

**CHAPTER 343****(HB 270)**

AN ACT relating to cellular communications and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 100.324 is amended to read as follows:

- (1) All other provisions of this chapter to the contrary notwithstanding, public utilities operating under the jurisdiction of the Public Service Commission, except as specified in KRS 100.987 ~~and subsection (5) of this section~~, or the Department of Vehicle Regulation or Federal Power Commission, any municipally-owned electric system, and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. Service facilities include all facilities of such utilities and common carriers by rail other than office space, garage space, and warehouse space and include office space, garage space, and warehouse space when such space is incidental to a service facility. The Public Service Commission and the Department of Vehicle Regulation shall give notice to the planning commission of any planning unit of any hearing which affects locations or relocations of service facilities within that planning unit's jurisdiction.
- (2) The nonservice facilities excluded in subsection (1) of this section must be in accordance with the zoning regulations.
- (3) Upon the request of the planning commission, the public utilities referred to in this section shall provide the planning commission of the planning unit affected with information concerning service facilities which have been located on and relocated on private property.
- (4) Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.
- ~~(5) Every utility which proposes to construct an antenna tower for cellular telecommunications services or personal communications services within a county containing a city of the first class shall submit the proposal to the planning commission of the affected planning unit. The planning commission shall review the proposal in light of its agreement with the comprehensive plan and locally adopted zoning regulations and shall, within sixty (60) days from the date the proposal is submitted, make its final decision and advise the utility in writing whether the proposed construction is in accordance with the comprehensive plan and locally adopted zoning regulations. If the planning commission fails to issue a final decision within sixty (60) days, it is presumed to have approved the proposal, and may not later appeal a decision of the Public Service Commission under KRS 278.650(3). If the planning commission disapproves of the proposed construction, it shall state the reasons for~~

~~disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission, shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its final decision on the utility proposal, whichever occurs first.]~~

Section 2. KRS 100.985 is amended to read as follows:

In addition to the definitions set forth in KRS 100.111, the following definitions shall apply to KRS 100.985 to 100.987:

- (1) "Cellular antenna tower" means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services;
- (2) "Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;
- (3) "Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower;
- (4) "Personal communication service" has the meaning as defined in 47 U.S.C. sec. 332(c);
- (5) "Uniform application" means an application~~[ for a certificate of convenience and necessity issued under KRS 278.020 submitted by a utility to the Public Service Commission]~~ to construct ~~a[an antenna tower for]~~ ***cellular antenna tower submitted to a planning commission in conformity with Sections 3 and 5 of this Act***~~[telecommunications services of personal communications service in a jurisdiction, that has adopted planning and zoning regulations in accordance with this chapter, except for any county that contains a city of the first class];[and]~~
- (6) "Utility" has the meaning as defined in KRS 278.010(3); ***and***
- (7) ***"Antennas or related equipment" means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.***

Section 3. KRS 100.987 is amended to read as follows:

- (1) A planning unit as defined in KRS 100.111 and legislative body or fiscal court that has adopted planning and zoning regulations~~[, except for a county that contains a city of the first class as provided under KRS 278.650,]~~ may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in this chapter~~[ by officially registering with the Public Service Commission. The registration shall be in the form of an official resolution adopted by the local planning commission. Nothing in this section shall require a planning unit and legislative body or fiscal court to plan for and regulate the siting of cellular antenna towers].~~
- (2) Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the jurisdiction of a planning unit that has adopted planning and zoning regulations in accordance with this

chapter~~], except for a county that contains a city of the first class as provided under KRS 278.650, and that has officially registered with the Public Service Commission]~~ shall:

