Access and Attachments to Utility Poles and Facilities
807 KAR 5:0XX

Section 1. Definitions

(1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.

(2) "Broadband internet provider" means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least 25 megabytes per second and upload speeds of at least 3 megabytes per second.

(3) "Communication space" means the lower usable space on a utility pole, which is typically reserved for low voltage communications equipment.

(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, by way of example.

(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet service provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility except that a new attacher shall not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.

(10) "Telecommunications carrier" means a person who owns, controls, operates,

or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation.

(11) "Simple make-ready" means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

Section 2. Duty to provide access to utility poles and facilities.

(1) A utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) Notwithstanding subsection (1) of this section:

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes; and

(b) A utility has no obligation to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments from a third party for or on behalf of any new or existing attacher.

(3) A request for access to a utility's poles, ducts, conduits or rights-of-way must be in writing, except that an application may be provided via email as permitted by a utility's tariff or a special contract between the utility and person requesting access.

(4) If a utility provides access to its poles, ducts, conduits or rights-of-way pursuant to an agreement that establishes rates, charges, or conditions for access not contained in its tariff:

(a) The rates, charges, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

Section 3. Pole attachment tariff required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments so

long as its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) The tariff may include terms that are fair, just, and reasonable subject to approval by the commission such as limitations on liability, indemnification, insurance requirements, and restrictions on access to utility poles that are consistent with the requirements of this administrative regulation.

Section 4. Procedure for new attachers to request utility pole attachments.

(1) All time limits in this section are to be calculated according to 807 KAR 5:001, Section 3(5).

(2) Application review and survey

(a) Application completeness.

1. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within 10 business days after receipt of the new attacher's pole attachment application if the application is incomplete.

2. A new attacher's pole attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

(b) Survey and Application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in subsection (7) of this section) for the purpose of determining whether the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1 of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 5 business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. Where a new attacher has conducted a survey pursuant to subsection (10)(c) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to subsection (10)(c) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in subsection (2)(b)1 of this section.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in subsection (7) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

6. Payment of survey costs and estimates.

    a. Notwithstanding any other provision of this administrative regulation, a utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness, before a utility is obligated to conduct surveys pursuant to this section.

    b. If a utility's tariff requires prepayment of survey costs, the utility shall send a new attacher whose application for access has been deemed to be complete, a detailed, itemized estimate in writing of charges to perform all necessary survey work within 14 days of providing the response required by subsection (2)(a)1 of this section indicating the application is complete.

    c. The new attacher shall be responsible for the costs of surveys made to review its pole attachment application even if the new attacher decides not to go forward with its attachments.

(3) Payment of make-ready estimates.

(a) A utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis where requested and reasonably calculable, of charges to perform all necessary make-ready within 14 days of providing a response granting access pursuant to subsection (2)(b)4 of this section.

(b) A utility shall provide documentation that is sufficient to determine the basis

of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than 7 days, notify all known entities with existing attachments in writing that may be affected by the make-ready.

(a) For attachments in the communications space, the notice shall:

1. Specify where and what make-ready will be performed.

2. Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in subsection (7) of this section).

3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

4. State that if make-ready is not completed by the completion date set by the utility in subparagraph 2 of this paragraph, the new attacher may complete the make-ready specified pursuant to subparagraph 1 of this paragraph.

5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For attachments above the communications space, the notice shall:

1. Specify where and what make-ready will be performed.

2. Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in subsection (7) of this section).

3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

4. State that the utility may assert its right to 15 additional days to complete make-ready.

5. State that if make-ready is not completed by the completion date set by the utility in subparagraph 2 in this paragraph (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to subparagraph 1 of this paragraph.

6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (a)2 of this subsection for communications space attachments or paragraph (b)2 of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in subsection (4)(a)2 of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2 of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(6) Final invoice.

(a) Within a reasonable period after a utility completes its make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work; and
2. A detailed, itemized final invoice, on a pole-by-pole basis where requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

(7) For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline described in subsection (2) through (4) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in the state.

(b) A utility may add 15 days to the survey period described in subsection (4) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in the state.

(c) A utility may add 45 days to the make-ready periods described in subsection (4) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in the state.

(d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(e) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(8) Deviations from make-ready timeline

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff, approved by the commission, or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations.

(c) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the completion date provided in the notice described in subsection (4) of this section is sent by the utility (or up to

105 days in the case of larger orders described in subsection 6(b) and (c) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(9) Self-help remedy

(a) Surveys. If a utility fails to complete a survey as specified in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey as specified in Section 5 of this administrative regulation.

1. A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 business days of a field inspection as part of any survey it conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date specified in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready as specified in Section 5 of this administrative regulation.

1. A new attacher shall permit the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 7 days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

(10) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this subsection in lieu of the attachment process described in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

2. Application completeness.

   a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within 10 business days after receipt of the new attachers attachment application whether the application is complete.

   b. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

   c. If the utility notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those described in (7)(d)).

   a. If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access.

   b. Within the 15-day application review period (or within 30 days in the case of larger orders as described in subsection (7)(b) of this section section or within a time negotiated in good faith for requests equal to

or larger than those described in (7)(d)), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(b) Surveys.

1. The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in Section 5(2) of this administrative regulation to complete such surveys.

2. The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 5 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by subsections

(2) through (9) of this section and the utility shall provide the notices and estimates required by subsections (2)(a), (3) and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole.

Section 5. Contractors for survey and make-ready

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility may not unreasonably withhold its consent.

(2) Contractors for simple work. A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility may not unreasonably withhold its consent.

(a) 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in subsection (3) of this section.

2. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in subsection (3) of this section when providing notices required by subsections 9(a)2, 9(b)2, 10(b)3, and 10(c) of Section 4 of this administrative regulation.

(b) 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in section 3 of this section or to meet the utility’s publicly available and commercially reasonable safety or reliability standards.

2. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in subsections 9(a)2, 9(b)2, 10(b)3,

and 10(c) of Section 4 of this administrative regulation and in its objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to subsection (2)(a) of this section, meet the following minimum requirements:

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(b) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(e) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

(4) A consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

Section 6. Notice of changes to existing attachers

(1) Unless otherwise provided in a joint use agreement or special contract, a utility shall provide an existing attacher no less than 60 days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4(4) of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion

pursuant to 807 KAR 5:001, Section 4 within 15 days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within 10 days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection will be considered unless requested or authorized by the commission.

Section 7. Complaints

(1) A complaint alleging a violation of this administrative regulation shall be made pursuant to 807 KAR 5:001, Section 17.

(2) The commission shall take final action on a complaint alleging that a person or entity was unlawfully denied access to a utility's pole, duct, conduit, or right-of-way within 360 days for the complaint being filed.