

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF POWERTEL/MEMPHIS, INC.)	
D/B/A T-MOBILE FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY TO CONSTRUCT AN ADDITIONAL)	
CELL FACILITY AT LEO BOWLDS ROAD,)	CASE NO.
HARDINSBURG, BRECKINRIDGE COUNTY,)	2009-00006
KENTUCKY)	
)	
(THE ROUGH 1 FACILITY))	

O R D E R

On January 13, 2009, Powertel/Memphis, Inc., a Delaware corporation d/b/a T-Mobile (“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 260 feet in height, with attached antenna, to be located at Leo Bowlds Road, Hardinsburg, Breckinridge County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 38’ 36.32” by West Longitude 86° 27’ 59.58”.

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. The Applicant has filed a copy of the FAA approval with the Commission, but the KAZC approval has not yet been filed.

The Applicant has filed evidence of the appropriate notices provided pursuant to 807 KAR 5:063. On March 17, 2009, the Commission granted the motion for intervention filed by James S. and Nancy E. Henning on March 2, 2009. A hearing was held in this matter on October 22, 2009 to address issues raised by the Intervenors. The Intervenors in this case were not present for the hearing.

The Commission issued an Order on August 12, 2009 setting a procedural schedule for the public hearing. Additionally, the Commission identified the issues to be addressed at the hearing as follows: (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) 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; (4) any acceptable alternative or collocation site that had been filed with T-Mobile and the Commission; and (5) any other issues that may arise in the course of the hearing. The Intervenors were served with a copy of this Order, and no further Orders were issued. The Applicant called four direct witnesses to address the contested issues. The Intervenors were not present at the hearing, and no witnesses testified on their behalf.

T-Mobile’s first witness was Mr. Raffi Achiba, a Radio Frequency (“RF”) Engineer who is an employee of Applicant. Mr. Achiba testified as to the current deficiencies in T-

Mobile's coverage of this area of Breckinridge County and testified that the general location selected by T-Mobile was optimum for correcting those deficiencies. He stated that T-Mobile had received both FAA and KAZC approval for the selected location. He additionally testified that there were no viable collocation possibilities.

Mr. Robert Gahagan, who, along with his spouse, owns the property where the proposed tower will be located, testified that he and his wife own 400 contiguous acres, that the general area is "very rural," and that they have received no complaints about the proposed tower except from the Hennings.

Mr. Hamlet Hope, an employee of Applicant's construction management consultant, was T-Mobile's third witness. He testified that the tower in question will be a 250-foot self-supported tower and will cost approximately \$140,000 to \$170,000 to construct. He testified that the selected location, given its close proximity to Leo Bowlds Road, would not require T-Mobile to incur significant cost for road construction. However, the three alternative sites requested by the Hennings (one through three) are 2,700 feet, 1,700 feet, and 1,500 feet, respectively, from Leo Bowlds Road, with a minimal cost of \$12 per linear foot for road construction, yet they would provide no better coverage than the selected site. The selected site is not in proximity to any buildings and poses no safety issues.

Applicant's fourth witness was Mr. Martin Brown, a real estate appraiser from Galloway Appraisal Company of Louisville, Kentucky. Mr. Brown testified that the area was rural-agricultural and that various studies, including those conducted by his company, have found that the location of cell towers in such areas have no negative effect on property values. Hence, it was his opinion that the location of the proposed

tower at the site selected by T-Mobile would have no negative effect on the value of the Hennings' property.

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 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 that, therefore, a Certificate of Public Convenience and Necessity to construct the proposed facility should be granted. The Intervenor's mere generalized statements of concern about the decrease in their property values were not sufficient to meet the requirement of substantial evidence.¹

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.

¹ See, California RSA No. 4 v. Madera County, 332 F. Supp. 2d 1291 (E. D. Cal. 2003).

IT IS THEREFORE ORDERED that:

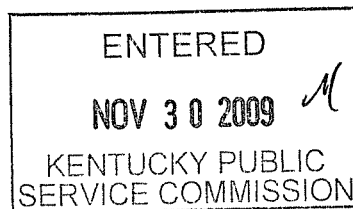
1. The Applicant is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 260 feet in height, with attached antenna, and is to be located at Leo Bowlds Road, Hardinsburg, Breckinridge County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 38' 36.32" by West Longitude 86° 27' 59.58".

2. The Applicant shall file a copy of the final decision regarding the pending KAZC application for the proposed construction within 10 days of receiving the decision.

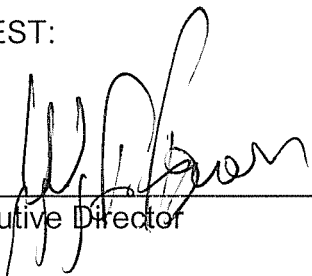
3. The Applicant shall immediately notify the Commission in writing if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of three months in the manner authorized by this Order.

4. 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.

By the Commission



ATTEST:



Executive Director

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