

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) CASE NO. 94-033
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 February 1, 1994, Lexington MSA Limited Partnership filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower to serve the Lexington Metropolitan Statistical Area ("Lexington MSA"). The Lexington MSA includes Bourbon, Clark, Fayette, Jessamine, Scott, and Woodford counties in Kentucky. Lexington MSA Limited Partnership has requested authorization to construct a cell site in Fayette County, Kentucky. Lexington MSA Limited Partnership was previously granted authority to operate a cellular radio telecommunications system in the Lexington MSA in Case No. 9679.¹

¹ Case No. 9679, The Application of Lexington MSA Limited Partnership for the Issuance of a Certificate of Public Convenience and Necessity to provide a New Domestic Public Cellular Radio Telecommunications Service to the Public in the Greater Lexington Metropolitan Area Including All, or Parts of, Bourbon, Clark, Fayette, Jessamine, Scott, and Woodford Counties in Kentucky and Tariff Approval.

The proposed cell site consists of a self-supporting antenna tower, not to exceed 280 feet in height, to be located at 2803 Georgetown Road, Lexington, Fayette County, Kentucky (the "Georgetown Road cell site"). The coordinates for the Georgetown Road cell site are North Latitude 38° 06' 28.5" by West Longitude 84° 31' 9.4".

Lexington MSA Limited Partnership has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Georgetown Road 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 Georgetown Road cell site's construction is exempt from local zoning ordinances. However, Lexington MSA Limited Partnership has notified the Lexington-Fayette Urban County Government Planning Commission of the proposed construction. Lexington MSA Limited 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 Georgetown Road cell site. Approval has been received from the FAA, while the KAZC application is still pending.

Lexington MSA Limited Partnership has notified all property owners and residents within 500 feet of the Georgetown Road cell site. The notice solicited comments and informed the property

owners and residents of their right to intervene. On February 17, 1994, the Commission received a protest letter from Tony Curtsinger. On February 18, 1994, the Commission received an intervention letter from Sarah and Kenneth Ramsey. On February 22, 1994, the Commission received a protest letter from Margaret Sullivan. On March 4, 1994, the Commission granted the Ramseys' intervention request and instructed Lexington MSA Limited Partnership to respond to the issues raised by the Ramseys and Mr. Curtsinger. On March 11, 1994, Lexington MSA Limited Partnership was instructed to respond to the issues raised by Ms. Sullivan. The Commission also notified the parties of their right to intervene and request a public hearing in this case. On April 1, 1994, the Commission received an intervention request from Ms. Sullivan. On April 5, 1994, the Commission granted Ms. Sullivan's intervention request. To date, no hearing requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine the 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 Limited Partnership should notify the Commission if it does not use this antenna tower to provide cellular 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 Limited Partnership.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Lexington MSA Limited Partnership should be granted a Certificate of Public Convenience and Necessity to construct and operate the Georgetown Road cell site under its currently approved tariff.

IT IS THEREFORE ORDERED that:

1. Lexington MSA Limited Partnership be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Georgetown Road cell site.

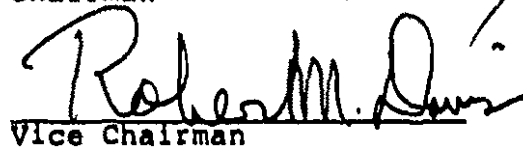
2. Lexington MSA Limited Partnership shall file a copy of the final decision regarding its pending KAZC application for this cell site construction within 10 days of receiving this decision.

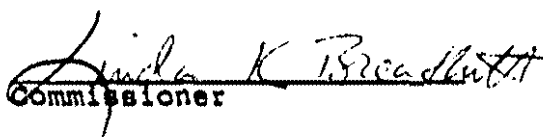
3. Lexington MSA Limited Partnership shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 19th day of May, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director