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November 8, 2017

PSC STAFF OPINION 2017-011

Mr. John E. Selent
Dinsmore & Shohl LLP
101 South Fifth Street
Suite 2500
Louisville KY 40202

RE: Request for Legal Staff Opinion
Jurisdiction over Cellular Tower Application located at 13475 Highway 60,
Guston, Meade County, Kentucky

Dear Mr. Selent,

Commission Staff acknowledges receipt of your letter dated November 2, 2017, requesting a staff advisory opinion to address issues relating to Commission jurisdiction over a proposed cellular antenna tower that Kentucky RSA #3 General Partnership d/b/a Bluegrass Cellular ("Kentucky RSA #3") proposes to construct at 13475 Highway 60, Guston, Meade County, Kentucky ("Meade County cell site"). This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

You state that the Meade County cell site is located within the geographical jurisdiction of the Meade County Planning Commission ("MCPC"). You state that MCPC adopted a zoning ordinance regulating the location of cellular antenna towers that became effective on March 1, 1998. You note that, in relevant part, Section 4.3.5(c) of MCPC's zoning ordinance provides:

Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within unincorporated Meade County Kentucky shall: 1. Submit a copy of the utility's completed uniform

application to the Meade County Planning Commission within five (5) days of applying to the PSC for a certificate of necessity and convenience as required by KRS 278.020(1).

You further note that KRS 100.987(1) provides:

A planning unit as defined in KRS 100.111 and legislative body or fiscal court that has adopted planning and zoning regulations may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in this chapter, except as otherwise provided in this section.

You request that Commission Staff render its opinion as to who has jurisdiction over the Meade County cell site and whether Kentucky RSA #3 should file its Uniform Application to construct a cellular antenna tower on the Meade County cell site with the Commission, with the MCPC, or with both.

KRS 100.111 defines a planning unit as:

any city, county, consolidated local government, urban-county government, charter county government, or unified local government, or any combination of cities, counties, or parts of counties, or parts of consolidated local governments engaged in planning operations.

According to Meade County Zoning Ordinance 2.9.3., MCPC, whose members are appointed by Meade County Fiscal Court, is engaged in planning operations for Meade County, Kentucky. Commission Staff concludes that MCPC is a planning unit as defined in KRS 100.111, and thus, under KRS 100.987(1), has authority to regulate the siting of cellular antenna towers in Meade County.

The Commission is a state agency empowered to regulate utilities and enforce the provisions of KRS Chapter 278. One provision of that Chapter is KRS 278.650, which requires Commission authorization of the "construction of an antenna tower for cellular communications services or personal communications services *which is to be located outside the jurisdiction of a planning commission*" (emphasis added).

In interpreting KRS 278.650, the Kentucky Supreme Court held in *Kentucky Public Service Comm'n. v. Shadoan*, 325 S.W.3d 360 (Ky. 2010) that the construction of a cellular antenna tower is outside the jurisdiction of local planning commission, and therefore subject to the Commission's jurisdiction, only when the area does not have a local planning commission. The Supreme Court further explained that:

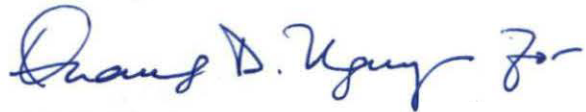
If the area of the proposed cellular tower has a planning unit that has adopted planning and zoning regulations, the jurisdiction over matters relating to cellular tower placement and construction rests with that planning commission, not the PSC.

Shadoan at 365 (Ky. 2010).

In the scenario that you present to the Commission, the Meade County cell site is located in the geographical jurisdiction of a planning commission that has adopted planning and zoning regulations. Commission Staff concludes that, pursuant to KRS 278.650 and *Shadoan*, the Commission does not have jurisdiction over cellular antenna tower construction on the proposed Meade County cell site. Commission Staff further concludes that, because MCPC, and not the Commission, has jurisdiction over the Meade County cell site, any application to construct a cellular antenna tower on that site should be filed with the MCPC. Pursuant to 807 KAR 5:064, Section 5, Kentucky RSA #3 should notify the Commission in writing if MCPC approves the application to construct a cellular antenna tower on the Meade County cell site.

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 concerning this opinion should be directed to Staff Attorney Nancy J. Vinsel at 502-782-2582.

Sincerely,



J.E.B. Pinney
Deputy General Counsel

NJV/ph