

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	
PROPOSED POLE ATTACHMENT TARIFFS OF)	Case No. 2022-00108
INCUMBENT LOCAL EXCHANGE CARRIERS)	

AT&T'S RESPONSE TO
COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION

FILED: May 5, 2022

AT&T Responses To Commission Staff's First Request For Information

General Objections:

AT&T objects to each request to the extent it purports to require the release of information which is protected by the attorney-client privilege, the attorney work product doctrine, is prepared in anticipation of litigation or trial, or is otherwise protected by any other discovery privilege recognized under the Federal Rules of Civil Procedure of the laws of the Commonwealth of Kentucky. AT&T objects to compiling information or producing documents not maintained in the ordinary course of business; any request to the extent it requires AT&T to provide information that may be obtained by Staff from another source that is more convenient, less expensive or less burdensome. AT&T objects to each request to the extent that it is vague, ambiguous, overly broad, unduly burdensome, oppressive or impossible to answer fully. AT&T objects to each request to the extent that it seeks information which is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible information.

Subject to and without waiving these objections, AT&T responds to the individually enumerated requests as follows:

1. **Refer to AT&T Kentucky's proposed tariff, PSC KY No. 2A, Original Page 40, A5.13.3 A. Please confirm \$5.52 per foot of usable space is an annual rate.**

AT&T Response: The stated rate is an annual rate, specifically, the 2022 annual rate.

Responsible Person: Daniel Rhinehart, Director - Regulatory

2. **Refer to AT&T Kentucky's proposed tariff, PSC KY No. 2A, Original Page 42, A5.13.4 2.2. With reference to the final sentence, please explain what "does not apply in the reverse pre-emption state of Kentucky."**

AT&T Response: The quoted phrase includes a typographical error. The sentence should be corrected as follows: "Note that this Agreement, by virtue of the following states' election to reverse pre-empt the Federal Communications Commission's (FCC) authority regarding pole attachments, does not apply in and does not include Arkansas, California, Illinois, Louisiana, Michigan, or Ohio, but does ~~not~~ apply in the reverse pre-emption state of Kentucky."

Responsible Person: Daniel Rhinehart, Director - Regulatory

3. **Refer to AT&T Kentucky's proposed tariff, PSC KY No. 2A, Original Page 66, 18.1 – Recurring Rates and One-Time Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. Explain why the rates have not been included in the proposed tariff.**

AT&T Response: AT&T Kentucky's annual recurring rates are included in the tariff at proposed tariff, PSC KY No. 2A, Original Page 40, Section A5.13.3. The web link at Original Page 66, section 18.1 is provided as a convenient, reliable, single source for our Customers who often operate

in many states. Rates change yearly and are updated on this site. AT&T's rates applicable in Kentucky will be updated annually in Section A5.13.3 of the tariff.

Responsible Person: Daniel Rhinehart, Director - Regulatory

4. Refer to AT&T Kentucky's proposed tariff, PSC KY No. 2A, Original Page 66, 18.2.1 – Unauthorized Attachments. Explain the rationale and justification for charging back rent, including interest, up to five times the annual rent per attachment for each unauthorized attachment.

AT&T Response: AT&T Kentucky's Tariff language is consistent with well-established precedent of this Commission and the Federal Communications Commission ("FCC") regarding this issue. Over a decade ago, in April 2011, the FCC determined it would consider contract-based penalties for unauthorized attachments to be presumptively reasonable if they do not exceed those implemented by the Oregon Public Utilities Commission ("Oregon PUC"), including but not limited to: (a) an unauthorized attachment fee of five times the current annual rental fee per pole if the pole occupant does not have a permit and the violation is self-reported or discovered through a joint inspection; and (b) an additional sanction of \$100 per pole if the violation is found by the pole owner in an inspection in which the pole occupant has declined to participate. (*See In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, WC Docket Number 07-245, GN Docket No. 09-51, FCC Rcd, Volume 26, No 7, pages 5291-5292 at ¶115 (April 7, 2011).) The FCC found the Oregon system of fines had been effective in reducing the incidence of unauthorized attachments.

The FCC noted that the Oregon sanctions are part of a larger system that also affords protections to Attaching Parties that operate in good faith. Thus, the FCC anticipated that, like the Oregon system, a reasonable pole attachment agreement also will contain provisions that provide notice to Attaching Parties, a fair opportunity to remedy violations, and a reasonable process for resolving factual disputes that may arise. AT&T Kentucky has provided such opportunities to Attaching Parties in Section 18.2, and it provides a reasonable process for resolving factual disputes that may arise in Sections 29.3, 29.5, 29.6, and 29.7 of the proposed tariff.

