

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

REBUTTAL TESTIMONY OF DANIEL RHINEHART
ON BEHALF OF AT&T

July 11, 2022

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Daniel P. Rhinehart. My business address is 9505 Arboretum Blvd., Room 9S12, Austin, Texas 78759.

Q. BY WHOM ARE YOU EMPLOYED, AND WHAT IS YOUR JOB TITLE?

A. I am employed by AT&T Services, Inc., an entity that provides support services for various AT&T entities. My job title is Director – Regulatory. This testimony is submitted on behalf of AT&T Kentucky (BellSouth Telecommunications, LLC, d/b/a/ AT&T Kentucky, “AT&T”).

Q. WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?

A. My responsibilities include participating in regulatory dockets and litigation matters, on behalf of various AT&T entities including AT&T Kentucky, with a focus on cost analysis and universal service matters. I direct the development of AT&T’s pole attachment and conduit occupancy rates and I support analysis of third-party pole attachment rates.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold Bachelor of Science in Education and Master of Business Administration degrees and I have completed numerous training courses covering the topics of separations, telephone accounting, and long run incremental costs.

I have been employed by AT&T and its predecessors since 1979 and have held several positions with increasing responsibilities in the finance and regulatory areas. My current responsibilities include, among other things, supporting various AT&T entities in the areas of cost analysis and pole attachment and conduit occupancy rates. I direct the

1 development of pole attachment and conduit occupancy rates charged by AT&T's
2 incumbent local exchange carriers ("ILECs") pursuant to Federal Communications
3 Commission ("FCC") and state formulas, including the calculation of the rental rates that
4 AT&T's ILECs charge cable and competitive local exchange carrier ("CLEC") attachers
5 across AT&T's ILEC 21-state footprint. I also review and evaluate the reasonableness of
6 pole attachment rates other entities propose to charge various AT&T entities. I have
7 testified in federal and state cases regarding the reasonableness of a variety of rates and
8 charges during the 43 years that I have worked in the telecommunications industry. My
9 curriculum vitae is provided as Exhibit DPR-1.

10 **Q. PLEASE DESCRIBE THE RELEVANT PROCEDURAL BACKGROUND**
11 **LEADING UP TO THE FILING OF YOUR TESTIMONY?**

12 A. AT&T filed its proposed tariff on February 28 in compliance with new rules promulgated
13 by the Commission. Various parties filed comments in Commission Docket 2022-0064
14 and, subsequently, the Commission established this docket and three others to consider
15 the filed tariffs, comments, discovery, and testimony related to tariffs various pole
16 owners filed. The only party who filed objections to AT&T's tariff was the Kentucky
17 Broadband and Cable Association ("KBCA"). Those objections, filed March 17, 2022,
18 were limited to three issues that KBCA described as: 1) sanctions for declining to
19 participate in an inventory survey; 2) a 24-month claims limitations; and 3) certain
20 indemnity provisions. KBCA subsequently issued two rounds of discovery to AT&T and
21 has now filed testimony in this case that seems to abandon the first two issues, briefly
22 address the indemnity issue, and then vastly expands its position, raised via discovery
23 requests and objections to tariffs other than AT&T's tariff, on terms related to
24 replacement costs of non-red-tagged poles.

1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. In that KBCA sought permission to file briefs that could address issues not raised in
3 witness testimony, I will address all three initial issues KBCA raised and will provide
4 significant evidence regarding why KBCA’s proposition that pole owners and their
5 customers should bear most of the costs related to non-red-tagged pole replacements is
6 completely inappropriate and, therefore, should be rejected by the Commission I will
7 address certain information request responses KBCA provided and will conclude by
8 indicating what changes AT&T has agreed to make to its tariff as a result of discovery
9 AT&T received in this Case.

10 **KBCA’S CONCERN OVER INVENTORIES AND SANCTIONS IS MISPLACED**

11 **Q. PLEASE BRIEFLY DESCRIBE KBCA’S ISSUE STATEMENT RELATED TO**
12 **INVENTORIES AND SANCTIONS IN SECTION 18.2.2 OF AT&T’S TARIFF.**

13 A. KBCA expresses concern that if it were not to participate in an inventory survey, it would
14 be subject to unauthorized attachment sanctions or penalties of \$100 for each
15 unauthorized attachment. See KBCA’s March 17, 2022 Objections at page 3.

16 **Q. HOW DOES AT&T RESPOND TO KBCA’S CONCERN REGARDING**
17 **SANCTIONS?**

18 A. KBCA’s concern is misplaced. As AT&T explained in its April 14, 2022, response to
19 KBCA’s objections, attached hereto as Exhibit DPR-2, AT&T’s view of “participation”
20 in the inventory process is quite permissive, and the focus of tariff Section 18.2 is on
21 unauthorized attachments. (Exhibit DPR-2, pp. 1 to 6) AT&T’s tariff language and
22 sanction structure are consistent with longstanding FCC precedent pertaining to
23 unauthorized attachments. AT&T explains Attaching Parties have reasonable ways of
24 avoiding any sanction by either establishing that AT&T has already provided them with
25 permission to attach to the specific pole or by promptly seeking such permission. Given

1 our explanation and the fact that the Commission has previously approved
2 interconnection agreements (“ICAs”) with the same language, the Commission should
3 approve AT&T’s tariff as filed.

4 **AT&T’S CLAIMS LIMITATION IS REASONABLE**

5 **Q. PLEASE BRIEFLY DESCRIBE KBCA’S ISSUE STATEMENT RELATED TO**
6 **CLAIM LIMITATIONS IN SECTION 29.1 OF AT&T’S TARIFF.**

7 A. KBCA states that it objects to AT&T’s tariff term that requires any claims under the tariff
8 to be brought no more than 24 months from the date of the occurrence which gives rise to
9 a dispute. See KBCA’s March 17, 2022 Objections at page 3. KBCA offered no
10 alternative language as part of its objection or in prefiled testimony.

11 **Q. HOW DOES AT&T RESPOND TO KBCA’S CONCERN REGARDING CLAIM**
12 **LIMITATIONS?**

13 A. The Commission has previously approved ICAs with structure access attachments that
14 include similar language, and approval of AT&T’s tariff will ensure that all Attaching
15 Parties are treated the same regardless of whether they have an ICA, a Stand-Alone
16 Structure Access Agreement, or are attached to AT&T’s Structure pursuant to AT&T’s
17 tariff. AT&T’s language is reasonable, and because it is reciprocal, both parties are
18 equally protected. See Exhibit DPR-2, pp. 6 to 8 for the full text of AT&T’s response to
19 KBCA on this topic.

20 **AT&T’S INDEMNITY PROVISION IS REASONABLE**

21 **Q. PLEASE BRIEFLY DESCRIBE KBCA’S ISSUE STATEMENT RELATED TO**
22 **INDEMNITY IN SECTION 22.2 OF AT&T’S TARIFF.**

23 A. KBCA “objects to any standard that would hold an attacher responsible for the
24 negligence of a pole owner.” KBCA’s testimony of Mr. Jerry Avery is similarly terse
25 claiming “[t]his requirement is unjust and unreasonable” and that “[n]o party should ever

1 bear the responsibility of the negligence of another party...” Mr. Avery concludes his
2 five lines of testimony by calling indemnity provisions “nonsensical and deeply unfair.”

3 (See Testimony of Jerry Avery at p. 5.)

4 **Q. IS KBCA’S POSITION REGARDING INDEMNITY WELL FOUNDED OR**
5 **REASONABLE?**

6 A. No. As described more fully in AT&T’s response to KBCA’s objections (Exhibit DPR-2
7 at pp. 8 to 11), the indemnity provision that KBCA complains about is related to an
8 Attaching Party’s work (emphasis added) in, on or in the vicinity of AT&T’s Structure
9 (e.g., poles, ducts, and conduit) and/or Attaching Party’s access to or use of AT&T’s
10 Structure. AT&T’s Structure is deployed throughout its service territory, and it is
11 impractical for any Structure owner to know the exact condition of all its Structure on an
12 ongoing, comprehensive, and instantaneous basis because Structure is subjected to
13 natural and man-made environmental factors which result in immediate changes. For
14 example, poles get hit by cars, suffer damage due to weather, animals, or insects.
15 Additionally, the underground environment may include toxic gases and liquids which
16 enter through whatever access points those dangerous substances may find, without the
17 conduit owners’ knowledge. As such, Attaching Parties have an obligation to
18 themselves, their employees, and to the public, among others, to operate safely, both aloft
19 and underground. This includes a reasonable expectation that an Attaching Party will
20 carefully examine a pole or conduit and its environment for safety issues before working
21 on, in, or near AT&T’s Structure.

