

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 RECONSIDERATION

SI Wireless, LLC, dba MobileNation (“SI Wireless” or “Company”), through counsel, for its Motion for Reconsideration of the Commission's February 2, 2017 Order denying Confidential Treatment for information on lines one and three of Exhibit 1 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:

BACKGROUND

As part of its investigation of a funding shortfall of the Kentucky Lifeline Program, the Commission requested SI Wireless and various other CMRS providers to file in the record copies of Universal Service Fund forms ("KUSF Form") submitted for January 2014 through July 2016. These are periodic reports filed by carriers who remit money to the Lifeline Program. SI Wireless responded to the information request by filing the requested reports with a motion for confidential treatment. While acknowledging the KUSF Form, if disclosed, would reveal the number of SI Wireless subscribers that do not participate in the Lifeline program, the Commission denied the motion, reasoning that the information that SI Wireless sought to protect "is publicly available from other sources." The Order stated that SI Wireless reports its access line count when it complies with KRS 278.140 and annually files its report of gross earnings

from intrastate business. The Order states SI Wireless began filing such reports in 2011 and "has neither sought nor received confidential treatment for this information." The Order appears to reason that in the absence of such a request, reports disclosing the number of access lines served by a CMRS provider are public records available for public inspection. *See* Order at 3.

SI Wireless respectfully requests the Commission to reconsider this decision in light of specific protection and guidance the Commission issued to the wireless industry nearly eight years ago. As discussed more fully below, beginning in 2009 the Commission ordered that access line counts submitted by *all wireless providers* would automatically be given confidential treatment, without the need for a motion. The Commission provided this blanket relief in response to a motion from AT&T Kentucky and T-Mobile in an earlier generic case involving the wireless industry.¹ It is a reason for the Commission to grant confidential treatment for the same information when included in KUSF Forms filed in response to Staff's Request for Information in this case.

ARGUMENT

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. In recognition of this, the Commission's *KCDHH Order* determined that "access line count information" for CMRS providers is confidential and its disclosure may result in a significant and unfair

¹ *See Petition of the Kentucky Commission on the Deaf and Hard of Hearing to Expand the Funding Base for the Kentucky Telecommunications Access Program*, Case No. 2007-00464 (April 16, 2009) (monthly access line reports) (hereafter "*KCDHH Order*").

commercial advantage to competitors of the company filing the information. *KCDHH Order* at 3, (citation omitted). While the *KCDHH Order* resolved a motion for clarification filed by wireless licensees affiliated with AT&T and T-Mobile, the Commission extended it to all wireless carriers required to collect TAP and TRS fees. The Commission also ordered its Executive Director to serve copies of the *KCDHH Order* upon all wireless carriers registered to provide service in Kentucky. *Id.* at Ordering paragraph 3.

The Commission granted this industry wide relief after noting access line count information submitted to the Kentucky CMRS Board was protected under KRS 65.7639, part of the wireless 911 statute. The Commission agreed with AT&T and T-Mobile that public disclosure of line count information at the Commission would undermine the purpose of KRS 65.7639, which was to protect the very same information.

Thus, the *KCDHH Order* establishes that access line count information for wireless carriers is to be presumed confidential whether or not a carrier has filed it at the Commission with a motion for confidential treatment. Requiring its public disclosure in this case would undo the very protection the Commission extended in the *KCDHH Order*. But the reasoning behind that decision applies here within even greater force, where electronic filing provides instant access to searchable versions of whatever information is publicly filed.

When SI Wireless asked for confidential treatment of a portion of Exhibit 1 to its response to Staff's First Request, Item 1 it stated it did not object to disclosure of *support amounts* it requested on behalf of eligible Lifeline customers 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 SI Wireless subscribers that do not participate in the Lifeline program. While this information is not relevant to the goals of this proceeding, it could be valuable business intelligence to certain wireless providers who compete with SI Wireless.

In its motion for confidential treatment SI Wireless explained it competes not only against other wireless licensees like AT&T, Verizon, and Sprint but also wireless resellers like Tracfone, Net 10 and Straight Talk Wireless.² Tracfone, Net 10 and Straight Talk Wireless are all trade names of Tracfone Wireless, Inc., a wireless carrier which the Commission has said is (i) not subject to KRS 278.140 and 278.150, (ii) not required to submit annual gross revenue reports or remit annual assessments, and (iii) not subject to the Commission's jurisdiction.³ Yet, Tracfone requested to "remain as a party" in this case⁴, remains on the service list, and presumably receives and reviews information submitted electronically by its competitors who are subject to the Commission's jurisdiction. Thus, the effect of denying confidentiality to SI Wireless would be to provide free business intelligence to Tracfone and perhaps other entities that do not file access line reports with the Commission, have not responded to any data requests, and would have no corresponding disclosure obligations.

Since line count information is presumptively confidential, whether or not SI Wireless sought confidential treatment for its annual reporting that includes less granular information is not a reason to deny protection to monthly line count information filed

² SI Motion for Confidential Treatment at 2 (filed September 16, 2016).

³ *Investigation of the Failure of Tracfone Wireless, Inc. to File Required Reports*, Case No. 2011-00322 (June 13, 2016).

⁴ *See Tracfone Wireless, Inc.'s Motion for Waiver of Initial Testimony Filing Requirement* (filed February 22, 2016).

with the Commission in response to a Staff Request for Information. No party requested this information from SI Wireless. Keeping confidential information about non-Lifeline operations does not affect the Commission's ability to address the issues in this investigation of the Kentucky Lifeline Program. Therefore, in light of applicable law established by the *KCDHH Order*, there is good cause for the Commission to reverse its decision.⁵

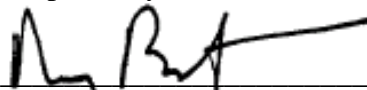
CONCLUSION

SI Wireless is entitled to confidential protection for the information at issue and requests that the Commission confirm that its unredacted Exhibit 1 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).

⁵ See *BellSouth Telecommunications, Inc. v Brandenburg Telephone Company*, Case No. 2006-00546 (August 4, 2010) (reversing decision to deny confidential treatment after considering "applicable law" and additional factors related to competitive significance of information filed by utility).

WHEREFORE, SI Wireless respectfully requests that the Commission reconsider its February 2, 2017 Order and grant confidential protection for the material referenced within or, in the alternative, schedule an evidentiary hearing on all factual issues.

Respectfully submitted,



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