

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 ON THE SOUTH SIDE OF HOG)
JOWL MOUNTAIN, WEST OF PLEASANT VIEW AND I-75,) CASE NO.
AND NORTH OF WOLF CREEK ROAD (HIGHWAY 628) IN) 97-006
SOUTHERN WHITLEY COUNTY, KENTUCKY)
(SAXTON CELL SITE))

O R D E R

On January 8, 1997, 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 Whitley 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

The proposed cell site consists of a 180-foot or less self-supporting antenna tower to be located on the south side of Hog Jowl Mountain, approximately one mile west of the

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.

community of Pleasant View and I-75, and one mile north of Wolf Creek Road in southern Whitley County, Kentucky ("the Saxton cell site"). The coordinates for the Saxton cell site are North Latitude 36° 40' 52" by West Longitude 83° 08' 46".

Kentucky RSA #11, Inc. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Saxton 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 Saxton cell site's construction is exempt from local zoning ordinances; however, Kentucky RSA #11, Inc. notified the Whitley County Judge/Executive of the pending construction. Kentucky RSA #11, 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 Saxton cell site. Both applications are pending.

Kentucky RSA #11, Inc. has filed notices verifying that each person who owns property or who resides within 500 feet of the Saxton 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 January 24, 1997, the Commission received a protest letter from Wesley Tipton, counsel representing Joe Patrick. On January 29, 1997, the Commission ordered Kentucky RSA #11, Inc. to respond to Mr. Patrick's concerns and informed him of

his right to intervene and request a hearing. 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 Saxton 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 Saxton cell site.
2. Kentucky RSA #11, 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 #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 12th day of May, 1997.

PUBLIC SERVICE COMMISSION

Lynda K. Breakitt
Chairman

Edue J. Helton
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director