

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN ADJUSTMENT)
OF ITS ELECTRIC RATES AND FOR)
CERTIFICATES OF PUBLIC CONVENIENCE)
AND NECESSITY)

Case No.
2016-00370

and

ELECTRONIC APPLICATION OF LOUISVILLE)
GAS AND ELECTRIC COMPANY FOR AN)
ADJUSTMENT OF ITS ELECTRIC AND GAS)
RATES AND FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY)

Case No.
2016-00371

KENTUCKY CABLE TELECOMMUNICATIONS ASSOCIATION'S
RESPONSES TO COMMISSION STAFF'S
INITIAL REQUEST FOR INFORMATION

Kentucky Cable Telecommunications Association ("KCTA"), by counsel, hereby submits the following responses to Commission Staff's Initial Request for Information ("Requests").

Respectfully submitted,

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**ATTORNEYS FOR THE KENTUCKY CABLE
TELECOMMUNICATIONS ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Kentucky Cable Telecommunications Association's Responses to Commission Staff's Initial Requests for Information has been served on all parties of record via hand delivery, facsimile, or electronically this 31st day of March, 2017.

/s/ Janice Theriot
Janice Theriot

**KENTUCKY CABLE TELECOMMUNICATIONS ASSOCIATION
CASE NOS. 2016-00370 and 2016-00371**

**KCTA’s Responses to Commission Staff’s
Initial Request for Information
Dated March 31, 2017**

Responding Witness: Joseph H. Crone III

REQUEST NO. 1:

Refer to the Testimony of Joseph H. Crone III (“Crone Testimony”). For each provision of the proposed Pole and Structure Attachment Charges (“PSA”) tariff to which KCTA objects, provide the practice currently in place.

RESPONSE:

For the purpose of this Request, KCTA notes that it is responding based on information provided by Charter Communications, Inc. (“Charter”), but believes that other cable operators that comprise KCTA’s membership have practices and procedures in place that are largely consistent with Charter’s. KCTA objects to the PSA tariff terms below and compares them to the practices currently in place:

Issue	PSA Tariff Term	Practice Currently in Place
Application Requirements	The PSA Tariff includes a number of specific requirements that Attachment Customers must meet to apply to make attachments to Kentucky Utility Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (together, the “Companies”) structures. Importantly, these requirements obligate Attachment Customers to conduct pole loading studies as well as an analysis of make ready work and any space or engineering issues as part of every attachment application. <i>See</i> PSA Tariff, Term & Condition 7(a).	The current tariff does not require pole loading analysis for every pole attachment permit application. <i>See</i> Cable Television Attachment Charges (“CTAC”) Tariff, Term & Condition 1. But for the time period running up to the proposed tariff, LG&E only required Charter to perform engineering analysis of necessary make ready work for Charter’s planned attachments; KU imposed no such requirement. In or around October 2016, LG&E began requiring Charter to perform pole loading analysis for each of its attachment applications; again, KU still does not require pole loading. LG&E’s new requirements are not necessary and impose obligations in excess of those permitted under the CTAC Tariff. Indeed, it appears that LG&E only began requiring

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		<p>Charter to perform pole loading in conjunction with its proposal of the PSA Tariff, which inspired LG&E preemptively to shift the burden of pole loading from LG&E to Attachment Customers before the Commission had the opportunity to review and pass on the PSA Tariff. Charter has conformed to LG&E's attachment application requirements only to avoid having its applications denied or delayed. LG&E's practice is out of step with the practice of other utilities in Kentucky – including its sister company, KU. These utilities perform make ready and pole loading engineering analyses themselves as they – and LG&E – have historically done.</p>
<p>Overlash Attachments</p>	<p>Overlash attachments are not considered a separate attachment and are excluded from the Companies' attachment application procedures only under certain limited conditions. <i>See</i> PSA Tariff, Term & Condition 10. In most instances of overlashing, these conditions will not be satisfied, and Attachment Customers will be required to comply with the PSA Tariff's full blown application procedures, including pole loading, prior to installing a small and lightweight attachment that takes no additional room on a utility pole and simply runs</p>	<p>The CTAC Tariff does not explicitly address overlashing and, accordingly, imposes no conditions or application requirements for overlashing. But LG&E requires attachment applications for overlashing. The application requires Charter to perform make ready engineering analysis and, since around October 2016, to perform pole loading for overlashing. These requirements are not necessary and impose obligations in excess of those permitted under the CTAC Tariff. Charter has complied with them to date to ensure the timely deployment and expansion of its communications network. Other utilities in Kentucky, including</p>

