

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 (LANDING) ) CASE NO. 97-192  
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

On June 9, 1997, United States Cellular Operating Company - formerly known as Kentucky RSA #9-10, Inc. - ("U. S. Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications facility for Rural Service Area No. 9 ("RSA No. 9"). RSA No. 9 includes Elliott, Floyd, Johnson, Lawrence, Magoffin, Martin, Morgan, and Pike counties. U. S. Cellular has requested authorization to construct a cell site in Pike County. U. S. Cellular was previously granted authority to operate a cellular radio telecommunications system in RSA No. 9 in Case No. 96-599.<sup>1</sup>

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<sup>1</sup> Case No. 96-599, Joint Application of Kentucky RSA #1, Inc., Kentucky RSA #2, Inc., Kentucky RSA #3, Inc., Kentucky RSA #9-10, Inc., Kentucky RSA #11, Inc. and United States Cellular Operating Company for a Determination That no Approval is Required for the Merger of Kentucky RSA #1, Inc., Kentucky RSA #2, Inc., Kentucky RSA #3, Inc., Kentucky RSA #9-10, Inc., Kentucky RSA #11, Inc. Into United States Cellular Operating Company with United States Cellular Operating Company Being the Surviving Corporation, or, Alternatively, for Approval of the Merger.

The proposed cell site consists of a 180-foot or less self-supporting antenna tower to be located at the head of Cox Hollow, off Cox Farm Road, west of Millard High School and U.S. Highway 460, approximately one and one-half miles southwest of Millard in Pike County, Kentucky ("the Millard cell site"). The coordinates for the Millard cell site are North Latitude 37° 23' 25" by West Longitude 82° 26' 57".

U. S. Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Millard cell site. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the Millard cell site's construction is exempt from local zoning ordinances; however, U. S. Cellular notified the Pike County Judge/Executive of the pending construction. U. S. Cellular 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 Millard cell site. Both applications are pending.

U. S. Cellular has filed notices verifying that each person who owns property or who resides within 500 feet of the Millard 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 U. S. Cellular's application was filed. On June 13, 1997, Kenny Schmidt, Regional Land Manager, on behalf of Elkhorn Coal Company, filed a letter requesting the Commission to deny U. S. Cellular's Certificate request. As support for his

request, Mr. Schmidt states that "the Kentucky Natural Resources and Environmental Protection Cabinet . . . has not released Clark Elkhorn's Reclamation Performance Bond pertaining to the proposed tower site and the access road thereto." [Emphasis supplied]

On June 24, 1997, the Commission ordered U. S. Cellular to respond to Mr. Schmidt's concerns and informed him of his right to intervene. To date, no intervention requests have been received.

In its response, U.S. Cellular correctly informed Mr. Schmidt that property rights are issues which may properly be raised in the Kentucky Court of Justice, not in this agency.

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, U. S. Cellular 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 U. S. Cellular.

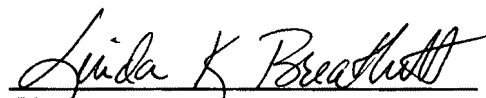
The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that U. S. Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Millard cell site in RSA No. 9 under its previously approved tariff.


IT IS THEREFORE ORDERED that:

1. U. S. Cellular is granted a Certificate of Public Convenience and Necessity to construct and operate the Millard cell site.
2. U. S. Cellular 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. U. S. Cellular 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 15th day of October, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director