

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #2, INC. )  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO CONSTRUCT A CELL SITE ) CASE NO. 94-135  
NEAR THE INTERSECTION OF BRIARWOOD )  
DRIVE AND KY 506 SOUTH OF MARION IN )  
CRITTENDEN COUNTY, KENTUCKY )

O R D E R

On April 7, 1994, Kentucky RSA #2, Inc. filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower to serve Rural Service Area No. 2 ("RSA No. 2"). RSA No. 2 includes Caldwell, Crittenden, Hopkins, Livingston, Lyon, Trigg, Union and Webster counties in Kentucky. Kentucky RSA #2, Inc. has requested authorization to construct a cell site in Crittenden County, Kentucky. Kentucky RSA #2, Inc. received the authority to operate a cellular radio telecommunications system in RSA No. 2 in Case No. 93-276.<sup>1</sup>

The proposed cell site consists of a self-supporting antenna tower, not to exceed 250 feet in height, to be located near the intersection of Briarwood Drive and KY 506 south of Marion in

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<sup>1</sup> Case No. 93-276, The Joint Application of Telephone and Data Systems, Inc., an Iowa Corporation, United States Cellular Corporation, A Delaware Corporation, and Mo-Tel Cellular, Inc., a Georgia Corporation d/b/a Cellular One Western Kentucky Cellular Telephone Company for Approval of the Merger of a Wholly-owned Subsidiary of Telephone and Data Systems, Inc. and Mo-Tel Cellular, Inc. and Transfer of the Surviving Corporation to United States Cellular Corporation.

Crittenden County, Kentucky (the "Marion cell site"). The coordinates for the Marion cell site are North Latitude 37° 19' 04" by West Longitude 88° 04' 32".

Kentucky RSA #2, Inc. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Marion cell site. Based upon the application, the design of the tower and foundation 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 Marion cell site's construction is exempt from local zoning ordinances. However, Kentucky RSA #2, Inc. has notified the Crittenden County Judge/Executive of the proposed construction. Kentucky RSA #2, Inc. has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") for the construction and operation of the Marion cell site. Both applications are still pending.

Kentucky RSA #2, Inc. has notified all property owners and residents within 500 feet of the Marion cell site. The notice solicited comments and informed the property owners and residents of their right to intervene. On April 25, 1994, a protest letter was received from Barry Workman. On April 29, 1994, the Commission ordered Kentucky RSA #2, Inc. to respond to the issues raised by Mr. Workman. On May 6, 1994, the Commission received a signed copy

of a request by Mr. Workman to withdraw his protest. To date, no intervention requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine the 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, Kentucky RSA #2, Inc. should notify the Commission if it does not use this antenna tower to provide cellular 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 Kentucky RSA #2, Inc.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Kentucky RSA #2, Inc. should be granted a Certificate of Public Convenience and Necessity to construct and operate the Marion cell site under its currently approved tariff.

IT IS THEREFORE ORDERED that:


1. Kentucky RSA #2, Inc. be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Marion cell site.

2. Kentucky RSA #2, Inc. shall file a copy of the final decisions regarding its pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.

3. Kentucky RSA #2, Inc. 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 8th day of June, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director