

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 AND NECESSITY	)	CASE NO.
TO CONSTRUCT A WIRELESS	)	2022-00414
COMMUNICATIONS FACILITY IN THE	)	
COMMONWEALTH OF KENTUCKY IN THE	)	
COUNTY OF BALLARD	)	

ORDER

On January 30, 2023, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility (AT&T Mobility) and Tillman Infrastructure LLC (Tillman Infrastructure) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for no less than ten years and up to an indefinite period of time for an affidavit in support of AT&T Mobility and Tillman Infrastructure.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,<sup>1</sup> which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<sup>5</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(i) grants confidential protection to preliminary drafts, notes, or correspondence.<sup>6</sup>

### DISCUSSION

In support of the motion, AT&T Mobility and Tillman Infrastructure argue that the affidavit includes discussion of inherently proprietary or confidential information, and that, if disclosed, that material would permit unfair commercial advantage to competitors under 807 KAR 5:001, Section 13 and KRS 61.878(1)(c)(1).

Having considered the motion and the material at issue, the Commission finds that the affidavit is generally recognized as confidential or proprietary. The affidavit contains a description of the several rental terms, including specific information between SBA and AT&T Mobility as well as Tillman Infrastructure and AT&T Mobility. More particularly, the financial benefits AT&T Mobility foresees in re-locating to a Tillman Infrastructure tower. In addition, similar affidavits have recently been granted confidential treatment by the

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<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> KRS 61.878(1)(a).

<sup>6</sup> KRS 61.878(1)(i).

Commission.<sup>7</sup> Therefore, it meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. AT&T Mobility and Tillman Infrastructure's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
3. 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).
4. AT&T Mobility and Tillman Infrastructure shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. 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

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<sup>7</sup> 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), Case No. 2020-00300, *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 Livingston* (Ky. PSC Dec. 14, 2021); Case No. 2021-00065, *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 Russell* (Ky. PSC Feb. 24, 2022); Case No. 2021-00092, *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 Bath* (Ky. PSC Feb. 24, 2022), Case No. 2022-00144, *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 Marion* (Ky. PSC July 26, 2022).

granted confidential treatment has not expired, AT&T Mobility and Tillman Infrastructure 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 and Tillman Infrastructure are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. 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 and Tillman Infrastructure to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

*Kurt Col*  
Chairman

*Aff*  
Vice Chairman

*Mary Pat Regen / Aff with permission*  
Commissioner

ENTERED  
MAY 25 2023  
rcs  
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SERVICE COMMISSION

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