

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

**In the Matter of:**

**ELECTRONIC INVESTIGATION OF THE                     )  
PROPOSED POLE ATTACHMENT TARIFFS OF            ) CASE NO. 2022-00107  
RURAL LOCAL EXCHANGE CARRIERS                    )**

**RURAL LOCAL EXCHANGE CARRIERS' RESPONSES**  
**TO KBCA'S OBJECTIONS**

Ballard Rural Telephone Cooperative Corporation; Brandenburg Telephone Company Inc.; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative Corporation, Inc.; Gearheart Communications Company, Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc. dba LTC Connect; Mountain Rural Telephone Cooperative Corporation; North Central Telephone Cooperative, Inc.; Peoples Rural Telephone Cooperative Corporation, Inc.; South Central Rural Telecommunications Cooperative, Inc.; Thacker-Grigsby Telephone Company, Incorporated; and West Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively, the “RLECs”), by counsel and pursuant to the Commission’s procedural order in the above-captioned case, respectfully provide the following response to Kentucky Broadband and Cable Association’s (“KBCA”) objections filed in Commission Case No. 2022-00064 and incorporated into the record of the above-captioned case.<sup>1</sup>

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<sup>1</sup> Gearheart Communications Company, Inc. (“Gearheart”) and Thacker-Grigsby Telephone Company, Incorporated (“Thacker-Grigsby”) note that KBCA’s objections were purportedly filed on behalf of all KBCA members, including Inter Mountain Cable, with whom Gearheart shares ownership and management, and Thacker-Grigsby’s wholly-owned subsidiary, TVS Cable. KBCA objected to portions of the Duo County Tariff adopted by Gearheart and Thacker-Grigsby. Gearheart and Thacker-Grigsby seek to make clear through this filing that neither Inter Mountain Cable nor TVS Cable object to the tariffs filed by their related entities.

## **I. Introduction**

While the RLECs infrastructure can be utilized for the expansion of broadband and other services in the Commonwealth, any use of the RLECs infrastructure must be approached with due respect for its chief purpose – the provision of safe, reliable telecommunications services from the RLECs.<sup>2</sup>

Consistent with the Commission’s regulatory directives, each of the RLECs prepared and recently submitted updated, detailed proposed tariff schedules governing attachments to their poles. These new schedules are modeled after RLEC tariffs for CATV services that have existed for many years and the practical experience of working with attachers. They fully reflect the pertinent regulation, 807 KAR 5:015, and contain only terms that are fair, just, and reasonable, which accomplish the overarching objective of the RLECs’ pole attachment tariff – the continued provision of safe and reliable telecommunications services.

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<sup>2</sup> See also 47 U.S.C. § 224(c)(2)(B) (requiring the Commonwealth to “consider the interests of the subscribers offered via such attachments as well as the interests of the consumers of the utility services” (emphasis added)).

## II. RLECs' Responses to KBCA's Objections

### 1. Objections to Ballard Rural Telephone Cooperative Corp., Inc. Tariff

#### A. Cost to Replace Poles that Are Not Red-Tagged.

**Objection:** KBCA objects to any provision assigning the entire cost of replacing a pole that is not red-tagged to KBCA, including the requirement that “[t]he make-ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new Pole to accommodate the new Attacher’s attachment shall be charged the Company’s cost [sic] in accordance with the Company’s tariff or a special contract regarding pole attachments between the Company and the new Attacher.” KBCA should only pay its reasonable share of a pole replacement. (Tariff Citation: Original Page 18-18 Sec. 18.19).

**Response:** KBCA’s objection is simply a restatement of its comments on the Commission’s proposed pole attachment regulations that the Commission refused to implement when issuing its final regulations. Because the Commission has already rejected this exact proposal from KBCA in implementing its final pole attachment regulation, no further response should be required.

Specifically, in its July 2021 Comments, KBCA stated “the Commission should ensure that the costs of pole replacements are appropriately shared in all cases and not only with regard to ‘red tagged’ poles, as defined in the Commission’s proposal.”<sup>3</sup>

In the Commission’s Statement of Consideration relating to 807 KAR 5:015, the Commission specifically addressed KBCA’s comments – which are restated in KBCA’s objection:

As part of that process, a number of attachers, including KBCA, requested more specific language regarding how the cost to replace poles should be allocated. . . . First, they alleged that pole owners were attempting to charge them for the cost of poles that had to be replaced for reasons other than a need to accommodate their new attachments i.e. the pole was damaged or had reached the end of its life.

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<sup>3</sup> KBCA’s Comments on the Commission’s Proposed Pole Attachment Regulations, *available at:* [https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments\\_072021\\_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf](https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments_072021_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf).

Second, they argued, as KBCA does in its comments here, that it is inequitable to charge a new attacher for the full cost of a replacement pole that is installed to accommodate a new attachment . . .

