AT&T'S COMMENTS TO COMMISSION'S PROPOSED AMENDMENTS TO ADMINISTRATIVE REGULATIONS 807 KAR 5:001, 807 KAR 5:006, AND 807 KAR 5:011

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky, on behalf of itself and its affiliates subject to the Kentucky Administrative Regulations ("KAR") 807 KAR 5:001, 807 KAR 5:006, and 807 KAR 5:011 (collectively, "AT&T"), commends the efforts of the Kentucky Public Service Commission ("Commission") on updating these Administrative Regulations. AT&T appreciated the opportunity to participate in the Advisory Boards established to recommend and review such revisions. For the most part, AT&T finds that the proposed revisions are efficient and beneficial in addressing outdated provisions and codifying in the regulations current Commission practice.

There are some proposed revisions, however, that do not seem helpful or efficient, but instead are more burdensome and costly for the Commission, its staff, and the parties impacted by such revised provisions. AT&T's comments address its concerns about certain proposed provisions, as well as rebut some of the comments made by other parties during the public hearing held at the Commission on August 27, 2012 ("Public Hearing").

807 KAR 5:001. Rules of Procedure

A. 807 KAR 5:001, Section 13(10)(a) - Confidentiality

The Commission's proposed revision to 807 KAR 5:001, Section 13, subsection (10) provides that

> (a) Unless the commission orders otherwise, confidential treatment shall be afforded to material for no more than two (2) years. At the end of this period, the person who sought confidential treatment for the material shall request that the material continue to be treated as confidential and shall demonstrate that the material still falls within the exclusions from disclosure requirements set forth in KRS 61.878. Absent any showing, the

> material shall be placed in the public record. If a request is not made for continued confidential treatment the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

AT&T Kentucky proposes that this provision be deleted in its entirety for the reasons articulated by various parties in the Public Hearing and those stated herein. The amendment to Section 13(10)(a), as proposed by the Commission, would substantially and unnecessarily increase the costs and administrative burdens not only on the utilities that file confidentiality petitions, but more importantly on the Commission and its staff. As indicated at the hearing and in the written comments filed by Delta Natural Gas Company, Inc. on August 20, 2012, this proposed amendment would require parties to file duplicate confidentiality petitions essentially every two years in some instances for information that has been granted confidentiality under KRS 61.878 and would increase substantially the workloads and administrative costs to the Commission and its staff, as well as to the utilities. Such increased workloads would most likely lead to the need for additional resources for all parties, including the Commission and its staff.

This amendment, by fixing a two-year default time period for affording confidentiality to information filed with the Commission, conflicts with KRS 61.878 under which the confidentiality would be granted. There are no specific time periods for which confidentiality is afforded under KRS 61.878 to information provided to the Commission or any other agency, and no provisions in that statute permit the Commission to specify such time periods. Telecommunications companies may file with the Commission information for which confidentiality is afforded pursuant to KRS 61.878, including under subsection (1)(c) (“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") and subsection (1)(m)1 ("[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to … f. [i]nfrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. . . . ." There should not be a fixed two-year limitation on the confidentiality of this highly competitive and sensitive information that could include customer proprietary information.

AT&T proposes that 807 KAR 5:001, Section 13(10)(a) be deleted in its entirety. In the alternative, AT&T proposes that either (1) Section 13(10)(a) be deleted and that information granted confidentiality by the Commission remain such until challenged and found to no longer be confidential, or (2) the Commission adopt the procedure suggested at the Public Hearing by LG&E and Kentucky Utilities, and remove the fixed two-year time period and place the burden on the petitioner seeking confidentiality to include in its petition the length of time for which confidentiality should be afforded to the information for which it seeks confidentiality, including an indefinite period of time for some information.

B. 807 KAR 5:001, Section 10(3) – Amicus Briefs

The Commission proposes to amend Section 10 of 807 KAR 5:001 to include a process by which an interested party may submit an amicus brief. Section 10(3) of 807 KAR 5:001 provides:

> A person wishing to submit an amicus curiae brief shall file a motion with the commission specifying with particularity the nature of his or her interest, the points to be presented, and their relevance to the disposition of the case. This motion shall be filed within fifteen (15) days of the time fixed for the filing of the parties' brief. An amicus curiae brief shall be tendered with the motion.

AT&T agrees with the comments expressed by LG&E and Kentucky Utilities that this provision should be deleted. The Commission already has in place a process by which parties with special interests may participate fully in a case by filing a motion to intervene in the case. 807 KAR 5:001 Section 4(11). Parties that are not granted leave to amend and other non-parties may file written comments in the case record. *Id.* To the extent the Commission believes a case has significant policy implications, it should open an administrative case and establish a generic docket in which utilities in a particular industry are parties. The Commission should not use the filing of amicus briefs in a case that does not involve the parties filing such briefs as a means of addressing or making decisions about significant policy implications. Such decisions should be made within the establishment of an administrative case that identifies the policy considerations or implications to be addressed by the Commission and that solicits input from parties in the industry to be impacted by such policy decisions.

