

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CUMBERLAND CELLULAR	)	
PARTNERSHIP FOR ISSUANCE OF A	)	
CERTIFICATE OF PUBLIC CONVENIENCE AND	)	CASE NO.
NECESSITY TO CONSTRUCT A CELL SITE	)	2005-00445
(FRAZER) IN RURAL SERVICE AREA #5 (WAYNE)	)	
OF THE COMMONWEALTH OF KENTUCKY	)	

O R D E R

On December 16, 2005, Cumberland Cellular 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 900 KY Old Loop #3, Monticello, Wayne County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 56’ 30.42” by West Longitude 84° 43’ 28.58”.

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. The Applicant 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 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. Numerous individuals requested intervention in this matter. By separate Commission Orders dated June 27, 2006, 13 individuals were granted full intervention while 30 individuals were granted limited intervention. A public hearing was held on March 7, 2007, at the Commission's offices to address issues raised by the Intervenors. The Intervenors present at the hearing were Lottie Shelton and Linda Tate.

The Commission issued an Order on November 29, 2006 setting a procedural schedule for the public hearing. Additionally, the Commission identified the issues to be addressed at the hearing as the following: (1) the public convenience and necessity for the construction and the operation of the cell facility; (2) the design, engineering, and construction of the proposed cell facility (jurisdictional safety issues); (3) character of the general area concerned and the likely effects of the installation of the new cell facility on nearby land uses and values; (4) any acceptable alternative or collocation site, other than the site proposed in the Certificate of Public Convenience and Necessity application; and (5) any other issues that may arise in the course of the hearing.

The Commission further ordered that all Intervenors, if they chose to do so, had a period of 30 days from the date of the November 29, 2006 Order to submit to the Commission and the Applicant a list, with supporting technical information and evidence, of specific potential and suitable alternative locations or sites where the

proposed cell facility might be collocated or constructed, other than the proposed site named in the application. However, the Intervenors chose not to submit any possible alternative sites to be considered and, thus, that issue was not addressed at the hearing. The Applicant, represented by John E. Selent, Esq., called four direct witnesses to address the contested issues. Mrs. Shelton and Mrs. Tate appeared pro se, and Mrs. Shelton was called to testify as a witness by Mrs. Tate.

The Applicant called George Chapman as its first witness. Mr. Chapman is currently the Managing Director of Integra Realty Resources and was called to address the character of the general area concerned and the likely effects of the installation of the new cell facility on nearby land uses and values. Throughout his testimony, Mr. Chapman utilized a report that his firm had prepared on the issue of cell towers and their impact upon nearby real estate.<sup>1</sup> As part of this report, Mr. Chapman cited a study performed in the Louisville area in 1996 which indicated the impact on the market value of housing for varying distances from a tower. The study concluded the impact on value decreased as the distance from the property to the tower increased, and there were no impacts beyond 350 feet. Mr. Chapman stated that there would be no impact on surrounding real estate due to the construction of the proposed tower. He further estimated that the nearest Intervenor's property was 390 feet from the proposed tower, and would thus not be adversely affected by the tower. The report cited by Mr. Chapman also contained several photographs of the area surrounding the proposed tower. Mr. Chapman characterized the area as rural in nature with some industrial and commercial properties along with housing and farming properties.

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<sup>1</sup> Applicant's Exhibit 1.

Mrs. Tate then questioned the validity of the analysis in the report cited by Mr. Chapman based on the fact that the survey was conducted in Louisville. In addition, Mrs. Tate questioned the impact that the proposed tower would have on tourism in the surrounding area. In response, Mr. Chapman stated that while the Intervenors may feel that a cell tower would negatively affect a buyer's decision in purchasing a home, his analysis and his conclusions were based upon factual evidence of people who had purchased property near a cell tower.

The Applicant next called Scott McCloud, Vice President, Wireless Network of Bluegrass Cellular Inc. Mr. McCloud was called to address the public necessity for the construction and operation of the proposed site. Mr. McCloud testified that, according to Transportation Cabinet traffic information, on a daily basis approximately 8,000 cars travel the stretch of Highway 90 that would be covered by the proposed tower.<sup>2</sup> He further stated this data is routinely utilized by his company in locating the need for towers, and this portion of Highway 90 is currently uncovered. In addition, according to Mr. McCloud, the proposed tower will complete a coverage gap between two existing towers, provide continuous, uninterrupted service, and address customer complaints of no service in the area.

Mrs. Tate argued that the tower was not a public necessity, but rather a Bluegrass Cellular necessity. Mr. McCloud pointed out, however, that the tower would also provide seamless coverage for those companies that roam using Bluegrass Cellular towers. Mr. McCloud was unable to give an exact number of dropped calls that have been reported in the area surrounding the proposed construction.

