COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE PROPOSED POLE ATTACHMENT TARIFFS OF RURAL ELECTRIC COOPERATIVE CORPORATIONS	**)** **)** **)** **)**	**CASE NO. 2022-00106**

JOINT RESPONSE OF RURAL ELECTRIC COOPERATIVE CORPORATIONS TO OBJECTIONS FILED BY KBCA AND AT&T

Come now Big Rivers Electric Corporation, Big Sandy R.E.C.C., Blue Grass Energy Cooperative Corp., Clark Energy Cooperative, Inc., Cumberland Valley Electric, Inc., East Kentucky Power Cooperative, Inc., Farmers R.E.C.C., Fleming-Mason Energy Cooperative, Inc., Grayson R.E.C.C., Inter-County Energy Cooperative Corporation, Jackson Energy Cooperative Corporation, Jackson Purchase Energy Corporation, Kenergy Corp., Licking Valley R.E.C.C., Meade County R.E.C.C., Nolin R.E.C.C., Owen Electric Cooperative, Inc., Salt River Electric Cooperative Corp., Shelby Energy Cooperative, Inc., South Kentucky R.E.C.C., and Taylor County R.E.C.C. (collectively, the "RECCs"), by counsel and pursuant to the Commission's procedural order in the above-captioned case, and hereby respectfully submit the following Joint Response to the objections filed in Case No. 2022-00064 by the Kentucky Broadband and Cable Association ("KBCA")[1] and Bellsouth Communications, LLC d/b/a AT&T Kentucky ("AT&T"), respectively.

[1] KBCA's objections were delineated by utility; as a consequence of the substantial similarity between the tariffs of the RECCs, this resulted in repeat objections to the same provisions in the various tariffs. For the sake of efficiency and clarity, this Joint Response identifies each unique objection and provides a joint response thereto on behalf of all RECCs.

Introduction

As the Commission is aware, the electrification of the vast majority of this Commonwealth came by way of the local RECC. In connection with the provision of this vital service, each of Kentucky's electric cooperatives has worked around-the-clock, decade after decade to construct and maintain a vast network of poles, ducts, conduits, and rights-of-way. While these facilities offer promise for the expansion of broadband and other services in the Commonwealth, any use of cooperative infrastructure must be approached with due respect for its chief purpose—the provision of safe, reliable electricity to cooperative member-owners.[2]

Consistent with the Commission's regulatory directive, each of the RECCs prepared and recently submitted updated, detailed proposed tariff schedules governing attachments to their poles. These new schedules are built upon CATV tariffs existing for 35+ years and the real-world experience associated with hundreds of thousands of historical attachments. They fully reflect the pertinent regulation, 807 KAR 5:015, and contain only terms that are fair, just, and reasonable. While the RECCs expect and hope to fine-tune their proposed tariffs as part of this docket, the overarching objective of an electric utility's pole attachment tariff must be to ensure the continued provision of safe, reliable and affordable electric service.

The RECCs appreciate this opportunity to discuss, refine, and defend their proposed tariffs.[3]

[2] *See also* 47 U.S.C. 224(c)(2)(B), requiring the Commonwealth to "consider the interests of the subscribers offered via such attachments as well as the interests of the consumers of the utility services." *Id.* (emphasis added).

[3] At the outset, it should be clear that RECCs generally object to AT&T's involvement in this proceeding, as AT&T's access to and use of RECC poles is governed by joint use agreements. Consequently, AT&T is not a "new attacher" under the pertinent regulation; it is not a customer under the pole tariffs at issue in this proceeding; and its inquiry with respect to the RECCs' proposed tariffs is therefore inappropriate. *See* PSC's Statement of Consideration Relating to 807 KAR 5:015 (Sept. 15, 2021) at 57 ("Rather, the Commission believes that existing special contracts should continue to control until they expire or until they are amended or are otherwise modified."); *see also EnviroPower, LLC v. Public Service Commission of Kentucky*, Case No. 2005-CA-001792-MR, 2007 WL 278328 at 3 (Ky. App. Feb. 2, 2007) ("the person seeking intervention must have an interest in the 'rates' or 'service' of a utility…."). The

KBCA OBJECTION 1. ***Overlashing*****.**

KBCA Objection: KBCA objects to the requirement that "[o]verlashing parties shall also be responsible for reasonable engineering, survey and inspection costs incurred by Cooperative in connection with overlashing activity." KBCA further objects to the provision that "[f]ailure to provide advance notice as described herein will result in Unauthorized Attachments (as defined herein), which are subject to additional costs and other recourse available to Cooperative."

