

Exhibit 7

**Excerpts of the
West Kentucky Deposition**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The Petition of the Kentucky Cable)
Telecommunications Association for)
a Declaratory Order that the) Case No. 2012-00544
Commission Has Jurisdiction to)
Regulate the Pole Attachment Rates,)
Terms, and Conditions of Cooperatives)
That Purchase Electricity from)
the Tennessee Valley Authority)

DEPOSITION FOR PETITIONER

*** *** ***

DEPONENT: DAVID E. SMART, CR 30.02(6) Designee of
 West Kentucky Rural Electric
 Cooperative Corporation

TAKEN: MARCH 12, 2015

BY: CANDACE MAUNEY REID, Certified Reporter

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1 not, familiar with this document and responsible for it in
2 your position as President and CEO?

3 A. Yes.

4 Q. Okay. So, where in this document is there any
5 expressed term related to pole attachment rates?

6 A. I don't know that there's anywhere in the
7 document that has expressed terms on pole attachment rates.
8 It deals with rates in general.

9 Q. Now, the document deals with rates in general.
10 Does the document contain any specific references to pole
11 attachment rates?

12 MR. DEPP: Objection. You just asked and he just
13 answered.

14 A. Not that I'm aware of.

15 Q. Can we get off the record for a minute?

16 (WHEREAS, A BRIEF RECESS WAS TAKEN.)

17 BY MR. GILLESPIE:

18 Q. Are there any other contracts between TVA and
19 West Kentucky?

20 (OFFICE STAFF INTERRUPTION)

21 MR. GILLESPIE: Thank you.

22 A. That are not part of the -- Are you asking --

23 Q. That are -- That are --

24 A. -- is there any --

25 Q. -- not part of --

1 Q. Has West Kentucky determined what the costs
2 associated with pole attachment rentals are?

3 A. No.

4 Q. On -- Let me go back to Exhibit No. 22. I'm
5 going to ask you if you can give that one back to me.

6 MR. DEPP: Okay.

7 Q. Take a look at Exhibit No. 22.

8 A. All right.

9 Q. And look at item number three. And this says
10 that the retail rates approved by the TVA are calculated
11 based on West Kentucky's revenue requirement. Do you see
12 that?

13 A. Yes, sir.

14 Q. And by retail rates that references to retail
15 electric rates, correct?

16 A. That references all rates, not just necessarily
17 retail electric rates.

18 Q. Well, it says retail rates, so what retail rates
19 are referred to?

20 A. That would be the electric rates.

21 Q. Okay. Now, this response also says that any
22 change in West Kentucky's pole attachment revenues will
23 necessarily change its revenue requirement and thus directly
24 impact the retail rates set by the TVA. Do you see that?

25 A. Yes.

1 Q. Does TVA take into account pole revenues in any
2 way different from its taking into account other revenues,
3 such as interest revenue?

4 A. I don't know how TVA uses the information.

5 Q. Okay. So you don't know whether TVA would take
6 account of pole revenues in any way different from other
7 miscella -- from miscellaneous revenue?

8 A. If you -- If you are asking if TVA has -- if any
9 of that is broken out in our financial reports, if that's
10 what you are asking. Is that the question you are asking --

11 Q. No.

12 A. -- me?

13 Q. No. I'm not asking that. And we'll get into
14 your financial reports. I'm just asking you in terms of how
15 TVA looks at these revenues, to your knowledge.

16 A. I don't know how they review it as a regulator.

17 Q. Okay. And you don't know whether TVA looks at
18 pole revenues any differently from state or local taxes?

19 A. No, sir.

20 Q. Okay. To the best of your knowledge, does TVA
21 control the amounts of state and local taxes paid by West
22 Kentucky?

23 A. To the best of my knowledge, no.

24 Q. Okay. I'd like marked as Exhibit No. 25, I
25 guess, the Agreement between AT&T and West Kentucky.

1 (WHEREAS, EXHIBIT NO 25 WAS ENTERED)

2 A. Thank you.

3 Q. Are you familiar with this document?

4 A. Yes, sir.

5 Q. And you executed this document on behalf of West
6 Kentucky, correct?

7 A. Yes, sir.

8 Q. Who drafted this document? Do you know?

9 A. No.

10 Q. Do you know who negotiated?

11 A. I don't know who the exact parties were. I know
12 that it was negotiated via the TVPPA group, but I have no
13 idea who was involved.

14 Q. The TVPPA being the Tennessee Valley Public Power
15 Association?

16 A. Yes, sir.

17 Q. And that's the association of TVA coops?

18 A. TVA distributors.

19 Q. TVA distributors?

20 A. Yes, sir.

21 Q. Okay. And that would include both municipals and
22 cooperatives?

23 A. Yes, sir.

24 Q. Okay. So, this document was negotiated between
25 AT&T and TVPPA and then it was revised to include the name of

1 the cooperative and then provided to you for signature; is
2 that right?

3 A. Yes, sir.

4 Q. Now, you had a prior agreement with AT&T, did you
5 not?

6 A. Yes, sir.

7 Q. And that document has not been produced to us; is
8 that right?

9 A. I don't think so.

10 Q. Okay. And do you know why that document was not
11 produced to us?

12 A. I don't recall you asking for it.

13 Q. Okay. Well, I'm not going to go through my
14 requests, but I believe we did. But let me -- Let me move
15 on. What rate was in effect prior to the adoption of this
16 agreement? Do you recall?

17 A. No, sir.

18 Q. Do you recall whether the \$25 pole rate specified
19 here for 2009 was a substantial increase?

20 MR. DEPP: Can you direct the witness to the part
21 of the document that reflects that?

22 Q. Sure. The last page of the document. Let's just
23 go through this. The last page of the document, Exhibit D --

24 A. Okay.

25 Q. -- contains the rates for 2009 through -- through

1 the end of the term of the document, correct?

2 A. Yes.

3 Q. And it specifies a \$25 rate for 2009, a \$27 rate
4 for 2010, a \$29 rate for 2011, and then it specifies the rate
5 would be adjusted annually according to the Handy Whitman
6 Index, right?

7 A. Yes.

8 Q. Okay. So, I asked whether the \$25 rate specified
9 for 2009 was a substantial increase from the rate paid in
10 2008?

11 A. I believe it was an increase, but I don't --
12 substantial is broad in my mind. But I -- I definitely think
13 it was an increase, but I don't recall how much of an
14 increase.

15 Q. Okay. Was this agreement approved by the TVA?
16 Do you know?

17 A. I don't know.

18 Q. You're not aware of TVA having approved this
19 agreement; is that right?

20 A. That is correct.

21 Q. Are you aware of any notice given to the TVA of
22 this agreement?

23 A. No.

24 Q. Do you know whether this agreement was submitted
25 to the TVA?

1 A. No.

2 Q. Did you have -- Did you or anyone at West
3 Kentucky have any discussions with anyone at TVA about this
4 agreement before you signed it?

5 A. No.

6 Q. Do you know whether anyone from TVPPA had any
7 discussions with the TVA before this document was finalized?

8 A. No.

9 Q. Okay. Now, the rates that are specified in this
10 agreement are rates paid by AT&T to attach to West Kentucky's
11 poles and paid by West Kentucky to attach to AT&T poles,
12 correct?

13 A. I don't recall if it's the exact same charge or
14 not. It would be spelled out in the agreement, if it is.

15 Q. These are the only rates that are included in the
16 agreement, isn't that true?

17 A. I'd have to review the agreement again to know.

18 Q. Take a look at the agreement then. That's fine.

19 A. (Witness reviews document). It appears that it's
20 the same rate, yes.

21 Q. Okay.

22 A. Because it says that (reading) the party owning
23 the greater number of joint use poles shall render the other
24 party a net rental billing, such billing shall reflect the
25 number of joint use poles owned by each party multiplied by

1 A. I don't recall.

2 Q. Does your agreement with Mediacom require West
3 Kentucky to complete make-ready within 60 days if not
4 complex?

5 A. I don't recall without looking at the contracts.

6 Q. Is the AT&T agreement used as a template for
7 agreements with any other parties?

8 A. I would say in its entirety, no. Is it -- Has
9 there possibly been similar language used from it? Yes.

10 Q. Okay. Is West Kentucky willing to offer the same
11 terms that are in the AT&T agreement to cable operators?

12 A. I can't answer that at this point.

13 Q. Okay. So, the rates that are specified in the
14 AT&T agreement -- Now, as far as you know, AT&T and West
15 Kentucky could have agreed to rates higher or lower than
16 those specified in this agreement; is that right?

17 A. Meaning that at the -- If you are asking me that
18 whenever we actually had a discussion with AT&T, had they
19 been willing to pay more or we had been willing to charge
20 less, is it possible that that could have occurred -- Is that
21 what you're asking me?

22 Q. Yeah.

23 A. Yes, it's possible.

24 Q. Okay. There wasn't any TVA requirement that the
25 rate in 2009 be \$25 a pole, right?

1 A. TVA requirement?

2 Q. Yes.

3 A. No.

4 Q. Okay. And had a different rate been or a
5 different series of rates been chosen by those two parties,
6 there's no reason to expect that those rates would have been
7 submitted to TVA, correct?

8 A. Correct.

9 Q. And there's no reason to believe that TVA would
10 have known whether the rates were these or higher or lower,
11 correct?

12 A. TVA does not ask us for specific rates with each
13 party, no.

14 Q. Okay. Now, if the rates selected -- negotiated
15 between AT&T and TVPPA apply to West Kentucky, if those rates
16 had been higher than these rates and the only thing that TVA
17 would have known was that the overall revenue that West
18 Kentucky gets, as reflected as revenue, would have been a
19 little bit more and the overall expenses reflected by the
20 payments to AT&T would have been a little less, right?

21 MR. DEPP: Objection to the extent you're asking
22 him to testify what the TVA knows.

23 Q. You can answer.

24 A. I don't know. Can you ask the question again?
25 Sorry.

1 Cable, right?

2 A. The rates as they are today, yes. But not -- I
3 mean, obviously this was '12 and '13.

4 Q. Well, I -- I don't understand that answer. They
5 -- These are rates that were charged to NewWave and -- and
6 its successor, Time Warner Cable, in 2010 through 2013,
7 right?

8 A. Yes, for those timeframes. Yes, sir.

9 Q. Okay. Were the rates that are reflected here for
10 West Kentucky Telephone Cooperative approved by TVA?

11 A. No.

12 Q. Was there any consultation with TVA about this
13 rate?

14 A. No.

15 Q. These rates?

16 A. No.

17 Q. Does TVA have knowledge of these rates, to the
18 best of your knowledge?

19 A. To the best of my knowledge, no.

20 Q. To the best of your knowledge, does TVA have
21 knowledge of any of these pole rates?

22 A. To the best of my knowledge, no.

23 Q. Prior to 2010, what rate was charged by West
24 Kentucky to West Kentucky Telephone Cooperative?

25 A. I don't recall.

1 coming upon time to do it or something like that. I don't
2 recall any specific emails, no.

3 Q. You don't have any other documents about
4 determining what the rates would be or anything like that?

5 A. No, sir.

6 Q. Okay. Okay. Thumb through about five pages to
7 an email from you to Bruce Gluckman at Mediacom.

8 A. Okay.

9 Q. This is about a dispute between West Kentucky and
10 Mediacom about Mediacom's payment of pole rates; is that
11 right?

12 A. There was two issues in the letter, it looks
13 like. One was on the rate and the other was on unpermitted
14 attachments.

15 Q. Okay. And since 2004 -- or, between 2004 and
16 2011, Mediacom was paying West Kentucky some amount for pole
17 attachments that was less than West Kentucky was billing it,
18 correct?

19 A. Yes.

20 Q. Was TVA informed that Mediacom was not paying the
21 full attachment rate?

22 A. Not to my knowledge, no.

23 Q. Okay. Now, because Mediacom was not paying the
24 full attachment rate, the revenues that West Kentucky had
25 from the years 2004 to 2011 were less than they would have

1 been had Mediacom been paying the full attachment rate,
2 correct?

3 A. Yes.

4 Q. Okay. Turn to the next page.

5 A. Okay.

6 Q. It's a letter from Mr. Robbins, counsel for West
7 Kentucky, to Bruce Gluckman at Mediacom, March 18th, 2011.
8 Do you see that?

