

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	CASE NO.
PROPOSED POLE ATTACHMENT TARIFFS OF)	2022-00107
RURAL LOCAL EXCHANGE CARRIERS)	

ORDER

On June 2, 2022, Ballard Rural Telephone Cooperative Corporation; Brandenburg Telephone Company Inc.; Duo County Telephone Cooperative Corporation, Inc.; Foothills Rural Telephone Cooperative Corporation, Inc.; Gearheart Communications Company, Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc. dba LTC Connect; Mountain Rural Telephone Cooperative Corporation; North Central Telephone Cooperative, Inc.; Peoples Rural Telephone Cooperative Corporation, Inc.; South Central Rural Telecommunications Cooperative, Inc.; Thacker-Grigsby Telephone Company, Incorporated; and West Kentucky Rural Telephone Cooperative Corporation, Inc. (collectively, Rural Local Exchange Carriers (RLECs)) filed a joint motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for five years for several joint use pole attachment agreements provided in response to Commission Staff's Second Request for Information, Item 4.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as

otherwise provided by KRS 61.870 to 61.884.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁴

In support of its motion, RLECs argued that that the Joint Use Agreements are subject to confidential treatment pursuant to KRS 61.878(1)(c)(1).⁵ The RLECs argued that the agreements are replete with detailed terms and conditions negotiated between private parties addressing matters such as maintenance, access, risk allocation, and insurance, as well as the applicable rates and fees to be paid by the parties.⁶ The RLECs explained that some of the agreements even have clauses recognizing and requiring the confidentiality of that agreement’s terms and conditions.⁷ The RLECs argued that potential users seeking pole attachments could use the information to unfairly negotiate terms to the detriment of the RLECs and other users and potential counterparties or

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ KRS 61.878(1)(c)(1).

⁵ RLECs’ Motion for Confidential Treatment (filed June 22, 2022) at 2–3.

⁶ RLECs’ Motion for Confidential Treatment at 2.

⁷ RLECs’ Motion for Confidential Treatment at 2.

competitors would gain a competitive advantage.⁸ The RLECs explained that the Joint Use Agreements are also subject to renewal and thus ongoing negotiation exist with the counterparties.⁹ The RLECs stated that the Commission has previously granted confidential protection to similar agreements.¹⁰

Having considered the petition and the material at issue, the Commission finds that the RLEC's petition should be granted, in part, and denied, in part. The Commission finds that negotiated terms; pricing and financial information; and term differences related to cost-sharing, space allocation, processes, and risk allocation are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1). Disclosure of the specific terms of joint agreements would put the RLECs at a commercial disadvantage and could hinder their current and future business relationships. However, the Commission finds that any non-material terms or boiler-plate language do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

Furthermore, the Commission finds any information in the public record is not subject to confidential treatment and that each utility is responsible for determining which agreements have been previously disclosed.¹¹ Each utility shall notify the Commission

⁸ RLECs' Motion for Confidential Treatment at 3.

⁹ RLECs' Motion for Confidential Treatment at 3.

¹⁰ RLECs' Motion for Confidential Treatment at 4 quoting Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rate* (Ky. PSC Dec. 2, 2015), Order; and Case No. 2016-00371, *Application of Louisville Gas & Electric Company for an Adjustment of its Electric Rates* (KY. PSC Dec. 10, 2018), Order.

¹¹ For example, Kentucky Power provided pole attachment agreements, redacting pricing and negotiated terms, in response to Commission Staff's Second Request for Information, Item 12 (filed May 2,

within 60 days of the issuance date of the Order of any pole attachment records previously placed into the public record.

IT IS THEREFORE ORDERED that:

1. The petition for confidential treatment filed by RLECs on June 2, 2022, for their joint use agreements is granted, in part, specifically for all material, negotiated, or pricing terms, as set forth above.

2. The petition for confidential treatment filed by the RLECs on June 2, 2022, for their joint use agreements is denied for any non-material or boiler-plate terms.

3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission.

4. Each utility shall notify the Commission within 60 days of the issuance date of the Order of any pole attachment records previously placed into the public record.

5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

6. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, RLECs shall inform the Commission and file with the Commission an unredacted copy of the designated material.

7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been

2022) in Case No. 2022-00105, *Investigation of the Proposed Pole Attachment Tariffs of Investor Owned Electric Utilities*.

granted confidential treatment has not expired, shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If RLECs is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow RLECs to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If the RLECs object to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, RLECs shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which RLECs' request for confidential treatment has been denied shall neither be placed in the public record nor made available for

inspection for 30 days from the date of service of this Order to allow RLECs to seek a remedy afforded by law.


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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner

ATTEST:



Executive Director

ENTERED
APR 16 2025 AH
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