

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A CERTIFICATION OF THE CARRIERS)	ADMINISTRATIVE
RECEIVING FEDERAL UNIVERSAL SERVICE)	CASE NO. 381
HIGH-COST SUPPORT)	

ORDER

On October 4, 2022, New Cingular Wireless PSC, LLC d/b/a AT&T Mobility (AT&T Mobility) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for attachments A-1 and A-2 of AT&T Mobility's Certification and Report.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ In support of its petition, AT&T Mobility argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Exceptions to the free and open examination of public records contained in

¹ KRS 61.872(1).

KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

Attachment A-1 consists of network infrastructure, including the location of cell sites; proposed service improvement projects; and the estimated costs associated with said improvements. In support of its petition, AT&T Mobility argued that the designated material is exempt from open records laws by KRS 61.878(1)(c)(1), which prohibits public disclosure of records that are confidential or proprietary and would permit an unfair commercial advantage to competitors if publicly disclosed. AT&T Mobility stated that public disclosure of the information would provide competitors with proprietary information regarding AT&T Mobility's network infrastructure, build out plans, and operating costs, which would not be publicly available otherwise. AT&T Mobility argued that public disclosure of the designated material would allow a competitor to develop business, operational, and marketing strategies to compete with AT&T Mobility to the detriment of the wireless marketplace and to the detriment of wireless customers.

Having considered the petition and the material at issue, the Commission finds that the petition should be granted in part and denied in part. Disclosure of AT&T Mobility's construction plans would assist competitors in competing with AT&T Mobility by allowing direct competition regarding cell tower placement. Also, disclosure of estimated costs would allow potential contractors to unfairly manipulate the bidding process.⁴ Therefore, Attachment A-1 is generally recognized as confidential or proprietary and therefore meets

² See KRS 61.871.

³ 807 KAR 5:001E, Section 13(2)(c).

⁴ See Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Feb. 28, 2022), Order at 2-3.

the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

Confidential treatment is denied for Attachment A-2. AT&T Mobility has not indicated any specific reason that a list of service outages should be confidential, and none of the data in this document would give an unfair advantage to AT&T Mobility's competitors.

IT IS THEREFORE ORDERED that:

1. AT&T Mobility's October 4, 2022 petition for confidential treatment is granted in part and denied in part.
2. AT&T Mobility's petition for confidential treatment is granted for Attachment A-1 to AT&T Mobility's Certification and Report.
3. AT&T Mobility's petition for confidential treatment is granted for Attachment A-2 to AT&T Mobility's Certification and Report.
4. Attachment A-1 to AT&T Mobility's Certification and Report shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
6. AT&T Mobility shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been

granted confidential treatment has not expired, AT&T Mobility shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If AT&T Mobility is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow AT&T Mobility to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If AT&T Mobility objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.


11. Within 30 days of the date of service of this Order, AT&T Mobility shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which AT&T Mobility's request for confidential treatment has been denied shall neither be placed in the public record nor made available

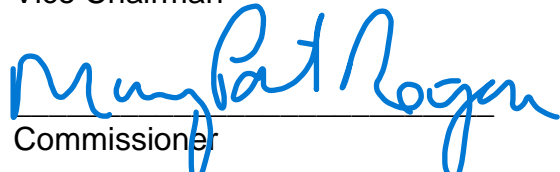
for inspection for 30 days from the date of service of this Order to allow AT&T Mobility to seek a remedy afforded by law.

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Vice Chairman


Commissioner

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JAN 20 2023
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