

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

**IN THE MATTER OF:**

<b>JOINT ELECTRONIC APPLICATION OF RED FIBER PARENT</b>	)	
<b>LLC, RF MERGER SUB, INC., CINCINNATI BELL INC., AND</b>	)	
<b>CINCINNATI BELL TELEPHONE COMPANY LLC FOR (1) AN</b>	)	
<b>APPROVAL OF THE PROPOSED INDIRECT TRANSFER OF</b>	)	
<b>OF CONTROL OF CINCINNATI BELL TELEPHONE</b>	)	
<b>COMPANY LLC TO RED FIBER PARENT LLC PURSUANT</b>	)	<b>CASE NO.</b>
<b>TO KRS 278.020(6) AND KRS 278.020(7), OR ALTERNATIVELY,</b>	)	<b>2020-00259</b>
<b>PURSUANT TO KRS 278.020(6) AND A DECLARATION THAT</b>	)	
<b>APPROVAL UNDER KRS 278.020(7) IS NOT REQUIRED;</b>	)	
<b>(2) NOTICE OF THE PROPOSED INDIRECT TRANSFER OF</b>	)	
<b>CONTROL OF CINCINNATI BELL EXTENDED TERRITORIES</b>	)	
<b>LLC AND CBTS TECHNOLOGY SERVICES LLC TO RED</b>	)	
<b>FIBER PARENT LLC; AND, (3) ALL OTHER REQUIRED</b>	)	
<b>APPROVALS AND RELIEF</b>	)	

**JOINT APPLICANTS’ REPLY TO CHARTER’S RESPONSE TO MOTION TO STRIKE**

Red Fiber Parent LLC (“Red Fiber Parent”), RF Merger Sub, Inc. (“Merger Sub”), Cincinnati Bell Inc. (“Cincinnati Bell”) and Cincinnati Bell Telephone Company LLC (“CBT”) (collectively, the “Applicants”), by their undersigned representatives, respectfully submit this Reply to the Response filed by Time Warner Cable Information Services (Kentucky), LLC (“Charter”), to the Joint Applicants’ Motion to Strike. On September 13, 2020, Joint Applicants filed a Motion to Strike the Reply of Charter in support of its Motion to Intervene, asserting that Charter’s Reply was untimely filed. Believing that Joint Applicants ignored KRS 446.030 pertaining to the calculation of time allowed to lodge a reply, Charter filed its Response on September 17, 2020, requesting Joint Applicants’ Motion to Strike be overruled. Because of Charter’s misplaced reliance on KRS 446.030, Joint Applicants’ Motion to Strike should be sustained for the following reasons:

1. As stated in Joint Applicants' original Motion to Strike, 807 KAR 5:001, Section 5(3), provides that "unless the Commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion." It is not disputed that Charter's Reply was filed seven (7) days after Joint Applicants' Response rather than five (5) as the regulation provides, thus resulting in Joint Applicants' Motion to Strike.

2. Charter's Response to the Motion to Strike relies exclusively on KRS 446.030(1)(a) and asserts that the statute supersedes the Commission's time computation regulation<sup>1</sup> by excluding intermediate Saturdays, Sundays and legal holidays in the computation.<sup>2</sup> Charter's reliance on this general computation of time statute is simply incorrect and does not cure its untimely filing.

3. While it is correct that KRS 446.030 provides a general statement of how time is to be computed in situations where a litigant's pleading must be filed in short order, it does not apply to the Commission's computation of time regulation<sup>3</sup> in this context because a specific statute allowing the Commission to adopt its own procedural rules exists. KRS 278.310 provides that "[a]ll hearings and investigations before the Commission or any commissioner shall be governed by rules adopted by the commission, and in the conduct thereof neither the commission nor the commissioner shall be bound by the technical rules of legal evidence." By adopting KRS 278.310 the General Assembly recognized the special nature of and need for the Commission to enact its own procedures to promote the efficient administration of investigations and hearings before it.

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<sup>1</sup> 807 KAR 5:001, Section 4(7)

<sup>2</sup> KRS 446.030(1)(a). "... When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation."

<sup>3</sup> 807 KAR 5:001, Section 4(7)

The Commission's computation of time regulation<sup>4</sup> does exactly that.

4. Upon review of KRS 446.030(1)(a) and 807 KAR 5:001, Section 4(7) it is abundantly clear that in enacting its computation of time regulation the Commission simultaneously borrowed and refused to borrow text from the statute. What the regulation borrowed from the statute is that the day of the act is not to be included in the computation of time, and if the last day of the period is a Saturday, Sunday or legal holiday, the period is extended until the next day which is not a Saturday, Sunday or legal holiday. What the Commission's computation of time regulation specifically refused to borrow from the statute is the very sentence upon which Charter's Response is based that "...intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation."<sup>5</sup> That the Commission chose to simultaneously borrow some text from KRS 446.030(1)(a) and not other text in enacting 807 KAR 5:001, Section 4(7), clearly manifests its intention on how internal procedures were to be employed.<sup>6</sup> Clearly, the Commission's refusal to adopt the very text of KRS 446.030(1)(a) relied upon in the Response is fatal to Charter's position.<sup>7</sup>

5. Charter's reliance on KRS 446.030(1)(a) in this context to uphold the untimeliness of its filing is misplaced. KRS 446.030 is a general statute providing rules of time computation across a broad spectrum of judicial and quasi-judicial proceedings such as courts of law, boards, commissions and administrative agencies. However, that general statute is tempered when, as in

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<sup>4</sup> *Id.*

<sup>5</sup> KRS 446.030(1)(a)

<sup>6</sup> The Commission last revised the regulations at issue here in 2012. *See*, Administrative Register of Kentucky, Volume 39, Number 5, November 1, 2012.

<sup>7</sup> Charter's Response (pages 3-4) cites authority which points to the Commission's mention of subsection (1)(b) of KRS 446.030 for other unrelated reasons to "demonstrate the Commission's adherence to the provisions of KRS 446.030." However, Charter also candidly admits that it has "located no cases in which the Commission issued a decision interpreting Subsection (1)(a) of KRS 446.030." It is more than probable counsel could not find any such cases because they do not exist for the reasons discussed above.

this case, the General Assembly sees fit to carve out special authority to an agency like the Commission to adopt its own set of unique rules and procedures tailored to the efficient administration of its investigations and hearings. KRS 278.310 does exactly that and the resulting computation of time regulation found in 807 KAR, Section 4(7), which does not exclude intermediate Saturdays, Sundays and legal holidays, is controlling. It is a basic tenet of statutory construction that specific statutes are superior to general statutes and control as a matter of law.<sup>8</sup>

WHEREFORE, for the reasons stated above 807 KAR 5:001, Section 4(7), and not KRS 446.030(1)(a), controls regarding whether Charter's Response was timely filed, and because intermediate Saturdays, Sundays and legal holidays are not excluded from the computation of time by the regulation, the Commission is respectfully requested to so find and enter an order striking Charter's Response.

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<sup>8</sup> See, *Lewis v. Jackson Energy Co-op Corp.*, 189 S.W. 3d 87, 94 (Ky. 2005) ("Where two statutes concern same or similar subject matter, specific statutes always prevail over general statutes."), citing *Withers v. University of Kentucky*, 939 S.W.2d 340 (Ky. 1997).

Respectfully submitted,



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