

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

**In the Matter of:**

<b>ELECTRONIC INVESTIGATION OF THE</b>	)	
<b>PROPOSED POLE ATTACHMENT TARIFFS</b>	)	<b>Case No.</b>
<b>OF RURAL LOCAL EXCHANGE</b>	)	<b>2022-00107</b>
<b>CARRIERS</b>	)	

**REBUTTAL TESTIMONY  
OF  
KEITH GABBARD  
ON BEHALF OF  
THE RURAL LOCAL EXCHANGE CARRIERS**

**FILED: July 11, 2022**

**REBUTTAL TESTIMONY**

**OF**

**KEITH GABBARD**

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1 with PRTC in customer service right out of college, later working in dispatch and  
2 engineering.

3 I currently serve on many local and national boards, including Foundation for  
4 Rural Service (“FRS”), East Kentucky Concentrated Employment Program  
5 (“EKCEP”), Daniel Boone Community Action Agency, and the White House Clinic  
6 Board of Directors. I am also Chair of the Jackson County Health Board, a charter  
7 member of the Jackson County Community Foundation Board, and a member of  
8 Foundation for Appalachian KY. In addition, I am a former President of the  
9 Kentucky Telecom Association (“KTA”) and current President of KY Independent  
10 Telephone Companies (“KITCOM”).

11 PRTC, as an incumbent provider, serves the communities of Jackson and  
12 Owsley counties, and its wholly-owned subsidiary, Peoples Telecom, additionally  
13 serves parts of Clay, Laurel, and Lee counties. Clay and Owsley counties are  
14 consistently rated among the ten poorest counties in the country, and because our  
15 entire service areas have a high poverty and high unemployment rate, I work  
16 diligently on economic and community development in my community in order to  
17 improve the quality of life for Kentuckians.

18 **Q. Have you previously testified before the Kentucky Public Service**  
19 **Commission (the “Commission”)?**

20 A. No.

21

1 **II. PURPOSE AND OVERVIEW OF TESTIMONY**

2 **Q. What is the purpose of your testimony in this proceeding?**

3 A. The purpose of my testimony is to support the pole attachment tariffs filed by  
4 the Rural Local Exchange Carriers (the “RLECs”) in response to the Commission’s  
5 newly promulgated administrative regulation, 807 KAR 5:015, regarding access and  
6 attachments to utility poles. Recognizing that the Commission’s new regulation was  
7 a principal aspect of a statewide emphasis on facilitating the deployment of  
8 broadband service to the Commonwealth’s unserved and underserved residents, any  
9 analysis of the RLECs’ proposed tariffs must begin with an understanding of the  
10 RLECs’ historical role in this endeavor.

11 Indeed, the RLECs, more than any other group in the Commonwealth have led  
12 the charge in ensuring that all Kentuckians have access to this critical, modern  
13 service. Most of us are small, member-owned cooperatives, but all of us are small  
14 companies who rose up out of a purely local desire to provide for our rural  
15 communities that have been historically ignored by the larger publicly-traded  
16 telecommunications companies like AT&T and Windstream. That experience of  
17 neglect has also been true with the large national cable companies like Charter and  
18 Comcast, whose focus has been the delivery of cable services in lower-cost population  
19 centers of the Commonwealth. Since day one, our goal has been to ensure that our  
20 communities have access to the same high-quality, affordable service as residents in  
21 the more populated areas of the Commonwealth, and we have done so through  
22 significant historical and ongoing investment in our communities.

1           In fact, there are perhaps no utilities in the Commonwealth who have been  
2 historically more concerned and driven to action in support of ensuring rural  
3 broadband access than the RLECs. As economic engines in our respective  
4 communities, each of the RLECs has long served its respective community with  
5 essential communications services that the largest national companies have  
6 historically neglected. That is the story of our genesis in the mid-1900s, and it has  
7 remained a defining characteristic of the RLECs' collective missions to date: to  
8 ensure that rural Kentuckians have access to the same vital tools of the modern  
9 economy as Kentuckians in the Commonwealth's more populated areas.

