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April 3, 2015

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APR 6 2015
PUBLIC SERVICE
COMMISSION

Mr. Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

**RE: Tower Access Group, LLC Application for Declaratory Order as to
Jurisdiction Over a 190-Foot Monopole Constructed on the Campus of
Eastern Kentucky University
Case No. 2015-00090**

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Kentucky Cable Telecommunications Association's Motion to Intervene in the above referenced case.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via the enclosed self-addressed, postage paid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:jmp
Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

TOWER ACCESS GROUP, LLC, APPLICATION)
FOR DECLARATORY ORDER AS TO)
JURISDICTION OVER A 190-FOOT MONOPOLE)
CONSTRUCTED ON THE CAMPUS OF)
EASTERN KENTUCKY UNIVERSITY)

CASE NO. 2015-00090

**KENTUCKY CABLE TELECOMMUNICATIONS
ASSOCIATION'S MOTION TO INTERVENE**

The Kentucky Cable Telecommunications Association ("KCTA") respectfully moves for full intervention in the above-referenced proceeding pursuant to KRS § 278.310, 807 KAR 5:001, § 4(11) and § 19(4).

KCTA is a non-profit organization consisting of cable operators serving the majority of cable customers throughout Kentucky. Several KCTA members attach their facilities to utility poles currently owned and controlled by various utilities in the state. Access to utility poles is essential for the cables KCTA members use to provide broadband, voice and video services in Kentucky. The Commission has regularly approved KCTA's intervention in proceedings implicating pole attachment issues to protect its members' interest in reasonable rates, terms and conditions. Most recently, KCTA was granted intervention in a case involving Windstream's proposal to transfer its utility poles to a real estate investment trust.¹

Tower Access Group, LLC ("TAG") is self-described as "a company that is engaged in the business of providing the required infrastructure to a utility." TAG application at 10. In this case, the required infrastructure TAG will provide is a monopole communication tower it

¹ *Application of Windstream Kentucky East and Windstream Kentucky West for a Declaratory Ruling*, Case No. 2014-00283 (October 22, 2014) (granting KCTA's motion to intervene) ("*Windstream REIT*" case)

installed on state property that will be used by wireless utility tenants under sub-lease arrangements. TAG has requested the Commission to declare that it was not required to seek Commission approval for the monopole construction.

TAG describes unique circumstances that underlie its application for a declaratory order, and then makes three arguments in support of it. First, TAG argues the Commission does not have jurisdiction to require a CPCN because the monopole is within the territorial boundaries of the City of Richmond. Second, TAG argues it is not a utility within the meaning of KRS 278 010(3)(e). Finally, TAG argues that even if the Commission has jurisdiction, it should take no adverse action against TAG or the structure, including penalties, and declare the monopole is available for colocation by utilities.

KCTA requests intervention only because of the second argument presented by TAG. As KCTA understands it, TAG claims it is not a utility because it does not provide telecommunications services and therefore its business activity is not within the definition of KRS 278.010(3)(e). TAG further suggests that its role in supplying required infrastructure to utilities could not possibly trigger the jurisdiction of the Public Service Commission.

TAG's role as a lessor of utility infrastructure and its contractual relationship with third party wireless carriers does not necessarily place the monopole beyond the Commission's authority. At a minimum, the Commission ruled in the 2014 *Windstream REIT* case that the definition of "facility" at KRS 278 010(11) is broad enough to include utility poles owned by a landlord that does not "provide the services necessary for the transmission or conveyance over wire, etc., of any message." *Windstream REIT*, Order (December 4, 2014). KCTA was a party to that proceeding.

The *Windstream REIT Order* applied principles established in earlier Commission cases related to jurisdiction over pole attachments. In the 1981 *Pole Attachment Jurisdiction Order* the Commission found that once its jurisdiction over a pole owner had been established, it could regulate pole attachments without determining whether the activity (permitting attachments) is a “utility” function.² That determination was upheld on appeal.³ The Commission made clear in the *Pole Attachment Jurisdiction Order* that “the service of providing space on existing utility poles (and the rates charged therefor) are “rates” and “services” within the purview of the Commission under KRS 278.040 ”⁴

In light of these precedents, KCTA would object to any declaration that a structure built specifically to accommodate utility attachments is not subject to Commission jurisdiction. Should the Commission be inclined to grant TAG relief based solely on one of the other arguments presented in its application, this motion to intervene will be moot. Otherwise, KCTA seeks full intervenor status pursuant to 807 KAR 5:001 § 4(11) to allow it to fully participate as a party and to be served with documents related to the Application. KCTA pledges to adhere to all Commission rules and procedures applicable to it as a party intervenor. KCTA’s timely intervention is in lieu of the individual intervention of its members. Consequently, KCTA’s intervention will promote the efficient progress of this proceeding by reducing the burden on other parties and on the Commission.

The undersigned attorney is authorized to represent KCTA in this proceeding and to take service of all documents.

² *Regulation of Rates, Terms and Conditions for the Provision of Pole Attachment Space to Cable Television Companies*, Case Nos. 8040 and 8090 (October 28, 1981) (“*Pole Attachment Jurisdiction Order*”) at 7.

³ *Kentucky CATV Association v Volz*, 675 S.W.2d 393 (Ky. App. 1983).

⁴ See *Pole Attachment Jurisdiction Order* at 5. (underlining in original).

WHEREFORE, KCTA moves for full intervention in the above proceeding.

Respectfully submitted,

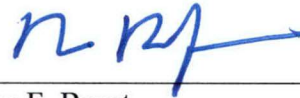


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion has been served by first class mail on those persons whose names appears below this 3rd day of April, 2015.

W. Brent Rice
McBrayer Attorneys at Law
201 East Main Street, Suite 900
Lexington, KY 40507



Douglas F. Brent