COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

PROPOSED REGULATIONS REGARDING ACCESS AND ATTACHMENTS TO UTILITY POLES AND FACILITIES	))))))

REPLY COMMENTS OF THE KENTUCKY BROADBAND AND CABLE ASSOCIATION ON THE KENTUCKY PUBLIC SERVICE COMMISSION'S PROPOSED POLE ATTACHMENT REGULATIONS

The Kentucky Broadband and Cable Association and its members ("KBCA" or "Association") are pleased to submit these reply comments in response to the comments submitted by other stakeholders in this proceeding.

INTRODUCTION

There is broad consensus among communications providers that the Commission should promulgate comprehensive pole attachment regulations, consistent with requirements governing pole attachments in the vast majority of States, to ensure cost effective and efficient broadband and other communications plant deployment in the Commonwealth of Kentucky. Clear and consistent rules applicable to all pole owners and attaching entities would much more effectively spur timely and efficient broadband deployment than the ever-changing utility tariffs that govern attachments today. Such rules are imperative for Kentuckians in underserved and unserved areas of the Commonwealth to connect to and share in the benefits of our increasingly digital world. This current, pandemic moment demonstrates that broadband access is more critical than ever, especially for Kentuckians in rural areas.

There is also significant agreement on what the Commission's pole attachment regulations should entail. Even some pole owners agree that it would be beneficial for pole attachments in

Kentucky to be subject to generally applicable pole attachment regulations promulgated by the Commission. Importantly, there is wide agreement that the Commission's regulations should be founded on the policies and approaches adopted by the Federal Communications Commission ("FCC"). There is also agreement that the Commission should move forward with adopting One Touch Make Ready ("OTMR") procedures. KBCA agrees that OTMR rules modeled after the ones in place in Louisville would be extremely beneficial statewide. And there is basic consensus that costs get fairly apportioned to those that cause them, and the Commission's regulations should reflect this fundamental, cost-causation principle to advance timely and efficient facilities' deployment.

The Commission's regulations should reflect these consensus views of commenters, and reject the outlier suggestions that would undermine the goal of timely and efficient broadband deployment and lead to continued delays and deter necessary investments. To that end, the Commission should reject proposals to "grandfather" outmoded utility pole attachment tariffs after regulations are adopted.[1] The Commission should also refrain from carving out amorphous exceptions from its rules, which would result in loopholes for utilities to dodge compliance.[2] The Commission should also decline to adopt narrow definitions of the term "pole" that would improperly restrict communications providers' access rights and undermine the ability to provide advanced communications services throughout Kentucky.[3] The Commission should also reject efforts by certain pole owners to extend the proposed access and make-ready deadlines in ways that will only increase the time and expense of broadband deployment.[4]

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[1] *See infra* Section II(A).
[2] *See infra* Section II.
[3] *See infra* Section II(D).
[4] Additionally, because the Commission adopted a formula for calculating pole attachment rates nearly four decades ago that has been working well for Kentucky providers, there is no reason, as

DISCUSSION

I. THE COMMISSION SHOULD IMPLEMENT RULES CONSISTENT WITH THE BROAD CONSENSUS AMONG STAKEHOLDERS.

A. The Commission's Regulations Should Be Founded On The FCC's Sound And Longstanding Policies And Procedures.

There is broad agreement among pole owners and attachers that, as the Commission moves to adopt pole attachment regulations to better promote rural broadband deployment, it should look to the Federal Communication Commission's ("FCC's") pole attachment regulations as the foundation for its own regulations.[5] While the state can take further action to even improve upon the FCC's regulations, current FCC rules already include among other things, established deadlines to speed pole access for communications providers, protections for attachers from having to pay make-ready costs to resolve problems they did not cause, and vital practices such as over-lashing that foster efficient deployment of communications facilities.[6]

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proposed by CTIA, for the Commission to revisit this issue. *See* Comments of The Wireless Association ("CTIA Comments") at 6; *In re Cable Television Pole Attachments*, Admin. Case No. 251, 49 P.U.R. 4th 128, 1982 WL 993115, at *132 (Ky. P.S.C. 1982). Although CTIA speculates that the Commission's existing rate regulation is inadequate to satisfy the requirements of federal law, CTIA identifies no deficiencies in the specificity of the Commission's pole rate methodology, which has worked for decades without incident and is easily applied to wireless attachments.