10           In the past twenty years, no service has been more vital to that mission than  
11 broadband. For that reason, the RLECs long-ago invested in the infrastructure and  
12 expertise to bring these services to rural Kentucky. We have made significant  
13 financial investments in our networks in order to bring broadband to our  
14 communities, and we have historically worked cooperatively, often with our local  
15 electric utilities, to ensure that services are deployed in a manner that brings timely  
16 benefits to our communities. This is not to suggest that our mission is completed; it  
17 is not. However, we have a long and successful track record of getting broadband to  
18 homes, schools, and businesses in the most rural parts of the Commonwealth; we  
19 know what it takes; and we intend to continue working cooperatively to that end for  
20 the benefit of the rural Kentuckians that we serve.

21

1 **Q. How have the RLECs contributed to the economic development of the**  
2 **areas they serve?**

3 A. The RLECs are economic engines in the areas we serve. We not only provide  
4 jobs as employers in our respective service territories, but we provide the  
5 infrastructure that allows individuals and businesses in the farthest reaches of the  
6 state to connect with others locally, nationally, and globally. We provide the pathway  
7 for economic development and innovation in our communities, and we have a long  
8 track record of doing so, unlike the large cable companies (Charter and Comcast) that  
9 suddenly claim to have an interest in rural Kentucky following years of neglect.

10 The RLECs have invested substantial sums of money in the development of  
11 the telecommunications infrastructure of the areas we serve, including landline,  
12 broadband, and wireless. But for these investments, the telecommunications  
13 infrastructure of rural Kentucky would not be where it is today. And while we cannot  
14 claim 100% broadband coverage throughout our territories, we continue in our  
15 endeavor to provide universal broadband service, and we have in many cases been  
16 the model of rural broadband deployment, not just to Kentucky but around the  
17 nation.

18 When the large cable companies lament the costs of deploying broadband  
19 service in rural Kentucky, we understand that lament perhaps better than anyone;  
20 we have been fighting that battle for more than 20 years, and there is no doubt that  
21 it is expensive and difficult. We recognize that we could not have done this without  
22 access to local, state, and federal programs that provided funding assistance through

1 grants and low-interest loans to the industry, and it is exciting to see those  
2 investments expanding broadband availability further into the expensive rural areas  
3 that still need these services.

4         However, the Commission should let those federal, state, and local subsidies  
5 do their work before adopting still further calls by the cable industry to unfairly shift  
6 their cost of business onto the RLECs and our rural Kentucky members and  
7 customers who are already footing the bill (through their taxes) for the significant  
8 additional subsidies recently made available. If, for example, a stable, functional  
9 RLEC pole needs to be changed out to accommodate cable attachments, the cable  
10 company should continue to pay for the actual cost of that replacement, just as it  
11 always has. Any other result (including the theoretical allocation sought by the cable  
12 companies) disrupts RLEC capital budgeting and construction, forcing RLEC  
13 members/customers to pay for new poles that are simply not needed, absent the  
14 business plans of a requesting attacher. Kentucky has never historically required  
15 the pole-owner to pay for these charges, and it should not start doing so now,  
16 especially in light of the raft of new funding opportunities recently made available to  
17 the cable industry and others to help offset the cost of investing in additional  
18 infrastructure. If additional subsidies are required, that is something that federal,  
19 state, and local governments can and should address in the future; however, it should  
20 do so only with the benefit of hindsight in evaluating how well the new subsidies have  
21 worked.

1 In addition, the Commission’s new regulation contains significant  
2 enhancements to the application process that should facilitate prompt broadband  
3 deployment, and the updated complaint process for attachment matters should  
4 likewise facilitate resolution of any disputes that may arise. For now, the cable  
5 industry’s complaints are not based on actual obstacles. Rather, this is a scare tactic  
6 designed to suggest imaginary problems in an effort to convince the Commission to  
7 grant them still further cost concessions beyond the enormous subsidies that they are  
8 now enjoying, and to do so at the expense of the RLECs.