Moreover, the Commission has repeatedly approved Interconnection Agreements (ICAs) with competitive local exchange carriers that contain this same language. *See* (1) Interconnection and/or Resale Agreement Under Section 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way Non-FCC States between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Lingo Communications of Kentucky, LLC, approved by the Commission on December 14, 2021; (2) Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell

Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, and Simwood Inc., approved by the Commission on July 16, 2020 (also applies to the states of Arkansas, Florida, Missouri, Ohio, Texas, and Wisconsin); (3) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and CBTS Technology Solutions, LLC, in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas, CBTS Technology Solutions, Inc. in the state of Michigan, Cincinnati Bell Any Distance, in the states of Alabama, California, Louisiana, Mississippi, and Wisconsin, Cincinnati Bell Extended Territories LLC, in the states of Indiana, Kentucky and Ohio, approved by the Commission on February 19, 2020 (also applies in the states of Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin); (4) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Metro FiberNet, LLC, approved by the Commission on January 7 2019; and (5) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Metro Communications, LLC, approved by the Commission on June 29, 2018.

Responsible Person: Daniel Rhinehart, Director - Regulatory

5. **Refer to AT&T Kentucky’s proposed tariff, PSC KY No. 2A, Original Page 66, 18.4 – Late Fees.**
 - a. **Explain the reasoning and justification for charging interest at 1.5 percent per month instead of establishing a late payment charge.**

AT&T Response: Charging an interest rate for late payments is typical and customary in the telecommunications industry. The Commission has approved interconnection agreements with

interest rates applicable for past due amounts. See Section 11.4 of the General Terms and Conditions in the approved ICAs cited in response to Request for Information 4 stating:

“If any charge incurred by AT&T-21STATE under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable AT&T-21STATE intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.’

AT&T has not developed billing capabilities to implement Section 18.4 Late Fees and therefore does not presently impose late payment interest for pole attachment and conduit occupancy billing.

Responsible Person: Daniel Rhinehart, Director - Regulatory

5. Refer to AT&T Kentucky’s proposed tariff, PSC KY No. 2A, Original Page 66, 18.4 – Late Fees.

b. Explain whether the interest charges on any balance that remains unpaid would be simple or compound interest.

AT&T Response: Consistent with AT&T interconnection agreements approved by the Commission, interest rate charges, when implemented are expected to be compounded daily.

Responsible Person: Daniel Rhinehart, Director - Regulatory

5. Refer to AT&T Kentucky’s proposed tariff, PSC KY No. 2A, Original Page 66, 18.4 – Late Fees.

c. Explain why 807 KAR 5:006, Section 9(3)(h), which states that a late payment charge may be assessed only once on a bill for rendered services, would not apply to the interest charge.

AT&T Response: 807 KAR 5:006, Section 9(3)(h) does not apply in that AT&T is not proposing a late payment charge.

Responsible Person: Daniel Rhinehart, Director - Regulatory

6. Explain how AT&T Kentucky’s tariff addresses charges, if any, for make ready cost for poles that are not a red tagged poles that are replaced with a new utility pole to accommodate the new attacher’s attachment, and identify where in the tariff that issue is addressed.

AT&T Response: Section 8.8 (Original Page 56) states that “AT&T will present to Attaching Party, no more than 14 days after providing the response required by Section 8.4, a detailed estimate of charges directly associated with performing all necessary Make-Ready Work identified during the Non-OTMR Survey and involving AT&T-owned facilities (i.e., Pole replacements and subsequent transfer of AT&T-owned cable or AT&T cable rearrangements).”

Sections 8.8.4 and 8.8.5 (Original Page 56) indicate that AT&T will determine the actual costs of the work it performs and then will true up the billing by issuing an invoice for the additional costs or refund any overpayment. Section 8.9 (Original Pages 57 and 58), and specifically section 8.9.4 (Original Page 58) provides for payments to AT&T and similar true ups to AT&T’s actual costs.

