

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF APC TOWERS)	
IV, LLC FOR A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2024-00091
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY)	

ORDER

On April 24, 2024, APC Towers IV, LLC (APC Towers IV) filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 199 feet in height, with attached antennas, to be located a lease area located on US Highway 68, Benton, Marshall County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 57' 56.81" by West Longitude 88° 26' 54.39".

Pursuant to 807 KAR 5:063, APC Towers IV has filed statements of having provided the required notifications regarding the proposed construction.¹ Pursuant to 807 KAR 5:063, APC Towers IV has filed evidence that the county judge/executive and all property owners within 500 feet and contiguous to the cell site have been notified of the proposed construction.² The notices solicited any comments and informed the recipients of their right to request intervention. As of the date of this Order, no public comments or requests for intervention have been received.

¹ Application at 6-7.

² Application at 7.

APC Towers IV filed an application with the Federal Aviation Administration (FAA) seeking approval for the construction and operation of the proposed facility. The application with the FAA has been approved. APC Towers IV have filed into the record that the FAA made a determination that there was no hazard to air navigation.³ APC Towers IV provided documentation from the Kentucky Airport Zoning Commission (KAZC) that a permit is not required for the proposed tower at the proposed tower location.⁴

APC Towers IV has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.⁵ Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a licensed professional engineer has certified the plans.

APC Towers IV has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.⁶ APC Towers IV has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁷

To obtain a CPCN, APC Towers IV must demonstrate a need for such facilities and an absence of wasteful duplication.⁸ “Need” requires “a showing of a substantial

³ Application, Exhibit E, FAA Determination of No Hazard to Air Navigation.

⁴ Application, Exhibit F.

⁵ Application, Exhibits B and C.

⁶ Application at 8 and Exhibit N.

⁷ Application at 4.

⁸ *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885 (Ky. 1952).

inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.”⁹ “Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”¹⁰ The wireless market is competitive and, other than the placement of towers and interconnection with other telecommunications providers, the Commission has little jurisdiction over wireless providers, including no jurisdiction over the rates and earnings of a wireless provider.¹¹

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that APC Towers IV has demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services, to assure adequate coverage in the area, and to improve service in Marshall County by providing interconnection between APC Towers IV other sites forming a more cohesive network.

The Commission also finds that the proposed facility will not result in wasteful duplication. Building a new tower to improve telecommunication services and assure adequate coverage when there are no reasonable opportunities to co-locate the equipment required to do so is not wasteful duplication. The Commission, therefore, finds that a CPCN to construct the proposed facility should be granted.

⁹ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

¹⁰ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

¹¹ See KRS 278.54611.

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, APC Towers IV shall notify the Commission if the antenna tower is not used to provide service in the manner set out in the 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 shall be observed by APC Towers IV.

IT IS THEREFORE ORDERED that:

1. APC Towers IV is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 199 feet in height, with attached antennas, to be located on US Highway 68, Benton, Marshall County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 57' 56.81" by West Longitude 88° 26' 54.39".
2. APC Towers IV 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 three months in the manner authorized by this Order.
3. Documents filed, if any, in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the post-case correspondence file.
4. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
JUN 28 2024
KENTUCKY PUBLIC SERVICE COMMISSION ^{rCS}

ATTEST:



Executive Director

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