

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY AT)CASE: 2009-00093
114 RISING SON LANE, PRESTONSBURG)
FLOYD COUNTY, KENTUCKY, 41653)

SITE NAME: BIG BRANCH (474G0111)

**AMENDMENT TO UNIFORM APPLICATION AND MOTION OF NEW CINGULAR
WIRELESS TO LIFT ABEYANCE**

By Order dated April 03, 2009, the Kentucky Public Service Commission (the "Commission") held Case Number 2009-00093 in abeyance pending a decision by the Kentucky Supreme Court in the Petition for Discretionary Review in the matter of L. Glenn Shadoan, et al. v. Kentucky Public Service Commission, et al. (Kentucky Supreme Court Case Number 2009-SC-000053-DR) (hereinafter "Shadoan"). This 60 day period having expired and for the evidence below, Applicant respectfully requests that the Order dated April 03, 2009 be lifted and that the Commission proceed with the review of Case Number 2009-00093.

Applicant submitted an Application for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communication Facility on March 25, 2009. Section 3 of the Application is hereby deleted in its entirety and replaced with the following paragraph:

Applicant proposes construction of an antenna tower in Floyd County, Kentucky, which is outside the jurisdiction of a planning commission and Applicant submits the Application to the PSC for a CPCN pursuant to KRS §§ 278.020(1), 278.650, and 278.665.

The Applicant was incorrect in the determination that the WCF was within the jurisdictional boundaries of the City of Prestonsburg and therefore was bound by its planning and zoning ordinances. The City of Prestonsburg ordinances do not specifically deal with the zoning of a cell tower and therefore the Applicant was in error in its application of the definition of "jurisdiction" as defined by the Kentucky Court of Appeals in the Shadoan case.

Upon further investigation it has been discovered that although the physical address of the subject parcel lies within the city's jurisdiction, said jurisdiction ends at the eight hundred foot (800') elevation mark of said parcel. The survey that was included as Exhibit B of said Application clearly indicates that the proposed WCF is above the eight hundred foot (800') elevation mark and therefore is outside the jurisdiction of the City of Prestonsburg.

The proposed WCF lies within the boundaries of Floyd County and as indicated by the letter dated September 28, 2009 and addressed to the Kentucky Public Service Commission by Robert D. Marshall, Floyd County Judge

Executive, "...Floyd County, Kentucky **does not have** a planning and zoning commission..."

Applicant hereby respectfully requests that the Application be amended as indicated and based upon the foregoing arguments and authorities, that the Commission lift the abeyance and review the application subject to Case Number 2009-00093.

Respectfully submitted,



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