

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CGA, 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. 96-562  
PUBLIC CELLULAR RADIO )  
TELECOMMUNICATIONS SERVICE TO THE )  
PUBLIC IN JEFFERSON COUNTY, KENTUCKY AND )  
THE LOUISVILLE M.A. )

O R D E R

On November 22, 1996, Kentucky CGA, 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 service facility in the Louisville Metropolitan Statistical Area ("the Louisville M.A."). The proposed facility consists of a monopole antenna tower not to exceed 126 feet in height, with attached antennas, to be located at 1839 Frankfort Avenue, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 15' 33.49" by West Longitude 85° 42' 47.27".

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(5), BellSouth Mobility submitted a proposal of the construction to the Louisville and Jefferson County Planning Commission ("Planning Commission") on November 21, 1996. The Planning Commission is required to approve or reject a proposal within 60 days, or the proposal is deemed approved. Id. On February 18, 1997, BellSouth Mobility filed a letter stating that no response or final decision had been received from the Planning Commission and that, pursuant to KRS 278.650, it must be presumed that the proposal has been approved. On February 25, 1997, over a month after the statutory deadline apparently had passed, the Planning Commission filed a letter with the Commission saying it had "received no formal application for this site" and characterizing BellSouth Mobility's filing as a "pre-application plan review request." The Planning Commission asks the Commission to hold this case in abeyance until zoning review is complete. BellSouth Mobility responds, by letter dated March 6, 1997, that utility towers are not subject to requirements for variances, waivers, set-back lines, zoning and subdivision platting. Its submission, it argues, is sufficient for the Planning Commission to determine whether the proposal is "in accordance with the Comprehensive Plan and locally-adopted zoning regulations." BellSouth Mobility also reiterates that the lack of a final determination from the Planning Commission mandates that the proposal be deemed approved.

This Commission is most emphatically not the appropriate body to determine the law as it pertains to planning and zoning procedures. However, it is required to fulfill its own duty under statutes that pertain to it. The statute in question states that the Commission

is to go forward regarding an application after 60 days, or after the utility receives the determination of the Planning Commission, whichever comes first.

Therefore, the Commission will proceed with its final Order in this case without purporting to issue a determination as to whether the Planning Commission may require additional documents from BellSouth Mobility before BellSouth Mobility may lawfully begin construction. The Commission notes, however, that the provision of the statute permitting the Commission to override the Planning Commission's rejection of an application addresses the location of the proposed facility and not technical compliance with paperwork requirements. The documents submitted to the Planning Commission clearly indicate the proposed location.

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. The KAZC application has been approved and the FAA decision is pending.

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 several comments from nearby property owners objecting to the proposed construction. As ordered by the Commission, BellSouth Mobility responded in writing to the property owners' concerns. Under separate letter, the Commission informed the property owners of their right to request intervention and a hearing if BellSouth

Mobility's response did not satisfy their concerns. To date, no further comments have been filed with the Commission.

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 under its currently approved tariff.

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 126 feet in height, with attached antennas, to be located at 1839 Frankfort Avenue, Louisville, Jefferson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 15' 33.49" by West Longitude 85° 42' 47.27".

2. BellSouth Mobility shall file a copy of the final decision regarding its pending FAA application for the proposed construction within 10 days of receiving the decision.


3. 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 23rd day of April, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director