[5] *See, e.g.*, Comments of the Kentucky Broadband And Cable Association ("KBCA Comments") at 3 (noting Commission's proposed rules are consistent with FCC rules); Comments of Duke Energy Kentucky, Inc. ("Duke Energy Comments"), at 1 (stating "the Commission should model any proposed rules related to attachments and access to be as consistent as possible to those of the Federal Communications Commission"); Comments of AT&T ("AT&T Comments") at 1 (encouraging the Commission to adopt "a simple approach that mimics" the FCC rules); Comments of OpenFiber Kentucky, LLC ("Open Fiber Comments"), at 1 (urging the Commission to include "additional language" from the FCC Orders and Rulings); Comments of Louisville Gas and Electric Company and Kentucky Utilities Company ("LG&E Comments") at 30-32 (applying FCC framework to the Commission's proposed rules).

[6] Specifically, KBCA recommends that the Commission adopt overlash rules that track the FCC's approach, which allows attachers to overlash after providing appropriate advance notice to the pole owner. KBCA Comments at 22. Other commenters agree. *See, e.g.*, Open Fiber Comments at 1-2. This approach would be consistent with the approach taken in current utility tariffs, many of which allow overlashing upon advance notice as well. *See* LG&E Tariff at ¶10; KU Tariff at ¶10.

B. The Commission Should Adopt OTMR Procedures To Facilitate Timely Pole Access And Deployment.

Many commenters have also expressed support for the adoption of OTMR procedures,[7] which are included in the Commission's proposal, and which KBCA also supports, subject to some modest proposed improvements set forth in its opening comments.[8] Numerous commenters also agree that the Commission should adopt a complaint procedure to resolve pole access disputes expeditiously, and expressed concerns similar to those expressed by KBCA that the Commission's proposed dispute resolution timeline of one year[9] is far too long.[10] To allow pole access disputes to be resolved in a timely manner, the Commission should instead implement a 90-day expedited timeframe for dispute resolution.[11]

C. The Commission's Regulations Should Reflect Cost Causation Principles.

As KBCA explained in its opening comments, one of the most important changes the Commission can implement to facilitate broadband deployment into unserved areas would be to codify regulations regarding the responsibility for pole replacement costs, particularly in areas that lack access to broadband service, to cause pole owners and attachers to share those costs more equitably and in a manner that recognizes the benefits that pole owners realize when a pole is replaced to accommodate an attachment.[12] KBCA's suggested approach is modeled after the approach the Maine Public Utilities Commission has adopted in its pole attachment rules.[13] This

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[7] *See, e.g.*, KBCA Comments 20-22; LG&E Comments at 30; Comments of Kentucky Power Company ("Kentucky Power Comments") at 16; AT&T Comments, Redline at 9-12.
[8] 807 KAR 5:0XX(4)(10); KBCA Comments 18-22.
[9] 807 KAR 5:0XX(7)(2).
[10] *See, e.g.*, KBCA Comments at 26-27 (suggesting a 90-day dispute resolution timeframe); AT&T Comments, Redline at 14 (suggesting a 180-day dispute resolution timeframe); CTIA Comments at 7 (suggesting a 7-day dispute resolution timeframe).
[11] KBCA Comments 26-27.
[12] *Id.* at 13-17.
[13] Me. Admin. Code § 65-407 Ch. 880 § 5(C).

change, if adopted, would significantly lower the cost of new broadband deployment in rural areas and thereby both enable more private investment and allow buildout projects with finite funds (such as those supported by grants or subsidized loans) to go further. While the FCC is also actively considering a proposal by the cable industry to clarify federal law on this point,[14] there is an opportunity for the Commission to lead on this issue and bring this reform to the unserved rural Kentucky communities that need it the most.