Responsible Person: Daniel Rhinehart, Director - Regulatory

7. **Explain why the pro-rata payment in Section 9 of AT&T Kentucky’s proposed service agreement is discretionary; identify and explain what criteria AT&T Kentucky would apply to determine whether a new attacher would be required to make such a payment, e.g. would it always be required if the conditions discussed therein are met; and explain how the pro-rata payment will be applied in a non-discriminatory manner if it is discretionary.**

AT&T Response: AT&T is following the cost-causer-pays concept long decided by the FCC. See FCC Decision 96-325 in CC Docket No. 96-98/CC Docket No. 95-185 (Adopted August 1, 1996, Released August 8, 1996, the “Local Competition Order” paragraphs 1207 to 1216.) Therein, the FCC laid out a clearly discretionary process whereby the costs of creating extra capacity on poles may be collected from subsequent users of the created capacity. The FCC suggested how the costs of the newly-created capacity could be attributed to additional users of the capacity (e.g., proportion of newly-created capacity used by each user taking advantage of the new capacity). To the extent AT&T were to create additional capacity for itself that was subsequently used by another entity, AT&T would follow the allocation of fully documented, depreciated costs suggested by the FCC in paragraph 1211. Under the FCC decision, when new capacity is created, the initial cost causer (if there is only one) has the right, but not the obligation, to ask other later users of that capacity to share the costs. Moreover, Section 9 has a reciprocal provision whereby any Attaching Party, as an initial cost causer, has the right to pursue compensation from a later user, which may include AT&T.

Responsible Person: Daniel Rhinehart, Director - Regulatory

8. **Explain what standards AT&T Kentucky would apply when determining what security would be reasonable pursuant to Section 27.1 of AT&T Kentucky’s proposed service agreement, and explain how the requirement will be applied in a non-discriminatory manner.**

AT&T Response:

This term is relatively new to AT&T’s template agreement for access to its Structure, and AT&T has not had occasion to invoke it with any entities who have executed agreements with the term included. In the event AT&T becomes aware of any lien, claim, or demand placed by an entity hired by an Attaching Party, AT&T will invoke this provision and require security for the full amount of such lien, claim, or demand.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 9. Explain whether the dispute resolution provisions in Section 29 of AT&T Kentucky’s proposed service agreement would limit the Commission’s authority to address disputes within the Commission’s jurisdiction.**

AT&T Response: After Parties comply with the provisions set forth in Section 29, either Party may go to the Commission to address issues within the Commission’s jurisdiction. See Section 29.6.2 (Original Page 79).

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 10. Explain whether a dispute over the scope or estimated cost of make-ready would be considered a billing dispute pursuant to Section 29.4 of AT&T Kentucky’s proposed service agreement, and if so, explain the effect of such a dispute on the 14 day window for paying estimated make ready costs.**

AT&T Response: While AT&T’s tariff does not include a provision for an Attaching Party to dispute an estimate, AT&T and its customers regularly resolve operational issues without resorting to dispute provisions in an agreement. In the scenario posed, AT&T would consider the disputing party’s concerns and discuss the rationale for the estimate amount in an attempt to resolve the concern. As long as the party remained engaged in the discussions, i.e., participated in communications with AT&T on the matter, AT&T would not withdraw the estimate or cancel the application. However, failure to respond or engage would send a clear signal to AT&T that the party no longer desired to proceed with the application. For administrative efficiency, AT&T does not withdraw estimates not accepted within 14 days. Rather, AT&T reserves the right to cancel the application 45 days after presentation of an estimate to facilitate the efficient management of the volume of applications received annually.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 11. a. Identify each account and subaccount in which the costs of utility poles in service are recorded.**

AT&T Response: AT&T records its investment in poles in service in primary Account 2411 Poles and subaccount 2411.1C Pole Lines.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 11. b. Provide a narrative description of the costs that are recorded in each such account, including a description of the type and vintage of poles for which costs are recorded in the account (e.g., wood poles placed in service in 2005) and a description other plant, if any, for which costs are recorded in the account.**

AT&T Response: AT&T follows the account structure of the FCC’s Uniform System of Accounts and account 2411 which is described as follows: “This account shall include the original cost of poles, crossarms, guys and other material used in the construction of pole lines and shall include the cost of towers when not associated with buildings. This account shall also include the cost of clearing pole line routes and of tree trimming but shall exclude the cost of maintaining previously cleared routes.”

