

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF UNITED STATES CELLULAR)
OPERATING COMPANY (FORMERLY KNOWN AS)
KENTUCKY RSA #9-10, INC.) FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY TO)
CONSTRUCT A CELL SITE OFF COX FARM) CASE NO. 97-192
(LANDING) ROAD, WEST OF HIGHWAY 460, AND)
APPROXIMATELY ONE AND ONE-HALF MILES)
SOUTHWEST OF MILLARD IN PIKE COUNTY,)
KENTUCKY (MILLARD SITE))

O R D E R

The Commission has received the attached letter from Kenny Schmidt on behalf of the Clark Elkhorn Coal Company regarding the proposed telecommunications services facility to be located three-fourths of a mile west of Highway 460, south of Hopkins Creek, at the head of Cox Hollow, approximately one and one-half miles southwest of Millard in Pike County, Kentucky.

IT IS THEREFORE ORDERED that:

1. United States Cellular Operating Company ("United States Cellular") shall respond to Mr. Schmidt's concerns by certified letter, within 10 days from the date of this Order.
2. United States Cellular shall file a copy of the certified letter and dated receipt, within 7 days of the date on the receipt.

Done at Frankfort, Kentucky, this 24th day of June, 1997.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Director



For the Commission

BD

Phoenix Land Company subsidiary of Zeigler Coal Holding Company

Zeigler

P.O. Box 2805

Pikeville, KY 41502-2805

606-432-7570

FAX 606-432-7535

June 10, 1997

Executive Director's Office
Public Service Commission of Kentucky
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

RECEIVED
JUN 13 1997
PUBLIC SERVICE
COMMISSION

RE: CASE NO. 97-192; KENTUCKY RSA #9, INC.'S PROPOSED TOWER
ON BOBBIE P. HARRIS PROPERTY, PIKE COUNTY, KENTUCKY

Dear Executive Director:

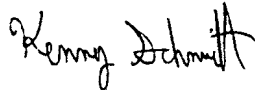
I am writing on behalf of Clark Elkhorn Coal Company ("Clark Elkhorn") to request that the Commission not approve the construction of the cellular radio telecommunication tower that is the subject of Case No. 97-192. Clark Elkhorn holds Kentucky Coal Mining and Reclamation Permit No. 898-0326 which covers the site of the proposed tower. The permitted area of Clark Elkhorn's Permit No. 898-0326 has already been mined and reclaimed, but the Kentucky Natural Resources and Environmental Protection Cabinet ("KNREPC") has not released Clark Elkhorn's reclamation performance bond pertaining to the proposed tower site and the access road thereto.

As you can see from the enclosed Settlement, Release and Waiver Agreement ("Agreement"), dated October 8, 1992, Mrs. Harris and her husband have agreed not to disturb any of Clark Elkhorn's reclaimed lands until full release of all applicable reclamation performance bonds--see page 6 of the Agreement. As such, Clark Elkhorn must insist that Kentucky RSA #9 not be allowed to construct their proposed tower until such time as Kentucky RSA #9 has secured from the KNREPC the full and final release of Clark Elkhorn's reclamation performance bonds pertaining to lands to be occupied or disturbed by Kentucky RSA #9 in connection with the proposed tower site and roadway thereto.

Executive Director's Office
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Should you have any questions, please call me at 606-432-7571.

Sincerely,



Kenny Schmidt
Regional Land Manager

KS/pjh

cc: Steve Rhinerson
United States Cellular
3101 North Green River Road, Suite 530
Evansville, Indiana 47715

Enclosure: Settlement, Release, and Waiver Agreement,
dated October 8, 1992

SETTLEMENT, RELEASE AND WAIVER AGREEMENT

THIS SETTLEMENT, RELEASE AND WAIVER AGREEMENT made and entered into ^{effective the} ~~this~~ 8th day of October, 1992, by and between:

(i) BOBBIE LORRAINE HARRIS and FERRELL HARRIS, her husband, whose mailing address is Cox Farm Estate, Pikeville, Kentucky 41501-9250, Parties of the First Part, hereinafter referred to as "LESSORS"; and,

(ii) CLARK ELKHORN COAL COMPANY, whose mailing address is P. O. Box 2805, Pikeville, Kentucky 41502, Party of the Second Part, hereinafter referred to as "LESSEE".