KBCA objects to any requirement to provide more than "advance notice of planned overlashing," as required by 807 KAR 5:015, Section 3(5). In particular, KBCA objects to any requirement to provide as part of its "notice" "a pole-loading analysis certified by a professional engineer licensed in Kentucky."

RECC Response:

The relevant regulation, 807 KAR 5:015, introduces a new, statewide framework for overlashing and outlines certain obligations related thereto. The regulation provides that utilities may require advance notice (though not prior approval) of overlashing; it reflects that a party engaging in overlashing must "ensure that it complies with reasonable safety, reliability, and engineering practices"; and it contemplates that utilities may perform post-overlash inspections and address issues when discovered. The RECCs proposed tariffs fully comply with the regulation. Additionally, the RECCs' proposed tariffs recognize the realities and risks associated with expanded use of overlashing.

The proposed tariffs seek to ensure that safety and system integrity remain paramount. Certainly, poles have become more and more burdened over the past 50 years and will become even more so as more broadband is deployed. Wind and ice are problems in Kentucky. The RECCs believe that a professional pole-loading analysis should be par for the course; a simple, objective way to promote the reliability of electric and telecommunications systems, particularly in the event of inclement weather when we can ill-afford an outage. It is unreasonable to burden

foregoing notwithstanding, the RECCs attempt to address all issues raised, as directed by the Commission, while reserving the right to seek formal relief should AT&T's involvement continue to be burdensome or unreasonable.

the utility with performing pole-loading analyses, presumably during post-overlash inspections, particularly when KBCA also objects to overlashers being "responsible for reasonable engineering, survey and inspection costs incurred by Cooperative in connection with overlashing activity." Overall, the proposed tariffs submitted by the RECCs are intended to minimize the risk associated with overlashing and ensure costs incurred by a utility related to overlashing are appropriately recovered (as opposed to being shouldered by cooperative electric ratepayers, who, of course, do not benefit at all from this activity).

KBCA OBJECTION 2. ***Costs To Replace Poles That Are Not Red-Tagged.***

KBCA Objection: KBCA objects to any provision assigning the entire cost of replacing a pole that is not red-tagged to KBCA, including the requirement that "Licensee shall pay all of the necessary Make-ready cost of attaching to a new pole, including any costs associated with replacing or Transferring Licensee's Attachments or any Outside Parties Attachments, except when the pole has been red-tagged for replacement." KBCA should only pay its reasonable share of a pole replacement.

RECC Response:

KBCA's objection is simply a restatement of its comments on the Commission's proposed pole attachment regulations that the Commission refused to implement when issuing its final regulations. Because the Commission has already rejected this exact proposal from KBCA in implementing its final pole attachment regulation, no further response should be required.

Specifically, in its July 2021 Comments, KBCA stated "the Commission should ensure that the costs of pole replacements are appropriately shared in all cases and not only with regard to 'red tagged' poles, as defined in the Commission's proposal."[4]

In the Commission's Statement of Consideration relating to 807 KAR 5:015, the Commission specifically addressed KBCA's comments – which are restated in KBCA's objection:

> As part of that process, a number of attachers, including KBCA, requested more specific language regarding how the cost to replace poles should be allocated. . . . First, they alleged that pole owners were attempting to charge them for the cost of poles that had to be replaced for reasons other than a need to accommodate their new attachments i.e. the pole was damaged or had reached the end of its life. Second, they argued, as KBCA does in its comments here, that it is inequitable to charge a new attacher for the full cost of a replacement pole that is installed to accommodate a new attachment . . .
>
> The amendment proposed by KBCA could result in electric rates that are not fair, just and reasonable. When reviewing utility rates and charges to determine if they are fair, just and reasonable and otherwise comply with statutory requirements imposed by KRS Chapter 278, the Commission generally attempts to ensure that costs are assigned to the party responsible for causing the utility to incur the cost.

[4] KBCA's Comments on the Commission's Proposed Pole Attachment Regulations, *available at*: https://psc.ky.gov/agencies/psc/Proposed%20Amendments/Comments_072021_KAR807515/Stakeholders/KBCA%20Comments%20red.pdf.

> If a utility must replace a pole that does not need to be replaced with a larger pole or a pole of a different type to accommodate a new attachment, then the cost to replace that pole is caused by the new attacher.

Accordingly, in recognition that the RECCs' proposed tariffs properly allocate costs to the party causing the cost, KBCA's objection is unfounded.

