



John T. Tyler
AVP-Senior Legal Counsel
Legal Department

AT&T Services, Inc.
1 CNN Ctr. NW, South Tower
Room 4327
Atlanta, GA 30303

T: 404.893.7944
jt9523@att.com
att.com

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Mr. John E.B. Pinney
Acting General Counsel
Kentucky Public Service Commission
211 Sower Boulevard,
Frankfurt, KY 40601

Delivered by email to: Jeb.Pinney@ky.gov

Dear Mr. Pinney,

AT&T Kentucky (“AT&T”) appreciates the opportunity to provide input to the Kentucky Public Service Commission regarding a new proposed regulation: “Access and Attachments to Utility Poles and Facilities” 807 KAR 5:015 (“Attachment Rules”).

As a structure owner of both pole and conduit, and an attacher to poles owned by electric utilities and other telecommunications providers in the Commonwealth, AT&T has significant interest in the outcome of this matter.

Accordingly, AT&T participated in the review and comment cycle on the draft version of the Attachment Rules and appreciates that some of its suggested edits were incorporated into the published rules. The suggested changes contained within this document are provided to assist in ensuring that the Attachment Rules are just, reasonable, non-discriminatory and legislatively compliant. To that end, AT&T’s further comments are limited to three substantive issues, and several miscellaneous issues.

First, as drafted, the Attachment Rules fail to comply with the statutory mandate to promulgate administrative regulations regarding all pole attachments under the Commission’s jurisdiction. Specifically, the Attachment Rules are currently inapplicable to pole attachments between utilities that currently attach to each other’s facilities based on a joint use agreement between the parties.

Second, the existing attachment rate development procedures rely on obsolete--nearly forty-year-old administrative rulings—that do not consider the substantial marketplace and regulatory changes that have occurred since 1982.

Third, as drafted, the Attachment Rules fail to recognize that some companies, such as AT&T, must abide by pre-existing contractual obligations regarding a unionized work force. For example, AT&T has a contractually agreed upon duty to allow its unionized Network employees to perform make-ready transfers. This oversight within the Attachment Rules could have

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substantial negative consequences for AT&T, and any other similarly-situated company utilizing a unionized workforce within the Commonwealth.

Finally, AT&T calls further attention to the following miscellaneous issues: Section 1 definitions; Section 2 (1)(b) related to outdoor lighting; Section 3 (4), (5) related to tariff requirements; Section 4 (6)(a) related to make-ready invoicing; Section 4 (10)(a)3.d. related to simple versus complex make ready; Section 5 (4) related to denial of access; Section 6 (3)(a) related to transfer of attachments; Section 6 (3)(d) related to early transfers; Section 7 (7)(b)¹. related to red-tag poles and related inspections; and, Section 7 (8)(a)² related to complaints about rates.

To assist in rectifying the foregoing deficiencies (and to correct minor typographical errors), following these comments, attached as Exhibit A, AT&T provides a redline of the Attachment Rules reflecting suggested modifications.³

1. The Attachment Rules Should Apply Equally to All Pole Attachments

The Commission has statutory authority to promulgate administrative regulations to implement the provisions of KRS Chapter 278. The preamble to the Attachment Rules notes that the recently passed House Bill 320 requires the Commission to promulgate administrative regulations regarding pole attachments under its jurisdiction including those necessary for the provision of broadband.

Notably, House Bill 320 sets up a paradigm whereby cooperative power companies are permitted and, indeed, incited to provide broadband via affiliates. Such affiliates may lease excess capacity on fiber optic cable serving the cooperative's distribution system. Such fiber optic cables undoubtedly will be attached to cooperative power company poles. And cooperative power company affiliates may directly compete against incumbent local exchange telephone companies ("ILECs") and other broadband providers.

Any new attachment rules promulgated by the Commission should apply to *all* pole attachments – whether governed by tariff, standard contract, special contract, or joint use agreement. Fair competition benefits the public but discriminatory application undermines sound public policy.

¹ Renumbered in the attached redline as Section 8 (7)(b).

² Renumbered in the attached redline as Section 8 (8)(a).

³ In the attached red-line and below in the rule cites, any insertions are indicated by bold, double-underlined text and any deletions are indicated by bold, strike-through text.