The amendment proposed by KBCA could result in electric rates that are not fair, just and reasonable. When reviewing utility rates and charges to determine if they are fair, just and reasonable and otherwise comply with statutory requirements imposed by KRS Chapter 278, the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost. If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.<sup>4</sup>

Accordingly, in recognition that Ballard Rural Telephone’s proposed tariff properly allocates costs to the party causing the cost, the Commission should approve Ballard Rural Telephone’s tariff as proposed.

#### **B. Indemnity.**

**Objection:** KBCA objects to any standard that makes an attacher responsible for the negligence of the pole owner, including the requirement that the “Attacher shall indemnify, protect, and hold harmless the Company and other joint-users of said poles from and against any and all loss, costs, claims . . . arising out of . . . the joint negligence of the Attacher and the Company and/or any joint users.” (Tariff Citation: Original Page 18-7 Sec. 18.8(1)).

**Response:** Ballard Rural Telephone’s proposed indemnity provision is designed to ensure that there are adequate mechanisms in place so that, as the pole owner, Ballard Rural Telephone is not responsible for damages or injuries caused or contributed to by an Attacher. Ballard Rural Telephone should not be required to incur damage or loss as a result of the negligence taken by an Attacher, which is what is accomplished by the proposed indemnity provision.

Accordingly, in recognition that Ballard Rural Telephone’s proposed tariff reasonably ensures that Ballard Rural Telephone will not incur losses as a consequence of third-party

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<sup>4</sup> 807 KAR 5:015 amended after comment, Statement of Consideration, at 46-47 (emphasis added), *available at:* <https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment.pdf>.

attachments, the Commission should approve Ballard Rural Telephone's tariff as proposed. In fact, Ballard Rural Telephone proposed this language because it is identical to language previously approved by the Commission for CATV Pole Attachments and has gone uncontested by KBCA and its members for years.<sup>5</sup>

### C. Termination of Attachments.

**Objection:** KBCA objects to a provision giving the Company a broad right to terminate KBCA's rights under the tariff and remove its attachments "[i]f the Attacher shall fail to comply with any of the provisions of this tariff, including . . . timely payment of any amounts due, and shall fail for thirty (30) days after written notice from the Company to correct such non-compliance." (Tariff Citation: Original Page 18-10 Sec. 18-11).

**Response:** KBCA objects to Ballard Rural Telephone's right to cease providing services to an Attacher if an Attacher: (1) fails to timely pay the required fees under the tariff; and (2) that failure to pay continues for thirty days after Ballard Rural Telephone provides written notice. According to KBCA, Ballard Rural Telephone's right to cease providing services only after written notice is provided and the failure to comply continues for an additional thirty (30) days is an "unreasonable" term and condition.

Comparably, the publicly available terms and conditions of Charter Communications show that (1) Charter Communications is required to provide its customers with no prior written notice for failure to timely pay amounts due; (2) Charter Communications has the right to terminate service if payment is even a single day late; and (3) in addition to the past amounts due, Charter Communications has the right to additional payments, including the possibility of an additional installation fee as well as the right to charge higher prices.

Section 2(c) of Charter Communication's Residential General Terms and Conditions of Service provide, in pertinent part:

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<sup>5</sup> See Mountain Rural Telephone Cooperative, Local Exchange Tariff, PSC Ky. Tariff No. 3, Original Sheet No. 12, § 11.11(1) (approved by the Commission and effective as of February 20, 2017).

Failure to pay charges by the due date on the billing statement (including checks returned for insufficient funds) may result in suspension or disconnection of all Services, the removal of all Equipment and/or imposition of a late payment or service charge. If Subscriber has more than one account (business and/or residential) served by Spectrum, all Spectrum-provided Services at all locations may be subject to suspension or disconnection of Service in the event any one account remains delinquent and Spectrum may apply any funds received from Subscriber first to such delinquent account(s). Should Subscriber wish to resume Service after any suspension, Subscriber may be subject to reconnection fees. Should Subscriber wish to resume Service after termination of Service, Spectrum may charge fees for installation, service calls, and/or activation and reserves the right to charge rates different than those in place at the time of disconnect. These fees are in addition to all past due charges and other fees. In the event collection activities are required, additional collection charges may be imposed.<sup>6</sup>

Thus, if the Commission were to accept KBCA's objections, Charter Communications would necessarily be forcing its customers across the Commonwealth to be bound by "unreasonable" terms and conditions.

Any pole owner, including Ballard Rural Telephone, must have a remedy for an Attacher's failure to comply with the terms of the Tariff (just like KBCA's members have remedies when users of their services fail to comply with their agreements). Ballard Rural Telephone's tariff adequately balances all interests by providing an Attacher with protection to ensure that Ballard Rural Telephone is required to provide notice and an opportunity to cure prior to seeking to remove any attachments for non-compliance, while simultaneously ensuring that Ballard Rural Telephone has mechanisms to ensure compliance with the Tariff, including for non-payment.

