

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) CASE NO.
TO CONSTRUCT A CELL SITE OFF LUCAS ROAD, EAST OF) 95-064
MANCHESTER, CLAY COUNTY, KENTUCKY)

O R D E R

On March 8, 1995, Kentucky RSA #11, Inc. filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications system 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 Clay 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 300-foot or less guyed antenna tower to be located off Lucas Road, east of Manchester in Clay County, Kentucky ("the Manchester cell site"). 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 Corp. to United States 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.

coordinates for the Manchester cell site are North Latitude 37° 08' 57.5" by West Longitude 83° 45' 07".

Kentucky RSA #11, Inc. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Manchester 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 Manchester cell site's construction is exempt from local zoning ordinances; however, Kentucky RSA #11, Inc. has notified the Clay County Judge/Executive. Kentucky RSA #11, Inc. has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") for the construction and operation of the Manchester cell site. Kentucky RSA #11 has received approval from the FAA while the KAZC application is still pending.

Kentucky RSA #11, Inc. has filed notices verifying that each person who owns property or resides within 500 feet of the Manchester 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. On March 21, 1995, the Commission received an intervention letter from Stella House of House Enterprises. On March 22, 1995, the Commission granted House Enterprises intervenor status and ordered Kentucky RSA #11, Inc. to

respond to the intervenor's concerns. On April 19, 1995, the Commission received a request from Kentucky RSA #11, Inc. to schedule a hearing in this case. On April 20, 1995, the Commission scheduled a hearing for May 10, 1995. Subsequently, in response to a motion filed by Kentucky RSA #11, Inc., the Commission issued an Order changing the hearing date to May 1, 1995. On May 1, 1995, the Commission received a copy of an executed Agreement between Kentucky RSA #11, Inc. and House Enterprises resolving the hearing issues. At the May 1, 1995 hearing, Kentucky RSA #11, Inc. introduced the Agreement in which House Enterprises withdrew its objections to the Manchester cell site.

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 Manchester cell site in RSA No. 11 under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Kentucky RSA #11, Inc. be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Manchester cell site.


2. Kentucky RSA #11, Inc. shall file a copy of the final decision regarding its pending KAZC application for this cell site construction within 10 days of receiving this decision.

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 9th day of May, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director