

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 DATA REQUESTS OF
KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY**

AT&T Kentucky¹ respectfully objects and responds as follows to the initial data requests served by Kentucky Utilities Company and Louisville Gas and Electric Company (together, “KU/LG&E”). 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 TO KENTUCKY UTILITIES

1. State whether Mr. Peters was aware of the PSC Staff Opinion Nos. 2014-014 and 2016-012 when preparing his testimony.

Response: Yes.

Responsible Person: Mark Peters

2. Regarding PSC Staff Opinion Nos. 2014-014 and 2016-012, state for each whether Mr. Peters agrees with the PSC Staff analysis. If not, explain why not.

Response: This question is not properly addressed to Mr. Peters, who is not an attorney and did not offer any legal opinion in his testimony. In addition, the question improperly asks for legal conclusions regarding the legal matters addressed by Staff in Opinions that, by their own terms, are “advisory in nature” and “not binding on the Commission.” Accordingly, whether any person or entity “agrees” with these Opinions is not relevant to the issue of how the Commission should rule on any issue in this proceeding.

Without waiving the foregoing, Staff Opinion 2016-012 states at page 3 that “Commission Staff is not aware of any reason why the cost of such [wireless carrier’s] attachment should not be at the same per-foot rate as attachments further down the pole.” AT&T has not challenged the per-foot rate proposed by KU and LG&E. The issue raised by AT&T witness Mr. Rhinehart is how many feet of pole space KU or LG&E should be able to charge for in the case of a wireless small-cell attachment. Rhinehart Testimony at 7-13. Mr. Rhinehart did not propose different per-foot attachment rates based on where on the pole an attachment is placed.

With regard to whether a utility must permit attachment of wireless equipment where such attachment is NESC compliant, Staff Opinion 2016-012 states that the answer depends on “a utility’s tariff language with regard to pole attachments.” The issue here is what language should be included in KU’s and LG&E’s proposed tariff—if pole attachment tariffs are allowed at all, which AT&T opposes (see Mark Peters Testimony at 3-5). The Staff Opinion therefore does not appear to be relevant here, since the language of a pole attachment tariff (if any) has yet to be determined. When considering what language should go into a proposed tariff, it makes sense to consider NESC industry standards, which is why AT&T witness Mr. Early referenced an NESC standard in noting that the NESC does not view conduit (riser) as obstructing the climbing space on a pole, which is a reason not to allow LG&E/KU to charge attachers for conduit space. Early Testimony at 3.

Staff Opinion 2014-014 (at 3) addresses “three questions and four issues,” and it is not clear which of these the discovery request refers to. As a general matter, Staff addressed the Commission’s jurisdiction over pole attachments by wireless carriers. AT&T has not denied such jurisdiction, but does oppose departing from the established contract-based approach and adopting generic tariffs for pole attachments. AT&T also opposes specific provisions of the proposed pole attachment tariffs, for the reasons stated in AT&T’s testimony.

At the bottom of page 4, Staff Opinion 2014-014 states that if LG&E/KU cannot negotiate a pole attachment agreement with wireless carriers, LG&E/KU “may file a revised tariff with cost support justifying its reasonableness.” AT&T notes that this departs from LG&E/KU’s own stated preference, which was “to address requests for attachments from wireless providers through the use of negotiated contracts.” Staff Op. 2014-014 at 3. Staff’s Opinion did not suggest that LG&E/KU are *required* to seek to use a tariff for wireless pole attachments. And while Staff appeared to view a tariff as a backstop to negotiated agreements when the negotiations fail, the fact is that once a tariff is in effect, it is unlikely that any more negotiated agreements would be reached. Staff’s statement that LG&E/KU’s tariffs for CATV attachments should “obviate the necessity of negotiated agreements” with wireless carriers likewise overlooks the benefits of negotiated agreements. Negotiation gives pole owners and wireless attachers the flexibility to address different situations, needs, and preferences, which can vary by attacher and can change rapidly as technology changes. For example, LG&E/KU stated in 2014 that it preferred negotiations because “wireless attachments are a recent development.” Staff Op. 2014-014 at 3. Since 2014, of course, wireless technology (including without limitation the expanding need for small cells) has continued to evolve in order to address the explosive consumer demand for wireless services. Tariff-based approaches inevitably suffer from regulatory lag and the difficulties of a one-size fits all approach, while negotiated contracts do not. That is one reason why the federal Telecommunications Act established a regime based on negotiated contracts for matters like pole attachments. *See* 47 U.S.C. §§ 251(b)(4) & 252(a). AT&T agrees with LG&E/KU’s view expressed in 2014 that the best way to address wireless attachments is through individual negotiated contracts.

Responsible person: Counsel for AT&T

3. State whether Mr. Peters agrees the Kentucky Public Service Commission has elected to regulate the rates, terms, and conditions of service for utility pole attachments of telephone service providers and that the Federal Communication Commission's rules regarding such attachments are not applicable to the rates and conditions of such service.

Response: This question is not properly addressed to Mr. Peters, who is not an attorney and did not offer any legal opinion in his testimony.

Without waiving the foregoing, AT&T agrees that the Kentucky Public Service Commission has elected to regulate the rates, terms, and conditions of service for utility pole attachments of telephone service providers. As a result, the rules of the Federal Communication Commission ("FCC") regarding such attachments are not dispositive of the issues before this Commission. However, the FCC has decades of experience with pole attachment rates, terms, and conditions, and it has comprehensively addressed pole attachments more recently than the Commission's Order in Administrative Case No. 251-50 in 1983. Accordingly, the FCC's rules, regulations, and orders relating to the same are things this Commission should consider in evaluating the open issues here.

