

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)
CELL SITE IN BOYLE COUNTY, KENTUCKY) CASE NO. 93-158
FOR THE PROVISION OF DOMESTIC PUBLIC)
CELLULAR RADIO TELECOMMUNICATIONS)
SERVICE TO THE PUBLIC IN THE B2 PORTION)
OF RURAL SERVICE AREA NO. 6)

O R D E R

On April 28, 1993, Lexington MSA Limited Partnership ("Lexington MSA") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate an additional cellular radio telecommunications antenna tower in the B2 portion of Kentucky Rural Service Area No. 6 ("RSA No. 6"). The B2 portion of RSA No. 6 includes Boyle, Casey, Garrard, Lincoln, and Madison counties of Kentucky. Lexington MSA requests authorization to construct a cell site in Boyle County, Kentucky. Lexington MSA was previously granted authority to operate a cellular radio telecommunications system in the B2 Portion of RSA No. 6 in Case No. 92-218.¹

¹ Case No. 92-218, Application of Lexington MSA Limited Partnership for Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Telecommunications Service to the Public for a Portion of Kentucky Rural Service Area No. 6 Which Includes Madison, Garrard, Boyle, Casey, and Lincoln Counties in Kentucky.

The proposed cell site consists of a 280 foot self-supporting tower, with attached antennas, not to exceed 300 feet in height to be located at 211 Forest Avenue, Danville, Boyle County, Kentucky. The coordinates for the proposed cell site are North Latitude 37° 38' 52.95" by West Longitude 84° 47' 12.50".

Lexington MSA filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") regarding the construction and operation of the proposed cell site. Both of those agencies have approved the construction. No further approvals from the Federal Communications Commission ("FCC") are necessary for the proposed cell site.

Lexington MSA has filed notices verifying that each property owner and resident 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 response to the notices, the Commission received two protests and one request for intervention. Hershel I. McKinley ("Intervenor") was granted intervention and at his request a hearing was held on August 4, 1993 at the Commission's offices in Frankfort.

The intervenor objected to the proposed cell site on the grounds that a tower will create a safety hazard and devalue properties in the area. On the issue of safety, he challenged the structural integrity of the proposed tower, the increased likelihood of lightning strikes, the impact of radio frequency emissions on the health of surrounding residents, and the tower's

accessibility to neighborhood children. Lexington MSA presented extensive expert testimony on the issues relating to the safety and design of the proposed tower.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the tower will be constructed in accord with all existing design standards and will be inspected after its erection to ensure proper construction. The application discloses that the tower and foundation are designed to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code, with reference to earthquakes, winds, and tornadoes.

The proposed tower will not increase the likelihood of lightning strikes in the surrounding area. Rather, the tower will safely ground lightning strikes that may occur in the immediate vicinity and possibly prevent contact with surrounding property. The radio frequency emissions from the proposed cell site will be significantly less than the applicable FCC standards. Furthermore, despite numerous scientific studies on this subject, there has been no definitive correlation between low-power radio frequency emissions and health affects.

In selecting a site for the proposed construction, Lexington MSA first determined potential sites based upon their elevation and ability to provide the necessary radio frequency coverage. Contact was then made with property owners and those sites unavailable for lease were eliminated. Consideration was also given to utilizing existing towers in the area. However, the existing towers were

eliminated as either not available for lease or structurally incapable of supporting the necessary facilities.

The proposed cell site at 211 Forest Avenue was selected on the basis of its elevation, radio frequency coverage, availability, and light industrial zoning classification. With this zoning classification a cellular tower is a permitted use. Although the construction of these facilities by a utility is exempted from local zoning ordinances pursuant to KRS 100.324(1), Lexington MSA did apply to the Danville-Boyle County Planning and Zoning Commission for approval of the proposed construction. After notice and hearing, construction permits were issued for the proposed tower.

The Commission recognizes that cellular towers, like water towers, bridges, and even swimming pools, may be an attractive nuisance for children. Lexington MSA stated that the proposed cell site will be surrounded by an eight foot high chain-link fence topped with three strands of barbed wire on 45 degree arms. This fence will be a formidable barrier and should deter attempts to enter the tower site.

Lexington MSA testified that based on studies of property valuations performed before and after the construction of cellular towers, there will be no diminution of property values in the surrounding area. The Commission recognizes that the tower is proposed to be constructed on but a small portion of a relatively large tract of property which is zoned light industrial. The north side of the proposed site abuts a major railroad switching yard.

Across the street to the south of the proposed site, and next door to the intervenor's property, is a tobacco warehouse which is zoned industrial. Considering all of the record evidence, we are unable to find that the proposed construction will devalue surrounding properties.

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 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.

There is sufficient customer demand in the Danville, Kentucky area to justify Lexington MSA's construction of a new cell site. The proposed facilities will not duplicate any existing facility operated by Lexington MSA and will not result in an unnecessary multiplicity of facilities or an excessive investment in relation to productivity or efficiency. Based on these findings, Lexington MSA should be granted a Certificate of Public Convenience and Necessity to construct and operate under its existing tariff the proposed cell site at 211 Forest Avenue, Danville, Kentucky.

IT IS THEREFORE ORDERED that:

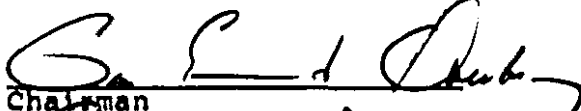
1. Lexington MSA is hereby granted a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower, with attached antennas, not to exceed 300 feet in height to be located at 211 Forest Avenue, Danville, Boyle County, Kentucky. The coordinates for the proposed cell site are North Latitude 37° 38' 52.95" by West Longitude 84° 47' 12.50".

2. Lexington MSA shall file copies of the final decisions regarding its FAA and KAZC applications for construction of this cell site within 10 days of the date of this Order.

3. Lexington MSA 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 three months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 27th day of October, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director