

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

In the Matter of:

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC,)
A DELAWARE LIMITED LIABILITY COMPANY,)
D/B/A AT&T MOBILITY)
AND HARMONI TOWERS LLC, A DELAWARE)
LIMITED LIABILITY COMPANY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2022-00279
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF WAYNE)

SITE NAME: WEST HIGHWAY 90 / ZULA RELO

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**FILING OF AFFIDAVIT IN SUPPORT OF APPLICATION WITH MOTION FOR
CONFIDENTIAL TREATMENT**

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New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility (“AT&T”) and Harmoni Towers LLC, a Delaware limited liability company (“Applicants”), by counsel, file an Affidavit in support of the within Application and make a Motion for Confidential Treatment of said Affidavit. This Motion is made pursuant to 807 K.A.R. 5:001, Section 13, and other law. Applicants respectfully state as follows:

1. The Affidavit speaks for itself in providing justification for approval of the Application pursuant to the federal Telecommunications Act of 1996, KRS 278.020, KRS 278.650, KRS 278.665, and 807 K.A.R. 5:063. See *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, 998 (9th Cir. 2009) and *T-Mobile Cent. LLC*

v. Charter Twp. of West Bloomfield, 691 F.3d 794 (Ky. App. 2012).

2. Applicants request confidential treatment of such Affidavit consistent with 807 K.A.R. 5:001 – Section 13. The Affidavit includes discussion of inherently proprietary and confidential information.
3. 807 K.A.R. 5:001 – Section 13 requires a party seeking confidential treatment to identify the specific grounds pursuant to KRS 61.878 (i.e. the “Kentucky Open Records Act”) to request classification of the material as confidential. KRS 61.878(1)(c) exempts from Open Records Act disclosure “... 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.” Kentucky’s appellate courts have repeatedly recognized the confidential nature of business financial information in connection with the Open Records Act and have applied the exemption from disclosure found in KRS 61.878(1)(c) to such information. *Marina Management Servs. v. Cabinet for Tourism, Dept. of Parks*, 906 S.W.2d 318 (Ky. 1995); *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” and falls within the wording of KRS 61.878(1)(c)(2)”). The PSC has granted similar requests for confidentiality protection in cellular antenna tower CPCN proceedings such as Case No. 2017-00435. KRS 6.878(1)(c) and all other applicable law entitle Applicants to confidentiality protection of the information included in the Affidavit.

4. 807 K.A.R. 5:001 contemplates a party subject to PSC information requests to submit a request for classification of information as confidential along with filing of the confidential information. The Affidavit was emailed to the Kentucky Public Service Commission. Confidential treatment of the entire Affidavit is requested.
5. 807 K.A.R. 5:001 – Section 13(2) requires a party seeking confidentiality protection to state “... the time period for the material to be treated as confidential and the reasons for this time period....” Cellular tower leases typically extend for multiple renewal terms extending to twenty-five years and beyond. Consequently, there is no short-term horizon when information about such transactions in a broad geographic area would not have substantial proprietary value to competitors or potential ground or tower space lessors. In these circumstances, Applicants request that information responsive to the Request be classified as confidential on a perpetual basis or for any lesser period exceeding ten years as established by the PSC in its reasonable discretion.
6. Should intervention be granted to any person, Applicants request any such intervener be required to execute an acceptable protective agreement consistent with the rights of Applicants if the PSC is to allow such future intervener any access to confidential information.
7. Applicants are aware of their obligation to inform the PSC in writing if material granted confidentiality becomes publicly available as specified in 807 KAR 5:001 – Section 13(10) and shall comply with such obligation.
8. If the PSC disagrees with the within request for confidential treatment of the Affidavit, Applicants request the PSC hold a conference between PSC Staff and

Applicants: (a) to protect Applicants' due process rights; and (b) to supply the PSC with a complete record to enable it to make a decision with regard to this matter.

REQUEST FOR RELIEF

WHEREFORE, Applicants request that the PSC:

- (a) Accept this Affidavit and Motion for filing;
- (b) Grant Applicants confidential treatment of the Affidavit; and
- (c) Grant Applicants any other relief to which they are entitled including granting a C.P.C.N.

The undersigned hereby certifies that on this 29th day of September 2022, the foregoing was filed electronically with the Kentucky Public Service Commission. No natural person or entity has been granted intervention in this proceeding. Accordingly, no other service of this Filing and Motion has been made.

Respectfully submitted,

David A. Pike

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