KBCA OBJECTION 3. ***Reservation of Space.***

KBCA Objection: KBCA objects to the provision allowing the Cooperative to reserve additional space on a newly installed pole for the Cooperative's "sole use" "in anticipation of Cooperative's future requirements or additions." Any reservation of space must be tied to a specific, known plan to provide core electric services.

RECC Response:

Demand for electric service is increasing in Kentucky, and as a result many cooperatives are installing poles taller than immediately necessary for reasonably anticipated use in the future. For example, certain utilities reserve space for transformers on all new poles installed; unsurprisingly, it is much less expensive to install a 5-foot taller pole initially than to go back later for a pole change out. Certainly, should a pole owner abuse its rights to its pole by refusing reasonable access in accordance with law, a remedy exists; however, there should be no incentive for cooperatives to install only bare-minimum poles, thereby increasing costs for consumers whenever expansion is needed or reasonably anticipated for Cooperatives or attachers. Moreover, KBCA's suggestion that a "specific, known plan to provide core electric services" must support a reservation is unreasonable and directly counter to the Commission's objective to speed broadband deployment.

KBCA OBJECTION 4. ***Inventory Penalty*****.**

KBCA Objection: KBCA objects to any provision imposing penalties for breaches other than an unauthorized attachment fee to compensate a pole owner for non-payment of rent. KBCA specifically objects to Article VII(E), which states "Cooperative may impose a penalty in the amount of one hundred dollars ($100) for any violation caused by Licensee that is not corrected in accordance with the timelines listed in ARTICLE VII SECTION D - CORRECTIONS, and an additional one hundred dollars ($100) every ninetieth (90th) day thereafter until Licensee addresses the violation(s) to Cooperative's reasonable satisfaction."

RECC Response:

As pole owners, RECCs are responsible for the safety and reliability of the pole and must have tools to enforce the technical requirements and specifications applicable to attachments. The penalty is not designed "to compensate a pole owner for non-payment of rent," but rather to provide a mechanism to ensure remedial efforts are timely pursued by attachers in violation of the National Electric Safety Code (NESC), the utility's specifications, and other stated rules governing attachment. Neither the timeframes (including grace period) nor the penalty amounts are oppressive or unreasonable.

KBCA OBJECTION 5. ***Indemnity*****.**

KBCA Objection: KBCA objects to any standard that would hold an attacher responsible for the negligence of the pole owner. KBCA specifically objects to Article XVIII, which states in part "Licensee will not be liable under this indemnity to the extent any of the foregoing Losses are determined, in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted from the sole gross negligence or willful misconduct of any Indemnified Person." (Emphasis added).

RECC Response:

The RECCs' proposed indemnity provision is designed to ensure cooperatives and their member-owners are not exposed to liability as a consequence of an attacher's activities. Because the use of the cooperative's infrastructure for third-party attachments presents significant risk to cooperatives—and basically only benefits attachers—the RECCs seek to avoid responsibility for damages or injuries caused or contributed to by an attacher. As in the RECCs' existing tariffs governing pole attachments, RECCs should be liable only if they are solely the cause of any damage or injury.

KBCA OBJECTION 6. ***Contractor Insurance Obligations.***

KBCA Objection: KBCA objects to any requirement that its contractors and subcontractors be required to carry the same insurance as KBCA, including the statement that "Licensee shall require its agents, contractors and subcontractors to comply with the specifications required under this Schedule and the obligations of this Schedule (including but not limited to the insurance and indemnification obligations under this Schedule)." KBCA, which is ultimately liable to the pole owner, has existing contracts with its contractors, which may contain different requirements.

RECC Response:

The purpose of this language is to ensure the RECCs are fully protected from any third-parties working on cooperative infrastructure, and to ensure all such parties are fully aware of the requirements and specifications governing their work. This type of language is not unusual from a general contracting perspective; moreover, from an operational standpoint, it is important to consider that contractors unable to acquire the required coverage may not be sophisticated enough or may have previous safety violations making adequate insurance unaffordable. Again, the overarching intent of the pass-through or flow-down provision is to ensure there are no gaps in protection or elevated risks introduced to the cooperative as a consequence of an attacher's chosen agent or subcontractor.

KBCA OBJECTION 7. ***Administrative Review Fee.*** (Clark Energy Cooperative, Inc., only)

KBCA Objection: KBCA objects to an "administrative review fee" of $100 for completeness review.

RECC Response:

For every action the utility undertakes to process a permit, it incurs costs. Some RECCs are consistently dealing with incomplete requests to attach, which the new regulation and proposed tariffs require the utility to review and respond to in writing within a certain timeframe. The amount of the fee is not unreasonable and is designed to recover costs associated with performing the work required to comply with the regulation's review and processing requirements.