Accordingly, the Commission should approve Ballard Rural Telephone's Tariff as proposed.

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<sup>6</sup> Spectrum Residential General Terms and Conditions of Service, *available at*: <https://www.spectrum.com/policies/residential-general-terms-and-conditions-of-service> (emphasis added).

## 2. Objections to Brandenburg Telephone Company Tariff

### A. Cost to Replace Poles that Are Not Red-Tagged.

**Objection:** KBCA objects to any provision assigning the entire cost of replacing a pole that is not red-tagged to KBCA, including the requirement that “[t]he make-ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new Pole to accommodate the new Attacher’s attachment shall be charged the Company’s cost [sic] in accordance with the Company’s tariff or a special contract regarding pole attachments between the Company and the new Attacher.” KBCA should only pay its reasonable share of a pole replacement. (Tariff Citation: Original Page 18-18 Sec. 18.19).

**Response:** KBCA’s objection is simply a restatement of its comments on the Commission’s proposed pole attachment regulations that the Commission refused to implement when issuing its final regulations. Because the Commission has already rejected this exact proposal from KBCA in implementing its final pole attachment regulation, no further response should be required.

Specifically, in its July 2021 Comments, KBCA stated “the Commission should ensure that the costs of pole replacements are appropriately shared in all cases and not only with regard to ‘red tagged’ poles, as defined in the Commission’s proposal.”<sup>7</sup>

In the Commission’s Statement of Consideration relating to 807 KAR 5:015, the Commission specifically addressed KBCA’s comments – which are restated in KBCA’s objection:

As part of that process, a number of attachers, including KBCA, requested more specific language regarding how the cost to replace poles should be allocated. . . . First, they alleged that pole owners were attempting to charge them for the cost of poles that had to be replaced for reasons other than a need to accommodate their new attachments i.e. the pole was damaged or had reached the end of its life. Second, they argued, as KBCA does in its comments here, that it is inequitable to charge a new attacher for the full cost of a replacement pole that is installed to accommodate a new attachment . . .

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<sup>7</sup> KBCA’s Comments on the Commission’s Proposed Pole Attachment Regulations, *available at*: [https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments\\_072021\\_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf](https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments_072021_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf).

The amendment proposed by KBCA could result in electric rates that are not fair, just and reasonable. When reviewing utility rates and charges to determine if they are fair, just and reasonable and otherwise comply with statutory requirements imposed by KRS Chapter 278, the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost. If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.<sup>8</sup>

Accordingly, in recognition that Brandenburg Telephone's proposed tariff properly allocates costs to the party causing the cost, the Commission should approve Brandenburg Telephone's tariff as proposed.

### **B. Indemnity.**

**Objection:** KBCA objects to any standard that makes an attacher responsible for the negligence of the pole owner, including the requirement that the "Attacher shall indemnify, protect, and hold harmless the Company and other joint-users of said poles from and against any and all loss, costs, claims . . . arising out of . . . the joint negligence of the Attacher and the Company and/or any joint users." (Tariff Citation: Original Page 18-7 Sec. 18.8(1)).

**Response:** Brandenburg Telephone's proposed indemnity provision is designed to ensure that there are adequate mechanisms in place to ensure that, as the pole owner, Brandenburg Telephone is not responsible for damages or injuries caused or contributed to by an Attacher. Brandenburg Telephone should not be required to incur damage or loss as a result of the negligence taken by an Attacher, which is what is accomplished by the proposed indemnity provision.

Accordingly, in recognition that Brandenburg Telephone's proposed tariff reasonably ensures that Brandenburg Telephone will not incur losses as a consequence of third-party attachments, the Commission should approve Brandenburg Telephone's tariff as proposed. In fact, Brandenburg Telephone proposed this language because it is identical to language

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<sup>8</sup> 807 KAR 5:015 amended after comment, Statement of Consideration, at 46-47 (emphasis added), available at: <https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment.pdf>.



previously approved by the Commission for CATV Pole Attachments and has gone uncontested by KBCA and its members for years.<sup>9</sup>

### C. Termination of Attachments.

**Objection:** KBCA objects to a provision giving the Company a broad right to terminate KBCA's rights under the tariff and remove its attachments "[i]f the Attacher shall fail to comply with any of the provisions of this tariff, including . . . timely payment of any amounts due, and shall fail for thirty (30) days after written notice from the Company to correct such non-compliance." (Tariff Citation: Original Page 18-10 Sec. 18-11).

