

1 STATEMENT OF EMERGENCY

2 807 KAR 5:015E

3 This emergency administrative regulation amendment is being promulgated to meet
4 an imminent deadline for promulgation of amendments to regulations established by the
5 General Assembly during the 2024 Regular Session in Senate Joint Resolution 175. The
6 Resolution states that access to broadband internet service in rural areas of the
7 Commonwealth places unserved and underserved citizens at a disadvantage and
8 recounts that funds from the Broadband Equity, Access, and Deployment (BEAD)
9 Program and the Rural Digital Opportunity Fund (RDOF) that will be used to assist in
10 deploying broadband internet service to unserved and underserved areas. The
11 Resolution states that the deployment of broadband internet access will require attaching
12 to utility poles.

13 The Resolution directs the Commission to promulgate emergency regulations on pole
14 attachments not later than 60 days after the effective date of the Resolution. The
15 Resolution was signed by the Governor on April 4, 2024, and enrolled with the Secretary
16 of State the same day.

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18 _____
19 Andy Beshear, Governor

20 _____
21 Kent A. Chandler, Chairman

1 ENERGY AND ENVIRONMENT CABINET

2 Public Service Commission

3 (Emergency Amendment)

4 807 KAR 5:015E. Access and attachments to utility poles and facilities.

5 RELATES TO: KRS Chapter 278, 47 U.S.C. Section 224(c)

6 STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.5464

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the

8 commission to promulgate administrative regulations to implement the provisions of KRS

9 Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction

10 over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to

11 demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires

12 every utility to furnish adequate, efficient, and reasonable service. KRS 278.5464 requires

13 the commission to promulgate administrative regulations regarding pole attachments

14 under its jurisdiction, including those necessary for the provision of broadband. 47

15 U.S.C.A. 224(c) requires that state regulation of pole attachments shall only preempt

16 federal regulation of poles under federal jurisdiction if the state regulates the rates, terms,

17 and conditions of access to those poles, has the authority to consider and does consider

18 the interest of the customers of attachers and the pole owning utilities, has effective rules

19 and administrative regulations governing attachments, and addresses complaints

20 regarding pole attachments within 360 days. This administrative regulation establishes

21 the process by which the commission regulates the rates, terms, and conditions of utility

1 pole attachments and access to other utility facilities, establishes specific criteria and
2 procedures for obtaining access to utility poles within the commission's jurisdiction, and
3 establishes a process by which the complaints of those seeking to access utility facilities
4 shall be addressed within the period established by federal law. 2024 KY S.J.R. 175,
5 2024 Regular Session requires the Commission to promulgate emergency regulations
6 addressing issues pertaining to broadband attachments to utility poles.

7 Section 1. Definitions.

8 (1) "Attachment" means any attachment by a cable television system operator,
9 telecommunications carrier, broadband internet provider, or governmental unit to a pole
10 owned or controlled by a utility.

11 (2) "Broadband internet provider":

12 (a) Means a person who owns, controls, operates, or manages any facility used or to be
13 used to offer internet service to the public with download speeds of at least twenty-five
14 (25) megabits per second and upload speeds of at least three (3) megabits per second;
15 and

16 (b) Does not mean a utility with an applicable joint use agreement with the utility that
17 owns or controls the poles to which it is seeking to attach.

18 (3) "Communications space" means the lower usable space on a utility pole, which is
19 typically reserved for low-voltage communications equipment.

20 (4) "Complex make-ready" means any make-ready that is not simple make-ready, such
21 as the replacement of a utility pole; splicing of any communication attachment or
22 relocation of existing wireless attachments, even within the communications space; and
23 any transfers or work relating to the attachment of wireless facilities.

1 (5) "Existing attacher" means any person or entity with equipment lawfully on a utility
2 pole.

3 (6) "Governmental unit" means an agency or department of the federal government; a
4 department, agency, or other unit of the Commonwealth of Kentucky; or a county or city,
5 special district, or other political subdivision of the Commonwealth of Kentucky.

6 (7) "Macro cell facility" means a wireless communications system site that is typically
7 high-power and high-sited, and capable of covering a large physical area, as
8 distinguished from a distributed antenna system, small cell, or WiFi attachment, for
9 example.

10 (8) "Make-ready" means the modification or replacement of a utility pole, or of the lines
11 or equipment on the utility pole, to accommodate additional facilities on the utility pole.

12 (9) "New attacher" means a cable television system operator, telecommunications
13 carrier, broadband internet provider, or governmental unit requesting to attach new or
14 upgraded facilities to a pole owned or controlled by a utility, except that a new attacher
15 does not include a utility with an applicable joint use agreement with the utility that owns
16 or controls the pole to which it is seeking to attach or a person seeking to attach macro
17 cell facilities.

