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PUBLIC SERVICE COMMISSION

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THE APPLICATION OF )  
TILLMAN INFRASTRUCTURE LLC )  
A DELAWARE LIMITED LIABILITY COMPANY, AND )  
NEW CINGULAR WIRELESS PCS, LLC, )  
A DELAWARE LIMITED LIABILITY COMPANY, )  
D/B/A AT&T MOBILITY )  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC ) CASE NO.: 2017-00435  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
A WIRELESS COMMUNICATIONS FACILITY )  
IN THE COMMONWEALTH OF KENTUCKY )  
IN THE COUNTY OF MARSHALL )

SITE NAME: HANSEN

**APPLICANTS' SUBMISSION OF RESPONSES TO DATA REQUESTS AND MOTION  
FOR CONFIDENTIAL TREATMENT OF RESPONSES**

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Tillman Infrastructure LLC ("Tillman"), a Delaware limited liability company, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility ("AT&T") (collectively, "Applicants"), by counsel, file Responses to the Kentucky Public Service Commission ("PSC") Staff's First Request for Information from Applicants (the "Data Requests") and make a Motion for Confidential Treatment of such Responses pursuant to 807 K.A.R. 5:001, Section 13, and other law. Applicants respectfully state as follows:

1. On November 14, 2017, Applicants initiated this proceeding by filing an application for a Certificate of Public Convenience and Necessity ("CPCN") for construction of a new cellular tower in Marshall County, Kentucky at 1641 Lee Burd Road, Benton, Kentucky (the "Application") with the PSC.

2. In Paragraph 10 of the Application, Applicants state "... that there is no more suitable location reasonably available from which adequate services can be provided, and that there are no reasonably available opportunities to co-locate Applicant's antennas on an existing structure." *Id.* at page 4.

3. In a Response to Public Comment filed December 27, 2017 Applicants explained that an SBA tower at 1709 Lee Burd Road, Benton, Kentucky was not "... in the long term a viable and reasonable collocation alternative for AT&T or other providers...." because "[e]xcessive rental rates render the tower "not feasible or available" under the *Anacortes*<sup>1</sup> standard and prevent it from being a "reasonably available opportunity to collocate" pursuant to 807 K.A.R. 5:063 – Section 1(s)." *Id.* at p. 5 of Applicants' December 27, 2017 Response.

4. The Data Requests require Applicants to provide written responses under oath to the following inquiries:

1. Provide the date on which AT&T began leasing space on the SBA Communications Corp. ("SBA") tower located on the property of Scott Norman.

a. Provide the annual amount AT&T paid to SBA as part of its lease as of that date.

b. Provide the date and amount of any increases in the annual amount of the lease between SBA and AT&T, including the annual amount paid currently.

2. State whether AT&T currently leases space or has leased space within the past five years on any other wireless communications facility within a 50-mile radius of the SBA tower located on Mr. Scott Norman's property.

3. If AT&T has leased space within the past five years or currently

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<sup>1</sup> *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, 998 (9<sup>th</sup> Cir. 2009). See also *T-Mobile Cent. LLC v. Charter Twp. of West Bloomfield*, 691 F.3d 794 (Ky. App. 2012).

leases space on any other wireless communications facility within a 50-mile radius of the SBA tower located on Mr. Scott Norman's facility, state the length of the lease, the starting annual payment for the lease, and the date and amount of any increases to the lease including the amount currently paid.

5. Applicants provide the within Responses to the Data Requests under Oath/Certification and under seal as included herein and incorporated by reference in this filing as **Exhibits A and B**. Such Responses do not include personal information as such term is used in 807 K.A.R. 5:001, Section 4(10).

6. The Responses are timely filed pursuant to the PSC's Order entered July 17, 2018, granting Applicants' request for extension of time to respond to August 1, 2018.

7. Applicants request confidential treatment of all portions of the Responses to the Data Requests submitted under seal (**Exhibits A and B**) consistent with 807 K.A.R. 5:001 – Section 13. Rental amounts in leases and information on increases in rent are inherently proprietary and confidential as often being carefully negotiated as to individual sites or involving master agreements covering sites in broad geographic areas or even nationally. Such information is also subject to limited access by Applicants' employees on a "need to know" basis. Moreover, such information is not generally in the public domain either through filings with the PSC or with other public entities. In addition, unlike the sales price in a deed, rental information is not normally disclosed to county clerks' offices in connection with recording a real property interest. The normal industry practice is to record only a memorandum of a cell tower lease containing no financial information.

8. If tower site rental information was publicly disclosed on a broad basis, such as a 50-mile radius of leases would involve, Applicants would be disadvantaged in future negotiations for tower and ground space rights with Applicants' competitors and property

and/or tower owners. Disclosure of rents for numerous existing sites would prejudice Applicants in negotiations for future sites and inevitably lead to payment of higher rents. Eventually, the cost of wireless service for the consumer would increase in such circumstances. The PSC's grant of confidentiality protection for the Responses tendered today would avoid such consequences.

