

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA NO. 3	)	
CELLULAR GENERAL PARTNERSHIP FOR	)	
APPROVAL TO CONSTRUCT AND OPERATE A	)	
NEW CELL FACILITY TO PROVIDE CELLULAR	)	CASE NO.
RADIO SERVICE (STEPHENSPORT) IN RURAL	)	2017-00143
SERVICE AREA NO. 3 (BRECKINRIDGE COUNTY)	)	
OF THE COMMONWEALTH OF KENTUCKY	)	

ORDER

On October 25, 2017, Kentucky RSA #3 Cellular General Partnership (“Kentucky RSA #3”) filed an application requesting a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a wireless telecommunications facility. The proposed facility consists of an antenna tower not to exceed 240 feet in height, with attached antennas, to be located at 6199 Highway 2779, Hardinsburg, Breckinridge County, Kentucky (“Stephensport cell tower”). The coordinates for the proposed facility are North Latitude 37° 54’07.45” by West Longitude 86° 31’56.18”.

Kentucky RSA #3 has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a licensed professional engineer has certified the plans.

Pursuant to 807 KAR 5:063, Kentucky RSA #3 has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to

807 KAR 5:063, Kentucky RSA #3 has filed evidence that the county judge/executive and all property owners within 500 feet and contiguous to the cell site have been notified of the proposed construction. The notices solicited any comments and informed the recipients of their right to request intervention.

Corey M. Biddle (“Mr. Biddle”), whose property surrounds the proposed site, and John K. Potts (“Mr. Potts”), whose property is adjacent to the proposed site, filed requests to intervene on December 27, 2017. Their requests to intervene were filed in addition to the public comments filed in emails and letters sent to the Commission.<sup>1</sup> Mr. Biddle and Mr. Potts state that they oppose the location of the Stephensport cell tower due to concerns about a potential decrease in property value. Mr. Biddle and Mr. Potts offer to provide competing expert testimony that the proposed cell tower would be inconsistent with the community image. Mr. Biddle and Mr. Potts also question whether Kentucky RSA #3 adequately researched options for collocation and alternative sites. Mr. Biddle and Mr. Potts argue that a more discreet location for a cell phone tower would be more appropriate. They also dispute that placing the tower at the proposed site would remedy gaps in coverage. On February 5, 2018, Mr. Biddle and Mr. Potts, legal counsel for Kentucky RSA #3, and representatives of Kentucky RSA #3 attended an informal conference with Commission Staff to discuss the issues involved in this matter.

On April 11, 2018, the Commission issued an Order denying intervention to Mr. Biddle and Mr. Potts based upon the standard set forth in 807 KAR 5:001, Section 4(11). The Commission found that Mr. Biddle and Mr. Potts failed to provide sufficient

---

<sup>1</sup> Public Comment: John Potts Letter, 4/10/2017; Corey M. Biddle Copy of 4/5/2017 email, 4/20/2017, Corey M. Biddle Copy of 4/5/2017 email, 5/17/2017.

evidence to support their assertions, and were, therefore, unlikely to present issues or develop facts that would assist the Commission in considering this matter. The documents filed by Mr. Biddle and Mr. Potts seeking intervention were deemed public comments pursuant to the April 11, 2018 Order.

Mr. Biddle filed a Request for Rehearing on May 4, 2018, and supplemental filings for the same on May 11, 2018. Kentucky RSA #3 filed its responses on May 11, 2018, and May 18, 2018. The Commission issued an Order denying rehearing of the issue of intervention on May 23, 2018, and the documents filed by Mr. Biddle were deemed public comments.

Kentucky RSA #3 has filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Kentucky RSA #3 has demonstrated that a facility is necessary to provide adequate utility service and, therefore, a CPCN to construct the proposed facility should be granted.

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 #3 should notify the Commission if the antenna tower is not used to provide service in the manner set out in the 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 #3.

IT IS THEREFORE ORDERED that:

1. Kentucky RSA #3 is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of an antenna tower not to exceed 240 feet in height, with attached antennas, to be located at 6199 Highway 2779, Hardinsburg, Breckinridge County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 54'07.45" by West Longitude 86° 31'56.18".

2. Kentucky RSA #3 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 three months in the manner authorized by this Order.

3. Documents filed, if any, in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED  
JUN 04 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

\*Felix Sharpe  
Dinsmore & Shohl, LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KENTUCKY 40202

\*Kentucky RSA #3 Cellular General Partnership,  
2902 Ring Road  
P. O. Box 5012  
Elizabethtown, KY 42701

\*Honorable John E Selent  
Attorney at Law  
Dinsmore & Shohl, LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KENTUCKY 40202