

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**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**

**THE TVA COOPERATIVES' FIRST DATA REQUESTS TO KCTA**

Hickman-Fulton Counties Rural Electric Cooperative Corporation, Pennyriple Rural Electric Cooperative Corporation, Tri-County Electric Membership Corporation, Warren Rural Electric Cooperative Corporation, and West Kentucky Rural Electric Cooperative Corporation (collectively, the "TVA Cooperatives"), by counsel, and pursuant to the October 10, 2013 procedural order entered by the Commission in this matter, hereby submit these first data requests to the Kentucky Cable Telecommunications Association ("KCTA") to be answered in accordance with the following Definitions and Instructions.

**DEFINITIONS**

1. Whenever it is necessary to bring within the scope of these data requests documents that otherwise might be construed to be outside their scope:
  - a. the use of "and" as well as "or" shall be construed both disjunctively and conjunctively;
  - b. the use of a word in its singular form shall be construed to include within its meaning its plural form as well, and vice versa;

- c. the use of “include” and “including” shall be construed to mean “without limitation”; and
- d. the use of a verb in any tense or voice shall be construed as the use of that verb in all other tenses and voices.

2. “TVA Cooperatives” collectively means Hickman-Fulton Counties Rural Electric Cooperative Corporation, Pennyrite Rural Electric Cooperative Corporation, Tri-County Electric Membership Corporation, Warren Rural Electric Cooperative Corporation, and West Kentucky Rural Electric Cooperative Corporation, and “KAEC” refers to the Kentucky Association of Electric Cooperatives and each of the TVA Cooperatives in their individual capacities.

3. “KCTA,” “you,” or “your” means the Kentucky Cable Telecommunications Association; any member of the KCTA; or the KCTA’s and its members’ agents, officers, directors, employees, and consultants.

4. “TVA” means the Tennessee Valley Authority.

5. “Commission” means the Kentucky Public Service Commission.

6. “Document” means any written, recorded, transcribed, printed or impressed matter of whatever kind, however produced, stored or reproduced, including, but not limited to, sound or pictorial recordings, computerized information, books, pamphlets, letters, memoranda, telegrams, electronic or mechanical transmissions, communications of all kinds, reports, notes, working papers, handwritings, charts, papers, writings, printings, transcriptions, tapes and records of all kinds. Document includes, without limitation, all workpapers produced by or relied upon by the witness.

7. “Person” includes a natural person, a business organization of any type, an unincorporated association, a governmental subdivision, agency, or entity, and a business trust.

8. "Pole attachment" means any attachment by a provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

9. Wherever in these information requests you are asked to "identify," you are requested:

a. when identifying a person, to give such person's:

- i. full name,
- ii. business address, residence address, and telephone number,
- iii. his or her present or last known position and business affiliation at the time in question, and
- iv. the nature of such person's participation in, and the scope of his responsibility with regard to, the facts and events underlying the present case;

b. when identifying an oral communication, to:

- i. identify the author thereof and the parties thereto,
- ii. state the date of the communication,
- iii. state the place of the communication,
- iv. state the substance of the communication, and
- v. state whether such communication has been reduced to writing and, if so, identify each document and the present custodian thereof;

c. when identifying other information, to state:

- i. the source thereof,
- ii. any oral communications pertaining thereto,
- iii. any documents pertaining thereto, and

- iv. the substance of the information;
- d. when identifying a document, to:
  - i. identify the author thereof and the parties thereto,
  - ii. state its title or other identifying data,
  - iii. state the date of the document or if no date appears thereon, the approximate date,
  - iv. state the exact nature and substance thereof;
  - v. identify each person having possession, care, custody or control of the original and any copies thereof; and
  - vi. if such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it.

### **INSTRUCTIONS**

1. If any document called for by any of these data requests is withheld based upon a claim of privilege or work product, please produce so much of the document as to which you do not claim privilege or protection, and for each document or part of a document for which you claim privilege or protection, describe or identify:

- a. The nature, subject matter and substance of the document or part of the document withheld;
- b. The nature of the privilege or protection claimed;
- c. The date, author or authors, addressee or addressees, and distribution of the document;
- d. Each person in whose possession, custody or control any copy of the document is or has been; and

e. Paragraph number of the schedule of documents to which the document or part of the document is responsive.

2. If, for reasons other than a claim of privilege or work product, you refuse to answer any data request or to produce any document requested, state the grounds upon which the refusal is based with sufficient specificity to permit a determination of the propriety of such refusal.

