

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF THE KENTUCKY COMMISSION)	
ON THE DEAF AND HARD OF HEARING TO)	CASE NO.
EXPAND THE FUNDING BASE FOR THE)	2007-00464
KENTUCKY TELECOMMUNICATIONS ACCESS)	
PROGRAM)	

O R D E R

This matter is before the Commission on the joint motion for clarification filed by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), New Cingular Wireless PCS, LLC and Cincinnati SMSA Limited Partnership d/b/a AT&T Mobility f/k/a Cingular Wireless ("AT&T Mobility") (collectively, "AT&T"), T-Mobile USA, Inc., Powertel/Memphis, Inc. and T-Mobile Central LLC (collectively, "T-Mobile").

On February 16, 2009, the Commission issued an Order in this proceeding expanding the collection of the fees for the Telecommunications Relay Service fund ("TRS") and the Telecommunications Access Program fund ("TAP") to Kentucky wireless carriers. Prior to this Order, the Commission only compelled landline carriers to collect the fees. In connection with the fees, wireless carriers must submit monthly reports to the Commission detailing the number of access lines each provider has in

service.¹ In their motion, AT&T and T-Mobile request clarification that the Commission will automatically grant confidential protection to the required monthly reports to be filed by wireless carriers with the Commission regarding the number of access lines in service and the exact dollar amount of the TRS and TAP fees remitted to those funds. The parties state that the monthly reports, once submitted, will contain carrier-specific, competitively sensitive non-public access line count information. In support of their argument for automatic confidentiality, AT&T and T-Mobile state the Federal Communications Commission (“FCC”) currently treats such competitively sensitive information as confidential.²

Under KRS 61.872 of the Kentucky Open Records Act, all public records shall be open for public inspection by any person and any person shall have the right to inspect public records, except as otherwise provided by statute. KRS 61.870(2) defines “public record” as all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. AT&T and T-Mobile contend that the monthly reports would be entitled

¹ In the Commission’s “Instructions for Completing Kentucky Telecommunication Relay Service and Telecommunication Access Program Fund Report,” the Commission has ordered that carriers may contribute to the fund on a monthly or quarterly basis, depending on the number of subscribers served. Carriers with less than 1,000 access lines may contribute on a quarterly basis. Carriers with greater than 1,000 access lines should continue to contribute on a monthly basis. Carriers contributing on a quarterly basis are still required to submit separate reports for each month but to remit them to the fund on a quarterly basis. Reports are due within 15 days following the reporting month. The instructions were included as an Appendix to the February 16, 2009 Order in this matter.

² See generally *In the Matter of Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, GC Docket No. 96-55, FCC 98-184, 13 FCC Rcd 24816 (1998).

to confidential protection of the access line information as an exception to the Open Records Act under the “competitive injury” exemption found in KRS 61.878(1)(c). KRS 61.878(1)(c) protects commercial information which is generally recognized as confidential or proprietary if public disclosure would cause competitive injury or give unfair business advantages to the competitors of the company providing the information.

The parties also note that access line count information is provided to Kentucky’s Commercial Mobile Radio Service Emergency Telecommunications Board (“CMRS Board”) and, pursuant to KRS 65.7639, the CMRS Board only releases access line information in aggregate amounts wherein neither the subscriber numbers nor revenue amounts can be attributed to specific carriers. The parties argue that providing this same information to the Commission without confidential protection would undermine the purpose of KRS 65.7639.

Having reviewed the arguments and applicable law, the Commission finds that public disclosure of the access line count information for wireless providers in the monthly TRS and TAP reports would cause competitive injury to those providers and would violate and undermine existing state law and federal regulatory protections on confidentiality previously granted to this information. Although the motion for clarification was filed by AT&T and T-Mobile, the Commission finds that this Order shall apply to all wireless carriers required to collect TAP and TRS fees, pursuant to the February 16, 2009 Order in this matter. The Commission finds that the access line count information to be provided by wireless carriers in the TRS and TAP monthly reports will be automatically granted confidential treatment. The Commission finds that

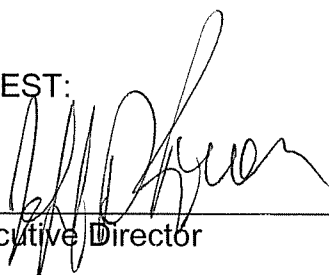
disclosure of the confidential information may result in a significant and unfair commercial advantage to competitors of the company filing the information. See *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. App. 1997). The Commission finds that no wireless provider will be required to file motions for confidentiality as to these reports and that no further action shall be required of wireless carriers unless otherwise ordered by the Commission.

IT IS HEREBY ORDERED that:

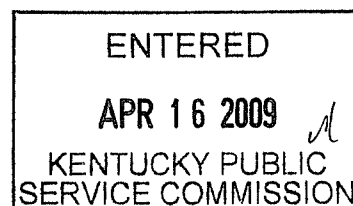
1. The monthly reports required to be filed in this matter to calculate a wireless carrier's number of access lines shall automatically be granted confidential protection each month.
2. No further motions for confidential treatment of the information contained in the required monthly reports are required by wireless carriers unless otherwise ordered by the Commission.
3. In addition to the parties to this proceeding, the Executive Director shall serve copies of this Order upon all wireless carriers registered to provide service in Kentucky.

By the Commission

ATTEST:



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