

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

**In the Matter of:**

<b>The Petition of the Kentucky Cable</b>	)	
<b>Telecommunications Association for a</b>	)	
<b>Declaratory Order that the Commission</b>	)	<b>Case No. 2012-00544</b>
<b>Has Jurisdiction to Regulate the Pole</b>	)	
<b>Attachment Rates, Terms, and Conditions</b>	)	
<b>of Cooperatives That Purchase Electricity</b>	)	
<b>from the Tennessee Valley Authority</b>	)	

**KCTA’S REPLY TO THE TVA COOPERATIVES’ RESPONSE TO KCTA’S  
SECOND STATUS REPORT AND REQUEST FOR ACTION**

The Kentucky Cable Telecommunications Association (“KCTA”) hereby submits this Reply to the TVA Cooperatives’ Response to KCTA’s Second Status Report and Request for Action (“Response”), filed with the Commission on Monday, October 13, 2014. As described below, and despite the TVA Cooperatives’ attempts to mischaracterize KCTA’s Request for Action, KCTA understands the scope of this proceeding and reiterates its Request that the Commission rule on the pending discovery motions in order to facilitate a final resolution.

KCTA consistently has taken the position that the Commission is required under its enabling statute to exercise the jurisdiction given to it by the legislature. *See Ky. PSC v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 380-381 (Ky. 2010) (reading the PSC’s enabling statute broadly such that it “require[s] that the PSC act to ensure that rates are ‘fair, just and reasonable’”). In the absence of evidence to the contrary, it is presumed that the federal government has not preempted in a given area, *see Michigan Bell Telephone Co. v. MCIMetro Access Transmission Services, Inc.*, 323 F.3d 348, 358 (6<sup>th</sup> Cir. 2003); in the absence of evidence to the contrary, therefore, it is presumed that the Commission must exercise its “broad,” “exclusive,” and “unquestionable” jurisdiction over this matter. *See Kentucky CATV Ass’n v.*

*Volz*, 675 S.W.2d 393, 396 (Ky. Ct. App. 1983); *Ballard Rural Telephone Coop. v. Jackson Purchase Energy Corp.*, 2005 WL 858940, \*3 (Ky. PSC Mar. 23, 2005).

In order to determine whether there is any evidence in support of the TVA Cooperatives' argument against the exercise of the Commission's jurisdiction, however, the Commission must allow discovery to go forward in this proceeding. While the TVA Cooperatives' may benefit from the delay, the narrow question at hand cannot be answered without further action by the Commission. Thus, KCTA reiterates its request that the Commission rule on all pending discovery motions as soon as possible.

In the Response, the TVA Cooperatives seek to have the Commission strike and disregard KCTA's Second Request for Action based on KCTA acting "in contravention of Commission procedures." Response at 2. The TVA Cooperatives, however, provide no reference to any legal authority in support of the accusation. Further, the TVA Cooperatives submit to the Commission that KCTA is withholding payment from certain cooperatives when, in fact, KCTA's Second Request for Action served to notify the Commission of Time Warner Cable's ("TWC's") recent payment, in full, of the amounts sought by Warren RECC based on Warren's refusal to process pole attachment permits essential for TWC to operate and expand its business. The point of KCTA's Second Request for action was simply that the Commission's failure to exercise its jurisdiction is harming KCTA's members.

The TVA Cooperatives' mischaracterization of the law and the facts should not serve to distract the Commission from heeding KCTA's request to rule on the pending discovery motions and, in the absence of contrary evidence, ultimately to exercise its "broad," "exclusive," "unquestionable," and statutorily required jurisdiction.

## CONCLUSION

For the reasons stated above, KCTA asks the Commission to rule on all pending discovery as soon as possible and to exercise its broad, exclusive and unquestionable jurisdiction so that this matter can proceed.

Respectfully submitted,

/s/ Laurence J. Zielke

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**ATTORNEYS FOR THE KENTUCKY CABLE  
TELECOMMUNICATIONS ASSOCIATION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Kentucky Cable Telecommunications Association's Status Update and Request for Action has been served on all parties of record via hand delivery, facsimile, or electronically this 16th day of October, 2014.

/s/ Laurence J. Zielke  
Laurence J. Zielke