AT&T OBJECTION 1. ***Definition of Attachment.***

AT&T Narrative: 807 KAR 5.015 Section 1 defines an attachment as "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." While this definition is very broad, the cooperative as a group filed a mostly-identical set of tariffs that provide that an attachment is [sic] "is any Licensee cable, wire, strand, circuit, service drop, permitted over-lashing, appurtenance, equipment, pedestal or apparatus of any type attached to the Cooperative's Pole."

While it may be argued that the tariff definition is simply an implementation of the rule, it opens the door for abuse of the rates established in the tariffs. Tariff rates have been developed assuming occupancy of one foot of usable space on a pole. Indeed, the new rules are replete with references to **space use** on poles. However, Appendix E – FEES AND CHARGES specifies that the cooperatives will invoice licensees on a per attachment basis, regardless of the space actually occupied.

For Example, there are normally only one or two J hooks with drop attachments on a pole, yet there may be 3 or 4 service drops on each of those two J hooks so a pole owner could charge 3 to 4 times for a single attachment. Further, the definition proposed by the cooperatives may allow for double or triple counting of a single attachment. Cables are routinely lashed to "strand" that provides necessary support not already built into the cable as well as additional structural integrity when a pole is damaged. Additionally, overlashing, by definition, reuses the same space used by another attachment and should not be assessed a recurring attachment fee – a conclusion supported by FCC decisions.

While not in the Article II definition of Attachment, and as discussed more completely below, the cooperative tariffs have introduced unnecessary new requirements for professional engineering associated with all attachments, this serves to increase the cost of ***any*** attachment by significant by [sic] multiples. Requiring permits and engineering for service drops specifically not only inhibits timelines for installing service to customers by requiring a permitting process, it classifies them each as individual attachments which would allow pole owners to charge multiple times for a single point attachment on a pole. Service drops have never been engineered in the past, nor have any attachments that fall within the unusable space on a pole. These changes go against the purpose of creating pole attachment rules to foster broadband expansion by significantly increasing cost through unnecessary and frivolous engineering and permitting requirements, and by subjecting overlashing to a "back door" permitting process that is against the published rules.

AT&T Suggestions:

1. Modify Appendix E – FEES AND CHARGES to base assessable rates on space actually used.
2. Service Drops should not require permits or engineering requirements.
3. Narrow the definition to include only those items in the communication space or electric space. Unusable space is unusable for pole-to-pole attachments and should not

have either engineering requirements or charges for incidental or non-pole affecting attachments. And require that tariffs use space requirements as opposed to attachments.

4. Remove overlashing from the definition of an attachment**.**

RECC Response:

At the outset, it is worth restating that AT&T is a joint user not subject to these tariffs. While the particular objections it is offering are based on the detailed nature of its own attachments, this is an inappropriate frame of reference for this tariff, because it was not developed to address the particular situation of AT&T's attachments. Further, if AT&T were subject to this tariff, many of its objections would be inappropriate or, at the very least, evince a misunderstanding of the tariff. In any event, it is the intention of the RECCs to implement reasonable tariffs that appropriately reflect the law and best practices, and to promote clarity in their interpretation.

Overall, the RECCs approach to these matters is consistent with the regulation. The RECCs do not seek to charge a separate rental annual fee for overlashing, nor do they require a "back door" permitting process. The tariffs simply require the appropriate advanced notice required by regulation, along with supporting documentation to demonstrate that the proposed overlash does not compromise the safety and reliability of the pole.

AT&T OBJECTION 2. *Service Drop Definition*.

AT&T Narrative: The cooperative tariffs include statements to the effect, "A service drop shall run from a pole directly to a specific customer, *without the use of any other poles." (emphasis added)*

Serving terminals are not and never have been on all poles that communications companies maintain cable on as it is cost prohibitive and over provisioning, similar to an electric provider not placing transformers on every pole to feed customers. On a relatively frequent basis service drops must be run from one pole with a terminal to the next pole or mid-span to accomplish the shortest path from the cable to the premises due to things like vegetation, to maintain required clearances, or for safety purposes.

AT&T Suggestion: Modify the statement to say, "A service drop shall run from a pole directly to a specific customer using the shortest practical route while maintaining the required clearances and safety parameters."

