

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. 98-169
PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN FAYETTE COUNTY, KENTUCKY AND)
THE LEXINGTON MSA)

O R D E R

This case, in which Kentucky CGSA, Inc. d/b/a BellSouth Mobility, Inc. (BellSouth Mobility) seeks authority to construct a 100 monopole to provide service to its wireless telecommunications customers at 361 Duke Road, Lexington, Kentucky, was heard by this Commission on September 29, 1998. Evidence regarding the suitability of the proposed site, as well as evidence regarding potential alternative sites, has been taken, and the parties post-hearing briefs have been filed. The Commission finds, however, that the matter should be held in abeyance pending receipt of one necessary clarification of the record.

Among the potential alternative sites discussed at the hearing is property located at Ecton Park. BellSouth Mobility s radio-frequency engineer, Richard Guittar, testified that the Ecton Park site would work.¹ BellSouth Mobility s witness Lawrence Hester stated that he met with Lexington-Fayette Urban County Government (LFUCG)

¹ Transcript of Evidence (Tr.) at 61.

officials including Bill Farmer, Joe Ewalt, and Chris King in regard to the possibility of locating a facility at Ecton Park. The consensus of the group was that neighbors of the park, who live in a residentially zoned area, would oppose a facility at that location. Nevertheless, potential options, including building a structure at the park to light the baseball field or constructing a clock tower within the park were discussed.² Mr. Hester testified, however, that the LFUCG would not permit BellSouth Mobility to build any sort of facility at Ecton Park, and that, in fact, Mr. Ewalt, Mr. King, and Mr. Farmer unanimously agreed that building at Ecton Park was not feasible.³ That would seem to close the matter, particularly since the Criteria for Review of Cellular Tower Applications of the LFUCG explicitly states that the LFUCG shall oppose towers which, inter alia, have a fall line which extends to any premises containing a park or other public open space.⁴

However, in its post-hearing brief, the LFUCG contends that:

Testimony presented on behalf of the Applicant indicated that Ecton Park was a viable location, but that the LFUCG rejected this proposition. There are problems with this assertion. First, as Chris King testified, there was no outright rejection by the LFUCG regarding the Ecton Park location. Second, Ecton Park was not even within the original search ring established by the Applicant. (TH, 175-76).⁵

The transcript pages cited by the LFUCG do not indicate that the LFUCG would permit BellSouth Mobility to construct a facility at Ecton Park. Nor does

² Tr. at 111-112.

³ Tr. at 112.

⁴ Criteria for Review of Cellular Tower Applications, as adopted by the Cellular Tower Committee of the LFUCG, Applicant Exhibit 9 (emphasis in original).

⁵ Brief on Behalf of Intervenor Lexington-Fayette Urban County Government at 6.

the LFUCG explicitly state that it considers the Ecton Park site to be superior, from a planning point of view, to the site chosen by BellSouth Mobility. However, if this is the LFUCG's position, and if the LFUCG would permit construction by BellSouth Mobility at Ecton Park, it should so notify this Commission within ten (10) days of the date of this Order. Final decision by this Commission shall be held in abeyance for this ten-day period.

IT IS SO ORDERED.

Done at Frankfort, Kentucky, this 27th day of January, 1999.

By the Commission

ATTEST:

Executive Director