

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MOUNTAINEER CELLULAR)
GENERAL PARTNERSHIP FOR THE ISSUANCE OF) CASE NO. 93-131
A CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A TOWER)

O R D E R

On April 26, 1993, Mountaineer Cellular General Partnership ("Mountaineer Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower in Rural Service Area No. 10 ("RSA No. 10"). RSA No. 10 includes Breathitt, Estill, Jackson, Knott, Lee, Letcher, Owsley, Perry, Powell, and Wolfe counties. Mountaineer Cellular has requested authorization to construct a cell site in Letcher County, Kentucky. Mountaineer Cellular was previously granted authority to operate a cellular radio telecommunications system in RSA No. 10 in Case No. 91-002.¹

The proposed cell site consists of a guyed antenna tower not to exceed 180 feet. The tower is located approximately 2.25 miles south of the intersection of State Road 15 and U.S. Route 119 in Letcher County, Whitesburg, Kentucky (the "Whitesburg cell site").

¹ Case No. 91-002, The Application of Mountaineer Cellular General Partnership for the Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Services to the Public and for Establishment of Initial Rates.

The coordinates for the Whitesburg cell site are North Latitude 37° 04' 38" by West Longitude 82° 48' 30".

The Whitesburg tower would replace a pre-existing tower 180 feet in height, and Mountaineer Cellular inquired about the need to send out public notice. The Commission Staff took the position that since this tower will replace an existing 180 foot tower, public notice is not required for the Whitesburg cell site.²

Mountaineer Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Whitesburg cell site. Based upon the application, the tower and foundation design appears 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 Whitesburg cell site's construction is exempt from local zoning ordinances. Mountaineer Cellular has filed an application with and received approval from the Federal Communications Commission. Due to the tower height being under 200 feet, the Federal Aviation Administration and the Kentucky Airport Zoning Commission approvals are not required for the construction and operation of the Whitesburg cell site.

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

² See Exhibit F to Mountaineer Cellular's Application.

insufficient. To assist the Commission in its efforts to comply with this mandate, Mountaineer Cellular should notify the Commission if it does not use this antenna tower to provide cellular radio telecommunications services 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 Mountaineer Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Mountaineer Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Whitesburg cell site in RSA No. 10 under its previously approved tariff.

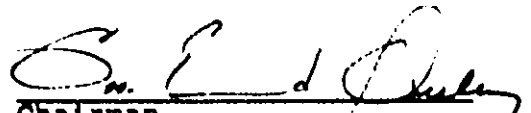
IT IS THEREFORE ORDERED that:

1. Mountaineer Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower, not to exceed 180 feet, in RSA No. 10 to be located approximately 2.25 miles south of the intersection of State Road 15 and U.S. Route 119 in Letcher County, Whitesburg, Kentucky. The coordinates for the Whitesburg cell site are North Latitude 37° 04' 38" by West Longitude 82° 48' 30".

2. Mountaineer Cellular 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 24th day of May, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director