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October 19, 2020

Administrative Regulations Working Group
Kentucky Public Service Commission
Via email: psc.regulations@ky.gov

Re: Supplemental Comments Regarding Proposed Pole Attachment Regulation

Working Group Members,

This letter is provided in supplement to my earlier correspondence dated September 15, 2020, containing the initial written comments of Kentucky Association of Electric Cooperatives, Inc. (the “Kentucky Electric Cooperatives”), to the above-referenced proposed regulation of the Kentucky Public Service Commission (the “Commission”). Having now reviewed the various comments submitted by other interested stakeholders as part of this process, the Kentucky Electric Cooperatives appreciate the opportunity to provide additional thoughts and context to these most important issues.

At the outset, it is advantageous to revisit and reiterate the Kentucky Electric Cooperatives’ primary interests with respect to the Commission’s development of a statewide pole attachment framework. *First*, Kentucky’s regulatory scheme must prioritize safety and reliability. While the Commonwealth’s vast, vital network of utility poles offers promise for the expansion of broadband and other services, any use of cooperative infrastructure must be approached with due respect for its chief purpose—the provision of safe, reliable electricity. *Second*, Kentucky’s pole attachment framework must consider the unique characteristics and challenges of rural electric cooperatives, particularly with respect to operational and administrative burdens, and thus permit reasonable flexibility and promote mutual cooperation

between pole attachers and pole owners. The significant differences between and among Kentucky’s rural electric cooperatives and investor-owned utilities (“IOUs”)—in terms of customer composition, service territory, system layout, and personnel base, for example—result in substantial impacts to the suitability of one-size-fits-all regulation in this context. Consequently, the Commission should resist the temptation to impose federal standards that were not developed and are not designed with rural cooperatives in mind. *Third*, and finally, if the Commission determines that a uniform regulatory scheme governing access to cooperative poles is necessary, the not-for-profit Kentucky Electric Cooperatives and their member-owners (*i.e.*, Kentucky homeowners and businesses) must be protected from costs they did not cause, and from liabilities for which they should not be responsible. These basic principles, guided by reasonableness, buttress every position of the Kentucky Electric Cooperatives in these and their earlier comments.

It surely comes as no surprise that the Kentucky Electric Cooperatives stand squarely opposed to many of the viewpoints espoused within the comments of several industry members, particularly those keen on cheap, largely-unfettered access to utility infrastructure. Certainly the further constriction of already-truncated timelines, as proposed by certain commenters,¹ would present immense (if not routinely insurmountable) compliance challenges for the smaller workforces of Kentucky’s rural electric cooperatives. Likewise, no benefit can be realized from attempts by certain commenters to unnecessarily curtail the Commission’s ability to address pole access disputes² or to excessively regulate each conceivable aspect of this subject on a statewide basis.³ Instead, each cooperative must maintain the ability to establish reasonable

¹ *See, e.g.*, Comments of The Kentucky Broadband and Cable Association (“KBCA”), at pp. 9-10 (proposing, among other things, that the window during which a utility may review an application for completeness be cut in half, to 5 days).

² *See* Comments of KBCA, at p. 27 (requesting the Commission reduce the timeframe it allows itself to address pole access complaints, from the proposed regulation’s 360 days down to “an expedited, 90-day timeframe”); Comments of AT&T Kentucky (seeking a 180-day timeframe for a Commission decision); Comments of CTIA - The Wireless Association, at p. 7 (stating the Commission “should look to Maine” and implement “rules requir[ing] a final order from the Commission resolving a dispute within seven business days of a complaint being filed.”).