W I T N E S S E T H :

WHEREAS, LESSORS, for a good and valuable consideration, executed and delivered unto CLARK ELKHORN COAL COMPANY, INC. that certain Lease Agreement dated November 22, 1983, Memorandum of which is of record in the Pike County Court Clerk's Office, in Deed Book 578, Page 328 [said Lease Agreement being hereinafter referred to as the "LEASE"] which inter alia, leased unto CLARK ELKHORN COAL COMPANY, INC., its successors and assigns, certain surface rights, easements and privileges to mine and remove coal and thereafter reclaim coal mine sites, over and upon those certain premises further described in said LEASE, lying and being located within the Cox Hollow, a tributary of the Russell Fork of the Big Sandy River, at or near Millard, Kentucky [reference is hereby made to the aforespecified "LEASE" for a more particular description of the Leased Premises thereof, said

premises being hereinafter referred to as the "Leased Premises"];
and,

WHEREAS, CLARK ELKHORN COAL COMPANY is the successor in
interest to CLARK ELKHORN COAL COMPANY, INC. under the "LEASE";
and,

WHEREAS, CLARK ELKHORN COAL COMPANY, now desires to
enter in and upon the Leased Premises in order to perform all
necessary and required reclamation with respect to the "Leased
Premises" and the Parties have hereby and do herewith agree to
Finally Settle all damages, disputes, and/or liabilities either
Party may have to the other with respect to the "Leased
Premises", the "LEASE" and/or any damages resulting from any
operations thereon or adjacent thereto, as set forth hereinbelow;
and,

WHEREAS, CLARK ELKHORN COAL COMPANY instituted that
certain Civil Action No. 92-CI-1146, styled Clark Elkhorn Coal
Company v. Bobbie Lorraine Harris and Ferrell Harris, her
husband, in Pike Circuit Court, Division No. Special Judge
Collins, in order to enforce said LEASE, and Clark Elkhorn Coal
Company obtained an Injunction against the LESSORS, INTER ALIA,
enjoining any interference with the LESSEE'S reclamation of the
Leased Premises; and,

WHEREAS, the Parties hereto have hereby and hereunder
agreed to settle all disputes by and between the LESSORS and
LESSEE pertaining to the LEASE, the Leased Premises, and/or the

reclamation of the Leased Premises.

NOW, THEREFORE, for and in consideration of the sum of Twenty-Five Thousand Dollars (\$25,000.00), via LESSEE'S Check # 980037, ^(Drawn on Pike County Coal Corporation) made payable to the female LESSOR, BOBBIE LORRAINE HARRIS, the receipt and sufficiency of all of which is hereby acknowledged, the LESSORS, have hereby and do herewith, forever, RELEASE, WAIVE, COMPROMISE, FULLY SETTLE and RELINQUISH any and all claims, causes of action, rights, and/or demands they and/or either of them may have, whether now known or hereafter discovered, against Clark Elkhorn Coal Company [and all of its predecessors, owners, affiliates, ^{parent companies, F.H. HARRIS} subsidiaries, successors, assigns, contractors, ^{lessees, sublessees, licensees, shareholders F.H. HARRIS} officers, directors, employees, and agents], as a direct or indirect result, and/or consequence of any mining, disturbance, work, reclamation operations, or related activities heretofore or hereafter, conducted upon and within the Leased Premises of the "LEASE", and LESSORS do hereby FOREVER SETTLE, COMPROMISE, RELEASE, and REMISE any and all claims, causes of action, or rights they or either of them may have against the LESSEE [and all of the aforespecified related/associated parties], by reason of any damage(s) to or trespass upon any other premises (including any improvements and appurtenances thereunto, belonging) adjacent, and/or vicinal to the Leased Premises; and, in no way limiting the general nature of the foregoing RELEASE and WAIVER, Bobbie Lorraine Harris and Ferrell Harris, her husband, do hereby IRREVOCABLY RELEASE,