22 Attaching Parties who fail to operate safely or cause unsafe conditions because of their
23 operations must reasonably be expected to assume potential liability. This makes

1 common sense, especially in a litigious society where every possible person or entity that
2 might in any way be found culpable can and often will be sued.

3 AT&T makes two additional points in its response to KBCA's objections. First, similar
4 indemnity provisions are in ICAs that the Commission previously approved. Second, the
5 indemnity provisions in AT&T's tariff are reciprocal – AT&T will indemnify Attaching
6 Parties pursuant to its tariff's terms if AT&T's work on, in, or in the vicinity of AT&T's
7 Structure leads Attaching Party to be named in a lawsuit. Thus, the Commission should
8 find the indemnity provisions of AT&T's tariff reasonable and should approve AT&T's
9 tariff as written.

10 **ALLOCATION OF COSTS FOR REPLACEMENT OF NON-RED-TAGGED POLES**

11 **Q. WHAT IS A NON-RED-TAGGED POLE?**

12 A. Based on the definition of red-tagged pole in the Commission's recently adopted rules, a
13 non-red-tagged pole is: 1) a pole that a utility owns or controls that is not designated for
14 replacement, 2) a pole in compliance with an applicable safety standard, 3) a pole that is
15 not designated for replacement within two years for any reason not related to a new
16 attacher's request for attachment, and 4) a pole that need not be replaced if the new
17 attachment were not made.

18 **Q. WHAT CONCLUSIONS SHOULD BE DRAWN FROM THIS DEFINITION?**

19 A. A non-red-tagged pole is simply a pole that would not be replaced under normal
20 circumstance "but for" an attacher's request for a new attachment. In other words, an
21 attacher's request for a new attachment is the sole cause of the pole replacement. The
22 requestor is the "cost causer" as the pole owner would not be incurring new, unforeseen,
23 unplanned costs absent the attachment request.

1 **Q. SHOULD COST CAUSERS AVOID RESPONSIBILITY FOR THE BURDENS**
2 **THEY WOULD IMPOSE ON POLE OWNERS AND THEIR RATEPAYERS?**

3 A. No. Consistent with historic utility ratemaking practice, cost causers should bear the
4 responsibility of the costs they caused.

5 **Q. WHAT ARE BENEFITS OF THE “COST CAUSER” PAYS REGIME IMPLICIT**
6 **IN AT&T’S TARIFF?**

7 A. The “cost-causer pays” regime involves an equitable trade-off, whereby the pole owner
8 provides access to an existing pole and the attacher, for make-ready costs and a nominal
9 rental rate, deploys its facilities on the provided pole without having to bear the costs to
10 build its own infrastructure.

11 This trade-off changes when poles have insufficient capacity to support additional
12 attachments because pole owners can deny attachment requests when, among other
13 circumstances, “there is insufficient capacity,” i.e., they are not required to replace a pole
14 to create more capacity. In that event, an equitable trade-off occurs when the pole owner
15 voluntarily agrees to replace the pole lacking sufficient capacity, and the attacher
16 requesting space on the pole (and again who does not want to build its own infrastructure
17 or seek an alternative means of deployment) agrees to pay all associated costs to create
18 that additional capacity. This is fair and reasonable for all concerned, as it gives the
19 attacher access to existing infrastructure without having to build its own infrastructure
20 and leaves the pole owner in no worse a position than before the attachment request. It
21 also provides substantial public interest benefits by creating more pole capacity and
22 avoiding infrastructure duplication.

23 **Q. WHAT WOULD HAPPEN IF POLE REPLACEMENT COSTS WERE SHIFTED**
24 **FROM THE COST CAUSER TO THE POLE OWNER?**

1 A. Shifting legitimate pole replacement costs from the cost-causing attacher to the pole
2 owner would eliminate this equitable trade-off and the substantial public interest benefits
3 that would otherwise ensue. Pole owners, faced with the need to pay an attacher’s
4 legitimate modification costs, would be incented to instead exercise their 807 KAR 5:015
5 Section 2.a. right to deny pole access due to insufficient capacity. Electric utilities under
6 rate of return regulation would not want, and may not be permitted by the Commission,
7 to impose these costs on their ratepayers. And ILEC pole owners—in competition with
8 these same attachers—would be unable to pass through those costs to customers and
9 would thus understandably balk at subsidizing their competitors. In this way, requiring
10 pole owners to bear the pole replacement costs of attachers that cause them would impede
11 broadband deployment by creating a disincentive for pole owners to approve applications
12 for new or modified attachments on poles with insufficient capacity. Even if pole owners
13 do not flat-out reject those attachment applications, attachers will have the same choice
14 they have now, agree to pay pole replacement costs as costs of doing business, build their
15 own network, or not access a pole with insufficient capacity.

16 **Q. WHAT WOULD BE THE EFFECTS OF KBCA WITNESS KRAVTIN’S**
17 **PROPOSAL TO SHIFT MOST OF THE COST OF REPLACEMENT OF NON-**
18 **RED-TAGGED POLES ONTO POLE OWNERS?**

19 A. If a pole owner chose to go ahead with the pole replacement regardless of its incentive to
20 not do so, the pole owner would be forced to reallocate capital from planned projects,
21 potentially including broadband projects, to cover the costs of unplanned pole
22 replacements. The pole owner could also experience a decrease in profitability because
23 of increased depreciation expense not recovered in approved rates.

24 **Q. PLEASE EXPLAIN THE IMPACTS OF THE SHIFT OF CAPITAL DOLLARS.**

1 A. Pole-owning companies prepare capital budgets with important strategic goals in mind.
2 Rate-regulated utilities may routinely seek approval of their budgets as part of general
3 rate cases. Pole-owning companies would be forced to reduce funding for their strategic
4 plans and approved budgets to effectively subsidize the strategic plans of the new
5 attacher, who in all likelihood is also the pole owner's competitor.

6 **Q. DO YOU AGREE WITH KBCA WITNESS KRAVTIN'S ASSERTION AT PAGE**
7 **38 OF HER TESTIMONY THAT IN REPLACING A POLE THERE IS NO NET**
8 **IMPACT ON A UTILITY'S DEPRECIATION ACCRUAL?**

9 A. No. Depreciation accruals will increase. Assuming the pole that is replaced is not fully
10 depreciated, the depreciation accrual for the retired pole will continue until the original
11 cost of the group of poles to which it belonged is fully depreciated. The existing accrual
12 will not decrease. The investment in the new pole will form part of a new group with its
13 own new additional depreciation accrual amount. The depreciation accrual will increase.
14 Absent a rate increase to offset the increased depreciation accruals, the pole owner's
15 profitability will decline.

16 **Q. HAVE THERE BEEN SIGNIFICANT NUMBERS OF REPLACEMENTS OF**
17 **AT&T POLES DRIVEN BY NEW ATTACHMENT REQUESTS?**

18 A. No. As AT&T on June 27, advised the FCC in WC Docket 17-84, AT&T's national
19 ILEC data suggests that pole replacements in response to attachment requests are rare.
20 AT&T owns millions of poles in its 21-state ILEC service territory. Over the last three
21 years (2019-2021), AT&T ILECs approved over 137,000 pole attachment requests for
22 wireline facilities nationally, of which less than one-half of 1 percent (specifically,
23 0.35%) required pole replacements, with each of these years well below one percent.

