

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. 98-594
NECESSITY TO CONSTRUCT A PERSONAL)	
COMMUNICATIONS SERVICES FACILITY IN B-263)	
BASIC TRADING AREA (THE L-KY-056-091))	

O R D E R

On November 19, 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 monopole¹ antenna tower not to exceed 195 feet in height, with attached antennas, to be located at 2800 Fisherville Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 11' 29.59" by West Longitude 85° 27' 19.48".

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.

¹ The application, as filed, reflects a "self-supporting" antenna tower. However, as discussed herein, Powertel/Kentucky proposes to modify the construction and change the tower type to a monopole antenna tower.

Pursuant to KRS 278.650, Powertel/Kentucky submitted a proposal to the Louisville and Jefferson County Planning Commission (Planning Commission). After a public hearing, the Planning Commission rejected the proposal. Pursuant to 807 KAR 5:063, Section 3, Powertel/Kentucky requested that the Commission override the Planning Commission's determination. 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 evidence of the appropriate notices provided pursuant to 807 KAR 5:063. The notices solicited any comments and informed the recipients of their right to request intervention. Two individuals and the Fisherville Neighborhood Association requested and were granted intervention in this matter. On May 19, 1999 a public hearing was held.

The Planning Commission made a statement during the public comment period discussing the reasons the Planning Commission rejected the proposal. The Planning Commission explained that the proposed site is within the Floyds Fork Development Review Overlay ("DRO") district, which is a special district established by the Planning Commission to protect the quality of the natural environment. Based on its statement, the Planning Commission denied the proposal because the construction would violate various aspects of the comprehensive plan guidelines. The Planning Commission noted that the site is located in a residential zone and claimed that the construction would create a substantial visual intrusion that cannot be adequately mitigated. The Planning Commission also determined that there were acceptable alternative sites.

Powertel/Kentucky offered evidence in support of the proposed construction, including a description of the design objectives for the proposed facility and propagation maps showing the radio frequency coverage levels before and after the proposed construction. According to the testimony of Powertel/Kentucky's expert witness, a portion of the target service area does not have adequate service and the hilly terrain makes location of the site important for optimum coverage. Powertel/Kentucky investigated opportunities for co-location on a nearby communications tower and electric transmission line towers but determined that co-location on either would result in less than adequate utility service likely necessitating the construction of another communications tower. In response to a request by the Commission staff, Powertel/Kentucky submitted post hearing exhibits analyzing the use of the existing communications tower and the electric transmission line towers in combination. Based on the exhibits, the coverage levels would not meet the design objectives for the proposed facility. Powertel/Kentucky also described the site acquisition process and stated that the hilly terrain within the search area reduced the number of suitable properties for the proposed construction. During its closing remarks, Powertel/Kentucky offered to construct a monopole instead of the proposed self-supporting tower in an attempt to minimize any aesthetic impact. Powertel/Kentucky reiterated that the proposed site was the optimum location from which adequate utility service could be provided and that there were no opportunities for co-location reasonably available to provide adequate utility service. Powertel/Kentucky maintains that if suitable opportunities for co-location were available they would be employed. Finally, Powertel/Kentucky advised the Commission that the proposed monopole will be

constructed to support multiple antennas, thereby reducing the likelihood of additional towers in the future.

The intervenors in this proceeding consistently noted aesthetic concerns with the proposed construction. The Fisherville Neighborhood Association contends that Powertel/Kentucky failed to demonstrate the proposed construction was necessary, claiming that multiple sites on existing structures would result in adequate service. Another intervenor claims that the proposed construction within the Floyds Fork DRO is inappropriate and would set a precedent for future tower construction in the protected area.

The Commission finds, based on the evidence of record, that Powertel/Kentucky has established that the public convenience and necessity require the construction, KRS 278.020, and that there is no more suitable location reasonably available from which adequate utility service can be provided, 807 KAR 5:063. Powertel/Kentucky provided persuasive evidence demonstrating that alternative locations, including co-locating on multiple existing structures, would reduce coverage levels in the target area thereby reducing the level of service for the design objectives. The Commission further finds that Powertel/Kentucky's proposal to modify the proposed construction and change the tower type from a self-supporting to a monopole type is reasonable to help minimize any aesthetic impact to the area.

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 has demonstrated that a facility is necessary to provide adequate utility service and therefore 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 195 feet in height, with attached antennas, to be located at 2800 Fisherville Road, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 11' 29.59" by West Longitude 85° 27' 19.48".

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 the decisions.

3. Within 20 days from the date of this Order, Powertel/Kentucky shall amend its application and change the proposed construction from a self-supporting antenna tower to a monopole antenna tower.

4. 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 17th day of August, 1999.
Executive Director

