

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CGSA, INC. FOR )  
ISSUANCE OF A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
AN ADDITIONAL CELL SITE IN LOUISVILLE, )  
KENTUCKY FOR THE PROVISION OF DOMESTIC ) CASE NO. 96-272  
PUBLIC CELLULAR RADIO )  
TELECOMMUNICATIONS SERVICE TO THE )  
PUBLIC IN JEFFERSON COUNTY, KENTUCKY AND )  
THE LOUISVILLE MSA )

O R D E R

On June 13, 1996, Kentucky CGSA, Inc. d/b/a BellSouth Mobility, Inc. ("BellSouth Mobility") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications facility in the Louisville Metropolitan Statistical Area ("the Louisville MSA"). The proposed facility consists of a monopole antenna tower not to exceed 130 feet in height, with attached antennas, to be located at 949/951 Dixie Highway, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 14' 30.82" by West Longitude 85° 47' 3.64".

BellSouth Mobility 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 the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the proposed facility's construction is exempt from local zoning ordinances. However, BellSouth Mobility has notified the Louisville and Jefferson County Planning Commission of the proposed construction. To date, no comments have been filed by the Planning Commission. BellSouth Mobility 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.

BellSouth Mobility has filed notices verifying that each person who owns property or resides within 500 feet of the proposed facility 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, BellSouth Mobility has posted notice of the proposed construction in a visible location for at least two weeks after filing its application. The Commission received two protest letters from nearby property owners both of which intervened in this matter. In addition, the City of Louisville Development Authority ("City of Louisville") filed comments and intervened.

The Commission scheduled a hearing for October 25, 1996. On October 17, 1996, a joint motion was filed requesting continuance of the hearing pending negotiations between the parties which was granted. Additional comments were filed by the City of Louisville indicating that several alternative sites were investigated by the parties but no mutually agreeable site had been located. The City of Louisville offered to lease property to BellSouth Mobility at a nearby fire station which it argued was suitable for the proposed construction and would not interfere with planned development in the area. On February 25, 1997, BellSouth Mobility filed comments stating that efforts to find an acceptable

alternative site were unsuccessful and requested a hearing. A hearing in this matter was held May 27, 1997.

BellSouth Mobility stated that it has investigated the fire station property offered by the Intervenors and has concluded that it is not suitable for the proposed facility. BellSouth Mobility claims that the property is outside the established search area which would compromise the facilities performance and there may be insufficient space for the proposed facility on the fire station property. BellSouth Mobility further argues the search area was already adjusted to avoid residential developments and the fire station property would have a greater impact on residential property than the proposed site.

The City of Louisville and Brown-Forman Corporation opposed the proposed construction primarily because of the affect it may have on future commercial development in the area. The City of Louisville and Brown-Forman argue that the site is within the City's Empowerment Zone on a commercial corridor and the proposed construction would take potentially prime pieces of commercial property off the market for development. Both intervening parties attending the hearing maintain that the fire station property is a more suitable location for the proposed facility.

The Commission finds the location selected by BellSouth Mobility appears suitable for the proposed construction. It is unclear that the alternative site proposed by the Intervenors is more suitable than that proposed in the application when considering the impact on surrounding properties and the performance of the cellular system. BellSouth Mobility has shown its willingness to consider alternative sites but the proposed location was determined to be the best site available to minimize the impact on surrounding property and provide for the adequate operation of the cellular system.

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, BellSouth Mobility 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 BellSouth Mobility.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that BellSouth Mobility should be granted a Certificate of Public Convenience and Necessity to construct and operate the proposed facility in the Louisville MSA.

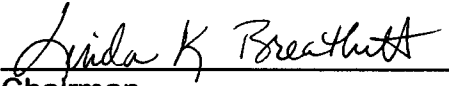
IT IS THEREFORE ORDERED that:

1. BellSouth Mobility is granted a Certificate of Public Convenience and Necessity to construct and operate a monopole antenna tower not to exceed 130 feet in height, with attached antennas, to be located at 949/951 Dixie Highway, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 14' 30.82" by West Longitude 85° 47' 3.64".

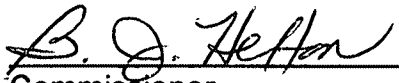
2. BellSouth Mobility shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 27th day of August, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director