

**KBCA COMMENTS ON THE COMMISSION'S  
EMERGENCY POLE ATTACHMENT REGULATIONS**

The Kentucky Broadband and Cable Association (“KBCA”) submits these comments on the Kentucky Public Service Commission’s (the “Commission”) proposed emergency regulation 807 KAR 5:015(E) issued on February 25, 2025.

**INTRODUCTION**

In 2024, the General Assembly adopted and the Governor signed Senate Joint Resolution 175, charging the Commission with removing unreasonable utility pole attachment-related impediments to the deployment of broadband service to unserved and underserved citizens in the Commonwealth, and preparing for the expected influx of pole attachment activity in the coming years. KBCA appreciates the Commission’s efforts to comply with this mandate; however, additional measures are necessary to ensure efficient deployment to these areas in the Commonwealth.

The Commission’s proposed emergency regulations (and the corresponding proposed permanent regulations) fail to address practical issues that, if unresolved, will slow permitting and construction processes, contrary to the Commonwealth’s policy mandate. As KBCA has emphasized, the required level of pole attachment activity is expected to dramatically increase due to approximately \$2 billion in anticipated funding from the FCC RDOF program, state and local grants, BEAD, and additional private investments. This surge in activity is already creating substantial pressure on Kentucky’s pole attachment infrastructure and will only become more challenging to manage if there are confusing or burdensome regulations.

KBCA’s members, who are actively expanding broadband networks in rural areas, are well positioned to identify impediments and recommend solutions to streamline processes, expedite

deployment, and unlock the benefits of broadband for rural Kentucky. To achieve these goals, KBCA continues to strongly urge the Commission to amend its proposed emergency and permanent regulations, and adopt the key KBCA proposals that were submitted in KBCA’s written comments filed on December 9 and 30, 2024, including:

- Confirming that the Commission’s regulatory definition of a “pole” includes any pole that is used for distribution purposes (*i.e.*, mixed-use poles), thus ensuring there is no confusion or disputes over access to all distribution poles necessary to deploy broadband facilities;
- Removing the existing confusing and burdensome 500-pole increment sliding scale for application completeness review, surveys and engineering, and make-ready construction deadlines, which adds unnecessary delays and complications;
- Aligning survey and make-ready construction deadlines with the FCC’s timelines, which will ensure that attachers are not delayed ***four months*** for a survey and ***five and a half months*** for make ready before they can exercise self-help;
- Eliminating mandatory special contract negotiations for large orders in favor of fair, reasonable, and uniform terms set by the Commission; and
- Clarifying that utilities can only require make ready payments that are specific to the attachment application at issue.

## COMMENTS

### I. Clarify Breadth of Pole Access

To ensure the efficient deployment of broadband services, the Commission must confirm attachers’ rights to attach to utility distribution poles, including mixed-use poles that also carry transmission facilities. As the utilities acknowledged at the Commission’s April 29, 2025, hearing, pole attachers are entitled to attach to distribution poles, even if they also host transmission facilities on them. *See Southern Co. v. F.C.C.*, 293 F.3d 1338, 1345 (11th Cir. 2002) (holding “local distribution facilities, festooned as they may be with transmission wires, are plainly” within the jurisdiction of the regulating agency); *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996*, FCC 99-266, Order on Reconsideration, 14 FCC Rcd. 18,049, ¶ 27 (1999) (“We reaffirm our decision in the Local

Competition Order that electric transmission facilities are not exempted from the pole attachment provisions of section 224.”). However, KBCA members have encountered cases in Kentucky where they were denied access to so-called “transmission” poles, causing confusion, disputes, and delays. *See* 47 C.F.R. § 76.309(c)(2)(i).

The Commission should clearly state in its regulations that attachers have the right to access all utility poles used for distribution purposes, regardless of whether they also carry transmission facilities. This clarification will prevent unnecessary conflicts and facilitate timely deployments. Confirming this right is important even if the issue only arises in limited circumstances and attachers sometimes elect not to attach to these types of mixed-use poles based on the cost of associated make ready.

## **II. Further Clarify and Streamline Timelines**

As KBCA noted in prior meetings hosted by the Commission, the Commission’s sliding scale for application completeness reviews, surveys, engineering and make-ready construction deadlines is excessively long and operationally cumbersome. The Commission’s sliding scale adds months to the timeline and is difficult to operationalize, placing it directly at odds with the legislative mandate to expedite rural broadband deployment.