3. If any copy of any document requested herein or any record which refers or relates to any document requested herein has been destroyed or lost, set forth to the extent possible the content of each such document, the date such document and its copies were destroyed or lost and, if destroyed, the identity of the person authorizing such destruction, and the identity of the last known custodian of such document prior to its destruction.

4. These data requests shall be deemed continuing and you should serve upon the TVA Cooperatives' counsel (1) supplemental responses to these data requests if additional information or information that changes your response to any data request is obtained during the course of this proceeding, and (2) any documents requested herein that become available or that are discovered after the date your responses to these data requests are due.

#### **DATA REQUESTS**

1. Please identify all members of KCTA.

2. Please identify all members of KCTA which currently provide services in the TVA Cooperatives' service territories or have pole attachments or conduit occupancy with the TVA Cooperatives, or which intend to do so before 2017.

3. Please identify each individual, if any, KCTA intends to call as a witness in this proceeding. Please identify the employer, title, and business address of each such individual

identified along with a brief description of the subject matter of his/her testimony. Please provide a current CV, resume, or like document for each such individual identified.

4. Please identify each individual, if any, KCTA intends to call as an expert witness in this proceeding. Please identify the employer, title, and business address of each such individual identified along with a brief description of the subject matter of his/her testimony. Please provide a current CV, resume, or like document for each such individual identified.

5. Please produce all documents and communications that you contend support KCTA's assertion that "the average pole attachment rate in 2011 for utilities under Commission jurisdiction was about one-third the amount of the average rate of utilities that were not regulated." See Petition at ¶ 6.

6. Regarding Item No. 5, please provide the same information for the years 2010, 2012, and 2013 (year-to-date), as well as the average pole attachment and conduit occupancy rates for each KCTA member for each of 2010, 2011, 2012, and 2013 (year-to-date).

7. Please produce all documents that you contend support the assertion that "[u]nreasonable pole attachment rates, terms, and conditions . . . burden [KCTA] members in providing their services and slows their ability to deploy in new areas." See Petition at ¶ 3.

8. For each of 2010, 2011, 2012, and 2013 (year-to-date), please state, for each KCTA member, whether that KCTA member postponed or cancelled the deployment of services due to pole attachment and/or conduit occupancy rates.

9. If the response to Item No. 8 is anything other than an unqualified "no" for each KCTA member, please state what service(s) were cancelled or postponed, please describe all factors contributing to the decision to postpone or cancel such service(s), and please produce all planning material(s), service order(s), and any other document(s) related thereto.

10. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in Kentucky that purchase electricity from the TVA. When doing so, please identify and provide the specific provisions of any tariff(s), plan(s), contract(s), or any other document(s) that memorialize these rates.

11. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in Alabama that purchase electricity from the TVA. When doing so, please identify and provide the specific provisions of any tariff(s), plan(s), contract(s), or any other document(s) that memorialize these rates.

12. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in Georgia that purchase electricity from the TVA. When doing so, please identify and provide the specific provisions of any tariff(s), plan(s), contract(s), or any other document(s) that memorialize these rates.

13. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in Mississippi that purchase electricity from the TVA. When doing so, please identify and provide the specific provisions of any tariff(s), plan(s), contract(s), or any other document(s) that memorialize these rates.

14. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in North Carolina that purchase electricity from the TVA. When doing so, please

identify and provide the specific provisions of any tariff(s), plan(s), contract(s), or any other document(s) that memorialize these rates.

15. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in Tennessee that purchase electricity from the TVA. When doing so, please identify and provide the specific provisions of any tariff(s), plan(s), contract(s), or any other document(s) that memorialize these rates.

16. For each KCTA member, please identify the rates at which the member receives pole attachment or conduit occupancy services from electric cooperatives or municipal electric utilities in Virginia that purchase electricity from the TVA. When doing so, please identify and provide the specific provisions of any tariff(s) plan(s), contract(s), or any other document(s) that memorialize these rates.

17. Please identify all rates charged by each KCTA member for pole attachment and conduit occupancy in Kentucky for each of 2010, 2011, 2012, and 2013 (year-to-date) and produce all documents pertaining to agreement(s), tariff(s), indefeasible rights of use (“IRU(s)”), and similar understandings regarding such pole attachments and conduit occupancy.

18. Please identify all rates charged by each KCTA member for pole attachment and conduit occupancy outside of Kentucky for each of 2010, 2011, 2012, and 2013 (year-to-date) and produce all documents pertaining to agreement(s), tariff(s), IRU(s), and similar understandings regarding such pole attachments or conduit occupancy.