Responsible person: Counsel for AT&T

4. Describe the unique characteristics of wireless facility attachments that would distinguish one type of pole attachment from another and make establishment of uniform rules and procedures impractical.

Response: As LG&E/KU stated in 2014, “wireless attachments are a recent development.” Staff Op. 2014-014 at 3. They still are a relatively recent development, when compared to wired attachments, and as consumer demand for wireless service continues to increase, wireless technologies and associated attachments continue to evolve.

For decades, wired attachments were limited to copper telephone cable. Then came coaxial cable and fiber optic cable, which, while different from one another and copper cable in size and weight, were all still wire strands being strung between poles.

Wireless facilities take a variety of different forms, including without limitation: (a) size and shape of antenna, (b) optimal location of antenna and other equipment on pole, and (c) size, shape and number of pieces of ancillary equipment. Since LG&E/KU's observation in 2014, wireless technology has continued to evolve, especially with the expanding need for small cells, and it is expected to continue to evolve at a rapid pace to meet the explosive consumer demand for wireless services.

As noted above, tariff-based approaches applying uniform rules and procedures inevitably suffer from regulatory lag and the difficulties of a one-size fits all approach, while negotiated contracts do not. That is one reason why the federal Telecommunications Act established a regime based on negotiated contracts for matters like pole attachments. *See* 47 U.S.C. §§ 251(b)(4) & 252(a). AT&T agrees with LG&E/KU's view expressed in 2014 that the best way to address wireless attachments is through individual negotiated contracts.

Responsible person: Mark Peters

5. State whether AT&T Kentucky currently permits cable television system operators and telecommunication carriers to place wireline attachments on its utility poles. If yes, provide a copy of the agreements that AT&T Kentucky currently has with those entities regarding such attachments and a copy of AT&T Kentucky's internal procedures, standards and rules that govern such placement.

Response: Yes, AT&T Kentucky permits cable television system operators and telecommunications carriers to place wireline attachments on its poles. AT&T Kentucky's generic proposed stand-alone 21-state structure access agreement for poles, conduit, and rights-of-way is attached as Exhibit A to this response, and its tariff for pole and anchor attachments is provided as Exhibit B. AT&T Kentucky's generic proposed agreement (Exhibit A) provides that attaching parties placing wireline attachments will adhere to the industry standards identified in Section 6.2 of the agreement, as well as the "Published Standards" identified in Section 6.2. These standards are available through the appropriate agencies, while the AT&T Structure Access Guidelines are available at https://clec.att.com/clec_documents//unrestr/hb/13%20State/250//Structure-Access-Guidelines-10012015.pdf.

AT&T objects to the remainder of the question on the grounds that it would be unduly burdensome to produce all of the requested agreements. Moreover, to the extent that AT&T Kentucky has entered into interconnection agreements under 47 U.S.C. §252 that address wireline attachments, those agreements are on file with the Commission and publicly available. Other agreements are confidential documents not generally disclosed to the public and which AT&T Kentucky objects to disclosing. Moreover, the request is not relevant or likely to lead to the discovery of relevant or admissible material. AT&T Kentucky's negotiated contracts with CATV attachers reflect the give and take between AT&T Kentucky and each individual CATV provider, which may not reflect AT&T Kentucky's own preferences and which may not be appropriate to apply generically on any and all attachers.



EX A.pdf



EX B.pdf

Responsible person: Mark Peters

6. State whether AT&T Kentucky currently permits telecommunication carriers to attach wireless facilities to its utility poles. If yes, provide a copy of each agreement that AT&T Kentucky currently has with those entities regarding such attachments and a copy of AT&T Kentucky's internal procedures, standards and rules that govern such attachments.

Response: Yes, AT&T Kentucky permits telecommunications carriers to attach wireless facilities to its poles. See the documents produced in response to request number 5 above. AT&T Kentucky's generic proposed agreement (Exhibit A) provides that attaching parties placing wireless attachments will adhere to the industry standards identified in Section 6.2 of the agreement to request 5, as well as the "Published Standards" identified in Section 6.2 and the guidelines in Section 19. These standards are available through the appropriate agencies, while the AT&T Structure Access Guidelines are available at https://clec.att.com/clec_documents/unrestr/hb/13%20State/250//Structure-Access-Guidelines-10012015.pdf.

AT&T objects to the remainder of the question on the grounds that it would be unduly burdensome to produce all of the requested agreements. Moreover, to the extent that AT&T Kentucky has entered into interconnection agreements under 47 U.S.C. §252 that address wireless attachments, those agreements are on file with the Commission and publicly available. Other agreements are confidential documents not generally disclosed to the public and which AT&T Kentucky objects to disclosing. Moreover, the request is not relevant or likely to lead to the discovery of relevant or admissible material. AT&T Kentucky's negotiated contracts with wireless attachers reflect the give and take between AT&T Kentucky and each individual wireless provider, which may not reflect AT&T Kentucky's own preferences and which may not be appropriate to apply generically on any and all attachers.

Responsible person: Mark Peters

7. State whether, in light of the revisions to KRS 278.541-.544, AT&T Kentucky's provision of pole attachment services is still regulated by the Kentucky Public Service Commission. If it is not, identify the statute(s) and regulation(s) that govern AT&T Kentucky's provision of such services. If it is, explain the applicability of KRS 278.160 and KRS 278.170 to the provision of such services.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information, in the form of legal conclusions, that is not relevant to any issue in this proceeding. No AT&T Kentucky service – pole attachment or otherwise – is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by an electric utility that indisputably is not subject to “the revisions to KRS 278.541-.544.”

