

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

**INITIAL 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 initial brief in this matter.

**I. PROCEDURAL BACKGROUND**

On February 1, 2022, 807 KAR 5:015 became effective. It required that utilities that own poles must file tariffs that are consistent with the requirements of the regulation no later than February 28, 2022, with an effective date of no later than March 31, 2022. On February 28, 2022, altafiber submitted proposed revisions to its existing PSCK No. 1 Pole Attachment Tariff, with a proposed effective date of March 31, 2022. The tariff revisions were intended to conform the existing tariff to the Commission’s new rule 807 KAR 5:015, which established criteria and procedures for obtaining access to utility poles within the Commission’s jurisdiction. On the same date, the Commission established this proceeding and released an Order setting forth a procedural schedule for the matter. The Commission suspended the effective date of the proposed tariff until August 31, 2022.

In Case No. 2022-00064, the Commission had established a procedure to receive comments and objections concerning the ILECs’ proposed individual tariffs. On March 17, 2022,

the Kentucky Broadband and Cable Association (“KBCA”) was the only party that filed comments or objections to altafiber’s tariff. The KBCA raised only two objections.

In its tariff filing, altafiber had proposed various changes and deletions to its existing tariff and seventeen completely new provisions to conform to 807 KAR 5:015. The filing included a number of new definitions and other substantive paragraphs. However, KBCA’s only objections to altafiber’s tariff related to Sections 3.2.1 and 3.2.2, which altafiber did not propose to change at all from the existing language. That tariff page has been in effect without change or objection since 1995.<sup>1</sup>

## **II. ARGUMENT**

No party has commented or objected to any of altafiber’s proposed tariff changes. The proposed changes should be approved as filed.<sup>2</sup> The only issue that the Commission need resolve is whether the KBCA has valid objections to two sections of altafiber’s tariff that it did not propose to change and which need not change to conform to 807 KAR 5:015.

### **A. Section 3.2.2**

The KBCA objected to Section 3.2.2 of altafiber’s tariff, asserting that it violates 807 KAR 5:015, without identifying any specific provision of 807 KAR 5:015 that 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.

---

<sup>1</sup> Cincinnati Bell Telephone Company LLC Cable Television Pole Attachment Tariff, PSCK No. 1, 2<sup>nd</sup> Revised Page 41.

<sup>2</sup> The Commission Staff did identify one typographical error in the tariff filing that altafiber would agree to correct. *See Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff’s Request for Information, No. 2.a* (repeated text on PSCK No. 1, 3<sup>rd</sup> Revised Page 18, § 2.3.3(E), lines 7-8).

As already noted, 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 nothing in 807 KAR 5:015 would require it to be changed. Having a new attachee pay the fully installed cost of a new pole 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 new rule does not address how the utility’s tariff should address charges for replacing non-red-tagged poles; it only requires that the method provided in the tariff (or a special contract) will be followed. Nothing in 807 KAR 5:015 requires that an existing method provided in a tariff be changed.

The KBCA only objected to § 3.2.2 “to the extent this requirement conflicts with the Commission’s red-tagged pole framework.” However, it never explained 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 a 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, Section 3.2.2 would not apply to a red tagged pole.

KBCA really only objects to altafiber's tariff to the extent it would require an attacher to pay the full replacement cost of non-red-tagged poles. But a non-red-tagged pole is one that would not be replaced but for a potential attacher's request for a new attachment. Therefore, the need to replace the pole is solely to accommodate the new attachment and the attacher is the sole cost-causer of the pole replacement. The Commission generally attempts to ensure that costs are assigned to the party responsible for causing a 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 solely to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.<sup>3</sup> If a pole is not currently flagged as a safety hazard or otherwise designated for replacement, it is deemed sufficient to support the existing infrastructure and business needs.<sup>4</sup>

KBCA witness Kravtin's proposal that new attachers should only have to pay the net, undepreciated cost of an old pole ignores reality. Such pole replacements are unexpected, unplanned and unbudgeted. Removal of a fully functional and adequate pole would not happen in the ordinary course of business and ILECs should not bear that cost. As shown by the vintages of altafiber's existing pole base, poles are not retired just because they have outlived their depreciation lives.<sup>5</sup> Forcing a utility to incur any of the cost to replace a viable pole that would not have been replaced but for a new attachment request would impose costs that would not have been necessary in the ordinary course of business. The 29-year useful life for depreciation purposes represents an economic service life estimate, not the physical service life. Most poles remain used

---

<sup>3</sup> See Commission's Statement of Consideration Relating to 807 KAR 5:015, p. 47.

