

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT OF ITS) CASE NO.
ELECTRIC RATES AND FOR CERTIFICATES) 2016-00370
OF PUBLIC CONVENIENCE AND NECESSITY)**

and

In the Matter of:

**APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR AN ADJUSTMENT) CASE NO.
OF ITS ELECTRIC RATES AND FOR) 2016-00371
CERTIFICATES OF PUBLIC CONVENIENCE)
AND NECESSITY)**

**AT&T's RESPONSES TO COMMISSION STAFF'S
INITIAL REQUEST FOR INFORMATION**

AT&T Kentucky¹ respectfully responds as follows to the Commission Staff's initial request for information from AT&T Kentucky. Unless otherwise stated, references to "AT&T" in these objections and responses refers to AT&T Kentucky, on behalf of itself and its affiliates.

GENERAL OBJECTIONS

1. AT&T objects to the Information Requests to the extent they seek the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege or doctrine, and the inadvertent disclosure of any such information shall not be deemed a waiver of any such privilege or doctrine.

¹ BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky

2. AT&T objects to the Information Requests to the extent they seek access to confidential, competitively sensitive and/or proprietary business information and trade secrets. The furnishing of responses to these requests is not intended to and should not be construed to waive AT&T's right to protect from disclosure documents and information containing confidential or proprietary trade secrets or business information.

SPECIFIC OBJECTIONS AND RESPONSES:

1. Refer to the Direct Testimony of Mark Peters, pages 14-15. Page 14, lines 10-12, state that there is no justification for AT&T to indemnify Kentucky Utilities Company and Louisville Gas and Electric Company (jointly "Companies") for claims arising out of the joint negligence of AT&T and the Companies. Given that page 15, lines 4-6, includes language from a previous Commission order in which the Commission allows a utility to require indemnification in cases of joint negligence, explain the statement that there is no justification for indemnification language pertaining to joint negligence.

Response: Mr. Peters is not an attorney and defers to legal counsel for AT&T to the extent this question addresses purely legal issues. Without waiving the foregoing, the primary focus of pages 14-15 of Mr. Peters's testimony is that attaching entities should not be required to indemnify KU or LG&E for losses to the extent that the losses are caused by KU's or LG&E's own misconduct or negligence.

In an instance where both KU or LG&E and an attaching party are partially at fault, each should bear their relative share of the responsibility based on their relative fault. The indemnification that Mr. Peters proposed at page 16 of his testimony does that when it states that "[t]his provision does not apply to losses, damages or liabilities arising out of the indemnitee's or its employees', contractors' or agents' sole, concurrent, or contributory negligence." This approach does not appear to be at odds with the decisions cited by Mr. Peters, which do not specify how responsibility to pay for damages in cases of joint negligence would be allocated.

AT&T stands by the position that in cases of "joint negligence" each party should be responsible for its relative share of the fault, and that attaching entities should not have to indemnify electric utilities for losses – or portions of losses – that are attributable to the electric utility. Forcing an attaching entity to indemnify an electric utility for losses not caused by the attaching entity's own negligence or misconduct would effectively subject the attaching entity to liability solely because of the existence of its pole attachments, which the cited decisions say is improper.

Responsible person: Counsel for AT&T

2. Refer to the Direct Testimony of Kevin Early, pages 5-6. Page 5, lines 20-21, includes language from the Companies' proposed Pole and Structure Attachment Charges tariff that written notice of each service drop would be required in the month following installation. Page 6, lines 5-10, discusses AT&T's contention that the proposed language would interfere with its ability to promptly serve its customers. Explain why a requirement to provide notice after an installation would interfere with AT&T's ability to provide service to its customers quickly.

Response: AT&T's contention that KU/LG&E's proposed language would interfere with AT&T's ability to promptly serve its customers relates to the proposed requirement that AT&T submit applications for service drops in certain circumstances, not the proposed requirement that AT&T provide notice of a service drop after its installation.

With regard to the proposed requirement that AT&T submit applications for certain service drops, such a requirement would delay AT&T's ability to provide service to its end-user customers. AT&T's end-user customers, particularly its residential customers, expect telephone and other communications services to be provisioned as quickly as possible – certainly long before the time it would take AT&T or other service providers to submit an application and wait for “permission” from KU or LG&E to attach a small service drop to a pole to serve a customer.

AT&T also opposes any proposed requirement to provide notice after installation of all service drops because AT&T has not previously been required provide such notice in Kentucky or elsewhere, and therefore it has not developed a system for reporting every time it has installed service drops on any entity's poles. To change the longstanding status quo and require notice would require AT&T to incur expense and administrative burden to establish new procedures, just for KU and LG&E, for which there is no appreciable benefit. As noted in Mr. Early's testimony, service drops do not affect the load on the pole, do not restrict others from attaching to the pole and do not affect the pole owner's network. Therefore, a requirement to provide notice of the attachment of service drops to poles would not serve any legitimate purpose in terms of pole management.

Responsible person: Kevin Early and Mark Peters

3. Refer to the Direct Testimony of Daniel Rhinehart, page 13.
 - a. Confirm that AT&T's recommendation is that the annual wireless facility fee be \$7.25 instead of \$84.00. If this cannot be confirmed, state AT&T's recommendation.
 - b. State whether AT&T believes there should be two wireless facility fees, one for pole-top attachments and one for mid-pole attachments. If yes, explain how each annual fee should be calculated.

Response:

- a. Correct. Because the amount of chargeable space for AT&T's wireless attachments is one (1) foot, for both mid-pole and pole-top attachments, the appropriate annual wireless facility fee is \$7.25 (the \$7.25 per-foot rate proposed by KU/LG&E multiplied by one foot of chargeable space).
- b. The wireless facility fee should be separately calculated for pole-top attachments and mid-pole attachments, using the approach set forth in Mr. Rhinehart's testimony. Mr. Rhinehart's testimony assumes that a mid-pole wireless attachment would utilize a stand-off bracket that itself would occupy no more than one foot of usable space. Based on this assumption, Mr. Rhinehart also assumes the associated antenna would not prevent attachments by other entities. If the mounting bracket consumed more than one foot of space or the associated antenna did prevent other attachments, the mid-pole attachment rate should reflect the amount of usable space occupied at a rate of \$7.25 per foot. The fact that different attachments may result in different fees further supports AT&T's position that pole attachment rates, terms and conditions should be addressed by negotiations and not through a one-size-fits-all tariff.

Responsible person: Daniel Rhinehart

Respectfully submitted,

/s/ Cheryl R. Winn

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FILING NOTICE AND CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing was transmitted to the Commission on March 31, 2017; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Cheryl R. Winn