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	<p>along an existing metal strand that has been attached under the regular application process.</p>	<p>KU, do not require Charter to perform make ready engineering and pole loading analyses for overlashing, and most utilities have expedited procedures for applications and permitting for overlashing.</p>
<p>Strand-Mounted Wi-Fi Facilities</p>	<p>Under the proposed tariff, strand-mounted Wi-Fi facilities are wireless attachments subject to full-blown application procedures. <i>See</i> PSA Tariff, Term & Condition 9(b). These attachments, however, are small and lightweight, do not take any pole space, and will not have any significant impact on pole loading unless the structure is at or near its loading capacity.</p>	<p>The current tariff does not address wireless attachments, but does permit “amplifier installations” as part of an existing attachment without additional permitting. <i>See</i> CTAC Tariff, Term & Condition 2. Charter treats its strand-mounted Wi-Fi facilities like amplifier installations because they are about the same size, weight, and occupy similar positions on existing messenger strand. Accordingly, Charter does not submit attachment applications for strand-mounted Wi-Fi access points to LG&E, KU, or any other utilities in Kentucky.</p>
<p>Unauthorized Attachments</p>	<p>To identify “unauthorized attachments,” the Companies propose to conduct visual inspections and deem “unauthorized” any attachments they count in the field that exceed the number of permitted attachments in their records for a given attacher. <i>See</i> PSA Tariff, Term & Condition 13; Response to KCTA’s First Requests for Information No. 1-20. The PSA Tariff requires Attachment Customers to pay a penalty equal to double the then-current attachment charge</p>	<p>The current tariff allows the Companies to assess unauthorized attachments, and related charges, by determining the difference between the recorded attachment count and the number of attachments observed in the course of visual inspection. <i>See</i> CTAC Tariff, Term & Condition 1. But the Companies may remove unauthorized attachments only after providing notice to the Attachment Customer. <i>See id.</i> In practice, Charter does not have first-hand knowledge of the method the Companies uses to identify unauthorized attachments.</p>

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	<p>for any unauthorized attachments. <i>See</i> PSA Tariff, Term & Condition 18. The Attachment Customer is also required to submit an application and make any required payments within 30 days of the discovery of the “unauthorized attachment.” If the Attachment Customer fails to do so, the Companies may remove the attachment at the customer’s expense. <i>See id.</i> The problem with the procedure the Companies outline is that it does not provide Attachment Customers the ability to verify whether the Companies’ unauthorized attachment findings are correct or to challenge the Companies’ designation of any specific attachment as unauthorized, as necessary.</p>	<p>But the Companies notify Charter of any unauthorized attachments through letter or email identifying the specific attachments they deem unauthorized. This practice provides Charter reasonable notice and the ability to make its own assessment as to whether or not a particular attachment was properly permitted.</p>
Service Drops	<p>The proposed tariff imposes additional onerous conditions for deployment of service drops. Attachment Customers must make written application to permit service drops that do not meet certain conditions. <i>See</i> PSA Tariff, Term & Condition 7(i). Service drops are made by construction personnel in the course of connecting customers to the cable network and therefore must be made quickly upon customer request for extension of service. Because it is often not known whether a service</p>	<p>The current tariff permits Attachment Customers to install up to “four service drops to be tapped on cable messenger strand and not on pole” as part of an attachment. CTAC Tariff, Term & Condition 2. The CTAC Tariff does not require Attachment Customers to permit service drops. Accordingly, in practice, Charter does not submit applications to LG&E, KU, or to other utilities in Kentucky to permit service drops. Charter installs drops on existing messenger strand about 2.5 feet from the Companies’ poles and, in some instances, installs an</p>

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	<p>attachment will be necessary before construction personnel are in the field to connect a customer to the network, adhering to the PSA Tariff's onerous application requirements to permit service drops will severely impair communications Attachment Customers' abilities timely to meet their customers' service needs.</p>	<p>additional attachment through a "helper pole," using a P-hook or a pole top extension fixture – just like those used by telephone companies – in order to connect a customer to Charter's network. Because service drops are smaller, lighter, and have a minimal impact on loading because they run from an attachment or pole to a customer's premise, Charter makes post-installation notice of service drops, and the Companies may inspect the attachment if it so desires. Pre-attachment notice is often infeasible as Charter does not usually know in advance which addresses along a particular route will request service.</p>
<p>Charges to Attachment Customers for Work LG&E Performs</p>	<p>The proposed tariff does not obligate the Companies to provide any cost information to back up the charges listed on an invoice to Attachment Customers. <i>See</i> PSA Tariff, Term & Condition 7(b), 7(d), & 8(g). Without such documentation, Attachment Customers are unable to assess the need for the work performed under the invoice or the reasonableness of the charges imposed.</p>	<p>The existing tariff does not clearly address the cost information the Companies must provide as part of their invoices. <i>See</i> CTAC Tariff, Term & Condition 5. In practice, the Companies provide no supporting documentation for their invoices and do not break out invoices to show the actual cost of materials, labor, overhead, and other charges imposed. This has led to situations in which Charter has identified errors where the Companies billed Charter for unnecessary work. However, because of the scant information the Companies provide in their invoices, Charter cannot determine whether the invoiced amounts are based on actual costs to perform the work for which the Companies charge Charter. Instead, Charter</p>