9. Ultimately, the PSC, in an Order, may explain the basis for its decision on the Applicants' request for a CPCN by referencing percentage differentials between costs to provide service from the existing SBA tower and the proposed Tillman tower and/or percentage differentials between the costs to provide service from the existing SBA tower and the average rent cost in the 50-mile radius specified in the Data Requests. Reference to percentage differentials would clearly show the PSC relied on substantial evidence and a rational basis in making its decision without revealing specific dollar amounts applicable to any one lease or an average of lease rents. An approach of only revealing percentage rent differentials in the PSC's Order would provide appropriate public disclosure of the basis for the PSC's Order while protecting the legitimate confidentiality interests of Applicants as to specific rent amounts involved.

10. 807 K.A.R. 5:001 – Section 13 requires a party subject to a PSC Data Request to identify the specific grounds pursuant to KRS 61.878 (i.e. the “Kentucky Open Records Act”) to request classification of the material as confidential. KRS 61.878(1)(c) exempts from Open Records Act disclosure “... records 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.” Kentucky's appellate courts have

repeatedly recognized the confidential nature of business financial information in connection with the Open Records Act and have applied the exemption from disclosure found in KRS 61.878(1)(c) to such information. *Marina Management Servs. v. Cabinet for Tourism, Dept. of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (“The records submitted to the Parks Department include information on ... rental amounts on houseboats.... These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators.”); *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It 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’ and falls within the wording of KRS 61.878(1)(c)(2)”).

11. Very recently, the PSC’s May 17, 2018 Order entered in *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, 2018 Ky. PUC Lexis 505 (Case No. 2017-00349) granted confidentiality protection to certain business information in circumstances where applicant argued disclosure would “... unfairly advantage competing operators...” as well as an applicant’s “competitive position in the marketplace.” *Id.* The rental information responsive to the Data Requests in the present case should likewise be afforded confidential treatment.

12. The foregoing authority, KRS 61.878(1)(c), and all other applicable law entitle Applicants to confidentiality protection of the rental information, rent increase information, and term of lease information required to be submitted by the Data Requests.

13. 807 K.A.R. 5:001 – Section 13(2) requires a party seeking confidentiality protection to state “... the time period for the material to be treated as confidential and the reasons for this time period....” Cellular tower leases typically extend for multiple renewal

terms extending to twenty-five years and beyond. Consequently, there is no short-term horizon when information on rental rates or rates of increase in a broad geographic area would not have substantial proprietary value to competitors or potential ground or tower space lessors. In these circumstances, Applicants request that information responsive to the Request be classified as confidential on a perpetual basis or for any lesser period exceeding twenty-five years as established by the PSC in its reasonable discretion.

14. This case has been pending since November of 2017, and the PSC has denied intervention by two attempted intervenors. No other person has requested intervention. Applicants do not contemplate permissive intervention being granted to any other parties in this proceeding. However, should intervention be later granted to any person, Applicants request any such intervener be required to execute an acceptable protective agreement consistent with the rights of Applicants if the PSC is to allow such future intervener any access to confidential information.

15. Applicants reserve all rights granted by 807 K.A.R. 5:001, Section 13; KRS 278.410; and other applicable law in connection with any denial of Applicants' Motion for Confidential Treatment of Responses.

16. Applicants are aware of their obligation to inform the PSC in writing if material granted confidentiality becomes publicly available as specified in 807 KAR 5:001 – Section 13(10) and shall comply with such obligation upon the occurrence of any such circumstances.

## **REQUEST FOR RELIEF**

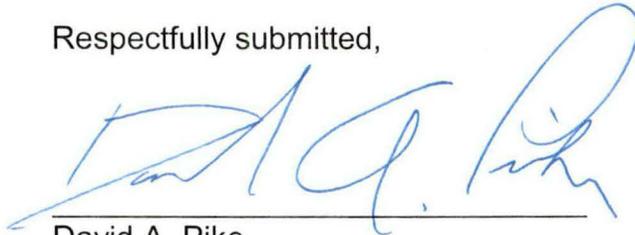
**WHEREFORE**, Applicants request that the PSC:

- (a) Accept this Response and Motion for Confidential Treatment for filing;
- (b) Grant Applicants Confidential Treatment of information herein submitted in perpetuity or for a minimum of 25 years;
- (c) Grant Applicants' request for a Certificate of Public Convenience and Necessity for the proposed construction; and
- (d) Grant Applicants any other relief to which they are entitled.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of August 2018, the foregoing was hand-delivered to the offices of the Kentucky Public Service Commission in Frankfort, Kentucky. No natural person or entity has been granted intervention in this proceeding. Accordingly, no other service of this Motion has been made.

Respectfully submitted,



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