Responsible person: Counsel for AT&T

8. State whether AT&T Kentucky has ever denied access to its poles in Kentucky for a wireline attachment. For each instance in which access was denied, state whether AT&T Kentucky sought authorization from the Kentucky Public Service Commission prior to such denial.

Response: AT&T objects to this request on the ground that it is overbroad, unduly burdensome, vague, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing, AT&T Kentucky evaluates requests to attach to individual poles consistent with applicable law, and AT&T Kentucky may deny a request for access as designed by the attacher or require modifications to a pole or existing attachments as a condition of application approval, where there is insufficient capacity, or for reasons of safety, reliability or generally applicable engineering purposes. Through its investigation in response to this question, AT&T Kentucky has not found any instances in which it denied a request for access; instead it has offered the attacher options to address insufficient capacity or safety, reliability, or generally applicable engineering concerns.

Responsible person: Mark Peters

9. State whether AT&T Kentucky has ever denied access to its poles in Kentucky for a wireless facility attachment. For each instance in which access was denied, state the basis for such denial.

Response: AT&T objects to this request on the ground that it is overbroad, unduly burdensome, vague, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing, AT&T Kentucky evaluates requests to attach to individual poles consistent with applicable law, and AT&T Kentucky may deny a request for access as designed by the attacher or require modifications to a pole or existing attachments as a condition of application approval, where there insufficient capacity, or for reasons of safety, reliability or generally applicable engineering purposes. Through its investigation in response to this question, AT&T Kentucky has not found any instances in which it denied a request for access; instead it has offered the attacher options to address insufficient capacity or safety, reliability, or generally applicable engineering concerns.

Responsible person: Mark Peters

10. Identify those states in which AT&T operates that regulate the rates, terms, and conditions of service for utility pole attachments and that require a pole owner to obtain regulatory or judicial authorization before denying access to its poles for a pole attachment.

Response: AT&T objects to this request on the ground that it is overbroad, unduly burdensome, vague, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. AT&T has not suggested that a pole owner should obtain regulatory or judicial authorization before denying access to its poles for a pole attachment in every instance. Rather, AT&T has stated that “if KU or LG&E seeks to deny access to a pole for any reason other than ‘insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes,’ KU or LG&E should be required to obtain approval from the Commission before denying pole access, and should be required to allow access to the pole by the requesting party until the Commission authorizes KU or LG&E to deny access for the specified reason.” Peters Direct at 6. The above enumerated reasons are those set forth in 47 U.S.C. 224(f).

Without waiving the foregoing, a list of the states that have opted to regulate the rates, terms, and conditions for utility pole attachments can be found at https://apps.fcc.gov/edocs_public/attachmatch/DA-10-893A1_Rcd.pdf. AT&T is not aware of any state that requires a pole owner to obtain regulatory or judicial authorization before denying access to a pole for a pole attachment where the reason for denial is one of those set forth in 47 U.S.C. 224(f), nor is AT&T proposing such a requirement here. That said, AT&T is not aware of any state that permits a pole owner to deny access to a pole for a pole attachment for any “other good reason” as is being proposed in this case by KU/LG&E.

Responsible person: Counsel for AT&T

11. List the electric utilities that currently permit AT&T Kentucky or AT&T Mobility to self-insure.

Response: AT&T is not aware of any electric utilities in Kentucky that currently prohibit AT&T from self-insuring with regard to pole attachments.

Responsible person: Mark Peters

12. List the electric utilities that currently do not permit AT&T Kentucky or AT&T Mobility to self-insure.

Response: AT&T is not aware of any electric utilities in Kentucky that currently prohibit AT&T Kentucky or AT&T Mobility from self-insuring with regard to pole attachments.

Responsible person: Mark Peters

13. Describe the insurance requirements that AT&T Kentucky imposes upon those persons requesting to attach wireline or wireless facilities to its utility poles.

Response: The language that AT&T Kentucky proposes in its pole attachment agreements to entities requesting to attach wireline or wireless facilities to its utility poles, subject to negotiation between the parties, is included in the generic 21-state structure access agreement provided in response to question 5 above.

Responsible person: Mark Peters

14. Does AT&T Kentucky object to the requirement that all facilities that it attaches to KU's poles must be tagged at the time of placement or within 180 days of the proposed effective date of the PSA Rate Schedule? If yes, explain why.

Response: Yes, in part. AT&T Kentucky does not object to tagging its facilities (other than service drops) at the time of placement on a going forward basis, but it does object to going back and tagging all existing attachments within 180 days of the proposed effective date of the PSA Rate Schedule. Such a requirement would be unduly costly and overly burdensome, and the cost or burden would far outweigh any purported benefit. Moreover, it would be a deviation from the decades-long practice between AT&T Kentucky and KU/LG&E. To the extent tagging of existing facilities (other than service drops, which should not be required) is required, AT&T Kentucky should only be required to tag them the next time it performs work on that attachment. Service drops should be exempt from a separate tagging requirement, as the ownership of that drop can be determined easily by looking at the distribution terminal to which it is connected.

Responsible person: Mark Peters

15. AT&T of Kentucky's Motion for Intervention states the motion was made "on behalf of itself and affiliated entities." Motion, p. 1. Identify each and every subsidiary or affiliate of AT&T that AT&T of Kentucky represents in this proceeding.