RECC Response:

It is the intention of the RECCs to preclude attachers from attaching to any pole without completing the application process. As evidenced by AT&T's objection, it is not unusual for certain attachers to consider as a single attachment a wire that is attached to multiple poles, simply because its ultimate purpose is to serve an end-user. Put plainly, if something is attached to RECC poles, the RECC should know about it. Further, if a third party is using available space on a pole, that space should be paid for consistent with the tariff. Finally, of note, cooperatives generally permit service drops to run directly from poles with an existing licensee attachment to a customer's location, but *not by first attaching to other poles to which the licensee is not attached* (*i.e.*, adding a J-hook to a pole with an existing attachment is typically acceptable, but attaching to one or more new primary poles without cooperative review is not). It is the RECCs' intent to specifically exclude all previously unattached-to secondary or lift poles for the purpose of being able to review, in-advance, ground clearances and separation from the power space.

AT&T OBJECTION 3. *Supply Space*.

AT&T Narrative: First, cooperative tariffs define "Supply Space" similarly, but with differing values. Electric supply engineering is largely standardized and the requirement of space available for use should be standardized as well. The definition of supply space should be consistent footage.

Second, the cooperative definition of "Supply Space" also includes a requirement that the, "Licensee will make its initial Attachments one foot above the lowest possible point that provides such ground clearance, which is within the Communications Space." This requirement inappropriately restricts the space that is supposed to be available to licensees.

Third, the cooperative definition of "Supply Space" includes language that specifies if the coop installs a pole larger than the standard pole, "...solely in anticipation of its future requirements or additions..." that supply space will be increased. This potentially conflicts expansion of broadband capabilities such that a cooperatives broadband plans may be used to thwart other entrants.

AT&T Suggestions:

1. Supply Space should be standardized.
2. The requirement to attach one foot above the beginning of the Communications Space should be eliminated.
3. A “standard pole” needs to be defined. There is no mechanism to track which poles are or will be designated as these types of replacements. Additionally, the FCC is clear on this that electric companies may only reserve future space on poles for their primary product, electric service. There needs to be language incorporated that includes that provision.

RECC Response:

With respect to AT&T’s first suggestion, to standardize the Supply Space for all cooperatives would be a virtually impossible undertaking since every cooperative is different, with different specifications, requirements, and needs vis-à-vis its poles. Further, consistency among all pole owners appears unnecessary; AT&T must demonstrate unreasonableness in the terms of each proposed tariff, not simply make suggestions based on its preferences or convenience.

With respect to the second AT&T suggestion, the intent of the language proposed in the tariffs is to ensure attachers utilize the next-lowest available foot within the Communications Space on a pole, thereby promoting the efficient use of the pole. Lowest available clearance is an

objective, measurable determination that any party can make independently based on NESC (with which all parties are expected to be familiar). This approach should speed broadband deployment because it is consistent and allows the relevant party to act on its own.

Finally, as it pertains to AT&T's third suggestion, each proposed tariff does define a "standard pole" and reflects the fact that each pole is the Cooperative's property. Of course, the rules governing pole attachments developed by the Federal Communications Commission do not apply, nor have they ever applied, to cooperatives. AT&T has no factual basis for its concerns, and while nothing about the tariffed language authorizes an electric cooperative to provide itself with any unlawful, discriminatory preference, applicable law is clear that an electric utility's reasonable reservation of space on its own pole is appropriate. *See* RECC Response to KBCA Objection 3, *supra*.

AT&T OBJECTION 4. ***Make Ready Estimates*****.**

AT&T Narrative: The cooperative tariffs automatically withdraw make-ready estimates after fourteen days. The rules say that pole owners may withdraw their estimates but the automatic withdrawal provision does not comport with the spirit of the rule. A simple acceptance and later payment of the make-ready estimate should suffice.

AT&T Suggested Language: (Company Name) may withdraw an outstanding estimate of charges to perform Make-Ready Work beginning 14 days after presentation of the estimate to Attaching Party. If Attaching Party does not pay the estimate of charges within 45 calendar days after presentation, (Company Name) reserves the right to cancel the Application.

RECC Response:

It is the intention of the RECCs to ensure the pole attachment process remains in motion and that estimates for work to be performed do not become stale with the passage of time. This is particularly true with rapidly increasing inflation and quickly changing markets for materials. To avoid the burden of formally withdrawing estimates and the risks attendant to failing to do so, the RECCs have proposed an automatic withdraw framework entirely consistent with the relevant regulation. See 807 KAR 5:015, Section 4(3) ("A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.").

AT&T OBJECTION 5. ***Guying and Anchoring*****.**

AT&T Narrative: The requirement in the tariffs that states that, "Any guying and anchoring required to accommodate the Attachments of the Licensee shall be provided by and at the full expense of the licensee and to the reasonable satisfaction of the Cooperative." [S]hould preclude any rates for guys an[d] anchors in the tariffs.

