

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA NO. 1 PARTNERSHIP)	
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE DOMESTIC)	CASE NO.
PUBLIC CELLULAR RADIO TELECOMMUNICATIONS IN)	92-040
KENTUCKY RURAL SERVICE AREA NO. 1)	

O R D E R

On February 10, 1992, Kentucky RSA No. 1 Partnership filed an application seeking a Certificate of Public Convenience and Necessity to provide public cellular radio telecommunications service, for approval of financing, and for establishment of initial rates in Rural Service Area No. 1 ("RSA No. 1") which includes Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall and McCracken counties in Kentucky. Kentucky RSA No. 1 Partnership has requested authorization to construct a cell site in McCracken County.

Concurrent with this case, Kentucky RSA No. 1 Partnership applied in Case No. 92-107¹ for a Certificate of Public Convenience and Necessity to provide cellular service in RSA No. 1 in the Draffenville area. In Case No. 92-107, the Commission

¹ Case No. 92-107, Application of Kentucky RSA No. 1 Partnership For Issuance of a Certificate of Public Convenience and Necessity to Construct an additional cell facility in Kentucky Rural Service Area No. 1 (Draffenville Cell Facility).

approved the initial tariff and granted Kentucky RSA No. 1 Partnership the authority to provide cellular service in RSA No. 1.

The proposed cell site consists of a 285 foot, or less, self-supporting tower with whip-like antennas mounted on top and parabolic antennas mounted on the sides. The tower will be located off Starr Hill Road, approximately 1/4 mile west of the intersection of Starr Hill Road and Hendron Road, McCracken County, Paducah, Kentucky ("the Paducah site"). The coordinates for the Paducah cell site are North Latitude 37° 01' 42" by West Longitude 88° 38' 22".

Kentucky RSA No. 1 Partnership provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Paducah cell site. Based upon the application, the tower and foundation design appear 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 Paducah cell site's construction is exempt from local zoning ordinances. Kentucky RSA No. 1 Partnership has filed applications with the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), and the Kentucky Airport Zoning Commission ("KAZC"). RSA No. 1 Partnership has received approval from the FCC while the FAA and KAZC applications are still pending.

Kentucky RSA No. 1 Partnership verified that each property owner and/or resident within 500 feet of the Paducah cell site has

been notified of the pending construction. The notice solicited any comments and informed the property owner and/or resident of their right to intervene. Intervention requests were received from 4 property owners and a hearing was held on May 13, 1992.

Intervenor, Nick Warren, who testified at the May 13, 1992 hearing raised objections to the proposed tower location relating to property devaluation and safety. Mr. Warren also presented three alternative site locations which he indicated would be less objectionable. Mr. Warren further testified that he was aware of and filed in the record a resolution of the McCracken County Planning Commission that the proposed location of the tower is inappropriate and that alternative locations be considered which will not conflict with existing residential developments and neighborhoods.

The Commission is aware that cell site construction is exempt from local zoning ordinances. Therefore, in considering the public interest with regard to Certificates of Public Convenience and Necessity, it also recognizes the duty to protect the public interest and in fulfilling that duty cannot decline to be cognizant of and sensitive to the concerns of the residents and/or landowners whose property is affected.

Kentucky RSA No. 1 Partnership has failed to demonstrate that the interests of the adjoining landowners and/or intervenors were adequately considered in the selection of the proposed site or that there are no other suitable, available alternative sites where adjoining residents and/or property owners would not be adversely affected. The Commission, having considered the


evidence of record and balancing the interests of the applicant against the interests of the intervenors, hereby finds that the public interest and convenience is not served by the granting of this certificate.

IT IS THEREFORE ORDERED that Kentucky RSA No. 1 Partnership's application for a Certificate of Public Convenience and Necessity to construct a 285 foot or less cellular radio telecommunications antenna tower in RSA No. 1 to be located off Starr Hill Road, approximately 1/4 mile west of the intersection of Starr Hill Road and Hendron Road, McCracken County, Paducah, Kentucky, be and it hereby is denied.

Done at Frankfort, Kentucky, this 24th day of July, 1992.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

DISSENT OF COMMISSIONER ROBERT M. DAVIS

I respectfully dissent.


ROBERT M. DAVIS
COMMISSIONER
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:


Executive Director, Acting