³ *See, e.g.*, Comments of KBCA, at pp. 24-25 (proposing the Commission regulate, among many other things, the frequency of pole audits conducted by utilities, as well as bestow upon attachers rights to notice of audits, rights in the planning and design of audits, the right to review company data and documentation related to audits, and the right to approve the costs of audits).

practices and safeguards governing its facilities and services,⁴ recognizing that the Commission maintains the ultimate regulatory authority to determine what is reasonable and what is not—just as it always has.⁵

Without a doubt, safety is the paramount concern and the driving force behind the Kentucky Rural Cooperatives' positions vis-à-vis third-party pole access. Though there are many areas where pole owners and pole attachers inevitably disagree, safety and continuity of affordable electric service must be given priority in any regulatory scheme prescribing the rules for attachments to utility poles. This includes the safety of pole attachers, who cooperatives know from experience are too-often ill-equipped to ensure proper clearances, grounding, tensioning, proper use of personal protective equipment, and adherence to other safety measures. By extension, this also affects the safety of utility personnel, who face significant dangers from attachments installed improperly and, in many cases, entirely without the utility's knowledge.⁶ And, of course, the concerns of cooperatives necessarily include the safety of utility customers and the general public—when the sag of an overburdened span prevents a farmer's combine from safe passage across his field, or when an a pole serving a nearby hospital breaks at its midsection as a result of continual abuse by un-invested (sometimes unreachable or unresponsive) attachers, the stakes are high, and the risks are real.⁷ For these reasons, the Kentucky Electric Cooperatives are generally opposed to any regulatory provision that inhibits a utility's ability to limit or condition pole access on a nondiscriminatory basis when safety or reliability require it. Even the Kentucky Broadband and Cable Association concedes the

⁴ See KRS 278.030(2) (“Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.”);

⁵ See, e.g., KRS 278.040(2) (“The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities....”); KRS 278.040(3) (“The commission may ... investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.”).

⁶ One member of the Kentucky Electric Cooperatives reported that third-party field audits have identified approximately 20,000 illegal attachments made to its system in roughly the last decade. Unfortunately, many other cooperatives have experienced similar situations.

⁷ These anecdotes are not dramatizations, but rather true examples shared by cooperatives which reflect the day-to-day challenges they face when sharing their infrastructure with third-party attachers. In fact, an incident occurred just a few weeks ago in a cooperative's territory which demonstrates the types of issues cooperatives must often address related to pole attachments; an anonymized copy of the relevant Incident Report is attached.

fundamental concern that “[a]llowing other entities to handle another attacher’s plant can lead to unknown problems and damage that can cause critical outages and failures.”⁸ Likewise, pole owners like the cooperatives must maintain reasonable precautions against allowing other entities to handle cooperative plant, as well as the ability to reasonably control the use of their poles, particularly above the communication space.

Of course, it is clearly unmanageable in the present context to address every position promoted by the other parties to this process, and therefore the Kentucky Electric Cooperatives focus the remainder of these supplemental comments on two central objectives: (i) emphasizing the reasons that the FCC rules do not belong unmodified in Kentucky; and (ii) ensuring that electric customers do not bear the burden nor expense of third-party attachments. These overarching issues permeate many of the comments received and require the Commission’s careful consideration.

FCC Regulation is Not Appropriate for Rural Electric Cooperatives

Many of the comments submitted to the Commission make reference to regulations of the Federal Communications Commission (“FCC”), with some requesting that the Commission adopt FCC rules and regulations wholesale for all poles within the state of Kentucky. While this may be expedient and practical for some pole owners, it is not appropriate for rural electric cooperatives. As the Commission is doubtlessly aware, cooperatives were specifically exempted from the Pole Attachment Act when it became law in 1978 and have remained exempt from the ensuing 42 years of regulation that has developed at the federal level. This long-term exemption is not by happenstance, but rather is based on the substantially different circumstances facing investor-owned utilities and electric cooperatives, particularly as it relates to pole attachments.

Perhaps the most notable difference between rural cooperatives and IOUs concerns the typical densities of the populations each serves. Investor-owned utilities have far denser populations—many more electric meters per mile of line, many more attachments per pole—and

⁸ See Comments of KBCA, at p. 19 (also stating that maintaining certain oversight as part of make-ready is “imperative for a facility owner to ensure the integrity and safety of its plant.”).

this fact has a practical impact on utility operations related to pole attachments (*e.g.*, more frequent, more consistent, and more localized demand for attachments supports greater staffing levels and economies of scale). As a result, it is much more economic and practical for investor-owned utilities to meet FCC timelines by maintaining staff, contractors, and systems in place to respond to attachment requests and other demands of the pole attachment process. It also bears repeating that, while the FCC’s rules surely reflect decades of substantial efforts to strike an appropriate balance among various stakeholders, the federal rules have never considered the interests and challenges faced by rural electric cooperatives. The attachment process for a series of poles in, *e.g.*, downtown Pittsburgh⁹ may simply not be suited for a series of poles in a holler of Harlan County, which is why this Commission should reject attempts to enforce the blanket application of national FCC rules on Kentucky’s rural electric cooperatives.