9 Indeed, in responding to the RLEC’s Request for Information, KBCA was  
10 unable to point to a single issue caused by an RLEC entity,<sup>1</sup> instead relying upon  
11 theoretical concerns, while simultaneously refusing to provide any information as to  
12 whether KBCA members have attachments on RLEC poles or plan to attach to RLEC  
13 poles.<sup>2</sup> Furthermore, KBCA refused to respond to any questions concerning safety,  
14 claiming that the safety measures taken to protect rural Kentuckians are “not  
15 relevant.”<sup>3</sup> The fact that KBCA and its participating members believe that safety  
16 concerns are “not relevant” is exactly why the RLECs have proposed many of the  
17 tariff provisions to which KBCA objects, and it is exactly why those provisions are  
18 fair, just, and reasonable.

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<sup>1</sup> See generally KBCA’s Responses to the RLEC’s Requests for Information, available at: [https://psc.ky.gov/psccf/2022-00107/tosterloh%40sturgillturner.com/07072022075334/2022-00107\\_KBCA\\_Response\\_to\\_RLEC\\_RFI\\_FINAL.pdf](https://psc.ky.gov/psccf/2022-00107/tosterloh%40sturgillturner.com/07072022075334/2022-00107_KBCA_Response_to_RLEC_RFI_FINAL.pdf).

<sup>2</sup> See *id.* at Nos. 1, 2, 17.

<sup>3</sup> See, e.g., *id.* at No. 25.

1           KBCA's participation in this proceeding so that it can attempt to shift the costs  
2 of its business to the RLECs' members/customers, while simultaneously refusing to  
3 participate in the discovery process, is not fair to the RLECs' members/customers.  
4 The RLECs' member/customers are already funding the subsidies to KBCA's  
5 members through their taxes, and the RLECs have invested in these previously  
6 unserved communities for many years, following the same rules that the cable  
7 industry now opposes, as they attempt to change the process to shift what has  
8 historically been the cost of the service provider onto the RLECs. Therefore, we  
9 appreciate the Commission's continuing attention (as evidenced by the institution of  
10 this RLEC-specific case) to the unique considerations applicable to the RLECs.

11           Ultimately, the overarching objective of this testimony is to ensure that the  
12 Commission understands that the Commonwealth's RLECs must remain capable of  
13 providing essential, reliable, and affordable service to their local communities. The  
14 RLECs are the original champions of rural broadband deployment in the  
15 Commonwealth, and given our strong community ownership, that will not change.  
16 But the cable industry's cost-shifting proposals threaten to undermine our financial  
17 and operational stability, even as it now has access to record levels of capital  
18 improvement subsidy from all levels of government.

19           The cable industry is of course welcome to seek those funds to assist with rural  
20 broadband deployment. However, there is no evidence that the RLECs, their  
21 attachment policies, or any aspect of their rates (including pre-attachment survey  
22 rates) are an impediment to rural broadband deployment. The RLECs have, frankly,

1 led the charge on rural broadband deployment, and we encourage the Commission to  
2 let the subsidies do their work before wading in to “fix” theoretical problems that may  
3 never even materialize, especially in RLEC territories. The cable industry’s  
4 shareholders may desire a more abrupt regulatory reversal, of course, but the  
5 responsible decision for Kentucky’s citizens is to leave questions regarding financial  
6 support for broadband deployment to the federal, state, and local governments.

7

8 **III. THE PROPOSED TARIFFS ARE FAIR, JUST, AND REASONABLE**

9 **Q. What objections has KBCA made with respect to the RLEC tariffs?**

10 A. KBCA has only objected to the tariffs of five RLECS: Ballard Rural Telephone  
11 Cooperative Corporation (“Ballard”), Brandenburg Telephone Company (“BTC”),  
12 Logan Telephone Cooperative d/b/a LTC Connect (“LTC Connect”), South Central  
13 Rural Telecommunications Cooperative, Inc. (“SCRTC”), and Thacker-Grigsby  
14 Telephone Company, Incorporated (“Thacker-Grigsby”). Within those five tariffs,  
15 KBCA only objects to the following issues:

- 16 • Pole replacement costs for poles that are not red-tagged;
- 17 • Survey fee estimates;
- 18 • Indemnity provisions; and
- 19 • Default remedies.

20 The survey fee estimate issue is omitted from KBCA’s objection to the Ballard and  
21 LTC Connect tariffs.

1           Of course, the RLECs recognize that the Commission’s suspension and  
2 evaluation applies to all tariffs – and thus we will discuss the issues in connection  
3 with all of the tariffs, which are essentially the same, as a consequence of the adoption  
4 notices – but it bears noting that the objections were explicitly aimed only at these  
5 five tariffs and these four issues within them (except for Ballard and LTC Connect,  
6 to which there were only three objections).

7  
8                                   ***Costs for replacing poles that are not red-tagged***  
9                                   **should be paid by the requesting attacher.**  
10

11 **Q.    The KBCA has objected to the RLECs’ tariff language charging the**  
12 **attaching party for the actual cost of a pole replacement, provided the pole**  
13 **is not red-tagged; do the RLECs agree?**

14 A.    No. As an initial matter, if an attachment request necessitates a larger (or  
15 different type) pole, then it is the requesting attacher who is causing the pole  
16 replacement to occur. It is my understanding that the Commission has long followed  
17 the principle that the party causing a cost is also responsible to pay. Not only is that  
18 the historically consistent result to reach here, it is similarly consistent with the fact  
19 that the cable industry now has access to record levels of federal, state, and local  
20 subsidies to assist with the cost of broadband deployment, including expected pole  
21 replacement costs. In addition to such costs being included in the business case used  
22 by the industry to apply for and receive state and federal grants, it is my  
23 understanding that the cable industry was principal in successfully lobbying  
24 specifically for a “pole replacement fund” from the Kentucky Legislature, which

1 passed the measure as Section 5 of House Bill 315, which became effective (in relevant  
2 part) in March of this year. (See  
3 <https://apps.legislature.ky.gov/record/22rs/hb315.html>.) KBCA’s members can and  
4 should seek funding from those sources: the so-named “pole replacement fund” and  
5 the multitude of other funding subsidies now available to it.

6 Moreover, the KBCA is asking the Commission to make this determination in  
7 a vacuum. Given the low volume of attachments in the RLECs territories, there is  
8 no indication that KBCA’s members actually intend to seek “replacement-causing”  
9 attachments in RLEC territories, much less a significant amount of them. The  
10 RLECs also serve quite varied geographic territories (from farmland in the West to  
11 mountains in the East) that could result in significant differences in costs. Quite  
12 simply, there is no basis to assume any specific facts about the likelihood of pole  
13 replacements or the costs of pole replacements to the RLECs as a class. Yet, we know  
14 that significant new subsidies are certainly available to assist attachers with the cost  
15 of deploying broadband, including costs of pole replacements. If there are eventual  
16 disputes, the Commission’s new attachment-related dispute procedures will facilitate  
17 a timely resolution of the matter. Likewise, future Legislative sessions will certainly  
18 have an opportunity – if desired – to address any future issues in the manner they  
19 deem most fit. In the meantime, shifting those costs directly to the RLECs’ members  
20 and customers is not only premature, it essentially double-taxes them in light of the  
21 new subsidies made available (from taxpayer funds) to the cable industry for these  
22 very costs.

1 **Q. Would KBCA’s proposal that the RLECs share in a portion of pole**  
2 **replacement costs cause any operational or financial concerns?**

3 A. Most certainly. Just like any other business, the RLECs engage in annual  
4 capital budgeting processes. Although individual processes may vary to some degree,  
5 there is uniformity in each utility’s efforts to budget its limited financial and  
6 operational resources to plan for capital improvements each year. We are not large  
7 companies, and we certainly have nowhere near the budget that companies like  
8 Charter and Comcast do. Consequently, that Charter or Comcast would seek to  
9 unilaterally shift their costs to the RLECs, undermining the RLECs ability to manage  
10 their budgets, is troubling, to say the least.

11 Kentucky is among the most poverty-stricken states in the country, and many  
12 of the RLECs – PRTC included – serve territories with significant economic  
13 challenges. Many of our members and customers struggle to make ends meet, and of  
14 course, the recent inflation for essential items like food, fuel, and transportation only  
15 exacerbates matters.

16 KBCA’s proposal to shift a portion of actual pole replacement costs to the  
17 RLECs, of course, means that it is proposing to undermine the RLECs’ historical right  
18 to recover the full, actual cost (but not more) of a pole replacement that a cable  
19 company may require. It also forces the RLEC to shift resources and adjust its own  
20 capital plans to accommodate the construction demands of a requesting attacher.  
21 This could significantly undermine our ability to effectively plan and operate our  
22 business, and it creates unreasonable cost pressure on the cost of our services. Our

1 members and customers should not be forced to subsidize reduced cost of business for  
2 large national cable companies who have access to unprecedented levels of broadband  
3 deployment subsidies funded by those same tax-paying members and customers.

4 **Q. What do you make of Ms. Kravtin's testimony (on behalf of KBCA)**  
5 **regarding the theoretical benefits of KBCA's position?**

6 A. I am not persuaded. Although I am not an economist, it is inconceivable to me  
7 as a long-serving CEO that any economic analysis would fail to account for the effect  
8 that the massive federal, state, and local broadband deployment subsidies would have  
9 on the substance of her testimony. As a CEO and businessperson, my economic focus  
10 cannot ignore actual funds available to my business. Consequently, that omission  
11 fundamentally undermines the credibility of her testimony, and it should be  
12 disregarded.

13 From a real-world perspective, my business experience teaches that one does  
14 not need a theoretical economic analysis to understand that the availability of many  
15 millions of dollars in available government subsidies can significantly reduce her  
16 clients' cost of doing business, thereby directly improving their ability to assist in the  
17 deployment of rural broadband and facilitating all of the broader benefits of modern  
18 communications capabilities. The RLECs know how connected communities can  
19 prosper; we have invested in those capabilities for years prior to now.

20 However, absent any evidence that the massive amount of subsidies available  
21 to the cable companies excluded pole replacement costs, or that the actual pole

1 replacement costs are allegedly too high – or that they will even require actual pole  
2 replacements – it is all just a hypothetical discussion. And, I do not believe the  
3 Commission should support the shifting of pole replacement costs (or even a portion  
4 of them) onto RLEC members/customers, but especially not on a purely hypothetical  
5 concern. All levels of government have made an enormous amount of funds available  
6 to offset any costs that might be incurred in new construction as broadband is  
7 deployed, and when combined with the cable industry’s significant capitalization,  
8 that should be more than adequate to incentivize their entry into the rural broadband  
9 market.

10  
11 **The RLECs’ survey fee estimates should be approved.**

12 **Q. KBCA objected to the survey fee estimates of three RLECS:**  
13 **Brandenburg Telephone Company (“BTC”), South Central Rural**  
14 **Telecommunications Cooperative Corporation, Inc. (“SCRTC”), and**  
15 **Thacker-Grigsby Telephone Company, Incorporated (“Thacker-Grigsby”)**  
16 **on the allegation that they are “unreasonable and unsupported”; do you**  
17 **agree?**

18 A. No. Those objections appear to stem from the false premise that there was a  
19 prescribed or industry-standard methodology for estimating pre-attachment survey  
20 costs. There is not. The regulation does not specify how estimates were to be made,  
21 and KBCA fails to appreciate the RLEC-specific circumstance that we (as a unique  
22 industry group) are historically not accustomed to receiving pole attachment

1 requests. This is primarily the result of two undisputed facts: (i) we have long been  
2 the sole broadband provider in our rural service territories; and (ii) cable companies  
3 have never been financially motivated to provide service in our territories for many  
4 reasons, including the diffuse population, often difficult terrain, and the resultant  
5 high cost of service. And because requests are few and far between in our experience,  
6 the notion of a “typical” request, even, is alien to us: there is no “typical” when  
7 attachment requests are not commonplace.