- The emergency regulations give utilities 90 days’ – **three months** – notice of large orders, plus 15 business days to determine whether an application for a large order is complete. 807 KAR 5:015E §§ 4(8)(g) & 4(2)(a)(8).
- For large orders utilities then have up to 120 days – **four months** – to complete a survey and perform engineering and grant or deny access. 807 KAR 5:015E §§ 4(2)(b)(1) & 4(2)(b)(4).

- Make-ready construction can then take up to an additional 120 days – **four months** – to complete in the communication space, and 165 days – **five and a half months** – to complete above the communication space. 807 KAR 5:015E §§ 4(4)(a)(2) & 4(4)(b)(2)).

This framework results in a minimum timeline of **almost one year** for large pole attachment orders, even without make-ready work above the communication space. Such timelines contradict the policy mandate to expedite broadband deployment and will exacerbate existing backlogs as activity ramps up. Instead of using the sliding scale, the Commission should adopt the FCC’s streamlined timeline framework, which sets clear and manageable deadlines that can be operationalized effectively by stakeholders.

### **III. Eliminate Mandatory Special Contract Negotiations**

The Emergency Regulations mandate individualized contracts for large requests exceeding 3,000 poles or 3% of a utility’s poles in Kentucky. While such contracts can be sensible under certain circumstances, once signed they can be difficult to modify or adjust based on real-world realities and experience, which can lead to problematic inefficiencies and delays – especially as attachers work to meet tight government funding deadlines. For example, Charter Communications entered into a high-volume contract with Kentucky Utilities (“KU”) prior to the Commission’s adoption of these regulations, and as was noted at Commission’s April 29, 2025, hearing, the contract with KU will require revisions to align it with our operational experience in the field to ensure timely deployment. Given that real-world and operational realities can require prompt adjustments based on changed needs, priorities, and circumstances, the KBCA recommends making special contracts permissive, not mandatory, to avoid unnecessary administrative burdens and delays and adherence to stock, one-size-fits-all terms that are impractical, outmoded, and delay deployment. At the same time, the Commission should make

clear that, even in the absence of a special contract, pole owners remain obligated to informally negotiate in good faith reasonable timelines for poles beyond the first 3,000 and exercise reasonable efforts to accommodate attachment needs without delays or refusals to agree on make-ready timelines.

#### **IV. Clarification on Timing of Make Ready Work Payments**

In the original regulation promulgated in 2022 and the emergency regulation issued in May 2024, one section stated: “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 seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.” In a prior draft circulated by the Commission to stakeholders on February 3, 2025, the Commission modified that sentence based on a recommendation of certain pole owners to state: “Upon receipt of payment for survey costs invoiced or otherwise owed to-date pursuant to the utility’s tariff and the make-ready estimate specified in subsection (3)(d) of this section . . . .” In the February 2025 emergency regulation issued by the Commission, the language “invoiced or” was deleted; however, the language “owed to-date” injects needless confusion and uncertainty concerning the circumstances under which a utility may delay make ready – it is vague, ambiguous, and ripe for abuse.

As written, the Commission’s new language in 807 KAR 5:015(E) § 4(4) (requiring payment of costs a utility believes are “owed to date”) could allow a utility to delay make ready construction until it receives payment for unrelated costs, such as costs for other projects or applications or work for unrelated payment disputes, none of which is a proper basis for a utility to delay make ready work that has been invoiced and paid for by an attacher. In addition, the omission of any reference to an “invoice” suggests that a utility could delay make ready

construction for work that had not yet been invoiced. Moreover, the failure to connect the costs to the specific work related to those costs could enable a utility to delay its work for unrelated payment disputes. Any such costs must be evidenced by an invoice and relate *only* to the specific attachment application for which make ready is sought. KBCA recommends clarifying that utilities may only require payment for invoiced costs directly related to the specific attachment at issue. This amendment will reduce disputes and ensure timely make-ready construction.

As was discussed during Commission's April 29, 2025, hearing on the emergency regulation, there continue to be issues of disagreement between pole owners and attachers about timely payment matters. KBCA members strongly believe that they have paid, and they commit to continue to pay, invoices on a timely basis. However, highly granular issues of payment and invoicing are technical operational issues best addressed in the context of an informal technical conference among stakeholders. The KBCA respectfully requests the Commission schedule just such a conference in the coming weeks.

### **CONCLUSION**

KBCA appreciates the Commission's work on these regulations, but further amendments are essential to achieving the Commonwealth's policy objectives and expediting broadband deployment across the Commonwealth. By adopting KBCA's proposed changes, the Commission can ensure these regulations serve their intended purpose and deliver the benefits of broadband to rural Kentuckians.

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Respectfully submitted,

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