

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 FRANKLIN COUNTY, KENTUCKY) CASE NO. 94-285
FOR THE PROVISION OF DOMESTIC PUBLIC)
CELLULAR RADIO TELECOMMUNICATIONS)
SERVICE TO THE PUBLIC IN THE B-3)
PORTION OF KENTUCKY RURAL SERVICE AREA)
NO. 7)

O R D E R

On August 10, 1994, Lexington MSA Limited Partnership ("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 B-3 portion of Rural Service Area No. 7 ("B-3 portion of RSA No. 7"). The proposed cell site consists of a self-supporting antenna tower not to exceed 210 feet in height, with attached antennas, to be located at 370 Clifty Road, Frankfort, Franklin County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 12' 45.20" by West Longitude 84° 53' 06.61".

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 Frankfort/Franklin County 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 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. Several letters objecting to the proposed construction were received by the Commission. Two protestors requested and were granted full intervention in this proceeding and a public hearing was held January 19, 1995.

The Intervenors and other property owners opposed the proposed construction primarily due to aesthetic concerns. They also argued that the proposed tower may interfere with already disrupted television reception and that the construction may aggravate an existing septic system problem on the leased property.

Lexington MSA Partnership argues that the proposed construction is necessary to improve coverage. The proposed site was selected because it was ideal for providing service in the

vicinity and a television antenna tower already exists on the leased property. Lexington MSA Partnership considered locating its facilities on the existing tower but determined that it was structurally inadequate. Lexington MSA Partnership stated that any septic or interference problems worsened by the proposed facility would be corrected to a condition as good or better than what existed prior to the construction. In addition, to minimize the aesthetic impact of the proposed facility, Lexington MSA Partnership proposes to install a wooden privacy fence on three of the four sides visible to the surrounding property owners and has requested permission from the FAA for approval to operate the proposed tower without lighting.

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 finds that there is insufficient evidence to conclude that the proposed construction will constitute a safety hazard, unduly affect aesthetics or adversely impact property values in the surrounding area.

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 B-3 portion of RSA No. 7 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 210 feet in height, with attached antennas, to be located at 370 Clifty Road, Frankfort, Franklin County, Kentucky. The coordinates for the proposed cell site are North Latitude 38° 12' 45.20" by West Longitude 84° 53' 06.61".

2. In order to minimize any aesthetic impact, Lexington MSA Partnership shall install a wooden privacy fence and seek authorization from the proper authority to operate the facility without lighting as proposed by it during the hearing in this proceeding.

3. 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.

4. 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.

Done at Frankfort, Kentucky, this 9th day of March, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director