The Commission's own findings from 2007 are illustrative.⁴ In *Ballard*, the Commission rightly found that attachments made to a power pole by a telecommunications provider and attachments made by a power provider on a telecommunications pole should be treated the same as those made by other attachers to each provider's poles.⁵ The Commission also summarized that "Ballard is a membership cooperative corporation that provides local exchange carrier telephone service as well as internet and digital video services..." and "Jackson Purchase is an electric distribution cooperative corporation ..." ⁶ And, "[i]nterestingly, while Jackson Purchase has asserted that Ballard is not similarly situated to its CATV customers, its witness testified at the hearing that the same methodology should be used to calculate pole attachment rates, regardless of who makes the attachment."⁷ The Commission found that "the pole attachments made by these parties constitute a like service made under the same or substantially the same conditions" and that "it would constitute a violation of KRS 278.170(1) for the parties to charge each other attachment rates based on a different methodology than it uses to calculate the rate they charge their cable customers."⁸

Consistent with *Ballard*, the adopted final rules should not make any distinction in pricing for pole attachments among parties based on their provision of service or the name of an attachment agreement.⁹ Pricing should deviate from tariffed rates only by explicit agreement of the parties *after* the effective date of the new Attachment Rules. In particular, current discriminatory pole attachment pricing imposed on ILECs through joint use agreements must be

⁴ Case No. 2004-00036, *In the Matter of Ballard Rural Telephone Cooperative Corporation, Inc. v. Jackson Purchase Energy Corporation*, issue on August 2, 2007, hereinafter "*Ballard*".

⁵ The Commission made clear the statutory requirements for fair, just, reasonable and non-discriminatory rates (KRS 278.030(1) and (2)) and the requirement that there be no unreasonable preference or advantage as to rates for the same or similar service offered to various customers (KRS 278.170(1)). The existence or non-existence of a joint use agreement between attaching entities has no bearing on the applicability of the statute. See *Ballard* at p. 7.

⁶ *Id.*, pp. 1 to 2.

⁷ *Id.*, at p. 6.

⁸ *Id.*, at p. 7. KRS 278.170(1) states: "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions." (Emphasis added.)

⁹ In comments on the draft Attachment Rule certain power companies recycled a variety of arguments posited by Jackson Purchase in *Ballard* insisting that if AT&T or other ILECs did not like the joint use agreement rates, they should file complaints at the Commission. It is wholly irrational to insist that an ILEC waste both ILEC and Commission resources to prosecute a complaint case addressing pricing in an existing joint use agreement when it is obvious, by comparison to tariff rates, that the existing joint use agreement rates are unjust and unreasonable. When attachers are providing a like and contemporaneous service, under the same or substantially similar conditions, the attachment rates should be the same.

required to conform to power company tariffed rates¹⁰ as part of the compliance process contemplated in the Attachment Rules.

To effectuate the changes contemplated by these comments, only two modifications to the Commission's rule are required.

Section 1, Definition (9) should be modified as follows:

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or properly authorized governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does 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.

Section 3 relating to Pole attachment tariffs, subsection (7) should be modified as follows:

(7) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022. Absent express agreement by contracting parties to ratify rates that differ from tariffed rates, existing special contracts and joint use agreements shall conform their pricing to that in the tariffs filed pursuant to this subsection no later than March 31, 2022.

2. The Attachment Rules Should Expressly Include Modern Pole Attachment Rate Rules

The Commission's current pole attachment rate procedures have not been reduced to administrative regulations. This is problematic for multiple reasons, not the least of which is that House Bill 320 requires that the Commission promulgate rules "including those necessary for the provision of broadband service."¹¹ The rules are not complete without rules for the development of just, reasonable, non-discriminatory rates for all providers of broadband service—including ILECs and broadband affiliates of power companies.

By way of example, in 2018, the Illinois Commerce Commission advised the Federal Communications Commission ("FCC") that it had not adopted any rules or regulations specifically governing rates, term, or conditions for attachments by telecommunications companies to poles owned by electric utilities. It acknowledged that under the federal Telecommunications Act, Section 224(c)(3), a state is not considered to regulate rates, terms, and conditions for pole attachments unless the state has issued and made effective rules and regulations implementing the state's authority over pole attachments. The FCC subsequently acknowledged this

¹⁰ This is true not only for cooperative power companies but also for investor-owned power companies.