19. For each KCTA member, identify the number of poles owned and miles of conduit owned or occupied pursuant to or subject to an IRU within Kentucky.



20. For each KCTA member, identify the total number of poles owned and miles of conduit owned or occupied pursuant to or subject to an IRU, both inside and outside of Kentucky.

21. Please identify all person(s) that exercise regulatory oversight regarding the attachment and occupancy rates of any such facilities identified in Items No. 19 and 20, and please identify the specific provisions of all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) that provide for this oversight.

22. Please identify and produce all IRUs under which each KCTA member receives pole attachment or conduit occupancy services.

23. Please identify and produce all IRUs under which each KCTA member provides pole attachment or conduit occupancy services.

24. Please identify all federal, state and municipal rate regulations related to pole attachments and conduit occupancy to which each KCTA member is subject and identify each such service that is so regulated.

25. Please identify all federal, state and municipal rate regulations unrelated to pole attachments and conduit occupancy to which each KCTA member is subject and identify each such service that is so regulated.

26. Admit that KCTA's position presents the Commission with a question of law. If your response is anything other than an unqualified admission, please state the KCTA's new position and identify all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other fact(s) and/or document(s) that support or allege this position.

27. Please identify the specific provisions of all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) that support your contention that the

Commission should begin regulating the pole attachment and conduit occupancy services of the TVA Cooperatives.

28. Please admit that the TVA regulates the rates for pole attachments and conduit occupancy for the TVA Cooperatives. If your response is anything other than an unqualified admission, please state KCTA's position and identify all statute(s), regulation(s), order(s), tariff(s), plan(s) contract(s), and all other document(s) that you contend support this position.

29. Please admit that KCTA, none of its members, and no person or entity acting on behalf of the KCTA or its members has lodged a complaint, petition, objection, or other request for ruling ("complaint(s)") with the TVA, either formally or informally, regarding TVA regulation of pole attachment or conduit occupancy services and rates of utilities that purchase electricity from the TVA.

30. If the response to Item No. 29 is anything other than an unqualified admission, please describe in detail the complaint(s) lodged with the TVA, state the procedural status of the complaint(s), and provide any final order(s) and case number(s) or other reference(s) specifically identifying the proceeding or inquiry.

31. Please admit that no state public utility regulatory authority, inside or outside of Kentucky, currently regulates the pole attachment or conduit occupancy rates of utilities that purchase electricity from the TVA. If your response is anything other than an unqualified admission, please identify all statute(s), regulation(s), order(s), tariff(s), plan(s) contract(s), and all other document(s) that you contend support your position.

32. If the response to Item No. 31 is anything other than an unqualified admission, please identify the state and the specific agency(ies), inside and outside of Kentucky, that regulate pole attachment and conduit occupancy rates of utilities which purchase electricity from

the TVA. Identify and produce all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), and all other document(s) that support this position.

33. For each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), please identify and explain all efforts made by KCTA and its members to reach agreements with the TVA Cooperatives for pole attachment or conduit occupancy services. When responding to this request, please produce all documents and communications related to requests for or negotiations of the terms of pole attachment or conduit occupancy services requested from the TVA Cooperatives by KCTA, its members, or anyone acting on behalf of KCTA or any of its members.

34. For each such KCTA member identified in response to Item No. 2, identify the person(s) responsible for management each of the business generally and of negotiation of and compliance with pole attachment or conduit occupancy terms and conditions. Please identify the person(s) by name, title, and business address.

35. For each such KCTA member identified in response to Item No. 2, identify from which TVA Cooperatives the member receives pole attachment or conduit occupancy services and the number of pole attachments and distance of conduit occupancy during each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date).

36. For each such KCTA member identified in response to Item No. 2, state the anticipated number of new pole attachments or distance of conduit occupancy with each of the TVA Cooperatives for each of calendar 2013 (remainder), 2014, 2015, and 2016.

37. For each KCTA member and for each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), state the total actual cost incurred in the United States for pole attachment and conduit occupancy services:

- a. By dollar amount.
- b. As a percentage of gross revenue.
- c. As a percentage of net revenue.

38. For each KCTA member and for each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), state the total actual costs incurred in Kentucky for pole attachment and conduit occupancy:

- a. By dollar amount.
- b. As a percentage of gross revenue.
- c. As a percentage of net revenue.