- (a) Submit a copy of the *applicant's*~~[utility's]~~ completed uniform application to the planning commission of the affected planning unit to construct an antenna tower for cellular or personal telecommunications services~~[within five (5) days of applying to the Public Service Commission for a certificate of necessity and convenience as required by KRS 278.020(1)].~~ The uniform application shall include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:
    1. All of the planning unit's jurisdiction; and
    2. A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;
  - (b) Include in any contract with an owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower including a timetable for removal; and
  - (c) Comply with any local ordinances concerning land use, subject to the limitations imposed by 47 U.S.C. sec. 332(c), KRS 278.030, 278.040, and 278.280.
- (3) ~~[Commencing from the time that a utility files a uniform application with the Public Service Commission, ]~~All information contained in the~~[uniform]~~ application and any updates, except for *any map or other* information that specifically identifies the proposed location of the cellular antenna tower then being reviewed~~[ by the applying utility]~~, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The~~[ Public Service Commission and the]~~ local planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.
- (4) After *an applicant's submission of*~~[receiving]~~ the uniform application to construct a cellular antenna tower, the planning commission shall:
- (a) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;
  - (b) Make its final decision to approve or disapprove the uniform application; and
  - (c) Advise the *applicant*~~[utility and the Public Service Commission]~~ in writing of its final decision within sixty (60) days commencing from the date that the uniform application is *submitted to*~~[received by]~~ the planning commission or within a date certain specified in a written agreement between the local planning commission and the *applicant*~~[utility]~~. If the planning commission fails to issue a final decision within sixty (60) days and if there is no written agreement between the local planning commission and the *applicant*~~[utility]~~ to a specific date for the planning commission to issue a decision,~~[ it is presumed that the local planning commission has approved]~~ the~~[ utility's]~~ uniform application *shall be deemed approved*.

- (5)~~[(a)]~~ If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower~~[, including any certificate of convenience and necessity required to be issued by the Kentucky Public Service Commission,]~~ shall be issued until the planning commission approves the uniform application or the sixty (60) day time period has expired, whichever occurs first.~~[ If a planning commission rejects the uniform application to construct an antenna tower, the Public Service Commission may override the decision of the planning commission and issue a certificate of convenience and necessity for construction of the cellular or personal communications services antenna tower, if it determines that there is no acceptable alternate site and that the public convenience and necessity requires the proposed construction.~~
- ~~(b) Any party, other than the applying utility, that is aggrieved by the final action of a planning commission under this section, may intervene in the action to the Public Service Commission, but this appeal shall not automatically postpone action by the Public Service Commission.]~~
- (6) The planning commission may require the *applicant*~~[utility]~~ to make a reasonable attempt to co-locate additional transmitting or related equipment~~[ on any new or existing towers, if there is available space on the tower and the co location does not interfere with the structural integrity of the tower and does not require the owner of the tower to make substantial alterations to the tower].~~ A planning commission may provide the location of existing cellular antenna towers on which the commission deems the *applicant*~~[applying utility]~~ can successfully co-locate its transmitting and related equipment. If the local planning commission requires the *applicant*~~[utility]~~ to attempt co-location, the *applicant*~~[utility]~~ shall provide the local planning unit with a statement indicating that the *applicant*~~[utility]~~ has:
- (a) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the *applicant's*~~[utility's]~~ facilities, and that identifies the location of the tower *or suitable structure on* which the *applicant*~~[applying utility]~~ will co-locate its transmission and related facilities~~[ on]~~; or
  - (b) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the *applicant's*~~[utility's]~~ facilities and that:
    1. Identifies the location of the towers *or other structures on* which the *applicant*~~[applying utility]~~ attempted to co-locate~~[ on]~~; and
    2. Lists the reasons why the co-location was unsuccessful in each instance.
- (7) The local planning commission may deny a uniform application to construct a cellular antenna tower based on *an applicant's*~~[a utility's]~~ unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers *or other structures*.
- (8) In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an

alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.

- (9) Upon the approval of an application for the construction of a cellular antenna tower by a planning commission, the applicant shall notify the Public Service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.*
- (10) A party aggrieved by a final action of a planning commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in any court of competent jurisdiction.*

SECTION 4. A NEW SECTION OF KRS 100.985 TO 100.987 IS CREATED TO READ AS FOLLOWS:

*In regulating the placement of cellular antenna towers, a planning commission shall not:*

- (1) Regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;*
- (2) Institute a moratorium upon the siting of cellular antenna towers;*
- (3) Charge an application fee that exceeds an amount that is reasonably related to expenses associated with processing an application to construct a cellular antenna tower, and to issue any necessary permits including any required building permit, up to a maximum of \$2500. Application fee amounts shall not be raised after June 15, 2002;*
- (4) Regulate the placement of antennas or related equipment on an existing structure; or*
- (5) Require the submission of application materials in addition to those required by Sections 3 and 5 of this Act, unless agreed by both parties.*