24 **Q. DO YOU AGREE WITH KBCA WITNESS KRAVTIN'S STATEMENT AT PAGE**
25 **9 THAT DEPRECIATION ACCRUALS ARE 'SUFFICIENT TO REPLACE THE**
26 **UTILITY'S ENTIRE INVENTORY OF POLES OVER A PERIOD MATCHING**
27 **THE DESIGNATED USEFUL LIFE OF POLES'?**

1 A. No. Kravtin’s statement belies a fundamental misconception of utility ratemaking.
2 Depreciation reflects the recovery of the utility’s past capital expenditures. Depreciation
3 does not provide funds for new purchases of replacement poles – especially on a one-for-
4 one basis Kravtin implies. Based on a common index for utility plant costs, the Handy
5 Whitman Index, pole costs have increased dramatically over the last 30 years. For
6 example, suppose that 1990 were used as the base year (index value of 260). Pole
7 investment costs increased 32% by 2000 (index value of 343), by 83% by 2010 (index
8 value of 475), and by 122% by 2020 (index value 577). Clearly full depreciation of
9 1990, 2000, or even 2010 vintage poles will not fund the installed cost of 2020 poles.
10 Kravtin’s assertion asks the Commission to believe there is no fundamental difference
11 between replacement of red-tagged poles and non-red tagged poles. Her assertion is just
12 plain wrong. Non-red-tagged poles, absent a cost causer event, remain used and useful
13 and their premature replacement without compensation will, as I discussed earlier,
14 increase the utility’s costs and, ultimately, impact the utility’s non-cost-causer customers.

15 **Q. IS KBCA WITNESS KRAVTIN’S PROPOSAL THAT NEW ATTACHERS**
16 **REQUIRING NEW POLES PAY ONLY THE NET UNDEPRECIATED VALUE**
17 **FOR POLES REPLACED EARLY REASONABLE?**

18 A. No. Kravtin lays out a proposed sample calculation on page 20 of her testimony which
19 reflects multiple fatal flaws. Kravtin would have new attachers pay only the net,
20 undepreciated cost of an old pole, apparently continuing her reliance of the false premise
21 that recovery of the original cost of an old pole will fully fund a new pole. She also
22 reduces the amount the new attacher would pay by looking only at the “bare pole” costs,
23 removing the utility investment in appurtenances from the recoverable amount.
24 Appurtenances, particularly for electric providers, include cross arms, platforms for

1 transformers, and more. There is no indication that appurtenances, that Kravtin would
2 not pay for, are recoverable or reusable.

3 Kravtin’s proposal suggests that average net book cost should be used, but then suggests
4 that assumptions in the computations can be rebutted. This will only lead to greater
5 conflicts, not fewer, as new attachers will attempt to rebut the claimed net value of older
6 poles and owners will attempt to rebut the net value for younger poles. Kravtin illustrates
7 possible rebuttal positions in a table on page 22 and then declares that the approach is
8 “simple” and “widely accepted” – it is neither. Kravtin’s Table 2 suggests that
9 adjustments to the base average case would reflect “reasonable” adjustments to
10 accumulated depreciation, identification of “unique” costs and estimated “cost savings.”
11 Beyond the problems with the basic calculation (leaving out unrecoverable appurtenance
12 investment), disputes over what is rebutted and how it is rebutted will be frequent and
13 time consuming not only for the parties but also this Commission and Staff.

14 **Q. WOULD PAYMENT OF THE AVERAGE NET BOOK COST OF A TO-BE-**
15 **REPLACED POLE COVER THE UTILITY’S COST OR OTHER ATTACHER’S**
16 **COSTS OF THE POLE REPLACEMENT?**

17 A. No. Nowhere in Kravtin’s proposal is any suggestion that the new attacher would pay for
18 pole height or strength upgrades required for the new attachments. She instead, writes
19 those costs off to the pole owner as a “normal and anticipated upgrade and modernization
20 of [owner] pole networks” (p. 24). Nowhere in Kravtin’s proposal is any suggestion that
21 the costs to transfer existing attachments from the old pole to the new pole would be
22 covered by the cost causer. This then, would not only impose costs on the pole owner,
23 but every other attacher on the pole – costs that “but for” the new attachment would not
24 have been incurred.

1 **Q. IS KBCA’S POSITION CONSISTENT WITH POSITIONS TAKEN EARLIER BY**
2 **ITS FEDERAL COUNTERPART ORGANIZATION?**

3 A. No. NCTA – The Internet & Television Association, whose membership includes
4 Comcast and Charter who are also members of KBCA, stated: “If a proposed attachment
5 requires make-ready or a stronger pole, the new attacher should be responsible for
6 covering those costs, just as existing operators were responsible for prior make-ready and
7 pole replacements.” See Reply Comments of NCTA filed July 17, 2017, in FCC WT
8 Docket No. 17-79 and WC Docket No. 17-84, p. 13.

9 **Q. WHAT DO YOU THINK IS DRIVING THIS CHANGE OF POSITION?**

10 A. I think the change of position is being driven by the massive expansion of federal and
11 state programs for broadband expansion. Some of the programs are driven by a lowest
12 bidder construct, and it is not difficult to imagine a scenario where successful bidders
13 underestimate the costs of their projects and then try to game the system to obtain
14 additional subsidies over and above the ones that they received through federal and state
15 grant programs by shifting the cost burden of underbid pole replacements from
16 themselves to the pole owner.

17 **Q. WILL CHARGING NEW ATTACHERS THE COMPLETE REPLACEMENT**
18 **COST OF A POLE CAUSE CONSUMER WELFARE LOSSES AS KBCA**
19 **CLAIMS (KRAVTIN P. 41)?**

20 A. No. Charging new attachers the complete replacement cost of a pole does not cause
21 consumer welfare losses as KBCA claims (Kravtin at 41), because such payments are not
22 “siphoning off” funds that could be used to further expand broadband. Conversely, from
23 AT&T’s perspective, this is just shifting the pole replacement costs from one broadband
24 provider (KBCA members) to another (AT&T). Charging new attachers the complete

1 replacement cost of a pole prevents “consumer welfare losses” when utilities are not
2 required to subsidize new attachers.

3 **Q. ARE KRAVTIN’S CLAIMS AT P. 12 OF FOREGONE OR DELAYED**
4 **ECONOMIC GAINS CREDIBLE?**

5 A. No. The implicit assumption is that pole replacement funding is a make-or-break
6 bottleneck in the expansion of broadband. This assertion is patently false as the
7 broadband expansion is not completed with poles alone. Broadband expansion is a high-
8 cost endeavor in under or unserved areas that the various broadband expansion programs
9 are targeted to remedy, and new entrants’ failures to count the cost correctly should not
10 fall on pole owners.

11 **Q. IS IT REASONABLE TO ASSUME THAT POLES APPROACHING THE END**
12 **OF THEIR ACCOUNTING SHOULD AUTOMATICALLY BE REPLACED?**

13 A. No. KBCA witness Kravtin asserts at page 28 that “[t]here is a fundamental relationship
14 between the useful live of poles and the expected rate of utility pole replacement implicit
15 in the depreciation allowances enjoyed by the utility and that provide the utility with a
16 free source of cash to fund the future replacement of [poles]” and that faster depreciation
17 accruals imply more rapid pole replacements. I have already discussed the fallacy present
18 in Ms. Kravtin’s testimony that depreciation does not provide sufficient funds to replace
19 poles. Beyond that, she implies that any pole that equals or exceeds its average account
20 depreciable life should be replaced. This is ludicrous and is akin to suggesting that
21 because a car has reached its 5-year depreciation limit, it ought to be scrapped. Average
22 accounting lives do not translate to automatic red-tag status or mandatory replacement at
23 a date certain. Further, net book value does not reflect either the true value of a still
24 viable pole that “but for” the attachment request, would have many more years of useful
25 life, or the costs that premature pole replacement imposes on the pole owner. A corollary

1 to this is that Ms. Kravtin’s flawed assertion at page 32 about an alleged “shortfall in the
2 reported red-tag rate for most utilities” has absolutely no foundation.