Other commenters have not yet addressed issues specific to pole replacement costs. But several pole owners' opening comments, in the context of the proposed rules' treatment of responsibility for the costs of remedying pre-existing violations discovered or precipitated during the attachment process, agree that make-ready costs should be borne by the party that causes them to be incurred, and that attachers should not be required to pay for costs caused by another party.[15] That same principle – that an attaching entity should not have to bear costs that it did not cause – underlies KBCA's proposal that the Commission's pole attachment rules equitably allocate pole replacement costs, which are caused only in part by an attacher, and in remaining part by the utility's own plant depreciation and pole replacement schedule.

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[14] *In the Matter of Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Development,* NCTA Petition for Expedited Declaratory Ruling, WC Dkt. No. 17-84 (July 16, 2020) (attached as Exhibit 2 to KBCA's initial comments); *In the Matter of Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Development*, Public Notice, WC Dkt. No. 17-84 (July 20, 2020) (establishing deadlines for comments and reply comments).

[15] *See, e.g.,* LG&E Comments at 23-24 (stating LG&E "agrees with the Commission's policy stance – i.e., requiring the at-fault party to bear the cost of its own violations" and that the entity that was "the cause of the violation" should inform cost responsibility); Kentucky Power Comments at 13 ("Kentucky Power agrees that the cost of correcting pre-existing violations should be paid by the entity that caused the violation").

II. ALLOWING POLE OWNERS TO CIRCUMVENT NEWLY-ADOPTED REGULATIONS WOULD UNDERMINE THE PURPOSE OF THIS RULEMAKING.

A. The Commission Should Prohibit Pole Owners From Circumventing Attachment Obligations By Grandfathering Superseded Tariff Obligations.

Any regulations the Commission adopts in this proceeding should be effective as to all providers and pole owners on the rules' effective date, and should supersede any contrary provisions in utility tariffs. Certain pole owners suggest that existing utility tariffs should instead be phased out over time after the new regulations take effect.[16] But allowing outmoded and unreasonable tariff obligations to remain in force would undermine the purposes of this proceeding – to install rules of general applicability that will facilitate broadband deployment in rural parts of Kentucky – by instead continuing an inconsistent patchwork of rules that delay broadband deployment. The Commission should make its rules effective immediately.

B. The FCC Approach Should Apply To So-Called "High Volume" Requests As The Commission Proposes.

Under FCC rules, certain make-ready timelines scale with the size of an attacher's project, allowing the utility more time to complete make-ready work for high-volume requests.[17] Rather than conform to this approach, LG&E and Kentucky Power propose defining a "high volume request" for pole attachments as one encompassing 300 poles or 0.5% of the utility's poles in the state.[18] This threshold is unreasonably low, and seriously out of step with the Commission's proposal, which would follow the FCC's sensible graduated approach, as well as those followed

[16] *See, e.g.*, AT&T Comments, Redline at 3 (suggesting existing tariffs need not conform to the requirements of this administrative regulation for one year); LG&E Comments at 7.
[17] *See* 47 C.F.R. 1.1411(g).
[18] LG&E Comments at 10; Kentucky Power Comments at 13.

in other certified states.[19] LG&E and Kentucky Power offer no reason why the FCC approach (followed in at least 30 states) is unworkable.

Moreover, under the proposed rules, if pole owners are unable to meet make-ready deadlines, attachers can simply hire contractors to perform the make-ready work, relieving utilities of the obligation altogether. As such, there is no policy or practical reason to adopt thresholds that are so low. Instead, and consistent with the approach followed by the FCC and several other certified states, the Commission should maintain the FCC's graduated schedule as proposed in its draft regulations.[20]

C. Attachers Should Be Allowed To Exercise Self-Help When Necessary For Make-Ready In The Electric Space.

While LG&E and Kentucky Power suggest that the Commission should limit the self-help remedy to the communications space,[21] there is no reasonable basis to prohibit attachers from using self-help to complete make-ready outside the communications space, including in the electric space. Attachers must use the pole owner's own approved contractors for such make-ready work, which limits the risk of damage to facilities in the electric space. Moreover, the self-help remedy is only used when a pole owner fails to complete a survey or other make-ready work in a timely manner.[22] This is consistent with the FCC approach, which was recently upheld on appeal by the federal Ninth Circuit Court of Appeals after challenges by many pole owners.[23]

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[19] *See, e.g.*, Ohio Admin. Code § 4901:1-3-03(B)(6) (defining a "large order" as the lesser of 3,000 poles or 5% of the public utility's poles in the state); Me. Admin. Code § 65-407 Ch. 880 § 2(A)(7) (same); *see also* 807 KAR 5:0XX(4)(7); 47 C.F.R. § 1.1411(g).

