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Commissioner

September 28, 2010

## PARTIES OF RECORD

RE: Case No. 2009-00432

Enclosed is the memorandum that has been filed in the record of the above-referenced case. Any comments regarding this memorandum's content should be submitted to the Commission, in writing, within seven (7) days of receipt of this letter.

Questions regarding this memorandum should be directed to Tiffany Bowman at (502) 564-3940, extension 465 or by e-mail at [TiffanyJ.Bowman@ky.gov](mailto:TiffanyJ.Bowman@ky.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff R. Derbuen".

Jeff R. Derbuen  
Executive Director

JD/tjb

enc.

## INTRA-AGENCY MEMORANDUM

### KENTUCKY PUBLIC SERVICE COMMISSION

**TO:** Main Case File - Case No. 2009-00432

**FROM:** Tiffany Bowman  
Staff Attorney

**DATE:** September 28, 2010

**SUBJECT:** Informal Conference Memorandum

An informal conference ("IC") was held in this matter on Friday, September 24, 2010. The purpose of this conference was to discuss the abeyance status, recent legal developments which affect the applicant's request for a certificate of public convenience and necessity and other issues relevant to this proceeding. The attendees were as follows:

- Todd Briggs, Mary Keyer, Joan Duncan and Tony Taylor – New Cingular Wireless (by phone)
- Tiffany Bowman, Allyson Honaker, Kyle Willard, Eric Bowman and JEB Pinney – PSC Staff

During the course of the IC, the parties and Commission Staff discussed the following issues:

- New Cingular stated it wants the current six cases released from Abeyance status (2009-00160; 2009-00432; 2010-00015; 2010-00031; 2010-00024 and 2010-00125). New Cingular says state of the law, based on the ruling by the Kentucky Court of Appeals in the Shadoan case, is that the PSC has the jurisdiction to issue cell tower siting decisions for proposed towers located in the geographic areas where a local Planning Commission exists; New Cingular says the business risk of building cell towers in those particular areas belongs to New Cingular should the Kentucky Supreme Court decides to reverse the Court of Appeals.
- New Cingular is concerned about increasing wireless coverage in Kentucky and says it has received complaints and concerns as to why service is not increasing.
- New Cingular discussed the Federal Communications Commission's new "Shot-Clock Rule". The Order was issued in Nov. 2009, but was under a motion for reconsideration. The FCC denied reconsideration on August 4, 2010. The rule is now effective.

- In discussing the issue of the business risk in constructing towers in areas where the Supreme Court may later say the PSC has no jurisdiction to issuing siting decisions, New Cingular says the PSC can account for this issue in the final siting Orders for each of these cases. New Cingular suggested that the PSC acknowledge in the Order that it has appealed the Court of Appeals decision and lifting the Abeyance and issuing a final decision on the application does not change its position before the Supreme Court and New Cingular may need to seek approval from the local planning commission if the Supreme Court reverses the decision of the Court of Appeals.
- New Cingular stated it does not want to withdraw its applications, as it believes it faces a bigger risk of not getting authority anywhere prior to constructing the towers versus the smaller risk of simply going to the wrong authority for approval. New Cingular states it is making the decision to move forward on the applications.
- Commission Staff stated that out of the 6 applications, 4 of them are relatively straightforward, as there are no requests for intervention or objections from property owners. However, there are complications in the Woodford, Christian and Bullitt County cases, as members of the community and property owners have submitted concerns or objections or requests for intervention that need to be addressed by the PSC and the utility. Commission Staff stated that although the applications have been in Abeyance, the abeyance status only meant that the Commission would not issue final decisions on the applications, but the status does not prohibit New Cingular from moving forward in addressing the concerns of the property owners while waiting for a final decision on the siting request.
- New Cingular stated that it believes both the Woodford County Commission and the Union County Commission have each acquiesced to the PSC's jurisdiction. Commission Staff noted that it believes there is some room for debate about Union County jurisdiction in light of its comprehensive land use plan and that the Woodford County Fiscal Court members have raised numerous concerns about the proposed tower.
- New Cingular stated that the FCC's "Shot Clock Rule" is in effect, but it would prefer not to seek a court ordered remedy against the PSC. Commission Staff and New Cingular discussed entering into a Settlement Agreement to extend the amount of time the PSC has to render decisions on the 6 cases, as allowed under the Shot-Clock Order.
- PSC Staff stated that it would immediately notify the Commission of New Cingular's request, the possibility of immediate litigation and the potential settlement agreement with PSC Staff. New Cingular proposed invoking the "reasonable time period for extension" for 30 days (to Nov. 4, 2010), under the Shot-Clock Order.

- The next IC will be held on October 8, 2010 to discuss the Commission's decision as to New Cingular's request to have the Abeyances lifted and the proposed settlement agreement with Staff.

The informal conference then adjourned.