



S T O L L · K E E N O N · O G D E N
P L L C

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

KENDRICK R. RIGGS
DIRECT DIAL: (502) 560-4222
DIRECT FAX: (502) 627-8722
kendrick.riggs@skofirm.com

March 9, 2009

Mr. Jeffrey Dereoun
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RECEIVED

MAR 11 2009

PUBLIC SERVICE
COMMISSION

**RE: Petition of the Kentucky Commission on the Deaf and Hard of Hearing to
Expand the Funding Base for the Kentucky Telecommunications Access
Program (TAP)
Case No. 2007-00464**

Dear Mr. Dereoun:

Enclosed please find and accept for filing the original and ten copies each of the T-Mobile USA, Inc.'s Motion for Clarification. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

Kendrick R. Riggs

KRR:jms
cc: Parties of Record

433070.130656/568419.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAR 11 2009
PUBLIC SERVICE
COMMISSION

In the Matter of:

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

JOINT MOTION FOR CLARIFICATION

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”), by counsel, submit this motion for clarification in the above-captioned proceeding. The Joint Movants provide the following memorandum in support of the Joint Motion.

BACKGROUND

AT&T Mobility and T-Mobile are commercial mobile service providers as defined under United States Code, Title 47, Section 332(d). AT&T Mobility and T-Mobile provide wireless voice and data services to customers in the Commonwealth of Kentucky pursuant to licenses issued by the Federal Communications Commission (“FCC”). AT&T Kentucky is an affiliate of AT&T Mobility and provides wireline local exchange service in the state of Kentucky.

In its petition instituting this case, The Kentucky Commission on the Deaf and Hard of Hearing (“KCDHH”) requested that the Kentucky Public Service Commission (“Commission”) order wireless telecommunications providers to begin collecting the Telecommunications Relay Service (“TRS”) and Telecommunications Access Program (“TAP”) surcharges in the same

manner as do wireline telecommunications providers.¹ On February 16, 2009, the Commission issued said order and required that all registered wireless carriers begin collecting fees² from their retail customers to fund TRS and TAP no later than June 1, 2009. In connection with these fees, wireless carriers must submit monthly reports to the Commission “detailing the number of access lines in service.” (“Monthly Reports”)

By this Petition, the Joint Movants request that the Commission clarify that it will automatically grant confidential protection to the required Monthly Reports because they contain competitively sensitive nonpublic access line count information. As discussed herein, state law already provides confidential treatment for access line information compiled and submitted by wireless carriers. In addition other regulatory agencies treat this information confidentially.

GROUND FOR MOTION

1. First, wireless carrier customer counts are already entitled to specific statutory protection. The Kentucky General Assembly has determined that access line count information submitted by wireless carriers should be maintained as confidential. Under KRS 65.7639, information provided to the Commercial Mobile Radio Service Emergency Telecommunications Board (“CMRS board”) of Kentucky will only be released “in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.” Public access to this information when filed at the PSC rather than the CMRS board would undermine clear legislative intent to keep such competitively sensitive information confidential.

2. Second, the Federal Communications Commission (“FCC”) maintains as confidential the sensitive non-public subscriber line count information contained in FCC Form

¹ AT&T and T-Mobile were granted full intervention in this case on January 29, 2008.

² The amount of such charge will be \$0.04 (\$0.02 TRS fee and \$0.02 TAP fee) per access line per month for bills rendered beginning June 1, 2009 until June 30, 2010.

477, which is the same information all carriers are required to provide in the Monthly Reports. In addition, the FCC's rules allow the Wireline Competition Bureau to release provider-specific information to a state commission *only when the state has protections in place that would preclude disclosure of any confidential information.* 47 C.F.R. § 43.11(c).

