

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY RSA #3)	
CELLULAR GENERAL PARTNERSHIP FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO CONSTRUCT)	CASE NO.
A CELL SITE (ALLEN NORTHWEST) IN RURAL)	2001-083
SERVICE AREA #3 (ALLEN) OF THE)	
COMMONWEALTH OF KENTUCKY)	

O R D E R

On April 24, 2001, Kentucky RSA #3 Cellular General Partnership ("Applicant") 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 255 feet in height, with attached antenna, to be located at 5 Johnson Loop Road, Scottsville, Allen County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 49' 37.8" by West Longitude 86° 18' 51.3".

The Applicant 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 a Licensed Professional Engineer has certified the plans.

Pursuant to 807 KAR 5:063, the Applicant has notified the County Judge/Executive of the proposed construction since there is no jurisdictional planning and zoning commission. The Applicant has filed applications with the Federal Aviation Administration

("FAA") and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

The Applicant 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. On June 5, 2001, Darrell and Patricia Doherty notified the Commission in writing of their desire to fully intervene in this case. The request for full intervention was granted by Commission Order on June 22, 2001 and a hearing was held on Tuesday, September 25, 2001, at the Commission's offices.

The contested issues covered in the hearing were the following: (a) public necessity; (b) alternative sites; (c) the description of the area; (d) effect of proposed construction on land use and values; and (e) proper notification as required by the statutes and regulations. The Applicant, represented by John E. Selent, Esq., called witnesses to address the contested issues. Mr. and Mrs. Doherty appeared pro se and called no witnesses.

Regarding the issue of public necessity, the Applicant called Scott McCloud, a Bluegrass Cellular executive. Mr. McCloud testified that according to Transportation Cabinet information, approximately 5,000 cars travel Highway 231 on a daily basis. He also testified that his company had reported at least 5 to 10 complaints per week regarding the lack of service and number of dropped calls in the area. Mr. McCloud stated that Bluegrass Cellular does not provide complete coverage to Highway 231 at the current time, and that the proposed construction would provide better coverage along that route.

The Applicant's next witness, Leila Rezanavaz, was called as an expert on the issue of co-location and alternative sites. Ms. Rezanavaz addressed the three alternative sites proposed by the intervenors which included: (1) a tower located at 3804 Old Glasgow Road

in Scottsville ("Scottsville #1"); (2) a tower located at Hillview Drive in Scottsville ("Scottsville #2"); and (3) the Halfway School Cell Site. Regarding both Scottsville sites, Ms. Rezanavaz testified that her computer models showed that Scottsville #1 and Scottsville #2 could not provide adequate service to the Applicant's coverage objective area. She stated that the coverage area was a long stretch of highway between Bowling Green and Scottsville, and that co-location on the existing towers in Scottsville would not adequately fill the gap in coverage. Regarding the Halfway School site, Ms. Rezanavaz testified that collocation on that tower would provide nearly the same results as collocating on the Scottsville towers. She testified that collocation on the Halfway School site would provide coverage to the southern portion of Highway 231, but the northern portion would remain unserved. The intervenor argued that the Halfway School site was adequate despite the lack of coverage that would still remain in some areas along Highway 231. In support of this position, he stated that another company already provided service in that area.

The Applicant next addressed the general character of the area by entering into evidence photographs of the area in which the proposed tower site is to be located. The photographs demonstrated that the area was rural in nature, consisting primarily of farmlands and woods with a few residences. The intervenor expressed his concern that the photographs did not adequately represent the quality of the land and residences near the proposed site.

Applicant next called George Chapman, a registered appraiser, to address the issue of the effect that the proposed construction would have on land uses and values. Mr. Chapman utilized a study his firm had prepared on the same issue in 1995 to address this

issue. The study was performed in the Louisville area and has not been updated with new information since it was created. Mr. Chapman stated that the study showed that cell towers do negatively affect the value of property located near a cell tower. However, the study also showed that effect decreased as the distance from the property to the tower increased. Mr. Chapman estimated that the intervenors' home was located approximately 1700 feet from the proposed tower site, and went on to state that the tower should not affect the value of use of the home. Mr. Doherty argued that there was no doubt the tower would affect his property value, and also disputed Mr. Chapman's estimate of the distance from Mr. Doherty's home to the tower site.

The intervenor expressed concern that most of the tower would be visible from his home in the summer, and that it would be more visible in the winter after the trees have lost their foliage. Mr. Doherty also noted that the flashing lights, as mandated by the FAA, on the tower would result in a serious negative visual impact for the area. Mr. Doherty entered into evidence a directive from the United States Department of Interior Fish and Wildlife Service stating that construction of new cell towers creates a significant impact on migratory birds. He also went on to state that the Applicant's proposed tower would place many beneficial migratory birds in the area in grave jeopardy.

Cases of this nature frequently involve a clash between two competing issues: preservation of Kentucky's scenic beauty and the need to ensure that the advantages of modern telecommunications technology are available to all of Kentucky's citizens. The issue of scenic beauty frequently arises because the location of a cellular tower is often in or near residential areas. The law, in requiring cellular companies to choose a location that is least objectionable, attempts to reconcile these competing interests; but, in the last

analysis, when no such reconciliation is possible, the need for service must triumph over aesthetics. KRS 278.020; KRS 278.650. Therefore, although the intervenor in this case has demonstrated that the site proposed herein leaves much to be desired from an aesthetic point of view, the record indicates that no suitable alternative site exists. The Commission, therefore, finds that the public convenience and necessity require the proposed construction. In addition, the Commission finds that the Applicant has adequately addressed each contested issue, and provided the Commission with enough evidence upon which to base a final decision in this matter.

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, the Applicant 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 the Applicant.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the Applicant 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. The Applicant is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a self-

supporting antenna tower not to exceed 255 feet in height, with attached antenna, and is to be located at 5 Johnson Loop Road, Scottsville, Allen County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 49' 37.8" by West Longitude 86° 18' 51.3".

2. The Applicant 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 7th day of December, 2001.

By the Commission

ATTEST:

Deputy Wm H. Fowler
Executive Director