

**KENTUCKY PUBLIC SERVICE COMMISSION**

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In the Matter of:	)	
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ELECTRONIC INVESTIGATION OF THE	)	CASE NO. 2022-00108
PROPOSED POLE ATTACHMENT	)	
TARIFFS OF INCUMBENT LOCAL	)	<b>OPPOSITION TO MOTION TO</b>
EXCHANGE CARRIERS	)	<b>STRIKE TESTIMONY OF PATRICIA</b>
	)	<b>D. KRAVTIN</b>
	)	

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The Kentucky Broadband and Cable Association (“KBCA”)<sup>1</sup> opposes BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky’s (“AT&T’s”), motion to strike the testimony of Patricia D. Kravtin. The Commission recently issued an Order denying a very similar motion filed by Kentucky Power Company (“KPC”),<sup>2</sup> and it should deny AT&T’s motion for the very same reasons.

**1.** Just like KPC, AT&T moves to strike Kravtin’s testimony on the basis that the Commission already considered and rejected it in the earlier pole attachment regulation proceeding. AT&T is mistaken. While the Commission adopted a regulation addressing cost recovery for *red-tagged* poles, it expressly declined to adopt a regulation addressing cost recovery of prematurely replaced *non-red-tagged* poles. *See* 807 KAR 5:015 § 4(6)(b)(4).

Instead, the Commission deferred action on that question, explaining that such costs were more appropriately evaluated in adjudications of specific tariff terms. That approach, the Commission explained, would allow it to “address the issue in a more nuanced manner based on

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<sup>1</sup> The KBCA’s members are Access Cable, Armstrong, C&W Cable, Charter Communications, Comcast, Inter Mountain Cable, Lycom Communications, Mediacom, Suddenlink, and TVS Cable. Kentucky Broadband & Cable Association, Our Members, *available at* <https://www.kybbroadband.org/members>.

<sup>2</sup> *Investigation of the Proposed Pole Attachment Tariffs of Investor Owned Electric Utilities*, Case No. 2022-00105 (Ky. PSC June 30, 2022).

evidence regarding specific utilities, including information regarding the age of each utility’s poles and the level of specificity with which they track depreciation expense for utility poles.”<sup>3</sup>

As the Commission further noted, a more nuanced, case-specific, and traditional approach would ensure that it could evaluate targeted “evidence and explanations” to determine whether utility pole replacement costs are “fair, just and reasonable” – or a “windfall.”<sup>4</sup>

AT&T is therefore incorrect that, by promulgating a regulation addressing cost recovery for red-tagged poles, the Commission already rejected any objection to utility tariff terms on cost recovery for non-red-tagged poles. Mot. 2. The Commission expressly reserved that very issue for consideration based on the “evidence and explanations” presented in the context of objections to specific tariff provisions.<sup>5</sup> Consequently, the Commission could not have rejected a substantive objection to a specific tariff provision that had yet to be proposed – especially where the Commission expressly stated it would evaluate such objections based on facts and evidence developed in tariff-specific adjudications.

2. Kravtin’s testimony is exactly the kind of “nuanced” and case specific evidence the Commission requested in order to evaluate the reasonableness of the costs utilities seek to recover through their new pole attachment tariffs. Indeed, Kravtin’s testimony is grounded in evidence developed in *this* tariff proceeding – including utility data and RFI responses – and bears directly on KBCA’s objections to the pole replacement costs the utilities seek to impose on KBCA members. Kravtin Tr. at 10 & 23-40. And, her testimony here demonstrates that the

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<sup>3</sup> Kentucky Public Service Commission, Statement of Consideration Relating to 807 KAR 5:015, at 47, *available at* <https://psc.ky.gov/agencies/psc/Proposed%20Amendments/092021/807%20KAR%205015%20amended%20after%20comment.pdf>.

<sup>4</sup> *Id.* at 47 & fn. 1.

<sup>5</sup> *Id.*

utilities' tariff provisions seeking certain cost recovery for non-red-tagged poles are unreasonable for multiple reasons:

- The utilities' data show they are red-tagging a much smaller population of poles than they intend to replace in the normal course of business, improperly shifting the cost of replacing those poles to attaching parties. *Id.* at 29-32.
- The utilities' data show they are depreciating poles faster than they intend to replace them. As a result, the utilities would recover the full cost of a pole well before it is designated for replacement. *Id.* at 35-37.
- While an attaching party may cause a utility to replace a pole sooner than planned, the utility would eventually need to replace the pole anyway. As a result, attachers should only be responsible for the costs associated with the early replacement of a pole, which can be readily and transparently calculated. *Id.* at 22-23.
- Utilities derive operational, strategic, and revenue-enhancing benefits, as well as capital savings from early pole replacements. *Id.* at 40.
- Kentuckians will lose roughly \$112 million per year of economic gains if attachers must bear the entire make-ready cost to replace non-red-tagged poles. *Id.* at 11-13.

Kravtin's testimony thus bears directly on KBCA's objection to the utilities' proposed cost allocation for non-red-tagged poles and is the precise evidence the Commission solicited in this proceeding. Kravtin's testimony is highly relevant and necessary for the Commission to develop a robust record to decide whether utility tariff provisions shifting all costs of replacing non-red-tagged poles to attachers are just and reasonable – or a windfall for the utilities. All Kentuckians will benefit from the timely and cost-efficient deployment of high-speed broadband

services if the Commission ensures an equitable, cost-sharing approach to pole replacements, and Kravtin’s testimony is designed to aid the Commission in that determination.

3. The Commission’s recent Order denying KPC’s motion indeed confirms the relevance of Kravtin’s testimony for this proceeding. The Commission there explained that “the plain language of the regulation, which controls, clearly indicates pole owners would be permitted to propose tariff provisions governing the cost allocation for non-red tagged poles but that those provisions would be subject to review by the Commission to determine whether they are fair, just and reasonable.” Case No. 2022-00105, Order at 3. Accordingly, the Commission concluded that KPC’s motion “ignore[s] the context and . . . plain language of the regulation.” *Id.* at 2. AT&T’s similar motion makes the very same mistake and should therefore suffer the same fate as KPC’s motion.

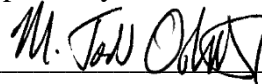
In sum, AT&T, like KPC, has no valid basis for the Commission to disregard Kravtin’s testimony – because there is none – and the Commission should decline to do so. *Id.*

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For these reasons, KBCA respectfully requests that the Commission deny AT&T’s motion.

Dated: July 5, 2022

Respectfully submitted,

/s/ 

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