

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE CINCINNATI)
SMSA LIMITED PARTNERSHIP FOR)
THE ISSUANCE OF A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A NEW) CASE NO. 97-201
CELL FACILITY FOR ITS DOMESTIC)
PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE IN)
HIGHLAND HEIGHTS, IN THE)
KENTUCKY PORTION OF THE)
CINCINNATI MSA)

O R D E R

On August 6, 1997, the Commission issued its Order granting to Cincinnati SMSA Limited Partnership ("Cincinnati SMSA") a Certificate of Public Convenience and Necessity to construct and operate a 154' or less monopole antenna tower at 80-82 Campbell Drive, Highland Heights, in Campbell County, Kentucky. On August 28, 1997, the CEO/President of the NKU Foundation filed a letter dated August 13, 1997, requesting that the certificate be amended to increase the approved tower height to 250' and that the certificate be transferred to another tower provider, TowerCom Midwest, which, according to the letter, will construct a tower and then lease space to Cincinnati SMSA and other users. The Commission will treat the letter as a motion.

This case is closed, and the Order of August 6, 1997 granting the certificate is final. The letter filed August 28 cannot be considered a petition for rehearing pursuant to KRS 278.400. Neither the NKU Foundation nor its CEO/President was a party to this case, and a petition for rehearing may be filed only by such a party. Id.

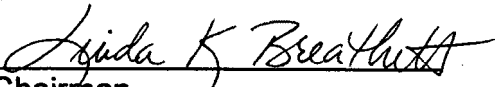
In addition, if TowerCom Midwest wishes to construct a tower for the provision of utility service, it should itself file an application for a certificate of authority to do so. KRS 278.020; KRS 278.650. Any such application must comply with 807 KAR 5:063.


Finally, pursuant to KRS 278.020(1), the authority conferred upon Cincinnati SMSA by the August 6, 1997 Order continues in effect until one year after the date of the Order. If Cincinnati SMSA begins construction in good faith pursuant to the terms of the Order within that year, the construction constitutes an exercise of its authority under the certificate. KRS 278.020(1). The decision as to whether that authority should be exercised belongs to Cincinnati SMSA, which should immediately inform the Commission should it decide not to exercise its authority to construct a tower. The Commission cannot deprive Cincinnati SMSA of authority it has lawfully received. Nor can it grant a certificate to a company which has filed no application.

The Commission being sufficiently advised, IT IS THEREFORE ORDERED that the motion of the CEO/President of the NKU Foundation is denied.

Done at Frankfort, Kentucky, this 11th day of September, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director