

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

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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 This deposition, under oath, of David E. Smart was  
 2 taken by me, Candace Mauney Reid, Certified Court Reporter  
 3 and Notary Public, on March 12, 2015, beginning at  
 4 approximately 9:37 a.m., Central Standard Time, at the  
 5 offices of Robbins & Robbins Law Office located at 101  
 6 South Seventh Street, Mayfield, Kentucky 42066. Said  
 7 examination was taken pursuant to Notice, for purposes of  
 8 discovery, and as provided by the Kentucky Rules of Civil  
 9 Procedure.

10 \*\*\* \*\*

11  
12 A P P E A R A N C E S

13 FOR PETITIONER: GARDNER F. GILLESPIE, ESQ.  
 14 SHEPPARD MULLIN RICHTER &  
 15 HAMPTON, LLP  
 16 1300 I STREET NW  
 17 11TH FLOOR EAST  
 18 WASHINGTON, DC 20005

19  
 20  
 21 FOR RESPONDENT: EDWARD T. DEPP, ESQ.  
 22 DINSMORE & SHOHL, LLP  
 23 101 SOUTH FIFTH STREET  
 24 SUITE 2500  
 25 LOUISVILLE, KY 40202

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5 Rural Electric Cooperative to KCTA)

6 EXHIBIT NO 28 60  
(Annual Reports, Years 2010, 2011, 2012  
7 and 2013)

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20  
21 Transcript Legend:  
22 (ph) (Phonetically)  
23 [sic] (In its original form)  
24 ... (Trailing off or did not complete thought)  
25 - (Interjection of thought for clarification)  
-- (Interruption of thought or speech)

1 DAVID E. SMART,  
2 a witness, called upon oral examination by counsel for the  
3 Petitioner, having been first duly sworn, was examined and  
4 testified as follows:

5  
6 EXAMINATION

7 BY MR. GILLESPIE:

8 Q. Mr. Smart, I'm Gardner Gillespie from Sheppard  
9 Mullin. I represent the Kentucky Cable Telecommunications  
10 Association. Would you state your name and address for the  
11 record, please?

12 A. My name is David E. Smart. My address is 2222  
13 Carolwood Way, Murray, Kentucky and I am the President and  
14 CEO of Western Kentucky Rural Electric Cooperative  
15 Corporation.

16 Q. Have you had your deposition taken before?

17 A. Yes, sir.

18 Q. How many times?

19 A. Once that I can remember.

20 Q. Okay.

21 A. It's been several years ago.

22 Q. Okay. What kind of case was it?

23 A. It might have been a territorial boundary case.  
24 That's what I'm thinking it was in.

25 Q. Okay. Well, you've gone over this, but let me

1 just give a little refresher. We are going to be having a  
2 colloquy here, recorded by the court reporter. So, we need  
3 verbal responses and we need something in words, not shaking  
4 of the head or uh-huh or something of that nature. Okay?

5 A. Okay.

6 Q. If you don't understand a question, ask me to  
7 clarify it. Because if you give an answer, we will assume  
8 that you have understood the question; is that all right?

9 A. Yes, sir.

10 Q. Are you on any medications or is there any other  
11 reason why the Public Service Commission cannot treat your  
12 answers today as being true and correct?

13 A. No.

14 Q. You understand that you are testifying on behalf  
15 of West Kentucky Cooperative?

16 A. Yes.

17 Q. And that your answers will be treated as if they  
18 were the answers of the cooperative?

19 A. Yes.

20 Q. Okay. Okay. And we'll have marked for  
21 identification the two Notices of Deposition that have been  
22 submitted in this case. So, we're up to Exhibit No. 20, I  
23 believe. These will be KCTA 20 and 21.

24 (WHEREAS, EXHIBIT NOS 20 AND 21 WERE ENTERED)

25 Q. The first one is a Notice of Deposition that was

1 submitted on the 15th of January, 2014. Have you seen that  
2 document before?

3 A. Yes.

4 Q. Okay. Now, I'm going to ask that we have marked  
5 as Exhibit No. 21 the updated Notice of Deposition that was  
6 submitted on the 9th of March. This is the Notice of  
7 Deposition that has been revised in conformance with the  
8 Order of the Commission in this case. Have you seen this  
9 document?

10 A. Yes.

11 Q. And are you prepared to answer the questions in  
12 the areas covered by that notice?

13 A. To the best of my ability, yes.

14 Q. What did you do to prepare for the deposition?

15 A. I reviewed the responses that we provided to the  
16 questions that you had proposed. I reviewed the letter  
17 drafted from TVA to the Public Service Commission. I  
18 reviewed the AT&T joint use contract between TVPPA and AT&T.  
19 And I looked through some of the responses as we had sent  
20 them to Tip in the beginning.

21 Q. When did you review these?

22 A. In the last couple of days. I've been looking  
23 through them over the last couple of days.

24 Q. In the last couple of days starting when?

25 A. I started on -- Today is Thursday, so I started

1 reviewing them on Tuesday afternoon.

2 Q. Okay. Did you speak to anyone in connection with  
3 preparation for this deposition?

4 A. Do you mean in the last two days or prior to  
5 that?

6 Q. At -- At any time in connection with the  
7 preparation for this deposition.

8 A. Yes. We spoke with Tip and one of the ladies  
9 that works with him. I believe her name was Michelle, as  
10 well as some of the other involved parties in this group.

11 Q. So, you had a meeting with counsel and the other  
12 four cooperatives?

13 A. Yes.

14 Q. When was that?

15 A. It was Friday, last Friday morning.

16 Q. Have you spoken to anyone, in addition to that,  
17 in preparation for this deposition or in connection with  
18 educating yourself on the subject of this deposition?

19 A. Only employees of West Kentucky Rural Electric.

20 Q. Okay. And what employees of West Kentucky did  
21 you speak with?

22 A. I spoke with our Vice President of Finance and  
23 Administration - his name is Randy Clifford - and my  
24 Executive Secretary, Cathy Ernstberger.

25 Q. And when did you have those conversations?



1 A. Since Tuesday afternoon.

2 Q. Okay. So, you understand that you're the  
3 cooperative representative for all the issues as designated  
4 by the Commission?

5 A. Yes.

6 Q. Your position at West Kentucky, I think you said  
7 you're the President; is that right?

8 A. President and CEO. Yes, sir.

9 Q. And how long have you held that position?

10 A. Since April 1st of 2002.

11 Q. And what are your --

12 A. April 15th, I'm sorry. That -- That's tax day,  
13 right, 15th?

14 Q. Uh-huh.

15 A. It was tax day. Yeah, it was tax day. The first  
16 was when Chris Perry started, because we called him April's  
17 Fool Day.

18 Q. Yeah.

19 A. Because he started at Floyd Mason on the first.

20 Q. And what are your duties as President and CEO?

21 A. I run the day-to-day operation of the electric  
22 cooperative.

23 Q. Okay. How long have you been -- been employed by  
24 West Kentucky?

25 A. Since that same date, April the 15, 2002.

1 Q. And what did you do before that?

2 A. I was a manager of engineering at Fleming Mason  
3 Energy Cooperative in Flemingsburg, Kentucky.

4 Q. And how long were you a manager of engineering  
5 there?

6 A. Right at ten years.

7 Q. Okay. And before that, what did you do?

8 A. I was a student at the University of Kentucky.

9 Q. Okay. And your educational background, as well?

10 A. I have a Bachelor's of Science in Engineering  
11 Arts degree from Georgetown College, a Bachelor of Science in  
12 Electrical Engineering from the University of Kentucky, and a  
13 Master's in Business Administration from Morehead State  
14 University.

15 Q. Okay. When you were at Flemingsburg, did you  
16 have any responsibility for pole attachments?

17 A. Yes, sir.

18 Q. What was your responsibility for pole attachments  
19 there?

20 A. Historically, anytime that you -- my  
21 responsibility was, as the manager of the Engineering  
22 Department, is our department was responsible for any  
23 requests from the utilities who wanted to attach. We had to  
24 go out and design any make-ready work that had to be  
25 performed for them to be able to meet code requirements or --

1 or clearance requirements or anything of that nature.

2 Q. And you dealt with pole attachment agreements and  
3 joint use agreements there?

4 A. I dealt with them, but I was not the person that  
5 was involved in negotiating them.

6 Q. Okay. Now, what do you mean you dealt with them?

7 A. The same thing that we're talking about. Anytime  
8 that you are dealing with a cable TV company or something,  
9 there was various times we had to refer to any agreements  
10 that we had in place to know exactly what the  
11 responsibilities were of both parties to know how to handle  
12 certain situations.

13 Q. Okay. And do you have responsibility for pole  
14 attachments at West Kentucky?

15 A. Yes, sir.

16 Q. Okay. And you are familiar with the agreement  
17 between AT&T and West Kentucky?

18 A. Yes, sir.

19 Q. Okay. And did you sign that agreement?

20 A. Yes, sir.

21 Q. Okay. You're familiar with agreements -- pole  
22 attachments agreements with other attaching parties?

23 A. Yes, sir.

24 Q. Okay. And did you sign those, as well?

25 A. Not all of them.

1 Q. You signed all the ones that have been --

2 A. Negotiated --

3 Q. -- executed since 2002?

4 A. Yes, sir.

5 Q. Okay. Let me have marked, as Exhibit No. 22,  
6 West Kentucky's responses to KCTA's first data requests.

7 (WHEREAS, EXHIBIT NO 22 WAS ENTERED)

8 Q. Are you familiar with this document?

9 A. Yes, sir.

10 Q. Do you see that you have been designated as the  
11 witness with respect to most of these answers?

12 A. Yes, sir.

13 Q. And you verified the accuracy of these responses,  
14 did you not?

15 A. Yes, sir.

16 Q. Okay. And let me have marked as Exhibit No. 23  
17 -- Go off the record for a minute. I'm looking for a  
18 document here.

19 (WHEREAS, A BRIEF RECESS WAS TAKEN.)

20 BY MR. GILLESPIE:

21 Q. I found a document we're -- we'll have marked as  
22 Exhibit No. 23, the West Kentucky responses to supplemental  
23 requests for information. The verification page is with this  
24 exhibit, but it is not stapled to it.

25 (WHEREAS, EXHIBIT NO 23 WAS ENTERED)

1 Q. Mr. Smart, are you familiar with this document?

2 A. Yes, sir.

3 Q. Were you responsible for the answers contained in  
4 this document?

5 A. Not for every answer, for most of them. Yes,  
6 sir.

7 Q. And you will verify the accuracy of these?

8 A. Yes, sir.

9 Q. Okay. Now, when you say that you're responsible  
10 for most of them but not all of them, what do you mean by  
11 that?

12 A. Well, some of the responses, I believe, said  
13 counsel was the witness, correct, in that document.  
14 Therefore, the -- some of the responses were -- I think --  
15 Let me flip through it.

16 Q. Yes. There are a couple of responses that say  
17 counsel as the witness, so you're saying that you're not  
18 responsible for those answers; is that right?

19 A. That is right.

20 Q. Okay. Now, you are responsible for all of the  
21 answers that reflect you as the witness?

22 A. Yes.

23 Q. Okay. What did West Kentucky do to respond to  
24 these data requests?

25 A. We looked at the requests as they were presented

1 and we provided responses to the best of our ability to the  
2 questions that were asked.

3 Q. Were the responses that you provided the same as  
4 contained in these documents?

5 A. Yes, except for one I believe.

6 Q. And what was the one?

7 A. It was a question in the second part about the  
8 FCC formula. (Reading) Have you or anyone on your behalf  
9 ever analyzed what your pole attachment rates would be under  
10 the Federal Communication Commission's pole attachment rate  
11 methodology?

12 And when we first answered that question, we had  
13 -- NRECA put out a document a few years ago on pole  
14 attachment calculations and, at the time, we had our -- I had  
15 my finance person, CFO at the time, plug some numbers in just  
16 to see what those numbers were.

17 Q. And which of the methodologies proposed by NRECA  
18 did you use in those calculations?

19 A. I don't recall the exact methodology. All I  
20 recall doing was looking at the FCC formulas that were out  
21 there at that time. There was like a teleco rate, maybe in  
22 the cable. The teleco rate, that's been several years ago.

23 Q. And what were the cable and teleco rates that  
24 were calculated for West Kentucky. Do you remember?

25 A. No, sir.

1 Q. Can you give us a range of what those rates were?

2 MR. DEPP: I'm going to object. I mean, the  
3 witness can answer if he knows, but I'm going to object just  
4 to note that the Commission's Order specifically declined to  
5 allow KCTA to get into this line of questioning.

6 MR. GILLESPIE: I don't recall. I just want to  
7 note that the Commission's Order does allow us to get into  
8 questions related to the data responses.

9 Q. So, you're saying that your answers were the same  
10 as each of the responses in the data requests where you are  
11 shown as the sponsoring witness?

12 A. I'm saying that the initial inquiry about the FCC  
13 formula and our knowledge of it indicated that we had run  
14 numbers on that, but not for any particular negotiation with  
15 AT&T or anyone like that, because we had no part in that  
16 negotiation. Just to see and compare what those formulas  
17 would have said versus some of what our current rates were.

18 Q. Okay. Well, I really was intending to ask a  
19 broader question. Putting aside that particular answer, all  
20 of the other answers where you are shown as the sponsoring  
21 witness, your responses were the same as the responses that  
22 are included in these exhibits?

23 MR. DEPP: I'm going to object again. I think  
24 that's been answered three times now. You have asked a  
25 question about the verification page, which is attached.

1 He's answered that. That document speaks for itself.

2 MR. GILLESPIE: Well, I'm trying to understand  
3 the process of the responses to this document and the  
4 question has not been asked and answered.

5 A. On behalf of Tip and his team, on behalf of the  
6 group of distributors that are involved in this discussion  
7 with you, prepared several of these responses based on the  
8 information that was provided to them by us.

9 Q. Okay. Well, that -- Just so I understand the  
10 process, counsel sent you the data requests; is that right?

11 A. Yes.

12 Q. Okay. And then, you provided some responses back  
13 to your counsel; is that right?

14 A. Yes.

15 Q. And then, your counsel provided you the responses  
16 that are specifically written in these two exhibits; is that  
17 right?

18 A. Yes.

19 Q. Okay. Do you have -- Did you send to your  
20 counsel the responses in writing?

21 A. Yes.

22 Q. I would ask for those.

23 MR. DEPP: The documents that you have identified  
24 as Exhibits 22 and 23 contain the responses to the data  
25 requests. We are not providing attorney work product



1 information or attorney-client privileged information. You  
2 have the responses, we're not providing more.

3 MR. GILLESPIE: Well, I just want to make it  
4 clear I'm not asking for either attorney-client information  
5 or attorney work product information. I'm simply asking for  
6 this witness' initial responses to the data requests.

7 MR. DEPP: Our position is you have them.

8 MR. GILLESPIE: Okay.

9 BY MR. GILLESPIE:

10 Q. What did West Kentucky do to look for the  
11 documents requested in the data requests?

12 A. We reviewed the current Power Contract we have in  
13 place with TVA, and we reviewed the pole attachment contracts  
14 we currently have in place, and we reviewed -- including the  
15 AT&T Joint Use Agreement negotiated with TVPPA. And to  
16 answer some of the other requests, we had to review some of  
17 our historical financial data.

18 Q. Okay. And is it fair to say that the documents  
19 that were provided to us are all of the documents that were  
20 requested, as far as you know?

21 A. As far as I know.

22 Q. Okay. Now, let's turn to Exhibit No. 22, item  
23 number two. It's on the second page of that exhibit. And  
24 the second sentence of the second paragraph of the response  
25 reads as follows, (reading) the TVA regulates these rates and

1 services through the expressed terms of its wholesale Power  
2 Contract with West Kentucky.

3 Do you see that?

4 A. Yes, sir.

5 Q. What rates does this sentence refer to?

6 A. TVA is our complete rate regulator. Therefore,  
7 it refers to any rate that we charge.

8 Q. That includes the pole attachment rates?

9 A. That includes any rate that we charge.

10 Q. Does that include pole attachment rates?

11 A. Yes.

12 Q. So, where in the ex -- expressed terms of the  
13 wholesale power contract with West Kentucky does it address  
14 pole attachment rates, do you recall?

15 A. No.

16 Q. Okay. Let's look at the contract. And I  
17 apologize for this. This is a hefty document. And I would  
18 have marked, as Exhibit No. 24, the Power Contract as --  
19 that's been provided to us from West Kentucky.

20 (WHEREAS, EXHIBIT NO 24 WAS ENTERED)

21 MR. GILLESPIE: Do you have paper -- Do you have  
22 rubber bands for that? I'm sure we can get something.

23 COURT REPORTER: I've -- I'll find one.

24 MR. GILLESPIE: Those won't do it.

25 BY MR. GILLESPIE:

1 Q. Mr. Smart, are you familiar with this document?

2 A. Yes.

3 Q. And does this represent the Power Contract  
4 between the TVA and West Kentucky?

5 A. If this is a copy of all of the supplemental  
6 agree -- you know, all of the supplemental agreements and of  
7 the contract itself, yes.

8 Q. Well, it's all of the document that was provided  
9 to us.

10 A. Okay. Then, yes.

11 Q. Okay. And this contract is currently in force  
12 and effect?

13 A. Yes.

14 Q. And this document provides for the extension or  
15 amendment of the 1982 Agreement?

16 A. Yes.

17 Q. Okay. So, where in this document is there or are  
18 there expressed terms regulating pole attachment rates?

19 MR. DEPP: I -- I will object. The witness can  
20 answer to the extent of his personal knowledge, but I do just  
21 want to go on the record to object to the extent that calls  
22 for any legal conclusion.

23 Q. Just understand, Mr. Smart, I'm asking for -- for  
24 your knowledge. You are the person that is responsible for  
25 this response to the data request and you are also, are you

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 A. -- that is not part of this?

2 Q. -- Exhibit 24?

3 A. Not that I'm aware of.

4 Q. Okay. As part of the response to item two in  
5 Exhibit No. 22, are there references to the TVA --  
6 cooperative's responses of January 17 -- of February 15th and  
7 July 25, 2013, do you see that?

8 A. Yes, sir.

9 Q. And I'm going to show you a copy of Exhibit 3,  
10 which was introduced by -- Exhibit 5 which was introduced  
11 yesterday and Exhibit No. 6 to which what's marked here as  
12 Exhibit No. 5, as a letter from Cynthia Herron of TVA to you  
13 dated January 24, 2013. Are you familiar with that letter?

14 A. Yes, sir.

15 MR. DEPP: Pardon me for one second. This is  
16 exhibit to Exhibit 5? Because the copy I received yesterday  
17 doesn't have a copy of those. This is a --

18 MR. GILLESPIE: We'll go off the record.

19 (WHEREAS, A BRIEF RECESS WAS TAKEN.)

20 BY MR. GILLISPIE:

21 Q. Okay. Mr. Smart, your counsel and I have had a  
22 discussion and we believe that the Cynthia Herron letter was  
23 an attachment to what was marked yesterday as Exhibit 4,  
24 which was the cooperative's response to the January 17 Order  
25 of the Commission. So, in any event, I want to point you to

1 the letter from Ms. Herron. Now, this is a document that you  
2 reviewed in preparation for this deposition, correct?

3 A. Yes, sir.

4 Q. Okay. Has anyone from West Kentucky discussed  
5 any issue regarding pole attachments with Ms. Herron?

6 A. No.

7 Q. Okay. Are you aware of discussions by anyone  
8 related to obtaining a letter from TVA on this subject?

9 A. I'm sure that that was asked, but I'm -- no, I'm  
10 not aware of where it originated.

11 Q. So, you have no knowledge about the origination  
12 of this letter?

13 A. I don't know who requested this particular letter  
14 to be sent as part of our group, no.

15 Q. So, you have no knowledge about the origination  
16 of it, correct?

17 A. Correct.

18 Q. Okay. Now, the letter says that basically the  
19 distributor, which would be West Kentucky, is required to  
20 recover its full costs associated with pole attachments and  
21 that the TVA doesn't object as long as the power distributor  
22 recovers the costs associated with pole attachment rentals  
23 and that the electric rate payers do not subsidize the cost  
24 of the rentals. Do you see that?

25 A. Yes.

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. Okay. Now, I would ask you to look at Exhibit  
2 No. 23, item number 52. Do you see that item 52 was asking  
3 you to identify each increase or decrease in electric rates  
4 set by TVA that has resulted from a change in your pole  
5 attachment revenues within the last ten years? Do you see  
6 that?

7 A. Yes.

8 Q. And then the last sentence of the response says,  
9 quote, West Kentucky also objects to this request on the  
10 grounds that the requested information is not in the custody  
11 or control of West Kentucky. Do you see that?

12 A. Yes.

13 Q. So, you don't have the information to identify  
14 any increase or decrease in electric rates that resulted from  
15 a change in pole attachment revenues; is that right?

16 MR. DEPP: Object, first of all, that the witness  
17 here is not the deponent, but he can answer if he knows.

18 Q. Okay.

19 A. I don't know exactly how TVA reviews that  
20 information.

21 Q. Okay. To your knowledge, does TVA take into  
22 account pole attachment revenues in any way different from  
23 other revenues or costs?

24 MR. DEPP: Objection. Vague.

25 A. I don't know.



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 then the current annual pole rental rate set forth in Exhibit  
2 D, with net difference being the actual amount billed.

3 Q. What section is that?

4 A. Should have caught me before I flipped it back.  
5 If you-all find it, you --

6 Q. If -- If you can't find it, that's all right.

7 A. I mean, it was -- I'll find it.

8 Q. It's in the documents.

9 A. Yeah, right there it is. It's in Article 14,  
10 Section A.

11 Q. Okay. So, this agreement binds both AT&T as a  
12 pole owner and West Kentucky as a pole owner between the two  
13 of them, right?

14 A. Yes.

15 Q. And AT&T owns poles to which West Kentucky  
16 attaches and West Kentucky owns poles to which AT&T attaches,  
17 right?

18 A. Yes.

19 Q. Okay. Now, the agreement reserves two feet of  
20 space for AT&T to use without paying any additional rate or  
21 without paying -- excuse me, for paying only one rate,  
22 correct?

23 A. I don't know.

24 Q. Isn't that the way this is -- Isn't that the way  
25 this arrangement works?

1 A. I --

2 Q. Take --

3 A. I've never seen --

4 Q. Take a look at --

5 A. There's a space allocation built in.

6 Q. Right. Take a look at page three, up at the top.

7 So, this provides that West Kentucky gets to use ten feet of  
8 space on a 45-foot pole, eight feet of space on a 40-foot  
9 pole, and 6.5 feet on a 35-foot pole, correct?

10 A. Yes.

11 Q. And that AT&T gets to use two feet of space on  
12 any of those joint use poles, correct?

13 A. They get two feet, it says, from the lowest point  
14 on the pole required to provide at all times the code minimum  
15 clearance above ground.

16 Q. Right.

17 A. So, yes. Two feet of space, but it's based on  
18 the initial point of attachment.

19 Q. Right. And that indicates where those two feet  
20 occur?

21 A. Yes.

22 Q. Okay. And the -- looking back into the agreement  
23 toward the end, do you see the diagrams of pole space?

24 A. Yes, sir.

25 Q. I think it's part -- I think it's Exhibit A.

1 It's called standard space allocation, do you see that?

2 A. Uh-huh.

3 Q. And this provides on the different sized poles  
4 the amount of electric company space and the amount of  
5 telephone company space, right?

6 A. Correct.

7 Q. And if West Kentucky uses the entire ten feet of  
8 space on a 45-foot pole, it would pay AT&T only one  
9 attachment rate, correct?

10 A. If we were on their pole?

11 Q. Yeah.

12 A. Yes. We would pay them one attachment rate.

13 Q. And if AT&T used the entire two feet of space to  
14 which it's entitled, it would pay West Kentucky only one  
15 attachment rate, correct?

16 A. They would pay us one attachment rate per  
17 attachment.

18 Q. Where does it say that?

19 A. Well, I would have to read the whole document  
20 again to know.

21 Q. Well, you can read the whole document, but let me  
22 -- let me go back before you do that. So, you agreed that  
23 West Kentucky, no matter how many attachments it has, pays  
24 one attachment rate to AT&T for use of the entire ten foot of  
25 -- ten feet of space, correct?



1 A. Yes.

2 Q. And doesn't the agreement work the same way with  
3 respect to AT&T having multiple attachments in its two feet  
4 of space?

5 MR. DEPP: Object to the extent it calls for a  
6 legal conclusion.

7 A. I -- I don't really know the answer to that. I  
8 don't recall. I mean, I'm not one that is responsible for  
9 the pole count, like physically looking at it in the field.  
10 So, I have no idea where they would have more than one  
11 attachment on a given structure.

12 Q. Isn't it true that AT&T has more than one  
13 attachment on many of West Kentucky's poles?

14 A. I don't know that.

15 Q. You don't know one way or the other?

16 A. No, sir.

17 Q. Now, you were the head of engineering at your  
18 other coop, right?

19 A. Yes, sir.

20 Q. Did AT&T or the -- Was it AT&T that was the  
21 incumbent local telephone company there?

22 MR. DEPP: We are --

23 A. I think it --

24 MR. DEPP: We are getting far outside of the  
25 scope --

1 MR. GILLESPIE: I'm just --

2 MR. DEPP: -- of a declaratory judgment.

3 MR. GILLESPIE: I'm actually -- I'm just testing.  
4 I'm just trying to understand his response here.

5 BY MR. GILLESPIE:

6 A. At Fleming Mason, I don't recall. I think it was  
7 South Central Bell, I think was the main attacher when I was  
8 at Fleming Mason. So, I don't recall if AT&T was an attacher  
9 at the time or not.

10 Q. Do you recall whether South Central Bell had  
11 multiple attachments on Fleming Mason's poles?

12 A. No.

13 Q. Okay. Okay. Turn to page five of the AT&T  
14 agreement.

15 A. All right.

16 Q. Do you see that, under easements, it provides  
17 that the parties will seek to obtain easements for both  
18 parties on joint use poles? Do you see that?

19 A. Yes.

20 Q. Okay. And turn to page six.

21 A. Okay.

22 Q. Do you see that -- under Section A.1, that AT&T  
23 is allowed to attach to West Kentucky's poles without any  
24 advanced notice?

25 A. If the attachment otherwise meets the

1 requirements of the code and if it does not interfere with  
2 the owner's use of the pole or with others who are attached,  
3 yes.

4 Q. Okay. And do you see under B.2 that where -- in  
5 situations where make it -- make-ready is required, such as  
6 where AT&T would want to use more than two feet of space,  
7 that the agreement would require West Kentucky to respond to  
8 an application to attach within ten days? Do you see that in  
9 B.2?

10 A. Yes.

11 Q. And do you see in B.3 that, where make-ready is  
12 to be performed where it's not complex, that West Kentucky  
13 has agreed to complete the make-ready construction within 60  
14 days?

15 A. Yes, or within a reasonable extended deadline for  
16 complex.

17 Q. Right.

18 A. Yes.

19 Q. And page seven under C, do you see that the  
20 agreement allows AT&T to place attachments on service drop  
21 poles without notice?

22 A. Yes.

23 Q. Okay. And also without submitting any  
24 application, correct?

25 A. It says (reading) subject to code compliance,

1 licensee shall... -- without submitting an application.

2 Correct.

3 Q. Does West Kentucky pay AT&T an annual pole  
4 attachment fee to attach to AT&T's drop poles under this  
5 agreement?

6 A. As far as I know, yes.

7 Q. What's that knowledge based on?

8 A. Just a general understanding of our day-to-day  
9 operation.

10 Q. Well, Western -- West Kentucky -- Let's turn it  
11 around. Does AT&T pay an annual attachment rate for  
12 attaching to West Kentucky's drop poles?

13 A. Yes.

14 Q. And what's that -- What's that answer based on?

15 A. It says service drops shall be considered  
16 attachments for all other purposes under this agreement. So,  
17 as far as exactly how the count takes place with my staff and  
18 their staff, I'm not exactly sure, but a service pole does  
19 warrant a pole.

20 Q. This provision provides that service drops are  
21 going to be made without any notice to West Kentucky in any  
22 application, correct?

23 A. That's what it says.

24 Q. Yeah. What's the basis of your understanding  
25 then that the -- West Kentucky has any idea how many service

1 drop poles AT&T is attached to?

2 MR. DEPP: Objection. We are getting into  
3 ratemaking. I know that's KCTA's principal objection here,  
4 is to turn this into a ratemaking proceeding, but that's not  
5 what the Commission has said this case is about. I'll let it  
6 go on for a question or two longer and that's it.

7 MR. GILLESPIE: Well, I do not accept your  
8 characterization of what I'm doing, but the witness can  
9 answer.

10 BY MR. GILLESPIE:

11 A. To answer your question, it says in Article 15  
12 that five years after the initial inventory and at intervals  
13 no more frequent than every five years thereafter, an actual  
14 inventory of attachments shall be made jointly by  
15 representatives of the parties or by a third party chosen by  
16 both parties. Therefore, to answer your question about how  
17 would we know they were attached, we would inventory it  
18 occasionally based on the terms of the contract.

19 Q. Do you have personal knowledge or -- or, do you  
20 have knowledge as the representative here of West Kentucky  
21 that those inventories would count the drop attachments of  
22 AT&T and West Kentucky?

23 A. I would that -- if a drop attachment -- if it  
24 involves a pole, then yes, it is an attachment.

25 Q. And you're testifying here on behalf of West

1 Kentucky that -- that the parties, West Kentucky and AT&T,  
2 actually charge each other an annual attachment rate for drop  
3 attachments, is that your testimony?

4 MR. DEPP: That question has been answered.

5 A. Did you -- I think you just asked me again if  
6 they charge us and we charge them.

7 Q. I'm not asking you to base this on the document.  
8 I'm asking you to base this on knowledge --

9 MR. DEPP: That question has been answered.

10 Q. -- that you have regarding the operation of these  
11 two companies.

12 A. Can you rephrase the question? I -- I mean,  
13 explicitly what are you asking me that I haven't already  
14 answered for you?

15 Q. Okay. Well, I'm -- I'm asking you whether you  
16 have knowledge, as the representative of West Kentucky, that  
17 West Kentucky and AT&T charge each other annual pole  
18 attachment rates for drop attachments?

19 MR. DEPP: The question has been answered.

20 A. To my knowledge, yes.

21 Q. Okay. West Kentucky has agreements with other  
22 parties that attach to West Kentucky's poles; is that right?

23 A. Yes.

24 Q. And does each of those agreements reserve two  
25 feet of space to the attaching party?

1 A. Not to my knowledge.

2 Q. Okay. The agreements that -- West Kentucky has  
3 agreements with cable companies, does it not?

4 A. Yes.

5 Q. And what cable companies?

6 A. We have an agreement with Mediacom. I'm not sure  
7 which ones are cable and which ones are telecommunications  
8 anymore.

9 Q. An agreement with Time Warner Cable?

10 A. No, sir.

11 Q. Do you have an agreement with NewWave?

12 A. Yes, sir. We had an agreement with NewWave.  
13 Yes, sir.

14 Q. You had an agreement or have one?

15 A. NewWave no longer has any operation on us.

16 Q. Yeah. The -- That operation has been taken over  
17 by Time Warner, has it not?

18 A. Yes, sir. But Time Warner sent us a letter  
19 requesting that we agree to the terms of the old contract and  
20 our response was we cannot agree to the terms of the old  
21 contract. Therefore, we currently do not have an active  
22 agreement with Time Warner Cable, to my legal knowledge, as  
23 such.

24 Q. Does your agreement with Mediacom allow Mediacom  
25 to attach to West Kentucky poles without advanced notice?

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 Q. Can we have that read back, please?

2 (WHEREAS, THE QUESTION WAS READ BACK.)

3 A. I don't -- As far as what we report to TVA, we  
4 just report the actual rent revenue from facilities to them.  
5 So, to that extent, that's all they would know.

6 Q. Now, the -- these rates also apply to attachments  
7 of West Kentucky to AT&T poles, right? We've established  
8 that. I'm just --

9 A. Yes, sir.

10 Q. Okay. And so, if these rates were higher, then  
11 West Kentucky would pay more to AT&T, right?

12 A. Theoretically. I mean, the -- the document said  
13 that it net zeros out the total number of count. So  
14 theoretically, yes.

15 Q. Okay. Let me ask if -- Well, let me finish this.  
16 And if the rates that had been agreed to by TVPPA and AT&T  
17 had been less, then West Kentucky's revenues would have been  
18 a little less and, with respect to payments from AT&T, and --  
19 its expenses would have been a little higher -- or, expenses  
20 would have been a little less, as well. Excuse me. Right?

21 A. Our expenses would have been less?

22 Q. Your expenses would have been less because you  
23 would have had a lower rate to attach to AT&T's poles.

24 A. I don't understand exactly what you're trying to  
25 get me to answer in this case. The number of attachments net

1 out. So obviously, if they are charging us 23, we're  
2 charging them 23, and it -- and we have -- and that number  
3 becomes 22, then obviously it's still going to net out. So  
4 yes, our -- our revenue would -- would go down and our  
5 expense would go down a \$1 per pole at the same time.

6 Q. Okay. Let's talk about this netting out issue  
7 for a moment. The -- Do you know, when it reports revenue to  
8 TVA, whether West Kentucky counts the net revenue from AT&T  
9 or the gross revenue before netting out the expenses that it  
10 pays to AT&T for attachments to its poles?

11 A. I don't know.

12 Q. Okay.

13 A. I don't know exactly how we account for that.

14 Q. Okay. So, just as an example, if we have a \$25  
15 rate and 100 poles that -- that AT&T attaches to and we have  
16 50 poles that West Kentucky attaches to, you don't know  
17 whether West Kentucky would treat its revenue at \$2500 or  
18 \$12,500 -- or, it should 1200 -- \$1250?

19 A. Off the top of my head, I'm not exactly sure how  
20 it's accounted for.

21 Q. Okay. Well, I'm not asking you as the top -- off  
22 the top of your head, but as the CEO of West Kentucky. You  
23 can't answer that?

24 MR. DEPP: As the CEO of West Kentucky, he's  
25 answered it twice now.

1 MR. GILLESPIE: He says he doesn't know. I just  
2 want to confirm that.

3 MR. DEPP: If that's what he said, you have that  
4 on the record.

5 BY MR. GILLESPIE:

6 A. I don't know exactly how we account for it.

7 Q. One of the parties that attaches to West  
8 Kentucky's poles is West Kentucky Rural Telephone Company,  
9 right?

10 A. Yeah. They're -- They're called West Kentucky  
11 and Tennessee Telecommunications Cooperative now or something  
12 like that. It's not West Kentucky Rural Telephone any  
13 longer, but it's the same entity.

14 Q. Okay. Can we just call it West Kentucky  
15 Telephone Cooperative?

16 A. That'd be fine.

17 Q. Okay. And West Kentucky has an agreement with  
18 West Kentucky Telephone Cooperative, correct?

19 A. Yes.

20 Q. Okay. And are the terms and conditions in that  
21 agreement, regardless of rates for a moment -- other than  
22 rates, are they the same as those in the AT&T/TVPPA  
23 agreement?

24 A. No.

25 Q. Okay. This was a separate negotiation?

1 A. Yes.

2 Q. Okay. And this was a negotiation conducted by  
3 West Kentucky and West Kentucky Telephone Coop?

4 A. Yes.

5 Q. Okay. I'm going to mark as an exhibit one page,  
6 a chart of pole attachment rates. Exhibit No. 26, I think.

7 (WHEREAS, EXHIBIT NO 26 WAS ENTERED)

8 Q. Are you familiar with this exhibit?

9 A. Yes.

10 Q. And this exhibit was prepared by West Kentucky?

11 A. Yes.

12 Q. Now, these are the rates that were charged by  
13 West Kentucky in these years to these pole attachers; is that  
14 right?

15 A. Yes.

16 Q. Now, Bell South listed here, is that the same  
17 company as AT&T we've been talking about?

18 A. Yes.

19 Q. Okay. And those rates would apply, as we have  
20 discussed, to attachments both by West Kentucky to AT&T and  
21 by AT&T to West Kentucky, right?

22 A. Yes.

23 Q. The rates shown there for Windstream, do those  
24 also go both ways?

25 A. To my knowledge, yes.

1 Q. So Windstream owns some poles that Western --  
2 West Kentucky is attached to?

3 A. I don't know if they do or not. I mean, I don't  
4 know that they own any poles that we are attached to.

5 Q. Okay. You don't know, okay. West Kentucky RTCC  
6 listed here, this is the same as the West Kentucky Telephone  
7 Cooperative we've been talking about, right?

8 A. Yes.

9 Q. And does West Kentucky Rural Telephone  
10 Cooperative own poles to which West Kentucky is attached?

11 A. I don't recall.

12 Q. Okay. Zito Media, that's a cable operator?

13 A. I don't know exactly what Zito is. I mean, they  
14 -- I know they have fiber, so I know they have some fiber as  
15 well, so I don't know if they're totally a cable TV company  
16 or not.

17 Q. They -- They acquired Galaxy; is that right?

18 A. Okay. Then yeah, they have a cable TV operation.

19 Q. Okay. Mediacom is a cable company?

20 A. Yes.

21 Q. And NewWave is a cable company, right?

22 A. Yes. They -- They all provide cable in addition  
23 to some other services, yes.

24 Q. So, the rates that are charged here under NewWave  
25 are rates that are currently being charged to Time Warner

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 Q. Was it less than \$8?

2 A. I don't remember.

3 Q. You don't remember whether the \$8 rate was an  
4 increase?

5 A. Not specifically. Not without looking at the  
6 contract and the past contract we had with them.

7 Q. Okay. What do West Kentucky Telephone  
8 Cooperative's attachments consist of?

9 A. What do they consist of? I'm assuming that they  
10 would consist of very similar cabling just like other  
11 entities would connect.

12 Q. Okay. Like AT&T?

13 A. I don't know if it's exactly the same cable. I  
14 don't think it's the same type of cable but -- you know,  
15 because one runs on a messenger and one doesn't normally, so  
16 to my -- you know, but yeah, they would be very similar to  
17 the other attachers.

18 Q. Okay. Now, you say here that the telephone  
19 companies are billed in arrears and the cable operators are  
20 billed in advance; is that right?

21 A. Correct.

22 Q. Okay. So, if the rate for 2010 is \$27 and the  
23 rate for -- Well, let's just start there. The -- Are AT&T  
24 and the cable companies both billed \$27 for 2010?

25 A. Are they both billed for 2010? Not the way that



1 the footnotes there say. Not -- Because they say that for --  
2 that the cable TV companies are billed in advance --

3 Q. Right.

4 A. -- for the previous year at the negotiated rate  
5 for the previous year.

6 Q. So, what does that mean exactly?

7 A. I would have to be -- I just know that we bill  
8 them differently. I would have to review exactly how the  
9 billing is handled to answer you specifically.

10 Q. Okay. So, if the rate in the agreement is \$27  
11 for 2010, you don't know what the effective rate is for 2010  
12 that's billed to the cable company?

13 A. I would have to review to see what the actual --  
14 how the billing was handled.

15 Q. Let's take a short break. We've been at this for  
16 a while.

17 (WHEREAS, A BRIEF RECESS WAS TAKEN.)

18 BY MR. GILLESPIE:

19 Q. I'd like marked, as Exhibit No. 27, a series of  
20 documents that have been provided to us by West Kentucky.

21 (WHEREAS, EXHIBIT NO 27 WAS ENTERED)

22 Q. Just leaf through these, if you would, and  
23 confirm that these are documents that West Kentucky pulled  
24 together and provided to us in this case.

25 A. (Witness reviews documents.) Yes, sir. Those

1 are documents we provided.

2 Q. Okay. I'm going to ask you some questions about  
3 these and we'll just have to leaf through them, because there  
4 are no page numbers on them.

5 A. Okay.

6 Q. The first document is a document provided to you  
7 by TVPPA in connection with the AT&T Joint Use Agreement,  
8 correct?

9 A. Correct.

10 Q. So, the only documents that West Kentucky has  
11 regarding the TVPPA and AT&T Joint Use Agreement is the  
12 agreement itself that we've been talking about and this page  
13 here?

14 A. The only document we have with AT&T, is that what  
15 you said? I'm sorry.

16 Q. No.

17 A. I was reading. Repeat that, please.

18 Q. All right. So, the only documents that you have  
19 that relate to the AT&T Joint Use Agreement are the agreement  
20 itself and this document here, this page?

21 A. Yes.

22 Q. You didn't have any emails or any correspondence  
23 with TVPPA about it?

24 A. If we did, I don't recall. You -- You know, it  
25 probably would have been something just saying that we're

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 A. Yes, sir.

2 Q. And you state that these rates are nonnegotiable,  
3 correct?

4 A. At the time that the letter was sent, yes.

5 Q. But the rates actually charged to West Kentucky  
6 Telephone Cooperative were \$8 in 2010, \$10 in 2011, \$10.50 in  
7 2012, and \$11 in 2013, right?

8 A. That is correct.

9 Q. Does this letter refresh your memory at all  
10 regarding what the rate was prior to 2009?

11 A. No, sir.

12 Q. What was the rate that was charged for 2009 to  
13 West Kentucky Telecommunication -- Telephone Cooperative?

14 A. I don't recall.

15 Q. Less than \$8?

16 A. I don't recall.

17 Q. What was the rate charged in 2008?

18 A. I don't recall.

19 Q. Less than -- Was it less than \$8?

20 A. I don't recall without looking at the contract.

21 Q. Wasn't the whole purpose of this letter to  
22 increase the rates that were to be paid by West Kentucky  
23 Telephone Cooperative?

24 A. The whole purpose of the letter? It wasn't just  
25 on the rate because it says the proposed language for a new

1 three-year contract is negotiable. So, it was for the entire  
2 contract, not just for a rate.

3 Q. Okay. Now, is the -- See the paragraph that  
4 begins "having discussed attachment rates with other  
5 representative managers at TVA" -- TVA distributors, do you  
6 see that?

7 A. Uh-huh. Yes, sir.

8 Q. Okay. You say here that, at the last meeting,  
9 all but one of the TVA coops was charging the AT&T rates to  
10 all companies attached to their poles, do you see that?

11 A. Yes, sir.

12 Q. And there's a reference to a discrepancy between  
13 an electric coop and two telephone coops which were paying  
14 between \$17 and \$18 per attachment, do you see that?

15 A. Yes, sir.

16 Q. And those electric coop and telephone  
17 cooperatives were paying less than -- than the AT&T rate for  
18 those years, correct?

19 A. If that's what I said, yes.

20 Q. So, which TVA coop or coops were charging less  
21 than the AT&T rate to these electric coop and telephone  
22 cooperatives?

23 A. I don't recall all of them. I believe I do  
24 recall -- I think Tri-County was one of them. But other than  
25 Tri-County, I don't recall the other.

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 MR. DEPP: No, I don't think.

2 BY MR. GILLESPIE:

3 Q. So does this represent the annual financial  
4 reports submitted by West Kentucky to TVA for the years 2010  
5 through 2013?

6 A. The fiscal years, yes. Fiscal years 2010 through  
7 2013.

8 Q. Okay. Do you recall whether there are any  
9 references to pole attachment revenues in -- listed in these  
10 documents?

11 A. Not broken down specifically, the pole  
12 attachment. But yes, the pole attachment revenues are  
13 included in the document.

14 Q. Well, the -- Let's look first at the 2010 report.

15 A. Okay.

16 Q. So, the pole attachment revenues are included  
17 within the revenue for rent from electric property on page  
18 three, line 62; is that right?

19 A. That's correct.

20 Q. And the revenue that is in that line is more than  
21 simply pole attachment revenue, correct?

22 A. Correct.

23 Q. In reviewing this document, the TVA doesn't know  
24 specifically what the pole attachment revenues of West  
25 Kentucky are, correct?

1 A. Not from this document.

2 Q. Okay.

3 A. However, they do know.

4 Q. Well, how do they know what they are  
5 specifically?

6 A. Because there's -- it's in our audited financial  
7 statements and there is a note to the audited statements and  
8 it breaks pole rental out when it is submitted to TVA.

9 Q. Did you provide the audited financial statements  
10 to me for 2010 through 2013?

11 A. Would I?

12 Q. Yeah.

13 MR. DEPP: No. We can take that up later. We  
14 provided everything that's responsive to your requests and  
15 you've either made a motion to compel or waive those.

16 MR. GILLESPIE: No. We asked for all of the  
17 documents that related to issues like that and we were not  
18 provided that.

19 MR. DEPP: That's the thing we need to argue  
20 about and we're not providing that.

21 MR. GILLESPIE: Just so I understand, is the --  
22 is your position that we didn't ask for it or is your  
23 position just that you're not going to provide it?

24 MR. DEPP: Our position will be addressed when  
25 the request is formally made in the proper form, but our

1 position is also that data request response is complete and  
2 accurate.

3 MR. GILLESPIE: In other words, that we didn't  
4 ask for that?

5 MR. DEPP: If you'd like to characterize it,  
6 you're free to do that in whatever motion you'd like to make.  
7 I have given you my answer.

8 MR. GILLESPIE: Okay.

9 BY MR. GILLESPIE:

10 Q. All right. Okay. Just so I understand your  
11 testimony -- So, your testimony is that the -- there is an  
12 audited financial statement that is provided to TVA every  
13 year, right?

14 A. They get a copy of our audit, yes.

15 Q. Okay. And that in the audited financial  
16 statement there is a line that breaks up all attachment  
17 revenue?

18 A. Yes. In that audit, it breaks out what's in the  
19 rent from electric property part of the financial statement.

20 Q. Okay. And has West Kentucky had any  
21 communications with TVA about any of the amounts received for  
22 pole attachment revenues as stated in the breakdown of the  
23 financial statement?

24 A. Not to my knowledge.

25 Q. The expenses that West Kentucky pays for

1 attaching to other parties' poles, such as AT&T, where are  
2 those expenses reflected in this -- in these financial  
3 reports?

