

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC INVESTIGATION OF) Case No.
POLE ATTACHMENTS) 2023-00416

**RESPONSE OF CTIA TO COMPANIES’
PROPOSED REVISIONS TO 807 KAR 5:015E**

As requested by Kentucky Public Service Commission (“Commission”) Staff at the December 13, 2024 informal conference in this proceeding, CTIA¹ submits the following comments in response to proposals submitted in this proceeding on December 9, 2024 regarding further revisions to the Commission’s emergency pole attachment regulation.

CTIA appreciates the Commission’s steps towards meeting the legislative mandate of Senate Joint Resolution 175 to create regulation “tailored to advance the buildout of broadband service to unserved or underserved areas.”² The emergency regulation in 807 KAR 5:015E, adopted by the Commission in 2024, represents progress towards removing barriers to broadband deployment. At the time, the Commission noted it “anticipates that further amendments to this regulation will be necessary upon observing the effects of the emergency regulation and what future amendments will be necessary to accomplish the goals enumerated in Senate Joint

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless providers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. CTIA represents a broad diversity of stakeholders, and the specific positions outlined in these comments may not reflect the views of all individual members. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² 2024 KY S.J.R. 175, 2024 Regular Session.

Resolution 175.”³ The Commission has continued to take a pro-active approach towards accelerating broadband deployment by bringing stakeholders together for a series of informal conferences throughout 2024, where CTIA has been a participant on behalf of the wireless industry.

As requested by the Commission, a number of stakeholders have submitted comments and suggested redlines to the emergency regulation. Among those, CTIA is concerned about some of the proposed language from Louisville Gas & Electric Company, Kentucky Utilities Company, and Kentucky Power Company (the “Companies”). In particular, the Companies’ proposal for “enhanced” one-touch make-ready (“OTMR”), raises several concerns with its elimination of the tested and proven “simple” vs. “complex” dichotomy for OTMR eligibility. The Companies’ proposal, which would require new attachers to move existing attachments within the communications space even at the risk of damage or service outage, seems more likely to create delays and liability concerns than accelerate broadband deployment. Further, the Companies’ proposals to allow the emergency regulation to expire or roll back many of the provisions relating to pole owner “shot clocks” for orders up to 3,000 poles would undermine positive steps taken by the Commission to reduce delays, as mandated by the Legislature.

Rather than overhaul or completely repeal the emergency regulation, as the Companies’ proposals would do, the Commission should instead build off of it, looking to make targeted improvements to further streamline the pole attachment process in Kentucky and accelerate the pace of broadband deployment by reducing potential delays.

³ “Statement of Emergency, 807 KAR 5:015E” (May 31, 2024).

I. THE COMMISSION SHOULD NOT ADOPT THE COMPANIES' PROPOSAL FOR "ENHANCED" OTMR

Many of the Companies' proposed redlines to the emergency regulation work in concert towards a proposal they refer to as "enhanced" OTMR. Its most important distinctions from "traditional" OTMR (as implemented by the Federal Communications Commission ("FCC"), the Commission, and by a number of state commissions across the country) are that the Companies' proposal would eliminate the distinction between "simple" and "complex" make-ready and would require all new attachers to complete *all* communications space make-ready, regardless of who owns the facilities – essentially making the "enhanced" OTMR process mandatory, rather than optional, as the current OTMR process is.⁴ The Commission should not adopt the Companies' proposal for "enhanced" OTMR. Instead, it should maintain the attacher option for OTMR for simple make-ready as found in the emergency regulation and implemented by the FCC.

The "simple" vs. "complex" distinction for make-ready is an important one for protecting sensitive equipment in the communications space. As defined in the FCC's rules, "complex" make-ready means

*"transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex."*⁵

⁴ Comments in Support of the Companies' Proposed Revisions to 807 KAR 5:015E (Dec. 9, 2024) ("Companies' Comments"), at p. 3.

⁵ 47 C.F.R. §1.1402(p) (emphasis added).

