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' RESPONSE TO KBCA'S MOTION FOR CLARIFICATION

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, hereby file this Response in Opposition to the KBCA's¹ Motion for Clarification.

As an initial matter, KBCA's characterization of its motion as one seeking "clarification" is utterly disingenuous. The Commission established a procedural schedule in this matter—as it has done in hundreds (likely thousands) of other proceedings in recent years—in which it provided for discovery through requests for information and submission of prepared testimony, followed by an opportunity to request a hearing on the merits. KBCA and its experienced counsel are undoubtedly familiar with this process and the expected format of intervenor

Grigsby's adoption thereof.

¹ Due to KBCA's continued filing of documents on behalf of its "members," including Inter Mountain Cable, Gearheart Communications Company, Inc. again seeks to make clear that Inter Mountain Cable, with whom Gearheart shares ownership and management, does not object to the Duo County Tariff or Gearheart's adoption thereof. Similarly, Thacker-Grigsby Telephone Company, Inc. again seeks to make clear that TVS Cable, a whollyowned subsidiary of Thacker-Grigsby Telephone Company, does not object to the Duo County Tariff or Thacker-

testimony, as exhibited by KBCA's ability to routinely file intervenor testimony in prior Commission proceedings and without the need for any "clarification." KBCA's motion should be considered for what it really is: an attempt to modify the procedural schedule so that KBCA can continue the same advocacy it has undertaken incessantly since the new pole attachment regulations were proposed.

Respectfully, the Commission has already heard legal and other arguments from KBCA during the approximately 2.5 year process to develop the Commission's new pole attachment regulation. For the reasons set forth in the Commission's Statement of Consideration, the Commission rejected many of KBCA's legal arguments when implementing 807 KAR 5:015. Neither the Commission nor the RLECs should be forced to expend time and resources responding to KBCA's already-rejected legal arguments, including further attempts to explain non-binding "FCC precedent," which the "Motion for Clarification" explicitly requests the right to do.

The Commission is distinctly capable of implementing its own regulations and determining if the tariffs comply with 807 KAR 5:015 based on the evidence presented. Accordingly, the RLECs do not believe legal briefing is necessary in this proceeding.

Finally, the Commission should not overlook the fact that the procedural schedule KBCA proposes would allow the RLECs just one (1) business day to review intervenor responses to requests for information before the proposed deadline to submit both a responsive legal brief and rebuttal testimony. This is patently unreasonable. Moreover, the Commission should be aware that KBCA filed its Motion for Clarification and suggested this schedule without any prior discussion with or concurrence from the RLECs. As an intervenor, KBCA may not unduly complicate or disrupt the proceedings, which it seeks to do by forcing the RLECs into an unfair

procedural schedule and by seeking revision to the procedural schedule without any forewarning or attempts at cooperation.

No briefing is necessary. No clarification of how to draft factual testimony is necessary. Consequently, the RLECs respectfully request the Commission deny KBCA's Motion for Clarification.

Respectfully submitted,

/s/ Edward T. Depp

Edward T. Depp, Esq. R. Brooks Herrick

DINSMORE & SHOHL LLP

101 South Fifth Street, Suite 2500

Louisville, KY 40202 Tel: (502) 5430-2300

Fax: (502) 585-2207 <u>tip.depp@dinsmore.com</u>

brooks.herrick@dinsmore.com

and

M. Evan Buckley **DINSMORE & SHOHL LLP**

100 West Main Street, Suite 900

Lexington, KY 40507

Tel: (859) 425-1000 Fax: (859) 425-1099

evan.buckley@dinsmore.com

Counsel to the RLECs

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.

/s/ Edward T. Depp Counsel to the RLECs

25115290