

**KENTUCKY PUBLIC SERVICE COMMISSION**

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In the Matter of: )  
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ELECTRONIC INVESTIGATION OF THE ) CASE NO. 2022-00106  
PROPOSED POLE ATTACHMENT )  
TARIFFS OF RURAL ELECTRIC )  
COOPERATIVE CORPORATIONS )  
)  
)  

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The Kentucky Broadband and Cable Association and its members<sup>1</sup> (“KBCA”), pursuant to the Commission’s March 30, 2022, Order, respectfully submits these Responses to the East Kentucky Power Cooperative, Inc.’s (“EKPC’s”), First Request For Information To Kentucky Broadband And Cable Association.

**RESPONSES**

**1. Please provide a definition of an authorized attachment and, conversely, an unauthorized attachment.**

ANSWER: KBCA objects that this Request seeks legal conclusions. KBCA further objects this Request seeks information irrelevant to the parties’ dispute, and equally available to EKPC. Subject to its objections, KBCA refers EKPC to the utilities’ tariffs, which set forth definitions or descriptions of authorized and unauthorized attachments.

WITNESS: N/A

**2. Concerning unauthorized attachments to the poles owned by electric utilities, the following information is requested from each of the ten members of KBCA.**

- a. Please provide copies of all written policies, directives, or guidance of the company concerning the avoidance of making unauthorized attachments to poles owned by electric utilities.**
- b. Please explain in detail what steps the company takes to ensure that any contractors or subcontractors employed on behalf of the company –**

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<sup>1</sup> The KBCA’s members are Access Cable, Armstrong, C&W Cable, Charter Communications, Comcast, Inter Mountain Cable, Lycom Communications, Mediacom, Suddenlink, and TVS Cable. Kentucky Broadband & Cable Association, Our Members, *available at* <https://www.kybroadband.org/members>.



- a. **Identify the individual(s) responsible for compliance at each member of KBCA by name and job title.**
- b. **Provide the contact information for the individual(s) identified in part (a) above.**
- c. **Provide a detailed description of how the individual(s) identified in part (a) above achieve compliance with the written policies, directives, or guidance or company practice concerning the avoidance of making unauthorized attachments to poles owned by electric utilities.**

ANSWER: KBCA objects that this Request seeks legal analysis and conclusions. KBCA further objects that this Request seeks information that is not relevant to the issues in dispute in this proceeding, especially insofar as it seeks contract information regarding specific people employed by KBCA's members. Subject to its objections, KBCA directs EKPC to KBCA's response to Request # 2.

WITNESS: Jason Keller

**4. Concerning attachments to poles owned by electric utilities, please specify which of the ten members of KBCA:**

- a. **Maintain an inventory or records of all of the company's pole attachments in the Commonwealth of Kentucky. If no inventory or records are maintained, please explain in detail why such information is not retained.**
- b. **For attachments to poles owned by electric utilities, maintain documentation establishing that the pole attachment was authorized. If such documentation is not retained, please explain in detail why such documentation is not retained.**
- c. **Require employees, contractor, or subcontractors to mark their installed assets with ownership identification such that upon field inspection ownership can be determined? If so, how is that marking accomplished? If not, why is that identification not required?**
- d. **Require employees, contractors, or subcontractors to uniquely identify and map circuits or cable segments of their respective systems? If so, how is this typically accomplished and are segments that serve critical customers like hospitals or emergency call centers identified?**
- e. **Sponsor training or require qualification for members, their contractors or their subcontractors to work safely on or around high voltage transmission assets? If so, please provide documentation for those training requirements.**
- f. **Insure against liability for cause or contribution to electric utility outages and/or loss of property or life resulting from attachments (authorized and unauthorized)?**

ANSWER: KBCA objects that this request seeks legal analysis and conclusions. KBCA further objects that this Request seeks information that is in the possession, custody, or control of EKPC, or equally available to EKPC. KBCA objects that this Request seeks information not relevant to the issues in dispute in this proceeding. Subject to its objections, KBCA states with respect to (a) and (b) that EKPC has its pole attachment agreements with KBCA members and has documentation – in the form of attachment applications and permits – establishing which attachments are authorized. With respect to (c), KBCA does not understand this question as phrased. KBCA’s members comply with tagging requirements per pole attachment agreements. With respect to (d), KBCA does not know what EKPC means by “uniquely identify and map circuits or cable segments.” Again, with regard to tagging, KBCA members are required to follow the tagging requirements per the tariff and/or pole attachment agreements with EKPC. With respect to (e), KBCA states documentation of its training requirements for its members, and its members’ contractors and subcontractors, is not at issue or relevant to this proceeding. And with respect to (f), EKPC has agreements setting forth KBCA’s members’ liability, if any, for issues related to their attachments.

WITNESS: Jason Keller

**5. If an inventory or record is maintained for pole attachments to electric transmission poles (69kV and above), provide an estimate of the number of transmission pole attachments in Kentucky.**

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Additionally, the data sought is in the possession, custody, and control of the EKPC, and equally available to it. Subject to its objection, KBCA states it does not have information in its possession, custody, or control that is responsive to this Request.