AT&T Suggested Language: There should be no guy or anchor charges included in any tariff that requires the attacher to place them at their own cost or it should be made clear that no such charges will apply to Licensee-provided guys and anchors.

RECC Response:

The Commission has made clear that this proceeding is about terms and conditions, not rates. The RECCs have worked diligently throughout the process to comply with this intent. For this reason, the RECCs proposed no changes to their rates in this tariff revision, and they have attempted to comply with the rate formulas and rules previously established by the Commission. Charges for guys and anchors, including for shared anchors, are not new, and they reflect the fact that basically every "hole" in a pole impacts that infrastructure and imposes a cost. Regardless, AT&T is not subject to the rates in either the proposed tariff or the previous CATV tariff, so its comments here are not relevant.

AT&T OBJECTION 6. ***Inventory*****.**

AT&T Narrative:

1. Inventories for suspected safety violations should be allowed by the pole owner at any time they choose, but those safety inspections should not be charged to the attachers, especially if there are no safety violations found by that particular attacher.

2. The term, "foreign-owned pole" needs to be defined.

3. Attachers should not be charged for inventories on poles that are not owned by the pole owner and the language appears to allow that.

4. The time frame for corrections is too short. Thirty-days to receive, process, and actively correct issues, some of which may be complex, is unreasonable.

5. The penalties are excessive, rigid, and there is no dispute resolution process.

AT&T Suggestions/Suggested Language:

1. Only attachers that have safety violations should be charged for a pole safety violation inventory implemented by a "reasonable suspicion that safety violations exist" by the pole owner.

    a. Suggested Language: With the exception of any state law or regulation providing otherwise, if Attaching Party's facilities are found to be in compliance with this Agreement, Attaching Party will not incur any charges for the Routine or Spot Inspection. However, (Company Name) determines Attaching Party's facilities are not in compliance with this Agreement, (Company Name) may charge Attaching Party for the cost of the Routine Inspection, as applicable to the particular item of Structure with the noncompliant attachment.

2. Define "foreign-owned pole".

3. Inventory costs should not be imposed by the pole owner for inventorying poles that they do not own.

4. Attaching Party must bring its noncompliant facilities into compliance within 90 days of the Notice of Noncompliance when no Make-Ready Work is required. If any Make-Ready Work or modification work to (Company Name) Structure is required to bring Attaching Party's facilities into compliance, Attaching Party must provide notice to (Company Name), and the Make-Ready Work or modification will be treated in the same fashion as Make-Ready Work or modifications for a new request for attachment. In any event, if the violation creates a hazardous condition, Attaching Party must bring facilities into compliance upon notification. Attaching Party must notify (Company Name) when the facilities have been brought into compliance.

5. Suggested Language: If Attaching Party fails to bring the facilities into compliance within 90 days, or provide (COMPANY NAME) with proof sufficient to persuade (COMPANY NAME) that (COMPANY NAME) erred in asserting that the facilities were not in compliance, (COMPANY NAME) may, at its option and Attaching Party's expense, take such non-service affecting steps as may be required to bring Attaching Party's facilities into compliance, including but not limited to correcting any conditions which do not meet the specifications of this Agreement. If Attaching Party fails to bring its facilities into compliance with the Occupancy Permit and/or the standards set forth in this Agreement, it will be deemed a Continuing Violation.

   If (COMPANY NAME) elects to bring Attaching Party's facilities into compliance, the provisions of this Section apply.

   (COMPANY NAME) will, whenever practicable, notify Attaching Party in writing before performing such work. The written notice will describe the nature of the work (COMPANY NAME) will perform and the schedule for performing the work.

   If Attaching Party's facilities have become detached or partially detached from supporting racks or wall supports located within an (COMPANY NAME) Manhole, (COMPANY NAME) may, at Attaching Party's expense, reattach them but has no obligation to do so.

   (COMPANY NAME) will, as soon as practicable after performing the work, advise Attaching Party in writing of the work performed or action taken. Upon receiving such notice, Attaching Party may inspect the facilities and take such steps as Attaching Party may deem necessary to ensure that the facilities meet Attaching Party's performance requirements.

   Attaching Party to Bear Expenses. Attaching Party will bear all expenses arising out of or in connection with any work performed to bring Attaching Party's facilities into compliance with this Section; provided, however that nothing contained in this Section or any Occupancy Permit issued hereunder requires Attaching Party to bear any expenses which, under applicable federal or state laws or regulations, must be borne by persons or entities other than Attaching Party.