FCC Pole Attachment Rental Rate Formula is Not Appropriate for Electric Cooperatives

While many of the comments submitted to the Commission request FCC-derived regulation broadly, some also specifically request that the Commission adopt the FCC pole attachment rental rate formula. These efforts are clearly outside the scope of the Commission’s proposed rulemaking. Though matters of cost recovery are and will remain important, as there are “no free rides” in policy-making, this proposed regulation governs access and attachments to utility poles, as its title reflects. Therefore, attempts by certain parties to push an agenda concerning rates at this juncture should be soundly rejected.

The foregoing notwithstanding, it is important that the Commission is provided full and accurate information with respect to the demands being made by certain commenters regarding rates. The FCC pole attachment rental rate formula may initially appear like a harmless request—simply a “good idea” passed down from the federal government. However, the FCC

⁹ On August 29, 2019, the Pennsylvania Public Utility Commission (“PPUC”) voted to exercise jurisdiction over pole attachments and to adopt, wholesale, the FCC’s pole attachment rules. The rules do not extend to attachments made to poles owned by municipalities or cooperatives which, like in many states, are generally excluded from regulation by the public utilities commission. See PPUC Final Rulemaking Order, *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, L-2018-3002672; see also Ohio Revised Code Chapter 4901:1-3, *Attachments to Utility Equipment or Rights of Way* (also excluding cooperatives from pole attachment regulation).

rental rate is a not a formula-based rate in the traditional sense of utility ratemaking. Rather, it is a policy designed by the FCC (at the request of members of the communications industry) with a stated objective of encouraging broadband deployment, specifically calculated to subsidize attachers at the expense of pole owners (and by extension their members/customers). The FCC's approach to pole attachment rates is simply not about cost recovery reflecting cost causation, and the Commission should avoid any temptation to accept the FCC's framework as an acceptable model.

It is worth noting, further, that the FCC's consistent policy choice to reduce rental rates with the hope of encouraging broadband deployment has not worked, despite promises made by various third-party attachers. The FCC's policy choices have put millions of dollars into the pockets of large broadband providers on the hope that they will invest some of that windfall in rural areas, but the investment has not come. Indeed, as the Commission is keenly aware, broadband deployment remains one of the most stubborn problems facing our Commonwealth and our country today. This is not because cooperatives are difficult to deal with or because rates have been prohibitively high. In fact, many cooperatives' tariffed rates for CATV remain basically unchanged since their implementation nearly forty years ago following Administrative Case No. 251 in 1982.¹⁰ Instead, broadband deployment in many rural areas has lagged for a far more obvious reason: just as electrification was slow to come to rural Kentucky but for the community-based action of the electric cooperatives, the customer density in rural areas is simply not sufficient to entice shareholders of for-profit, investor-owned entities to pursue the low return on investment associated with serving rural Kentucky. Indeed, any suggestion that the Kentucky Electric Cooperatives member pole attachment rates or processes have inhibited the deployment of broadband or other services to rural Kentuckians is a blatant falsehood unsupported by evidence, as well as an affront to cooperatives and the rural community-based foundations upon which they were built and continue to operate. Certainly there is no reason to blindly adopt the attacher-biased FCC rates at this juncture, as doing so will siphon funds from

¹⁰ Administrative Case No. 251, *The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments* (Ky. P.S.C. Sept. 17, 1982).

small towns in rural Kentucky where electric cooperatives provide service to the headquarters of major telecom and cable firms in Dallas, Philadelphia, and other locations with no accountability and no hope of those funds being reinvested in rural Kentucky. Put simply, it is a policy choice that would disadvantage rural Kentucky communities even further.