Response: As noted in their respective testimony, each of AT&T's witnesses is employed by AT&T Services, Inc., which provides support to various AT&T entities including, without limitation, AT&T Kentucky and AT&T Mobility. AT&T's participation in this case is on behalf of any and all AT&T entities that currently, or in the future, would be subject to the terms and conditions of the proposed tariff, including without limitation AT&T Kentucky and AT&T Mobility.

Responsible person: Counsel for AT&T

16. AT&T of Kentucky's motion for intervention references the fact that BellSouth Telecommunications, LLC does business as AT&T of Kentucky. Please describe the commercial relationships for pole attachment space or services between LG&E or KU and BellSouth of Kentucky, LLC d/b/a AT&T of Kentucky.

Response: AT&T is unaware of any entity that does business as "AT&T of Kentucky." AT&T Kentucky, which is a dba of BellSouth Telecommunications, LLC, currently has joint use agreements for pole attachments with KU and LG&E, respectively. KU and LG&E already have copies of those agreements.

Responsible person: Counsel for AT&T

17. State whether AT&T Kentucky uses the same cable to support AT&T Kentucky's local exchange carrier operations and AT&T Mobility's wireless operations. Explain.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information that is not relevant to any issue in this proceeding. No AT&T Kentucky service or operation is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by KU and LG&E.

Without waiving the foregoing, AT&T Kentucky uses its cables and other facilities to provide services to its customers, including without limitation wireless service providers. To the extent that AT&T Kentucky offers or provides services to wireless service providers, including without limitation AT&T Mobility, it does so at arm's length and pursuant to interconnection agreements, tariffs, Service Guides, and/or other arrangements in compliance with applicable law.

Responsible person: Counsel for AT&T

18. State whether AT&T Kentucky or any of AT&T Kentucky's affiliates have installed wirelines to KU's poles or structures solely to support the wireless operations of AT&T Mobility and any other AT&T Kentucky affiliate. If yes, state the number of attachments and the amount of wireline (in miles) that has been installed solely to support these operations.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information that is not relevant to any issue in this proceeding. No AT&T Kentucky service or operation is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by KU and LG&E. Additionally, AT&T Kentucky uses its "wirelines," including those "installed . . . to KU's poles or structures" to offer or provide services to its customers, including without limitation wireless and landline telecommunications service providers. To the extent that AT&T Kentucky offers or provides services to wireless or landline telecommunications service providers, including without limitation any of its affiliates, it does so at arm's length and pursuant to interconnection agreements, tariffs, Service Guides, and/or other arrangements in compliance with applicable law.

Responsible person: Mark Peters

19. State whether AT&T Kentucky has attached facilities to KU poles in areas in which AT&T Kentucky is not the incumbent local exchange carrier. If yes,
- a. State the approximate number of attachments and amount of wireline (in miles) that AT&T Kentucky has installed in these areas.
 - b. Provide the attachment agreement(s) under which these attachments were made.
 - c. State whether AT&T Kentucky obtained permits to make these attachments.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information that is not relevant to any issue in this proceeding. No AT&T Kentucky service or operation is at issue in this proceeding, and no joint use agreement between AT&T Kentucky and KU is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by KU.

Without waiving the foregoing, AT&T Kentucky is authorized to provide service as an incumbent local exchange carrier within specified areas of Kentucky, and it is authorized to provide service as a competitive local exchange carrier in all other areas of the state. Further, any attachments by AT&T Kentucky to KU poles have been pursuant to a joint use agreement with KU, and AT&T Kentucky has or has not obtained "permits" for those attachments according to the terms of the applicable agreement and/or according to applicable law.

Responsible person: Kevin Early

20. State the average height of AT&T Kentucky and affiliates' small-cell antennas.

Response: AT&T objects to this request on the ground that it is vague and ambiguous as to the meaning of "average height." AT&T interprets "average height" to mean the average height on the pole of AT&T Kentucky and its affiliates' small-cell antennas. AT&T further objects to this request on the ground that it seeks information that is not relevant to any issue in this proceeding nor likely to lead to the discovery of relevant or admissible material. Without waiving the foregoing, neither AT&T nor any of its affiliates have deployed small-cell antennas on poles in Kentucky yet. Therefore, there is no basis to calculate an "average height." That said, many variables could affect the location on the pole of an antenna, including but not limited to network coverage needs; location, condition, type and vintage of pole; the particular small cell equipment to which the antenna is attached; and aesthetics requirements. As a general matter, AT&T prefers to locate its antenna at the pole top, but it also has configurations that place the antenna mid-pole. At present, AT&T anticipates that its antennas will be located between 25 and 45 feet above ground, but that may change as the small cell technology continues to evolve. This is yet another reason why the one-size fits all approach of a tariff is not desirable for pole attachments, and why negotiated contracts are, as the federal Telecommunications Act and the FCC have recognized, the preferred approach.

Responsible person: Kevin Early

21. Describe AT&T Kentucky's current policy regarding performing pole loading analysis when attaching facilities to LG&E/KU owned poles.

Response: AT&T Kentucky's policy is that for each type of attachment it proposes to deploy, except for service drops, it will perform a pole loading analysis on at least one pole with the same or similar characteristics, including, without limitation, category, height, and type. In addition, AT&T Kentucky's policy is that it will perform a pole loading analysis on all dead-end and corner poles.

Responsible person: Mark Peters

22. Describe AT&T Kentucky's current policy regarding the performance of pole loading studies for attachments to its own poles.

Response: AT&T Kentucky's policy is that for each type of attachment it proposes to deploy, except for service drops, an attacher shall perform a pole loading analysis on at least one pole with the same or similar characteristics, including, without limitation, category, height, and type. In addition, AT&T Kentucky's policy is that an attacher shall perform a pole loading analysis on all dead-end and corner poles.

