

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

COMMENTS OF CTIA REGARDING PROPOSED AMENDMENTS TO COMMISSION
RULES ON POLE ATTACHMENTS (807 KAR 5015)

CTIA¹ respectfully submits the following comments in response to the Public Service Commission of Kentucky’s (“Commission’s”) May 14, 2021 e-mail seeking comment on its proposed amendments to the Commission’s rules at 807 K.A.R. 5015 *et seq.* (“Proposed Rules”).

CTIA appreciates the Commission’s work to update and modernize its pole attachment regime. As CTIA noted in its September 2020 comments in this proceeding, this is a critical time for the Commission to streamline and facilitate infrastructure deployment, due to the importance of broadband access to Kentuckians and the major economic benefits wireless network deployment brings to the Commonwealth.² For example, a CTIA study completed in February 2021 calculated that 5G (which delivers broadband as well as voice and other wireless services) will contribute roughly \$1.5 trillion to U.S. GDP, and create approximately 4.5 million additional jobs over the next decade.³ As Acting Federal Communications Commission (“FCC”) Chair Jessica Rosenworcel has stated, “Our 5G future is about connecting everything. It is about

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² See Comments of CTIA Regarding Proposed Amendments to Commission Rules (September 15, 2020) (“2020 CTIA Comments”) at 1-2. In particular, there are already over 53,000 wireless-related jobs in Kentucky, and the wireless industry is responsible for a \$4.7 billion contribution to Kentucky’s GDP. *See id.*

³ See CTIA, “Building the 5G Economy: The Wireless Industry’s Plan to Invest and Innovate in the U.S.” (February 2021), available at https://api.ctia.org/wp-content/uploads/2021/01/2021-Wireless-Briefing-2_9.pdf (last accessed July 28, 2021).

radically higher speeds and lower latency, opening up possibilities for wireless that we cannot even fully imagine today.”⁴ And the ongoing COVID-19 epidemic has only emphasized the tremendous value of wireless technologies to Kentuckians. Indeed, Governor Beshear recently stated that “COVID-19 demonstrated just how critical it is for all Kentuckians to have reliable internet access to stay informed, safe and connected,”⁵ and the wireless industry has made significant efforts to keep customers connected during this time.⁶

In its initial comments, CTIA also explained the importance of the Proposed Rules mirroring the FCC’s existing pole attachment regime.⁷ CTIA therefore supports the numerous steps the Commission takes in the Proposed Rules to reflect the FCC’s work to promote and streamline deployment, including the incorporation of “shot clock” timelines, one-touch make-ready, and self-help provisions in the Proposed Rules.

CTIA is, however, concerned that the Proposed Rules’ continued reliance on tariffs to govern pole attachment rates, terms, and conditions in Kentucky could create barriers to deployment. Below, CTIA offers targeted revisions to the Proposed Rules to help mitigate this issue, including incorporation of a model tariff and streamlining of the dispute resolution process. These changes will promote a fair and expeditious pole attachment regime during this crucial time for broadband deployment in Kentucky.

⁴ Remarks of Commissioner Jessica Rosenworcel, “Taking the Open Road to DC” (Sep. 14, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-366876A1.pdf> (last accessed July 28, 2021).

⁵ Office of the Governor of Kentucky, “Gov. Beshear Requests Input from Broadband Providers Ahead of Better Kentucky Plan Internet Expansion” (June 24, 2021), available at <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=832> (last accessed July 28, 2021).

⁶ For specific examples and up-to-date news on the wireless industry’s COVID-19 relief efforts, see CTIA, “The Wireless Industry Responds to COVID-19”, available at <https://www.ctia.org/covid-19> (last accessed July 28, 2021).

⁷ See 2020 CTIA Comments at 3-4.

I. CTIA SUPPORTS THE COMMISSION’S EFFORTS TO BETTER ALIGN ITS RULES WITH THE FCC’S SUCCESSFUL POLE ATTACHMENT REGIME

As noted in CTIA’s 2020 comments, there are a variety of good reasons for the Commission to align the Proposed Rules with the FCC’s existing pole attachment regime. In particular, the FCC’s pole attachment regime has proven fair and effective in balancing the needs of pole owners and pole attachers while promoting efficient broadband deployment, and having a consistent framework for pole attachments from state to state facilitates broadband deployment by promoting efficient use of resources.⁸

CTIA therefore appreciates that the Commission has incorporated a number of provisions into the Proposed Rules that mirror the FCC’s regime and will help to reduce barriers to wireless infrastructure deployment in Kentucky. In particular, Section 4 of the Proposed Rules incorporates “shot clock” timelines for applications, surveys, and make-ready, which will help ensure that installations proceed in a steady and timely manner. The Proposed Rules also incorporate attacher remedies in the event that utilities are unable to meet those timelines, including “deemed granted” remedies for applications and self-help remedies for survey and make-ready. These self-help remedies are accompanied by appropriate requirements for third-party contractors, ensuring utilities still keep control over their safety standards for attachers. And the Proposed Rules allow for one-touch make-ready for simple attachments, which supports getting the necessary backhaul for wireless attachments out to the pole, while mirroring the FCC’s “simple/complex” attachment dichotomy to help guarantee appropriate safeguards for wireless attachments, too.

