

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

RESPONSE TO OBJECTIONS OF THE
KENTUCKY BROADBAND AND CABLE ASSOCIATION

On March 17, 2022, the Kentucky Broadband and Cable Association (“KBCA”) filed objections to a number of pole attachment tariffs, including that of Cincinnati Bell Telephone Company LLC d/b/a altafiber. Altafiber hereby responds to the two objections the KBCA lodged against its tariff.

I. Section 3.2.2

The KBCA objects to Section 3.2.2 of altafiber’s tariff, asserting that it violates 807 KAR 5:015. The KBCA does not identify any specific provision of 807 KAR 5:015 that it alleges would be violated. Section 3.2.2 of the tariff states in its entirety:

The charge for replacement of a pole, required to accommodate attachee’s communications facilities, in accordance with 2.6.1(G) shall be based on the Telephone Company’s fully installed costs less salvage value, if any, and depreciation expense when applicable.

First, altafiber did not propose any change to § 3.2.2 of the tariff as it currently exists. This provision has been in effect since 1995 and there was nothing in 807 KAR 5:015 that would require it to change.

Second, when the KBCA’s objection quoted from § 3.2.2 of the tariff, it omitted the phrase “in accordance with 2.6.1(G)” and replaced it with an ellipsis without commenting on the deletion. The objection is deceptive because it ignores the narrow context in which § 3.2.2 applies. Section

2.6.1(G) of the tariff addresses the very specific situation where a new attachment requires the replacement of a pole and the new attachee *elects* to take ownership of the replacement pole instead of becoming a mere attacher. Nothing requires an attachee to take ownership of a replacement pole, so this provision is totally avoidable and can never be imposed upon an attachee against its will.

Third, having a new attachee pay the fully installed cost of a new pole that it elects to own is totally consistent with 807 KAR 5:015. 807 KAR 5:015(6)(b)(4) states: “The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher’s attachment 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 does not address how the utility’s tariff should charge for new poles, only that the method provided in the tariff will be followed.

Finally, the KBCA only objects to § 3.2.2 “to the extent this requirement conflicts with the Commission’s red-tagged pole framework.” However, it never explains how § 3.2.2 could conflict with that framework. According to 807 KAR 5:015(1)(10), a “red tagged pole” is a pole that (1) is designated for replacement based on the pole’s non-compliance with an applicable safety standard; (2) is designed for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher’s request for attachment; or (3) would have needed to be replaced at the time of replacement even if the new attachment were not made. Section 3.2.2 is limited to situations where it is necessary to replace a pole to accommodate the new attachment. A “red-tagged pole” that needs to be replaced independent of any new attachment is not a pole that needs to be replaced *because* of a new attachment. By definition, this section would not apply to a red tagged pole.

II. Section 3.2.1

The KBCA's only other objection to altafiber's tariff is to § 3.2.1. The KBCA contends that this section is an unreasonable term or condition. The entire text of § 3.2.1 is as follows:

Charges for all work performed by the Telephone Company or by its authorized representatives in connection with the furnishing of pole accommodations as covered by this tariff shall be based upon the full cost, plus (10%) of such amount, to the Telephone Company for performance of such work. Such charges will apply for, but not be limited to, prelicense survey, make-ready work, inspection and removal of attachee's communication facilities.

The KBCA states that it objects to "unreasonable, non-cost based charges" without elaborating on what was unreasonable about the tariff.

First, as with § 3.2.2 above, altafiber did not propose any changes to § 3.2.1 of its tariff. This provision has been in effect for decades and there was no need to change it to conform the tariff to 807 KAR 5:015.

Second, the KBCA cannot be objecting to recovery of "full cost" which would be cost-based by definition and, therefore, reasonable. Presumably, the KBCA only objects to § 3.2.1 because it includes a 10% markup to direct costs. The 10% markup provision represents an allocation of overhead expenses and CBT is entitled to recover its full cost of doing work necessary to provide pole attachments, which would include overhead. Most notably, this provision was expressly approved by the Commission in Administrative Case No. 251-1 over the objection of the then Kentucky Cable Television Association ("KCTA"). In paragraph 5 of its June 1, 1983 Order, the Commission stated:

KCTA's objection to Bell's addition of a 10 percent surcharge to CATV "make-ready" and rearrangement activity is unreasonable. The Commission will allow the surcharge and advises that similar surcharges on customer-oriented construction are allowed in Bell's General Exchange Tariff, Section 5, Construction.

This provision has appeared in CBT's pole attachment tariff since the Commission approved it in 1983 and the KBCA has provided no basis for changing it.

III. Conclusion

The KBCA has not raised any valid objection to the tariff changes that altafiber filed to conform its pole attachment tariff to 807 KAR 5:015. Neither of the provisions that were subject to objection were changed and neither is within the scope of any change mandated by 807 KAR 5:015. In any event, all of the tariff provisions are reasonable and lawful and should remain undisturbed. The Commission should dismiss the KBCA's objections and approve the tariff changes as filed.

Respectfully submitted,



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