

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LEXINGTON MSA LIMITED )  
PARTNERSHIP FOR ISSUANCE OF A )  
CERTIFICATE OF PUBLIC CONVENIENCE AND )  
NECESSITY TO CONSTRUCT AN ADDITIONAL ) CASE NO. 94-237  
CELL SITE IN LEXINGTON KENTUCKY FOR THE )  
PROVISION OF DOMESTIC PUBLIC CELLULAR )  
RADIO TELECOMMUNICATIONS SERVICE TO THE )  
PUBLIC IN THE LEXINGTON MSA )

O R D E R

On June 21, 1994, Lexington MSA Limited Partnership ("Lexington MSA Partnership") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower in the Lexington Metropolitan Statistical Area ("Lexington MSA"). The proposed cell site consists of a self-supporting antenna tower not to exceed 200 feet in height, with attached antennas, to be located at 1100 Armstrong Mill Road, Lexington, Fayette County, Kentucky. The coordinates for the proposed cell site are North Latitude 37° 58' 45.28" by West Longitude 84° 29' 34.78".

Lexington MSA Partnership has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed cell site. Based upon the application, the design of the tower and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code, with reference to earthquakes, winds, and tornadoes.

Lexington MSA Partnership has notified the Lexington-Fayette Urban County Planning and Zoning Commission ("Planning Commission") of the proposed construction. Lexington MSA Partnership 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 cell site. Both decisions are pending.

Lexington MSA Partnership has filed notices verifying that each person who owns property or resides within 500 feet of the proposed cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners and residents of their right to intervene. The Planning Commission along with joint property owners Percy and Viola Brown intervened in this proceeding, and a public hearing was held October 19, 1994.

The primary focus of the Planning Commission's objection was that the cellular facility would be inconsistent with land use guidelines established by its 1988 Comprehensive Plan. The Planning Commission argued that construction of the proposed cellular facility would disrupt future development in the area and would set a precedent for other property owners to deviate from the Comprehensive Plan.

The Planning Commission opposes the location of cellular towers on property designated for residential uses and stresses that cellular towers are more compatible with commercial and industrial areas. The Browns are the nearest property owners to the proposed cell facility. They oppose the construction due to

safety and aesthetic concerns and the potential impact on property value.

Lexington MSA Partnership claims that the proposed facility is absolutely necessary for alleviating capacity and coverage problems in the area. According to the Partnership's evidence, its property acquisition team contacted most if not all owners of commercial property in the densely populated area but none were willing to lease or sell property for the tower. Its evidence also reflected that the proposed property was the only property available in the primarily residential search area specified by its radio frequency engineer likely to cause few objections while still meeting technical requirements.

There do not appear to be any significant safety concerns associated with the proposed cell site location. The proposed site is adjacent to currently undeveloped property and the only structure within the falling radius of the tower is owned by the lessor. Although the Planning Commission argued that development of nearby property, which is pending local approval, would result in residences located approximately 200 feet from the proposed tower, Lexington MSA Partnership asserts that nearby property is unlikely to be developed in the near future because it lies within the flood plain. Both the pastor of the lessor Church and the Planning Commission's witness testified as to the difficulties involved in obtaining permits to build upon land within the flood plain in Fayette County.

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, Lexington MSA Partnership should notify the Commission if it does not use this antenna tower to provide cellular radio telecommunications services 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 Lexington MSA Partnership.

Based on the record and being sufficiently advised, the Commission finds that there is insufficient evidence to conclude that the proposed cellular facility will have any impact on the safety of residents or devalue property in the vicinity of the proposed cell site. Although the proposed facility does not conform to the land use guidelines established by the Comprehensive Plan, the record is clear and uncontroverted regarding the shortage of available commercial property and the absence of industrial property in the search area prescribed by Lexington MSA Partnership. The proposed location appears to be an acceptable site in a highly populated, primarily residential, area and minimizes aesthetic and safety concerns to the extent possible.

Based on these findings the Commission concludes that Lexington MSA Partnership should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed cell site in the Lexington MSA under its currently approved tariff.

IT IS THEREFORE ORDERED that:



1. Lexington MSA Partnership be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a self-supporting antenna tower not to exceed 200 feet in height, with attached antennas, to be located at 1100 Armstrong Mill Road, Lexington, Fayette County, Kentucky. The coordinates for the proposed cell site are North Latitude 37° 58' 45.28" by West Longitude 84° 29' 34.78".

2. Lexington MSA Partnership 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. Lexington MSA Partnership 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 15th day of December, 1994.


PUBLIC SERVICE COMMISSION

  
Chairman  
  
Vice Chairman

CONCURRENCE OF COMMISSIONER LINDA K. BREATHITT

I concur in the Commission's decision in this case. As noted in today's order, KRS 100.324(1) exempts the proposed construction from the jurisdiction of the Lexington/Fayette County Planning and Zoning Commission. The Commission's jurisdiction is grounded on the concepts of public convenience and necessity. Therefore, our primary concern is whether the construction is needed to enable the utility to provide its service to the public.

At the same time, I share the concerns of many members of the general public who believe that facilities such as the tower approved today are out of place in residential areas. Utilities seeking to obtain certificates of public necessity and convenience should make every effort to comply with the applicable planning and zoning regulations when choosing locations for their facilities.

  
Commissioner

ATTEST:

  
Executive Director