SECTION 5. A NEW SECTION OF KRS 100.985 TO 100.987 IS CREATED TO READ AS FOLLOWS:

*In addition to the requirements of Section 3 of this Act, a uniform application shall include:*

- (1) The full name and address of the applicant;*
- (2) The applicant's articles of incorporation, if applicable;*
- (3) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations;*
- (4) A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas;*
- (5) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;*

- (6) *The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, an applicant may file a copy of the agreement as recorded by the county clerk and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987(2);*
- (7) *The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;*
- (8) *A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system;*
- (9) *A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;*
- (10) *The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky;*
- (11) *A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower;*
- (12) *A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:*
  - (a) *Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction;*
  - (b) *Given the telephone number and address of the local planning commission; and*
  - (c) *Informed of his or her right to participate in the planning commission's proceedings on the application;*
- (13) *A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;*
- (14) *A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction;*
- (15) *A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;*
- (16) *A statement that:*
  - (a) *A written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application; and*

- (b) *A written notice, at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site;*
- (17) *A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;*
- (18) *A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;*
- (19) *A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities; and*
- (20) *A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.*

Section 6. KRS 278.650 is amended to read as follows:

- ~~(1) If a utility proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located within a county containing a city of the first class, then the utility shall submit the proposal to the planning commission of the affected planning unit prior to making application to the commission for a certificate of public convenience and necessity as required by KRS 278.020(1). The commission shall not grant a certificate of convenience and necessity in this situation until a final action on the proposal has been taken by the planning commission of the affected planning unit, or until the sixty (60) day time period set forth in KRS 100.324(5) has expired, whichever comes first.~~
- ~~(2) If a planning commission rejects a proposal to construct an antenna tower, the commission may override the decision of the planning commission and issue a certificate of convenience and necessity for construction of the cellular or personal communications services antenna tower, if it determines that there is no acceptable alternate site, and that the public convenience and necessity requires the proposed construction.~~
- ~~(3) Any party aggrieved by the final action of the Public Service Commission under subsections (1) and (2) of this section shall appeal from the action to the Franklin Circuit Court. The appeal shall be filed within thirty (30) days after the final action by the Public Service Commission. All final actions of the Public Service Commission which have not been appealed within thirty (30) days shall not be subject to judicial review.~~
- ~~(4) If an applicant's {a utility} proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in~~

*an~~[outside the]~~ area outside the jurisdiction of a planning commission, the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), Section 7 of this Act, and this section. The commission shall convene a local public hearing on the application upon the receipt of a request from the local governing body or from not less than three (3) interested persons that reside in a county or municipal corporation in which the tower is proposed to be constructed. In reviewing the application,~~[of a county containing a city of the first class, then]~~ the commission may~~[also]~~ take into account~~[in its deliberations]~~ the character of the general area concerned, and the likely effects of the installation on nearby land uses and values. A local government may charge a fee for a building permit, in connection with the construction or alteration of any structure for cellular telecommunications services or personal communication services, if the fee does not exceed that charged for any other commercial structure of comparable cost of construction.*

Section 7. KRS 278.665 is amended to read as follows:

- (1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of *an~~[a uniform]~~ application~~[, provided under KRS 100.985(5),]~~* for a certificate of convenience and necessity to construct cellular antenna towers *for areas outside the jurisdiction of a planning commission~~[, and the procedures to carry out the commission's responsibilities under KRS 100.987].~~*
- (2) The commission, in establishing the public notice requirements of *an~~[a uniform]~~ application* as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city~~[or within a rural service area in an urban county]~~, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the *commission proceedings on the* application.~~[The provisions of this subsection shall not apply to unincorporated areas within a county containing a city of the first class.]~~

Section 8. The following KRS section is repealed:

278.660 Confidentiality of uniform application and updates -- Penalty for violation.

Section 9. Whereas there is rapid growth in the cellular communication industry and there is a serious need for increased local participation in this area, an emergency is declared to exist and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved April 23, 2002**