

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

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In the Matter of:	)	
	)	
	)	
ELECTRONIC INVESTIGATION OF THE	)	CASE NO. 2022-00107
PROPOSED POLE ATTACHMENT	)	
TARIFFS OF RURAL EXCHANGE	)	<b>REPLY IN SUPPORT OF</b>
CARRIERS	)	<b>MOTION FOR CLARIFICATION</b>
	)	
	)	

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On May 19, 2022, the RLECs filed a Response to the Kentucky Broadband and Cable Association’s (“KBCA”) Motion for Clarification dated May 12, 2022. Due to the fact that the RLECs’ response mischaracterizes KBCA’s motion, KBCA respectfully submits the following points in Reply to that Response to ensure the Commission has a complete and accurate record when it considers this matter.

First, the RLECs criticize the style of KBCA’s motion for clarification, through which KBCA seeks Commission confirmation that KBCA may file a legal brief in conjunction with its written testimony. Contrary to the RLECs belief, clarification from the Commission is precisely what KBCA seeks. KBCA is unaware of any Commission prohibition against the filing of a brief on the legal issues in the case at the same time Intervenor testimony is filed. Any member of the public may submit such a document in the case record at that same time. KBCA seeks confirmation from the Commission that this approach would be acceptable in this proceeding.<sup>1</sup>

Second, KBCA and its counsel believe that this process will serve to enhance the efficiency of the overall proceeding, as it provides notice of legal issues at an earlier point in the process.

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<sup>1</sup> In its motion, KBCA also explicitly stated “in the alternative” that it was requesting a “modification” to the procedural schedule in the event the Commission believes that an amendment to the procedural schedule is necessary. KBCA was completely transparent in its request.

This will also eliminate or minimize the need for fact witnesses to testify on legal arguments, which are better suited to be addressed through legal briefing. Moreover, KBCA's proposal benefits the pole owners. It is common for parties with the burden of proof—such as the pole owners in this case—to be required to submit legal briefs prior to intervening parties. KBCA proposes to file a legal brief followed by a response from the pole owners. This process enables the pole owners to respond directly to KBCA's legal arguments.

Third, the RLECs argue that no legal briefing is required in this case, suggesting that all legal issues have already been fully vetted—that is inaccurate. This case and its companion cases<sup>2</sup> are the first time the Commission has had the opportunity to consider whether the pole owners' proposed tariffs comply with the requirements in 807 KAR 5:015. The RLECs suggestion that no additional legal briefing is necessary suggests that the RLECs want the Commission to rubber stamp their tariffs without consideration of the novel issues they raise.

Fourth, the RLECs complain that the proposed schedule is unduly burdensome. KBCA's proposal would provide nearly a month—from June 9 to July 7—for pole owners to draft a brief regarding the legal issues. KBCA believes that this time period of twenty-eight (28) days is reasonable, and the RLEC's have not demonstrated otherwise. However, to the extent that pole owners have a good faith basis for requesting additional time to provide their response, KBCA has no objection to the pole owners filing a request for an extension of time, as may be deemed reasonable by the Commission.

Ultimately, KBCA's motion seeking clarification that it may submit a legal brief at the same time as its testimony is reasonable. This proposal streamlines the process. It also encourages

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<sup>2</sup> Case Nos. 2022-00106, 2022-00107, and 2022-00108.

legal issues to be addressed in the briefing process as opposed to fact testimony. Accordingly, KBCA respectfully requests that the Commission grant its motion.

Dated: May 26, 2022

Respectfully submitted,

/s/ M. Todd Osterloh

James W. Gardner

M. Todd Osterloh

Sturgill, Turner, Barker & Moloney, PLLC

333 West Vine Street, Suite 1500

Lexington, KY 40507

Phone: (859) 255-8581

jgardner@sturgillturner.com

tosterloh@sturgillturner.com

Paul Werner (admitted pro hac vice)

Hannah Wigger (admitted pro hac vice)

Sheppard Mullin Richter & Hampton LLP

2099 Pennsylvania Avenue NW

Suite 100

Washington, DC 20006

(202) 747-1900

pwerner@sheppardmullin.com

hwigger@sheppardmullin.com

*Counsel for KBCA*