In specific terms, the FCC rental rate is not appropriate for electric cooperatives for reasons similar to the reasons that FCC regulation itself is not appropriate for electric cooperatives. The rate was designed and has been implemented over many years for a fundamentally different use case—IOWUs—and it has been designed solely with that use case in mind. Investor-owned utilities have denser service territories and more densely populated poles. For example, if a typical investor-owned utility has an average span length of 150 feet between poles, two attachments per pole, and is charging \$7 per attachment based on the FCC formula, it would generate revenue of approximately \$492.80 per mile of distribution line for attachments, and it would have many more line miles of revenue to support overhead and centralized joint use/pole attachment operations. Conversely, a typical electric cooperative with the same \$7 rental rate is likely to have an average span length of 250 feet between poles and an average of 1 attachment per pole. This would generate revenue of only \$147.84 per mile of distribution line, and that revenue would be replicated across far fewer miles of line. Because the electric cooperative system is much less dense, this rate does not provide the revenue necessary to support joint use/pole attachment operations and would most certainly not provide enough revenue to support staffing required to meet the desired timelines in the Commission's proposed rulemaking. Electric cooperatives and their member-customers should not be forced to pick up the tab for those costs, especially when they have not caused them.

Though the Commission clearly did not intend the current process to encompass discussion of pole attachment rates, should it determine in the future to conduct such an examination, the FCC's approach to pole attachment ratemaking should not be adopted.

***Demanding Contribution to Make-Ready Costs Further Disadvantages
Rural Electric Cooperatives and their Member-Owners***

Some comments submitted to the Commission request that electric utilities contribute to the make-ready costs incurred by attachers to access poles. It should first be emphasized that make-ready is about safety, code compliance, and system integrity. As with all things under the cooperative model, there is no profit motive or shareholder to satisfy, but simply the continued provision of safe, reliable, affordable electric power. It is next important to understand why only one regulatory body in the country, in the 100+ years of joint use and pole attachment agreements and 40+ years of regulation of pole attachments by state and federal governments, has implemented a framework requiring pole owners to contribute to make-ready costs.¹¹

The asset that is the distribution pole is typically owned and maintained by one party, most often the electric utility. The utility holds that asset and is responsible for the liability associated with it. The utility must maintain its assets to provide for the safety and reliability of its system. As a part of that process, the utility must budget and plan for the maintenance and replacement of its poles. If a third-party attacher is able to demand the utility to contribute to its pole replacement costs on demand based on the attacher's own budget and deployment schedule, this directly undermines the utility pole-owner's control of its own operation and maintenance budget. There will be fewer funds to spend on the utility's planned pole replacements. This is, in essence, an unplanned (and unplannable) tax that will cause the utility's system to become less safe and less reliable. It will disrupt the electric cooperative's planning and execution of its primary function which, again, is providing safe and reliable power to its members. The Commission has long-recognized the principle that the "cost-causer pays," and it should therefore reject any notion that a utility should subsidize a portion of a putative attacher's expense to make a pole safe for further loading/attachment.

¹¹ See Maine Administrative Code 65-407, Chapter 880, Section 5.C.

Policies to Move Kentucky Toward Rural Broadband Deployment

The Kentucky Electric Cooperatives wish to express clearly to the Commission that we enthusiastically support increased broadband deployment in rural areas. In some cases, smaller community-based entities have long-ago invested in bringing broadband to cooperative territories; in others, where there is no locally-based broadband provider, service availability lags significantly. This real-world experience belies the distorted reality that the large telecommunications and broadband companies are selling. Have no doubt, many electric cooperative territories desperately need better broadband to support education, telemedicine, and local economic development. Frankly, that is why one electric cooperative presently seeks to fill the void left by unwilling telecommunications/cable providers.

Unfortunately, a blanket application of FCC rules/regulations to electric cooperatives they were never designed to affect will not only fail to enhance broadband availability in rural Kentucky, it will negatively impact the safety, reliability, and affordability of electricity to those same households and businesses. While Kentucky's electric cooperatives have maintained low pole attachment (CATV) rates on file with the Commission that have been largely unchanged over the last nearly forty years, the large telecommunications and cable companies have simply not invested in bringing rural broadband to Kentucky. If nearly forty year-old rates are inadequate to encourage investment in broadband deployment, there is no realistic justification to assume that imposing additional costs and burdens on electric cooperatives will solve the problem; they will not.