[20] 807 KAR 5:0XX(4)(7) (following 47 C.F.R. § 1.1411(g)).

[21] *See* Kentucky Power Comments at 15 (proposing to limit self-help to the communications space); LG&E Comments at 27-28 (same).

[22] 807 KAR 5:0XX(4)(9).

[23] *In the Matter of Accelerating Wirelines Broadband Deployment By Removing Barriers To Infrastructure Investment*, 33 FCC Rcd 7705, 7752, ¶ 97 (2018) (hereinafter "2018 FCC Order") (amending rules "to allow new attachers to invoke the self-help remedy for work above the

If there is no need for self-help in the electric supply space because pole owners always meet their deadlines, as LG&E insists,[24] then there should be no harm in allowing a self-help remedy based on use of a utility's approved contractors. And if in fact some utilities do not perform work on time, attachers should have the option of self-help even if it is outside of the communications space in order to ensure that they can serve their customers and deploy plant to additional unserved areas in a timely manner. Given that work would be performed by the utility's own approved contractors there is no sound, reasonable basis for objecting to that remedy, which promotes important policy objectives.

D. Attachers Should Have Broad Access To Utility Pole Infrastructure.

The Commission should not limit access to poles by adopting a narrow definition of the term "Pole," as requested by certain pole owners. Specifically, LG&E, Duke Energy, and Kentucky Power propose to exclude from the definition of "Pole" any poles that support electric transmission facilities.[25]

While interstate electric transmission towers are regulated by the Federal Energy Regulatory Commission ("FERC"), there is no reason why poles used for electric distribution and useful for wire communications should be excluded from the Commission's pole attachment rules simply because the utility has also placed transmission facilities on the pole. The FCC's pole attachment regulations apply to *all* electric distribution poles irrespective of whether those poles

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communications space"), *aff'd City of Portland v. United States*, 969 F.3d 1020, 1051-52 (9th Cir. 2020) (upholding 2018 FCC Order and rejecting Petitioner's argument that allowing self-help in the power supply space jeopardized safety or exceeded the FCC's authority).

[24] LG&E Comments at 28.

[25] LG&E Comments at 12-13; Duke Energy Comments at 4-5; Kentucky Power at 5-6.

also support transmission facilities, and the federal courts have upheld this approach against challenges from electric utilities.[26]

Moreover, attachers pay for all distribution poles through the annual pole attachment rent whether they support additional transmission facilities or not. If a pole owner believes access to a particular facility is unsafe, it can deny access on a case-by-case basis, consistent with Section 2 of the proposed rules. Otherwise, there is no reasonable basis to allow utilities to exempt poles useful to wire communications that are included in its rate base and that would facilitate broadband deployment, merely because they also support additional facilities.

Nor should the Commission prophylactically restrict access to any utility easements. Duke Energy asserts that an attacher's use of private easements would constitute an "encroachment" or require the utility to "renegotiate" an easement.[27] But Duke overlooks that, under the federal Cable Act, cable operators have a right to access all easements that have been dedicated for compatible uses, such as electric service, irrespective of whether those easements are public or private.[28] This federal right was recently affirmed by the Seventh Circuit Court of Appeals.[29] And cable operators' federal right under the Cable Act is indeed consistent with Kentucky law on easements generally, which recognizes that an easement's use may be expanded over time in line with the purpose of its original grant.[30] Accordingly, Duke's proposed revision to the definition of pole is

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[26] *Southern Company v. F.C.C.*, 293 F.3d 1338, 1345-46 (11th Cir. 2002) (holding the FCC has jurisdiction over distribution poles, "regardless of whether they are used in part for transmission wires or other transmission facilities").

