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February 8, 2021

***Filed Electronically***

Linda C. Bridwell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

***Re: In the Matter of: The Application of New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company, d/b/a AT&T Mobility and Uniti Towers LLC, a Delaware Limited Liability Company 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, Case No. 2020-00351***

Dear Executive Director Bridwell:

In recognition of the fact that the Commission has not yet ruled on the pending motion to intervene of SBA Towers III LLC (“SBA”), SBA files this interim public comment to note that if the Applicant’s January 11, 2021 Filing of Affidavit in Support of Application (the “Affidavit”) contains information related to AT&T’s current lease with SBA, SBA’s Motion to Intervene should be granted so that SBA may assert its interest to protect its confidential, sensitive business information. Indeed, the current lease between SBA and AT&T contains a confidentiality provision. If AT&T has voluntarily disclosed the terms of its lease with SBA to the Commission, SBA has a right to know that those terms and conditions were disclosed so that it may decide whether to pursue remedies for AT&T’s possible breach of its lease with SBA.

Moreover, Applicant’s Motion for Confidential Treatment fails to comply with the Commission’s regulations. 807 KAR 5:001 § 13(2)(b) specifically requires that a Motion for Confidential Treatment provide a copy of the document “with only those portions for which confidentiality is sought redacted.” Rather than provide a copy of

the document with redactions, Applicants have apparently filed the entire document(s) under seal, seeking to have even the name of the Affiant to be deemed confidential and proprietary.

Applicants' attempt to shield the entirety of unnamed documents in a public proceeding – which purport to provide “justification for approval of the Application,” but that were not provided to the Commission with the Application – is plainly contrary to Commission precedent. *See, e.g., In the Matter of: The Application of Vista International Communications, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services within the Commonwealth of Kentucky*, Case No. 93-367, 1993 Ky. PUC LEXIS 649, at \*2 (Ky. PSC Dec. 15, 1993) (“[T]he contract deals with many aspects of the relationship between its parties, not all of which relate to or would reveal Vista’s operating costs. Therefore, even if it is assumed that the disclosure of cost information in the contract would result in competitive injury, that is not sufficient to protect the entire contract from public disclosure. Therefore, Vista has failed to comply with the provisions of the regulation and its petition must be denied.”).

Additionally, while it is impossible to determine what is contained within the Affidavit, considering the Affidavit was only filed after SBA filed its Motion to Intervene, one could logically assume the Affidavit bears on issues raised by SBA. Given that the Affidavit and any other undisclosed documents have been produced entirely in secret (and which Applicants have refused to provide to SBA under protective order), it is impossible for SBA to determine whether (1) the information communicated to the Commission relates to issues raised by SBA; (2) if so, whether the information provided to the Commission is complete and accurate; and (3) if not, whether SBA should attempt to rebut the information provided to the Commission. Thus, as should be evident, Applicants' prior allegation that SBA can meaningfully participate in this proceeding as a public commenter is not true because Applicants seek to have the relevant issues decided in secret.

Finally, not only does this deprive SBA of a meaningful opportunity to participate, it prevents all members of the public from a meaningful opportunity to participate, despite the fact that Applicants seek an Order which will allegedly serve the public's interest. Indeed, nearby property owners that were required to be provided notice of this proceeding may be monitoring the case, but cannot reasonably determine whether to seek intervention or file public comment when the information allegedly justifying the Application is filed in secret.

Executive Director  
Kentucky Public Service Commission  
February 8, 2021  
Page 3

Sincerely,

DINSMORE & SHOHL LLP

**/s/ Edward T. Depp**

Edward T. Depp

**Certification**

I hereby certify that the electronic version of this filing made with the Commission on February 8, 2021, is a true and accurate copy of the paper document that will be submitted to the Commission within 30 days of the Governor lifting the state of the emergency pursuant to the Commission's Orders in Case No. 2020-00085, and the electronic version of the filing has been transmitted to the Commission. A copy of this cover letter has been served electronically on all parties of record for whom an e-mail address is given in the online Service List for this proceeding.

/s/ Edward T. Depp  
Edward T. Depp

ETD