3 **Q. DO YOU AGREE THAT POLE REPLACEMENT IS JUST A MATTER OF A**
4 **“TEMPORAL” SHIFT AS MS. KRAVTIN ASSERTS?**

5 A. No. Ms. Kravtin takes the position (pages 15, 38 to 39) that pole replacements are
6 always inevitable, eventual, unavoidable, and that as a part of their “core service,” the
7 utilities should foot most of the bill for any replacement any time. Taking this logic to an
8 extreme, one could argue that every pole ought to be replaced every time a new
9 attachment is made, and everybody wins because there is, according to Kravtin, no
10 normal cost of doing business that is not covered by a little upfront payment of the
11 average undepreciated value of the pole. But the reality is, advancing pole replacements
12 costs utilities real, unplanned, and distracting current cash outlays for significantly more
13 expensive poles that would not be replaced, sometimes for decades, “but for” the need to
14 accommodate a new attacher.

15 **Q. IS MS KRAVTIN’S CONCLUSION AT PAGES 33 TO 34 THAT UTILITIES ARE**
16 **REPLACING “OLDER VINTAGE UNDERSIZED POLES WITH NEWER,**
17 **TALLER, STRONGER POLES FOR PURPOSES OF THEIR OWN ELECTRIC**
18 **SERVICE” SUPPORTED BY THE “EVIDENCE” SHE PROVIDES?**

19 A. No. While there certainly are some programs in some states that support a pole
20 hardening premise, Ms. Kravtin provides no evidence of that as it relates to poles in
21 Kentucky generally or even with the specific example she uses. Ms. Kravtin sets up a
22 completely false premise in her question, assuming the “absence of new attachers” that
23 the trend of pole replacements demonstrated by South Kentucky RECC in its response to
24 a Staff information request “proves” that South Kentucky is replacing poles for its own
25 benefit. Ms. Kravtin fails to link the underlying data to any other information that would

1 describe why the company now owns more taller poles or the number of attachers on
2 those poles. Ms. Kravtin's conclusion is unreliable.

3 **Q. DO YOU AGREE WITH MS. KRAVTIN'S VIEW AT PAGES 39 AND 40 THAT**
4 **THERE ARE SIGNIFICANT BENEFITS THAT ACCRUE TO POLE OWNERS**
5 **FROM EARLY POLE REPLACEMENT?**

6 A. No. An attacher paying for a replacement pole it needs to accommodate its facilities is
7 the sole causer of any created unused space. Poles are not generally made-to-order. They
8 come in standard classes and lengths, specifically in five-foot increments, which means a
9 replacement pole may be taller (and add more space) than the new attacher's facilities
10 will occupy. For example, if a new attachment request requires a five-foot taller pole, but
11 the new attacher plans to use only one foot of space on the pole, four feet of the added
12 capacity remains unoccupied. Yet, the new attacher must bear 100% of the cost of the
13 five-foot taller replacement pole to accommodate its attachments, as it derives all the
14 benefit when no other attacher sought to use that added capacity. The pole owner does
15 not generally need and derives no benefit from the unused space. Any potential benefit a
16 pole owner may derive from the unused space is completely speculative, unrealized, and
17 incidental.

18 **Q. DOES A REPLACEMENT POLE PROVIDE THE "OPERATIONAL BENEFITS"**
19 **OF ADDITIONAL HEIGHT, STRENGTH AND RESILIENCY MS. KRAVTIN**
20 **SUGGESTS?**

21 A. Any operational benefits of a replacement pole are only incidental. Removal of a fully
22 functional, adequate pole would not happen in the ordinary course of business, and it
23 would be irrational to divert resources to do so.

24 **Q. DOES A REPLACEMENT POLE PROVIDE THE "STRATEGIC BENEFITS" OF**
25 **THE ABILITY TO OFFER ADDITIONAL SERVICE OFFERINGS, NETWORK**
26 **ENHANCEMENTS OR COMPETITIVE BROADBAND OFFERINGS OR**
27 **"REVENUE-ENHANCING BENEFITS" OF NEW RENTAL OPPORTUNITIES?**

1 A. Again, any such “benefits” are only incidental or even illusory. Looking at the thrust of
2 this case as a vehicle to expand broadband services, the new attachers will be coming to
3 high-cost underserved or unserved markets, often with government subsidies. The
4 likelihood that another provider will enter into competition with a subsidized broadband
5 provider is exceedingly low absent some spectacular technological breakthrough that
6 might not even use poles. Notably, under AT&T’s tariff, the new attacher that paid for
7 the pole replacement could recoup a portion of its costs if AT&T or another new entrant
8 were to utilize excess space the pole replacement created. Thus, there is no need to shift
9 costs from the cost causer to the pole owner.

10 **Q. DOES A REPLACEMENT POLE PROVIDE “CAPITAL COST SAVINGS” OR**
11 **“OPERATIONAL COST SAVINGS”?**

12 A. No. As mentioned before, removal of a fully functional, adequate pole would not happen
13 in the ordinary course of business and premature replacement at a high current cost may
14 or may not be less costly on a net-present-value basis than a future even more costly pole.
15 Any presumed benefit would be speculative, at best. However, as I have discussed
16 elsewhere in this testimony, the pole owner’s depreciation expense would most certainly
17 increase, reducing company profitability.

18 **Q. DOES A REPLACEMENT POLE PROVIDE “ADDITIONAL TAX SAVINGS OR**
19 **CASH FLOW OPPORTUNITIES” FROM THE ACCELERATED**
20 **DEPRECIATION OF A NEW CAPITAL ASSET?**

21 A. Tax “savings” under accelerated depreciation for tax accounting are speculative. What is
22 not said clearly is that such “savings” relate only to the timing of the taxes paid. The
23 taxes may be deferred, but they are not forgiven. Thus, the only “benefit” is a time value
24 of money component and that is very difficult to value in a rapidly changing interest rate
25 environment.

1 **Q. DO YOU HAVE REACTIONS TO MS. KRAVTIN’S STATEMENTS IN**
2 **RESPONSE TO STAFF INFORMATION REQUESTS IN THIS CASE?**

3 A. Yes. My comments here are far from comprehensive as the full scope of Ms. Kravtin’s
4 misunderstandings and mischaracterizations is wide ranging. I will focus on two items
5 and provide an alternate response to one of the Staff questions.

6 **Q. PLEASE COMMENT ON MS. KRAVTIN’S RESPONSE TO STAFF**
7 **INFORMATION REQUEST 11.A. WHERE MS. KRAVTIN AVERS THAT**
8 **UTILITIES COULD BE OVER-RECOVERING THE COST OF POLE**
9 **REPLACEMENTS.**

10 A. Ms. Kravtin claims that utilities are recovering the cost of pole replacements in the form
11 of fully allocated recurring rates, non-recurring make ready charges, and depreciation
12 allowances built into both pole attachment charges and rates charged to their electric
13 customers.

14 Ms. Kravtin is wrong in several ways. She does not distinguish between pole
15 replacements initiated by the utilities, for which recovery in rates is just and reasonable,
16 and pole replacements funded by cost causer new attachers. When poles are replaced and
17 an attacher is billed for that pole, AT&T does not increase its booked investment in poles.
18 Reimbursement for the capital costs of such a pole are netted against the capital monies
19 received from the attacher. Make-ready costs are also identified and when reimbursed
20 are entered on AT&T books as contra-expenses, meaning that make-ready costs do not
21 become part of AT&T’s pole attachment rates. Ms. Kravtin implies that depreciation
22 charges are somehow separate from normal ratemaking for pole attachment rates and that
23 they are recovered more than once. This also is not true. Finally, for companies subject
24 to rate-base-rate-of-return ratemaking (unlike AT&T), the costs of poles are included in
25 the overall costs of the utility, but the “rate design” portion of any rate case normally
26 considers all sources of revenue. As such, pole attachment revenue would be counted

1 toward overall revenue requirements, and other rates would be less in recognition of such
2 revenue. There is no double counting of pole replacement costs.