<sup>4</sup> 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. 2-5.

<sup>5</sup> See Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff's Second Request for Information, No. 10.

and useful well beyond that time period.<sup>6</sup> Poles are not replaced based solely on age, but only as necessary to accommodate third-party attachment requests, safety conditions or business needs.<sup>7</sup> KBCA's proposal would force ILECs to subsidize an attacher's buildout plan when the pole did not need to be replaced.

### **B. 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 or identifying any provision in 807 KAR 5:015 that requires charges to be cost-based.

First, as with the case of § 3.2.2 above, altafiber did not propose any change to § 3.2.1. This provision has been in effect for decades and there was no need to change it in order to conform with 807 KAR 5:015. The same provision is also contained in altafiber's Ohio pole attachment tariff.<sup>8</sup>

Second, the KBCA only objects to § 3.2.1 because it includes a 10% markup to direct costs. But the 10% markup provision is cost-based because it represents an allocation of overhead

---

<sup>6</sup> Approximately 72% (34,919 of 48,532) of altafiber's poles have been in service longer than their economic depreciation life. *See* Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff's Request for Information, No. 9.

<sup>7</sup> *See* Responses of Cincinnati Bell Telephone Company LLC d/b/a/ altafiber to Commission Staff's Second Data Requests, No. 6.e.

<sup>8</sup> Cincinnati Bell Telephone Company LLC Pole and Anchor Attachment and Conduit Occupancy Accommodations, PUCO No. 1, Page 40, § 3.2.1.

expenses and CBT is entitled to recover its full cost of doing work necessary to provide pole attachments. 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.<sup>9</sup>

This provision was expressly approved by this Commission in Administrative Case No. 251-4 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 and the KBCA has provided no basis for changing it. The process used by altafiber to manage third-party attachments has not changed over time.<sup>10</sup>

Commission Staff asked KBCA why the Commission should deviate in this proceeding from its 1983 Order finding the surcharge reasonable.<sup>11</sup> KBCA’s primary response was that the 1983 Order only related to “make-ready and rearrangement activity” while the tariff provision includes “prelicense survey, make-ready work, inspection and removal of the attachee’s communication facilities.”<sup>12</sup> But this is just a word game. The types of activities listed in the tariff *are* “make-ready and rearrangement activit[ies].” The fact that the Commission’s 1983 Order may

---

<sup>9</sup>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.

<sup>10</sup> 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

<sup>11</sup> Commission Staff’s First Request For Information to Kentucky Broadband and Cable Association, No. 6.

<sup>12</sup> KBCA Response to Commission Staff’s First Request for Information to Kentucky Broadband and Cable Association, No. 6.

have used a shorthand reference to the types of activities does not take altafiber's tariff provision outside its bounds.

KBCA went on to opine on the policy bases for the Commission revisions to its pole attachment rules in 807 KAR 5:015, but did not identify any specific verbiage in 807 KAR 5:015 itself that changed the substantive law that would have applied in 1983 when § 3.2.1 was approved as reasonable. KRS 278.030(1) authorizes utilities to receive "fair, just and reasonable rates," the same legal standard that was in effect in 1983. KBCA has shown no justification for ignoring or overruling the Commission's prior approval of tariff § 3.2.1.

### **III. CONCLUSION**

No party has raised any objection to any of the tariff additions, deletions or modifications that altafiber made to conform its pole attachment tariff to 807 KAR 5:015. Neither of the two provisions that KBCA objects to were changes and neither is within the scope of any change mandated by 807 KAR 5:015. In any event, both 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,



---

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

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

October 11, 2022