EXEMPT, AND FOREVER RELIEVE LESSEE [and all of its successors, assigns, predecessors, affiliates, subsidiaries, parent companies, owners, officers, ^{directors, employees, shareholders F.H. 7/9/81} agents, ^{agents F.H. 7/9/81} contractors, lessees, sublessees, licensees, and ~~shareholders~~] from any and all liabilities, of any kind or nature, as a result or consequence of: (i) any damage(s) to any real ^{F.H. 7/9/81} or personal property(ies), owned or controlled by the LESSORS, within the drainage of Cox Hollow, (including, but not limited to the Leased Premises of the "LEASE"), any other of LESSORS' premises adjacent thereto, and any appurtenances and improvements, thereunto belonging; (ii) any damage(s), cost(s), and expense(s) incurred by LESSORS as a result or consequence of the issuance to Permit No. 898-0326 by the Kentucky Natural Resources and Environmental Protection Cabinet; and, (iii) any damage(s), cost(s), and expense(s) incurred by LESSORS as a result or consequence of the Injunction entered in that certain Civil Action described hereinabove, being Civil Action No. 92-CI-1146, of the Pike Circuit Court, and/or said Civil Action No. 92-CI-1146.

IT BEING EXPRESSLY UNDERSTOOD AND AGREED by and between the Parties hereto, that the LESSEE, [and all of its successors, assigns, contractors, agents, employees, and each of them], shall and do have the absolute, irrevocable right and privilege to enter in and upon the "LEASED PREMISES" or LESSOR'S other lands in Cox Hollow, at any time or from time to time, to perform any and all reclamation, work, services, or related activities which

may be necessary, convenient and/or incidental to conduct mine reclamation and/or mitigate environmental problems on such lands without any further consideration or compensation, of any kind or nature, being due unto the LESSORS for said right, privilege, and/or entries; and, said unlimited right of entry and easement shall include rights of entry upon any portions of the "LEASED PREMISES" and any other adjacent premises (including, but not limited to, access across the low-water bridge at the mouth of Cox Hollow) in order to obtain water samples, remove debris and sedimentation from any streams, remove, reclaim, and permit any off-permit disturbances, rehabilitate and/or perform any required reclamation activity(ies), and otherwise to monitor and maintain all reclaimed areas or any adjacent areas hereafter requiring reclamation. In spite of the foregoing, LESSEE shall not bring track-propelled equipment (e.g. dozers) across said low-water bridge.

LESSORS hereby COVENANT, AGREE and STIPULATE that they shall not, in any respect whatsoever, interfere with, hinder, delay, impede, or otherwise disrupt or disturb any of the LESSEE'S, its successors' or assigns', reclamation operations, reclamation, bond release activities, work, services, or related activities upon, within, or adjacent to the "LEASED PREMISES", at any time, or from time to time hereafter, for any reason(s) whatsoever. LESSORS covenant and agree to promptly withdraw their pending request for a formal administrative Hearing whereby

LESSORS petition the Kentucky Natural Resources and Environmental Protection Cabinet to revoke LESSEE'S Permit 898-0326. LESSORS further covenant and agree that they shall not disturb, in any respect whatsoever, the lands being reclaimed by LESSEE pursuant to Kentucky Natural Resources and Environmental Protection Cabinet PERMIT NO. 898-0326, until such time as LESSEE obtains full bond release on said reclaimed lands. In the event of any breach(es) of this COVENANT, LESSORS covenant and agree that they shall be liable unto the LESSEE, its successors and assigns, for all loss(es) incurred by reason of said breach, including, but not limited to attorney's fees, Court costs, compensation due unto contractors, down time, lost time, and any other proximate or consequential damages.

