

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #2, INC.)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO CONSTRUCT A CELL SITE) CASE NO. 94-164
OFF RICKETTS ROAD SOUTHWEST OF)
MORGANFIELD IN UNION COUNTY, KENTUCKY)

O R D E R

On May 6, 1994, Kentucky RSA #2, Inc. filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower to serve Rural Service Area No. 2 ("RSA No. 2"). RSA No. 2 includes Caldwell, Crittenden, Hopkins, Livingston, Lyon, Trigg, Union and Webster counties in Kentucky. Kentucky RSA #2, Inc. has requested authorization to construct a cell site in Union County, Kentucky. Kentucky RSA #2, Inc. received the authority to operate a cellular radio telecommunications system in RSA No. 2 in Case No. 93-276.¹

The proposed cell site consists of a self-supporting antenna tower, not to exceed 300 feet in height, to be located off Ricketts Road, southwest of Morganfield in Union County, Kentucky ("the

¹ Case No. 93-276, The Joint Applicant of Telephone and Data Systems, Inc., an Iowa Corporation, United States Cellular Corporation, A Delaware Corporation, and Mo-Tel Cellular, Inc., a Georgia Corporation d/b/a Cellular One Western Kentucky Cellular Telephone Company for Approval of the Merger of a Wholly-owned Subsidiary of Telephone and Data Systems, Inc. and Mo-Tel Cellular, Inc. and Transfer of the Surviving Corporation to United States Cellular Corporation.

Morganfield cell site"). The coordinates for the Morganfield cell site are North Latitude 37° 39' 12" by West Longitude 87° 55' 12".

Kentucky RSA #2, Inc. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Morganfield cell site. Based upon the application, the design of the tower and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code, with reference to earthquakes, winds, and tornadoes.

Pursuant to KRS 100.324(1), the Morganfield cell site's construction is exempt from local zoning ordinances. However, Kentucky RSA #2, Inc. has notified the Union County Judge/Executive of the proposed construction. Kentucky RSA #2, Inc. has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") for the construction and operation of the Morganfield cell site. Both applications are still pending.

Kentucky RSA #2, Inc. has notified all property owners and residents within 500 feet of the Morganfield cell site. The notice solicited comments and informed the property owners and residents of their right to intervene. On May 13, 1994, an intervention letter was received, and intervention was granted to James D. Shreve, Sr., who contended that Kentucky RSA #2, Inc. could not erect a tower on property adjacent to his, due to deed restrictions. On July 1, 1994, Mr. Shreve was informed by Commission Order that protection of covenant restrictions are

outside the scope of Commission authority and would have to be raised in the Kentucky Court of Justice. Mr. Shreve was also notified that he could request a public hearing on other issues by July 21, 1994. To date, no other intervention or hearing requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine the 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 #2, Inc. should notify the Commission if it does not use this antenna tower to provide cellular 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 #2, Inc.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Kentucky RSA #2, Inc. should be granted a Certificate of Public Convenience and Necessity to construct and operate the Morganfield cell site under its currently approved tariff.

IT IS THEREFORE ORDERED that:

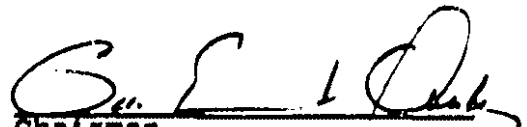
1. Kentucky RSA #2, Inc. be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Morganfield cell site.

2. Kentucky RSA #2, Inc. shall file a copy of the final decisions regarding its pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.


3. Kentucky RSA #2, 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 31st day of August, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director