

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CGSA, INC. FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
AN ADDITIONAL CELL SITE IN LEXINGTON,)
KENTUCKY FOR THE PROVISION OF DOMESTIC) CASE NO. 97-023
PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN FAYETTE COUNTY, KENTUCKY AND)
THE LEXINGTON MSA)

O R D E R

On January 22, 1997, Kentucky CGSA, 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 facility in the Lexington Metropolitan Statistical Area ("MSA"). The proposed facility consists of a monopole antenna tower not to exceed 126 feet in height, with attached antennas, to be located at 2640 Richmond Road, Lexington, Fayette County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 0' 30.79" by West Longitude 84° 27' 29.42".

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(1), the proposed facility's construction is exempt from local zoning ordinances. However, BellSouth Mobility has notified the Lexington-Fayette Urban County Planning Commission ("Planning Commission") of the proposed construction. The Planning Commission filed comments on January 24, 1997. As ordered, BellSouth Mobility responded in writing to the Planning Commission. Under separate letter, the Commission notified the Planning Commission of its right to request intervention and a public hearing if BellSouth Mobility's response did not satisfy its concerns. On February 12, 1997, the Planning Commission filed additional comments stating that it would not oppose the proposed construction so long as (1) the tower is constructed as proposed; (2) proper screening is provided; and (3) the Commission requires removal of the tower if it ceases to be used for cellular service. BellSouth Mobility has filed no objections to these conditions. The Commission finds that the conditions offered by the Planning Commission appear to be reasonable and that BellSouth Mobility should comply with the conditions when constructing the proposed facility.

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 FAA decision is pending and the KAZC determined that a permit is not required for the proposed construction.

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 comments from one property owner opposing the proposed construction. As ordered by the Commission, BellSouth Mobility responded in writing to the property owner's comments and under separate letter the Commission notified the property owner of his right to request intervention and a hearing if BellSouth Mobility's response did not satisfy his concerns. The property owner requested and was granted intervention in this matter and a public hearing was scheduled at his request. However, after discussions with BellSouth Mobility, the property owner withdrew his concerns and stated that he would not attend the scheduled hearing. The Commission canceled the hearing and the application was submitted for a decision.

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 Lexington MSA.

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 2640 Richmond Road, Lexington, Fayette County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 0' 30.79" by West Longitude 84° 27' 29.42".

2. BellSouth Mobility shall provide reasonable screening of the proposed tower site and forward any significant changes of the proposed construction to the Planning Commission.

3. 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.

4. 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 29th day of July, 1997.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner