

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

RURAL LOCAL EXCHANGES CARRIERS' RESPONSES TO THE KBCA'S
INITIAL REQUESTS FOR INFORMATION

REQUEST NO. 1-1: Identify the number or percentage of Your poles that are currently red-tagged.

RESPONSE: Objection. LTC objects to this Request because it has no "Poles" as defined in KBCA's initial Requests for Information. LTC further objects to Request No. 1-1 because, pursuant to 807 KAR 5:015 § 4(6)(b)(2), an attacher is not responsible for the costs of replacing red-tagged poles. Subject to and without waiver of the foregoing objections, 0% of poles in LTC's telecommunications system are currently red-tagged.

Witness) Gregory A. Hale

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REQUEST NO. 1-2: Provide data related to the number of Your Poles that are anticipated to be red-tagged in the next five years

RESPONSE: Objection. LTC objects to this Request because it has no "Poles" as defined in KBCA's initial Requests for Information. LTC further objects to Request No. 1-2 because, pursuant to 807 KAR 5:015 § 4(6)(b)(2), an attacher is not responsible for the costs of replacing red-tagged poles, and Request No. 1-2 calls for speculation. Subject to and without waiver of the foregoing objections, no poles are currently "anticipated" be red-tagged. Any determination of whether to red-tag a pole will be determined based upon the safety and reliability of the pole, as determined in connection with an inspection of a pole.

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REQUEST NO. 1-3: Explain how You will determine if a pole is red-tagged.

- a. Explain what You will do when You are notified of a red-tagged pole.
- b. Explain how an attacher can determine and assess whether or not a pole is or will be red tagged.

RESPONSE: Objection. LTC objects to this Request because it has no "Poles" as defined in KBCA's initial Requests for Information. Subject to and without waiver of the foregoing objections, LTC will determine if a pole is red-tagged based upon inspections of the pole for safety issues or other issues that would require the pole to be removed from service. Specifically, an engineer performs a test to "sound out" the pole. Engineers also visually inspect the pole for long, vertical cracks, which would require replacement.

LTC's inspection methods for determining whether a pole is unsafe or needs replacement follow the OSHA guidelines applicable to telecommunications utilities.

(n) Overhead lines. . . .

(3) Methods for testing wood poles. One of the following methods or an equivalent method shall be used for testing wood poles:

(i) Rap the pole sharply with a hammer weighing about 3 pounds, starting near the ground line and continuing upwards circumferentially around the pole to a height of approximately 6 feet. The hammer will produce a clear sound and rebound sharply when striking sound wood. Decay pockets will be indicated by a dull sound and/or a less pronounced hammer rebound. When decay pockets are indicated, the pole shall be considered unsafe. Also, prod the pole as near the ground line as possible using a pole prod or a screwdriver with a blade at least 5 inches long. If substantial decay is encountered, the pole shall be considered unsafe.

(ii) Apply a horizontal force to the pole and attempt to rock it back and forth in a direction perpendicular to the line. Caution shall be

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exercised to avoid causing power wires to swing together. The force may be applied either by pushing with a pike pole or pulling with a rope. If the pole cracks during the test, it shall be considered unsafe.

29 CFR 1910.268(n)(3)(i)-(ii).

(a) When notified of a possible issue with a pole, LTC performs inspections to confirm whether the pole needs to be replaced. If so, the pole is deemed to be “red-tagged” and is scheduled for prompt removal from service.

(b) LTC does not have set, lengthy time frames for removing “red-tagged” poles from service. Instead, a work order is generated and red-tagged poles are scheduled for removal from service as quickly as possible. In the event an attacher requests attachment to a red-tagged pole that has not yet been removed from service, LTC will bear the cost of replacement, which will allow the attacher to determine that the pole is red-tagged.

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REQUEST NO. 1-4: Explain the basis for Your proposed requirement that an attacher pay the entire cost of replacing a pole that is not red-tagged, including all economic basis for this requirement.

a. Explain your accounting treatment of a non-red-tagged pole that is replaced with a new pole paid for by an attacher.

b. Explain whether or not You receive any financial or other benefit as a result of an attacher paying to replace an existing pole with a new pole so that it may attach.

RESPONSE: Objection. LTC objects to Request No. 1-4 because it has no "Poles" as defined in KBCA's initial Requests for Information. Subject to and without waiver of the foregoing objection, the requirement that an attacher bear the cost of replacing a pole that only needs replacement to accommodate the attacher's request for attachment is based upon a reasonable, common sense approach that an attacher should not be allowed to force another party to incur additional costs on its behalf. Historically, this has for over 40 years been the standard of a fair, just, and reasonable practice. Indeed, the Commission itself explained this when implementing 807 KAR 5:015:

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.¹

¹ 807 KAR 5:015 amended after comment, Statement of Consideration, at 47, *available at*:
[https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%](https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment)

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Moreover, the Commission has already rejected KBCA's claim that this approach is "unfair," explaining:

Other utility customers may eventually benefit from the installation of the new pole installed to accommodate a new attacher as alleged by KBCA, but only to the extent the new pole adds useful life. For instance, if a new pole has a 50-year life and the pole that was replaced had a 30 year remaining useful life, then other customers may get the benefit of 20 additional years of life that were paid for by the new attacher. However, in 30 years, the relevant pole may not be necessary such that other customers would not receive any benefit from the new pole installed to accommodate the new attacher's equipment. Further, depending on the age of the pole being replaced and the types of poles involved, it is possible that a new pole of a different type necessary to accommodate a new attacher may not actually have a longer life than the existing pole.²

Simply put, LTC's customers should not have to provide a subsidy to an attacher by being forced to incur costs over which neither LTC nor its customers have any discretion. *See* 807 KAR 5:015 § 2(1) (“[A] utility shall provide . . . access to any pole . . .”). This is especially true in light of the substantial pole replacement and other subsidies the KBCA's members will now be able to obtain through the Commonwealth's newly-formed Kentucky Rural Infrastructure Improvement Fund and other elements of the Commonwealth's broadband infrastructure investments through HB315 (in addition to available federal or local subsidies), which was passed during the most recent legislative term.

(a) Aid to construction received by LTC is credited to accounts charged with the costs of such construction.

[20comment.pdf](#). Although the explanation is directed to electric utility-owned poles, the same rationale applies to telecommunications utility-owned poles.

² *Id.*

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(b) LTC objects to Request for Information No. 1-4(b) because it is so vague and incomplete that it calls for speculation. Subject to and without waiver of the foregoing objection, LTC states that it receives no direct benefits, financial or otherwise, at the time a pole is replaced to accommodate an attacher. While LTC acknowledges that KBCA has previously advanced theoretical, alleged long-term benefits to a utility, there is no method by which to determine whether any of the required conditions presumed by KBCA in such theoretical, long-term analysis will actually be realized. Alternatively, in all cases, the attacher is the party causing the costs incurred and an attacher receives the immediate benefit of access to new prospective customers without incurring the costs necessary to construct its own system.

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REQUEST NO. 1-5: Explain and provide data concerning why You should not be responsible for Your own negligence, including the basis for Your requirement that “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.”

a. Explain why the same standard of liability does not apply to You and the third party attachers.

b. Explain why third party attachers should be liable for Your negligence

RESPONSE: This provision of the Duo County tariff, adopted by LTC, is identical to the CATV pole attachment tariffs previously approved by the Commission and to which KBCA has never objected. The tariff is written broadly to protect LTC from incurring defense costs and potential liability as a result of being required by law to allow a third-party to occupy its property. If a third-party incurs damage involving a utility pole owned by LTC, the owner of the pole will undoubtedly be included in any lawsuit or claim for damages. Without protection to a pole owner, an attacher would be incentivized to shift blame to a pole owner to attempt to minimize the extent of its own losses caused by the attacher's negligence. Further, a pole attachment tariff must have mechanisms to incentivize an attacher to ensure that all attachments are made safely and without damage to a pole, which could lead to injuries to a third-party.

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It is not fair, just, and reasonable to require an entity to involuntarily provide access to its property while then stripping that property-owner of the right to be fully protected against any loss or damage resulting from the licensee's actions or omissions.

Witness) **Gregory A. Hale**

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REQUEST NO. 1-6: Explain the basis for and provide data concerning Your requirement that You may terminate KBCA's rights under the tariff and remove its attachments for failure to comply with the tariff, including failure to pay amounts You are claim are due, after a 30 day cure period.

a. Explain the basis for terminating KBCA's rights under the tariff and removing its attachments if You and KBCA are engaged in a dispute regarding the terms, conditions, or rates set forth in Your tariff.

b. Explain the basis for denying access to a pole for payment disputes.

c. Explain why the Commission's complaint process and the financial penalties already included in the tariff are not an adequate "remedy for an Attacher's failure to comply with the terms of the Tariff."

RESPONSE: (a) **The terms, conditions, or rates set forth in the tariff are subject to approval by the Commission. Like all other users of tariffed services, KBCA and its members will be required to comply with the terms of the tariff. If KBCA and its members do not comply with the tariff, including payment of amounts due at the rates approved by the Commission, then LTC is provided a remedy (just like when any other user of tariffed services fails to comply with a tariff). Removing "teeth" from the tariff dis-incentivizes compliance and is unreasonable from financial, technical, and operational perspectives.**

(b) **LTC does not propose denying access to a pole based on a "payment dispute."** Use of utility poles by an attacher will be subject to the rates and terms set by the Commission in an approved tariff. Following the Commission's approval of the tariff, KBCA's members

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will be required to pay the tariffed rates approved by the Commission. If KBCA's members fail to pay those amounts, there is no "dispute," but a failure to comply with the tariff, for which a utility customarily has remedies (including the rights of "disconnection" and refusing additional service).

(c) The Commission does not have the jurisdictional authority to award monetary damages, such as the failure to pay past due amounts. Moreover, the pole-owner should not be burdened with having to institute a complaint because an attacher is violating terms of the tariff; that burden (like the burden of proof) falls to the person complaining that the tariff terms are not fair, just, and reasonable.

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REQUEST NO. 1-7: To Brandenburg only: Explain the cost basis for Brandenburg's
“survey fee estimate” of \$225 per pole, including any data supporting the fee.

a. Explain and provide all data concerning the portion of this fee that is “included to
provide Brandenburg Telephone with ‘reasonable security’ ” as opposed to the portion that is an
estimate of the cost of the survey itself. Response at 12.

RESPONSE: Request No. 1-7 is not directed to LTC, and no response is required.

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REQUEST NO. 1-8: To South Central only: Explain the cost basis for South Central's "survey fee estimate" of \$162.77 per pole, including any data supporting the fee.

a. Explain and provide all data concerning the portion of this fee that is "included to provide South Central Rural Telephone with 'reasonable security' " as opposed to the portion that is an estimate of the cost of the survey itself. Response at 18.

RESPONSE: Request No. 1-8 is not directed to LTC, and no response is required.

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REQUEST NO. 1-9: To Thacker-Grisby only: Explain the cost basis for Thacker-Grisby's
“survey fee estimate” of \$119 per pole, including any data supporting the fee.

a. Explain and provide all data concerning the portion of this fee that is “included to
provide Thacker-Grisby Telephone with ‘reasonable security’ ” as opposed to the portion that is
an estimate of the cost of the survey itself. Response at 24.

RESPONSE: Request No. 1-9 is not directed to LTC, and no response is
required.

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As to Objections,

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VERIFICATION

I, Gregory A Hale, verify, state, and affirm that the information request responses filed with this verification for which I am listed as a witness are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

Gregory A Hale

Name: Gregory A Hale

Title: General Manager

COMMONWEALTH OF KENTUCKY)
) ss:
COUNTY OF LOGAN)

SUBSCRIBED AND SWORN TO before me by on this the 3rd day of May, 2022.

My commission expires: 9/26/24



Jennifer Dunson
Notary Public #566729