3 **Q. PLEASE COMMENT ON MS. KRAVTIN'S RESPONSE TO STAFF QUESTION**
4 **11.B. ABOUT THE REMOVAL OF MAKE-READY POLE REPLACEMENTS**
5 **PAID BY NEW ATTACHERS FROM THE RATE BASE.**

6 A. Ms. Kravtin's answer is wholly electric-company centric and makes broad, unsupported
7 assumptions that pole replacement make-ready costs, including the cost of the
8 replacement pole, are included in the expenses and pole investments used to determine
9 pole attachment rates. On information and belief, as I indicated in the prior question and
10 answer, AT&T's accounting expressly precludes make-ready expenses and investments
11 from pole attachment rate development. There is no need to require removal of pole
12 replacements or associated make-ready from AT&T's rates.

13 **Q. IS AT&T AWARE OF ANY JURISDICTION THAT HAS INSTITUTED A**
14 **PROCEDURE THAT REQUIRES A NEW ATTACHER TO BEAR THE INITIAL**
15 **COST OF REPLACING NON-RED TAGGED POLES BUT ALLOWS ALL OR A**
16 **PORTION OF THOSE COSTS TO BE REIMBURSED WHEN THE BENEFITS**
17 **ARE DETERMINED TO HAVE ACTUALLY ACCRUED TO OTHER**
18 **CUSTOMERS?**

19 A. Yes. The procedure is embedded in the FCC's pole attachment rules at 47 C.F.R.
20 1.1408(b) which states: "If a party makes an attachment to the facility after the
21 completion of the modification, such party shall share proportionately in the cost of the
22 modification if such modification rendered possible the added attachment." This rule is
23 in effect in 27 states and in any of the reverse preemption states that expressly adopt FCC
24 rules as part of their governance of pole attachment rates. Further, the essence of this
25 paradigm is incorporated in AT&T's new pole attachment tariff at section 9 (PSC KY.
26 Tariff 2A, Original Page 59).

27 **AT&T HAS AGREED TO CHANGE ITS FILED TARIFF**

1 **Q. WHAT CHANGES HAS AT&T AGREED TO MAKE TO ITS TARIFF AS A**
2 **RESULT OF THIS CASE?**

3 A. AT&T has agreed to three changes to our prefiled PSC KY. Tariff 2A. First, AT&T will
4 add the word “Annual” to the description of the AT&T pole attachment rate found on
5 Original Page 40.
6 In Section 2.2, Original Page 42 under definitions, AT&T agrees to correct a
7 typographical error.

8 **AT&T Inc.** means the holding company which directly or indirectly owns
9 the following ILECs: BellSouth Telecommunications, LLC, d/b/a AT&T
10 Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T
11 Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South
12 Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC,
13 d/b/a AT&T Illinois; Indiana Bell Telephone Company, Incorporated,
14 d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T
15 Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada; The
16 Ohio Bell Telephone Company, d/b/a AT&T Ohio; Pacific Bell Telephone
17 Company, d/b/a AT&T California; Southwestern Bell Telephone
18 Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T
19 Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T
20 Wisconsin. Note that this Agreement, by virtue of the following states’
21 election to reverse pre-empt the Federal Communications Commission’s
22 (FCC) authority regarding pole attachments, does not apply in and does
23 not include Arkansas, California, Illinois, Louisiana, Michigan, or Ohio,
24 but does ~~not~~ apply in the reverse pre-emption state of Kentucky.

25
26 In Section 8.8.6, Original Page 56, AT&T clarifies language related to how AT&T will
27 charge new attachers or the cost to replace red-tagged poles.

28 With respect to Make-Ready Work, AT&T will assign any costs
29 associated with the correction of existing conditions to the entity(ies) that
30 caused the existing condition requiring correction, less the cost of any
31 betterments the Attaching Party requested. For example, the cost for the
32 replacement of a red-tagged pole will be assigned to AT&T, though each
33 Other User will be responsible for its own expense to transfer its own
34 facilities from the red-tagged pole to the replacement pole.
35

36 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

37 A. Yes.

DANIEL RHINEHART

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214-729-7948 ♦ rhinehart@att.com

Proficient in performing and directing performance of cost analysis, regulatory functions and regulatory litigation.

- Financial and product cost analyst with expertise in fundamentals of accounting, auditing, embedded and incremental costs, cost allocations, margin analysis, capital costs, and depreciation.
- Regulatory manager experienced in interpreting statutes and regulations; and drafting, advocating, and ensuring compliance with agency regulations.
- Litigation support manager skilled in discovery, developing and delivering cost and policy testimony, preparing work papers and post-hearing briefs.

PROFESSIONAL EXPERIENCE

AT&T Services Inc. and Predecessors

Director – Regulatory, National Regulatory Organization **2015 - Present**
Director providing pole attachment rate development, cost analysis and regulatory advocacy supporting company strategic initiatives.

Director – Financial Analysis, ATTCost/Capital Planning Division **2012 - 2015**
Director providing product cost analysis support and regulatory advocacy supporting company strategic initiatives.

Lead Financial Analyst, Finance Costing Division **2006 - 2012**
Senior analyst and regulatory advocate supporting company negotiations, arbitrations and regulatory policy.

Senior Specialist, Global Access Management **2005 - 2006**
Senior analyst and regulatory advocate supporting company negotiations, arbitrations and regulatory policy.

Professional, Law and Government Affairs, National Cost Team **2001 - 2004**
Senior cost analyst and national regulatory advocate auditing supplier costs and clearly presenting company positions to regulators.

District Manager, State Government Affairs **1995 - 2001**
Senior regional regulatory advocate and cost analyst responsible for developing and implementing company policy in five states.

Manager, State Government Affairs, Exchange Carrier Cost Analysis **1985 - 1995**
Cost analyst and regulatory advocate responsible for developing regulatory policy toward local telephone companies in California.

Supervisor **1984 - 1985**
Separations and Settlements analyst for company regulated costs.

EDUCATION

MBA, St. Mary's College, Moraga, CA, with honors.
BS – Education, University of Nevada – Reno, Math Major, with High Distinction

PROFESSIONAL DEVELOPMENT

The Brookings Institution–Understanding Federal Government Operations
University of Southern California–Middle Management Program in Telecommunications

PREVIOUS TESTIMONY OF DANIEL P. RHINEHART

Date Filed	State	Proceeding Number	Subjects Addressed
2022-06	Kentucky	2022-00105 2022-00106	Pole Attachment Tariffs of Investor Owned Electric Utilities and Rural Electric Cooperative Corporations
2020-10 2020-11	Georgia	43453	Pole Attachment Rates – Electric Membership Corporations
9/20 12/20	FCC	20-293 EB-20-MD-004	Pole Attachment Rates – Duke Energy Progress (NC and SC)
8/20 11/20	FCC	20-276 EB-20-MD-003	Pole Attachment Rates – Duke Energy Florida
7/19 11/19	FCC	19-187 EB-19-MD-006	Pole Attachment Rates – Florida Power and Light
4/19 7/19	FCC	19-119 EB-19-MD-002	Pole Attachment Rates – Alabama Power
12/18	Minnesota	0:18-cv-00247	Paul Bunyan Rural Telephone Cooperative v. AT&T Corp. – Access Charges
7/18 8/18	Georgia	32235	Universal Access Fund Rate of Return and related issues
2/18 5/18 6/18	FCC	WC 18-60 Transmittal No. 36	Iowa Network Services Centralized Equal Access Rates
6/17 7/17 8/17	FCC	17-56 EB-17-MD-001	Iowa Network Services Centralized Equal Access Rates
3/17	Kentucky	2016-00370 2016-00371	Pole Attachment Rates – Kentucky Utilities, Louisville Gas and Electric
11/16 1/17	Illinois	16-0378	Illinois USF – IITA/AT&T Stipulation
12/15 4/16	South Dakota	1:14-cv-01018	Northern Valley Communications v. AT&T Corp. – Traffic Pumping
10/15	Arkansas	150019-R	Pole Attachment Rates, terms and conditions. [Panel testimony sponsoring Joint Parties Comments]
6/15	California	Truckee Donner PUD	Pole Attachment Rates
3/14	Maine	2013-00340	FairPoint Maine USF Request – Revenue, Rate Base, Rate of Return, Expenses, FLEC Model.
10/13	Nevada	13-060007	Rio Virgin Telephone Rate Case – Access Rates and Cost Allocations
2/13	Alaska	U-12-120 et al	Switched Access Demand
12/12 2/13	Oklahoma	PUD 201200040	Oklahoma High Cost Fund
7/12	Georgia	35068	Rate Cases for [UAF Year 16] Track 2 Applicants – Public Service Telephone.
1/12	Oklahoma	PUD 201000211 PUD 201100145	Settlement Agreement related to state High Cost Fund and State Universal Service Fund
11/11	Nebraska	FC-1332, FC-1335	OrbitCom Access Service Rates

