

**BEFORE THE PUBLIC SERVICE COMMISSION
COMMONWEALTH OF KENTUCKY**

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

SBA TOWERS III LLC MOTION FOR CONFIDENTIAL TREATMENT

1. SBA Towers III LLC (“SBA”) hereby moves the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential treatment to certain information contained in SBA’s Response Letter submitted contemporaneously herewith. The information for which SBA seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information contained in SBA’s Response Letter consists of proposed financial terms and business details that AT&T Mobility may consider sensitive. Thus, out of an abundance of caution, and in recognition of AT&T Mobility’s potential interest in protecting the Confidential Information, SBA files this Motion for Confidential Treatment.

3. Pursuant to the Commission's March 24, 2020 Order *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 ("Case No. 2020-00085"), one (1) copy of the confidential information highlighted in yellow is being filed with this motion by electronic mail. A copy of those pages, with the Confidential Information redacted, is being electronically filed with SBA's Interim Public Comment.

4. A copy of this motion with the Confidential Information redacted has been served on all parties to this proceeding through the use of electronic filing. *See* 807 KAR 5:001, Section 13(b). A copy of the Confidential Information has been served on all parties to this proceeding through electronic mail.

5. Because the Confidential Information contains information related to AT&T Mobility's business strategies and financial terms proposed by AT&T Mobility, disclosure of the information could allow AT&T Mobility's competitors to discover and make use of this information, which AT&T Mobility may wish to prevent by seeking to protect this information as confidential.

6. As discussed below, the Confidential Information is likely entitled to confidential treatment based upon KRS 61.878(1)(c)(1). *See* 807 KAR 5:001, Section 13(2)(a)(1).

7. KRS 61.878(1)(c)(1) protects "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."

8. As AT&T Mobility has often claimed before, the telecommunications and wireless infrastructure markets are competitive, and AT&T Mobility competes in those markets.

9. The financial terms upon which AT&T Mobility is willing to contract for co-location on cellular antennas is the type of information generally recognized as confidential or proprietary. Indeed, the Commission has previously recognized that the prices at which a party is willing to transact business should be granted confidential treatment. Specifically, in PSC Case No. 2003-00054, the Commission granted confidential treatment to bids submitted to Union Light, Heat & Power (“ULH&P”), who had argued that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order, PSC Case No. 2003-00054 (August 4, 2003). The Commission also implicitly accepted ULH&P’s further argument that the likelihood of higher bids would lessen ULH&P’s ability to effectively compete with other gas suppliers. *Id.* Similarly, if AT&T Mobility’s proposed financial terms were publicly disclosed, it could potentially harm AT&T Mobility’s ability to effectively negotiate co-location rents in the future.

10. In addition to the proposed financial terms, the SBA Response Letter also contains specific information regarding AT&T Mobility’s existing infrastructure within the Commonwealth of Kentucky. AT&T Mobility may consider this information to be similarly confidential in nature, as it could potentially reveal the

inner workings of AT&T Mobility or its need for additional services in the future. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary’”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations”).

11. SBA requests that the Confidential Information remain confidential for a period of five (5) years from the date of this Motion, at which time the Confidential Information should be sufficiently outdated so that it could not be used to competitively disadvantage AT&T Mobility. 807 KAR 5:001, Section 13(2)(a)(2).

12. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should allow AT&T Mobility to request an evidentiary hearing to protect AT&T Mobility’s due process rights and to supply the Commission with a complete record to enable it to reach a decision with regard to this filing. *See Util. Reg. Comm’n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, SBA respectfully requests that the Commission classify and protect the Confidential Information as confidential for the period(s) requested above.

This the 27th day of April, 2021.

Respectfully submitted,

/s/ Edward T. Depp
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Certification

I hereby certify that the electronic version of this filing made with the Commission on April 27, 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 filing has been served electronically on all parties of record for whom an email address is given in the online Service List for this proceeding, and there are currently no parties that the Commission has excused from participation by electronic means.

/s/ Edward T. Depp
Counsel to SBA Towers III LLC