[27] Duke Energy Comments at 6.

[28] *See* 47 U.S.C. § 541(a)(2) (stating a franchise "shall be construed to authorize the construction of a cable system over public rights of way, *and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses*") (emphasis added).

[29] *West v. Louisville Gas & Electric Company*, 951 F.3d 827, 830-32 (7th Cir. 2020).

[30] Under Kentucky law, [t]he nature and extent of an easement must be determined in light of its purposes." *Com., Dep't of Fish & Wildlife Res. v. Garner*, 896 S.W.2d 10, 14 (Ky. 1995). But easements "are not strictly limited to purposes for which [they] had been historically used."

contrary to law insofar as it would restrict cable operators from accessing any private easements it has obtained to transmit electricity and/or communications.

E. The Commission Should Not Unreasonably Restrict The Contractors Attachers May Use For Survey And Make-Ready.

The Commission should reject the various proposals that would restrict attachers from using contractors for survey and make-ready work because of collective bargaining agreements between the pole owner and the pole owner's own workforce.[31] These proposals are unwarranted, would needlessly delay broadband deployment, and have been soundly rejected by the FCC and other state public utility commissions that have confronted the same issue.[32]

Sawyers v. Beller, 384 S.W.3d 107, 111 (Ky. 2012) (citing *Cameron v. Barton*, 272 S.W.2d 40 (Ky. 1954)). Instead, "[a]s the passage of time creates new needs and the uses of property change, a normal change in the manner of using a passway does not constitute a deviation from the original grant, and modern transportation uses are not restricted to the ancient modes of travel." *Cameron*, 272 S.W.2d at 41 (holding easement granted in 1876 originally used for transferring animals to a slaughter house could later be used by Highway Department to move vehicles and equipment).

[31] *See, e.g.*, AT&T Comments at 2.

[32] *See, e.g.*, 2018 FCC Order at ¶¶ 47-48 (finding that "[n]ew attachers that are not parties to a CBA have no obligations under such a CBA," that "[i]t is the new attacher's contractor that will be performing the make-ready work, so the CBA is not implicated," and that "requiring a new attacher to hire a union contractor only because one of the existing attacher's CBA mandates the use of union workers to perform its pole attachment work would frustrate the efficiency and utility of OTMR"); *National Broadband Plan for Our Future*, WC Docket No. 07-245, Report & Order & Order On Reconsideration, 26 FCC Rcd. 5240, 5291 at ¶52 (Apr. 7, 2011) (hereinafter "2011 FCC Order") (noting collective bargaining agreements "do not and cannot restrict who the attachers hire"); *Proceeding On Motion Of The Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement On Pole Attachments, No. 03-M-0432, at 5-6 (N.Y. P.S.C. 2004), *available at* http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=03-M-0432&submit=Search (rejecting the argument utilities with collective bargaining agreements may not allow attachers to hire outside contractors and explaining "[s]ince time is the critical factor in allowing Attachers to serve new customers, it is reasonable to require the utilities either to have an adequate number of their own workers available to do the requested work, to hire outside contractors themselves to the do the work, or to allow Attachers to hire approved outside contractors").

Collective bargaining agreements impose obligations on a pole owner – not an attacher. Accordingly, as other certified states and the FCC have recognized, while collective bargaining agreements may limit the pole owner's options for who may complete their own make-ready, they do not so limit attachers.[33] More importantly, an attacher that is exercising its self-help remedy or performing OTMR is exercising the attacher's rights, not the pole owner's rights. Because the right to perform OTMR or self-help in the make-ready context using a contractor belongs to the attacher and not to the pole owner, the pole owner does not have the right to negotiate it away in a collective bargaining agreement, and cannot invoke such an agreement as the basis to restrict access to its contractors. Thus, there is no basis to limit attachers' use of contractors where the pole owner may have collective bargaining agreements in place.

F. The Commission Should Not Extend The Make-Ready Timeline, Which Would Unreasonably Delay And Deter Broadband Deployment.