9 A. Yes.

10 Q. Okay. And you were cc'd on this, right?

11 A. Yes.

12 Q. Okay. Now, this letter reflects the same dispute
13 and it involves a resolution over the dispute, correct?

14 A. This doesn't appear to be -- This does not appear
15 to have anything to do with their not paying the full amount.
16 This is for unreported attachments.

17 Q. Okay. This shows that the rate that was being
18 charged to Mediacom in 2006 was \$16.35, right?

19 A. Yes.

20 Q. And that was the rate that was being charged to
21 and from South Central Bell, right?

22 A. Yes.

23 Q. South Central Bell being the same as AT&T that
24 we've been discussing, right?

25 A. Yes.

1 Q. Okay. And the rate in 2007 was \$16.81, correct?

2 A. Yes.

3 Q. And the rate in 2008 was \$17.53, correct?

4 A. Yes.

5 Q. And the rate in 2009 was \$18.25, correct?

6 A. Yes.

7 Q. And the rate in 2010, both for Mediacom and for
8 South Central Bell, was increased to \$25, right?

9 A. Correct.

10 Q. So, that was the increase that we talked about
11 earlier that you weren't able to remember, right?

12 A. I said that I remembered there was an increase,
13 but not the -- whether it was substantial or not and --

14 Q. Correct.

15 A. -- I needed you to define substantial, I think is
16 what I said.

17 Q. All right. Is that -- Do you consider that to be
18 substantial?

19 A. No.

20 Q. You don't. Okay. So, the difference that -- a
21 \$6.75 difference is not considered substantial in -- in your
22 review about pole attachment rates, right?

23 MR. DEPP: Objection. Argumentative.

24 Q. You can answer.

25 A. It gets back to the same thing. Define

1 substantial. Substantial is a very broad -- broad word.

2 Q. Well, I'm just asking what you think substantial
3 is.

4 A. No. I don't think it's substantial.

5 Q. Okay. Go forward several documents to another
6 letter from Mr. Robbins, this one to counsel for NewWave,
7 dated October 24, 2011.

8 A. Okay.

9 Q. Okay. And do you see the last sentence in the
10 second paragraph says, quote, last year the rate paid by
11 NewWave was \$27 per pole? Do you see that?

12 A. Yes, sir.

13 Q. Okay. Never mind. Several documents over, there
14 is a letter from you to Thomas Hudock at Alltel
15 Communications, dated April 16th, 2009. Do you see that?

16 A. Yes.

17 Q. And this -- This seems to indicate that West
18 Kentucky terminated its Joint Use Agreement with Alltel; is
19 that right?

20 A. Yes.

21 Q. Does West Kentucky have an agreement now with
22 Alltel?

23 A. Not that I'm aware of because I think Alltel
24 became -- or got bought or however --

25 Q. Alltel was acquired by Windstream?

1 A. Yes.

2 Q. Okay. Turn to a letter from you to Mr. Hudock,
3 January 15th, 2010, stating that the -- in the second
4 paragraph, it states that the rate for 2010 is \$27 an
5 attachment, for 2011 it would be \$29. Do you see that?

6 A. Yes, sir.

7 Q. Now, the way I read the chart that is Exhibit No.
8 26, it says that the rate for 2011 is \$27 and the rate for
9 2000 -- No, never mind. I see the -- I see the difference.
10 Excuse me.

11 A. Okay.

12 Q. Strike that as they say. Turn several documents
13 further to a letter from you to Brenda Wilfong at Windstream
14 dated August 9th of 2010.

15 A. Okay.

16 Q. And about two-thirds of the way through that
17 paragraph of the letter, it states that you use the FCC
18 telecom formula to arrive at the figures used in the contract
19 with Windstream and that this is the methodology that will be
20 used in the future. Do you see that?

21 A. Yes.

22 Q. Did West Kentucky use the FCC telecom formula to
23 arrive at the figures for the Windstream contract?

24 A. Not that I can remember or, if we looked at it, I
25 don't know that that's exactly what was used in the contract,

1 no.

2 Q. Now, when it says that the methodology would be
3 used in the future, the FCC telecom methodology, that's not
4 right either, is it?

