

**Written Decision**  
**Use Permit for Towers, Antennae and Wireless Telecommunications Facilities**  
**Application (UP03-004)**  
**VoiceStream PCS III, Corp.**

In accordance with Town Code §13-21-110, on April 14, 2003 the Prescott Valley Planning and Zoning Commission held a public hearing to consider the application of VoiceStream PCS III, Corp. for a Use Permit to allow for placement of a Wireless Telecommunications Facility in a C2 (Commercial; General Sales and Services) Use District on property located south of Second Street at the rear of Peddler's Pass where an APS substation is currently located (UP03-004). At the hearing, Community Development Director Richard Parker noted that a Wireless Telecommunications Plan for Central Yavapai County was adopted by the Town in May of 1998. The Plan recommends that wireless telecommunications facilities should be placed in the PL (Public Lands) Use District whenever possible. The Town Code allows wireless facilities in the PL Use District upon agreement with the Town and/or other owners of public and quasi-public property. Wireless facilities in any other zoning district are subject to approval of a Use Permit. The Plan recognizes the option of owners of tower, antennae and/or wireless telecommunications facilities to seek Use Permits to locate such facilities in other zoning districts if PL sites are unavailable. Use Permits are generally issued by the Board of Adjustment. However, Use Permits for towers, antennae and wireless telecommunications facilities are issued by the Town Council after a recommendation from the Planning and Zoning Commission. With regard to such Use Permit applications, a written decision will be issued by the Council, based on the evidence in the written record. Parker then explained that there are appropriate locations within the PL Use District for placement of this wireless communications facility. Therefore, Staff recommended that the Commission recommend denial of this request for a Use Permit. Mr. Rulen Anderson, 2505 Lee High Drive, Mesa Arizona, also spoke at the hearing on behalf of the application. He distributed photo simulations of the site and proposal. He also explained that VoiceStream has considered a PL District site on a Prescott Valley Water District water tank, but the cost of providing electricity to the site was prohibitive. Consequently, VoiceStream researched alternative sites and determined that this APS site in the C2 Use District was the most suitable. After reviewing this application, Town Staff redirected VoiceStream to a nearby PL Use District site with PV Water District water tanks (Elks Tank), but also indicated that the antenna would need to be reduced in size because of the proximity to Highway 69. Town Staff also recommended that VoiceStream withdraw this application. However, VoiceStream felt it had already expended enough costs and felt it should pursue this Use Permit. Anderson asserted that the application is consistent with the Town's Ordinance related to telecommunications facilities. Parker responded that the Town would like to continue to administer the Wireless Telecommunications Plan as written. He emphasized that wireless telecommunication facilities should be located in the PL Use District, in which there are many, including a PL property in close proximity to the proposed site. There had been some confusion early in the process because the Elks Tank had been scheduled to be sold at auction and initial inquiries about that site by VoiceStream had indicated the site wasn't available. Now, however, the site is available. Anderson, in turn, responded that he believes the requirement to place a telecommunications facility in the PL Use District as outlined in the adopted Wireless Telecommunications Plan violates the Federal Communications Act. Parker replied that the Plan had been reviewed by legal counsel when it was adopted.

Lengthy discussion ensued regarding the initial and secondary applications by VoiceStream and the confusion caused by Staff's initial failure to acknowledge that the Elks Tank was an appropriate site. Parker urged the Commission to set aside the issue of costs incurred by VoiceStream in the application process, and to focus on the acknowledged availability of the nearby Elks Tank site.

At the close of the hearing, Vice-Chairperson Bourdon moved for the Commission to forward UP03-004 to the Town Council with a recommendation of denial, based on the Wireless Telecommunications Plan adopted by the Town Council in 1998 and the fact that appropriate locations exist within the PL Use District for placement of this wireless communications facility. Commissioner Babbitt seconded the motion. The motion carried by a 5:1 roll call vote of those members present as follows. Commissioner Huot, "yes", Commissioner Sundell, "yes", Commissioner Houglund, "no", Commissioner Babbitt, "yes", Vice-Chairperson Bourdon, "yes", and Chairperson Yeater, "yes".

At its regular meeting on May 8, 2003, the Town Council considered UP03-004 and the recommendation of denial of the Planning and Zoning Commission. Parker addressed the Council and again discussed the background of the application and the Staff recommendation that it be denied because of the availability of a nearby suitable site within the PL Zoning District, in compliance with the Wireless Telecommunications Plan. Anderson addressed the Council and distributed a picture of what the proposed facility at the APS site would look like. Anderson stressed the benefit of the APS site versus the Elks Tank site, since Staff had indicated that it would not recommend to the PV Water District Board that it agree to a lease for as large an array as was being proposed in this application. Staff had indicated it would recommend stealth technology at the Elks Tank so that the facility looked like a flag pole. Anderson acknowledged that such a facility might meet VoiceStream's current needs, but that he would likely be looking for another site soon given current growth in the area. Parker responded that the issue of the type and size of facility at the Elks Tank would be a question for the PV Water District Board (which the members of the Town Council also constitute) in a subsequent meeting when a sublease agreement through Allynx would be considered.

Considerable discussion followed about the advantages of the C2 Zoning District (APS) and the PL Zoning District site (Elks Tank). Mayor Killingsworth spoke strongly in favor of the Wireless Telecommunications Plan and his concern that it be followed by all of the government entities in Central Yavapai County that had signed it. At the close of the discussion, Mayor Killingsworth moved not to approve the Use Permit application of VoiceStream, PCS III Corp. for installation of a telecommunications facility, and to authorize signature of the Mayor (or in his absence, the Vice-Mayor) of written findings and conclusion based on the record in support of such disapproval. Council member Flannery seconded the motion. The motion carried by a 7:0 electronic vote of those members present as follows. Council member Ables, "yes", Council member Seder, "yes", Council member Schumacher, "yes", Council member Rabideau, "yes", Council member Flannery, "yes", Vice-Mayor Fagelman, "yes", and Mayor Killingsworth, "yes".

Date: \_\_\_\_\_

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Richard C. Killingsworth, Mayor

ATTEST:

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Diana Roberts, Town Clerk

APPROVED AS TO FORM:

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Ivan Legler, Town Attorney