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		must use its best estimates to determine if the charges appear reasonable for work performed. As a practical matter, Charter must pay invoiced amounts – whatever they are – for its projects to proceed.
Monitoring & Inspection of Attachment Placement	The PSA Tariff provides the Companies discretion to require monitoring of construction or inspection of construction and to charge Attachment Customers the costs of any monitoring or inspection. <i>See</i> PSA Tariff, Term & Condition 8(g).	While the Companies intermittently inspect Charter's construction and attachment installations, they do not purport to reserve the right to charge Charter for such inspections. <i>See</i> CTAC Tariff, Term & Condition 8. This practice, unlike the proposed PSA tariff is consistent with Administrative Case No. 251, which provides that utilities must conduct periodic inspections of facilities and additional payment by customers for such inspection is inappropriate. <i>See</i> Administrative Case No. 251, 49 P.U.R.4th 128 (1982). Other utilities in Kentucky also bear the cost of their own periodic inspections.
Maintaining & Repairing Attachments	The PSA Tariff not only requires third party Attachment Customers to repair out of specification attachments caused by their own construction but also to repair and pay for damage to their facilities caused by other attachers, including LG&E and KU. <i>See</i> PSA Tariff, Terms & Conditions 8(j), 8(k). The PSA Tariff does not contain any mechanism to ensure that the entity that causes an out of specification condition is	The current tariff requires Attachment Customers to bear the cost of the out of specification conditions they cause. <i>See</i> CTAC Tariff, Term & Conditions 3-4. This policy is consistent with the Commission's guidance, which permits pole owners to require Attachment Customers to pay the costs of repairing substandard installations "which are not created by the utility but by the CATV operator." Administrative Case No. 251, 49 P.U.R.4th 128 (1982). In practice, the Companies

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	<p>responsible for correcting the condition. This is problematic because attachments are rarely installed out of specification and generally fall out of specification because of activities on the pole by another attacher, such as when another attacher installs additional facilities on a pole (such as a street light) or otherwise moves or adjusts its attachments.</p>	<p>dedicate few resources to identifying the attacher responsible for an out of specification condition. In many cases, when LG&E or KU submits a request to Charter to perform make ready or corrections on its attachments, Charter can easily determine that a third party or LG&E or KU is responsible for the out of specification condition, not Charter. But Charter has effectively no recourse to require the attacher that caused the noncompliant condition to bear the cost of the necessary repair work.</p>
<p>Discretion to Deny Attachment Applications</p>	<p>Under the proposed tariff, the Companies reserve discretion to deny attachment applications for any "good reason." PSA Tariff, Term & Condition 7(c). This term is unjust and unreasonable because it provides the Companies an open-ended, unilateral right to deny Attachment Customers access to essential pole structures.</p>	<p>The Companies do not currently purport to have authority to deny attachment applications for any "good reason." <i>See</i> CTAC Tariff, Terms & Conditions, Preface. Charter is aware of no instances in which an attachment application was denied for any reason other than capacity, safety, reliability, or engineering standards, and the Companies submitted no evidence indicating that adhering to this standard has caused problems of any kind.</p>
<p>Construction Requirements & Guidelines</p>	<p>The Companies' proposed requirement that attachments must be constructed so that the utility is "reasonably satisfied" is unworkable and provides insufficient notice and guidance to Attachment Customers about the applicable construction standards. <i>See</i> PSA Tariff, Term & Condition 8(b).</p>	<p>The existing tariff sets forth the standards and specifications Attachment Customers must comply with in making attachments. <i>See</i> CTAC Tariff, Term & Condition 3. Charter relies on the National Electrical Safety Code, the Companies' construction standards, and the Commission's guidance, as well as its internal specifications in</p>

