

## Comment Summaries Not Expressly Tied to Specific Proposed Language in the Regulation

### Open Fiber:

1. Overlashing
  - a. The Commission should adopt an overlashing policy that requires pre-notification without pre-approval.
    - i. Utilities may not require pre-approval for third-party overlashing of an existing attachment, when such overlashing is conducted with the permission of the existing attacher
    - ii. Utilities may require from overlashers 15 days advance notice of overlashing work. This will promote safety and allow utilities to protect its interests without imposing unnecessary burdens on overlashing attachers.
    - iii. If the utility determines through its own engineering analysis that the noticed overlash would compromise the pole's safety, reliability, or integrity, the utility must provide specific documentation demonstrating the overlashing issue within the 15 day advance notice period and the overlasher must address those identified issues before continuing with the overlash work.
    - iv. If the utilities elect to establish an advance notice requirement, the utility must provide advanced written notice to attachers or include the requirement in its pole attachment agreements.
2. The Commission should address rate disparities in its proposed regulation to ensure that similarly situated attachers pay comparable pole attachment rates, adding regulatory language to create a presumption that similarly situated telecommunications carriers and CLECs will receive comparable pole attachment rates from utilities.
3. The Commission should expand its language related to the self-help remedy in Section 5 of the proposed regulation, adopt a rule that would permit attachers to use outside contractors to perform simple make ready work and make ready work that is not timely completed even if the utilities or incumbent carriers have unionized workforces and labor agreements.
4. The Commission should add language to the proposed regulation that allows for wireless attachments on pole tops and **grants them an express right to do so.**

5. The Commission should add language to the proposed pole attachment regulation adopting the FCC's "sign and sue" rule.
6. The FCC's longstanding "sign and sue" rule allows an attacher to challenge the lawfulness of the terms in an executed pole attachment agreement where the attacher claims it was coerced to accept those terms to gain access to utility poles. Meaning, an attacher may execute a pole attachment agreement with a utility and later file a complaint challenging the lawfulness of that agreement.

### KAEC

1. Electric cooperatives should be protected from liability related to any such work from third-party attachers
  - a. Utilities' ability to include terms "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" permitted in the regulation is not enough. Cooperative tariffs and agreements should be liberally accepted by the Commission.
  - b. pole owners under Kentucky's regulatory scheme should at least be afforded similar post-attachment rights and remedies as pole owners under the comparable FCC rule
    - i. Add that utilities are granted ninety (90) days to inspect make-ready performed by new attachers, and are also given the ability to either require remediation of any issues/damage or address such issues/damage themselves at the new attacher's expense.
      1. They argue both are granted in the FCC regulation that the Commission regulation was based on, 47 C.F.R. § 1.1411(i)(2) and § 1.1411(j).

### Kentucky Broadband:

1. The Commission should adopt uniform regulations similar to other states or those governed by the FCC, where their "access rules" require pole owners make determinations and preparations within a standardized timetables. And if the pole owners fail to meet the timeframes, the attacher may use "self-help" and finish the work using contractors.

- a. Currently pole owner timeframes for reviewing applications, conducting surveys, and performing make-ready work vary from pole owner to pole owner under individual tariffs.
  - b. Each pole owner also has its own application process, varying in cost and difficulty
  - c. Currently it can take a minimum of six months for a project involving 50 poles.
2. The Commission should set time limits and define reasonable cost parameters
- a. Shorten its proposed access timeframes to ensure more timely pole access (mirror the FCC approach)
  - b. Revise its proposals regarding “traditional” make-ready work to better ensure that attachers can perform necessary work quickly and cost-effectively
  - c. Revise the rules so that existing attachers may designate their make-ready work as simple or complex in the first instance (subject to Commission review if disagreements arise)
  - d. Revise its proposed regulations to require that make-ready costs, for both “traditional” make-ready process and OTMR, are just and reasonable.
    - i. Attachers should only be responsible for the costs that are caused solely by their attachments
  - e. Expand on its proposed regulations to ensure that pole owners do not prohibit standard and reasonable attachment techniques. Importantly, the Commission should confirm that pole owners may not prohibit attachers from employing standard construction practices, including overlashing on a notice-only basis.
  - f. Adopt an expedited dispute resolution procedure, and a reasonable audit process so that attachers are not subject to repetitive inspections and unreasonable penalties for so-called “unauthorized” attachments. **(same as CITA)**
3. Access standard should be clarified and strengthened
- a. the Commission’s rules should specify that a pole owner may not deny pole access if make-ready work can safely resolve any capacity, engineering, or safety concerns with an attachment request