⁸ *See id.*

CTIA urges the Commission to maintain these provisions in the Proposed Rules, with an eye toward incorporating greater parity with the FCC's rules to encourage and incentivize deployment as it continues to modernize its pole attachment regime to keep pace with the accelerating trend of deployment on utility poles.

II. THE COMMISSION SHOULD MAKE TARGETED IMPROVEMENTS TO THE PROPOSED RULES, INCLUDING INCORPORATION OF A MODEL TARIFF AND ACCELERATED DISPUTE RESOLUTION

While the Proposed Rules take a number of positive steps to help limit delays in the pole attachment process, CTIA is concerned about the Commission's decision to continue structuring its pole attachment regime around utility pole tariffs.

Because terms and conditions of attachment, apart from those proscribed in the Proposed Rules, are set by tariff, and because the Proposed Rules call for the filing of new tariffs by all pole owners under the Commission's jurisdiction by the end of February 2022,⁹ the transition period for attachers may be wildly confusing. Attachers – not to mention, the Commission – will need to review new tariffs for many utility companies on short notice. This places attachers, who are already at a negotiating disadvantage due to the inherently monopolistic nature of pole access, in a worse position, and increases the likelihood of error. Moreover, the Proposed Rules do not govern rates at all, giving no guidance for attachers on what rates are fair, just, and reasonable,¹⁰ and increasing the possibility of discriminatory rate structures, such as those that charge higher rates for pole-top attachments.¹¹

⁹ See Proposed Rules at Section 3(7).

¹⁰ See Ky. Rev. Stat. §278.030(1) (“Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.”)

¹¹ See 2020 CTIA Comments at 8-9.

While attachers have some recourse with the Commission in disputes, delays caused by any disputes are exacerbated by the long dispute resolution periods found in the Proposed Rules – 180 days as a baseline, but up to 360 days or longer for “good cause.”¹² The Commission’s reliance on a tariffing system for its pole attachment regime creates a feedback loop of delay within the Proposed Rules. The less clarity the Proposed Rules have regarding the rates, terms, and conditions of attachment, the more likely it is that attachers will need to bring complaints to the Commission. This, in turn, taxes Commission resources, meaning longer timelines for resolution of disputes and greater deployment delays. Moreover, the Proposed Rules also do not specify what relief is available to complainants if the Commission fails to render a final decision in the specified time. All of these factors serve to create significant uncertainty for wireless attachers in Kentucky, discouraging investment in the Commonwealth’s networks.

To help mitigate these issues, CTIA encourages the Commission to include a model tariff within the Proposed Rules that specifies a baseline for rates, terms, and conditions the Commission finds just and reasonable. Such a model tariff will significantly decrease the administrative burden on all parties as the Proposed Rules go into effect: pole owners will have a reliable baseline for their tariffs instead of having to draft new, compliant ones from scratch, while both attachers and Commission will make the best use of limited resources by being able to review largely the same tariff instead of ones that are completely unique to each owner. A model tariff should also significantly decrease disputes – another major benefit for all parties – by setting a preapproved Commission baseline for rates, terms, and conditions.

¹² See Proposed Rules at Section 7(8).

CTIA recommends this model tariff incorporate the FCC's pole rate formula, which, as CTIA explained in prior comments, has been found to be fair and compensatory for pole owners.¹³ To encourage use of the model tariff, the Commission should require pole owners to explain and justify any deviations from the model alongside their submissions. Regardless of whether the Commission adopts a model tariff, the Commission should implement a notice process for any tariff changes by pole owners, with a reasonable amount of time for attachers to review tariffs, and a docket that consolidates tariff submissions in one place for simplification of access and review.

Although a model tariff should significantly decrease the number of disputes created by implementation of the Proposed Rules, regardless of whether the Commission chooses to adopt it, CTIA recommends that the 180-day (or more) timeline for dispute resolution contemplated by the Proposed Rules be shortened considerably. At a minimum, a 90-day timeline would be more reasonable, and would mirror the timeline for the FCC's accelerated docket for pole attachment complaints.¹⁴ Other states have implemented shorter timelines for pole attachment complaints, however,¹⁵ and the Commission should consider whether its expertise in resolving disputes may situate it to adopt swifter dispute resolution timelines than the FCC's, which will ultimately reduce delays and promote rapid deployment.

¹³ See 2020 CTIA Comments at 6.

¹⁴ See 47 C.F.R. § 1.736(a); *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018).

¹⁵ See 2020 CTIA Comments at 7 (noting Maine, for example, requires a final order resolving a dispute within seven business days of filing).

III. CONCLUSION

The Proposed Rules represent concrete steps by the Commission to modernize Kentucky's pole attachment regime. CTIA urges the Commission to consider incorporating its suggested revisions to further prevent barriers to deployment during this critical time for broadband development. The Commission should also monitor the impact of the Proposed Rules, once adopted, and continue to look for ways to streamline its infrastructure deployment processes for the benefit of all Kentuckians.

Respectfully submitted,

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