807 KAR 5:063. Filing requirements and procedures for proposals to construct antenna towers or to co-locate antennas on an existing structure for cellular telecommunications services or personal communications services.

RELATES TO: KRS 100.111, 278.010, 278.020, 278.650, 278.660, 278.665
STATUTORY AUTHORITY: KRS 278.040(3), 278.665(1)
CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.665(1) requires the commission to promulgate administrative regulations to establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission. KRS 278.665(2) requires that an application concerning a site outside of an incorporated city shall, at a minimum, demonstrate that each person who owns property contiguous to the property upon which the construction is proposed has received notice of the proposed construction. KRS 278.280(1) requires the commission to establish proper practices to be observed in regard to the facilities of a utility. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.650 requires a local public hearing upon the request of the local governing body or at least three (3) local residents. KRS 100.987(9) requires an applicant to notify the commission within ten (10) working days of planning commission approval of an application to construct a tower. This administrative regulation prescribes filing requirements and procedures to be followed for: (1) applying for a certificate of public convenience and necessity to construct a telecommunications antenna tower for cellular telecommunications services or personal communications services in an area outside the jurisdiction of a planning unit; (2) notifying the commission of a planning commission approval; and (3) notifying the commission of the placement of an antenna on an existing structure.

Section 1.

(1) To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in an area which is not within the jurisdiction of a planning unit that has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, shall file with the Public Service Commission the following information:

(a) All documents and information required by:

1. 807 KAR 5:001, Section 14, except that the applicant shall file with the commission the original and five (5) copies of the application; and
2. 807 KAR 5:001, Section 15(2)(a), (b), (c), (d) and (g);

(b) A copy of the utility's applications to the Federal Aviation Administration and Kentucky Airport Zoning Commission and written authorizations from these agencies as soon as they are available;

(c) A copy of the utility's application to, and authorization from, the Federal Communications Commission, if applicable;

(d) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs, foundation design recommendations, and a finding as to the proximity of the proposed site to flood hazard areas, except that the utility may file findings prepared by a land surveyor as to the proximity of the proposed site to flood hazard areas;

(e) 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;

(f) 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, utility may file a copy of the agreement as recorded by the county clerk;
(g) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;
(h) 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 500 feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within 200 feet of the access drive, including the intersection with the public street system;
(i) 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;
(j) 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;
(k) A map, drawn to a scale no less than one (1) inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower;
(l) A statement that every person who, according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower has been:
1. Notified by certified mail, return receipt requested, of the proposed construction;
2. Given the commission docket number under which the application will be processed; and
3. Informed of his right to request intervention;
(m) A list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners;
(n) A statement that the county judge executive has been:
1. Notified by certified mail, return receipt requested, of the proposed construction;
2. Given the commission docket number under which the application will be processed; and
3. Informed of his right to request intervention;
(o) A copy of the notice sent to the county judge executive;
(p) A statement that:
1. Two (2) written notices meeting the requirements of subsection (2) of this section have been posted, one (1) in a visible location on the proposed site and one (1) on the nearest public road; and
2. The notices shall remain posted for at least two (2) weeks after the application has been filed;
(q) 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.
(r) 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;
(s) A statement that the utility 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 co-locate, including documentation of attempts to co-locate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility 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 utility's facilities; and

(t) 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 a site should, pursuant to radio frequency requirements, be located.

(2)

(a) The notices required by subsection (1)(p) of this section shall:

1. Be at least two (2) feet by four (4) feet in size; and

2. Except as provided by paragraph (b) of this subsection, state the following: " (Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(b) The notice posted on the nearest public road shall state the following: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") near this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(c) In both posted notices, the word "tower" or "monopole" shall be printed in letters at least four (4) inches high.

Section 2. If the construction is proposed for an area outside the incorporated boundaries of a city, the application shall state that public notices required by Section 1(1)(l) have been sent to every person who, according to the property valuation administrator, owns property contiguous to the property upon which the construction is proposed.

Section 3.

(1) A utility planning to co-locate its antennas on an existing structure outside the jurisdiction of a planning unit, or to augment an existing structure outside the jurisdiction of a planning unit, to enable the utility to place its antennas on that structure shall file with the Executive Director of the Public Service Commission, in lieu of an application, written notice of its intent, including the name and address of the utility filing the notice, the name of the owner of the structure, the latitude and longitude of the structure, and a description of the plan to augment or co-locate, if the proposed augmentation will neither:

(a) Increase the height of the structure more than fifty (50) percent; nor

(b) Result in new lighting requirements for a structure on which lighting is not currently required.

(2) A utility planning to co-locate its antennas on an existing structure that is in an area under the jurisdiction of a planning unit shall file with the commission written notice of its intent. The notice shall include:

(a) Name and address of the utility filing the notice;

(b) Name of the owner of the structure;

(c) Street address and latitude and longitude of the structure; and

(d) A description of the plan to co-locate.

Section 4.

(1) A resident of a county in which an antenna tower for cellular telecommunications services or personal communications services is proposed, or the local governing body of a county or municipal corporation for which an antenna tower for cellular telecommunications services or personal communications services is proposed, may request a local public hearing by sending a written request complying with subsections

(2) and (3) of this section to the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40601.

(2) A request for a local public hearing shall contain:

(a) The docket number of the case to which the request refers;

(b) The name and address of the person sending the request; and

(c) Statement as to whether the requestor wishes to participate in an evidentiary hearing or to make unsworn public comment.

(3) If a person requesting a local public hearing wishes to participate in an evidentiary hearing, the written request shall include a request to intervene in the Public Service Commission proceedings on the application.

Section 5. To notify the Public Service Commission of a planning commission approval of an application for the construction of an antenna tower for cellular telecommunications services or personal communications services, an applicant shall file with the Executive Director, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40601, the following information:

(1) The name, address, telephone number and facsimile number of the person whose application to construct the tower has been approved;

(2) The street address of the tower site;

(3) The names of the county and, if applicable, the city in which the tower will be located;

(4) The latitude and longitude of the tower site;

(5) A brief description of the tower, including the tower height, the ground elevation at the tower site, and a statement as to whether the tower will be self-supporting or guyed;

(6) The name of the planning commission that approved the construction;

(7) The date of the planning commission decision approving the construction.

(23 Ky.R. 3659; 4185; 24 Ky.R. 367; eff. 8-27-1997; 25 Ky.R. 916; 1402; 1289; eff. 12-18-1998; 27 Ky.R. 1096; eff. 12-7-2000; 29 Ky.R. 564; 956; eff. 10-9-2002; TAm 1-30-2013; Crt eff. 3-27-2019; Crt eff. 3-23-2026.)