¹¹ House Bill 320, Section 1 (6).

communication and retained jurisdiction over a pole attachment complaint filed at the FCC for lack of state jurisdiction.¹² Thus, if this Commission wants to retain full jurisdiction as to rates-- as it should and as HB 320 implicitly insists upon—the Commission must include all pole attachments in its rules and not exclude those governed by joint use agreements.

It is clear that the current rate development procedures have been applied to the development of power company pole attachment rates *only* applicable to cable television providers. Power company tariffs are typically given titles such as “Cable Television Attachment Tariff” (e.g., Jackson Purchase Energy Corp, Meade County Rural Electric Cooperative Corporation), “Cable Television Attachment Rate” (e.g., Blue Grass Energy Cooperative Corporation), Tariff C.A.T.V. (Kentucky Power Company), “Pole and Structure Attachment Charges” (Kentucky Utilities Company). Each of these tariffs expressly limits the availability of attachment services to “qualified CATV operators having the right to receive service.” And even where the tariff offers pole attachments more broadly, they may have express exclusions that prohibit ILECs with joint use agreements from obtaining the rates offered in the tariffs. Such tariffs are indisputably discriminatory and fail to meet the new requirements of House Bill 320.

Finally, the Commission’s current rate development procedure is based in Administrative Case 251 that dates back to 1982—long before the federal Telecommunications Act was contemplated. Since then, the marketplace has changed dramatically; the telecommunications industry is highly competitive with a number of entities—both wireline and wireless—attaching to poles. There has been a robust development of the record at the FCC and in the courts regarding modern assumptions and cost determinations for pole attachment rates. It is with these facts in mind that AT&T urges the Commission to adopt the FCC’s rate development rules and rebuttable presumptions for application in prospective attachment rates by regulated pole owners in the Commonwealth.

To effectuate the change contemplated by these comments, AT&T suggests the Commission’s rule be modified to insert a new Section 7 and renumber the current Section 7 to Section 8.

Section 7. Rates

(1) Rates for access to utility poles, ducts, conduits and rights-of-way shall be developed in accordance with rate rules promulgated by the Federal Communications Commission in 47 C.F.R. Chapter I, Subchapter A, Part 1, Subpart J, section 1.1406(d)(2) inclusive of future changes as those regulations may be amended or interpreted by the FCC or bureau order or a court of competent jurisdiction.

¹² See Order DA 19-640 *In the Matter of Crown Castle Fiber LLC v Commonwealth Edison Company*, Proceeding Numbers 19-169 and 19-170, Adopted: July 15, 2019, Released: July 15, 2019.

(2) Changes in effective and applicable Federal Communications Commission rate regulations shall be deemed to take effect under this administrative regulation 90 days after the effective date of the changes in the FCC rule(s).

3. The Attachment Rules Should Honor Collective Bargaining Agreements

Within any new one-touch make-ready (“OTMR”) rules, the Commission should include an exception honoring attachers’ collective bargaining agreements, thereby allowing employers, such as AT&T, which are parties to such agreements, to abide by pre-existing contractual obligations. AT&T’s collective bargaining agreements obligate AT&T to have its unionized work force perform make-ready transfers in Kentucky. There is no sound justification for forcing AT&T, or any other similarly situated attacher, to impair its contractual obligations to meet unnecessarily stringent OTMR rules. On the contrary, sound public policy merits providing an exception within OTMR rules to allow attachers with pre-existing collective bargaining agreements to honor their commitments to organized labor.

To effect the change contemplated by these comments, AT&T suggests the Commission’s rule be modified to insert a new subsection (11) to Section 4 Procedure for New Attachers to Request Utility Pole Attachments.

(11) A utility with a collective bargaining agreement existing as of the effective date of these administrative regulations, requiring the engineering or make-ready on its poles or attachments be performed by its own employees shall not be subject to the self-help remedies or one-touch make-ready described in subsections 9 and 10.

Miscellaneous Issues

- Because the terms are used throughout the Pole Attachment rule but are undefined, AT&T proposes the addition of definitions for “Standard Contract,” “Special Contract,” and “Joint Use Agreement” to Section 1 of the rule.