Date Filed	State	Proceeding Number	Subjects Addressed
10/11	Iowa	FCU-2011-0002	Aventure Communications Cost of High Volume Access (HVAS) Traffic
8/11	Georgia	32235	Ringgold - Track 2 UAF Revenue Requirement
8/11	Georgia	32235	Public Service - Track 2 UAF Revenue Requirement
8/11	Georgia	32235	Chickamauga - Track 2 UAF Revenue Requirement
3/11 5/11	Georgia	32235	Universal Access Fund cost of capital and caps on UAF distributions.
7/10 3/11	Texas	PUC Docket No. 36633 SOAH No.473-09-5470	Pole attachment rates, cost of capital.
12/09	Alaska	U-09-081, U-09-082, U-09-083, U-09-084, U-09-085, U-09-086, U-09-087, U-09-088 [Unconsolidated]	Switched access revenue requirements for various companies. Addressed variously non-regulated cost assignments, depreciation expense, corporate operations expenses, and other disallowances.
6/09 8/09	Iowa	TF-2009-0030	Switched Access cost study for Kalona Cooperative Telephone Company
2/09	Alaska	U-08-081	Switched Access Demand for pooled access rates
12/08	Alaska	U-08-084, U-08-086, U-08-087, U-08-088, U-08-089, U-08-090, U-08-112, U-08-113 [Unconsolidated]	Switched access revenue requirements for various companies. Included variously, depreciation expense, corporate operations expense, and cost of capital.
11/08	Nebraska	Application C-3745/ NUSF-60.02/PI-138	Switched Access Rates and Cost of Capital
2/08 3/08	Oklahoma	Cause No. PUD 200700370	Medicine Park Tel. Co. request for Oklahoma USF Support
6/07 7/07	Iowa	Docket RPU-07-1	South Slope Coop – Separations Cost Study and CCL Rate
4/07 10/07	Texas	Docket 33545	McLeodUSA Access Cost Model – Cost of Capital, Asset Lives, Factors, Common Costs, Rate Development
3/07	Oklahoma	Cause No. PUD 200600374	Medicine Park Tel. Co. separations study supporting request for High Cost Funds
6/05 7/05	Missouri	Case No. TT-2002-129	AT&T Instate Connection Fee
5/05	Missouri	Case No. TO-2005-0336	UNE Policy Issues (dedicated transport, combinations/commingling, EELs, ILEC obligations, etc.), UNE Rider, Pricing
3/05 4/05	Texas	Docket 28821	UNE Policy (dedicated transport, combinations and commingling, EELs, ILEC obligations, etc.)
2/05 3/05	Kansas	Docket 05-AT&T-366-ARB	Call Flows, UNE Policy Issues
1/05 2/05 3/05	Oklahoma	Cause No. PUD 200400493	Interim contract pricing terms (1/05), call flows and permanent pricing (2/05), UNE Issues and pricing (3/05)

Date Filed	State	Proceeding Number	Subjects Addressed
3/04	Oklahoma	Cause No. PUD 200300646	Track I Triennial Review Impairment Analysis (Sponsored with Robert Flappan)
12/03 1/04	Texas	Docket No. 28600	Asset Lives, Capital Cost Factors, Annual Cost Factors, Shared and Common Costs
5/03 6/03	Illinois	Docket No. 03-0329	Reciprocal compensation, 8YY compensation, space license
11/02 2/03	Texas	Docket 25834	Depreciation, Annual Cost Factors, Investment Factors, Inflation and Productivity, Common Costs
10/01	Missouri	Case No. TO-2001-438	Depreciation, Cost Factors, Labor Rates, Common Costs
4/01	Missouri	Case No. TO-2001-455	AT&T Interconnection Agreement Arbitration – Intellectual Property, Stand-alone Services Resale, Audit Rights, UNE Costs
2/01	Kansas	Docket 99-GIMT-326-GIT	Universal Service Fund Portability (Sponsored at hearing by R. Flappan)
12/00	Oklahoma	Cause No. PUD 2000000587	Intellectual Property, Reciprocal Compensation for ISP-bound traffic, Vertical Services Resale, Access to OSS and CPNI, OSS Audit, Definitions
8/00	Kansas	Docket 00-GIMT-1054-GIT	Reciprocal Compensation for ISP-bound traffic
6/00	Texas	PUC Docket 22315	Intellectual Property and Access to Operational Support Systems
5/00	Texas	PUC Docket 21425 SOAH No. 473-99-2071	Resale obligations under FTA for vertical features, Local Plus and LDMTS service offers
3/00	Texas	Docket 21982	SWBT Cost Study for Internet-Bound Traffic
1/00	FCC	Docket 00-4	SWBT Long Distance Entry in Texas, Glue Charges and Intellectual Property
1/00	Kansas	Docket 97-SCCC-149-GIT	Resale Discount Levels
1/00	Missouri	Docket TT-2000-258	Local Plus Resale Issues
12/99	Texas	Docket 20047	GTE Directory Assistance Listing Information Service
11/99	Kansas	Docket 99-GIMT-326-GIT	Kansas Universal Service Fund Issues (Sharing of USF Support)
10/99	Texas	Docket 21392	SWBT Switched Access Optional Payment Plan
10/99	Texas	Project 18515	Texas USF Further Implementation Issues
6/99 7/99	Texas	Project 18515 Project 18516	Texas USF Implementation Issues
4/99 5/99	Kansas	Docket 99-GIMT-326-GIT	Kansas Universal Service Fund Issues
4/99 5/99 6/99	Missouri	Case No. TO-98-329	Missouri Universal Service Fund Issues
12/98	Texas	Project 16251	Right-to-Use Adder costs

Date Filed	State	Proceeding Number	Subjects Addressed
10/98	Texas	Project 18516	Texas Universal Service Fund Issues for Small LECs
9/98	Missouri	Docket TO-98-115	Arbitration Cost Studies of SWBT (Sponsored at hearing by D. Crombie)
6/98 7/98 8/98	Kansas	Docket 97-SCCC-149-GIT	Generic Cost Docket for SWBT. Depreciation, cost factors, fill factors.
4/98	Texas	Docket 16251	Non-cost basis of certain Arbitration rates for SWBT – TX
1/98	Oklahoma	Cause No. PUD 970000442	Permanent Rates for SWBT Services
1/98	Oklahoma	Cause No. PUD 970000213	Permanent Rates for SWBT Unbundled Network Elements
8/97	Texas	Docket No. 16226	Restatement of SWBT Arbitration Cost Studies
3/97	Kansas	Docket 97 SCCC 149-GIT	Generic Cost Proceeding for SWBT
1/97	Arkansas	Docket No. 96-395-U	Arbitration Cost Studies of SWBT – AR
1/97	Kansas	Docket 97-AT&T-290-ARB	Arbitration Cost Studies of SWBT – KS
10/96	Texas	Docket 16300	Arbitration Cost Studies of GTE – TX
10/96	Missouri	Case No. TO-97-63	Arbitration Cost Studies of GTE – MO
10/96	Oklahoma	Cause 960000242	Arbitration Cost Studies of GTE – OK
10/96	Missouri	Case No. TO-97-40	Arbitration Cost Studies of SWBT – MO
9/96	Oklahoma	Cause No. PUD 960000218	Arbitration Cost Studies of SWBT – OK
9/96	Texas	Docket 16226	Arbitration Cost Studies of SWBT – TX
6/96 7/96	Kansas	190,492-U	Universal Service Fund, Alternative Regulation, Imputation
1/96	Texas	Docket 14659	Costs of SWBT and GTE loop facilities
1/96	Texas	Docket 14658	Resale of SWBT and GTE services under PURA
9/95	California	A.95-02-011 A.95-05-018	Uniform System of Accounts Rewrite rate adjustments
6/95	Missouri	Case TR-95-241	SWBT Local Plus service offering
8/94 2/95	California	A.93-12-005 I.94-02-020	Citizens Utilities General Rate Case, Access Pricing, Price Cap, IntraLATA Equal Access, Imputation
4/93	California	A.92-05-002 A.92-05-004 I.87-11-033	First Price Cap Review, productivity factors, sharing
6/92	California	I.87-11-033	Centrex and PBX trunk Pricing
10/91	California	I.87-11-033	Competitive entry issues
1/91	California	A.85-01-034	High Cost Funding
10/90	California	I.87-11-033	Expansion of Local Calling Areas, Touch Tone

