

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)	

ORDER

This matter is before the Commission on Kentucky Broadband and Cable Association's (KBCA) motion for clarification filed May 12, 2022. KBCA requested clarification regarding whether the intervenor testimony to be filed on or before June 9, 2022, pursuant to the procedural schedule in the Commission's March 30, 2022 Order, contemplated witness testimony or legal briefing from the intervenors, and if the procedural schedule did not contemplate legal briefing, KBCA requested that the procedural schedule be amended to allow legal briefs to be filed by intervenors with intervenor witness testimony and by the utilities with their rebuttal testimony. KBCA argued that many of its issues with the utilities' tariffs relate to their failure to comply with 807 KAR 5:015 or are based on Commission or Federal Communications Commission precedent such that legal briefing is a more appropriate way to address them.

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC jointly responded to KBCA's motion and indicated that they did not have an objection to the motion but requested additional time to file a response brief such that they could do so several days after they are required to file rebuttal testimony. Cincinnati Bell Telephone

Company, LLC d/b/a Altafiber and BellSouth Telecommunications, LLC d/b/a AT&T Kentucky did not respond to KBCA's motion.¹

The Commission notes that verified, intervenor testimony, if any, to be filed on or before June 9, 2022, was not intended to include legal briefing. Rather, the procedural schedule contemplated that intervenors would file written, verified witness testimony, if any, to support their objections to the tariffs in this matter by the date in the procedural schedule. The Commission understands that certain objections to the tariffs may be primarily legal, and that legal briefing will likely be beneficial in this matter, but such briefs would be more useful at the close of written discovery or any hearing in this matter. Thus, the Commission finds that KBCA's motion for clarification shall be denied to the extent it seeks to have the parties submit legal briefs with intervenor and rebuttal testimony. However, the Commission does find that counsel for the parties shall confer and that the parties shall jointly or separately state their positions, if any, regarding briefing, including the order and timing of briefing, on or before July 18, 2022, (when parties must request a hearing or that the case be submitted for a decision on the record).

IT IS THEREFORE ORDERED that:

1. KBCA's motion is denied to the extent it sought to amend the procedural schedule to establish deadlines for filing legal briefs with intervenor and rebuttal testimony.
2. Parties shall jointly or separately state their positions, if any, regarding briefing, including the order and timing of briefing, on or before July 18, 2022.

¹ Notably, there are currently 3 other cases addressing utility pole attachment tariffs. KBCA made the same motion in each of those cases, and the rural electric cooperative corporations (RECCs) and rural local exchange carriers (RLECs) objected to the motion in the cases pertaining to their tariffs. The investor-owned electric utilities did not respond to KBCA's motion.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

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