Responsible person: Mark Peters

23. State whether there have been any incidents in which KU denied access to pole space to AT&T and did not offer to replace the utility pole in question or permit the rearrangement of facilities to accommodate the proposed attachment. If yes, describe each incident and provide the date of occurrence.

Response: AT&T Kentucky is not aware of any such instances.

Responsible person: Mark Peters

SPECIFIC OBJECTIONS AND RESPONSES TO
LOUISVILLE GAS AND ELECTRIC

1. State whether Mr. Peters was aware of the PSC Staff Opinion Nos. 2014-014 and 2016-012 when preparing his testimony.

Response: Yes.

Responsible Person: Mark Peters

2. Regarding PSC Staff Opinion Nos. 2014-014 and 2016-012, state for each whether Mr. Peters agrees with the PSC Staff analysis. If not, explain why not.

Response: This question is not properly addressed to Mr. Peters, who is not an attorney and did not offer any legal opinion in his testimony. In addition, the question improperly asks for legal conclusions regarding the legal matters addressed by Staff in Opinions that, by their own terms, are “advisory in nature” and “not binding on the Commission.” Accordingly, whether any person or entity “agrees” with these Opinions is not relevant to the issue of how the Commission should rule on any issue in this proceeding.

Without waiving the foregoing, Staff Opinion 2016-012 states at page 3 that “Commission Staff is not aware of any reason why the cost of such [wireless carrier’s] attachment should not be at the same per-foot rate as attachments further down the pole.” AT&T has not challenged the per-foot rate proposed by KU and LG&E. The issue raised by AT&T witness Mr. Rhinehart is how many feet of pole space KU or LG&E should be able to charge for in the case of a wireless small-cell attachment. Rhinehart Testimony at 7-13. Mr. Rhinehart did not propose different per-foot attachment rates based on where on the pole an attachment is placed.

With regard to whether a utility must permit attachment of wireless equipment where such attachment is NESC compliant, Staff Opinion 2016-012 states that the answer depends on “a utility’s tariff language with regard to pole attachments.” The issue here is what language should be included in KU’s and LG&E’s proposed tariff—*if* pole attachment tariffs are allowed at all, which AT&T opposes (see Mark Peters Testimony at 3-5). The Staff Opinion therefore does not appear to be relevant here, since the language of a pole attachment tariff (if any) has yet to be determined. When considering what language should go into a proposed tariff, it makes sense to consider NESC industry standards, which is why AT&T witness Mr. Early referenced an NESC standard in noting that the NESC does not view conduit (riser) as obstructing the climbing space on a pole, which is a reason not to allow LG&E/KU to charge attachers for conduit space. Early Testimony at 3.

Staff Opinion 2014-014 (at 3) addresses “three questions and four issues,” and it is not clear which of these the discovery request refers to. As a general matter, Staff addressed the Commission’s jurisdiction over pole attachments by wireless carriers. AT&T has not denied such jurisdiction, but does oppose departing from the established contract-based approach and adopting generic tariffs for pole attachments. AT&T also opposes specific provisions of the proposed pole attachment tariffs, for the reasons stated in AT&T’s testimony.

At the bottom of page 4, Staff Opinion 2014-014 states that if LG&E/KU cannot negotiate a pole attachment agreement with wireless carriers, LG&E/KU “may file a revised tariff with cost support justifying its reasonableness.” AT&T notes that this departs from LG&E/KU’s own stated preference, which was “to address requests for attachments from wireless providers through the use of negotiated contracts.” Staff Op. 2014-014 at 3. Staff’s Opinion did not suggest that LG&E/KU are *required* to seek to use a tariff for wireless pole attachments. And while Staff appeared to view a tariff as a backstop to negotiated agreements when the negotiations fail, the fact is that once a tariff is in effect, it is unlikely that any more negotiated agreements would be reached. Staff’s statement that LG&E/KU’s tariffs for CATV attachments should “obviate the necessity of negotiated agreements” with wireless carriers likewise overlooks the benefits of negotiated agreements. Negotiation gives pole owners and wireless attachers the flexibility to address different situations, needs, and preferences, which can vary by attacher and can change rapidly as technology changes. For example, LG&E/KU stated in 2014 that it preferred negotiations because “wireless attachments are a recent development.” Staff Op. 2014-014 at 3. Since 2014, of course, wireless technology (including without limitation the expanding need for small cells) has continued to evolve in order to address the explosive consumer demand for wireless services. Tariff-based approaches inevitably suffer from regulatory lag and the difficulties of a one-size fits all approach, while negotiated contracts do not. That is one reason why the federal Telecommunications Act established a regime based on negotiated contracts for matters like pole attachments. *See* 47 U.S.C. §§ 251(b)(4) & 252(a). AT&T agrees with LG&E/KU’s view expressed in 2014 that the best way to address wireless attachments is through individual negotiated contracts.

Responsible person: Counsel for AT&T

3. State whether Mr. Peters agrees the Kentucky Public Service Commission has elected to regulate the rates, terms, and conditions of service for utility pole attachments of telephone service providers and that the Federal Communication Commission's rules regarding such attachments are not applicable to the rates and conditions of such service.

Response: This question is not properly addressed to Mr. Peters, who is not an attorney and did not offer any legal opinion in his testimony.