**Response:** KBCA objects to Brandenburg Telephone's right to cease providing services to an Attacher if an Attacher: (1) fails to timely pay the required fees under the tariff; and (2) that failure to pay continues for thirty days after Brandenburg Telephone provides written notice. According to KBCA, Brandenburg Telephone's right to cease providing services only after written notice is provided and the failure to comply continues for an additional thirty (30) days is an "unreasonable" term and condition.

Comparably, the publicly available terms and conditions of Charter Communications show that (1) Charter Communications is required to provide its customers with no prior written notice for failure to timely pay amounts due; (2) Charter Communications has the right to terminate service if payment is even a single day late; and (3) in addition to the past amounts due, Charter Communications has the right to additional payments, including the possibility of an additional installation fee as well as the right to charge higher prices.

Section 2(c) of Charter Communication's Residential General Terms and Conditions of Service provide, in pertinent part:

Failure to pay charges by the due date on the billing statement (including checks returned for insufficient funds) may result in suspension or disconnection of all Services, the removal of all Equipment and/or imposition of a late payment or service charge. If Subscriber has more than one account (business and/or

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<sup>9</sup> See Mountain Rural Telephone Cooperative, Local Exchange Tariff, PSC Ky. Tariff No. 3, Original Sheet No. 12, § 11.11(1) (approved by the Commission and effective as of February 20, 2017).

residential) served by Spectrum, all Spectrum-provided Services at all locations may be subject to suspension or disconnection of Service in the event any one account remains delinquent and Spectrum may apply any funds received from Subscriber first to such delinquent account(s). Should Subscriber wish to resume Service after any suspension, Subscriber may be subject to reconnection fees. Should Subscriber wish to resume Service after termination of Service, Spectrum may charge fees for installation, service calls, and/or activation and reserves the right to charge rates different than those in place at the time of disconnect. These fees are in addition to all past due charges and other fees. In the event collection activities are required, additional collection charges may be imposed.<sup>10</sup>

Thus, if the Commission were to accept KBCA's objections, Charter Communications would necessarily be forcing its customers across the Commonwealth to be bound by "unreasonable" terms and conditions.

Any pole owner, including Brandenburg Telephone, must have a remedy for an Attacher's failure to comply with the terms of the Tariff (just like KBCA's members have remedies when users of their services fail to comply with their agreements). Brandenburg Telephone's tariff adequately balances all interests by providing an Attacher with protection to ensure that Brandenburg Telephone is required to provide notice and an opportunity to cure prior to seeking to remove any attachments for non-compliance, while simultaneously ensuring that Brandenburg Telephone has mechanisms to ensure compliance with the Tariff, including for non-payment.

Accordingly, the Commission should approve Brandenburg Telephone's Tariff as proposed.

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<sup>10</sup> Spectrum Residential General Terms and Conditions of Service, *available at:* <https://www.spectrum.com/policies/residential-general-terms-and-conditions-of-service> (emphasis added).

**D. Survey Fee Estimate.**

**Objection: KBCA objects to a survey fee estimate of \$225 per pole because it is unreasonable and unsupported. (Tariff Citation 18-28 Sec. 18.26)**

**Response:** KBCA's objection to Brandenburg Telephone's survey fee estimate misunderstands the Commission's regulation and, when combined with KBCA's objection to the inclusion of remedies for non-payment in Brandenburg Telephone's Tariff, seeks to shift the risk associated with survey costs to Brandenburg Telephone – in contravention of the Commission's regulation.

As implemented, 807 KAR 5:015 § 4(2)(b)(6) provides as follows:

- a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.
- b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.
- c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

807 KAR 5:015 § 4(2)(b)(6) (emphasis added).

Next, 807 KAR 5:015 § 6(a), provides that a utility must provide a final make-ready invoice, which must include "A detailed, itemized final invoice of the actual survey costs incurred if the survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid." 807 KAR 5:015 § 6(a)(1). Thus, the regulations expressly contemplate a true-up mechanism to ensure that the new attacher is only responsible for the actual survey costs, if different than the estimate.

Brandenburg Telephone's Tariff contains a good faith "per pole estimate of costs" as is expressly required by the Commission's regulation. This estimate is included to provide Brandenburg Telephone with "reasonable security," as the Commission's regulation expressly places the costs of the survey upon the new attacher. In the event the survey estimate ever exceeded the amount of "actual survey costs," Brandenburg Telephone would be required to provide a new attacher with an itemized invoice, detailing the cost difference and providing a credit to the new attacher.

Brandenburg Telephone's proposed Tariff complies with the language and intent of the Commission's regulation because it ensures that Brandenburg Telephone is provided "reasonable security," while simultaneously authorizing a true-up procedure if actual costs of the survey are greater or less than the survey estimate. This ensures that a pole owner, like Brandenburg Telephone, is given adequate security that it is able to fully recover the costs of the survey, as is expressly required by Commission regulation. Indeed, when combined with KBCA's objection to any remedies for non-payment, it is clear that adequate measures of security are needed for pole owners.

The Commission should accept Brandenburg Telephone's Tariff as proposed.

3. **Objections to South Central Rural Telecommunications Cooperative, Inc. Tariff**

A. **Cost to Replace Poles that Are Not Red-Tagged.**

**Objection:** KBCA objects to any provision assigning the entire cost of replacing a pole that is not red-tagged to KBCA, including the requirement that “[t]he make-ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new Pole to accommodate the new Attacher’s attachment shall be charged the Company’s cost [sic] in accordance with the Company’s tariff or a special contract regarding pole attachments between the Company and the new Attacher.” KBCA should only pay its reasonable share of a pole replacement. (Tariff Citation: Original Page 18-18 Sec. 18.19).

**Response:** KBCA’s objection is simply a restatement of its comments on the Commission’s proposed pole attachment regulations that the Commission refused to implement when issuing its final regulations. Because the Commission has already rejected this exact proposal from KBCA in implementing its final pole attachment regulation, no further response should be required.

Specifically, in its July 2021 Comments, KBCA stated “the Commission should ensure that the costs of pole replacements are appropriately shared in all cases and not only with regard to ‘red tagged’ poles, as defined in the Commission’s proposal.”<sup>11</sup>

In the Commission’s Statement of Consideration relating to 807 KAR 5:015, the Commission specifically addressed KBCA’s comments – which are restated in KBCA’s objection:

As part of that process, a number of attachers, including KBCA, requested more specific language regarding how the cost to replace poles should be allocated. . . . First, they alleged that pole owners were attempting to charge them for the cost of poles that had to be replaced for reasons other than a need to accommodate their new attachments i.e. the pole was damaged or had reached the end of its life. Second, they argued, as KBCA does in its comments here, that it is inequitable to charge a new attacher for the full cost of a replacement pole that is installed to accommodate a new attachment . . .

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<sup>11</sup> KBCA’s Comments on the Commission’s Proposed Pole Attachment Regulations, *available at:* [https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments\\_072021\\_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf](https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments_072021_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf).

The amendment proposed by KBCA could result in electric rates that are not fair, just and reasonable. When reviewing utility rates and charges to determine if they are fair, just and reasonable and otherwise comply with statutory requirements imposed by KRS Chapter 278, the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost. If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.<sup>12</sup>

Accordingly, in recognition that South Central Rural Telephone's proposed tariff properly allocates costs to the party causing the cost, the Commission should approve South Central Rural Telephone's tariff as proposed.

## **B. Indemnity.**

**Objection:** KBCA objects to any standard that makes an attacher responsible for the negligence of the pole owner, including the requirement that the "Attacher shall indemnify, protect, and hold harmless the Company and other joint-users of said poles from and against any and all loss, costs, claims . . . arising out of . . . the joint negligence of the Attacher and the Company and/or any joint users." (Tariff Citation: Original Page 18-7 Sec. 18.8(1)).

**Response:** South Central Rural Telephone's proposed indemnity provision is designed to ensure that there are adequate mechanisms in place to ensure that, as the pole owner, South Central Rural Telephone is not responsible for damages or injuries caused or contributed to by an Attacher. South Central Rural Telephone should not be required to incur damage or loss as a result of the negligence taken by an Attacher, which is what is accomplished by the proposed indemnity provision.

Accordingly, in recognition that South Central Rural Telephone's proposed tariff reasonably ensures that South Central Rural Telephone will not incur losses as a consequence of third-party attachments, the Commission should approve South Central Rural Telephone's tariff

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<sup>12</sup> 807 KAR 5:015 amended after comment, Statement of Consideration, at 46-47 (emphasis added), available at: <https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment.pdf>.

as proposed. In fact, South Central Rural Telephone proposed this language because it is identical to language previously approved by the Commission for CATV Pole Attachments and has gone uncontested by KBCA and its members for years.<sup>13</sup>

### C. Termination of Attachments.

**Objection:** KBCA objects to a provision giving the Company a broad right to terminate KBCA’s rights under the tariff and remove its attachments “[i]f the Attacher shall fail to comply with any of the provisions of this tariff, including . . . timely payment of any amounts due, and shall fail for thirty (30) days after written notice from the Company to correct such non-compliance.” (Tariff Citation: Original Page 18-10 Sec. 18-11).

**Response:** KBCA objects to South Central Rural Telephone’s right to cease providing services to an Attacher if an Attacher: (1) fails to timely pay the required fees under the tariff; and (2) that failure to pay continues for thirty days after South Central Rural Telephone provides written notice. According to KBCA, South Central Rural Telephone’s right to cease providing services only after written notice is provided and the failure to comply continues for an additional thirty (30) days is an “unreasonable” term and condition.

Comparably, the publicly available terms and conditions of Charter Communications show that (1) Charter Communications is required to provide its customers with no prior written notice for failure to timely pay amounts due; (2) Charter Communications has the right to terminate service if payment is even a single day late; and (3) in addition to the past amounts due, Charter Communications has the right to additional payments, including the possibility of an additional installation fee as well as the right to charge higher prices.

Section 2(c) of Charter Communication’s Residential General Terms and Conditions of Service provide, in pertinent part:

Failure to pay charges by the due date on the billing statement (including checks returned for insufficient funds) may result in suspension or disconnection of all

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<sup>13</sup> See Mountain Rural Telephone Cooperative, Local Exchange Tariff, PSC Ky. Tariff No. 3, Original Sheet No. 12, § 11.11(1) (approved by the Commission and effective as of February 20, 2017).

Services, the removal of all Equipment and/or imposition of a late payment or service charge. If Subscriber has more than one account (business and/or residential) served by Spectrum, all Spectrum-provided Services at all locations may be subject to suspension or disconnection of Service in the event any one account remains delinquent and Spectrum may apply any funds received from Subscriber first to such delinquent account(s). Should Subscriber wish to resume Service after any suspension, Subscriber may be subject to reconnection fees. Should Subscriber wish to resume Service after termination of Service, Spectrum may charge fees for installation, service calls, and/or activation and reserves the right to charge rates different than those in place at the time of disconnect. These fees are in addition to all past due charges and other fees. In the event collection activities are required, additional collection charges may be imposed.<sup>14</sup>

Thus, if the Commission were to accept KBCA's objections, Charter Communications would necessarily be forcing its customers across the Commonwealth to be bound by "unreasonable" terms and conditions.

Any pole owner, including South Central Rural Telephone, must have a remedy for an Attacher's failure to comply with the terms of the Tariff (just like KBCA's members have remedies when users of their services fail to comply with their agreements). South Central Rural Telephone's tariff adequately balances all interests by providing an Attacher with protection to ensure that South Central Rural Telephone is required to provide notice and an opportunity to cure prior to seeking to remove any attachments for non-compliance, while simultaneously ensuring that South Central Rural Telephone has mechanisms to ensure compliance with the Tariff, including for non-payment.

Accordingly, the Commission should approve South Central Rural Telephone's Tariff as proposed.

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<sup>14</sup> Spectrum Residential General Terms and Conditions of Service, *available at*: <https://www.spectrum.com/policies/residential-general-terms-and-conditions-of-service> (emphasis added).



**D. Survey Fee Estimate.**

**Objection: KBCA objects to a survey fee estimate of \$162.77 per pole because it is unreasonable and unsupported. (Tariff Citation 18-28 Sec. 18.26)**

**Response:** KBCA's objection to South Central Rural Telephone's survey fee estimate misunderstands the Commission's regulation and, when combined with KBCA's objection to the inclusion of remedies for non-payment in South Central Rural Telephone's Tariff, seeks to shift the risk associated with survey costs to South Central Rural Telephone – in contravention of the Commission's regulation.

As implemented, 807 KAR 5:015 § 4(2)(b)(6) provides as follows:

- a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.
- b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.
- c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

807 KAR 5:015 § 4(2)(b)(6) (emphasis added).

Next, 807 KAR 5:015 § 6(a), provides that a utility must provide a final make-ready invoice, which must include "A detailed, itemized final invoice of the actual survey costs incurred if the survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid." 807 KAR 5:015 § 6(a)(1). Thus, the regulations expressly contemplate a true-up mechanism to ensure that the new attacher is only responsible for the actual survey costs, if different than the estimate.

South Central Rural Telephone's Tariff contains a good faith "per pole estimate of costs" as is expressly required by the Commission's regulation. This estimate is included to provide South Central Rural Telephone with "reasonable security," as the Commission's regulation expressly places the costs of the survey upon the new attacher. In the event the survey estimate ever exceeded the amount of "actual survey costs," South Central Rural Telephone would be required to provide a new attacher with an itemized invoice, detailing the cost difference and providing a credit to the new attacher.

South Central Rural Telephone's proposed Tariff complies with the language and intent of the Commission's regulation because it ensures that South Central Rural Telephone is provided "reasonable security," while simultaneously authorizing a true-up procedure if actual costs of the survey are greater or less than the survey estimate. This ensures that a pole owner, like South Central Rural Telephone, is given adequate security that it is able to fully recover the costs of the survey, as is expressly required by Commission regulation. Indeed, when combined with KBCA's objection to any remedies for non-payment, it is clear that adequate measures of security are needed for pole owners.

The Commission should accept South Central Rural Telephone's Tariff as proposed.

#### 4. Objections to Thacker-Grigsby Telephone Co., Inc. Tariff

##### A. Cost to Replace Poles that Are Not Red-Tagged.

**Objection:** KBCA objects to any provision assigning the entire cost of replacing a pole that is not red-tagged to KBCA, including the requirement that “[t]he make-ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new Pole to accommodate the new Attacher’s attachment shall be charged the Company’s cost [sic] in accordance with the Company’s tariff or a special contract regarding pole attachments between the Company and the new Attacher.” KBCA should only pay its reasonable share of a pole replacement. (Tariff Citation: Original Page 18-18 Sec. 18.19).

**Response:** KBCA’s objection is simply a restatement of its comments on the Commission’s proposed pole attachment regulations that the Commission refused to implement when issuing its final regulations. Because the Commission has already rejected this exact proposal from KBCA in implementing its final pole attachment regulation, no further response should be required.

Specifically, in its July 2021 Comments, KBCA stated “the Commission should ensure that the costs of pole replacements are appropriately shared in all cases and not only with regard to ‘red tagged’ poles, as defined in the Commission’s proposal.”<sup>15</sup>

In the Commission’s Statement of Consideration relating to 807 KAR 5:015, the Commission specifically addressed KBCA’s comments – which are restated in KBCA’s objection:

As part of that process, a number of attachers, including KBCA, requested more specific language regarding how the cost to replace poles should be allocated. . . . First, they alleged that pole owners were attempting to charge them for the cost of poles that had to be replaced for reasons other than a need to accommodate their new attachments i.e. the pole was damaged or had reached the end of its life. Second, they argued, as KBCA does in its comments here, that it is inequitable to charge a new attacher for the full cost of a replacement pole that is installed to accommodate a new attachment . . .

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<sup>15</sup> KBCA’s Comments on the Commission’s Proposed Pole Attachment Regulations, *available at*: [https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments\\_072021\\_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf](https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments_072021_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf).

The amendment proposed by KBCA could result in electric rates that are not fair, just and reasonable. When reviewing utility rates and charges to determine if they are fair, just and reasonable and otherwise comply with statutory requirements imposed by KRS Chapter 278, the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost. If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.<sup>16</sup>

Accordingly, in recognition that Thacker-Grigsby Telephone's proposed tariff properly allocates costs to the party causing the cost, the Commission should approve Thacker-Grigsby Telephone's tariff as proposed.

### **B. Indemnity.**

**Objection:** KBCA objects to any standard that makes an attacher responsible for the negligence of the pole owner, including the requirement that the "Attacher shall indemnify, protect, and hold harmless the Company and other joint-users of said poles from and against any and all loss, costs, claims . . . arising out of . . . the joint negligence of the Attacher and the Company and/or any joint users." (Tariff Citation: Original Page 18-7 Sec. 18.8(1)).

**Response:** Thacker-Grigsby Telephone's proposed indemnity provision is designed to ensure that there are adequate mechanisms in place to ensure that, as the pole owner, Thacker-Grigsby Telephone is not responsible for damages or injuries caused or contributed to by an Attacher. Thacker-Grigsby Telephone should not be required to incur damage or loss as a result of the negligence taken by an Attacher, which is what is accomplished by the proposed indemnity provision.

Accordingly, in recognition that Thacker-Grigsby Telephone's proposed tariff reasonably ensures that Thacker-Grigsby Telephone will not incur losses as a consequence of third-party attachments, the Commission should approve Thacker-Grigsby Telephone's tariff as proposed. In fact, Thacker-Grigsby Telephone proposed this language because it is identical to language

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<sup>16</sup> 807 KAR 5:015 amended after comment, Statement of Consideration, at 46-47 (emphasis added), available at: <https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment.pdf>.

previously approved by the Commission for CATV Pole Attachments and has gone uncontested by KBCA and its members for years.<sup>17</sup>

### C. Termination of Attachments.

**Objection:** KBCA objects to a provision giving the Company a broad right to terminate KBCA’s rights under the tariff and remove its attachments “[i]f the Attacher shall fail to comply with any of the provisions of this tariff, including . . . timely payment of any amounts due, and shall fail for thirty (30) days after written notice from the Company to correct such non-compliance.” (Tariff Citation: Original Page 18-10 Sec. 18-11).

**Response:** KBCA objects to Thacker-Grigsby Telephone’s right to cease providing services to an Attacher if an Attacher: (1) fails to timely pay the required fees under the tariff; and (2) that failure to pay continues for thirty days after Thacker-Grigsby Telephone provides written notice. According to KBCA, Thacker-Grigsby Telephone’s right to cease providing services only after written notice is provided and the failure to comply continues for an additional thirty (30) days is an “unreasonable” term and condition.

