

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	
PROPOSED POLE ATTACHMENT TARIFFS OF)	CASE NO.
INCUMBENT LOCAL EXCHANGE CARRIERS)	2022-00108

**REPLY BRIEF OF CINCINNATI BELL
TELEPHONE COMPANY LLC d/b/a/ altafiber**

Pursuant to the Commission’s September 23, 2022 Order, Cincinnati Bell Telephone Company LLC d/b/a altafiber (“altafiber”) hereby submits its reply brief in this matter in response to the initial brief of the Kentucky Broadband and Cable Association (“KBCA”).

I. PROCEDURAL BACKGROUND

As noted in altafiber’s initial brief, the KBCA was the only party that filed comments or objections to altafiber’s tariff. It is also the only other party that filed an initial brief in this specific proceeding. Only two issues in the KBCA brief pertain to altafiber.¹ And, as previously noted, KBCA’s two objections with respect to altafiber only relate to provisions of the tariff that altafiber did not propose to change and that have been in effect since 1995 without complaint.

¹ KBCA did not lodge any objection to § 2.2.4 of altafiber’s tariff, nevertheless KBCA cited it in footnotes 49 and 50 of its Initial Brief in support of its argument against utilities having discretion to remove disputed attachments. This oblique reference to altafiber’s tariff should not be regarded as a valid objection to § 2.2.4. Furthermore, altafiber did not propose any change to that section, other than to delete the words “Cable Television” in § 2.2.4(A)(6) so as to make the provision to all types of attachments, not just Cable Television. In any event, citing altafiber’s § 2.2.4 with regard to an objection to removal of disputed attachments is misplaced, as § 2.2.4 only pertains to the termination of authorizations of attachments, not their physical removal, which involves different tariff provisions.

II. ARGUMENT

A. Under the Filed Rate Doctrine, Previously Approved Tariff Provisions Are Presumed Reasonable and the Burden of Proof Lies on the Party Seeking to Establish Their Unreasonableness.

As the Commission has previously explained, a filed rate “is presumed reasonable.”² In this case, altafiber’s tariff § 3.2.1 is not only presumed reasonable, the Commission explicitly found it to be reasonable. The party who challenges a provision bears the burden of proof.³ These principles should be applied to altafiber’s existing tariff provisions because altafiber is not proposing a change and the recent rule updates did not require any change.

The KBCA only objects to § 3.2.1 because it includes a 10% markup to direct costs. But the 10% markup provision was approved in 1983 when established as an allocation of overhead expenses. altafiber incurs administrative costs to process and manage third-party attachment requests that are not included in the amount billed by the contractors who perform the physical work and the markup is necessary to recover these administrative costs.⁴ altafiber’s pole attachment management process has not materially changed since this provision was established.⁵ KBCA has shown no justification for ignoring or overruling the Commission’s prior approval of tariff § 3.2.1 as reasonable, so this tariff provision should remain as is.

² See *In the Matter of East Clark County Water District*, Case No. 2005-00322, Order at p. 2 (Ky. PSC Apr. 3, 2006), citing *Southwestern Electric Power Co. v. Grant*, 73 S.W.3d 211 (Tx. 2002)

³ *Id.*, citing *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky.App. 1980).

⁴ See Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to the Kentucky Broadband and Cable Association’s Supplemental Requests for Information, No. 2-4; Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff’s Second Request for Information, No. 7.b.

⁵ See Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to the Kentucky Broadband and Cable Association’s Supplemental Requests for Information, No. 2-4

B. It Is Reasonable To Require A New Attacher To Pay The Full Cost of Non-Red Tagged Poles Whose Replacement Is Necessitated By Their Attachment.

807 KAR 5:015, Section 4, (6)(b)(4) provides that the make ready cost to replace a pole to accommodate a new attacher's attachment that is not a red tagged pole shall be charged "in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher." The rule only prohibits utilities from charging attachers for replacement of red tagged poles; it does not restrict the utilities' ability to charge the full cost to replace non-read tagged poles. The KBCA has not provided a valid basis for changing altafiber's tariff § 3.2.2. altafiber did not propose any changes to that part of its tariff, which tariff is presumed reasonable.

KCBA's arguments against paying for the replacement cost of such poles do not stand muster. For example, it contends that new attachers do not cause pole replacements. Nothing could be further from the truth. Poles are only replaced when they need to be replaced. When poles are deemed adequate for their existing use and are not defective, they only need to be replaced to accommodate the new attacher's request. The replacement is done solely to enable the new attacher to add its attachment. As altafiber showed with respect to the vintages of its existing pole base, approximately 72% of altafiber's poles have been in place longer than their depreciation lives. There is no way to accurately predict when a pole might need to be replaced. The replacement date is certainly not tied to depreciation lives. And KBCA is wrong that unexpected pole replacements do not negatively affect utilities' budgets. Altafiber only replaces on average 150 poles per year⁶ out of its 48,532 Kentucky poles,⁷ so its pole replacement budget is only based

⁶ See Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff's Second Request for Information, No. 8.

⁷ See Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff's First Request for Information, No. 9.

on a figure of that order of magnitude. Further, as an electing company in Kentucky, altafiber does not have a pole replacement account funded by its customers. Altafiber has not been subject to rate regulation for many years, does not have a regulated rate base, and its customers' rates are not established by regulation to cover pole depreciation expense and create a pole replacement fund.

III. CONCLUSION

Because no party has objected to any of altafiber's many proposed tariff changes designed to comply with 807 KAR 5:015, those changes should be approved as filed. And, because KBCA has not provided valid objections to the two sections of altafiber's tariff that altafiber did not propose to change and has not shown those provisions to be unreasonable, neither of those provisions that should be changed.

Respectfully submitted,



1818 Madison Road
Cincinnati, OH 45202-1827
Telephone: (513) 621-6709
Email: dhart@douglasshart.com

Attorney for Cincinnati Bell Telephone
Company LLC d/b/a/ altafiber

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