

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 (3449 BUCKHORN)
DRIVE) FOR THE PROVISION OF) CASE NO. 97-072
DOMESTIC PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO)
THE PUBLIC IN FAYETTE COUNTY,)
KENTUCKY AND THE LEXINGTON)
MSA)

O R D E R

On September 10, 1998, Lexington-Fayette Urban County Government ("LFUCG") filed a petition for rehearing asserting that Revised Exhibits 7, 8, and 9 should not be admitted because it was denied an opportunity to conduct cross-examination. LFUCG additionally states that the evidence upon which the Commission based its decision was not adequate.

In requesting to set aside the Order, LFUCG bears the burden of proving that the Commission's prior decision is unreasonable or unlawful by clear and satisfactory evidence. KRS 278.430; Public Service Com'n of Ky. v. Continental Telephone Co. of Ky., 692 S.W.2d 794 (1985). (A court may only reverse an Order of the Public Service Commission when the complaining party has shown by clear and convincing proof that the

determination of the commission was unlawful or unreasonable.) In this matter, LFUCG has failed to meet its burden of proof.

Revised Exhibits 7, 8, and 9 were submitted at the request of the hearing officer. They are the same exhibits that were originally submitted except that the cellular towers south of the study area are added to the exhibits. This request was made before LFUCG began its cross-examination concerning Exhibits 7, 8, and 9.¹ The record reflects that cross-examination was conducted with respect to the additions required for the Revised Exhibits 7, 8, and 9.² These exhibits are essentially the same as those submitted at the hearing. Therefore, no further cross-examination is necessary. LFUCG provided no evidence that the Commission's determination was unreasonably or unlawfully altered by the Revised Exhibits.

LFUCG also failed to meet its burden of proof in setting aside the Commission's determination that the proposed construction of the cell tower is necessary and that a better alternative site cannot be located. LFUCG offered no evidence, let alone clear and satisfactory evidence, that the Commission's ruling was unreasonable or unlawful.

The Commission having been sufficiently advised HEREBY ORDERS that LFUCG's petition for rehearing is denied.

¹ Transcript of Evidence at 210-211.

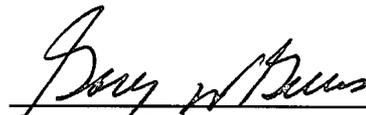
² Id. at 211-222.

Done at Frankfort, Kentucky, this 29th day of September, 1998.

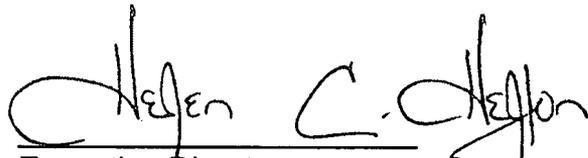
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director