

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.
A CERTIFICATE OF PUBLIC CONVENIENCE AND) 97-011
NECESSITY TO CONSTRUCT A TOWER)

O R D E R

On March 13, 1997, Mountaineer Cellular General Partnership ("Mountaineer Cellular") 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. 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. 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 180-foot or less self-supporting antenna tower to be located 2.2 miles northeast of the intersection of U.S. Highway 23 and 119 in Letcher County, Kentucky ("the Jenkins cell site"). The coordinates for the Jenkins cell site are North Latitude 37° 10' 13" by West Longitude 82° 36' 56".

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

Mountaineer Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Jenkins 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 Jenkins cell site's construction is exempt from local zoning ordinances; however, Mountaineer Cellular notified the Letcher County Judge/Executive of the pending construction. Mountaineer Cellular 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 Jenkins cell site. Both applications are pending.

Mountaineer Cellular has filed notices verifying that each person who owns property or who resides within 500 feet of the Jenkins 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 Mountaineer Cellular's application was filed. 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, 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 Jenkins cell site in RSA No. 10 under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Mountaineer Cellular is granted a Certificate of Public Convenience and Necessity to construct and operate the Jenkins cell site.
2. Mountaineer Cellular 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. 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 22nd day of May, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director