

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #9-10, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A CELL SITE OFF) CASE NO.
KY. HWY. 611, EAST OF DORTON, 12 MILES) 96-157
SOUTH OF PIKEVILLE IN PIKE COUNTY, KENTUCKY)
(HIGHWAY 23 SITE))

O R D E R

On June 7, 1996, Kentucky RSA #9-10, Inc. filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications facility for Rural Service Area No. 9 ("RSA No. 9"). RSA No. 9 includes Elliott, Floyd, Johnson, Lawrence, Magoffin, Martin, Morgan, and Pike counties. Kentucky RSA #9-10, Inc. has requested authorization to construct a cell site in Pike County. Kentucky RSA #9-10, Inc. was previously granted authority to operate a cellular radio telecommunications system in RSA No. 9 in Case No. 94-385.¹

The proposed cell site consists of a 400-foot or less guyed antenna tower to be located off Ky. Hwy. 611, east of Dorton and approximately twelve miles south of Pikeville

¹ Case No. 94-385, The Joint Application of Telephone and Data Systems, Inc., Kentucky RSA 9-10, Inc. and Alpha Cellular Telephone Company For Approval of the Acquisition by Telephone and Data Systems, Inc. of Those Assets of Alpha Cellular Telephone Company Constituting the Non-Wireline Cellular Operations in Kentucky Rural Service Areas 9 and 10, the Transfer of Such Assets to Kentucky RSA 9-10, Inc. and Establishment of Initial Tariffs Describing Conditions of Service.

in Pike County, Kentucky ("the Highway 23 cell site"). The coordinates for the Highway 23 cell site are North Latitude 37° 18' 52" by West Longitude 83° 20' 12".

Kentucky RSA #9-10, Inc. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Highway 23 cell site. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the Highway 23 cell site's construction is exempt from local zoning ordinances; however, Kentucky RSA #9-10, Inc. notified the Pike County Judge/Executive of the pending construction. Kentucky RSA #9-10, Inc. has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the Highway 23 cell site. Both applications are pending.

Kentucky RSA #9-10, Inc. has filed notices verifying that each person who owns property or who resides within 500 feet of the Highway 23 cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners or residents of their right to intervene. In addition, notice was posted in a visible location on the proposed site for at least two weeks after Kentucky RSA #9-10, Inc.'s application was filed. There were two protesters in this proceeding. The Commission informed them of their right to intervene and ordered Kentucky RSA #9-10, Inc. to respond to their concerns. Only one protestor, Don Batten, requested intervention, which was granted on July 16, 1996. On December 3, 1996, Mr. Batten filed a letter notifying the

Commission that he was withdrawing his objection to the proposed construction because the parties had reached an agreement.

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 insufficient. To assist the Commission in its efforts to comply with this mandate, Kentucky RSA #9-10, Inc. 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 Kentucky RSA #9-10, Inc.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Kentucky RSA #9-10, Inc. should be granted a Certificate of Public Convenience and Necessity to construct and operate the Highway 23 cell site in RSA No. 9 under its previously approved tariff.

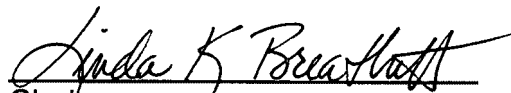
IT IS THEREFORE ORDERED that:

1. Kentucky RSA #9-10, Inc. is granted a Certificate of Public Convenience and Necessity to construct and operate the Highway 23 cell site.
2. Kentucky RSA #9-10, Inc. shall file a copy of the final decisions regarding the pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.

3. Kentucky RSA #9-10, 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 29th day of January, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director