Exhibit DPR-2

**AT&T's April 14, 2022 Response To
KBCA's Objections to AT&T's Tariff
Filed in Case No. 2022-00108**



AT&T

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April 14, 2022

VIA ELECTRONIC FILING SYSTEM

Ms. Linda C. Bridwell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

Re: AT&T Kentucky's Response To Objections of The Kentucky Broadband and Cable Association To Proposed Pole Attachment Tariffs

Dear Executive Director Bridwell:

Attached, please find AT&T Kentucky's Response To Objections of The Kentucky Broadband and Cable Association To AT&T's Proposed Pole Attachment Tariff, filed today in: *In the Matter of: Electronic Investigation of the Proposed Pole Attachment Tariffs of Incumbent Local Exchange Carriers*, Case No. 2022-00108.

Sincerely,

John T. Tyler
Attorney for AT&T Kentucky

Enclosures

KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

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

AT&T’S¹ RESPONSE TO KENTUCKY BROADBAND AND CABLE ASSOCIATION’S² OBJECTIONS TO AT&T’S PROPOSED POLE ATTACHMENT TARIFF³

AT&T respectfully requests that the Commission reject KBCA’s Objections to AT&T’s Tariff and, for the reasons discussed below, determine that the Tariff, as submitted to the Commission on February 28, 2022, is just and reasonable pursuant to KRS 278.030, and fully compliant with all applicable law.

Within its pleading, KBCA makes three objections to AT&T’s Tariff, none form a basis for the Commission to find the Tariff unreasonable, and each should be dismissed because: 1) the manner of resolving unauthorized attachments KBCA complains of in AT&T’s Tariff is reasonable; 2) AT&T’s 24-month claims limitation period is reasonable; and 3) AT&T’s indemnity provision is reasonable.

I. Section 18.2 of AT&T’s Tariff Related to Unauthorized Attachments is Reasonable

For its first objection, KBCA states:

Sanction For Declining To Participate In An Inventory Survey. KBCA objects to the provision that: “[i]f Attaching Party declines to participate in an Inventory Survey (i.e., providing the locations of its existing attachments), and AT&T discovers an unauthorized attachment by Attaching Party, AT&T will also be entitled to invoice Attaching Party a sanction of \$100.00 for each such unauthorized attachment that AT&T discovers.” In order for this penalty to apply, there must be a meaningful opportunity for the attaching party to participate in the audit. If an

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

² KBCA.

³ Tariff.

attacher participates by cooperating with AT&T during the audit process (without actually going out in the field with the auditors, which may not be possible), that cooperation should constitute participation.

First, KBCA's title: "Sanction For Declining To Participate In An Inventory Survey" is a misnomer. To be clear, and as is apparent from the text of the Tariff, this is not a sanction for declining to participate in an inventory survey. Rather, it is a reasonable remedy for resolving unauthorized attachments when a party with unauthorized attachments declines to participate in an inventory survey.⁴

Furthermore, the Tariff language is consistent with well-established precedent of the Commission and the Federal Communications Commission (FCC) regarding this issue. Over a decade ago, in April 2011, the FCC determined that, going forward, 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.⁵ Specifically, the FCC stated:

To address the concerns implicated by unauthorized attachments, we explicitly abandon the *Mile Hi* limitation on penalties and instead create a safe harbor for more substantial penalties. Specifically, going forward, we will consider contract-based penalties for unauthorized attachments to be presumptively reasonable if they do not exceed those implemented by the Oregon PUC. Oregon has established a multifaceted system that contains, among others, the following provisions:

⁴ See Tariff, Section 18.2.2.

⁵ 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).

- An unauthorized attachment fee of \$500 per pole for pole occupants without a contract (*i.e.*, when there is no pole attachment agreement between the parties);
- 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, with 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.
- A requirement that the pole owner provide specific notice of a violation (including pole number and location) before seeking relief against a pole occupant.
- An opportunity for attachers to avoid sanctions by submitting plans of correction within 60 calendar days of receipt of notification of a violation or by correcting the violation and providing notice of the correction to the owner within 180 calendar days of receipt of notification of the violation.
- A mutual obligation of pole owners and pole occupants to correct immediately violations that pose imminent danger to life or property. If a party corrects another party's violation, the party responsible for the violation must reimburse the correcting party for the actual cost of corrections.
- The opportunity for resolution of factual disputes via settlement conferences before an alternative dispute resolution forum.⁶

The FCC explained: “[t]he record shows that the system of fines instituted by the Oregon PUC has been effective in reducing substantially the incidence of unauthorized attachments in that state.”⁷ It continued:

we have examined Oregon’s rules and find them to be reasonable, and that we would expect to find reasonable any unauthorized attachment provisions contained in agreements that do not exceed Oregon penalties. As noted above, however, the Oregon sanctions are part of a larger system that also affords protections to attachers that operate in good faith. Consequently, we anticipate that, like the Oregon system, a reasonable pole attachment agreement also will contain

⁶ *Id.* at ¶ 115.

⁷ *Id.* at ¶ 117.

provisions that provide notice to attachers, a fair opportunity to remedy violations, and a reasonable process for resolving factual disputes that may arise.”⁸

In the present instance, AT&T’s Tariff contains provisions that provide notice to attachers, a fair opportunity to remedy violations, and a reasonable process for resolving factual disputes that may arise. Specifically, the Tariff requires written notice of unauthorized attachments pursuant to the Notices Provision set forth in Section 20 of the Tariff. Additionally, the Tariff specifically provides that the Attaching Party can avoid the sanction by submitting an Application within 60 days of receiving AT&T’s written notice and correcting any safety violations.⁹ Finally, the Tariff provides a reasonable process for resolving factual disputes that may arise and KBCA does not contend that any of these provisions are unreasonable.¹⁰

Moreover, the Commission has repeatedly approved Interconnection Agreements (ICAs) with competitive local exchange carriers that contain this same language.¹¹

⁸ *Id.* at ¶ 118.

⁹ *See* Tariff, Section 18.2.3.

¹⁰ *See* Tariff, Section 29.3, 29.6, and 29.7.

¹¹ *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,

The Commission should find the Tariff reasonable because: (a) the FCC, has determined that a sanction of \$100 per pole is reasonable if the violation is found by the pole owner in an inspection in which the pole occupant declined to participate; (b) AT&T’s Tariff requires written notice of the sanction to the Attaching Party as suggested by the FCC; (c) the Tariff provides a fair opportunity to remedy violations, as suggested by the FCC, in that it allows the Attaching Party to avoid the sanction by submitting an Application within 60 days of receiving written notice and correcting any safety violations within 180 days; (d) it provides a reasonable process for resolving factual disputes that may arise in Sections 29.3, 29.5, 29.6, and 29.7; (e) the Tariff is designed to, and AT&T believes will, reduce the number of unauthorized attachments throughout the Commonwealth and, thereby better ensure the safety of Structure Access in Kentucky; (f) approval of the Tariff would ensure that all Attaching Parties would be treated the same regardless of whether they have an ICA, a Stand-Alone Structure Access Agreement, or attach to AT&T’s Structures pursuant to the Tariff; and (g) the Tariff is consistent with AT&T’s structure access agreements in the 21 states in which AT&T operates as an ILEC, and as the FCC stated is “presumptively reasonable.”

