

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF POWERTEL/KENTUCKY, INC., A)	
DELAWARE CORPORATION, FOR ISSUANCE OF)	
A CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO. 98-344
NECESSITY TO CONSTRUCT A PERSONAL)	
COMMUNICATIONS FACILITY IN B-263 BASIC)	
TRADING AREA (THE L-KY-056-054 FACILITY))	

O R D E R

On July 8, 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 monopole antenna tower not to exceed 175 feet in height, with attached antennas, to be located at 14904 Factory Lane, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 16' 9" by West Longitude 85° 29' 25".

Pursuant to KRS 278.650(1), Powertel/Kentucky submitted a proposal to the Louisville and Jefferson County Planning Commission (Planning Commission). The Planning Commission approved the proposed construction. 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. The FAA determined that no notice was required and the KAZC decision is 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 was posted in a visible location for at least two weeks after the application was filed. In response to public notice made by Powertel/Kentucky, the Commission received numerous protests regarding the proposed construction. Several individuals requested and were granted intervention in this matter and a public hearing was held October 15, 1998.

During the hearing Powertel/Kentucky provided extensive evidence in support of the application including the necessity of the proposed construction, the structural integrity of the facility, and the investigation of alternative sites including co-location opportunities. Powertel/Kentucky determined that there was no more suitable location for the proposed facility from which adequate service could be provided. Only one Intervenor attended the hearing and claimed that the local review process by the Planning Commission was inadequate. The Intervenor also expressed concerns regarding the safety of the proposed facility and the possibility of co-locating the facility on an existing structure in the area.

The Commission finds that Powertel/Kentucky has adequately demonstrated the need for the proposed construction. In addition, 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.

As a final matter, the Commission notes that the Intervenor has, in effect, requested this Commission to review the Planning Commission's determination that the proposed site is a reasonably appropriate one for the construction. The Commission has no statutory authority to review the Planning Commission's decision on planning matters. KRS 278.650(2) provides that the Commission may override the Planning Commission's rejection of a proposal to construct, but only if public convenience and necessity require the construction and there is no acceptable alternative site. There is no provision in the statute even hinting that this Commission is to undertake a review of the Planning Commission's process or its finding of fact regarding the suitability of the site from a planning standpoint. When the Planning Commission has indicated its approval, when public convenience and necessity requires the proposed construction, and when the construction has been shown to conform to applicable safety standards, as here, issuance of a certificate is lawful and appropriate.

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 monopole antenna tower not to exceed 175 feet in height, with attached antennas, to be located at 14904 Factory Lane, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 16' 9" by West Longitude 85° 29' 25".

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.

ATTEST:

Done at Frankfort, Kentucky, this 9th day of February, 1999.
Executive Director