(13) “Standard Contract” is one that solely incorporates rates, terms and conditions from the tariff.

(14) “Special Contract” is one that is negotiated by the parties and contains rates, terms or conditions that vary from the tariff.

(15) “Joint Use Agreement” is a particular type of Special Contract between two entities with rates, terms and conditions for attachments to each other’s poles.

- The Commission’s Attachment Rules adopt a blanket exclusion from access by attachers to poles used primarily to support outdoor lighting. AT&T suggests the following changes to Section 2, subsection (1)(b) to narrow the exclusion.

(b) A utility shall not be required to provide access to any decorative pole, though access to any wood pole that is used primarily to support outdoor lighting shall not be denied except for reasons described in paragraph (a) of this subsection; and

- Section 3, subsections (4) and (5) address specific requirements for pole attachment tariffs but leave open the possibility that access to poles could be restricted based on individual company-determined engineering standards. AT&T suggests the following changes to narrow the standards to ones that are “generally applicable.”

(4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(5) The tariff shall not prohibit overlashing except if doing so is justified by lack of capacity, safety or reliability concerns, or generally applicable engineering standards.

- The Commission’s Attachment Rules related to final invoicing of make ready work for new attachers is problematic. In AT&T’s systems, expenses associated with an application are booked to a single project, which does not close until after the post-construction inspection is completed. The new attacher has twelve months from the application approval to complete construction of its attachment regardless of when AT&T completes make-ready for the new attacher. Thus, requiring a final make-ready invoice that incorporates the totality of AT&T’s work for the new attacher (including, for example, post-installation inspections) only 90 days after make-ready is complete is not reasonable, as it will drive inefficiency in the process and thus raise overhead costs for both AT&T and attachers. AT&T suggests the following change to Section 4, subsection (6)(a).

(a) Within a reasonable period, not to exceed ninety (90) days after ~~a utility completes the utility’s make-ready~~ the new attachment is constructed or the new attachment passes the utility’s inspection, whichever is later, the utility shall provide the new attacher:

- When the classification of a one-touch make-ready application as “simple” is successfully challenged, the Commission’s Attachment Rules are ambiguous as to the effect such determination should have. As a result, AT&T recommends the following clarification to Section 4, subsection (10)(a)3.d.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex, and the new attacher may not proceed with the affected proposed one-touch make-ready.

- AT&T proposes that Section 5 (4) be deleted as it is duplicative of Section 2 (1)(a). In the alternative, this section need not be limited to a "consulting representative" of a utility. We offer two possible edits to the rule to address this issue.

Preferred Modification to Section 5 (4):

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

Alternative proposal to modify Section 5 (4):

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

- Section 6 (3)(a) addresses transfer of attachments after notice from the pole owner. AT&T believes that the addition of electronic notice is an important option to help facilitate more timely transfers. AT&T suggests the following revised language.

(a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within 60 days of receiving written or electronic notice from the utility pole owner.

- AT&T suggests that Section 6 (3)(d) be deleted as the section is not limited to emergency pole replacements (e.g., required by accident or natural disaster). As written, the section leaves far too much discretion in the hands of pole owners and fails to require adequate notice to existing attachers that their attachments could be transferred by a third party at the attacher's expense.

~~(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.~~

- Section 7 (renumbered as Section 8) (7)(b) should be stricken in its entirety as it is unnecessary. Each new attacher has the opportunity to be present at the field inspection as part of the application process. At that time, they can witness the field testing, such as the

“hammer test”, “prod test” or visual inspection, that would determine if the pole is in red tag status; it would also provide the new attacher its proof that could be used should a complaint ensue.

~~(b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:~~

~~1. There is a dispute regarding the condition of the pole at the time it was replaced; and~~

~~2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.~~

- Section 7 (renumbered as Section 8) (8)(a) as proposed may be interpreted to preclude complaints against utilities based on unlawful rates. AT&T suggests a minor modification to ensure that complaints based on rates are contemplated under this administrative rule.

(a) The commission shall take final action on a complaint alleging that a person or entity was charged an unlawful rate or was unlawfully denied access to a utility’s pole, duct, conduit, or right-of-way within 180 days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 360 days from the date the complaint establishing a prima facie case is filed.