18 (10) "Red tagged pole" means a pole that a utility that owns or controls the pole that:

19 (a) Is designated for replacement based on the pole's non-compliance with an
20 applicable safety standard;

21 (b) Is designated for replacement within two (2) years of the date of its actual
22 replacement for any reason unrelated to a new attacher's request for attachment; or

1 (c) Would have needed to be replaced at the time of replacement even if the new
2 attachment were not made.

3 (11) "Telecommunications carrier":

4 (a) Means a person who owns, controls, operates, or manages any facility used or to be
5 used for or in connection with the transmission or conveyance over wire, in air, or
6 otherwise, any message by telephone or telegraph for the public, for compensation; and

7 (b) Does not mean a utility with an applicable joint use agreement with the utility that
8 owns or controls the poles to which it is seeking to attach.

9 (12) "Simple make-ready" means make-ready in which existing attachments in the
10 communications space of a pole could be rearranged without any reasonable
11 expectation of a service outage or facility damage and does not require splicing of any
12 existing communication attachment or relocation of an existing wireless attachment.

13 Section 2. Duty to Provide Access to Utility Poles and Facilities.

14 (1) Except as established in paragraphs (a) through (c) of this subsection, a utility shall
15 provide any cable television system operator, telecommunications carrier, broadband
16 internet provider, or governmental unit nondiscriminatory access to any pole, duct,
17 conduit, or right-of-way owned or controlled by it.

18 (a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-
19 discriminatory basis if there is insufficient capacity or for reasons of safety, reliability, or
20 generally applicable engineering purposes.

21 (b) A utility shall not be required to provide access to any pole that is used primarily to
22 support outdoor lighting.

1 (c) A utility shall not be required to secure any right-of-way, easement, license,
2 franchise, or permit required for the construction or maintenance of attachments or
3 facilities from a third party for or on behalf of a person or entity requesting access
4 pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way
5 owned or controlled by the utility.

6 (2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be
7 submitted to a utility in writing, either on paper or electronically, as established by a
8 utility's tariff or a special contract between the utility and person requesting access.

9 (3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to
10 an agreement that establishes rates, terms, or conditions for access not contained in its
11 tariff:

12 (a) The rates, terms, and conditions of the agreement shall be in writing; and

13 (b) The utility shall file the written agreement with the commission pursuant to 807 KAR
14 5:011, Section 13.

15 Section 3. Pole Attachment Tariff Required.

16 (1) A utility that owns or controls utility poles located in Kentucky shall maintain on file
17 with the commission a tariff that includes rates, terms, and conditions governing pole
18 attachments in Kentucky that are consistent with the requirements of this administrative
19 regulation and KRS Chapter 278.

20 (2) The tariff may incorporate a standard contract or license for attachments if its terms
21 and conditions are consistent with the requirements of this administrative regulation and
22 KRS Chapter 278.

1 (3) Standard contracts or licenses for attachments permitted by subsection (2) of this
2 section shall prominently indicate that the contracts or licenses are based wholly on the
3 utility's tariff and that the tariff shall control if there is a difference.

4 (4) The tariff may include terms, subject to approval by the commission, that are fair,
5 just, and reasonable and consistent with the requirements of this administrative
6 regulation and KRS Chapter 278, such as certain limitations on liability, indemnification
7 and insurance requirements, and restrictions on access to utility poles for reasons of
8 lack of capacity, safety, reliability, or generally applicable engineering standards.

9 (5) The tariff shall include the URL for a utility-maintained website that includes:

10 (a) A certificate form that a new attacher will submit to the utility that the application
11 satisfies the utility's requirements, pole attachment tariff, and applicable law. The form
12 shall require attacher to designate an attachment manager generally responsible for
13 overseeing all attachments with the utility, as well as an application contact associated
14 with each application, who shall be responsible for coordinating with the utility and
15 ensuring that attachment-related issues are addressed in a timely manner;

16 (b) Pole attachment information including the identity and contact information for
17 contractors approved to conduct surveys and make-ready self-help; and

18 (c) Construction standards for attachments.

19 ~~(6)~~ Overlashing.

20 (a) A utility shall not require prior approval for:

- 21 1. An existing attacher that overlashes its existing wires on a pole; or
22 2. A third party overlashing of an existing attachment that is conducted with the
23 permission of an existing attacher.

1 (b)

2 1. A utility shall not prevent an attacher from overlashing because another existing
3 attacher has not fixed a preexisting violation.

4 2. A utility shall not require an existing attacher that overlashes its existing wires on a
5 pole to fix preexisting violations caused by another existing attacher, unless failing to fix
6 the preexisting violation would create a capacity, safety, reliability, or engineering issue.

7 (c)

8 1. A utility shall not require more than thirty (30) days' advance notice of planned
9 overlashing.

