

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS)	
PCS, LLC FOR ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO.
TO CONSTRUCT A WIRELESS)	2009-00093
COMMUNICATIONS FACILITY AT 114 RISING)	
SON LANE, PRESTONSBURG, FLOYD)	
COUNTY, KENTUCKY, 41653)	

O R D E R

On April 3, 2009, the Commission ordered (“April 3 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 Prestonsburg, 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 April 3 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.¹ In the April 3 Order, the Commission also held that, if a decision had not been made within 60 days, New Cingular could file a motion to request that the Commission revisit this matter.

On June 11, 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 for a decision on the CPCN application. First, New Cingular states that it has met all the filing requirements applicable to this case, as required by Commission statutes and regulations. Next, New Cingular discussed the letter from Mr. Skeans² wherein he indicates that New Cingular's notification letter regarding the proposed site contains a faulty map. In response to Mr. Skeans' statement, New Cingular argues that Mr. Skeans' argument is invalid, as the notification letter also included detailed directions to the proposed site and notice signs were also posted near the site, thereby giving Mr. Skeans the opportunity to determine the placement of the proposed tower. 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 the deployment of wireless communications facilities and the extension of wireless service across the

¹ In this proceeding, there is a pending motion for intervention filed by Mr. Floyd Skeans, as submitted on April 1, 2009. By letter dated April 6, 2009, the Commission notified Mr. Skeans that this proceeding was being held in abeyance pending a ruling by the Kentucky Supreme Court in a related matter. The Commission informed Mr. Skeans that it would not undertake a review of his motion until such time as this proceeding becomes active again.

² See Letter from Mr. Skeans dated April 1, 2009, *supra*.

Commonwealth. However, at this juncture, there exists a crucial legal question about 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. 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 request that the Commission revisit this matter.

IT IS THEREFORE ORDERED that:

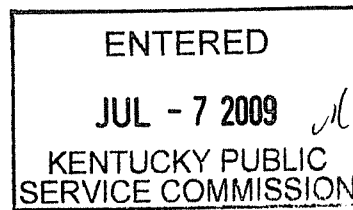
1. New Cingular's request for a decision in this proceeding is denied.

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 Kentucky Supreme Court Case No. 2009-SC-000053-DR.

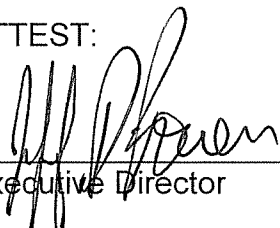
3. At the conclusion of 60 days, New Cingular may request that the Commission revisit this matter.

4. The Executive Director shall serve a copy of this Order to Mr. Floyd Skeans, P.O. Box 0248, Dwale, Kentucky, 41621.

By the Commission



ATTEST:



Executive Director

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