Without waiving the foregoing, AT&T agrees that the Kentucky Public Service Commission has elected to regulate the rates, terms, and conditions of service for utility pole attachments of telephone service providers. As a result, the rules of the Federal Communication Commission ("FCC") regarding such attachments are not dispositive of the issues before this Commission. However, the FCC has decades of experience with pole attachment rates, terms, and conditions, and it has comprehensively addressed pole attachments more recently than the Commission's Order in Administrative Case No. 251-50 in 1983. Accordingly, the FCC's rules, regulations, and orders relating to the same are things this Commission should consider in evaluating the open issues here.

Responsible person: Counsel for AT&T

4. Describe the unique characteristics of wireless facility attachments that would distinguish one type of pole attachment from another and make establishment of uniform rules and procedures impractical.

Response: As LG&E/KU stated in 2014, “wireless attachments are a recent development.” Staff Op. 2014-014 at 3. They still are a relatively recent development, when compared to wired attachments, and as consumer demand for wireless service continues to increase, wireless technologies and associated attachments continue to evolve.

For decades, wired attachments were limited to copper telephone cable. Then came coaxial cable and fiber optic cable, which, while different from one another and copper cable in size and weight, were all still wire strands being strung between poles.

Wireless facilities take a variety of different forms, including without limitation: (a) size and shape of antenna, (b) optimal location of antenna and other equipment on pole, and (c) size, shape and number of pieces of ancillary equipment. Since LG&E/KU's observation in 2014, wireless technology has continued to evolve, especially with the expanding need for small cells, and it is expected to continue to evolve at a rapid pace to meet the explosive consumer demand for wireless services.

As noted above, tariff-based approaches applying uniform rules and procedures inevitably suffer from regulatory lag and the difficulties of a one-size fits all approach, while negotiated contracts do not. That is one reason why the federal Telecommunications Act established a regime based on negotiated contracts for matters like pole attachments. *See* 47 U.S.C. §§ 251(b)(4) & 252(a). AT&T agrees with LG&E/KU's view expressed in 2014 that the best way to address wireless attachments is through individual negotiated contracts.

Responsible person: Mark Peters

5. State whether AT&T Kentucky currently permits cable television system operators and telecommunication carriers to place wireline attachments on its utility poles. If yes, provide a copy of the agreements that AT&T Kentucky currently has with those entities regarding such attachments and a copy of AT&T Kentucky's internal procedures, standards and rules that govern such placement.

Response: Yes, AT&T Kentucky permits cable television system operators and telecommunications carriers to place wireline attachments on its poles. AT&T Kentucky's generic proposed stand-alone 21-state structure access agreement for poles, conduit, and rights-of-way is attached as Exhibit A to this response, and its tariff for pole and anchor attachments is provided as Exhibit B. AT&T Kentucky's generic proposed agreement (Exhibit A) provides that attaching parties placing wireline attachments will adhere to the industry standards identified in Section 6.2 of the agreement, as well as the "Published Standards" identified in Section 6.2. These standards are available through the appropriate agencies, while the AT&T Structure Access Guidelines are available at https://clec.att.com/clec_documents//unrestr/hb/13%20State/250//Structure-Access-Guidelines-10012015.pdf.

AT&T objects to the remainder of the question on the grounds that it would be unduly burdensome to produce all of the requested agreements. Moreover, to the extent that AT&T Kentucky has entered into interconnection agreements under 47 U.S.C. §252 that address wireline attachments, those agreements are on file with the Commission and publicly available. Other agreements are confidential documents not generally disclosed to the public and which AT&T Kentucky objects to disclosing. Moreover, the request is not relevant or likely to lead to the discovery of relevant or admissible material. AT&T Kentucky's negotiated contracts with CATV attachers reflect the give and take between AT&T Kentucky and each individual CATV provider, which may not reflect AT&T Kentucky's own preferences and which may not be appropriate to apply generically on any and all attachers.



EX A.pdf



EX B.pdf

Responsible person: Mark Peters

6. State whether AT&T Kentucky currently permits telecommunication carriers to attach wireless facilities to its utility poles. If yes, provide a copy of each agreement that AT&T Kentucky currently has with those entities regarding such attachments and a copy of AT&T Kentucky's internal procedures, standards and rules that govern such attachments.

Response: Yes, AT&T Kentucky permits telecommunications carriers to attach wireless facilities to its poles. See the documents produced in response to request number 5 above. AT&T Kentucky's generic proposed agreement (Exhibit A) provides that attaching parties placing wireless attachments will adhere to the industry standards identified in Section 6.2 of the agreement to request 5, as well as the "Published Standards" identified in Section 6.2 and the guidelines in Section 19. These standards are available through the appropriate agencies, while the AT&T Structure Access Guidelines are available at https://clec.att.com/clec_documents/unrestr/hb/13%20State/250//Structure-Access-Guidelines-10012015.pdf.

AT&T objects to the remainder of the question on the grounds that it would be unduly burdensome to produce all of the requested agreements. Moreover, to the extent that AT&T Kentucky has entered into interconnection agreements under 47 U.S.C. §252 that address wireless attachments, those agreements are on file with the Commission and publicly available. Other agreements are confidential documents not generally disclosed to the public and which AT&T Kentucky objects to disclosing. Moreover, the request is not relevant or likely to lead to the discovery of relevant or admissible material. AT&T Kentucky's negotiated contracts with wireless attachers reflect the give and take between AT&T Kentucky and each individual wireless provider, which may not reflect AT&T Kentucky's own preferences and which may not be appropriate to apply generically on any and all attachers.