4 MR. DEPP: I'm going to object that we continue  
5 to be talking about cost-related data that the Commission has  
6 said is irrelevant to this decision. And I understand your  
7 position, that you're asking about data request responses,  
8 but it is clearly bootstrapping to ask about the things in  
9 the data request responses that are --

10 MR. GILLESPIE: This --

11 MR. DEPP: -- related to the topic the Commission  
12 has said you're not allowed to ask about.

13 MR. GILLESPIE: This has to do with the extent to  
14 which the TVA reviews this information and is aware of it.  
15 It's directly relevant.

16 BY MR. GILLESPIE:

17 A. I'm not exactly sure where the numbers, where --  
18 where it's accounted for in here.

19 Q. Are the expenses that West Kentucky pays to  
20 attach to other parties' poles contained in any kind of a  
21 breakout of the audited financial statement?

22 MR. DEPP: Same objection.

23 A. I don't know.

24 Q. Again looking at 2010, look at page 33.

25 A. These aren't numbered, do you want to help me get



1 to it?

2 Q. It's numbered up on the top. Should be.

3 A. All right, 33. Okay.

4 Q. All right. So, you look down about a third of  
5 the way through. Do you see the reference to page three,  
6 item 62?

7 A. Yes.

8 Q. So this indicates that, in 2010, the coop advised  
9 TVA that there was an increase in pole attachment rates,  
10 correct? Well, let me take it a step back for you. Page  
11 three, item 62 is the line containing the revenue from  
12 property rent, correct?

13 A. Yes. That's what I was looking back to see.

14 Q. And --

15 A. So --

16 Q. -- page 33, you advised the TVA that there was an  
17 increase in that amount due to pole attachment rates. Do you  
18 see that?

19 A. Yes.

20 Q. There wasn't any indication to TVA as to what the  
21 rate had been or what the rate -- new rate was, correct?

22 A. Correct.

23 Q. So, looking at 2011 -- excuse me, the report for  
24 2012 and look at page 33.

25 A. Would that be the period ending June 30 of '11 or

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.

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A. Cynthia Herron.

Q. Okay. I have no further questions. Thank you.

MR. DEPP: No questions.

(DEPOSITION ENDED AT 11:59 A.M. CST)

(WITNESS EXCUSED.)

1 DAVID E. SMART

2 ERRATA PAGE  
3 (may or may not be requested)

4 PAGE	LINE	REASON
5 _____	_____	_____
6 _____	_____	_____
7 _____	_____	_____
8 _____	_____	_____
9 _____	_____	_____
10 _____	_____	_____

11 I HAVE READ THE FOREGOING PAGES, AND THE STATEMENTS  
12 CONTAINED THEREIN (SUBJECT TO CORRECTIONS, ADDITIONS, AND  
13 DELETIONS CONTAINED IN THE ADDENDUM ANNEXED HERETO, IF ANY),  
AND THEY ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

14 \_\_\_\_\_  
DAVID E. SMART

15 SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF  
16 (Date)  
17 \_\_\_\_\_, \_\_\_\_\_  
(Month) (Year)

18 \_\_\_\_\_  
19 NOTARY PUBLIC, STATE OF \_\_\_\_\_  
(State)  
20 MY COMMISSION EXPIRES: \_\_\_\_\_

21 RETURN WITHIN 30 DAYS TO:  
22 Video Court Reporting Services, Inc.  
23 734 West Main Street, Suite 100  
24 Louisville, Kentucky 40202  
25 502.561.9988 Voice 502.561.9080 Fax  
E-mail: depo@vcrslou.com

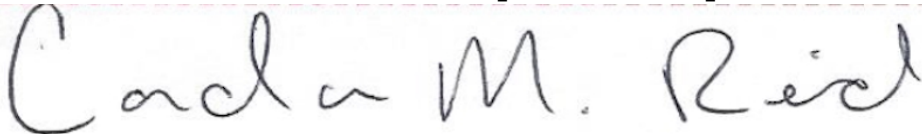
1 STATE OF KENTUCKY )  
2 ) SS  
3 COUNTY OF JEFFERSON )

4 I, CANDACE MAUNEY REID, Certified Court Reporter  
5 and Notary Public in and for the Commonwealth of Kentucky,  
6 State at Large, hereby certify that the foregoing  
7 deposition was taken at the time and place stated in the  
8 caption; that the appearances are as set forth in the  
9 caption; that prior to giving the testimony the witness was  
10 first duly sworn by me; that said testimony was reported by  
11 mechanical means by me, and thereafter transcribed under my  
12 personal direction and supervision; and that said  
13 typewritten transcript is a true, accurate, and complete  
14 transcript to the best of my ability and understanding; and  
15 that there was a request that the witness read and sign the  
16 deposition.

17 I further certify that I am not related by blood or  
18 marriage to any of the parties hereto and that I have no  
19 interest in the outcome of the captioned matter.

20 My Commission as a Notary Public expires March 12,  
21 2016.

22 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
23 2015, at Louisville, Jefferson County, Kentucky.

24 

25 CANDACE MAUNEY REID, CERTIFIED COURT REPORTER  
NOTARY PUBLIC, STATE-AT-LARGE, KY

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April 20, 2015

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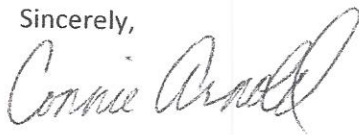
**RE: Public Service Commission Case No. 2012-00544  
Depositions of Eston W. Glover, Jr.; Warren Ramsey; David E. Smart; Paul Thompson; and  
Debra Weatherford**

To Whom It May Concern:

Enclosed are the original Errata Pages for the depositions of Eston W. Glover, Jr., Warren Ramsey, David E. Smart and Debra Weatherford. Enclosed also is a copy of the Errata Page for the deposition of Paul Thompson. We will forward the original of Mr. Thompson's Errata Page when we receive it.

In the meantime, if you have any questions, please let me know.

Sincerely,



Constance Arnold

Enclosures  
9586902v1

DAVID E. SMART

ERRATA PAGE  
(may or may not be requested)

PAGE	LINE	REASON
5	14	Should be "West" not "Western"
9	10	Should be April 15 <sup>th</sup> not April 1 <sup>st</sup>
9	19	Should be "Fleming" not "Flayd"
10	2	I was "manager" not "a manager" - There was only one.

I HAVE READ THE FOREGOING PAGES, AND THE STATEMENTS CONTAINED THEREIN (SUBJECT TO CORRECTIONS, ADDITIONS, AND DELETIONS CONTAINED IN THE ADDENDUM ANNEXED HERETO, IF ANY), AND THEY ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

*David E. Smart*  
\_\_\_\_\_  
DAVID E. SMART

SWORN TO AND SUBSCRIBED BEFORE ME THIS 13<sup>th</sup> DAY OF  
April, 2015.  
(Month) (Year)

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\_\_\_\_\_  
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