10 2. If a utility requires advance notice for overlashing, then the utility shall include the
11 notice requirement in its tariff or include the notice requirement in the attachment
12 agreement with the existing attacher.

13 3. If, after receiving advance notice, the utility determines that an overlash would create
14 a capacity, safety, reliability, or engineering issue, it shall provide specific
15 documentation of the issue to the party seeking to overlash within the thirty (30) day
16 advance notice period and the party seeking to overlash shall address any identified
17 issues before continuing with the overlash either by modifying its proposal or by
18 explaining why, in the party's view, a modification is unnecessary.

19 (d)

20 1. A party that engages in overlashing shall be responsible for its own equipment and
21 shall ensure that it complies with reasonable safety, reliability, and engineering
22 practices.

1 2. If damage to a pole or other existing attachment results from overlashing or
2 overlashing work causes safety or engineering standard violations, then the overlashing
3 party shall be responsible at its expense for any necessary repairs.

4 (e) An overlashing party shall notify the affected utility within fifteen (15) days of
5 completion of the overlash on a particular pole.

6 1. The notice shall provide the affected utility at least ninety (90) days from receipt in
7 which to inspect the overlash.

8 2. The utility shall have fourteen (14) days after completion of its inspection to notify the
9 overlashing party of any damage or code violations to its equipment caused by the
10 overlash.

11 3. If the utility discovers damage or code violations caused by the overlash on
12 equipment belonging to the utility, then the utility shall inform the overlashing party and
13 provide adequate documentation of the damage or code violations.

14 4. The utility shall either:

15 a. Complete any necessary remedial work and bill the overlashing party for the
16 reasonable costs related to fixing the damage or code violations; or

17 b. Require the overlashing party to fix the damage or code violations at its expense
18 within fourteen (14) days following notice from the utility.

19 ~~(7)(6)~~ Signed standard contracts or licenses for attachments allowed by subsection (2)
20 of this section shall be submitted to the commission but shall not be filed pursuant to
21 807 KAR 5:011, Section 13.

1 (7) Tariffs conforming to the requirements of this administrative regulation and with a
2 proposed effective date no later than August [March] 31, 2024 [2022], shall be filed by
3 July 31 [February 28], 2024 [2022].

4 Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

5 (1) All time limits established in this section shall be calculated according to 807 KAR
6 5:001, Section 4(7).

7 (2) Application review and survey.

8 (a) Application completeness.

9 1. Prior to submitting a pole attachment application to a utility, a new attacher shall
10 review the application for completeness and certify in writing, in the certification form
11 provided on the utility's website pursuant to Section 3(5) that the application satisfies
12 the utility's requirements, pole attachment tariff, and applicable law. The new attacher
13 shall submit the written certification with the pole attachment application. If the utility
14 uses an electronic system to manage pole attachments, this certification shall be
15 uploaded to the utility's designated system.

16 2[4]. A utility shall review a new attacher's pole attachment application for completeness
17 before reviewing the application on its merits and shall notify the new attacher within ten
18 (10) business days after receipt of the new attacher's pole attachment application if the
19 application is incomplete.

20 3[2]. A new attacher's pole attachment application shall be considered complete if the
21 application provides the utility with the information necessary under its procedures, as
22 established in the utility's applicable tariff or a special contract regarding pole

1 attachments between the utility and the new attacher, to begin to survey the affected
2 poles.
3 ~~4~~[3]. If the utility notifies a new attacher that its attachment application is not complete,
4 then the utility shall state all reasons for finding it incomplete.

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6
7 **5. If a utility rejects an application the rejection shall state the reason for the denial and**
8 **shall include specific citations to the regulation and the utility's tariff that form the basis**
9 **of the rejection.**

10 **6. A utility shall complete a review of an application of 500 poles or less within ten (10)**
11 **business days after receipt of the application. A utility shall have an additional two (2)**
12 **business days to complete its review for each 500-pole increment in an application. By**
13 ~~way of example, the completion review period for 501-1,000 poles shall be twelve (12)~~
14 ~~business days.~~

15
16 ~~7.~~ If the utility does not respond within **the time prescribed above** ~~ten (10) business~~
17 ~~days~~ after receipt of the application, or if the utility rejects the application as incomplete
18 but fails to state any reasons in the utility's response, then the application shall be
19 deemed complete **and accepted for filing.**

20 (b) Survey and application review on the merits.
21 1. A utility shall complete a survey of poles for which access has been requested within
22 forty-five (45) days of receipt of a complete application to attach facilities to its utility
23 poles (or within **one hundred twenty (120)** ~~sixty (60)~~ days in the case of larger orders

Deleted: 5[4]. A utility shall not require a new attacher to submit a survey as a filing requirement for an application.