Instead, the Kentucky Electric Cooperatives propose that the Commission consider ways to encourage investment in the staffing and software that undergird the safe and efficient facilitation of pole attachments. Primarily, this could be accomplished by allowing electric utilities to treat this part of their organization like any other, allowing a reasonable rate of return on joint use/pole attachment services provided by electric utilities to third-party attachers. This would allow cooperatives to invest in the software and staffing required to provide prompt, modern services to new attachers seeking to make real investments in deploying broadband to

rural Kentuckians. This policy approach would allow electric cooperatives to engage constructively with third-party attachers for their mutual benefit, finding mutually-agreeable approaches on issues that will truly speed deployment, like safe processes for One-Touch Make-Ready and overlashing.

It bears repeating that rural electric cooperatives face significant risks and costs in connection with third-party pole attachments. There are “no free rides” in policy-making, and these costs are sure to increase if the Commission mandates compliance with a new regulatory scheme derived from the FCC’s IOU-centric federal regulations, and cost-causers must not avoid expenses or liability at the expense of cooperative customers. The Kentucky Electric Cooperatives thank the Commission for the opportunity to provide feedback through the comment process and ask that their input continue to be considered and implemented moving forward.

Please do not hesitate to contact me with any questions or concerns.

Respectfully,



Chris Perry
CEO & President

Fiber Contractor Incident Report September 21, 2020

On Monday, September 21st an employee of ABC Cooperative received a call from a Contractor crew installing new fiber wire, contracted by XYZ Attacher, that one of their employees had been shocked on ABC Cooperatives pole. ABC Cooperative dispatched a Crew Foreman, 1st Class Line Technician, and Safety/Loss Control Coordinator to the scene.

Upon arrival to the scene the contracting crew had a bucket truck setup beside ABC Cooperatives pole, the bucket was in the cradled position and no one in it. The individual that felt the shock and his Supervisor were both on the ground. No injuries were sustained from the “shock”. The individual that was working the bucket truck stated the following: “I was going up in the bucket to swap the lasher. As I reached out and touched the lasher I felt a shock in my right hand. I immediately brought the bucket down and reported what happened to my supervisor”.

The contracting crew was pulling in new Fiber and lashing it to existing XYZ Attacher Cable that was already present on the pole. The new reel of fiber was approximately 1,160ft from the shock location, and 45ft away from an adjoining utility 138kv transmission line. ABC Cooperatives pole was a VA.6, double dead-end single phase, with a guy wire in-line. The guy wire and primary neutral were both grounded to the pole ground. ABC Cooperative’s framing was on 4ft spacing, and the XYZ Attacher pre-existing cable was 6’2” below the primary neutral. Voltage on ABC Cooperative’s distribution line was 14,400 volts. Running parallel to ABC Cooperatives line was the adjoining utilities 138kv transmission line, and also in close proximity to a 345kv transmission line.

The lasher was sitting very close, if not touching, ABC Cooperative’s guy wire when the contractor employee went up in the bucket. The new fiber that was being pulled in was not grounded in any way. The existing XYZ Attacher cable was bonded to ABC Cooperative’s ground wire.

ABC Cooperative found nothing on their equipment that could have caused the Contractor employee to feel a shock. After the investigation ABC Cooperative believes the following to have occurred: With the close proximity to the 138kv transmission line that the ungrounded new fiber had built up a static charge. When the Contractor employee went up in his bucket truck that he made contact with the lasher and ABC Cooperatives grounded guy wire at the same time, causing him to feel a shock from the static build up.

Findings

From the investigation the following was found in regards to the Contractor Crew installing the new fiber wire:

- No pole attachment request was made
- No notification to ABC Cooperative that work would be conducted on their system
- Did not reach out to ABC Cooperative regarding voltage levels or Minimum Approach Distances
- Did not reach out to adjoining utility in regards to the transmission line voltage or Minimum Approach Distances

- Did not conduct job briefings to discuss potential hazards on the job site
- Only PPE being worn were hard hats
- Contractor bucket truck had uninsulated boom
- Contractor employees were not trained on potential of static voltage working near transmission lines, or identification of transmission lines