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		constructing and maintaining its facilities.
Billing & Remedy Available to LG&E in the Event of a Billing Dispute	The PSA Tariff permits the Companies to remove Attachment Customers' attachments based on non-payment, even in the case of good faith billing disputes. "If the Attachment Customer fails to pay all charges and fees billed within six months of the bill's issuance, the Company may remove any or all of Attachment Customer's Attachments." PSA Tariff, Billing.	Under the current tariff, the Companies may not remove attachments where there is a good faith billing dispute. Charter has withheld payment in the past pending resolution of a billing dispute, and the Companies did not move to remove Charter's attachments based on non-payment.
Assignment	The PSA Tariff purports to require LG&E's and KU's permission for internal corporate reorganizations. "Except as provided in this Schedule, Attachment Customer's rights under the Attachment Customer Agreement are non-delegable, non-transferable and non-assignable." PSA Tariff, Term & Condition 4.	The CTAC Tariff also limits Charter's ability to assign and transfer its rights under the tariff, though in slightly different terms as the PSA Tariff. <i>See</i> CTAC Tariff, Term & Condition 16. But in practice, Charter has not sought approval for a transfer or assignment to a third party. Charter has, however, undertaken internal restructurings for which it has not provided the Companies advance notice or obtained permission. Charter provided the Companies notice after the fact, and this procedure caused no harm to them.
Tagging	"Any Attachments existing as of the date of execution of Attachment Customer Agreement shall be tagged within 180 days of the date of the Agreement." PSA Tariff, Term & Condition 8(c). The	The CTAC Tariff does not include a tagging requirement. But Charter nevertheless tags its new fiber attachments. When Charter conducts inspections of its facilities, it tags any "untagged" fiber facilities that it identifies.

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	<p>deadline for tagging is an unusual requirement because it is generally treated as a maintenance issue addressed in the normal course where an untagged attachment is identified by the Attachment Customer or the pole owner.</p>	<p>This is Charter's practice throughout Kentucky. Neither of the Companies have previously sought to impose penalties on Charter for untagged attachments or to impose any time limit on when facilities must be tagged.</p>
Indemnification	<p>The PSA Tariff requires Attachment Customers to indemnify LG&E and KU but denies Attachment Customers the right to select their own counsel and control the defense of the claim. <i>See</i> PSA Tariff, Term & Condition 17. This approach is unjust and unreasonable because the Companies do not necessarily share the same interests as the Attachment Customer in handling and disposing of an indemnifiable claim.</p>	<p>The current tariff imposes extensive indemnification obligations on Attachment Customers but does not afford Attachment Customers the right to assume the defense of and select counsel to defend against any claim for which they may ultimately be responsible. <i>See</i> CTAC Tariff, Term & Condition 10. Charter often seeks to intervene in or to assume the defense of claims for which it has an indemnification obligation.</p>

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Responding Witness: Joseph H. Crone III

REQUEST NO. 2:

Refer to the Crone Testimony, page 33. Provide the amount of increase Charter will receive under the proposed PSA tariff. Include in the response the supporting calculations.

RESPONSE:

In addition to other services Charter takes from LG&E and KU, such as lighting, Charter will incur greater costs for electric Power Service. Charter takes secondary Power Service from KU. Under the proposed electric tariff, the Basic Service Charge of \$90 will remain the same as will the per kWh Energy Charge, but the Demand Charge will increase by about eight percent from \$19.05 to \$20.71 in the summer and from \$16.95 to \$18.43 in the winter. *See* KU Application, Tab 5, Filing Requirement 807 KAR 5:001 Section 16(1)(b)(4), Attachment at 14. The Demand Charge makes up the largest portion of the costs Charter incurs in connection with Power Service. While Charter does not have annualized data related to its Power Service costs readily available, Charter estimates that even if its monthly usage only warrants application of the base demand minimum of 50 kWh, Charter's monthly electric Power Service costs will increase by about five percent on average.

VERIFICATION

STATE OF OHIO)
)
COUNTY OF HAMILTON) SS:

The undersigned, **Joseph H. Crone III**, being duly sworn, deposes and says that he is the Senior Director of Regional Construction for Charter Communications in the Southern Ohio Region, and that he has personal knowledge of the matters set forth in the foregoing testimony and exhibits, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

Joseph H. Crone III

Joseph H. Crone III

Subscribed and sworn to before me, a Notary Public, in and before said County and State, this 30 day of March, 2017.

Tamara Newsom (SEAL)

Notary Public

My Commission Expires:



TAMARA NEWSOM
Notary Public, State of Ohio
My Commission Expires 11-13-2021