A similar definition is incorporated within the Commission’s emergency regulation as well.⁶

Importantly, “complex” make-ready, both under the FCC’s definition and the Commission’s emergency regulation, includes any work with wireless facilities. This is due to the relative complexity and sensitivity of wireless attachments as compared to other types of pole attachments, and the reasonable likelihood of causing damage or service outages unless work on wireless equipment is conducted by personnel with appropriate training and expertise. The FCC reached the determination to designate all work involving wireless attachments as complex after compiling and considering a fulsome record on the topic. As noted by the FCC:

There is substantial support from commenters in the record for not using OTMR for complex make-ready work at this time. We agree that we should exclude these more challenging attachments from OTMR at this time to minimize the likelihood and impact of service disruption. In particular, cutting or splicing of existing wires on a pole has the heightened potential to result in a network outage. *We also recognize that wireless attachments involve unique physical and safety complications that existing attachers must consider (e.g., wireless configurations cover multiple areas on a pole, considerably more equipment is involved, RF impacts must be analyzed), thus increasing the challenges of using an accelerated, single-party process at this time.*⁷

The Companies’ proposal, which would eliminate the distinction between “simple” and “complex” make-ready, would implicate the safety and technical issues identified by the FCC, creating significant safety concerns and increasing the likelihood of both power and wireless

⁶ 807 KAR 5:015E, §1(4) (““Complex make-ready” means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.”)

⁷ *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Third Report and Order and Declaratory Ruling, FCC 18-111 (Aug. 2, 2018) (“FCC OTMR Order”) at para. 19 (emphasis added).

network outages. To the best of CTIA’s knowledge, no reverse-preemption state has adopted a similar model for OTMR that eliminates the “simple” vs. “complex” distinction.

The Companies’ proposal also implicates several issues with regard to third-party contractors. Because outside contractors do not currently conduct OTMR for complex make-ready, it is difficult to determine if there will be enough qualified contractors available to keep up with the greatly increased demand this proposal would create. As cited by states’ filings, including Kentucky’s, with regard to the BEAD program, a lack of qualified workforce is already a concern⁸ – one that is only likely to become worse due to the significant amount of upcoming BEAD deployment expected. Moreover, the possibility of third parties moving sensitive plant would create a number of liability concerns that are not present under the current system, where attachers move their own complex plant. And there are also concerns with the fact that it is the utilities, not the attachers, setting the minimum qualifications for the workers that would be moving their attachments. Under the Companies’ proposal, there are a set of qualifications identified for contractors, but these do not include particular experience with wireless equipment, and the ultimate determination of whether a contractor is qualified or not belongs solely to the utilities.

These contractor issues are another reason why OTMR has traditionally been limited to simple make-ready. Complex make-ready requires contractors to understand how to rearrange plant in a way that will not damage the equipment, create interference issues, or cause power or

⁸ See, e.g. Commonwealth of Kentucky, “Five-Year Action Plan: Broadband Equity, Access and Deployment Program (BEAD)” (August 2023), available at <https://broadband.ky.gov/resources/Documents/KY%20BEAD%205-Year%20Action%20Plan.pdf> at pp. 21-22 (“Workforce availability could have an impact on the speed and cost of broadband deployment [...] the workforce development barrier that Kentucky will face is related to the availability of workers.”) As part of its BEAD preparation, Kentucky is implementing a “cohesive, statewide workforce development program to help meet the workforce needs of the BEAD program.” See Commonwealth of Kentucky, “Kentucky BEAD Initial Proposal, Volume 2” (May 17, 2024), available at <https://broadband.ky.gov/Documents/Intake%20Summary-Volume%202-05-17-2024.pdf> at Section 02.06.01.

network outages, among other considerations. The most qualified entities to move these types of attachments are the specific attachers who own and installed the plant.

These problems would, of course, all be exacerbated by the proposal that the new OTMR process be mandatory. And damage to existing poles and attachments that might be caused by contractors attempting to implement OTMR for complex plant would not just delay future broadband deployment, but potentially imperil current deployments - and power and telecommunications service to customers - as well.

OTMR, if implemented properly, represents a valuable option available to accelerate broadband deployment. The Commission should retain the option for OTMR for simple make-ready in the amended regulation. However, the Commission should not adopt the Companies' proposal for "enhanced" OTMR.

II. THE COMMISSION SHOULD NOT ELIMINATE MAKE-READY DEADLINES FOUND IN THE EMERGENCY REGULATION

Beyond the Companies' proposal for "enhanced" OTMR, the Companies' proposals include many areas where they suggest the Commission roll back or eliminate "shot clock" timelines for application review, survey, and make-ready for larger orders found in the emergency regulation. In fact, the Companies' base position advocates for eliminating the emergency regulation altogether,⁹ which would eliminate these additional protections for *all* orders.