WITNESS: Jason Keller

**6. Regarding the KBCA members when attaching to electric utility assets:**

- a. How are property rights to traverse private property acquired?
- b. Where are the property rights recorded?
- c. Do members typically acquire independent rights when attaching to electric utility poles on an established electric utility easement?

ANSWER: KBCA objects that this request seeks legal analysis and conclusions. KBCA further objects that this Request seeks information that is not relevant to the issues in dispute in this proceeding. KBCA also does not understand what EKPC means by “property rights recorded” or “acquire independent rights.” Subject to its objection, KBCA answers that its members have federal and state law rights to access public rights of way and private easements dedicated to compatible uses. Where necessary, KBCA members also obtain their own easements.

WITNESS: Jason Keller

**7. Do each of the ten members of KBCA agree that unauthorized attachments to poles of electric utilities should be avoided? Please explain the response in detail.**

ANSWER: KBCA states that attachments made outside a governing pole attachment application process should be avoided.

WITNESS: Jason Keller

**8. Do each of the ten members of KBCA agree that the pole owner should remove attachments to poles owned by electric utilities that were attached without the utility's consent? Please explain your answer.**

ANSWER: KBCA objects that this Request is argumentative and seeks legal conclusions. Subject to its objection, KBCA states that they should not. Determining whether any given attachment was made "without" consent is a fraught and challenging inquiry for a variety of reasons, including imperfect record keeping, emergencies, transfers, changes to the definition of "attachment," and changes to the built environment. As a result, it is more appropriate and standard industry practice for pole owners and attachers to work cooperatively to resolve any issues about unauthorized attachments, assess an unauthorized attachment penalty to the attacher, and update the records for future billing purposes.

WITNESS: Jason Keller

**9. What penalty should broadband providers be subject to for having placed attachments to electric utility poles without proper authorization from the utility?**

ANSWER: KBCA objects that this Request is argumentative and seeks legal conclusions. Subject to its objection, KBCA states that utilities' tariffs set forth penalties for unauthorized attachments, and those terms must be fair, just, and reasonable. In general, the penalty for unauthorized attachments should be the lesser of no more than five years' back rent, or the attachment rate multiplied by the number of years since the utility's last audit. This type of penalty is consistent with standard industry practice and provides incentives for pole owners to perform timely audits and attachers to obtain permits as required.

WITNESS: Jason Keller

**10. Excluding property rights, what is the average cost (labor and materials) of a full structure installation for broadband that must be erected independently, i.e. not attached to a pole owned by another entity?**

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Additionally, the data sought, as it pertains to the EKPC, is in the possession, custody, and control of the EKPC, or equally available

to it. Subject to its objections, KBCA states it does not have information responsive to this Request in its possession, custody, or control. KBCA's members do not install their own poles, and requiring them to do so would be neither reasonable nor economic.

WITNESS: Richard Bast

**11. Please provide industry specifications and design criteria used in Kentucky to determine the structural loading applied to poles by standard broadband configurations. What are the required qualifications for those persons who design and approve broadband installations in Kentucky?**

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Additionally, the data sought, as it pertains to EKPC, is in the possession, custody, and control of the EKPC, or equally available to it. KBCA further states it does not have information in its possession, custody, or control that is responsive to this Request. Subject to KBCA's objections, Mr. Bast states as follows:

Each pole owner has a different set of policies related to what the "reasonable work tasks involved in performing a pole loading analysis" would be. Some do not require more than a picture of the pole and its location, while others require more formal analyses. Regardless, before Charter attaches to a pole, it visually inspects the pole for clear safety violations, and will not attach if it observes a safety issue that needs to be corrected to make a safe attachment. Charter also visually inspects cable before overlashing to ensure the bundle size is reasonable and not likely to overload the pole.

WITNESS: Richard Bast


**12. Please provide copies of all pole attachment agreements that each of the ten members of KBCA have with EKPC.**

ANSWER: KBCA objects that this Request seeks information that is unduly burdensome and disproportionate to the needs of this case. Additionally, the data sought is in the possession, custody, and control of the EKPC, and equally available to it. Subject to its objection, KBCA states it does not have information in its possession, custody, or control that is responsive to this Request.

WITNESS: Jason Keller

Dated: July 7, 2022

Respectfully submitted,

/s/ 

James W. Gardner  
M. Todd Osterloh  
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*Counsel for KBCA*

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

In the Matter of:

ELECTRONIC INVESTIGATION OF THE )  
PROPOSED POLE ATTACHMENT )  
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COOPERATIVE CORPORATIONS )

Case No.  
2022-00106

**VERIFICATION**

The undersigned, Richard Bast, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in these Responses for which he is listed as a witness, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

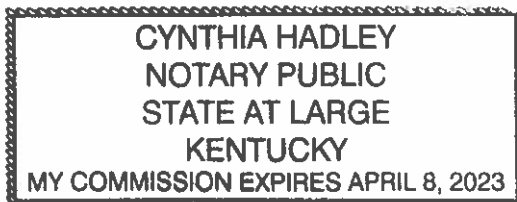
*Richard W. Bast*

Richard Bast

COMMONWEALTH OF KENTUCKY )  
JEFFERSON COUNTY )



SUBSCRIBED AND SWORN TO before me by Richard Bast on this the 7<sup>th</sup> day of  
July, 2022.



*Cynthia Hadley*  
NOTARY  
# 621067



