

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

AN INQUIRY INTO THE STATE	)	CASE NO.
UNIVERSAL SERVICE FUND	)	2016-00059

**MOTION FOR CONFIDENTIAL TREATMENT**

i-wireless, LLC (“i-wireless” or “Company”), through counsel, for its Motion for Confidential Treatment for information on lines one and three of Exhibit A to its Responses to the Kentucky Public Service Commission Request for Information dated April 6, 2016, pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1), states as follows:

**GROUND FOR CONFIDENTIAL PROTECTION**

The Kentucky Open Records Act exempts from disclosure certain commercial information, including records 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. *See* KRS 61.878(1)(c). CMRS is perhaps the most competitive segment of the modern telecommunications business. Potential customers often have five or more carriers to choose from. This reality is acknowledged by Kentucky law, which states the provision of CMRS in Kentucky is market-based and not subject to regulation. *See* KRS 278.54611(1). As the market is, without question, highly competitive, certain information i-wireless has been requested to file as part of this investigation should be treated by the agency as highly confidential trade secret information subject to protection under the Kentucky Open Records Act. The Commission has requested copies of KUSF reporting forms from participants in this

proceeding. Those forms disclose the support amounts requested on behalf of eligible Lifeline customers, and i-wireless does not object to disclosure of that information in the context of this proceeding to consider the status of the Kentucky Lifeline Program. However, the reporting forms also include information about the number of i-wireless subscribers that do not participate in the Lifeline program. This information is not relevant to the goals of this proceeding, but would be valuable competitive intelligence to certain prepaid wireless providers who compete with i-wireless, including for retail sales in The Kroger Company's stores, which holds an ownership interest in the Company.

The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. That requirement is met here. First, the Company competes not only against other Lifeline service providers in Kentucky but also against wireless resellers like Tracfone, Net 10 and Straight Talk Wireless and wireless licensees like AT&T, Verizon, and Sprint.

Moreover, the Commission has long recognized the highly competitive nature of CMRS as a reason to provide confidential treatment to information submitted to the Commission by CMRS providers. *See, e.g., In the Matter of: ACC of Kentucky LLC's Petition for Confidential Protection*, Case No. 99-184, (January 24, 2000) (confidential treatment for intrastate gross revenue reports). Obviously, the confidential and proprietary business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1.

In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General

Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768.

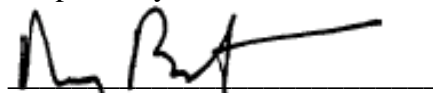
The same analysis applies here. i-wireless is disclosing information not only related to its participation in the Lifeline program, but also its unrelated retail operations that will disclose its strengths in the intensely competitive prepaid wireless segment. i-wireless would never voluntarily provide this information about its non-Lifeline business to its direct competitors, carriers that may or may not be parties disclosing information comparable to what the Company is providing to the Commission.

### **CONCLUSION**

i-wireless is entitled to confidential protection for the information at issue and requests that the Commission confirm that its unredacted Exhibit A will not be disclosed. If the Commission disagrees, however, it must hold an evidentiary hearing (a) to protect the due process rights of the Company and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. Ct. App. 1982).

**WHEREFORE**, i-wireless respectfully requests that the Commission grant confidential protection for the material identified herein or, in the alternative, schedule an evidentiary hearing on all factual issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Douglas F. Brent', is written over a horizontal line.

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