

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LEXINGTON MSA LIMITED)
PARTNERSHIP FOR ISSUANCE OF A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY TO)
CONSTRUCT AN ADDITIONAL CELL SITE IN)
MIDWAY, WOODFORD COUNTY, KENTUCKY, FOR) CASE NO. 95-215
THE PURPOSE OF DOMESTIC PUBLIC CELLULAR)
RADIO TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN THE LEXINGTON MSA AREA)

O R D E R

On November 27, 1995, after a hearing, the Commission issued its Final Order in this case, granting Lexington MSA Limited Partnership d/b/a BellSouth Mobility, Inc. ("Lexington MSA Partnership") a certificate of public convenience and necessity to construct a cellular facility on Spring Station Pike, Midway, Woodford County, Kentucky. On December 18, 1995, Nuckols Farm, Inc. ("Nuckols Farm") filed a Petition for Rehearing ("Petition") pursuant to KRS 278.400. Subsequently, on January 2, 1996, Lexington MSA Partnership filed its Response to Nuckols Farm Petition for Rehearing ("Response").

Pursuant to KRS 278.400, a party may present at rehearing "additional evidence that could not with reasonable diligence have been offered on the former hearing." Nuckols Farm does not offer any such evidence. The bulk of its petition reiterates evidence and legal argument previously presented to, and considered by, the Commission. The only evidence offered by Nuckols Farm that was not

already in the record prior to the issuance of the final Order pertains to the possibility that Cellular One Corporation ("Cellular One") could co-locate a cellular facility on a Lexington MSA Limited Partnership tower north of I-64. This evidence, a March 2, 1995 letter from Brent Rice, Cellular One's attorney, with attached map and Site Acquisition Request Form dated January 27, 1995, allegedly depicts a Cellular One search area corresponding generally with that of Lexington MSA Partnership and extending north of I-64 to include a portion of the property offered by Nuckols Farm as an alternative site. However, these documents were mailed to Nuckols Farm in March, and could "with reasonable diligence" have been offered at the August 31, 1995 hearing. The implication of these documents -- that Cellular One could co-locate on a tower north of I-64 -- contradicts testimony of Cellular One's Manager of Network Operations. This witness stated repeatedly at the hearing that a location north of I-64 in this area is unsuitable for Cellular One. Consequently, the documents not only could have been offered at the hearing but should have been offered at the hearing.

Nuckols Farm does not explain why it did not offer these documents at the hearing. Had it done so, Lexington MSA Partnership could have explained then what it explains now in its Response: for technical reasons stated by Cellular One Radio System Design Engineer Kerry Risch, in an affidavit attached to the Response, Cellular One determined prior to the hearing that it

could not locate a cellular facility north of I-64. Consequently, the documents belatedly offered by Nuckols Farm are obsolete.

The Commission being sufficiently advised, IT IS THEREFORE ORDERED that the petition of Nuckols Farm, Inc., for rehearing is denied.

Done at Frankfort, Kentucky, this 8th day of January, 1996.

PUBLIC SERVICE COMMISSION

Chairman



Vice Chairman



Commissioner

ATTEST:



Executive Director