Conclusion

AT&T’s comments are intended to address the most significant problems it has identified with the proposed Attachment Rules. There are a few additional typographical corrections that are reflected in the attached redline of those Rules. AT&T respectfully reserves the right to further address the Attachment Rules at the scheduled July 29, 2021 Public Hearing and any appropriate future opportunity. AT&T thanks the Commission for its time and attention to this vitally important matter.

Respectfully,



John T. Tyler

AVP-Senior Legal Counsel

807 KAR 5:015. Access and attachments to utility poles and facilities.

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 twenty-five (25) megabits per second and upload speeds of at least three (3) megabits 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, for 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 provider, or properly authorized governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does 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) "Red tagged pole" means a pole that a utility that owns or controls the pole:
 - (a) Designated for replacement based on the pole's poles non-compliance with an applicable safety standard;
 - (b) Designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or
 - (c) Would have needed to replace at the time of replacement even if the new attachment were not made.
- (11) "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.

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged 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.

(13) "Standard Contract" is one that solely incorporates rates, terms and conditions from the tariff.

(14) "Special Contract" is one that is negotiated by the parties and contains rates, terms or conditions that vary from the tariff.

(15) "Joint Use Agreement" is a particular type of Special Contract between two entities with rates, terms and conditions for attachments to each other's poles.

Section 2. Duty to Provide Access to Utility Poles and Facilities.

(1) Except as established in paragraphs (a), (b), and (c) of this subsection, 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.

(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;

(b) A utility shall not be required to provide access to any **decorative** pole, **though access to any wood pole** that is used primarily to support outdoor lighting **shall not be denied except for reasons described in paragraph (a) of this subsection**; and

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

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

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

(b) The utility shall file the written agreement with the commission pursuant to 807 6 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 if its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.
- (3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that the tariff shall control if there is a difference.
- (4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or **generally applicable** engineering standards.
- (5) The tariff shall not prohibit overlashing except if doing so is justified by lack of capacity, safety or reliability concerns, or **generally** applicable engineering standards.
- (6) Signed standard contracts or licenses for attachments permitted by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 4 KAR 5:011, Section 13.
- (7) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022. **Absent express agreement by contracting parties to ratify rates that differ from tarified rates, existing special contracts and joint use agreements shall conform their pricing to that in the tariffs filed pursuant to this subsection no later than March 31, 2022.**

Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

- (1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).
- (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 ten (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 shall be considered complete if the application provides the utility with the information necessary under its procedures, as established 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.
 - 3. If the utility notifies a new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.
 - 4. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as established in subsection (7) of this section) for the purpose of determining if 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 allow 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 five (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. If a new attacher has conducted a survey pursuant to subsection (10)(c) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(c), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.
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 forty-five (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 the denial, and shall explain how the 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. 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 shall be obligated to conduct surveys pursuant to this section.
 - b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

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

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, 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 if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(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 the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (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 a new attacher shall not accept the estimate 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 seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready in the communications space that is no later than thirty (30) days after notification is sent (or up to seventy-five (75) days in the case of larger orders as established 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 established for completion;
4. State that, if make-ready is not completed by the completion date established 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; and
5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 135 days in the case of larger orders, as established 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 established for completion;
 4. State that the utility may assert the utility's right to fifteen (15) additional days to complete make-ready;
 5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make ready specified pursuant to subparagraph 1 of this paragraph; and
 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 required by this subsection, the utility shall 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 completion of make-ready by the dates established by the utility pursuant to 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 established 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 fifteen (15) day right of control, fifteen (15) days later).
- (6) Final invoice.
- (a) Within a reasonable period, not to exceed ninety (90) days after ~~a utility completes the utility's make-ready~~ the new attachment is constructed or the new attachment passes the utility's inspection, whichever is later, 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 or if no estimate was previously paid; and
 2. A detailed, itemized final invoice, on a pole-by-pole basis if 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) Limitations on make ready costs.
 1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety,

reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red tagged pole with a replacement pole of the same type and height.
3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.
4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

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

- (a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 300 poles or zero and five-tenths (0.5) percent of the utility's poles in the state;
- (b) A utility may add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.
- (c) A utility may add up to forty-five (45) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.
- (d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.
- (e) A utility may treat multiple requests from a single new attacher as one request if the requests are submitted within thirty (30) days of one another; and
- (f) As soon as reasonably practicable, but no less than sixty (60) days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a high volume request.

