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March 17, 2009

Mr. John E. Selent  
Dinsmore & Shohl, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202

Re: Request for Advisory Opinion 2009-003 re: Legal Effect of *Kentucky Public Service Commission and Bluegrass Wireless, LLC v. L. Glenn Shadoan and Sue Shadoan*, Kentucky Court of Appeals Case Nos. 2007-CA-000697 and 2007-CA-000713 (Slip Op., Dec. 31, 2008)

Dear Mr. Selent:

Commission Staff acknowledges receipt of your letter of January 16, 2009, in which you request an advisory opinion regarding whether the Commission will exercise jurisdiction over an application to construct a cellular communications tower ("cell tower") where the proposed cell tower is within the political boundaries of a local planning commission that has adopted planning and zoning regulations in accordance with KRS Chapter 100, but has not adopted specific regulations governing cell towers under the authority of KRS 100.987(1).

Based upon your letter, Commission Staff understands the facts as follows:

On December 31, 2008, the Kentucky Court of Appeals issued an opinion on rehearing that effectively reversed its prior opinion and held that a local planning commission does not have any jurisdiction over cell tower construction applications unless it has adopted specific regulations governing cell towers pursuant to KRS 100.987(1). Therefore, the Court of Appeals has stated that in such

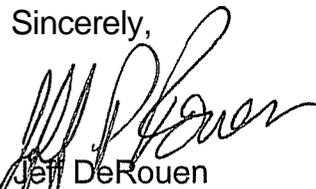
circumstances a regulatory "void" would exist and that the Public Service Commission must exercise jurisdiction over cell tower construction, even if a local planning commission exists and has adopted planning and zoning regulations in accordance with KRS Chapter 100.

As you are aware, the December 31, 2008 Opinion is not yet final. On January 30, 2009, the Commission filed a motion for discretionary review with the Kentucky Supreme Court. That motion is still pending.

Your letter presents the following question: As the Opinion of the Court of Appeals is not yet final, will the Public Service Commission exercise jurisdiction over applications for cell tower construction, if the location of the proposed cell tower is within the political boundaries of a local planning commission and the local planning commission has adopted planning and zoning regulations in accordance with KRS Chapter 100; but the local planning commission has not adopted specific regulations regarding cell towers pursuant to KRS 100.987(1)?

It is the position of Commission Staff that any applications for a Certificate of Public Convenience and Necessity which are factually similar to the *Shadoan* case will likely be dismissed without prejudice for lack of jurisdiction or held in abeyance until finality has been reached in the *Shadoan* case.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions regarding this opinion should be directed to Allyson Honaker, Staff Attorney, at (502) 564-3940, extension 265.

Sincerely,  
  
Jeff DeRouen  
Executive Director

AH/ew

cc: David Pike  
Robert Grant  
W. Brent Rice  
Douglas Brent  
Paul B. Whitty  
Todd R. Briggs