

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NEW)	
CINGULAR WIRELESS PCS, LLC D/B/A AT&T)	
MOBILITY FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY TO CONSTRUCT A)	2020-00354
WIRELESS COMMUNICATIONS FACILITY IN)	
THE COMMONWEALTH OF KENTUCKY IN)	
THE COUNTY OF WAYNE)	

ORDER

This matter arises from motions filed on January 11, 2021, by New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility (AT&T), and Uniti Towers LLC, a Delaware limited liability company (AT&T/Uniti) and on April 27, 2021, by SBA Properties, LLC (SBA) all of which requested confidential treatment of pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The motions are described more specifically below.

AT&T/Uniti requested confidential treatment for an indefinite period or ten years for an affidavit filed in support of their application. As a basis for their motion, they assert that the affidavit includes confidential contract negotiations for a cellular tower lease with a third party and that this information is proprietary and confidential. AT&T/Uniti contend that public disclosure of the designated material would result in an unfair commercial advantage to their competitors due to the competitive nature of cellular tower leases. KRS 61.878(1)(c)(1) provides that: "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.”

SBA requested confidential treatment for five years for information redacted from an email regarding details of contract negotiations, including rental rates. SBA argues that wireless infrastructure markets are competitive and disclosure of financial terms of contract negotiations would harm them with competitors and merit protection under KRS 61.878(1)(c)(1).

Having considered the motion and the material at issue, the Commission finds that AT&T/Unifi’s motion should be granted because the affidavit they provided is recognized as confidential or proprietary as it contains internal details regarding decisions over cellular tower leasing.¹ In addition, a similar affidavit at issue was previously granted confidential treatment in a prior Commission ruling in a different case.² It therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that SBA’s motion should be granted because proposed contract terms in contract negotiations are generally recognized as confidential or proprietary and SBA would be harmed if its competitors had access to this information. The Commission previously granted confidential treatment to similar information

¹ See Case No. 2017-00435, *Application of Tillman Infrastructure LLC and New Cingular Wireless Pcs, LLC D/B/A AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Marshall* (Ky. PSC Oct. 4, 2018), Order at 1–2.

² Case No. 2020-00310, *Electronic Application of New Cingular Wireless Pcs, LLC d/b/a AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Pulaski* (Ky. PSC Apr. 19, 2021), Order.

describing contract negotiations.³ The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. AT&T/Uniti's motion for confidential protection is granted.
2. The designated material provided by AT&T/Uniti granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for a period of ten years or until further Orders of this Commission.
3. SBA's motion for confidential protection is granted.
4. The designated material provided by AT&T/Uniti granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for a period of five years or until further Orders of this Commission.
5. Use of the material granted confidential treatment by this Order in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
6. AT&T/Uniti or SBA shall inform the Commission if the 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, then AT&T/Uniti or SBA 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

³ Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC Sept. 25, 2013), Order at 3-4.

AT&T/Uniti or SBA are 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/Uniti or SBA to seek a remedy afforded by law.

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By the Commission

ENTERED
DEC 10 2021
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2020-00354

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