

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 & Windstream Kentucky West, LLC's (collectively  
"Windstream") Responses to the Kentucky Broadband and Cable Association's (KBCA)  
Initial Request for Information**

**1-1. Identify the number or percentage of Your poles that are currently red-tagged.**

**Windstream Response:** Approximately 0.187% of Windstream's combined poles are considered red-tagged.

**1-2. Provide data related to the number of Your Poles that are anticipated to be red-tagged in the next five years.**

**Windstream Response:** At this time there is no data to predict the number of Windstream's poles that will be red-tagged in the next five years.

**1-3. Explain how You will determine if a pole is red-tagged.**

**Windstream Response:** A pole is determined to be red-tagged if it is broken or damaged in anyway.

**1-3.a. Explain what You will do when You are notified of a red-tagged pole.**

**Windstream Response:** If the pole is deemed to be broken or damaged and is not causing a safety issue the pole will be evaluated to determine if it can be fixed or if it needs to be replaced and such action will be taken. If the pole is creating a safety risk, there is an escalation process within Windstream to have the matter quickly reported and to dispatch a crew to fix or replace the pole as soon as possible.

**1-3.b. Explain how an attacher can determine and assess whether or not a pole is or will be red tagged.**

**Windstream Response:** Each attacher is strongly recommended to perform its own testing and safety procedures to determine the pole's condition before climbing or attaching to the pole.

**1-4. Explain the basis for Your proposed requirement that an attacher pay the entire cost of replacing a pole that is not red-tagged, including all economic basis for this requirement.**

**Windstream Response:** If Windstream is required to replace a non-red-tagged pole to accommodate the request of a new attacher, that new attacher should carry the burden of that cost, the change is being made as a result of its request.

**1-4.a. Explain your accounting treatment of a non-red-tagged pole that is replaced with a new pole paid for by an attacher.**

**Windstream Response:** It is unclear what is being requested here.

**1-4.b. Explain whether or not You receive any financial or other benefit as a result of an attacher paying to replace an existing pole with a new pole so that it may attach.**

**Windstream Response:** While there may be some perceived initial benefit in that a new pole is erected, Windstream would still maintain obligations to complete routine maintenance of the pole, management and insurance costs, as well as any applicable governmental fees.

**1-5. Explain and provide data related to “the regular and customary methods used by Licensor in determining such costs” for “performing such work for Licensee to include, without limitation, costs to transfer or moving of Licensor facilities and removal of old Poles,” as referenced in Section 6, Original Page 20, of Your Proposed Tariff.**

**Windstream Response:** Windstream will pass through costs it incurs to complete work. This could include labor costs for internal Windstream employees or costs associated with hiring a third-party construction firm.

**1-5.a. Explain the basis for and provide data related to the calculation of Your “reasonable overhead,” including explaining how these costs are not recovered in the annual rental rate. Proposed Tariff Section 6, Original Page 20.**

**Windstream Response:** Windstream will pass through costs it incurs to complete work. This could include labor costs for internal Windstream employees or costs associated with hiring a third-party construction firm. The overhead would include internal costs for Windstream to manage this special work whether it be internal or in the event a third-party contractor is required. These items are handled on a case by case basis.

**1-6. Explain the basis for and provide data concerning Your requirement that You may terminate KBCA’s rights under the tariff and remove its attachments for failure to pay amounts You are claim are due. Proposed Tariff Section 7(A), Original Page 20.**

**Windstream Response:** This recourse is standard if the attacher does not pay or refuses to pay

invoiced amounts. Windstream does not have an obligation to continue to provide for and support the attacher on its pole.

**1-6.a. Explain the basis for terminating KBCA’s rights under the tariff and removing its attachments if You and KBCA are engaged in a dispute regarding the terms, conditions, or rates set forth in Your tariff.**

**Windstream Response:** It is not clear where this interpretation is coming from. In the event KBCA presents a valid dispute, Windstream would not remove KBCA’s attachments. However, disputes submitted must be valid and not frivolous as a ploy to avoid paying valid amounts owed.

**1-6.b. Explain the basis for denying access to a pole for payment disputes.**

**Windstream Response:** See response to 1-6 (a).

**1-7. Please provide a copy of the “Licensor requirements and specifications of Licensor” referenced in Section 11, Page 26 of Your Proposed Tariff.**

**Windstream Response:** Please see **Exhibit A.**

**1-8. Please identify and provide data concerning all costs (including how such costs are calculated) incurred by You in connection with overlashing.**

**Windstream Response:** Windstream will supplement its response with additional details.

**1-9. Please explain why an “engineering analysis” would be necessary before or after every overlash, even for extremely lightweight fiber overlashing. See Section 12, Original Pages 28, of Your Proposed Tariff.**

**Windstream Response:** Windstream will supplement its response with additional details.

**1-10. Please state whether You maintain current pole loading data for all of Your poles and, if so, explain how such data is maintained.**

**Windstream Response:** Not at this time.

**1-10.a. Please identify the number or percentage of poles you own that are currently at, near, or over their load capacity.**

**Windstream Response:** Windstream does not have this information readily available.

**1-11. Explain the cost basis for Your \$100 penalty for unauthorized attachments when a party with unauthorized attachments declines to participate in an inventory survey. Proposed Tariff, Section 18, Original Page 33.**

**Windstream Response:** The proposed amount is an industry standard rate and is necessary to deter unauthorized attachments.

