

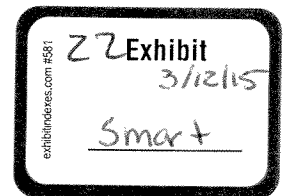
WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
TELECOMMUNICATIONS ASSOCIATION FOR A DECLARATORY ORDER
THAT THE COMMISSION HAS JURISDICTION TO REGULATE THE POLE
ATTACHMENT RATES, TERMS AND CONDITIONS OF COOPERATIVES
THAT PURCHASE ELECTRICITY FROM THE TENNESSEE VALLEY
AUTHORITY
CASE NO. 2012-00544

Response to KCTA's First Requests for Information
dated October 24, 2013

November 14, 2013

- 1 **Item 1)** *Do you contend that the TVA regulates your pole rates in any way?*
2
3 **Response)** Yes.
4
5 **Witness)** David Smart



WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 2) *If the answer to the prior data request is affirmative, please explain*
2 *fully, making reference to all facts known to you supporting that answer.*

3

4 **Response)** West Kentucky objects to this request insofar as it seeks conclusions of a
5 legal nature which are protected by the attorney-client and attorney-work-product
6 privileges. West Kentucky also objects to this request on the grounds that it is overly
7 broad and unduly burdensome. Notwithstanding these objections, but without waiving
8 them, West Kentucky states as follows.

9 By statute, the TVA has plenary authority over all rates and services of the
10 utilities which purchase and distribute the electricity it generates. The TVA regulates
11 these rates and services through the express terms of its wholesale power contract with
12 West Kentucky. Please also see the TVA Cooperatives' Response to the January 17
13 Order filed February 15, 2013 in this matter, and the Response to Application for
14 Rehearing filed July 25, 2013 in this matter.

15

16 **Witness)** David Smart

Case No. 2012-00544
West Kentucky Rural Electric Cooperative Corporation
Response to KCTA 1-2
Witness: David Smart
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WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
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1 Item 3) *Provide the legal and factual basis for the statement on page 7 of the*
2 *TVA Cooperatives' Response to the January 17 Order, filed with the Commission on*
3 *February 15, 2013, that states: "The cost-based rates the TVA Cooperatives collect in*
4 *connection with the pole attachment services they provide directly impact the end-*
5 *users' retail rates which are set by the TVA."*

6

7 **Response)** West Kentucky objects to this request insofar as it seeks conclusions of a
8 legal nature which are protected by the attorney-client and attorney-work-product
9 privileges. Notwithstanding this objection, but without waiving it, West Kentucky states
10 as follows.

11 The retail rates approved by the TVA are calculated based on West Kentucky's
12 revenue requirement. TVA's assessment of the revenue requirement takes into account
13 all revenues, including those for pole attachment services. Any change in West
14 Kentucky's pole attachment revenues will necessarily change its revenue requirement and
15 thus directly impact the retail rate set by the TVA. Please see West Kentucky's response

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1 to KCTA 1-2, and the TVA Cooperatives' Response to the January 17 Order, filed
2 February 15, 2013 in this matter.

3

4 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
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1 **Item 4)** *Do you contend that regulation of your pole attachment rates according*
2 *to the cost-based rate methodology used by the Commission, and outlined in the*
3 *September 17, 1982 order by the Commission in Administrative Case No. 251, would*
4 *conflict with the TVA's regulation of your electric rates?*

5

6 **Response)** Yes.

7

8 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 5)** *If the answer to the prior data request is affirmative, please explain*
2 *fully, making reference to all facts known to you supporting that answer.*

3

4 **Response)** West Kentucky objects to this request insofar as it seeks conclusions of a
5 legal nature which are protected by the attorney-client and attorney-work-product
6 privileges. West Kentucky also objects to this request on the grounds that it is overly
7 broad and unduly burdensome. Notwithstanding these objections, but without waiving
8 them, West Kentucky states as follows.

9 The TVA takes into account pole attachment revenues when determining West
10 Kentucky's revenue requirement and retail rate. Because pole attachment rates are a
11 component of the retail rate that the TVA sets for West Kentucky, any State action
12 attempting to set West Kentucky's pole attachment rates would necessarily impact the
13 retail rate and present a direct conflict between state and federal law. Please see West
14 Kentucky's responses to KCTA 1-2 and KCTA 1-3, and the TVA Cooperatives'
15 Response to the January 17 Order, filed February 15, 2013 in this matter.

16

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

**IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
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1 Witness) David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 6)** *Produce all documents concerning how you ensure a pole attachment*
2 *rate will provide sufficient revenues to cover the costs of providing for the attachments.*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. Notwithstanding this objection, but without waiving it,
6 West Kentucky states as follows.