The Commission should not allow a pole owner to delay broadband deployment by extending the make-ready timeline with "estimated dates of completion" or until after "any applicable government permits are obtained," as proposed by Duke.[34] There is no reasonable basis to inject uncertainty or unjustified delays into the make-ready timeline. Communications providers make commitments to their customers that rely on such deadlines and can lose customers when those deadlines slip.

While Duke Energy nevertheless asserts that unspecified permits, such as DOT permits, can "adversely impact" the make-ready timelines, make-ready timelines must exist independent of other processes. Neither the FCC rules, nor any other certified state pole attachment rules that KBCA is aware of, contain carve-outs for obtaining government or other like permits. The

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[33] *Id.*

[34] *See* Duke Energy Comments at 8-9.

Commission should reject this proposal to delay the make-ready process. Pole owners have the right to deviate from the timeline on a case-by-case basis "for good and sufficient cause"[35] in any event. No more is needed or appropriate.

Similarly, the Commission should maintain Section 4(4)(b)(2) of its proposed regulations, which requires a pole owner to set a date for completion of make-ready no later than 90 days after notification of the need for make-ready, and reject Kentucky Power's proposal that there should only be an estimated date of completion.[36] While KBCA has no objection to utilities' providing an estimated date of completion within a specified timeframe, there must be an outside date by which the make-ready shall be completed – and that deadline should be 90 days as proposed.

G. The Commission Should Adopt An Efficient OTMR Process.

The Commission should ensure an efficient application and OTMR process by allowing attachers to submit a single application denoting both simple and complex make-ready work, even if OTMR would not apply to the complex make-ready component of the application.

AT&T's proposed two-track process would inject needless inefficiency and confusion into the process.[37] There is no reason attachers should have to submit multiple applications for the same project where some of the make-ready work is simple and some is complex. Nor is there any apparent reason why pole owners would need (let alone prefer) duplicative paperwork for the

[35] 807 KAR 5:0XX(4)(8)(b).
[36] Kentucky Power Comments at 11.
[37] AT&T Comments, Redline at 10.

same project. Instead, the Commission should adopt the rule as drafted, and require an attacher to "identify the simple make-ready that it will perform."[38]

Likewise, the Commission should reject LG&E's proposal for a pole owner to have 60, rather than 15 days, to review an OTMR application.[39] Two months to review an application is facially unreasonable, and would effectively undermine the efficiency of the OTMR process. Allowing a pole owner to take up to 60 days to review an OTMR application would severely delay deployment, and there is no reason why a pole owner needs that much time.[40]

III. ATTACHERS ARE ENTITLED TO DETAILED AND TIMELY INVOICES.

The Commission has reasonably proposed to require a pole owner to provide attachers with "detailed, itemized estimate[s] in writing, on a pole by pole basis where requested and reasonably calculable" of make-ready costs, actual survey charges, and actual make-ready costs.[41] This is consistent with FCC rules, which the FCC recently implemented in 2018 "[t]o facilitate the planning of more aggressive deployments" after reviewing an extensive record reflecting "frustration over the lack of transparency of current estimates of make-ready work charges" that impede attacher planning for broadband deployment and introduce risks that attachers will be billed for avoidable or inefficient work.[42]

LG&E, Kentucky Power, and Duke Energy nevertheless request that they should only have to submit a "reasonably detailed" estimate or invoice. But the Commission should reject these unreasonable pole owner proposals. Attachers rely on detailed invoices for budgeting and other purposes; and, in any case, any customer deserves to know exactly what they are paying for.

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[38] 807 KAR 5:0XX(4)(10)(a).
[39] LG&E Comments at 32; 807 KAR 5:0XX(4)(10)(a)(3).
[40] *See, e.g.*, 47 C.F.R. 1.1411(j)(2) (providing for 15 to 30 days to evaluate applications).
[41] 807 KAR 5:0XX(4)(3)(a) & 807 KAR 5:0XX(4)(6)(a)-(b).
[42] 2018 FCC Order at ¶¶ 109-110; 47 CFR § 1.1411(d).

