

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 NEAR THE HIGGINSON-) CASE NO.
HENRY WILDLIFE MANAGEMENT AREA, IN CHALYBEATE) 96-058
HILLS, SOUTHWEST OF MORGANFIELD IN UNION COUNTY,)
KENTUCKY (ANDERSON PROPERTY))

O R D E R

On February 22, 1996, Kentucky RSA #2, 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. 2 ("RSA No. 2"). RSA No. 2 includes Caldwell, Crittenden, Hopkins, Livingston, Lyon, Trigg, Union, and Webster counties. Kentucky RSA #2, Inc. has requested authorization to construct a cell site in Union County. Kentucky RSA #2, Inc. was previously granted 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 320-foot or less self-supporting antenna tower to be located near the Higginson-Henry Wildlife Management Area, in Chalybeate Hills, southwest of

¹ Case No. 93-276, The Joint Application 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 and d/b/a 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, Union County, Kentucky ("the Morganfield cell site"). The coordinates for the Morganfield cell site are North Latitude 37° 39' 06" by West Longitude 87° 55' 18".

Kentucky RSA #2, Inc. requests, pursuant to 807 KAR 5:001, Section 14, that it be permitted to deviate from Commission filing requirements by submitting, with this application, engineering information submitted in Case No. 94-164.² In Case No. 94-164, the Commission authorized Kentucky RSA #2, Inc. to construct a cell site near the site presently proposed. However, a legal dispute with adjoining landowners resulted in a settlement pursuant to which Kentucky RSA #2, Inc. agreed not to construct its tower at that location. Subsequently, this application was filed.

In support of its request to deviate, Kentucky RSA #2, Inc. has submitted, inter alia, the statement, under seal, of a Kentucky-registered professional engineer, that the "structural and operational integrity of the tower and anchor system will not be affected by the location shift" (February 15, 1996 letter of Wayne Zinn, P.E., Exhibit 8 to Application). Consequently, the Commission finds that Kentucky RSA #2, Inc. has demonstrated that engineering information submitted in Case No. 94-164 is adequate to support this application, and the request to deviate should be granted. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building

² Case No. 94-164, Application of Kentucky RSA #2, Inc. for a Certificate of Convenience and Necessity to Construct a Cell Site off Ricketts Road, Southwest of Morganfield in Union County, Kentucky.

standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the Morganfield cell site's construction is exempt from local zoning ordinances; however, Kentucky RSA #2, Inc. notified the Union County Judge/Executive of the pending construction. Kentucky RSA #2, 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 Morganfield cell site. Both applications are pending.

Kentucky RSA #2, Inc. has filed notices verifying that each person who owns property or who resides within 500 feet of the Morganfield 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 #2, Inc.'s application was filed. To date, no comments or 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 #2, 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 #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 in RSA No. 2 under its previously 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 the pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.

3. Kentucky RSA #2, Inc.'s deviation request is hereby granted.

4. 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 23rd day of April, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

Edwin J. Hines
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director