5 A. Currently, everyone is using the AT&T/Bell South
6 rate, negotiated rate.

7 Q. Not the FCC telecom formula rate, correct?

8 A. That is correct.

9 Q. Go over one page to -- to the letter from you to
10 Mr. Bonnstetter at West Kentucky and Tennessee
11 Telecommunications Cooperative dated January 15, 2010. Do
12 you see that?

13 A. Yes, sir.

14 Q. And that's the company we've been calling West
15 Kentucky Telephone Cooperative, right?

16 A. Yes, sir.

17 Q. So, looking at this, does this refresh your
18 memory as to whether the \$12.50 rate -- Well, let me ask you
19 this. The letter of January 15th, 2010 states that the rate
20 for 2009 for them would be \$12.50. Do you see that?

21 A. Yes.

22 Q. And that the rate for 2010 would be \$13.50?

23 A. Yes.

24 Q. And that the rate for 2011 would be \$14.50, do
25 you see that?

1 Q. So, what was the basis for West Kentucky charging
2 West Kentucky Telephone Cooperative less than the AT&T rate?

3 A. What -- Can you repeat that please or just the
4 beginning?

5 Q. What was the basis for West Kentucky charging
6 West Kentucky Telephone Cooperative less than the AT&T rate?

7 A. There was a contract in place with the rural
8 telephone for many years before I was here and any contract
9 is negotiated and has to be approved by a Board of Directors,
10 which is my governing body. And at that point, it was time
11 for us to renegotiate a contract, so we sat down with the
12 rural telephone and negotiated a new contract with them.

13 Q. So, the -- there was a prior contract with West
14 Kentucky Telephone Cooperative, right?

15 A. I believe so, yes.

16 Q. And that prior contract contained rates that
17 were, in any event, less than \$12.50, correct?

18 A. Yes.

19 Q. And you don't recall whether they were less than
20 \$8?

21 A. Not at the -- No, not by the end of the contract
22 terms. No. I don't recall.

23 Q. Okay. And the -- In essence, what you're saying
24 is that West Kentucky negotiated a new agreement with West
25 Kentucky Telephone Cooperative that was approved by the Board

1 that contained the rates that are shown on Exhibit No. 26?

2 A. Is this Exhibit 26? Yes. Yes, the new contract
3 contained those rates, yes.

4 Q. Okay. Are there any documents that you're aware
5 of that would constitute an order directive or communication
6 from TVA regarding pole attachment rates?

7 A. Any document concerning --

8 Q. Yes.

9 A. -- pole attachment rates? Other than the letter
10 that you presented to me earlier, no.

11 Q. Other than the letter from Cynthia --

12 A. Cynthia.

13 Q. -- Herron?

14 A. Yes.

15 Q. Does West Kentucky provide pole related expenses
16 to the TVA?

17 A. Pole related expenses?

18 Q. Yes.

19 A. Not specifically down to the pole, no.

20 Q. Okay. All right. Let me have marked, as Exhibit
21 No. 28, the annual reports that are submitted by West
22 Kentucky to the TVA.

23 (WHEREAS, EXHIBIT NO 28 WAS ENTERED)

24 MR. GILLESPIE: If your copy has a tab ten on it,
25 you can delete that. It may not.

1 are you looking actually at '12?

2 Q. The year ended June 30, 2012.

3 A. Okay. Okay.

4 Q. And if you look down to the reference to page
5 three, item 62, do you see that you advised TVA that there
6 was an increase there because of recovery of some monies from
7 Mediacom? Do you see that?

8 A. Yes, sir.

9 Q. And there hadn't been any prior notification to
10 TVA that Mediacom was not paying its contractual amounts,
11 correct?

12 A. That is correct.

13 Q. So, when was the last time that, if ever, that
14 West Kentucky communicated with the TVA about the pole
15 attachment matter?

16 A. When was the last time that we had any discussion
17 with them about the pole attachment matter?

18 Q. Yes. Any communication other than --

19 A. Not --

20 Q. -- the references that I just referred to in
21 the --

22 A. Not to my knowledge, other than the letters that
23 we've been looking at from TVA or the -- Cindy Herron's
24 letter.

25 Q. Okay.