

**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
WAYNE**

Case No. 2020-00354

**SBA TOWERS VII, LLC'S REPLY IN SUPPORT OF ITS
MOTION FOR CONFIDENTIAL TREATMENT**

1. SBA Towers VII, LLC ("SBA") hereby files its Reply in Support of its April 27, 2021 Motion for Confidential Treatment ("Motion").¹
2. Applicants' have asked the Commission to strike from the record SBA's Motion for Confidential Treatment and related information identified as "Confidential Information." As was stated in SBA's Motion, SBA sought confidential treatment of the redacted information because it contained information provided by

¹ In anticipation of Applicants' argument that SBA should not be allowed to file any sort of response because the Commission has not yet ruled on its Motion to Intervene, SBA respectfully submits that the Commission deem Applicants' May 4, 2021 Motion to Strike a Response to SBA's Motion for Confidentiality, as, in substance, a Response to SBA's Motion for Confidential Treatment of information provided to SBA by AT&T. Thus, SBA should be allowed to file its Reply in Support of that Motion. Alternatively, if the Commission treats Applicants' filing as a separate motion, SBA respectfully requests that the Commission accept this filing as SBA's Response to the Motion to Strike, as it explicitly relates to SBA's filing.

AT&T Mobility (“AT&T”) that is similar to information the Commission has frequently considered to be sensitive, proprietary business information.

3. SBA filed its April 27, 2021 Public Comment merely as an update to previous information filed by SBA regarding rent negotiations with AT&T for the applicable site. Because AT&T has repeatedly argued that the rental rate is dispositive in this case, SBA simply sought to provide the Commission with updated facts related to negotiation of the rental rate.

4. Had AT&T not willfully avoided any attempt to negotiate with SBA before coming to the Commission, it could have saved the Commission, SBA, and AT&T (itself) from the trouble of now having to dispute the effects of its own gamesmanship.

5. If AT&T is requesting that the redacted copy of SBA’s public comment remain in the record and the Commission strike any “confidential information” that was provided separately to the Commission and AT&T as it appears to advocate, SBA has no objection.

6. Indeed, even if the Commission chooses to accept AT&T’s curious argument that “documentation of attempts to co-locate” should be stricken from the record – even though it is explicitly required to be provided to the Commission by AT&T² – it remains clear that SBA has offered a rental rate to AT&T that is less than

² 807 KAR 5:063 Section 1(1)(s) (“A statement . . . that there is no reasonably available opportunity to co-locate, including documentation of attempts to co-locate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility attempted to co-locate on towers designed to host multiple wireless service providers’ facilities or existing structures, such as a telecommunications tower. . .”).

that offered by Uniti Towers. It is also abundantly clear that AT&T's continuing refusal to accept that offer undermines its own argument that the only reason AT&T's existing SBA co-location site did not present a reasonable co-location opportunity was that SBA's rental rate allegedly exceeded the rental rate of Uniti Towers.

7. Conversely, however, if AT&T is advocating for the Commission to ignore and strike information directly relating to the negotiation of a rental rate offered by SBA despite AT&T's burden to prove that it "attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures,"³ SBA strenuously objects. Pursuant to the Commission regulations (and AT&T's own arguments), these negotiations bear directly on whether AT&T has met its burden of proof in this case.

8. Consequently, if the Commission were to strike SBA's April 27, 2021 Public Comment from the record in its entirety based on AT&T's request that the Motion be stricken, SBA respectfully submits that the Application must be denied because AT&T would be unable to meet its burden of proof.⁴

9. Finally, it must be observed that AT&T's repeated attempts to prevent the Commission from considering relevant facts, its filing of Affidavits entirely outside of public view, and its constant attempts to minimize SBA's ability to provide public comment and facts bearing on the Commission's decision only further prove that SBA's Motion to Intervene should be granted.

³ *Id.*

⁴ *Id.*

10. SBA recognizes that the information it provides may not fit AT&T's narrative, but the public interest demands consideration of all reasonably available facts that could bear on the matter.

11. To that end, SBA respectfully suggests that the best way to ensure the public interest is served is to simply allow SBA to intervene so that the relevant facts and issues can be developed in an orderly and efficient process, without the temptation for Applicants to continue subverting the transparent review of their application through the overly broad designation of confidential material and attempted exclusion of facts that undermine their narrative. Allowing a willing, experienced, knowledgeable party, like SBA, to intervene will assist the Commission in testing the sufficiency of Applicants' claim that the "public interest" will be served by the granting of the requested CPCN.

This the 7th day of May, 2021.

Respectfully submitted,

/s/ Edward T. Depp

Edward T. Depp

R. Brooks Herrick

DINSMORE & SHOHL LLP

101 S. Fifth St., Suite 2500

Louisville, KY 40202

tip.depp@dinsmore.com

brooks.herrick@dinsmore.com

Telephone: (502) 540-2300

Facsimile: (502) 585-2207

Counsel to SBA Towers VII, LLC

Certification

I hereby certify that the electronic version of this filing made with the Commission on May 7, 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 VII, LLC

21651774.1