CTIA disagrees with the Companies' position. "Shot clock" timelines are important guardrails to ensure that pole owners meet their obligations to accommodate attachers in a timely manner. They represent the upper bound of a reasonable timeframe for pole owners to process

⁹ Companies' Comments at 1 ("The Commission should allow the emergency regulation to expire on February 25, 2025, without further amendment.")

applications and conduct survey and make-ready, and are designed to capture only actual pole owner delays as opposed to delays on the part of attachers. When initially formulating the timelines, the FCC noted that pole owner delays represented one of the most significant impediments to timely broadband deployment.¹⁰ Those initial steps proved successful enough that the FCC subsequently shortened those timelines,¹¹ finding that “adoption of a shorter make-ready period in the communications space will promote the efficient completion of make-ready by encouraging utilities and existing attachers to prioritize attachment work.”¹² Not only are pole owners held to these timelines in the many states where the FCC maintains authority over pole attachments, but several reverse-preemption states have also adopted identical or similar timelines as a step to remove barriers to broadband deployment.¹³

The Commission’s “shot clock” deadlines serve only to accelerate deployment, helping ensure that there are not unnecessarily long delays in siting, as opposed to the Companies’ “enhanced” OTMR proposal, which presents a number of issues that could delay rather than expedite deployment (as discussed previously). Given the success of the “shot clock” timelines in reducing delays nationwide, the Commission is correct to apply them as broadly as possible, while allowing good faith negotiations in cases where the order is truly so large as to render the timelines unreasonable.

¹⁰ See *In re Implementation of Section 224 of the Act, A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, FCC 11-50 (Apr. 7, 2011) at para. 3.

¹¹ See FCC OTMR Order at para. 84.

¹² *Id.* at para. 85.

¹³ See, e.g., New York Public Service Commission, Case 03-M-0432, *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments (Aug. 6, 2004) (requiring pole owners to complete make-ready within 45 days of payment); W.V. Code §31G-4-4 (b) (adopting the FCC’s rates, terms and conditions for pole access and attachment in West Virginia); Vermont Public Utility Commission Rule 3.708(D) (requiring pole owners to complete make-ready within 60 days of payment for small orders and 105 days for large orders).

Although the Companies contend that more deployments should be steered to the special contract model – *i.e.* exempt from make-ready timelines – the Commission’s emergency regulation is largely more lenient than the FCC standard that governs many other states, including neighboring Tennessee. While the FCC has a 30-day shot clock for completion of make-ready work for smaller orders and 75 days for larger ones in the communications space, the Commission’s emergency regulation sets these deadlines at 45 and 105 days, respectively. (The Commission matches the FCC’s 90 day and 135 day timelines for work above the communications space.) The FCC considers a “large order” greater than 300 poles (or 0.5 percent of a utility’s poles in a state) up to 3000 poles (or 5 percent of a utility’s poles in a state), only applying the good faith negotiation standard to orders larger than 3000 poles or 5% of a utility’s poles in a state.¹⁴ The Commission’s emergency regulation, while considering small orders as less than 500 poles or 0.75% of a utility’s poles in Kentucky, considers large orders the lesser of 3,000 poles or 3% of a utility’s poles in Kentucky. (Both the FCC and the Commission require negotiation for orders above 3,000 poles.) But the Commission’s emergency regulation also allows for orders between 500-3,000 poles to receive “bonus” time for survey and make-ready for each 500 pole increment. So an order within the communications space for 2,500 poles would have a 75 day time limit for make-ready under the FCC’s rules, but 165 days under the Commission’s emergency regulation – more than double the time.

This suggests both the Commission’s timelines and its threshold for good faith negotiation are more than reasonable. Accordingly, the Commission should not eliminate “shot clock” deadlines for larger orders. Rather, it should continue to monitor the impact of its regulations while maintaining reasonable upper boundaries for owner compliance to minimize

¹⁴ See 47 C.F.R. §1.1411 (g)(1), (4).

CERTIFICATION

I hereby certify that on December 27, 2024, a copy of this filing 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/
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