**1-11.a. Explain and provide data concerning all costs you incur as a result of unauthorized attachments.**

**Windstream Response:** The costs incurred as a result of an unauthorized attachment include administrative costs related to processing the unauthorized attachment data and reviewing possible safety implications. In addition, fees to deter unauthorized behavior is not an unreasonable business practice.

**1-11.b. Explain how those costs are not recovered in the unauthorized attachment fee set forth in section 18(b) of Your Proposed Tariff.**

**Windstream Response:** It is unclear what information KBCA is seeking.

**1-11.c. Explain whether you would consider a third party attacher to have participated in an inventory survey if it cooperates with Windstream during the audit process, but does not actually go into the field with the auditors.**

**Windstream Response:** Windstream would consider a third-party attacher who cooperates, but does not go into the field as a participator.

**1-12. Explain the basis for and provide all data concerning Your requirement that “Licensee represents and warrants that all Licensee Contractors shall maintain the same insurance coverage and limits as are required under this Agreement, and if not Licensee’s insurance will provide such coverage.” Proposed Tariff Section 20, Original Page 37.**

**Windstream Response:** Windstream requires anyone working on or near its network to carry additional insured status, waiver of subrogation, and their insurance to be primary and non-contributory.

**1-13. Explain the basis for and provide data concerning Your requirement that KBCA carry additional (double) insurance when an Approved Contractor (a contractor that Windstream itself has approved) works on Your poles. Proposed Tariff Section 23, Original Page 42.**

**Windstream Response:** This is Windstream’s standard practice and thus is required in all construction related agreements.

**1-14. Explain why third party attachers should be liable for Your negligence.**

**Windstream Response:** It is unclear where KBCA is pulling this interpretation, in fact Section 22 (b) and (c) on Original Page 40 specifically excludes Windstream’s negligence from indemnification and liability.

**1-15. Explain why the same standard of liability does not apply to the You and to third party attachers.**

**Windstream Response:** The language included is standard language included in all of Windstream’s contracts.

**1-16. Explain the cost basis for Your field or engineering fee of \$75.00 per hour, including how You calculate that fee.**

**Windstream Response:** The “\$75.00 per hour Field or Engineering Fee” is calculated based on the average time and material costs incurred for engineering field review and work.

**1-16.a. Explain how those costs are not recovered in the annual rental rate.**

**Windstream Response:** According to 807 KAR 5:006 §9 (1) “A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates...” The needs of every customer are different and determined on a case-by-case basis. This work is outside the routine work that would be recovered from a recurring pole attachment rate, this is also allows Windstream to maintain reasonable recurring pole attachment rates for all attachers.

**1-17. Explain the cost basis for Your \$125 per application fee, including how You calculate that fee.**

**Windstream Response:** The “\$125.00 Application Fee” for each pole license fee is calculated based on the average time and material costs incurred for the joint-use team to process each application.

**1-17.a. Explain how those costs are not recovered in the annual rental rate.**

**Windstream Response:** According to 807 KAR 5:006 §9 (1) “A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates...” This work is outside of routine work that would be recovered from a recurring pole attachment rate, this also allows Windstream to maintain reasonable recurring pole attachment rates for all attachers.

**1-18. Explain the cost basis for Your \$400 one time agreement fee, including how You calculate that fee.**

**Windstream Response:** The “\$400.00 One Time Agreement Fee” is based on the average time and material costs incurred to evaluate new attachers and negotiate any particular needs.

**1-18.a. Explain how those costs are not recovered in the annual rental rate, and why this cost is reasonable when attachers wish to use this tariff.**

**Windstream Response:** According to 807 KAR 5:006 §9 (1) “A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates...” This work is outside of routine work that would be recovered from a recurring pole attachment rate, this also allows Windstream to maintain reasonable recurring pole attachment rates for all attachers.

**1-19. Explain the cost basis for Your \$15 per pole removal verification fee, including how You calculate that fee.**

**Windstream Response:** The “\$15.00 Removal Verification Fee” per pole is based on the average time and cost of necessary materials in examining whether it is appropriate for a particular pole to require removal.

**1-19.a. Explain how those costs are not recovered in the annual rental rate.**

**Windstream Response:** According to 807 KAR 5:006 §9 (1) “A utility may make special nonrecurring charges to recover customer-specific costs incurred that would otherwise result in monetary loss to the utility or increased rates...” This work is outside of routine work that would be recovered from a recurring pole attachment rate, this also allows Windstream to maintain reasonable recurring pole attachment rates for all attachers.

**Responding Witness: Amanda Brown**



Dated: May 5, 2022

Respectfully submitted,

/s/ Robert C. Moore

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2022, I electronically filed the foregoing document using the Kentucky Public Service Commission's electronic system for filing, which sent notice of filing to counsel of record.

/s/ Robert C. Moore  
Robert C. Moore



**EXHIBIT A**  
**CONSTRUCTION SPECIFICATIONS**