RECC Response:

NESC violations and unsafe practices are unacceptable and a danger to the public. As pole owners, RECCs are responsible to the public for the safety and reliability of their poles and must be provided with effective tools to ensure public safety. As a joint user, AT&T is also a pole

owner and is free to set the rules that govern reasonable safety practices and processes on it poles, but there is no reason why AT&T should be entitled to set safety rules on RECC poles.

With regard to the substance of AT&T's assertions, the cooperative tariff states plainly that the cooperative must have "reasonable cause to believe code violations or unsafe conditions (or other violations of ARTICLE III) exist on its system," "that Cooperative may not more than once every five (5) years perform a periodic safety inspection of Cooperative's Poles" and that "[a]t least three (3) months prior to any such safety inspection, Cooperative shall provide notice of the safety inspection to the Licensee." These provisions are specifically designed to ensure that safety inspections are not undertaken frivolously or at undue expense or burden to attaching entities.

AT&T OBJECTION 7. *Unauthorized Attachment Fee*.

AT&T Narrative: Unauthorized attachment fee of 5X annual cost for attachment. These punitive penalties have increased significantly.

AT&T Suggested Language:

Notice to Attaching Party. If (Company Name) finds any of Attaching Party's facilities, attached to (Company Name) Structure, for which no Occupancy Permit is presently in effect, (Company Name), without prejudice to other rights or remedies available to (Company Name) under this Agreement, and without prejudice to any rights or remedies which may exist independent of this Agreement, will send written notice to Attaching Party advising that no Occupancy Permit is presently in effect with respect to the facilities, and Attaching Party must, within 30 days, respond in writing to the notice.

Attaching Party's Response. Within 30 days after receiving a notice, Attaching Party must acknowledge receipt of the notice and: (a) submit to (Company Name) an existing Occupancy Permit covering the alleged unauthorized attachments; (b) if an Occupancy Permit does not exist, submit an Application; or (c) notify (Company Name) in writing that the unauthorized attachment does not belong to Attaching Party.

Charges for Unauthorized Attachments. Attachment fees continue to accrue until Attaching Party removes the unauthorized facilities from (Company Name) Structure. In addition, Attaching Party will: (a) be liable for an unauthorized attachment fee as specified elsewhere this Agreement; (b) rearrange or remove its unauthorized facilities at (Company Name) request to comply with applicable placement standards; (c) remove its facilities from any space occupied by or assigned to (Company Name) or Other User; and (d) pay (Company Name) for all costs (Company Name) incurred in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of attaching Party's unauthorized facilities.

RECC Response:

The RECCs desire to avoid unauthorized attachments, and for good reason. In addition to unauthorized attachments constituting conversion (basically, theft) of cooperative infrastructure, unauthorized attachments are also unfair to other attachers and fundamentally dangerous. As pole owners, RECCs are responsible for the safety and reliability of their poles and must have tools to enforce their rules, both to ensure proper cost recovery and to incentivize and ensure compliance with technical requirements and specifications applicable to attachments. It should also be noted

that unauthorized attachments, upon discovery, require investigation and efforts to resolve, again increasing costs to the RECCs which may otherwise be unrecovered.

Finally, and again because AT&T is a joint user and not a "new attacher" to be served under the proposed tariff, its view as to whether the relevant fee is too high is simply not germane. An unauthorized attachment fee of 5x is reasonable and consistent with common industry standards, as even the Federal Communications Commission has acknowledged. *See, e.g.*, 17 FCC Rcd 6268, 2002 FCC LEXIS 1589 (F.C.C. March 28, 2002) ("[The Bureau Order] concluded that a reasonable fee for unauthorized attachments in this case will equal five times the annual pole attachment fee per pole per unauthorized attachment plus interest. This amount comported with information submitted by Complainant concerning industry practice as well as with the Bureau's own experience with unauthorized attachment fees.").

AT&T OBJECTION 8. ***Certification of Licensee's design*****.**

AT&T Narrative: Will now require licensee's application permit to be signed and sealed by a professional engineer, registered in the state of Kentucky including pole loading by a professional engineer.

Requiring a P.E to stamp and seal arial design is complete Overkill. All attachments including drops, overlashing, mid-span taps would require a P.E to perform pole loading, stamp and seal every design. Current local practice does not require P.E pole loading or P.E engineering design for any aerial applications. This requirement will add significant costs and slow or possibly stop fiber deployment.

