

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
ELECTRONIC JOINT APPLICATION)
OF RED FIBER PARENT LLC, RF)
MERGER SUB, INC., CINCINNATI)
BELL, INC., AND CINCINNATI BELL)
TELEPHONE COMPANY LLC FOR (1))
APPROVAL OF THE PROPOSED)
INDIRECT TRANSFER OF CONTROL)
OF CINCINNATI BELL TELEPHONE)
COMPANY LLC TO RED FIBER)
PARENT LLC PURSUANT TO KRS)
278.020(6) AND KRS 278.020(6) AND)
A DECLARATION THAT APPROVAL)
UNDER KRS 278.020(7) IS NOT)
REQUIRED; (2) NOTICE OF THE)
PROPOSED INDIRECT TRANSFER)
OF CONTROL OF CINCINNATI BELL)
EXTENDED TERRITORIES LLC AND)
CBTS TECHNOLOGY SERVICES, LLC)
TO RED FIBER PARENT LLC; AND,)
(3) ALL OTHER REQUIRED)
APPROVALS AND RELIEF)
)

CASE NO.
2020-00259

**TIME WARNER CABLE INFORMATION SERVICES (KENTUCKY), LLC'S
RESPONSE TO APPLICANTS' MOTION TO STRIKE**

On September 11, 2020, Red Fiber Parent LLC, RF Merger Sub, Inc., Cincinnati Bell Inc., and Cincinnati Bell Telephone Company LLC (collectively, "Applicants") filed a Motion to Strike, requesting that the Commission strike the Reply of Time Warner Cable Information Services (Kentucky), LLC's ("Charter") in support of its Motion to Intervene. Charter, by counsel, files this Response to Applicants' Motion to Strike. Because the Applicants have misconstrued Kentucky law, their Motion to Strike must be denied.

I. ARGUMENT

On September 4, 2020, Applicants filed their memorandum in opposition to Charter's Motion to Intervene. Pursuant to Commission regulation 807 KAR 5:001, Section 5(3), Charter was authorized to file a reply brief "no later than five (5) days of the filing of the most recent response to the party's motion." In their Motion to Strike, the Applicants maintain that Charter's September 11, 2020, filing of its Reply was untimely, arguing that it should have been filed on September 9, 2020.

The Applicants' argument ignores the plain language of KRS 446.030(1)(a), which states:

In computing any period of time prescribed or allowed by order of court, or by any applicable statute or **regulation**, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, a legal holiday, or a day on which the public office in which a document is required to be filed is actually and legally closed, in which event the period runs until the end of the next day which is not one (1) of the days just mentioned. **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.**

KRS 446.030(1)(a) (emphasis added).

This statute clearly provides that when the period of time allowed by regulation is less than seven days, intermediate Saturdays, Sundays, and legal holidays are not included in the computation. In this particular instance, the regulation allowed a Reply to be filed within 5 days, which is less than the 7-day ceiling set by the relevant provision in KRS 446.030(1)(a). Applicants' response was filed on Friday, September 4, 2020. In addition to the Saturday and Sunday immediately following the September 4

filing, the following Monday was Labor Day, a legal holiday in Kentucky. See KRS 2.110.¹ Accordingly, Charter's September 11 filing was made on the fourth day, in accordance with the computation requirements of KRS 446.030.

This interpretation of KRS 446.030(1)(a) has been used by courts and agencies in other contexts. For example, in *Commonwealth v. Brown*, 911 S.W.2d 279, 280 (Ky. App. 1995), the Court of Appeals interpreted the statute so as to exclude the intermediate Saturday and Sundays from the deadline computation of a six-day period.² The Attorney General has also confirmed that KRS 446.030(1)(a) requires the exclusion of an intermediate Saturday, Sunday, or legal holiday from the computation of the three-day period by which responses to Open Records requests must be issued. See Ky. Op. Atty. Gen. 16-ORD-259 (2016)(quoting Ky. Op. Atty. Gen. 96-ORD-207(1996).

Although the undersigned counsel has located no cases in which the Commission issued a decision interpreting Subsection (1)(a) of KRS 446.030, the Commission has relied on Subsection (1)(b) to determine statutory deadlines for its own orders. See, e.g., *In the Matter of: Purchased Water Adjustment Filing of Harrison County Water Association, Inc.*, Case No. 2009-00457, 2009 WL 4890290, at *1 n.2

¹ KRS 2.110(1) with emphasis added states: "The first day of January (New Year's Day), the third Monday of January (Birthday of Martin Luther King, Jr.), the nineteenth day of January (Robert E. Lee Day), the thirtieth day of January (Franklin D. Roosevelt Day), the twelfth day of February (Lincoln's Birthday), the third Monday in February (Washington's Birthday), the last Monday in May (Memorial Day), the third day of June (Confederate Memorial Day, and Jefferson Davis Day), the fourth day of July (Independence Day), **the first Monday in September (Labor Day)**, the second Monday in October (Columbus Day), the eleventh day of November (Veterans Day), the twenty-fifth day of December (Christmas Day) of each year, and all days appointed by the President of the United States or by the Governor as days of thanksgiving, **are holidays**" Subsection (2) of that statute states: "(2) No person shall be compelled to labor on the first Monday in September (Labor Day) by any person."

² In that case, the event triggering the beginning of the calculation occurred on a Saturday. That particular Saturday was excluded from the computation because it was the day of the occurrence—not because it was an intermediate Saturday. The next Sunday and the following Saturday and Sunday were excluded from the calculation. Accordingly, the 6-day window that was triggered by a Saturday, October 15 event expired on October 24.

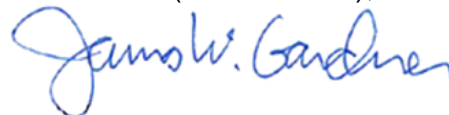
(Ky. PSC Dec. 16, 2009)(applying KRS 446.030 to the deadline established by KRS 278.012); *In the Matter of: Hardin County Water District No. 1's Proposed Tariff Allowing the Use of Master Meters in Manufactured Housing Communities*, 2007-00461, 2008 WL 3856822, at *4 (Ky. PSC Aug. 14, 2008)(applying KRS 446.030 to the deadline established in KRS 278.190). These decisions demonstrate the Commission's adherence to the provisions of KRS 446.030.

II. CONCLUSION

Because Charter's Reply was filed within the 5-day window computed as required by KRS 446.030, the Applicants' Motion to Strike must be denied.

Respectfully submitted,

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