7 Please see the attached documents. Please also see West Kentucky's responses to
8 KCTA 1-1, KCTA 1-2, KCTA 1-3, KCTA 1-4, and KCTA 1-5.

9

10 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 7) *Do you contend that the TVA has statutory jurisdiction to regulate pole*
2 *attachment rates of its member cooperatives?*

3

4 Response) Yes.

5

6 Witness) David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 8)** *If the answer to the prior data request is affirmative, please explain*
2 *fully, giving all statutory reference and case citations in support of your answer.*

3

4 **Response)** West Kentucky objects to this request insofar as it seeks legal conclusions
5 (not data) and legal research and reasoning protected by the attorney-client and attorney-
6 work-product privileges. West Kentucky also objects to this request on the grounds that
7 it is overly broad and unduly burdensome. Notwithstanding these objections, but without
8 waiving them, West Kentucky states as follows.

9 Please see the TVA Cooperatives' Response to the January 17 Order filed
10 February 15, 2013 in this matter, and the Response to Application for Rehearing filed
11 July 25, 2013 in this matter.

12

13 **Witness)** Counsel

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 9)** *Provide all pole attachment rates charged by you to any entity (identify*
2 *by year and the entity to which such rate applied).*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. West Kentucky also objects to this request on the
6 grounds that it is not reasonably calculated to lead to the discovery of relevant and
7 admissible evidence. Notwithstanding these objections, but without waiving them, West
8 Kentucky states as follows.

9 Please see the attached document.

10

11 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
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1 **Item 10)** *Explain the basis and methodology for setting or calculating all pole*
2 *attachment rates used by you.*

3

4 **Response)** West Kentucky participates in the TVPPA/AT&T Joint Use Agreement.

5 Please see West Kentucky's response to KCTA 1-6. West Kentucky charges the same

6 pole attachment rates for all foreign attachers except West Kentucky & Tennessee

7 Telecommunications Cooperative, with which it negotiated a separate agreement.

8

9 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 11) *Explain the basis and methodology for setting or calculating all pole*
2 *attachment rates used by you at this time and, if the basis or methodology has changed*
3 *since the year 2000, provide an explanation of the changes.*

4

5 **Response)** West Kentucky objects to this request on the grounds that it is overly
6 broad and unduly burdensome. West Kentucky also objects to this request on the
7 grounds that it is not reasonably calculated to lead to the discovery of relevant and
8 admissible evidence. Notwithstanding these objections, but without waiving them, West
9 Kentucky states as follows.

10 Please see West Kentucky's response to KCTA 1-10.

11

12 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 12)** *Explain how often you have reset or recalculated your pole attachment*
2 *rates.*

3

4 **Response)** The current TVPPA/AT&T Joint Use Agreement sets specific rates for the
5 first three years of its term. After the first three years, the rate escalates annually
6 according to the Handy-Whitman Index. The last negotiated Joint Use Agreement was
7 executed in 1990. To West Kentucky's knowledge, the only material difference between
8 the 1990 agreement and the 2010 agreement is the use of the Handy-Whitman Index in
9 lieu of the Telephone Price Index, which no longer exists.

10

11 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
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1 **Item 13)** *State your total revenues for each of the years 2000 to the present.*

2

3 **Response)** West Kentucky objects to this request on the grounds that it is overly
4 broad and unduly burdensome. West Kentucky also objects to this request on the
5 grounds that it is not reasonably calculated to lead to the discovery of relevant and
6 admissible evidence. Notwithstanding these objections, but without waiving them, West
7 Kentucky states as follows.

8 Please see the table below.

Year	Operating Revenue (\$)
2010	87,051,862
2011	87,575,376
2012	83,443,124

9

10 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 14) *State your total revenues received from pole attachment rates for each*
2 *year from 2000 to the present.*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. West Kentucky also objects to this request on the
6 grounds that it is not reasonably calculated to lead to the discovery of relevant and
7 admissible evidence. Notwithstanding these objections, but without waiving them, West
8 Kentucky states as follows.

9 Please see the table below. West Kentucky's fiscal year runs from July 1 to June
10 30. FY 2010, for example, is the time period from July 1, 2009 to June 30, 2010.

Year	Pole Attachment Revenue (\$)
FY 2010	816,513
FY 2011	1,014,788
FY 2012	1,371,489
FY 2013	1,123,137

11

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Revenues for FY 2011 and FY 2012 were inflated by "catch-up" payments made
2 by MediaCom for previously unreported attachments, and additional payments made by
3 MediaCom to correct for its prior refusals to render payment at the contemporaneous
4 rates.

