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September 1, 2010

Jeffrey DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RECEIVED
SEP 07 2010
PUBLIC SERVICE
COMMISSION

RE: *In the Matter of:*
A Certification of the Carriers Receiving Universal Service High Cost Support
Administrative Case No. 381

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of T-Mobile's first Annual High Cost Universal Service Certification and its Petition for Confidential Treatment of Exhibit B to the Certification.

Please acknowledge receipt of this filing by placing your file-stamp on the extra copy and returning to me via ~~our runner~~. Thank you.

the enclosed envelope.

Sincerely yours,

STOLL KEENON OGDEN, PLLC

Douglas F. Brent

DFB: jms
Enclosures

RECEIVED

SEP 07 2010

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of)
A Certification of the Carriers Receiving) Administrative Case No. 381
Universal Service High Cost Support)

PETITION FOR CONFIDENTIAL TREATMENT

T-Mobile Central LLC and PowerTel/Memphis, Inc. (collectively, “T-Mobile” or the “Company”) by counsel, for its Petition for Confidential Treatment filed pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1), state as follows:

BACKGROUND

By this Petition, T-Mobile requests that the Public Service Commission (“Commission”) grant confidential protection to Exhibit B of T-Mobile’s Annual High Cost Universal Service Certification. This certification is being filed pursuant to the *T-Mobile ETC Order*¹ and *High Cost Certification Order*², as a means for the Commission to monitor the use of high cost funding by various eligible telecommunications carriers.³ Confidential Exhibit B is an estimate for T-Mobile’s capital and operating expenditures for 2011 in its Kentucky ETC service area. As demonstrated in this Exhibit, T-Mobile will undertake several network improvements to use universal service support to improve signal quality, coverage, and capacity within its designated ETC service area. In particular, T-Mobile has initiated several projects aimed at increasing its coverage in

¹ In the Matter of Petition of T-Mobile Central LLC and PowerTel/Memphis, Inc. for Designation as Eligible Telecommunications Carriers Pursuant to Section 214(e)(2) of the Communications Act of 1934, *Order*, Case No. 2010-00050 (entered July 14, 2010) (*T-Mobile ETC Order*).

² In the Matter of A Certification of the Carriers Receiving Universal Service High Cost Support, *Order*, Administrative Case No. 381 (entered September 24, 2008) (*High Cost Certification Order*).

³ *Id.* at 1 (federal regulations require states to ensure that carriers use the federal high-cost support for the provision, maintenance and upgrading of facilities for which the support is intended).

rural areas of Kentucky and improving customer experience through signal quality, capacity, and other network enhancements.

GROUNDS FOR PETITION

The Kentucky Open Records Act exempts from disclosure certain commercial information, including records 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. KRS 61.878(1)(c). CMRS is perhaps the most competitive segment of the modern telecommunications business. Potential customers often have five or more carriers to choose from. This reality is acknowledged by Kentucky law, which states the provision of CMRS in Kentucky is market-based and not subject to regulation. KRS 278.54611(1). As the market is, without question, highly competitive, T-Mobile's disclosures related to network construction and planned improvements are highly confidential trade secret information subject to protection under the Kentucky Open Records Act.

The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. That requirement is easily met here. T-Mobile competes not only against other Commercial Mobile Radio Service ("CMRS") providers like AT&T Wireless, Verizon Wireless, Cricket Communications and Sprint Nextel, but also with voice and unregulated broadband offerings of cable providers and wireline providers like BellSouth Telecommunications and Windstream. Consumers choose providers based on a variety of factors, including their subjective impression about the service quality and network reliability of particular carriers. Thus, public disclosure of proprietary information could easily cause competitive injury to T-Mobile,

particularly if the information were to be used selectively by a competitor. Moreover, the Commission has long recognized the highly competitive nature of CMRS as a reason to provide confidential treatment to information submitted to the Commission by CMRS providers. *See, e.g., In the Matter of: ACC of Kentucky LLC's Petition for Confidential Protection*, Case No. 99-184, (January 24, 2000) (confidential treatment for intrastate gross revenue reports). Obviously, the confidential and proprietary business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1.

In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential proprietary.’” *Id.* at 768.

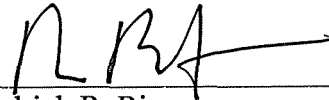
The same analysis applies here. T-Mobile is disclosing information concerning the number of cell sites on T-Mobile’s Kentucky network, as well as information about T-Mobile’s construction work and capital expenditures during 2010 and 2011. The exhibit describes the number of cell sites being added in 2010 and projected additions for 2011. Exhibit B also discloses T-Mobile’s anticipated expenditures to operate and maintain its Kentucky network in 2011. This information is capable of misinterpretation and deliberate misuse. A competitor of T-Mobile, whether an incumbent local carrier, a CLEC, or another wireless carrier, could use this information to disparage T-Mobile or

attempt to paint T-Mobile's operations in a false light. This could include carriers that may or may not be disclosing information comparable to what T-Mobile is providing to the Commission.

CONCLUSION

T-Mobile is entitled to confidential protection for the information at issue and requests that the Commission confirm that Exhibit B to this compliance filing will not be disclosed. If the Commission disagrees, however, it must hold an evidentiary hearing (a) to protect the due process rights of T-Mobile and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. Ct. App. 1982).

Respectfully submitted,



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