

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #11, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A CELL SITE AT GRASSY) CASE NO. 96-427
KNOB ON PINE MOUNTAIN, APPROXIMATELY 5 MILES)
NORTHWEST OF THE CITY OF HARLAN IN HARLAN)
COUNTY, KENTUCKY (MOLUS SITE))

O R D E R

On October 23, 1996, Kentucky RSA #11, 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. 11 ("RSA No. 11"). RSA No. 11 includes Bell, Clay, Harlan, Knox, Leslie, and Whitley counties. Kentucky RSA #11, Inc. has requested authorization to construct a cell site in Harlan County. Kentucky RSA #11, Inc. was previously granted authority to operate a cellular radio telecommunications system in RSA No. 11 in Case No. 94-398.¹

¹ Case No. 94-398, The Joint Application of Telephone and Data Systems, Inc., an Iowa Corporation, United States Cellular Corporation, a Delaware Corporation, and First Kentucky Cellular Corp., a Delaware Corporation for Approval of (1) the Merger of First Kentucky Cellular Corp. and a Wholly Owned Subsidiary of Telephone and Data Systems, Inc., with First Kentucky Cellular Corp. the Surviving Entity, and the Transfer of First Kentucky Cellular Corporation, and (2) for Approval of a Tariff Describing Conditions of Service to be Provided by First Kentucky Cellular Corp. Following Consummation of the Acquisition of First Kentucky Cellular Corp.

The proposed cell site consists of a 250-foot or less guyed antenna tower to be located in Harlan County, Kentucky ("the Molus cell site"). The coordinates for the Molus cell site are North Latitude 36° 52' 15.31" by West Longitude 83° 24' 53.6".

Kentucky RSA #11, Inc. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Molus 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 Molus cell site's construction is exempt from local zoning ordinances; however, Kentucky RSA #11, Inc. notified the Harlan County Judge/Executive of the pending construction. Kentucky RSA #11, Inc. has filed applications with and received approvals from the Federal Aviation Administration and the Kentucky Airport Zoning Commission for the construction and operation of the Molus cell site.

Kentucky RSA #11, Inc. has filed notices verifying that each person who owns property or who resides within 500 feet of the Molus 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 #11, Inc.'s application was filed. On October 29, 1996, the Commission received a protest letter from Andrew and Kathleen Wilson and on November 8, 1996, the Commission received a protest letter from Hayward and Grover Blanton. Kentucky RSA #11 has responded to the concerns of the protesters and the Commission, in letters dated November 19 and 25,

1996, informed them of their right to intervene. To date, no intervention requests have been received.

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 #11, 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 #11, Inc.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Kentucky RSA #11, Inc. should be granted a Certificate of Public Convenience and Necessity to construct and operate the Molus cell site in RSA No. 11 under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Kentucky RSA #11, Inc. is granted a Certificate of Public Convenience and Necessity to construct and operate the Molus cell site.
2. Kentucky RSA #11, 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 5th day of February, 1997.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

Ed J. Goff
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director