Licensee's Attachment Permit application must be signed and sealed by a professional engineer, registered in the State of Kentucky, certifying that Licensee's aerial cable design fully complies with the NESC and Cooperative's Construction Standards and any other applicable federal, state or local codes and/or requirements, or Licensee will pay Cooperative for actual costs for necessary engineering and post-construction inspection and to ensure Licensee's design fully complies with the NESC and Electric Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.

This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of Cooperative's facilities and other Attaching Entities' facilities that exist on the poles without regard to the condition of the existing facilities.

AT&T Suggested Language: Licensee's Attachment Permit design application must fully comply with the NESC and Cooperative's Construction Standards and any other applicable federal, state or local codes and/or requirements, or Licensee will pay Cooperative for actual costs for necessary engineering and post-construction inspection and to ensure Licensee's design fully complies with the NESC and Electric Utility's Construction Standards and any other applicable federal, state or local codes and/or requirements.

This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of Cooperative's facilities and other Attaching Entities' facilities that exist on the poles without regard to the condition of the existing facilities.

RECC Response:

See RECC Response to KBCA Objection 1, *supra*. To be certain, most of the not-for-profit cooperatives do not have the in-house resources to timely perform or administer engineering for all intended attachers. This is particularly true considering the scope of applications expected as a result of rural broadband expansion, as well as the new timelines in which the relevant regulation

requires RECCs to act in connection with applications for attachment. AT&T seeks to shift further burdens to the RECCs and fundamentally alter the applicable framework to one of reaction rather than careful planning. The RECCs appropriately consider their poles—which are, of course, cooperative property—to be absolutely vital to the continued provision of safe, reliable and affordable electric service, and for this reason believe a cautious approach is best for their member-owners. Fundamentally, AT&T has not demonstrated, and cannot demonstrate, that requiring engineering and a professional approach to pole attachments is unreasonable.

AT&T OBJECTION 9. *Overlashing*.

AT&T Narrative: Will now require pole loading by a professional engineer licensed in the state of Kentucky.

Currently local operations does not require pole loading by a professional engineer. Requiring pole loading by a professional engineer will add significant costs and will slow or possibly stop fiber deployment.

Any person or entity seeking to over lash existing facilities attached to Cooperative's Poles shall provide advance written notice to the Cooperative describing the proposed activity along with submission of the complete information required under APPENDIX A, including a pole-loading analysis certified by a professional engineer licensed in Kentucky, in the method and form reasonably required by Cooperative

AT&T Suggested Language: Any person or entity seeking to over lash existing facilities attached to Cooperative's Poles shall provide advance written notice to the Cooperative describing the proposed activity along with submission of the complete information required including a pole-loading analysis in the method and form reasonably required by Cooperative.

RECC Response:

See RECC Response to KBCA Objection 1, AT&T Objection 8, *supra*. To be clear, AT&T's assertion that "[c]urrently[,] local operations does [*sic*] not require pole loading by a professional engineer" is disingenuous at best. At present, many RECCs do not permit overlashing at all (or have not historically received requests/notice from attachers), facts which underscore the significant operational changes being implemented by the RECCs as a result of the relevant regulation. Again, overlashing presents significant risk to cooperative infrastructure essential to the provision of electric service, and appropriate care should be taken on the front-end to avoid undesirable—possibly calamitous—outcomes resulting from overburdened poles.

AT&T OBJECTION 10. ***Mid-span Taps*****.**

AT&T Narrative: All Mid span taps will now have the same requirements of a new attachments.

Mid-Span Taps are now being treated the same as new attachments. This will require professional engineering and pole loading performed by a professional engineer. Mid-span taps could include drops to feed customers.

This is design overkill and will add significant costs and slow or possibly stop fiber deployment.

AT&T Suggested Language: All strand cross-over taps should be subject to the same installation and maintenance requirements as an attachments under this Tariff and should not require professional engineering evaluation.

RECC Response:

See RECC Response to KBCA Objection 1, AT&T Objection 8 and 9, *supra*. In brief, cooperatives are justifiably concerned that allowing third-party overlashing will incentivize mid-span taps directly to another pole not directly connected to the existing wireline. This will change the load on all three poles involved. Requiring engineering be done for the desired work will ensure that poles do not experience overloading. Again, the RECCs do not believe that safety and reliability should be sacrificed to promote the economic objectives of third parties like AT&T.

This 14th day of April, 2022.

Respectfully submitted,

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Counsel to the RECCs

Certification

I hereby certify that a copy of the foregoing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Edward T. Depp
Counsel to the RECCs

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