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<sup>2</sup> Applicant's Exhibit 2.

The Applicant's next witness was Leila Rezanavaz who serves as Senior Radio Frequency ("RF") Consulting Engineer for Lukas, Nace, Gutierrez, and Sachs. Ms. Rezanavaz was called to testify as to the selection of the proposed site pursuant to RF requirements and as to the public necessity for the construction and operation of the proposed site. Ms. Rezanavaz produced two separate computer models to indicate the effect of the tower on the coverage in the area surrounding the proposed construction. The first map indicated a fairly sizeable gap in coverage along Highway 90 near the proposed construction.<sup>3</sup> The second map showed the effect of the proposed tower and how the construction would alleviate the gaps in coverage that currently exist.<sup>4</sup>

Mrs. Shelton asked Ms. Rezanavaz to testify as to how long a caller would be without a signal traveling Highway 90 at approximately 60 miles per hour through the area that is currently uncovered according to the Applicant's coverage maps. Ms. Rezanavaz stated that the caller would be without a signal for roughly 4 minutes traveling down that portion of the highway at that speed as the coverage now permits. Ms. Rezanavaz further testified that a system is not designed based on how many minutes a person is without coverage, but that the integrity of the system is based on seamless coverage along major highways and business and residential areas, and beyond that any minor roadways.

Finally, the Applicant called Johnny Rhodes, a licensed Professional Engineer who currently serves as the President of Eastpointe Engineering Group, LLC, to testify as to the jurisdictional safety issues, that is, the design, engineering, and construction of

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<sup>3</sup> Applicant's Exhibit 14.

<sup>4</sup> Applicant's Exhibit 15.

the tower and its foundation, including the suitability and preparation of the proposed cell site. Mr. Rhodes addressed the design considerations and loading capacity of the proposed tower along with specifics regarding the foundation design and geotechnical engineering report. The information covered by Mr. Rhodes in his testimony had been previously filed with the Commission as part of the Applicant's original application.

Mrs. Tate raised concerns regarding the field in which the proposed construction will take place. Further, Mrs. Tate recalled pictures of the proposed site submitted by the Applicant as exhibits earlier in the hearing to indicate the tendency of the field to retain water, and characterized the field as "swamp-like." Mr. Rhodes stated that in the foundation design, the first three feet of soil below the surface is taken into consideration, but what is below that level is of importance to the design considerations. Further, he stated that surface water is not a consideration when determining foundation design. In addition, he referred to the geotechnical engineering report which contains soil measurements up to 30 feet deep, and stated that the report indicated there was no evidence of water in the soil at a level that would affect the foundation design.

At the conclusion of the Applicant's case, Mrs. Tate called Mrs. Shelton to the stand to testify as to her thoughts on the proposed construction. Mrs. Shelton indicated concern that the proposed tower would be too near to her property, and she feared the tower would become an eye sore to the community.

In its closing statements, the Applicant reiterated the need for the proposed tower as it will fill in a gap of coverage that currently exists in the Applicant's system as well as address the complaints of unsatisfied customers. The Intervenors claimed that the proposed tower would not be a benefit to the community or its tourism, and that the

tower is not a public necessity but a customer service necessity. In addition, the Intervenor feels the tower is unsightly and located in an area that is not geologically sound.

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 Commission, in encouraging cellular companies to pursue a location that is least objectionable, attempts to reconcile these competing interests. KRS 278.020; KRS 278.650.

Pursuant to KRS 278.030(2), the Applicant is required to "furnish adequate, efficient and reasonable service." It is, in turn, the obligation of this Commission to see that the facilities of all utilities it regulates are sufficient to comply with this mandate.<sup>5</sup> Here, the Applicant has shown that denial of the instant application would jeopardize the availability of adequate utility service. Accordingly, the Commission finds that the application should be approved.

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, a Certificate of Public Convenience and Necessity to construct the proposed facility should be granted.

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<sup>5</sup> See KRS 278.040 (requiring the Commission to enforce the provisions of KRS Chapter 278); KRS 278.280 (requiring the Commission to see, among other things, that the facilities of utilities are sufficient and adequate).

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.

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 900 KY Old Loop #3, Monticello, Wayne County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 56' 30.42" by West Longitude 84° 43' 28.58".
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.
3. The Applicant shall also notify the Commission in writing, within 20 days of completion, that it has finished construction of the tower and the date upon which said construction was complete.



Done at Frankfort, Kentucky, this 13<sup>th</sup> day of July, 2007.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Executive Director