

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #3)	
CELLULAR GENERAL PARTNERSHIP FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO)	CASE NO.
CONSTRUCT A WIRELESS)	2009-00044
COMMUNICATIONS FACILITY (MUHLENBERG)	
SOUTH) IN RURAL SERVICE AREA #3)	
(MUHLENBERG) OF THE COMMONWEALTH)	
OF KENTUCKY)	

O R D E R

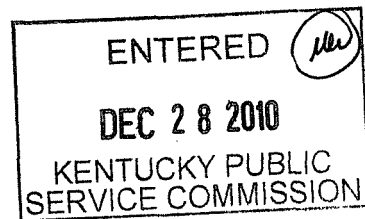
On March 2, 2009, Kentucky RSA #3 Cellular General Partnership filed an application for a Certificate of Public Convenience and Necessity ("CPCN") to construct a wireless communications facility in Muhlenberg County, Kentucky, within the geographical boundaries of a local planning and zoning commission. On April 6, 2009, the Commission issued an Order holding this case in abeyance. In support of its decision for abeyance, the Commission stated that it would render a decision on the application once the Supreme Court of Kentucky issued a ruling in *Kentucky Public Service Commission v. Shadoan*, ___ S.W.3D ___, 2010 WL 4679513 (Ky. Nov. 18, 2010). The Commission sought discretionary review of the decision by the Kentucky Court of Appeals wherein that court had held, *inter alia*, that, under KRS 278.665, the Commission has jurisdiction over wireless tower siting applications for facilities to be located in geographic areas where local planning and zoning commissions exist. On November 18, 2010, the Supreme Court issued a decision in *Shadoan* stating that the

Commission does not have jurisdiction to accept or approve CPCN applications for towers to be geographically located inside the jurisdictional boundaries of existing local planning commissions. The Supreme Court's decision became final on December 8, 2010. Based upon the Supreme Court decision in *Shadoan*, the Commission finds that it does not have jurisdiction over the application contained in this proceeding, since the proposed site is within the geographical boundaries of a local planning and zoning commission, and that this case should be dismissed for lack of jurisdiction and removed from the Commission's docket.

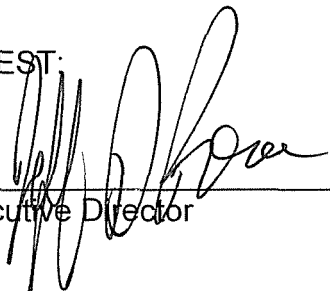
IT IS THEREFORE ORDERED that:

1. This case is lifted from abeyance.
2. This case is dismissed and removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

Honorable John E Selent
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