807 KAR 5:006. General Rules

807 KAR 5:006, Section 26, Subsection (7)(a) – Telephone Utility Inspection.

The amendment to Section 26(7)(a) of 807 KAR 5:006 states that each telephone utility "shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, *vegetation management consistent with the utility's vegetation management practices* and climbing safety every two (2) years." (Emphasis added.) The italicized wording is new to this provision and should be deleted and the

regulation for telephone utilities restored to its original language. As noted in the Public Hearing, the safety concerns involving aerial telephone facilities is much different than those involving energized electrical facilities, which is already sufficiently addressed by the existing language of the regulation. This revision is unnecessary and should be deleted.

AT&T also takes exception to the comments made at the Public Hearing on behalf of Sprint, tw telecom, and Verizon regarding the revised regulation and their position that tenants or those attaching their facilities to utility poles should have no responsibility for vegetation management and that that responsibility should be solely that of the pole owners. AT&T disagrees with that position. Each utility on a pole is in the best position to make the determination of whether vegetation poses a safety and/or quality/functionality risk to its respective attachments. It would be fundamentally unfair to require a pole owner to take vegetation management efforts solely for the benefit of an attacher.

If a utility that attaches its facilities to another utility's pole observes an unsafe condition involving its facilities and vegetation, that utility will have to decide what it needs to do to make it safe for its employees to perform work or for its facilities that may be impacted by the vegetation. Although vegetation contacting communications facilities, without first contacting the overhead electrical lines, does not typically cause downed poles or necessarily a safety issue, each entity that attaches to a pole has a responsibility to manage vegetation so that it does not present a safety issue or damage its facilities. Additionally, to the extent that each entity attaching to a pole manages vegetation trimming to prevent damage to its own facilities or facilitate climbing the pole

for any maintenance of its own facilities, potential pole failures due to vegetation are further mitigated.

Vegetation management is really an issue best left to the pole owners and attachers as a negotiated item in their agreements and should not be addressed in the regulation. Pole owners and attachers are in the best position to determine what makes the best business and economic sense for them regarding vegetation maintenance and their own facilities.

AT&T proposes that this revision be deleted and that this regulation be restored to its original language.

Exemptions - 807 KAR 5:001, Section 17(1) and 807 KAR 5:006, Section 4(2)

There were comments made on behalf of Sprint, tw telecom, and Verizon that indicated the regulations should specifically identify certain types of carriers, such as interexchange carriers ("IXCs") and competitive local exchange carriers ("CLECs"), that are exempt from certain regulations by Commission Order under KRS 278.512. In particular, the commenter noted that IXCs and CLECs were exempt from 807 KAR 5:001, Section 4(2) and 807 KAR 5:006, Section 17(1). AT&T believes that it could be more confusing if the Commission began including in the general administrative regulations exceptions for those utilities that have been exempted from some of them either by Commission Order or by statute. The regulations set forth the general regulations under which utilities governed by them operate. KRS 278.512 allows for a telecommunications utility to request, and the Commission to grant, an exemption from KRS Chapter 278. There are also statutory provisions that exempt certain services and utilities from certain statutes and regulations. *See*, *e.g.*, KRS 278.543 and 278.544. If

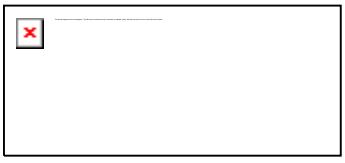
the Commission were to start including in the general regulations exceptions that have been granted to which types of utilities from which regulations, it would have to make further revisions than just the ones mentioned by Sprint, tw telecom, and Verizon in the Public Hearing.

To the extent there are Commission Orders or statutory provisions exempting certain utilities or carriers from certain statutes or regulatory obligations, then those utilities are in fact exempt from those without the regulations indicating they are.

807 KAR 5:011. Tariffs – Section 4(2)(d)(e) – Late Payment Charges

The Commission proposed a revision to 807 KAR 5:011, Section 4(2)(d) and (e) that provides for the amount of a late payment charge be "shown in each rate schedule." AT&T Kentucky has a provision in its Tariff, Section A2.4.3.H that specifically states the amount of the late payment charge that will apply to each subscriber's bill, when the charge will be assessed, and how it will be assessed. AT&T believes requiring that the amount of the late payment charge be shown on each rate schedule is unnecessary and duplicative. AT&T would like clarification that its existing late payment charge provision is sufficient to meet this proposed regulation. If not, AT&T recommends that that revision be deleted.

Respectfully submitted,



Mary K. Keyer
601 W. Chestnut Street, Room 407
Louisville, KY 40203
(502) 582-8219
mary.keyer@att.com

1045002