

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC INVESTIGATION OF THE PROPOSED
POLE ATTACHMENT TARIFFS OF INCUMBENT
LOCAL EXCHANGE CARRIERS

CASE NO. 2022-108

**WINDSTREAM KENTUCKY EAST, LLC'S, AND WINDSTREAM KENTUCKY WEST,
LLC'S RESPONSES TO KENTUCKY BROADBAND AND CABLE ASSOCIATION'S
OBJECTIONS TO WINDSTREAM KENTUCKY EAST, LLC'S AND WINDSTREAM
KENTUCKY WEST, LLC'S PROPOSED POLE ATTACHMENT TARIFF**

Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively "Windstream"), respectfully files responses in part to the Kentucky Broadband and Cable Association's ("KBCA") objections to Windstream's Proposed Pole Attachment Tariff.

KBCA makes a number of objections to Windstream's Proposed Pole Attachment Tariff, many of which are objections over the form. While Windstream believes it has language in the proposed document to address conflicts with the Kentucky Public Service Commission's (Commission's) rules, it is willing to amend its proposed pole attachment tariff. In instances where Windstream is willing to amend its tariff in response to KBCA's objections it has not individually addressed KBCA's objections in these responses. In addition, the proposed document filed for each Windstream company is identical and as such the objections are identical. Therefore, Windstream is consolidating its responses.

Requests to Attach, KBCA objects to having two different processes for complex and simple or one-touch applications citing that 807 KAR 5:015 does not have that distinction. However, 807 KAR 5:015 Section 4(10) does contain this distinction and provides for a separate process.

Application Limitation. KBCA objects to Windstream's procedures for the number and form of applications submitted at one time. The process Windstream proposes is not unduly burdensome and ensures that requests will not be missed. Windstream is however, willing to add language to incorporate 807 KAR 5:015 Section 4(7) to address large pole attachment orders.

Complex Make Ready. This section allows for Windstream to invoice the Survey and Make-Ready Estimates at the same time and gives the requester a specific period of time to pay. It does not in any way change the timeframes required under 807 KAR 5:015.

Simple Make Ready. KBCA objects to the requirement that it bear responsibility for surveying Windstream's poles and that it send notice in advance of such survey. In its objection it cites 807 KAR 5:015 Section 4(2)(b). However, KBCA's cite is incorrect since this section is related to one touch make ready work, and the correct citation is 807 KAR 5:015 Section 10(2)(b) which does require the attacher to be responsible for surveys.

Definitions. KBCA objects to several definitions claiming they conflict with 807 KAR 5:015 or are overly broad. Windstream responds as follows:

- Application for Pole License – this does not conflict with the rule and provides a template attachment application which only aids the attacher with its request to Windstream to ensure its initial application will be considered complete, thereby decreasing potential delays.
- Make Ready Estimate – there is no conflict between this definition and the Commission rules and if there were Section 32 of the proposed tariff states that the Commission's rules would control.
- Force Majeure Event – this proposed definition is standard verbiage found in numerous agreements, and it is not unreasonable or overly broad.

- Hazardous Materials - this proposed definition is standard verbiage found in numerous agreements, and it is not unreasonable or overly broad.
- Licensee Contractor – Windstream is simply ensuring it knows the entities that are doing work on its poles as it has an obligation to protect the existing attachments on the pole. The proposed definition is neither overly broad or unduly burdensome and provides safety protection for all parties involved.
- Overlapping – the Commission rules do not define overlapping. Therefore, there is no conflict, and the proposed definition is not overly broad.
- Pole – the proposed definition is not overly broad and does not conflict with Commission rules.
- Right-of-Way - the proposed definition is not overly broad and does not conflict with Commission rules.

Future Agreements. KBCA objects to the language in this section stating that access to Windstream poles must proceed on a nondiscriminatory basis and Windstream may not favor itself or other attachers over KBCA members. This is exactly what this section does. It ensures there is no discrimination amongst attachers, therefore, Windstream does not understand the objection.

Termination of Licenses. KBCA objects to this section citing 807 KAR 5:015 Section 6(1), however, Section 6(1) is not addressing the same issue as Windstream’s proposed tariff language addresses. Windstream is addressing when it has been notified by a governmental entity that it must remove its pole. In these instances Windstream is limited to the notification it is given by the governmental authority which may not be the 60 days KBCA is requiring.

Unsupported and Unreasonable Costs. KBCA objects to the proposed verbiage that would make it responsible for all work Windstream performs on its behalf. KBCA or any attacher

has the option to complete the work on their own behalf to avoid paying Windstream to complete the work.

Lien. KBCA objects to Windstream's ability to place a lien on KBCA's attachment. This is not unreasonable and is an accepted practice in the pole attachment industry.

Construction and Maintenance. KBCA objects to any verbiage that would make it responsible to correct the preexisting violations of other attachers. The proposed verbiage does not require that. It only requires that KBCA be responsible for correcting violations involving its own attachments.

Cost and Expenses of Other Parties. KBCA objects to being responsible for costs and expenses related to the expansions that it requests but that other attachers may benefit from. Windstream believes that in those instances, the attacher is the cost causer, and as such the attacher should be primarily responsible for costs necessary to accommodate the attacher's request.

Unauthorized Attachments. KBCA objects to the proposed definition as being overly broad and unreasonable. Windstream disagrees because the definition is specific and does not conflict with Commission rules and there are no specific requirements around unauthorized attachments.

Indemnity & Liability. KBCA objects to the proposed language. The verbiage proposed is standard indemnification and liability language that is not unreasonable and is routinely used.

Assignment. KBCA objects to Windstream's proposed verbiage regarding assignment. The limitations are not unreasonable, as Windstream needs to know which entities are attached to its poles and in fact is required to know this under the Commission rules in order to provide the required and necessary notifications.

Rates, Fees, and Charges. KBCA has objected in several instances to Windstream's proposed pricing, in each instance Windstream responds that it believes the proposed pricing is market standard and is just and reasonable.

Waiver of Jury Trial. KBCA objects to the waiver of jury trial verbiage. This is standard verbiage in contracts and is not an unreasonable request for sophisticated business parties that would be attaching to utility poles.

Dated: April 20, 2022

Respectfully submitted,

/s/ Robert C. Moore

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing filing was electronically transmitted to the Commission on April 20, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. I further hereby certify that the foregoing Notice of Appearance and Statement Regarding Electronic Filing Procedures is being served via electronic mail to Counsel for all parties to Commission Case No. 2022-00108 on this 20th day of April, 2022.

/s/ Robert C. Moore

Robert C. Moore