- b. the Commission should revise its proposed regulation to expressly confirm that the use of boxing techniques, extension arms, attachments below existing attachments (where space is available), temporary attachments, and other techniques are all acceptable construction practices so long as the attacher complies with the National Electrical Safety Code (“NESC”) or other applicable safety standards, and include a presumption that any prohibition against such practices is unreasonable.
      - c. Revise the proposed rules to bar “blanket bans” on attachments to certain portions of the utility pole
- 4. The Commission Should Ensure Attachers Can Deploy Broadband Facilities Timely And Efficiently Through Overlashing
  - a. Overlashing is the practice of physically tying new attachments to existing ones, like adding a new fiber to an existing coaxial cable
    - i. Ties into request to ban “blanket limitations” from utilities, as some utilities are attempting to limit overlashing to facilities under a certain size and adopting a maximum size of overlash facilities.
- 5. The Commission Should Prohibit Pole Owners From Circumventing Attachment Obligations Through Informal Construction Materials And New, Retroactive Rules.
  - a. The Commission’s proposed regulations do not address pole owners’ use of rules, practices, handbooks, or manuals to specify construction practices, procedures, specifications, or other requirements on attaching service providers beyond the terms of a pole attachment agreement, tariff, the NESC, or Commission regulation. And utilities often reserve the right unilaterally to change their internal policies, and sometimes do so in ways that undermine or circumvent established requirements
  - b. The Commission should require that any construction standards that exceed the NESC are demonstrably necessary for specific safety reasons that cannot otherwise be achieved by following the NESC or other generally applicable standards and applied on a nondiscriminatory, prospective basis
- 6. The Commission Should Ensure Pole Attachment Audits Do Not Unreasonably Burden Or Penalize Attachers
  - a. The Commission should limit inventory audits in frequency to no more than once every five years, and prohibit pole owners from imposing on attachers any costs beyond the pro-rata costs incurred to count the attacher’s billable (for rental rate purposes) pole attachments.

- b. The Commission should also require utilities to allow attachers to participate in the planning and design of audits, as well as provide reasonable advance written notice of planned inventory audits
7. The Commission Should Prohibit Excessive Unauthorized Attachment Penalties. To ensure that such penalties are used properly only to deter unauthorized attachments rather than generate windfall profits, the Commission should limit the extent of penalties pole owners may recover.
- a. The Commission could adopt the FCC’s standard set forth in its *Mile Hi* decisions. standard limits unauthorized attachment penalties to an amount “approximately equal to the annual pole attachment fee for the number of years since the most recent inventory or five years, whichever is less, plus interest
  - b. Alternatively, the Commission could codify the similar standard privately negotiated between pole owners and attachers that has been adopted in recent tariffs.
  - c. Before pole owners impose any unauthorized attachment penalties, however, the Commission should require them clearly to identify by pole number and location each attachment they allege is unauthorized.
    - i. This provides the attaching party the important opportunity to verify it owns the attachment and whether it was in fact made without a permit.

#### State Senators, Political Organizations, Magistrates, and Local Executives

- a. Have a general support for whatever will assist in the expansion of broadband throughout the Commonwealth. They have no specific responses to or suggested edits for any proposed section of subsection of the Regulation. The only speak of the need for and their support f expansion of broadband services.