

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NEW CINGULAR WIRELESS PCS LLC FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2009 -00034
CONSTRUCT A WIRELESS)	
COMMUNICATIONS FACILITY)	

O R D E R

On March 17, 2009, the Commission ordered ("March 17 Order") that this proceeding would be held in abeyance pending a decision by the Kentucky Supreme Court in the matter of *L. Glenn Shadoan, et al. v. Kentucky Public Service Commission, et al.*, Kentucky Supreme Court Case No. 2009-SC-000053-DR ("*Shadoan*"). The application filed by New Cingular Wireless PCS, LLC ("New Cingular") in this proceeding concerns a request for a Certificate of Public Convenience and Necessity ("CPCN") to construct a wireless communications tower in Henderson, Kentucky. New Cingular proposes to build the tower at a location within the political boundary of a local planning commission that has adopted planning and zoning regulations in accordance with KRS Chapter 100. The *Shadoan* case, as filed before the Kentucky Supreme Court, centers on the question of whether or not the Commission has jurisdiction over certain applications, such as the one filed by New Cingular in this proceeding.

In the March 17 Order, the Commission held that New Cingular's current application would be held in abeyance pending a decision by the Kentucky Supreme Court. As of the date of this Order, the Court has not issued a ruling in the *Shadoan*

case. In the March 17 Order, the Commission also held that, if a decision has not been made within 60 days, New Cingular may file a motion to request that the Commission revisit this matter.

On June 1, 2009, New Cingular moved the Commission for a decision on the application in this proceeding. In support of its motion, New Cingular makes three arguments in support of a decision on the CPCN application. First, New Cingular states that it has met all of the filing requirements applicable to this case, as required by Commission statutes and regulations. Next, New Cingular states that no requests for intervention have been filed with the Commission. Lastly, New Cingular states that the proposed tower is a vital element of the utility's wireless provisions of its Federal Communications Commission license.

The Commission acknowledges the importance of deployment of wireless communications facilities and extension of wireless service across the Commonwealth. However, at this juncture, there exists a crucial legal question on the proper jurisdiction for certain wireless applications for proposed sites within the political boundary of a local planning commission that has adopted planning and zoning regulations in accordance with KRS Chapter 100. The Commission finds that, to ensure the most efficient and effective use of the resources of the Commission and the parties, and to avoid unnecessary costs and proceedings, no ruling upon New Cingular's application should be made until such time as the Kentucky Supreme Court has issued a ruling in the *Shadoan* matter. In its current motion, New Cingular has presented no legal argument to persuade the Commission that the abeyance should be lifted, nor has it shown, through demonstrable evidence, how the abeyance directly impacts the provision of

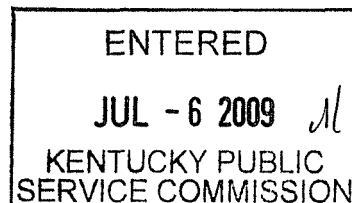
New Cingular's service in Kentucky. Such information would have been helpful to the Commission in the review of this matter. While the statements in the current motion are informative, they neither dissuade nor divert the Commission from its position that abeyance is the proper procedure to apply to CPCN applications that are substantively related to the *Shadoan* case.

Having reviewed New Cingular's request for a decision, the Commission finds that this matter shall continue in abeyance pending a decision by the Kentucky Supreme Court in the *Shadoan* case. If a decision has not been made by the Court within 60 days of the date of this Order, New Cingular may file a motion to request that the Commission revisit this matter again.

IT IS THEREFORE ORDERED that:

1. New Cingular's request for a decision in this proceeding is denied.
2. This matter shall continue to be held in abeyance for a period of not less than 60 days commencing from the date of this Order, and pending a final decision in the Kentucky Supreme Court Case No. 2009-SC-000053-DR.
3. At the conclusion of 60 days, New Cingular may request that the Commission revisit this matter again.

By the Commission



ATTEST:


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