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.*, approved by the Commission on June 29, 2018.

Finally, contrary to KBCA’s misstatement, AT&T’s Tariff does provide a meaningful opportunity for the Attaching Party to participate in an audit. In Section 15.11, AT&T provides 60 days’ notice of upcoming inventories which are to be conducted no more than once every 5 years. Further, although KBCA does not explain how it would cooperate with AT&T by participating in an audit, Section 18.2.3 specifies how an Attaching Party may cooperate with AT&T without the burden of going out in the field with the auditors. For all of these reasons, the Commission should dismiss KBCA’s objection to this section of the Tariff.

II. AT&T’s Claims Limitation is Reasonable

For its second objection, KBCA states:

Claims Limitations. KBCA objects to Section 29.1, including the provision that “[e]xcept as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Any legal action arising in connection with this Agreement must be filed within 24 months after the cause of action accrues, with the exception of a Continuing Violation, or it will be time-barred and waived. The parties waive any statute of limitations to the contrary.”

Despite its objection, KBCA does not provide an alternative to AT&T’s reasonable 24-month Finality of Dispute provision.¹² The Commission has repeatedly approved ICAs that contain similar language, and approval of the Tariff will ensure that all Attaching Parties are treated the same regardless of whether they have an ICA, Stand-Alone Structure Access Agreement, or are attached pursuant to the Tariff.¹³

¹² See Tariff, Section 29.1.1.

¹³ 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

AT&T's ICA provides:

29.0 DISPUTE RESOLUTION – FINALITY OF DISPUTES

Except as otherwise provided below, Dispute Resolution will be governed by the GT&Cs of this Agreement.

29.1 Except as otherwise specifically provided for in this Attachment, no claim may be brought for any dispute arising from this Attachment more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Any legal action arising in connection with this Attachment must be filed within twenty-four (24) months after the cause of action accrues, with the exception of a Continuing Violation, or it will be deemed time-barred and waived. The Parties waive any statute of limitations to the contrary. Continuing Violations are specifically exempt from the waiver of any statute of limitations and shall be brought within the time set forth in the applicable state's statutes.

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.*, approved by the Commission on June 29, 2018.

The Commission has repeatedly approved ICAs with this language and it is, therefore, presumptively reasonable.¹⁴

Also, the 24-month claim limitation strikes a balance for both parties. For example, the Attaching Party must file a billing dispute within 24 months from the date of the bill. Similarly, AT&T may only back bill Attaching Party for 24 months if it fails to timely render a Structure Access invoice. Two years is more than enough time to bring a dispute and is a standard provision in AT&T's ICAs, Stand-Alone Structure Access Agreements, and is reasonable for the Tariff.

The Commission should approve the Tariff because: (a) it has repeatedly approved similar language in ICAs; (b) it is reasonable; (c) it ensures that all Attaching Parties--whether they are attached to AT&T's poles pursuant to an ICA, a Stand-Alone Structure Access Agreement, or pursuant to the Tariff are treated similarly; and (d) the provision is consistent with AT&T's Structure Access agreements in the 21 states in which AT&T operates as an ILEC.

KBCA has failed to provide a more reasonable alternative, and the Commission should summarily dismiss KBCA's objection with regard to AT&T's Finality of Disputes provision.

III. AT&T's Indemnity Provision is Reasonable

For its third and final objection, KBCA states:

Indemnity. KBCA objects to any standard that would hold an attacher responsible for the negligence of a pole owner. KBCA specifically objects to Section 22.2, which states: "Attaching Party will indemnify, hold harmless, and, on request, defend AT&T from any Claim or Liability, if such Claim and/or Liability arises out of Attaching Party's work in, on, or in the vicinity of AT&T's Structure and/or Attaching Party's access to or use of AT&T's Structure, except to the extent caused by AT&T's willful or intentional misconduct, or gross negligence.

First, AT&T notes an applicable, well-established industry safety standard uniformly practiced when working aloft: personnel examine each pole prior to working aloft, even when

¹⁴ *Id.*

working from a bucket truck.¹⁵ This reduces risk of injury by ensuring that, prior to commencing work, any person intending to work aloft identifies rot, and other conditions, that would make such work dangerous.¹⁶ Provisions like that found in the Tariff are standard provisions and appropriately apportion risk, and place responsibility for determining pole viability on the entity proposing to work aloft at the moment in question. Thus, KBCA’s objection to any standard that would hold an attacher responsible for the negligence of a pole owner is inconsistent with commonsense, and reasonable well-established industry precedent.

Moreover, the Commission has repeatedly approved ICAs containing this same language,¹⁷ and approval of the Tariff will ensure that all Attaching Parties are treated the same regardless of

¹⁵ See Blue Book – Manual of Construction Procedures, Special Report SR-1421, Issue 6, March 2017 (Telcordia-NIS). “All poles must be visually examined before work operations are begun that involve pole climbing, placing a ladder against the pole or strand, hanging an aerial platform, riding a strand, or similar procedures where a load is placed on a pole. *Id.* at Section 12-1. “No pole climbing shall be started unless the employee is satisfied, based upon the visual inspection and any subsequent pole testing, that the pole line structure has adequate strength to support the load resulting from working aloft and the load that will result from the intended work operations. If the strength of the pole line structure is in doubt, supports must be applied before starting work.” *Id.*

¹⁶ *Id.* “Although pole failures may occur as a result of unusual conditions or inadequate preservation treatment, a failure of a pole is usually due to one or more of the following causes:

- Decay of the pole at or below groundline.
- Storm damage.
- Mechanical damage from automotive or other impact.
- Insect damage from termites, carpenter ants, or other insects.
- Lightning damage or fire damage.
- Woodpeckers.
- Application of excessive loads or creating unbalanced loads that can become too great under normal expected conditions (*e.g.*, average storm or ice loading). Such loads may result from improper or inadequate construction or maintenance methods.” *Id.*

¹⁷ 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

the legal authority under which they attach whether it be an ICA, Stand Alone Structure Access Agreement or Tariff.

Moreover, the indemnity provision is a reasonable mutual obligation. Specifically, Section 22.2 provides:

Attaching Party will indemnify, hold harmless, and, on request, defend AT&T from any Claim or Liability, if such Claim and/or Liability arises out of Attaching Party's work in, on, on in the vicinity of AT&T's Structure and/or Attaching Party's access to or use of AT&T's Structure, except to the extent caused by AT&T's willful or intentional misconduct, or gross negligence.

Section 22.3, in turn, provides:

AT&T will indemnify, hold harmless, and, on request, defend Attaching Party from any Claim or Liability, if such Claim and/or Liability arises out of AT&T's work in, on, on in the vicinity of AT&T's Structure and/or AT&T's access to or use of AT&T's Structure, except to the extent caused by Attaching Party's willful or intentional misconduct, or gross negligence.

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.*, approved by the Commission on June 29, 2018.

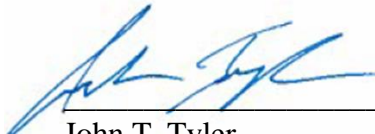
Such indemnity provisions are standard provisions found in AT&T's ICAs, Stand-Alone Structure Access Agreements, and are reasonable for inclusion in the Tariff.

The Commission should reject KBCA's protestations and approve the Tariff because: (a) it has repeatedly approved the same language in ICAs; (b) it is reasonable; (c) it ensures that all Attaching Parties, regardless of the legal mechanism under which they attach, are treated the same; and (d) it is consistent with AT&T's Structure Access Agreements in the 21 states in which AT&T operates as an ILEC. Thus, the Commission should dismiss KBCA's objection with regard to AT&T's indemnification provision in the Tariff.

Conclusion

For the foregoing reasons, AT&T requests the Commission reject KBCA's Objections to AT&T's Proposed Pole Attachment Tariff, and find the Tariff, as submitted to the Commission on February 28, 2022, adequate, efficient, and reasonable.

Respectfully Submitted,



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