

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF POWERTEL/KENTUCKY,	)	
INC., A DELAWARE CORPORATION, FOR	)	
ISSUANCE OF A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY TO CONSTRUCT	)	CASE NO. 98-302
A PERSONAL COMMUNICATIONS SERVICES	)	
FACILITY IN B-263 BASIC TRADING AREA	)	
(THE L-KY-093-068)	)	

O R D E R

On June 11, 1998, Powertel/Kentucky, Inc. ("Powertel/Kentucky") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 235 feet in height, with attached antennas, to be located at 8103 Kentucky Avenue, LaGrange, Oldham County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 24' 6.4" by West Longitude 85° 23' 39.67".

Powertel/Kentucky 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, Powertel/Kentucky notified the Oldham County

Planning and Zoning Commission ("Planning Commission") of the proposed construction. The Planning Commission filed comments and intervened, arguing that even though House Bill 168, which empowers planning commissions to conduct reviews of wireless tower siting proposals, was not yet effective when the application was filed in June, certain local ordinances should be observed. Powertel/Kentucky 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.

Powertel/Kentucky has filed notices verifying that each person who owns property within 500 feet of the proposed facility has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to request intervention. In addition, notice of the proposed construction has been posted in a visible location for at least two weeks after filing the application. The Commission received several comments from property owners but, other than that from the Planning Commission, no requests for intervention were filed.

Upon motion of Powertel/Kentucky, a hearing in this matter was held on August 7, 1998. During the hearing, Powertel/Kentucky provided information in support of the proposed construction. According to Powertel/Kentucky, the proposed site, in the eastern portion of the company's search area, is the only location reasonably available from which service can be adequately provided to LaGrange, portions of I-71, and the area a few miles east of LaGrange. Powertel/Kentucky provided exhibits demonstrating that every potential alternative site within the search area had been evaluated and found deficient.

Powertel/Kentucky also points out that the site is adjacent to a railroad track, although it is zoned residential. The closest single family residence to the proposed location is over 500 feet from the proposed structure and is on property owned by Powertel/Kentucky's landlord. Powertel/Kentucky says it attempted to co-locate on a Crown Communication, Inc. tower, but the structure was located outside the designated search area and placement of antennas on the tower would not have provided adequate coverage.

Powertel/Kentucky has produced extensive evidence of attempts to locate its facility elsewhere, providing documentation of its investigation into thirteen alternative locations. It says the fairgrounds location, which is within the search area, was rejected due to inadequate space to locate a facility. Powertel/Kentucky's witness explained that, because of the way the buildings are situated and because of the steep fall at the back of the property, the tower could not be located there.<sup>1</sup> The property immediately behind the fairgrounds is used by the Kentucky State Reformatory for agriculture.<sup>2</sup> Powertel/Kentucky also testified that the farther west it goes, the poorer the coverage for LaGrange, an area it needs to cover.<sup>3</sup> North and south of the proposed site, which is on a crest, elevation falls quickly, and there is also progressively less elevation to the west.<sup>4</sup>

The Planning Commission asserts that a location in an industrial zoned area would be more suitable; states that it understands Powertel/Kentucky is willing to meet

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<sup>1</sup> Transcript of Evidence ("Tr.") at 29.

<sup>2</sup> Tr. at 100.

<sup>3</sup> Tr at 25.

<sup>4</sup> Tr. at 23.

landscaping and screening requirements; and requests that the application be denied. In its original letter requesting intervention, the Planning Commission asked that, if approval is granted, such approval be conditioned on compliance with its ordinance.

The Commission finds that Powertel/Kentucky has provided sufficient evidence to support its conclusion that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to collocate its facilities on an existing structure. The Commission also notes its approval of Powertel/Kentucky's willingness to comply with local landscaping requirements.

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, Powertel/Kentucky 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 Powertel/Kentucky.

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

IT IS THEREFORE ORDERED that:

1. Powertel/Kentucky is granted a Certificate of Public Convenience and Necessity to construct a self-supporting antenna tower not to exceed 235 feet in height, with attached antennas, to be located at 8103 Kentucky Avenue, LaGrange, Oldham County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 24' 6.4" by West Longitude 85° 23' 39.67".


2. Powertel/Kentucky 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. Powertel/Kentucky 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.

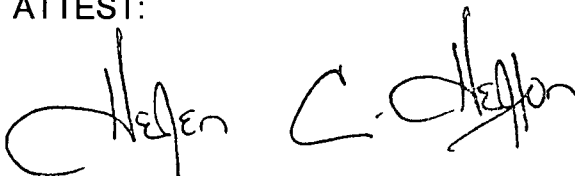
Done at Frankfort, Kentucky, this 9th day of October, 1998.

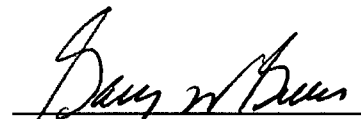
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner