

**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)**

**INITIAL BRIEF
OF THE RURAL LOCAL EXCHANGE CARRIERS**

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 Order entered September 23, 2022, in the above-captioned matter, hereby respectfully submit this Initial Brief.

The Commission’s new pole attachment regulation, 807 KAR 5:015 (the “Pole Attachment Regulation”), is the result of years of detailed stakeholder input and a voluminous body of public comment and discourse, beginning with the Commission’s initial public meeting in February of 2020. Throughout this proceeding, the RLECs have endorsed their role in facilitating the deployment of rural broadband in a manner that ensures safety and integrity of their telecommunications systems, recognition of the unique characteristics and challenges of rural local exchange carriers, and protection of their members/customers from costs they have not caused and

liabilities they should not bear. As the Commission underscored in its Order establishing this case, KRS 278.030 requires utilities to provide adequate, efficient, and reasonable service at fair, just and reasonable rates.¹ Each of the RLECs have proposed a pole attachment tariff that is, on its face, not only consistent with KRS 278.030 and KRS Chapter 278 generally, but also specifically compliant with the letter and spirit of the Commission’s new Pole Attachment Regulation. The RLECs respectfully request the Commission accept and approve the proposed tariffs as reasonable and consistent with law.²

The pole attachment tariffs proposed by the RLECs reflect all of the requirements of the Pole Attachment Regulation (sometimes verbatim), and the terms employed are entirely consistent with the reasonable provision of an ancillary service like access to poles. Substantial evidence supports the conclusion that the proposed tariffs are reasonable and should therefore be approved.

In addition to requiring reasonable rates and service, KRS 278.030 provides that a utility may “. . . establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service[,]” as well as “employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates.”³ Likewise, Section 3(4) of the Pole Attachment Regulation permits an approved pole attachment tariff to include any terms

¹ See Order at 1 (Ky. P.S.C. March 30, 2022).

² The Commission’s September 23, 2022 order establishing this briefing schedule did not specify any issues that briefs should address. Consequently, the RLECs respectfully reserve the right to respond to any issues raised by other parties submitting an initial brief in this matter. See also the July 18, 2022 Joint Statement of Position on behalf of the Rural Local Exchange Carriers (requesting that “[i]f . . . the Commission determines that briefing would . . . be beneficial to its consideration of this matter, the RLECs respectfully request that the Commission . . . specify which limited issues it believes should be addressed . . .”).

³ See KRS 278.030(2) and (3).

that are fair, just, and reasonable if they are consistent with the requirements of the Pole Attachment Regulation and KRS Chapter 278.⁴

As the long-term stewards of their respective telecommunications networks, the RLECs' proposed tariffs included the reasonable tools necessary to support safe, fair, and workable practices with respect to third-party attachers. Recognizing their responsibility to demonstrate the reasonableness of their proposed rules and conditions of service, the RLECs have utilized this proceeding as an opportunity to discuss in detail (and defend as necessary) each item in their proposed tariffs which drew the focus of either Commission Staff or an intervenor. Absolutely, the impetus of certain portions of the proposed tariffs is to ensure RLEC members or customers avoid costs they did not cause and should not bear, but much of the tariff is motivated by concerns that the RLECs meet the requirements of law while maintaining network reliability and safety. As the Commission has recognized in the specific context of pole attachments, "[t]he delivery of safe service is synonymous with 'adequate' and 'reasonable' service."⁵ The RLECs propose reasonable tariff terms that (despite the contentions and unsubstantiated presumptions of some of the intervenors that the RLEC tariffs will be unreasonably applied) will successfully allow reasonable access to poles without jeopardizing the integrity of RLEC infrastructure, members/customers, or the RLEC itself.

While this proceeding was established to investigate the reasonableness of proposed tariffs governing access to utility poles, it no-doubt directly impacts the primary utility service the RLECs exist to provide. As the Commission has observed, "[a] utility pole attachment's operation and

⁴ 807 KAR 5:015, Section 3(4) (providing, as examples, terms related to "limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards").

⁵ See Case No. 93-044, *In the Matter of: Jackson Purchase Electric Cooperative Corporation, Inc.; Alleged Failure to Comply with Commission Regulations*, Order at 6 (Ky. P.S.C. Aug. 14, 1996)

maintenance is inseparable from that of its supporting utility pole. If a pole attachment is not operated and maintained in accordance with the NESC, then neither is the utility pole to which it is attached. A pole attachment's non-compliance poses a safety risk not only to itself but also to the utility pole, other pole attachments and to the general public. . . .”⁶ Based on this same reasoning, each of the RLECs have developed a pole attachment framework that appropriately balances the interests of broadband providers and other attachers with the RLECs’ enduring obligation to ensure the provision of reliable service.

The resulting tariffs represent the culmination of several hundred hours of considered effort by dedicated professionals from RLECs across the Commonwealth, and they will permit adequate, efficient, and reasonable service (at fair, just, and reasonable rates) in connection with third-party access to utility poles. Consequently, the RLECs respectfully request that the Commission approve their proposed tariffs.

Respectfully submitted,

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⁶ *Id.*, Order at 9-10 (Ky. P.S.C. Aug. 14, 1996).

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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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