5

6 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 15)** *Produce all documents reflecting any communication between you and*
2 *the TVA at any time concerning pole attachment revenues or rates.*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. West Kentucky also objects to this request on the
6 grounds that it is duplicative. Notwithstanding these objections, but without waiving
7 them, West Kentucky states as follows.

8 Please see West Kentucky's response to KCTA 1-17.

9

10 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 **Item 16)** *Identify each communication concerning pole attachment revenues or*
2 *rates from 2000 to the present.*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. West Kentucky also objects to this request on the
6 grounds that it is duplicative. Notwithstanding these objections, but without waiving
7 them, West Kentucky states as follows.

8 Please see the attached documents. Please also see West Kentucky's responses to
9 KCTA 1-15, KCTA 1-17, and KCTA 1-18.

10

11 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 17) *Produce all documents concerning any order, directive, contract or*
2 *other communication from or by the TVA concerning pole attachment rates.*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. West Kentucky also objects to this request on the
6 grounds that it is duplicative. Notwithstanding these objections, but without waiving
7 them, West Kentucky states as follows.

8 Please see the attached documents.

9

10 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 18) *Identify and produce all communications with the TVPPA concerning*
2 *pole attachment rates.*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. Notwithstanding this objection, but without waiving it,
6 West Kentucky states as follows.

7 Please see West Kentucky's response to KCTA 1-16.

8

9 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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1 Item 19) *Identify the name, title, dates of employment, and contact information*
2 *for your former and current personnel who had responsibility for setting or calculating*
3 *your pole attachment rates for the years 2008 to the present.*

4

5 **Response)** Since April 2002, the responsible employee has been David E. Smart,
6 President & CEO.

7

8 **Witness)** David Smart

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

IN THE MATTER OF: PETITION OF THE KENTUCKY CABLE
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1 Item 20) *Provide the following information for each of the years 2010, 2011 and*
2 *2012. Use either the data for the entire year or the information as of the yearend, as*
3 *appropriate. If you do not keep any data requested according to the RUS accounting*
4 *system contained in 7 C.F.R. Ch. 17, provide the equivalent number.*

5 a. *Gross investment in RUS Account 364;*

6 b. *The number of poles in RUS Account 364;*

7 c. *Gross investment in 35 foot poles in RUS Account 364;*

8 d. *The number of 35 foot poles in RUS Account 364;*

9 e. *Gross investment in 40 foot poles in RUS Account 364;*

10 f. *The number of 40 foot poles in RUS Account 364;*

11 g. *Gross investment in 45 foot poles in RUS Account 364;*

12 h. *The number of 45 foot poles in RUS Account 364;*

13 i. *Accumulated depreciation reserve related to the total investment in RUS*
14 *Account 364;*

15 j. *Gross investment in any grounds included in RUS Account 364;*

16 k. *Gross investment in RUS Account 365;*

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- 1 *l. Accumulated depreciation related to RUS Account 365;*
- 2 *m. Gross investment in RUS Account 369;*
- 3 *n. Accumulated depreciation related to RUS Account 369;*
- 4 *o. Gross investment in total utility plant;*
- 5 *p. Accumulated depreciation related to total utility plant;*
- 6 *q. Gross investment in Distribution Plant;*
- 7 *r. Accumulated depreciation related to Distribution Plant;*
- 8 *s. Annual depreciation rate for RUS Account 364;*
- 9 *t. Expenses in RUS Account 593;*
- 10 *u. Any tax expenses (please describe and detail);*
- 11 *v. Expenses in RUS Accounts 920-931 (General and Admin.)*
- 12 *w. Cost of money*
- 13 *x. The number of poles with attachments owned only by the pole owner*
14 *and a cable company (two-party poles as described in Administrative*
15 *Order 251);*
- 16 *y. The number of poles with attachments owned by the pole owner, a cable*

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1 *company, and another entity (three-party poles as described in*
2 *Administrative Order 251).*

3

4 **Response)** West Kentucky objects to this request on the grounds that it is overly
5 broad and unduly burdensome. West Kentucky also objects to this request on the
6 grounds that it is not reasonably calculated to lead to the discovery of relevant and
7 admissible evidence.

8

9 **Witness)** Counsel

WEST KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

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VERIFICATION

I, David E. Smart, verify, state, and affirm that I prepared or supervised the preparation of the data responses filed with this Verification, and that those data responses are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

David E. Smart
David E. Smart

COMMONWEALTH OF KENTUCKY)
COUNTY OF GRAVES)

SUBSCRIBED AND SWORN TO before me by David E. Smart on this the 12th day of
November, 2013.

Cathy L. Ernestberger
Notary Public, Ky. State at Large
My Commission Expires 8-17-2014
Notary ID# 424869