Unfortunately, right now, that is not always the case in Kentucky. For example, some of KBCA's members never receive specific invoices from certain pole owners. Instead, these members receive a list of the make-ready tasks that need to be performed with only a total make-ready cost. These vague invoices are sometimes presented *a year or more after* a project is complete, making it virtually impossible to determine whether they are accurate, or even to which project they are connected. This practice leaves attaching entities unable to identify inefficient or overpriced work, and removes utility incentives to manage the make-ready process to avoid unnecessary costs.

The Commission's rule as drafted does not call for a pole owner to provide a breakdown of every "nut and bolt"[43] on each pole, or prohibit inclusion of fixed costs as a separate entry on an invoice or estimate, as some pole owners allege.[44] Instead, the Commission's proposed rule would merely prevent pole owners from imposing vague or unidentified costs on an attacher without justification or explanation, which is more than eminently reasonable and consistent with how the FCC resolved this same issue in its most recent reforms.

IV. THE COMMISSION SHOULD ENSURE ANY RULES FOR TRANSFERRING ATTACHMENTS INCLUDE NOTICE, AN INSPECTION PERIOD, AND A REMEDY FOR UTILITY-CAUSED VIOLATIONS.

Certain utilities suggest the Commission should adopt new regulations allowing an existing pole owner to transfer an existing attacher's attachments, if the existing attacher does not transfer its own attachments within 60 days.[45] LG&E and Kentucky Power claim these measures are necessary to avoid "double wood" problems where replacement poles reside next to existing poles for protracted periods of time.[46]

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[43] Duke Energy Comments at 7.
[44] LG&E Comments at 20; Kentucky Power Comments at 8.
[45] LG&E Comments at 33-34; Kentucky Power Comments at 18.
[46] *Id.*

While there may be some double poles in Kentucky, KBCA's members are not aware of a widespread problem involving their plant. But if the Commission adopts such a requirement, the 60-day timeframe should apply to transfers involving a limited number of poles. For large relocation projects, the transfer timeline must be tied to the size of the project.

Notice is also an issue. If the Commission were to adopt a 60-day transfer requirement, then, it must also assure that pole owners provide adequate notice (*i.e.,* through NJUNS, which informs the attachers when it is their turn to make the transfer) and also allow an attacher to deviate from the 60-day deadline when a transfer would be impossible because of situations beyond its control – *e.g.*, when another attacher's facility is in the way of a transfer.

Additionally, as in the context of third party make-ready, KBCA is concerned that pole owners may damage facilities or place them out of compliance, while moving an existing attacher's facilities, and then bill the existing attacher to correct the pole-owner caused violation. Accordingly, an attacher whose facilities are transferred should receive the same notice, inspection, and cure protections as KBCA has proposed for OTMR. Specifically, the Commission should require a utility that transfers an existing attacher's facilities to notify the affected attacher(s) within 15 days of completing the transfer.[47] The existing attacher should then have 90 days to inspect its attachments, and 14 days following its inspection to report any damage or code violations caused by the pole owner.[48] This process will ensure an existing attacher's plant is not

[47] *See, e.g.*, 807 KAR 5:0XX(4)(10)(d) (requiring, in the context of OTMR, "[a] new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole").

[48] *See, e.g.*, 47 C.F.R. § 1.1411(i)(2)(iii) (providing inspection period following rearrangement of attachments); L.M.C.O. § 116.03(D)(2)(h) (also providing inspection period following rearrangement of attachments).

damaged or placed out of compliance when a pole owner transfers an attacher's facilities itself and that correction costs are allocated fairly.

V. THE COMMISSION SHOULD HOLD A WORKSHOP TO FURTHER EXPLORE THESE ISSUES.

Going forward, the Commission should hold a workshop during which interested parties may discuss the proposed pole attachment rules. Some of KBCA's members, including Charter Communications, attended the public meetings the Commission held last February and March, which were productive and helped clarify the positions of some of the parties. KBCA believes continued discussion would benefit the Commission as it considers the various comments on its proposed rules.

CONCLUSION

The KBCA appreciates this opportunity to participate in this proceeding and it looks forward to providing any additional information or insight the Commission may require as it considers these important policy issues.

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