8         And so even though I note that KBCA only objected to the survey estimates  
9 proposed by BTC, SCRTC, and Thacker-Grigsby, its objections are equally off-target  
10 for all of the RLECs. First and foremost, it bears reiterating that these charges are  
11 mere estimates. As the regulation, our responses to KBCA’s objections, and multiple  
12 data request responses indicate, the attacher is only ultimately responsible for the  
13 actual cost of the survey. Thus, the end-result is always going to be that the RLEC  
14 trues-up the estimate to the actual cost, and the difference will be either refunded or  
15 collected.

16         Mr. Bast (on behalf of KBCA) claims that he believes pre-construction survey  
17 fees “should be based on an estimate of the utility’s actual, per pole survey costs.”  
18 (Bast at 10.) He mistakenly assumes, however, that the RLECs all share his  
19 perspective as a Charter employee, where he presumably makes frequent attachment  
20 requests in the more densely populated areas that Charter serves. The problem with  
21 that thinking, of course, is that the RLEC paradigm is not comparable.

1           As our various data request responses indicated, we rarely receive attachment  
2 requests. As a consequence, the procedures for dealing with attachment requests  
3 have, in many respects, always been something of a special circumstance that has  
4 been dealt with on an informal or one-off basis. The lack of attachment complaints  
5 against the RLECs, including KBCA’s inability to provide evidence of any such  
6 complaints in this proceeding,<sup>4</sup> reflect that this has not been a problem, but it  
7 certainly highlights that the RLECs are generally not able to provide an estimate of  
8 its “actual per pole survey costs,” like Mr. Bast seeks because they have no historic  
9 basis on which to do so.

10           Perhaps that will change going forward, but perhaps not – as KBCA’s members  
11 themselves are apparently unable (or unwilling) to tell the Commission whether they  
12 plan to attach to RLEC poles in the future.<sup>5</sup> We know that broadband deployment  
13 funds are already flowing and that development is occurring rapidly around the  
14 Commonwealth. At this point, however, actual survey cost data remains more of a  
15 theoretical construct than a provable fact, given the historical lack of requests and  
16 the novelty of the regulation. If attachment requests to the RLECs increase, then it  
17 is reasonable to assume that the RLECs will begin to accrue more documented proof  
18 of survey costs. Until there are sufficient requests to give rise to the occasion for  
19 incurring survey costs, however, the RLECs have done their best to provide a good

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<sup>4</sup> See KBCA’s Responses to the RLECs’ Request for Information, at No. 6, 8, 9, 10, 12, *available at*: [https://psc.ky.gov/pscecf/2022-00107/tosterloh%40sturgillturner.com/07072022075334/2022-00107\\_KBCA\\_Response\\_to\\_RLEC\\_RFI\\_FINAL.pdf](https://psc.ky.gov/pscecf/2022-00107/tosterloh%40sturgillturner.com/07072022075334/2022-00107_KBCA_Response_to_RLEC_RFI_FINAL.pdf).

<sup>5</sup> *Id.* at No. 17.

1 faith estimate of survey costs, which will of course be trued-up consistent with the  
2 mandates and the timeframe imposed by the regulation.

3         And on that point, it must be said that Mr. Bast’s testimony highlights the very  
4 sort of gamesmanship that concerns the RLECs. At page 12 of his testimony, he  
5 claims that truing-up a survey estimate to actual costs will be an “administrative  
6 nightmare,” in which the attacher may not recover any true-up refund “for months,  
7 if ever.” *Id.* This is pure fantasy. The regulation requires true-up, and there is  
8 absolutely no basis to assume that the RLECs will violate it. But his suggestion has  
9 an additional implication: if the true-up process were – for sake of argument – an  
10 “administrative nightmare,” his solution is to set survey estimates lower so that  
11 Charter can thrust the RLECs into an “administrative nightmare” of having to collect  
12 from the attacher when actual costs exceed estimated costs. In fact, Mr. Bast testified  
13 as such in responding to the RLECs’ Request for Information.

14         Mr. Bast specifically testified that the “administrative nightmare” was  
15 tracking payments and actual costs, and that if the true-up was not paid, Charter  
16 would be forced to consider whether to initiate an administrative proceeding or let a  
17 utility keep the money.<sup>6</sup> Of course, because the Commission’s regulation requires  
18 Charter to pay the actual costs incurred in performing a survey, what Mr. Bast really  
19 seeks is to ensure the so-called “administrative nightmare” of tracking all payments  
20 and actual costs and determining whether to initiate an administrative proceeding

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<sup>6</sup> *Id.* at 13.

1 when an attacher does not pay is forced upon the RLECs. Thus, to the extent keeping  
2 track of the amount of actual costs expended on a capital project can be considered  
3 an “administrative nightmare,” as opposed to good accounting practices, this is yet  
4 another example of KBCA and its participating members seeking to shift costs it  
5 causes to the RLECs.

6 In reality, this strange bit of Charter testimony highlights that the issue is  
7 primarily one of cash flow. Charter wants the RLECs to cash flow Charter’s survey  
8 expense by paying artificially low “estimates” derived from Charter’s experiences in  
9 more populated areas, which of course do not at all mirror the RLECs’ limited survey  
10 experiences in rural Kentucky, where we serve. Rather than a true-up that is near-  
11 zero or results in the RLECs owing a refund, Charter naturally would rather the  
12 RLECs provide a service first and chase their actual costs after the fact. While  
13 understandable from Charter’s perspective, this Commission cannot support a  
14 proposal that essentially asks the smallest companies in the state to even temporarily  
15 fund the largest.

16 Consequently, in light of the explanations provided in our various data request  
17 responses on this subject, in light of the massive subsidies recently made available to  
18 the cable companies for broadband deployment, in light of the true-up obligation  
19 imposed by the regulation, and in light of the general and financial unfairness of  
20 forcing the RLECs’ members and ratepayers to temporarily cash flow capital costs for  
21 attachers like Charter and Comcast, we believe that the proposed survey rates are  
22 fair, just, and reasonable.

1           Finally, I would note that we expect that neither the RLECs nor the attachers  
2   desire a complaint proceeding, especially over an estimate that is required to be  
3   promptly trued-up. This is to say that in the event that actual survey costs for an  
4   RLEC begin to suggest that an estimate is unreasonably high, I would expect that  
5   the RLEC will be self-incentivized to revise its estimated fee going forward in order  
6   to avoid an unnecessary dispute before the Commission. But, to force the RLECs to  
7   bear the risk of cash-flowing an attacher's survey costs before there is a critical mass  
8   of actual survey costs in RLEC territories is not fair, just, or reasonable. In fact, it  
9   could be said that the absence of a critical mass of actual survey costs renders the  
10   matter moot, in any event.

11

12

**The indemnity provision is reasonable.**

13   **Q.    KBCA claims that it is unreasonable for an RLEC to require that an**  
14   **attacher indemnify the RLEC for claims associated with the attacher's**  
15   **attachments; do you agree?**

16   A.    No. This issue seems predominantly like a legal issue. However, I would note  
17   that the language at Original Page 18-7 Sec. 18.8(1) is identical to and was copied  
18   directly from language previously approved by the Commission for CATV Pole  
19   Attachments. (See Mountain Rural Telephone Cooperative, Local Exchange Tariff,  
20   PSC Ky. Tariff No. 3, Original Sheet No. 12 § 11.11(1) (approved by the Commission  
21   and effective as of February 20, 2017)). KBCA and its members have never contested

1 this language, which is designed to ensure that, as the pole owner, an RLEC is not  
2 responsible for damages or injuries caused or contributed to by an attacher.

3

4 **The RLECs' default remedies are reasonable.**

5 **Q. KBCA claims that it is unreasonable that the RLECs may terminate**  
6 **services for a default that continues past a written cure notice; do you**  
7 **agree?**

8 A. No. It is of course customary for a customer default (especially for non-  
9 payment) to result in disconnection of service, following a notice of the default and an  
10 opportunity to cure. The RLECs' tariffs propose that – in the event of an attacher  
11 default – the RLECs will provide written notice of that default and thirty days for the  
12 attacher to cure the default. Only then may an RLEC cease providing service,  
13 assuming the default remains uncured at that time. Provisions like this protect a  
14 utility from potential customer abuse, especially when (as noted in the RLECs'  
15 response to KBCA Data Request No. 2-4 and the United States District Court order  
16 attached thereto) the RLECs are aware of KBCA member propensity to engage in  
17 self-help tactics like withholding payment in a pole attachment dispute with another  
18 small utility.

19 But even aside from the compliance incentive that the RLEC language  
20 provides, KBCA and its members cannot seriously contest the appropriateness of the  
21 RLEC default terms when they impose still stricter terms on their own end-user

1 customers. Charter, for example, is not required to provide its customers with any  
2 prior written notice for failure to timely pay amounts due; Charter may terminate  
3 service if payment is even a single day late; and Charter reserves the right to collect  
4 additional payments (beyond amounts past due), including the possibility of an  
5 additional installation fee and the right to charge higher prices. (See Spectrum  
6 Residential General Terms and Conditions of Service Section 2(c), *available at:*  
7 [9       Moreover, the regulation introduced new complaint procedures and  
10 timeframes that will ensure that any disputes are timely and appropriately  
11 addressed. Actual disputes \(if any\) can be addressed in actual complaint proceedings,  
12 but the RLEC tariff intentionally incorporates customary “teeth” like those  
13 pertaining to default and cure so that attachers have an incentive to comply with the  
14 tariff. By doing so, it may also help improve administrative efficiency by removing  
15 any potential incentive for an attacher to simply file a complaint in an effort to  
16 forestall enforcement actions under the tariff and to thereby secure leverage for a  
17 continuing default, particularly when the default pertains to payment obligations.](https://www.spectrum.com/policies/residential-general-terms-and-conditions-of-<br/>8 <u>service.</u></a>) In that light, the RLEC proposal is not only fair; it is generous.</p></div><div data-bbox=)

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1 **IV. CONCLUSION**

2 **Q. Please summarize your testimony in this proceeding.**

3 A. The RLECs are the original protagonists of rural broadband deployment in  
4 Kentucky. We have made (and continue to make) the significant investments that  
5 these services require because our members and our customers are our neighbors,  
6 and each of us long ago began our service out of a mission to improve our communities  
7 with high-quality, affordable communication services. That mission remains as true  
8 today as it did at our inception. We have succeeded in that mission because our  
9 neighbors know and trust us and because of our attention to careful financial and  
10 operational management of our systems.

11 KBCA's objections threaten to undermine these hard-earned successes. They  
12 threaten to do that by shifting capital costs occasioned by their business plans onto  
13 us, and on a schedule controlled by them. They threaten to do that by artificially  
14 deflating survey estimates and blaming the RLECs for failing to have "actual" survey  
15 cost data for "typical" attachment requests, when none exist. They threaten to do  
16 that by objecting to liability provisions that have been approved and uncontested for  
17 years and by complaining that standard default remedies are unfair to them, even in  
18 the face of their historical self-help tactics and despite their imposition of far more  
19 extreme terms on their own customers... customers who they presumably intend to  
20 now solicit in rural Kentucky. And finally, they threaten to do that by intentionally  
21 diverting attention away from the extraordinary subsidies recently made available to  
22 them by all levels of government for the very purpose of assisting with rural

1 broadband deployment and, more explicitly, pole replacement and other related  
2 expenses.

3 The RLEC tariffs are fair, just, and reasonable. The Commission should  
4 approve them as drafted.

5 **Q. Does this conclude your testimony?**

6 A. Yes.