AT&T does not maintain detailed breakdowns of types of poles or components (e.g., investment in crossarms) in its records. No other plant types are recorded in subaccount 2411.1C.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 11. c. Provide an Excel spreadsheet with formulas, columns, and rows unprotected and fully accessible showing the plant in service balance of each such account at the end of each of the last five fiscal years.**

AT&T Response: See Attached File.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 12. a. Identify each account and subaccount in which accumulated depreciation for poles in service is recorded.**

AT&T Response: AT&T records its accumulated depreciation associated with poles in service in primary Account 3100 and subaccount 3100.1X Poles - Pole Lines.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 12. b. Provide a narrative description of how the accumulated depreciation in each such account is calculated.**

AT&T Response: AT&T does not maintain a distinct narrative for accumulated depreciation subaccount 3100.1X. Under our group depreciation methodology, cost is aggregated, and depreciation expense is calculated at the entity (e.g., BellSouth) level and the corresponding depreciation expense and associated accumulated depreciation is allocated down to the State (e.g. Kentucky). Net accumulated depreciation equals the beginning of period total prior accumulations plus accrued depreciation expense, less pole retirements less cost of removal.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 12. c. Identify the corresponding plant account or accounts for each account in which accumulated depreciation for poles is recorded.**

AT&T Response: AT&T records its investment in poles in service in primary Account 2411 Poles and subaccount 2411.1C Pole Lines. AT&T records its accumulated depreciation associated with poles in service in primary Account 3100 and subaccount 3100.1X Poles - Pole Lines.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 12. d. Provide an Excel spreadsheet with formulas, columns, and rows unprotected and fully accessible showing the balance of each such account at the end of each of the last five fiscal years.**

AT&T Response: See file provided in response to Information Request 11.c.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 13. a. Identify the depreciation rates currently used to calculate depreciation expense for each account containing utility pole costs.**

AT&T Response: AT&T's present pole depreciation rate is 3.70%.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 13. b. Identify the useful lives of the poles used to calculate each such depreciation rate.**

AT&T Response: AT&T's presently assumed useful life for poles is 27 years.

Responsible Person: Daniel Rhinehart, Director - Regulatory

- 14. Identify the total number of poles owned or controlled by AT&T Kentucky, and provide a breakdown of those poles based on the year they were installed.**

AT&T Response:

Year Placed	Pole Count
1990 and Prior	183,560
1991	10,672
1992	9,221
1993	8,696
1994	6,493
1995	7,880
1996	4,118
1997	4,277
1998	3,903
1999	4,290

2000	3,992
2001	3,029
2002	2,737
2003	2,405
2004	7,101
2005	6,702
2006	7,612
2007	3,464
2008	3,052
2009	4,274
2010	3,452
2011	3,336
2012	2,915
2013	3,127
2014	2,796
2015	2,933
2016	2,930
2017	3,475
2018	3,337
2019	3,157
2020	3,260
2021	2,320
Grand Total	324,516

Responsible Person: Daniel Rhinehart, Director - Regulatory

15. Describe in detail the current plan or policy regarding the inspection and replacement of aging or damaged poles in AT&T Kentucky’s system, and provide a copy of any such plan or policy that has been memorialized in writing.

AT&T Response: AT&T itself uses and requires by agreement and this tariff that Attaching Parties use, the current version of the Blue Book Manual of Construction Procedures when performing work aloft, among other things. This standard requires that any party working aloft conduct an inspection of the poles included in the area where work will be performed to ensure the serviceability of such poles. In addition, before approving applications to attach to its poles, AT&T engineering forces perform a field survey, which also includes a check for serviceability of the poles. Furthermore, electric utilities attached to AT&T poles perform inspections of their facilities and when necessary, may perform inspections for the serviceability of AT&T poles. If and when any pole has been identified as unserviceable, by external entities or AT&T, following receipt of notification from the inspector AT&T’s engineering team verifies the deficiency and designs a project to remediate the issue.

Responsible Person: Daniel Rhinehart, Director - Regulatory

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF WILLIAMSON)

The undersigned, Daniel Rhinehart, being duly sworn, deposes and says that he is Director-Regulatory, AT&T, and that he has personal knowledge of the matters set forth in the responses contained herein and that they are true and correct to the best of his information, knowledge and belief.


Daniel Rhinehart

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 5th day of May 2022


Notary Public

Notary Public, ID No. _____

(Seal)



My Commission Expires:

4/20/2025

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2022, I electronically filed the foregoing document using the Kentucky Public Service Commission's electronic system for filing, which sent notice of filing to counsel of record.



John T. Tyler