39. For each KCTA member and for each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), state the total actual costs charged by each TVA Cooperative for pole attachment and conduit occupancy services:

- a. By dollar amount.
- b. As a percentage of gross revenue.
- c. As a percentage of net revenue.

40. For each KCTA member and for each of the calendar years 2013 (remainder), 2014, 2015, and 2016, state the projected total cost incurred in the United States for pole attachment and conduit occupancy services:

- a. By dollar amount.
- b. As a percentage of gross revenue.
- c. As a percentage of net revenue.

41. For each KCTA member and for each of the calendar years 2013 (remainder), 2014, 2015, and 2016, state the projected total cost for pole attachments and conduit occupancy services to be incurred in Kentucky:

- a. By dollar amount.
- b. As a percentage of gross revenue.
- c. As a percentage of net revenue.

42. For each KCTA member and for each of the calendar years 2013 (remainder), 2014, 2015, and 2016, state the projected total cost of pole attachment and conduit occupancy services expected to be charged by each of the TVA Cooperatives:

- a. By dollar amount.
- b. As a percentage of gross revenue.
- c. As a percentage of net revenue.

43. Please identify each KCTA member(s) that has desired to attach to any of the TVA Cooperatives' poles but has been unable to do so. For each such KCTA member, identify the person(s) responsible for management each of the business generally and of negotiation of and compliance with pole attachment and conduit occupancy terms and conditions. Please identify such person(s) by name, title, and business address.

44. For each such KCTA member identified in Item No. 43, state the reason(s) that the member has been unable to attach to the TVA Cooperatives' poles.

45. Please state which utilities in Alabama that purchase electricity from the TVA are subject to pole attachment and/or conduit occupancy regulation by a state public utility regulatory authority and identify the specific official(s), agency(ies) or other responsible

person(s) charged with this authority. Please provide all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) supporting the same.

46. Please state which utilities in Georgia that purchase electricity from the TVA are subject to pole attachment and/or conduit occupancy regulation by a state public utility regulatory authority and identify the specific official(s), agency(ies) or other responsible person(s) charged with this authority. Please provide all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) supporting the same.

47. Please state which utilities in Mississippi that purchase electricity from the TVA are subject to pole attachment and/or conduit occupancy regulation by a state public utility regulatory authority and identify the specific official(s), or agency(ies), or other responsible person(s) charged with this authority. Please provide all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) supporting the same.

48. Please state which utilities in North Carolina that purchase electricity from the TVA are subject to pole attachment and/or conduit occupancy regulation by a state public utility regulatory authority and identify the specific official(s), or agency(ies), or other responsible person(s) charged with this authority. Please provide all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) supporting the same.

49. Please state which utilities in Tennessee that purchase power from the TVA are subject to pole attachment and/or conduit occupancy regulation by a state public utility regulatory authority and identify the specific official(s), or agency(ies), or other responsible person(s) charged with this authority. Please provide all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) supporting the same.

50. Please state which utilities in Virginia that purchase electricity from the TVA are subject to pole attachment and/or conduit occupancy regulation by a state public utility regulatory authority and identify the specific official(s), or agency(ies), or other responsible person(s) charged with this authority. Please provide all statute(s), regulation(s), order(s), tariff(s), plan(s), contract(s), or any other document(s) supporting the same.

51. Please produce all complaint(s), communication(s), ruling(s), or any other document(s) reflecting inquiries to any regulatory authority by KCTA, any KCTA member, or by any person or entity acting on behalf of KCTA or any its members regarding the question of TVA regulation and/or oversight of TVA electric utilities' pole attachment, conduit occupancy, or other rates.

52. For each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), please identify any litigation or administrative proceedings regarding pole attachment and conduit occupancy rates in which the KCTA and its members have been involved inside or outside of Kentucky.

53. For each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), please produce all communications internally by each KCTA member or between KCTA members regarding oversight and/or regulation of pole attachments and conduit occupancy for the TVA Cooperatives or any other TVA cooperative.

54. For each of the calendar years 2010, 2011, 2012, and 2013 (year-to-date), please produce all communications regarding pole attachment and conduit occupancy rates of utilities that purchase electricity from the TVA between the TVA and each KCTA member, or any person or entity acting on behalf of a KCTA member.

55. Please identify and produce any petition(s) for rulemaking and all other document(s) and communication(s) with the TVA requesting that the TVA promulgate or modify regulations related to pole attachment and conduit occupancy services.

Respectfully submitted,

/s/ Edward T. Depp

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