

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

IN THE MATTER OF:

ELECTRONIC INVESTIGATION OF THE
PROPOSED POLE ATTACHMENT TARIFFS
OF INCUMBENT LOCAL EXCHANGE
CARRIERS

CASE NO. 2022-00108

**PETITION OF AT&T KENTUCKY
FOR CONFIDENTIAL TREATMENT**

Pursuant to KRS 61.878, KAR 5:001 Section 13, and 807 KAR 5:001 Section 22, BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (“AT&T Kentucky”) respectfully submits this Petition for Confidential Treatment and Request for Deviation from Filing Requirements, for the Joint Use Agreements between AT&T and the various electric utilities, municipal power entities, RECCs or other third-party attachers (individually “JUA” or collectively “JUAs”)¹, which were requested by Item No. 10 of the Commission Staff’s Second Requests for Information.

While public records generally are open for inspection, *see* KRS §61.872(1), several exceptions exist. *See Id.* One such exception is that information “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records,” is subject to inspection “only upon order of a court of competition jurisdiction” *See* KRS §61.878(1)(c)(1). This exemption applies to the JUAs that are the subject of this Petition.

¹ A list of the agreements is provided as Exhibit 1.

The information for which confidential treatment is sought is neither generally known outside AT&T Kentucky nor provided to the public. The internal use of this information is restricted to only those employees who have a legitimate business reason for reviewing it, and AT&T Kentucky attempts to control the dissemination of this information through all reasonable means, including this Petition.

The information to be protected, if disclosed, would provide competitors and potential competitors with important information about AT&T Kentucky and its operations, which competitors would be unable to obtain otherwise. Armed with this information, a competitor could develop entry, marketing, or other strategies, which would likely ensure it success in competing with AT&T Kentucky. Further, in a competitive market, any information gained about a competitor can be used to that competitor's detriment. Such an unfair competitive advantage skews the marketplace and prevents the development of true competition to the ultimate detriment of the consumer.

AT&T Kentucky seeks confidential protection for the entirety of each JUA given the pervasive nature of confidential information contained in each document. The JUAs are replete with detailed terms and conditions resulting from negotiations between the parties to each agreement addressing matters including, but not limited to, maintenance, access, risk allocation, insurance and applicable rates and fees to be paid by the parties. Such information could be used by other entities to have an unfair advantage in negotiating terms to the detriment of AT&T Kentucky placing it at a competitive disadvantage in ongoing negotiations with attachers for renewal of existing agreements or entry into new agreements.

The Commission has previously granted confidential treatment to similar pole attachment agreements between joint users and/or third-parties to avoid an unfair commercial advantage to a

utility's competitors. *See, e.g., In the Matter of Application of Kentucky Utilities for an Adjustment of its Electric Rates*, Case No. 2014-00371, Order Regarding Request for Confidential Treatment to KIUC's Initial Request for Information (Ky. PSC Dec. 2, 2015); *see also In the Matter of Application of Louisville Gas & Electric Company for an Adjustment of its Electric Rates*, Case No. 2016-00371, Order Regarding Request for Confidential Treatment to KCTA's First Request for Information (Ky. PSC Dec. 10, 2018). In light of the facts concerning the JUAs and consistent with the Commission's treatment of similar joint use agreements in past years, AT&T Kentucky requests the entirety of each of the JUAs remain unavailable to the general public as contemplated by 807 KAR 5:001 Section 13(2)(a)(3)(b). If the Commission disagrees, AT&T Kentucky requests the Commission hold an evidentiary hearing to protect AT&T Kentucky's due process rights and to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *See Utility Regulatory Comm'n v. Kentucky Water Service Co, Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

Given AT&T Kentucky has sought confidential treatment of each JUA in its entirety, a redacted copy has not been filed or uploaded with AT&T Kentucky's responses to the PSC Staff's Second Requests for Information.² To the extent required, AT&T Kentucky requests permission to deviate from filing requirements as described in 807 KAR 5:001 Section 13, pursuant to 807 KAR 5:001 Section 22. AT&T Kentucky has provided a list of the JUAs with this petition as Exhibit 1.

If any of the JUAs becomes publicly available because it is no longer competitively sensitive, AT&T Kentucky will inform the Commission in writing and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

² AT&T Kentucky is compiling responsive JUAs and will file confidential marked versions of the agreements.

Accordingly, for the reasons explained above, AT&T Kentucky respectfully requests that the Commission issue an Order granting Confidential Treatment for a period of ten years after the expiration or termination of the JUAs requested by PSC Staff and permitting deviation from the filing requirements for a redacted copy of each JUA.

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
CO-COUNSEL FOR AT&T KENTUCKY

-and-

John T. Tyler
Assistant Vice President – Senior Legal Counsel
AT&T Services, Inc.
One CNN Center, SW11423C
Atlanta, GA 30303
Telephone: (404) 893-7944
Email: john.tyler@att.com
CO-COUNSEL FOR AT&T KENTUCKY

FILING NOTICE AND CERTIFICATE

This 2nd day of June, 2022, the undersigned hereby certifies that a copy of the foregoing has been filed via the Commission’s electronic filing system, served electronically upon all parties of record through the same, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission’s July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Cheryl R. Winn