

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NEW)	
CINGULAR WIRELESS PCS, LLC D/B/A AT&T)	
MOBILITY FOR ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO.
TO CONSTRUCT A WIRELESS)	2019-00176
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF CASEY)	

ORDER

On December 30, 2019, New Cingular Wireless PSC, LLC d/b/a AT&T Mobility (AT&T Mobility) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for information contained in a supplemental evidence filing in a cellphone tower construction Certificate of Public Convenience and Necessity case.

In support of its motion, AT&T Mobility argued that certain information was exempt from public disclosure pursuant to KRS 61.878(1)(c)(1), which exempts “[r]ecords 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.” AT&T Mobility sought confidential treatment for an engineer’s affidavit and cellphone tower rental rates. AT&T Mobility argued that the engineer’s affidavit addressed the service advantages of the proposed new cellular antenna tower and if disclosed would provide an unfair commercial advantage to competitors in that they could deduce what

technical steps AT&T Mobility would take to improve its service in the vicinity depending on whether or not a new tower was approved. Regarding the tower rental rates, AT&T Mobility argued that they are inherently proprietary and confidential, being carefully negotiated as to individual sites. This information is not generally available in the public domain—unlike the sales price in a deed, rental information is not normally disclosed publicly through filings with county clerks' offices or property valuation administrators in connection with recording a real property interest. AT&T Mobility claimed that in the wireless industry, an expectation of confidentiality is inherent in commercial rent information.

Although AT&T Mobility only asked for confidential treatment for the engineer's affidavit and rental rates, it filed the entire supplemental evidence filing under confidential seal. The rental rates AT&T Mobility sought to redact are highlighted.

Having considered the motion and the material at issue, the Commission finds that AT&T Mobility's motion is granted. The engineer's affidavit contains technical information that indicates what governs the company's expansion needs. Competitors could use this information to assess AT&T Mobility's technical capabilities and expansion strategies in the region. Regarding cellphone tower rental rates, if this information were available to competitors, they could use this information to underbid AT&T Mobility with new or renewing lessees. The Commission previously granted confidential treatment to cell tower lease amounts.¹ The designated material is generally recognized as confidential

¹ Case No. 2017-00435, *Application of Tillman Infrastructure LLC and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility 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 Marshall* (Ky. PSC Oct. 4, 2018), Order at 2.

or proprietary, and if openly disclosed would permit an unfair commercial advantage to competitors of AT&T Mobility. It therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). However, AT&T Mobility has not asked for confidential treatment of the remainder of the supplemental evidence filing. The Commission orders that the remainder of this filing be publicly disclosed.

IT IS THEREFORE ORDERED that:

1. AT&T Mobility's motion for confidential treatment is granted.
2. The remainder of AT&T Mobility's December 30, 2019 supplemental evidence filing shall be publicly disclosed.
3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
5. AT&T Mobility shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
6. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, AT&T Mobility shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If AT&T Mobility is

unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow AT&T Mobility to seek a remedy afforded by law.

8. The material for which public disclosure is required by this Order shall be placed in the public record and made available for public inspection.

9. If AT&T Mobility objects to the Commission's determination that material be publicly disclosed, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

10. Within 30 days of the date of service of this Order, AT&T Mobility shall file a revised version of the material required to be publicly disclosed, reflecting as unredacted the information that has been required to be publicly disclosed.

11. The material that has been required to be publicly disclosed shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow AT&T Mobility to seek a remedy afforded by law.

By the Commission



ATTEST:


Executive Director

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