Responsible person: Mark Peters

7. State whether, in light of the revisions to KRS 278.541-.544, AT&T Kentucky's provision of pole attachment services is still regulated by the Kentucky Public Service Commission. If it is not, identify the statute(s) and regulation(s) that govern AT&T Kentucky's provision of such services. If it is, explain the applicability of KRS 278.160 and KRS 278.170 to the provision of such services.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information, in the form of legal conclusions, that is not relevant to any issue in this proceeding. No AT&T Kentucky service – pole attachment or otherwise – is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by an electric utility that indisputably is not subject to “the revisions to KRS 278.541-.544.”

Responsible person: Counsel for AT&T

8. State whether AT&T Kentucky has ever denied access to its poles in Kentucky for a wireline attachment. For each instance in which access was denied, state whether AT&T Kentucky sought authorization from the Kentucky Public Service Commission prior to such denial.

Response: AT&T objects to this request on the ground that it is overbroad, unduly burdensome, vague, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing, AT&T Kentucky evaluates requests to attach to individual poles consistent with applicable law, and AT&T Kentucky may deny a request for access as designed by the attacher or require modifications to a pole or existing attachments as a condition of application approval, where there is insufficient capacity, or for reasons of safety, reliability or generally applicable engineering purposes. Through its investigation in response to this question, AT&T Kentucky has not found any instances in which it denied a request for access; instead it has offered the attacher options to address insufficient capacity or safety, reliability, or generally applicable engineering concerns.

Responsible person: Mark Peters

9. State whether AT&T Kentucky has ever denied access to its poles in Kentucky for a wireless facility attachment. For each instance in which access was denied, state the basis for such denial.

Response: AT&T objects to this request on the ground that it is overbroad, unduly burdensome, vague, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing, AT&T Kentucky evaluates requests to attach to individual poles consistent with applicable law, and AT&T Kentucky may deny a request for access as designed by the attacher or require modifications to a pole or existing attachments as a condition of application approval, where there insufficient capacity, or for reasons of safety, reliability or generally applicable engineering purposes. Through its investigation in response to this question, AT&T Kentucky has not found any instances in which it denied a request for access; instead it has offered the attacher options to address insufficient capacity or safety, reliability, or generally applicable engineering concerns.

Responsible person: Mark Peters

10. Identify those states in which AT&T operates that regulate the rates, terms, and conditions of service for utility pole attachments and that require a pole owner to obtain regulatory or judicial authorization before denying access to its poles for a pole attachment.

Response: AT&T objects to this request on the ground that it is overbroad, unduly burdensome, vague, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. AT&T has not suggested that a pole owner should obtain regulatory or judicial authorization before denying access to its poles for a pole attachment in every instance. Rather, AT&T has stated that “if KU or LG&E seeks to deny access to a pole for any reason other than ‘insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes,’ KU or LG&E should be required to obtain approval from the Commission before denying pole access, and should be required to allow access to the pole by the requesting party until the Commission authorizes KU or LG&E to deny access for the specified reason.” Peters Direct at 6. The above enumerated reasons are those set forth in 47 U.S.C. 224(f).

Without waiving the foregoing, a list of the states that have opted to regulate the rates, terms, and conditions for utility pole attachments can be found at https://apps.fcc.gov/edocs_public/attachmatch/DA-10-893A1_Rcd.pdf. AT&T is not aware of any state that requires a pole owner to obtain regulatory or judicial authorization before denying access to a pole for a pole attachment where the reason for denial is one of those set forth in 47 U.S.C. 224(f), nor is AT&T proposing such a requirement here. That said, AT&T is not aware of any state that permits a pole owner to deny access to a pole for a pole attachment for any “other good reason” as is being proposed in this case by KU/LG&E.

11. List the electric utilities that currently permit AT&T Kentucky or AT&T Mobility to self-insure.

Response: AT&T is not aware of any electric utilities in Kentucky that currently prohibit AT&T from self-insuring with regard to pole attachments.

Responsible person: Mark Peters

12. List the electric utilities that currently do not permit AT&T Kentucky or AT&T Mobility to self-insure.

Response: AT&T is not aware of any electric utilities in Kentucky that currently prohibit AT&T from self-insuring with regard to pole attachments.

Responsible person: Mark Peters

13. Describe the insurance requirements that AT&T Kentucky imposes upon those persons requesting to attach wireline or wireless facilities to its utility poles.

Response: The language that AT&T Kentucky proposes in its pole attachment agreements to entities requesting to attach wireline or wireless facilities to its utility poles, subject to negotiation between the parties, is included in the generic 21-state structure access agreement provided in response to question 5 above.

Responsible person: Mark Peters

14. Does AT&T Kentucky object to the requirement that all facilities that it attaches to LG&E's poles must be tagged at the time of placement or within 180 days of the proposed effective date of the PSA Rate Schedule? If yes, explain why.

Response: Yes, in part. AT&T Kentucky does not object to tagging its facilities (other than service drops) at the time of placement on a going forward basis, but it does object to going back and tagging all existing attachments within 180 days of the proposed effective date of the PSA Rate Schedule. Such a requirement would be unduly costly and overly burdensome, and the cost or burden would far outweigh any purported benefit. Moreover, it would be a deviation from the decades-long practice between AT&T Kentucky and KU/LG&E. To the extent tagging of existing facilities (other than service drops, which should not be required) is required, AT&T Kentucky should only be required to tag them the next time it performs work on that attachment. Service drops should be exempt from a separate tagging requirement, as the ownership of that drop can be determined easily by looking at the distribution terminal to which it is connected.

Responsible person: Mark Peters

15. AT&T of Kentucky's Motion for Intervention states the motion was made "on behalf of itself and affiliated entities." Motion, p. 1. Identify each and every subsidiary or affiliate of AT&T that AT&T of Kentucky represents in this proceeding.

