprintCom asserted the necessity of the site to achieve adequate PCS coverage and argued convincingly that no more suitable site was available. The intervenors represented the area as pristine and as a poor site for a monopole. Further, they questioned SprintCom's ability to work with either the

City or its residents. The City argued that the monopole should be located on city property so that all residents would receive some benefit from the site. However, the site offered, at Veterans' Park, is unsuitable from an engineering point of view, as SprintCom demonstrated by means of radio frequency engineering studies. The intervenors also argued that SprintCom should locate its facility in the right-of-way. However, it is undisputed on the record that leases on state rights-of-way for such purposes are currently unavailable. The charge was also made that, based on environmental and historical concerns, placement of the monopole at the proposed site would be inappropriate. However, letters from the Kentucky Heritage Council and the Kentucky State Nature Preserves Commission indicate no objections to the proposed construction. Based on the record, the Commission finds that SprintCom has borne its twin burdens of demonstrating that a structure is needed in its search area to provide adequate coverage and that there is no more suitable site reasonably available from which adequate service may be provided.

The record also contains various unaddressed motions submitted by SprintCom to strike pleadings based on, inter alia, alleged legal infirmities and violations of various procedural orders. These motions should be denied. The Commission is not bound by the technical rules of legal evidence, KRS 278.310, and legal shortcomings of various pleadings are considered in weighing the merits of those pleadings. Furthermore, since the Commission finds in favor of the Applicant herein, a party which has conformed its conduct in this matter to procedural orders entered, it is clear that no party has benefited from any documents it has inappropriately filed.

Finally, the intervenors' motions for an oral argument in this case remain outstanding. These motions also should be denied. The record in this case is already unnecessarily lengthy, and no additional, relevant argument has been offered. Moreover, the record reflects that the parties chose to file post-hearing briefs in this case rather than to make closing (oral) arguments. The case is ripe for decision, and there is no need to delay further.

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, SprintCom should notify the Commission if it does not use this antenna tower to provide PCS 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 SprintCom.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that SprintCom should be granted a Certificate of Public Convenience and Necessity to construct and operate the Coney Island PCS site under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. SprintCom is granted a Certificate of Public Convenience and Necessity to construct and operate the Coney Island PCS site.

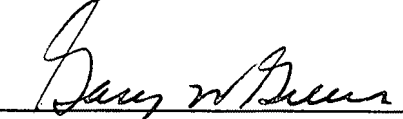
2. SprintCom shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 6th day of November, 1998.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director