Comparably, the publicly available terms and conditions of Charter Communications show that (1) Charter Communications is required to provide its customers with no prior written notice for failure to timely pay amounts due; (2) Charter Communications has the right to terminate service if payment is even a single day late; and (3) in addition to the past amounts due, Charter Communications has the right to additional payments, including the possibility of an additional installation fee as well as the right to charge higher prices.

Section 2(c) of Charter Communication’s Residential General Terms and Conditions of Service provide, in pertinent part:

Failure to pay charges by the due date on the billing statement (including checks returned for insufficient funds) may result in suspension or disconnection of all Services, the removal of all Equipment and/or imposition of a late payment or service charge. If Subscriber has more than one account (business and/or

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<sup>17</sup> See Mountain Rural Telephone Cooperative, Local Exchange Tariff, PSC Ky. Tariff No. 3, Original Sheet No. 12, § 11.11(1) (approved by the Commission and effective as of February 20, 2017).

residential) served by Spectrum, all Spectrum-provided Services at all locations may be subject to suspension or disconnection of Service in the event any one account remains delinquent and Spectrum may apply any funds received from Subscriber first to such delinquent account(s). Should Subscriber wish to resume Service after any suspension, Subscriber may be subject to reconnection fees. Should Subscriber wish to resume Service after termination of Service, Spectrum may charge fees for installation, service calls, and/or activation and reserves the right to charge rates different than those in place at the time of disconnect. These fees are in addition to all past due charges and other fees. In the event collection activities are required, additional collection charges may be imposed.<sup>18</sup>

Thus, if the Commission were to accept KBCA's objections, Charter Communications would necessarily be forcing its customers across the Commonwealth to be bound by "unreasonable" terms and conditions.

Any pole owner, including Thacker-Grigsby Telephone, must have a remedy for an Attacher's failure to comply with the terms of the Tariff (just like KBCA's members have remedies when users of their services fail to comply with their agreements). Thacker-Grigsby Telephone's tariff adequately balances all interests by providing an Attacher with protection to ensure that Thacker-Grigsby Telephone is required to provide notice and an opportunity to cure prior to seeking to remove any attachments for non-compliance, while simultaneously ensuring that Thacker-Grigsby Telephone has mechanisms to ensure compliance with the Tariff, including for non-payment.

Accordingly, the Commission should approve Thacker-Grigsby Telephone's Tariff as proposed.

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<sup>18</sup> Spectrum Residential General Terms and Conditions of Service, *available at:* <https://www.spectrum.com/policies/residential-general-terms-and-conditions-of-service> (emphasis added).

**D. Survey Fee Estimate.**

**Objection: KBCA objects to a survey fee estimate of \$119 per pole because it is unreasonable and unsupported. (Tariff Citation 18-28 Sec. 18.26)**

**Response:** KBCA's objection to Thacker-Grigsby Telephone's survey fee estimate misunderstands the Commission's regulation and, when combined with KBCA's objection to the inclusion of remedies for non-payment in Thacker-Grigsby Telephone's Tariff, seeks to shift the risk associated with survey costs to Thacker-Grigsby Telephone – in contravention of the Commission's regulation.

As implemented, 807 KAR 5:015 § 4(2)(b)(6) provides as follows:

- a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.
- b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.
- c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

807 KAR 5:015 § 4(2)(b)(6) (emphasis added).

Next, 807 KAR 5:015 § 6(a), provides that a utility must provide a final make-ready invoice, which must include "A detailed, itemized final invoice of the actual survey costs incurred if the survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid." 807 KAR 5:015 § 6(a)(1). Thus, the regulations expressly contemplate a true-up mechanism to ensure that the new attacher is only responsible for the actual survey costs, if different than the estimate.

Thacker-Grigsby Telephone's Tariff contains a good faith "per pole estimate of costs" as is expressly required by the Commission's regulation. This estimate is included to provide Thacker-Grigsby Telephone with "reasonable security," as the Commission's regulation expressly places the costs of the survey upon the new attacher. In the event the survey estimate ever exceeded the amount of "actual survey costs," Thacker-Grigsby Telephone would be required to provide a new attacher with an itemized invoice, detailing the cost difference and providing a credit to the new attacher.

Thacker-Grigsby Telephone's proposed Tariff complies with the language and intent of the Commission's regulation because it ensures that Thacker-Grigsby Telephone is provided "reasonable security," while simultaneously authorizing a true-up procedure if actual costs of the survey are greater or less than the survey estimate. This ensures that a pole owner, like Thacker-Grigsby Telephone, is given adequate security that it is able to fully recover the costs of the survey, as is expressly required by Commission regulation. Indeed, when combined with KBCA's objection to any remedies for non-payment, it is clear that adequate measures of security are needed for pole owners.

The Commission should accept Thacker-Grigsby Telephone's Tariff as proposed.



Respectfully submitted,

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### **Certification**

I hereby certify that a copy of the foregoing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

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