3. Third, there is recent state commission precedent that supports the clarification AT&T and T-Mobile seek here. In a recent rulemaking proceeding by the Public Utilities Commission of Ohio ("Ohio Commission") concerning, among other things, the collection of TRS charges from wireless providers, the Ohio Commission determined to protect non-public access line count information *of all competitive providers required to collect TRS fees.* In the proposed rule, Ohio Staff included language that provided "the [Ohio] Commission shall take such measures as it considers necessary to protect the confidentiality of information provided pursuant to this rule." During the comment period, however, AT&T requested that the Ohio Commission specify that providers may request confidential treatment of nonpublic information (specifically, sensitive non-public access line count information contained in FCC form 477). The Ohio Commission went a step further and determined that it would "*automatically* treat all information that providers are required to submit in order for the [Ohio] Commission to determine the assessment amount as confidential."³ The same treatment is appropriate in Kentucky.

4. Moreover, this information would be entitled to protection under the exceptions to the Kentucky Open Records Act. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury

³ *In the Matter of the Adoption of Rules for the Telecommunications Relay Service Assessment Pursuant to Section 4905.84, Revised Code, as Enacted by House Bill 562*, Case No. 08-815-TP-ORD, Finding and Order, dated August 27, 2008, ¶ 11, page 14 (emphasis added) (copy attached as Exhibit 1).

to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. Here, KCDHH's petition asserted that there is actual competition between wireline and wireless carriers. The Commission credited this assertion, so there can be little dispute that carrier access line counts are among the types of confidential and proprietary information carriers wish to protect. Disclosure of the information on a carrier-specific basis could result in competitive injury. Indeed, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. "competitive injury" exemption to financial information that was in the possession of Kentucky's Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*: "These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations."⁴ The same reasoning applies to the information contained in the Monthly Reports at issue here.

5. The information contained in the Monthly Reports is maintained internally by AT&T and T-Mobile. As stated above, this information is kept confidential by the FCC⁵ and is not publicly available through any other agency, or through any commercial or other source outside of AT&T and T-Mobile. The Monthly Reports are limited in distribution within these companies to those employees who have a business reason to have access to such information. Further, the information includes statistics for nonregulated services. Thus, the public interest to be served by its disclosure is minimal at best.

⁴ 906 S.W.2d 318, 319 (Ky. 1995).

⁵ *Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998).

CONCLUSION

For the reasons stated, AT&T and T-Mobile respectfully requests that the Commission clarify that it will automatically treat Monthly Reports filed for the purpose of calculating a carrier's number of access lines as confidential information which will not be subject to disclosure.

Dated: March 9, 2009

Respectfully submitted,

Mary K. Keyer (with permission)

Mary K. Keyer *MK*
General Counsel/Kentucky
BELL SOUTH TELECOMMUNICATIONS, INC
d/b/a AT&T KY
601 West Chestnut Street
Room 408
P.O. Box 32410
Louisville, Kentucky 40232

Kendrick R. Riggs

Kendrick R. Riggs
Douglas F. Brent
Sarah K. M. Adams
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Joint Motion has been served by U.S. mail on those persons whose names appear below this 9th day of March, 2009:

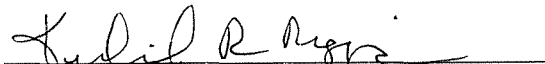
Lawrence W. Cook
Assistant Attorney General
Office of the Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Virginia L. Moore
Interim Executive Director
Kentucky Commission on the Deaf and Hard of Hearing
632 Versailles Road
Frankfort, Kentucky 40601

Mary K. Keyer
General Counsel/Kentucky
BELLSOUTH TELECOMMUNICATIONS, INC
d/b/a AT&T KY
601 West Chestnut Street
Room 408
P.O. Box 32410
Louisville, Kentucky 40232

Howard Kent Cooper
Cooper & Associates
404 Monument Square
P.O. Box 650
Jamestown, Kentucky 42629

Bridget L. Dunaway
Taylor, Keller & Dunaway & Tooms, Attorneys
1306 West Fifth Street
P.O. Box 905
London, Kentucky 40743-0905


Kendrick R. Riggs