

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. 95-456
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 October 17, 1995, Lexington MSA Limited Partnership d/b/a BellSouth Mobility, Inc. ("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 ("the 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 on Viley Road near the Old Frankfort Pike, Lexington, Fayette County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 03' 39.28" by West Longitude 84° 33' 05.79".

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.

Pursuant to KRS 100.324(1), the proposed cell site's construction is exempt from local zoning ordinances. However, Lexington MSA Partnership has notified the Lexington/Fayette Urban County Planning 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 applications 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. In addition, Lexington MSA Partnership has posted notice of the proposed construction in a visible location for at least two weeks after filing its application. The Commission received objections to the proposed construction from two property owners and the Planning Commission. Lexington MSA Partnership responded to the objections in writing and subsequently filed a revised site plan which relocated the proposed construction approximately 50 feet south of the original location. One property owner, James F. Davis, requested and was granted intervention in this matter but later withdrew as an intervenor after stating that his concerns had been addressed by

Lexington MSA Partnership. After receiving Lexington MSA Partnership's response, the remaining property owner, Roger Hougham, filed another letter stating his continued objection; however, he made no request for intervention or a hearing. The Planning Commission stated that it would not oppose the proposed construction, as revised, if certain conditions were met: (1) the revised location is approved by the Commission; (2) the tower is screened in accordance with the Zoning Ordinance for utility substations; and (3) the Commission requires the tower to be removed by the owner if the tower ceases to be used for cellular telephone transmissions. The Commission finds that the industrial location selected by Lexington MSA Partnership is suitable for the proposed construction. In addition, the Commission finds that the conditions proposed by the Planning Commission are reasonable and should be observed by Lexington MSA Partnership.

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.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds 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 on Viley Road near the Old Frankfort Pike, Lexington, Fayette County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 03' 39.28" by West Longitude 84° 33' 05.79".

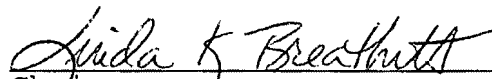
2. Lexington MSA Partnership shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the proposed construction within 10 days of receiving these decisions.


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.

4. Lexington MSA Partnership shall screen the proposed construction in accordance with the Zoning Ordinance for utility substations as requested by the Planning Commission.

Done at Frankfort, Kentucky, this 7th day of February, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director