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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 Tillman Infrastructure 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 Ballard, Case No. 2022-00414

Dear Executive Director Bridwell:

In recognition of the fact that the Commission has not yet ruled on the pending Motion to Intervene of TV6 Holdings LLC ("TV6"), TV6 files this interim public comment regarding the Applicants' January 30, 2023 Filing of Affidavit in Support of Application with Motion for Confidential Treatment (the "Affidavit").

While TV6 generally acknowledges that KRS 61.878 and Commission precedent prevent the public disclosure of confidential business information (such as pricing terms of TV6, AT&T, and Tillman Infrastructure, LLC), SBA has reason to believe that much of the Affidavit purports to provide information about TV6. Therefore, even if the Commission determines the general public is not entitled to review the Affidavit, assuming the Affidavit relates to or names TV6, the Commission may not withhold the entirety of the Affidavit from TV6.

KRS 61.884 provides: “Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provision of KRS 61.878.” TV6, through counsel, has requested a copy of the Affidavit specifically citing KRS 61.884 in its request to review the Affidavit.

Moreover, Applicants’ 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 TV6 filed its Motion to Intervene, one could logically assume the Affidavit bears on issues raised by TV6. Given that the Affidavit and any other undisclosed documents have been produced entirely in secret, it is impossible for TV6 to determine whether (1) the information communicated to the Commission relates to issues raised by TV6; (2) if so, whether the information provided to the Commission is complete and accurate; and (3) if not, whether TV6 should attempt to rebut the information provided to the Commission. Thus, as should be evident, TV6 cannot meaningfully participate in this proceeding as a public commenter because Applicants seek to have the relevant issues decided in secret. Moreover, if the Affidavit relates to information about TV6, TV6’s Motion to Intervene should be granted so that TV6 can assert its interest to protect its confidential and proprietary business information.

Finally, not only does this deprive TV6 of a meaningful opportunity to participate, it prevents all members of the public from a meaningful opportunity to participate. Indeed, nearby property owners or local government officials 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.

Sincerely,

DINSMORE & SHOHL LLP

/s/ Edward T. Depp

Edward T. Depp

Certification

I hereby certify that a copy of this filing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Edward T. Depp

Edward T. Depp

ETD