(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 or in a special contract between the utility and the new attacher.
- (b) A utility may deviate from the time limits established 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 established 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 established 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 once the utility returns to routine operations.
- (c) An existing attacher may deviate from the time limits established 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 established 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 shall not extend beyond sixty (60) days from the completion date provided in the notice described in subsection (4) of this section ~~is as~~ 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 not deviate from the time limits established in this section for a period for 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 established 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 allow 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 five (5) business days of a field inspection as part of any survey the attacher 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 established 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 allow 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 seven (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 established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if 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 ten (10) business days after receipt of the new attachers attachment application whether or not the application is complete.
 - b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established 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 an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.
 - d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.
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 fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)).

- a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.
- b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.
- c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.
- d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex, **and the new attacher may not proceed with the affected proposed one-touch make-ready.**

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.
2. The new attacher shall allow 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 five (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 the attacher has provided fifteen (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 established 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 all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles 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 fifteen (15) days after completion of make-ready on a one-touch make ready application.

(11) A utility with a collective bargaining agreement existing as of the effective date of these administrative regulations requiring the engineering or make-ready on its poles or attachments be performed by its own employees, shall not be subject to the self-help remedies or one-touch make-ready described in subsections 9 and 10.

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 the utility 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 the utility's 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 shall not unreasonably withhold its consent.
- (2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall 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 shall 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 shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4 (9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) 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 a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this Section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.
2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4 (9)(a)2, (9)(b)2, (10)(b)3, and (10)(c) of this administrative regulation and in the utility's objection must identify at least one available qualified contractor.
- (3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.
- (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 the contractor 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 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 established by the utility, if made available.
- (e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

PROPOSAL TO STRIKE:

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

PROPOSED MODIFICATION IF NOT STRICKEN:

- (4) A ~~consulting representative of an electric~~ utility may make final determinations, on a nondiscriminatory basis, if 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 established 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 joint use agreement or 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 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 fifteen (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 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 ten (10) days of the date the motion for a temporary stay was filed.
 - (e) No further filings under this subsection shall be considered unless requested or authorized by the commission.
- (3) Transfer of Attachments to New Poles
- (a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within 60 days of receiving written or electronic notice from the utility pole owner.
 - (b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the

transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

- (c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer those attachments at the existing attacher's expense.

~~(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.~~

Section 7. Rates

(1) Rates for access to utility poles, ducts, conduits and rights-of-way shall be developed in accordance with rate rules promulgated by the Federal Communications Commission in 47 C.F.R. Chapter I, Subchapter A, Part 1, Subpart J, section 1.1406(d)(2) inclusive of future changes as those regulations may be amended or interpreted by the FCC or bureau order or a court of competent jurisdiction.

(2) Changes in effective and applicable Federal Communications Commission rate regulations shall be deemed to take effect under this administrative regulation 90 days after the effective date of the changes in the FCC rule(s).

Section ~~7~~ 8. Complaints for Violations of This Administrative Regulation.

- (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:
- (a) The full name and post office address of the complainant;
 - (b) The full name and post office address of the defendant;
 - (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and
 - (d) The relief sought.
- (2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.
- (3) How filed.
- (a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8.
 - (b) Notwithstanding 807 KAR 5:001, Section 8(3), the filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.

- (4) Procedure on filing of complaint.
- (a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.
1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.
 2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.
- (b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.
- (5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.
- (6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.
- (a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.
- (b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.
- (7) Burden of proof.
- (a) The complainant has the burden of establishing it is entitled to the relief sought.
- ~~(b) The commission may presume that a pole replaced to accommodate a new attachment was a red-tagged pole if:~~
- ~~1. There is a dispute regarding the condition of the pole at the time it was replaced; and~~
 - ~~2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.~~

(8) Time for final action.

- (a) The commission shall take final action on a complaint alleging that a person or entity was charged an unlawful rate or was unlawfully denied access to a utility's pole, duct, conduit, or right-of-way within 180 days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 360 days from the date the complaint establishing a prima facie case is filed.
- (b) The period within which final action shall be taken may be extended beyond 360 days upon agreement of the complainant and defendant and approval of the commission.