Response: As noted in their respective testimony, each of AT&T's witnesses is employed by AT&T Services, Inc., which provides support to various AT&T entities including, without limitation, AT&T Kentucky and AT&T Mobility. AT&T's participation in this case is on behalf of any and all AT&T entities that currently, or in the future, would be subject to the terms and conditions of the proposed tariff, including without limitation AT&T Kentucky and AT&T Mobility.

Responsible person: Counsel for AT&T

16. AT&T of Kentucky's motion for intervention references the fact that BellSouth Telecommunications, LLC does business as AT&T of Kentucky. Please describe the commercial relationships for pole attachment space or services between LG&E or KU and BellSouth of Kentucky, LLC d/b/a AT&T of Kentucky.

Response: AT&T is unaware of any entity that does business as "AT&T of Kentucky." AT&T Kentucky, which is a dba of BellSouth Telecommunications, LLC, currently has joint use agreements for pole attachments with KU and LG&E, respectively. KU and LG&E already have copies of those agreements.

Responsible person: Counsel for AT&T

17. State whether AT&T Kentucky uses the same cable to support AT&T Kentucky's local exchange carrier operations and AT&T Mobility's wireless operations. Explain.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information that is not relevant to any issue in this proceeding. No AT&T Kentucky service or operation is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by KU and LG&E.

Without waiving the foregoing, AT&T Kentucky uses its cables and other facilities to provide services to its customers, including without limitation wireless service providers. To the extent that AT&T Kentucky offers or provides services to wireless service providers, including without limitation AT&T Mobility, it does so at arm's length and pursuant to interconnection agreements, tariffs, Service Guides, and/or other arrangements in compliance with applicable law.

Responsible person: Counsel for AT&T

18. State whether AT&T Kentucky or any of AT&T Kentucky's affiliates have installed wirelines to LG&E's poles or structures solely to support the wireless operations of AT&T Mobility and any other AT&T Kentucky affiliate. If yes, state the number of attachments and the amount of wireline (in miles) that has been installed solely to support these operations.

Response: AT&T Kentucky objects to this request on the grounds that it seeks information that is not relevant to any issue in this proceeding. No AT&T Kentucky service or operation is at issue in this proceeding. Instead, this proceeding addresses proposed tariffs addressing services offered by KU and LG&E. Additionally, AT&T Kentucky uses its "wirelines," including those "installed . . . to KU's poles or structures" to offer or provide services to its customers, including without limitation wireless and landline telecommunications service providers. To the extent that AT&T Kentucky offers or provides services to wireless or landline telecommunications service providers, including without limitation any of its affiliates, it does so at arm's length and pursuant to interconnection agreements, tariffs, Service Guides, and/or other arrangements in compliance with applicable law.

Responsible person: Mark Peters

19. State the average height of AT&T Kentucky and affiliates' small-cell antennas.

Response: AT&T objects to this request on the ground that it is vague and ambiguous as to the meaning of "average height." AT&T interprets "average height" to mean the average height on the pole of AT&T Kentucky and its affiliates' small-cell antennas. AT&T further objects to this request on the ground that it seeks information that is not relevant to any issue in this proceeding nor likely to lead to the discovery of relevant or admissible material. Without waiving the foregoing, neither AT&T nor any of its affiliates have deployed small-cell antennas on poles in Kentucky yet. Therefore, there is no basis to calculate an "average height." That said, many variables could affect the location on the pole of an antenna, including but not limited to network coverage needs; location, condition, type and vintage of pole; the particular small cell equipment to which the antenna is attached; and aesthetics requirements. As a general matter, AT&T prefers to locate its antenna at the pole top, but it also has configurations that place the antenna mid-pole. At present, AT&T anticipates that its antennas will be located between 25 and 45 feet above ground, but that may change as the small cell technology continues to evolve. This is yet another reason why the one-size fits all approach of a tariff is not desirable for pole attachments, and why negotiated contracts are, as the federal Telecommunications Act and the FCC have recognized, the preferred approach.

Responsible person: Kevin Early

20. Describe AT&T Kentucky's current policy regarding performing pole loading analysis when attaching facilities to LG&E/KU owned poles.

Response: AT&T Kentucky's policy is that for each type of attachment it proposes to deploy, except for service drops, it will perform a pole loading analysis on at least one pole with the same or similar characteristics, including, without limitation, category, height, and type. In addition, AT&T Kentucky's policy is that it will perform a pole loading analysis on all dead-end and corner poles.

Responsible person: Mark Peters

21. Describe AT&T Kentucky's current policy regarding the performance of pole loading studies for attachments to its own poles.

Response: AT&T Kentucky's policy is that for each type of attachment it proposes to deploy, except for service drops, an attacher shall perform a pole loading analysis on at least one pole with the same or similar characteristics, including, without limitation, category, height, and type. In addition, AT&T Kentucky's policy is that an attacher shall perform a pole loading analysis on all dead-end and corner poles.

Responsible person: Mark Peters

22. State whether there have been any incidents in which LG&E denied access to pole space to AT&T and did not offer to replace the utility pole in question or permit the rearrangement of facilities to accommodate the proposed attachment. If yes, describe each incident and provide the date of occurrence.

Response: AT&T Kentucky is not aware of any such instances.

Responsible person: Mark Peters

Respectfully submitted,

/s/ Cheryl R. Winn

Cheryl R. Winn

Waters Law Group, PLLC

12802 Townepark Way, Suite 200

Louisville, KY 40243

Telephone: (502) 425-2424

Facsimile: (502) 425-9724

Email: crwinn@waterslawgroup.com

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