It is further understood, agreed and stipulated by and between the Parties hereto as follows:

1. MINING PERMIT WAIVERS: The LESSORS [hereby irrevocably binding themselves and all of their respective heirs, successors, assigns, and each of them forever], do hereby covenant, agree and stipulate that they shall, upon any request(s), from LESSEE, its successors or assigns, duly execute and deliver any and all waivers, post-mining land use consent(s), consent(s), release(s) and/or any other written instruments, at any time or from time to time, required by the Kentucky Natural Resources and Environmental Protection Cabinet, in order to complete and fulfill any regulatory and/or reclamation

requirements now existing or hereafter imposed by law and/or policy, and prescribed under Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet Permit #898-0326, (as the same may be amended, modified, and/or altered, at any time or from time to time, hereafter).

2. SATISFACTION OF OPTION: LESSORS hereby agree that the Quitclaim Deed from Clipper Coal Corporation to Bobbie Lorraine Harris, executed on the same date hereof fully satisfies all of LESSEE'S obligations under Article VIII of the LEASE.

3. INTEGRATION CLAUSE: This SETTLEMENT, RELEASE AND WAIVER AGREEMENT constitutes the entire, integrated agreement by and between the Parties hereto with respect to the subject matters hereof and supersedes all prior and contemporaneous negotiations, representations, agreements and understandings of the parties hereto relating to the subject matters hereof, whether written or oral. Further, this SETTLEMENT, RELEASE AND WAIVER AGREEMENT shall not be modified, negated, and/or abrogated, in whole or in part, unless such modification, negation, and/or abrogation is in writing, and duly executed by authorized agents and officers of the parties hereto.

4. PARTIES BOUND: This SETTLEMENT, RELEASE AND WAIVER AGREEMENT and the conditions, provisions, covenants, acknowledgments, stipulations, and agreements contained herein, shall be of full force and binding effect upon and otherwise inure to the benefit of the Parties hereto, and their respective

heirs, predecessors in title, successors, assigns, affiliates, subsidiaries, agents, contractors, licensees, lessees, sublessees, and employees.

5. CONFLICTS OF LAW: This SETTLEMENT, RELEASE AND WAIVER AGREEMENT shall in all respects be governed, construed, and enforced in accordance with the substantive and procedural laws of the Commonwealth of Kentucky.

6. CAPTIONS: The captions and/or titles, contained herein, are for identification purposes, only, and in no way limit or prescribe the terms and conditions hereof.

IN TESTIMONY WHEREOF the Parties hereto have subscribed their respective signatures, effective the date first above written.

PARTIES OF THE FIRST PART
"LESSOR"

By: Bobbie Lorraine Harris
BOBBIE LORRAINE HARRIS

By: Ferrell Harris
FERRELL HARRIS

PARTY OF THE SECOND PART
"LESSEE"

CLARK ELKHORN COAL COMPANY

By: [Signature]

Its: Vice President Mining

COMMONWEALTH OF KENTUCKY

COUNTY OF PIKE

The foregoing instrument was acknowledged before me by
BOBBIE LORRAINE HARRIS this 6 day of October, 1992.

My commission expires 2-8-93.

Melba Jean Robinson
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY

COUNTY OF PIKE

The foregoing instrument was acknowledged before me by
FERRELL HARRIS this 5th day of October, 1992.

My commission expires October 11 1993

John Halbrook
NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY

COUNTY OF PIKE

The foregoing instrument was acknowledged before me by
W.G. Meister, Vice-President Mining, of CLARK
ELKHORN COAL COMPANY, for and on behalf of the corporation, this
8th day of October, 1992.

My commission expires 2-20-94.

R. J. Schmitt
NOTARY PUBLIC