Deleted: 6. A new attacher may submit a survey with application of 500 poles or less, which the utility shall accept if the new attached used an approved contractor listed on the utility's website and the survey was conducted no longer than forty-five (45) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

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Deleted: 9. A new attacher if it submits an application while a previous application is still under review may prioritize the order in which a utility shall review the applications. Prioritizing an application suspends the review time for a new attacher's other applications currently under review.

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1 as established in subsection (7) of this section) for the purpose of determining if the
2 attachments may be made and identifying any make-ready to be completed to allow for
3 the attachment.

4 2. Participation of attachers in surveys conducted by a utility.

5 a. A utility shall allow the new attacher and any existing attachers on the affected poles
6 to be present for any field inspection conducted as part of a utility's survey conducted
7 pursuant paragraph (b)1. of this subsection.

8 b. A utility shall use commercially reasonable efforts to provide the affected attachers
9 with advance notice of not less than five (5) business days of any field inspection as
10 part of the survey and shall provide the date, time, and location of the inspection, and
11 name of the contractor, if any, performing the inspection.

12 3. If a new attacher has conducted a survey pursuant to subsection (10)(b) of this
13 section, or a new attacher has otherwise conducted and provided a survey, after giving
14 existing attachers notice and an opportunity to participate in a manner consistent with
15 subsection (10)(b), a utility may elect to satisfy survey obligations established in this
16 paragraph by notifying affected attachers of the intent to use the survey conducted by
17 the new attacher and by providing a copy of the survey to the affected attachers within
18 the time period established in subparagraph 1. of this paragraph.

19 4. Based on the results of the applicable survey and other relevant information, a utility
20 shall respond to the new attacher either by granting access or denying access within
21 forty-five (45) days of receipt of a complete application to attach facilities to its utility
22 poles (or within one hundred twenty ~~sixty (60)~~ days in the case of larger orders as
23 described in subsection (7) of this section).

1 5. A utility's denial of a new attacher's pole attachment application shall be specific,
2 shall include all relevant evidence and information supporting the denial, and shall
3 explain how the evidence and information relate to a denial of access for reasons of
4 lack of capacity, safety, reliability, or engineering standards.

5 6. Payment of survey costs and estimates.

6 a. A utility's tariff may require prepayment of the costs of surveys made to review a pole
7 attachment application, or some other reasonable security or assurance of credit
8 worthiness before a utility shall be obligated to conduct surveys pursuant to this section.

9 b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per
10 pole estimate of costs in the utility's tariff and the payment of estimated costs shall
11 satisfy any requirement that survey costs be prepaid.

12 c. The new attacher shall be responsible for the costs of surveys made to review the
13 new attacher's pole attachment application even if the new attacher decides not to go
14 forward with the attachments.

15 (3) Payment of make-ready estimates.

16 (a) Within fourteen (14) days of providing a response granting access pursuant to
17 subsection (2)(b)4. of this section, a utility shall send a new attacher whose application
18 for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole
19 basis if requested and reasonably calculable, and consistent with subsection (6)(b) of
20 this section, of charges to perform all necessary make-ready.

21 (b) A utility shall provide documentation that is sufficient to determine the basis of all
22 estimated charges, including any projected material, labor, and other related costs that
23 form the basis of the estimate.

1 (c) A utility may withdraw an outstanding estimate of charges to perform make-ready
2 beginning fourteen (14) days after the estimate is presented.

3 (d) A new attacher may accept a valid estimate and make payment any time after
4 receipt of an estimate, except a new attacher shall not accept the estimate after the
5 estimate is withdrawn.

6 **(e) Payment for the estimate must clearly identify the application or project for which**
7 **payment is made.**

8 (4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's
9 tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as
10 soon as practical but in no case more than seven (7) days, notify all known entities with
11 existing attachments in writing that could be affected by the make-ready.

12 (a) For make-ready in the communications space, the notice shall:

13 1. State where and what make-ready will be performed;
14 2. State a date for completion of make-ready in the communications space that is no
15 later than **forty-five (45) [thirty (30)]** days after notification is sent **(or up to one hundred**

16 **forty-five (145) [seventy-five (75)]** days in the case of larger orders as established in
17 subsection (7) of this section);

18 3. State that any entity with an existing attachment may modify the attachment.

19 Modification shall be consistent with the specified make-ready before the date
20 established for completion;

21 4. State that, if make-ready is not completed by the completion date established by the
22 utility in subparagraph 2. of this paragraph, the new attacher may complete the make-

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1 ready, which shall be completed as specified pursuant to subparagraph 1. of this
2 paragraph; and

3 5. State the name, telephone number, and email address of a person to contact for
4 more information about the make-ready procedure.

5 (b) For make-ready above the communications space, the notice shall:

6 1. State where and what make-ready will be performed;

7 2. State a date for completion of make-ready that is no later than ninety (90) days after
8 notification is sent (or 190 days in the case of larger orders, as established in
9 subsection (7) of this section).

10 3. State that any entity with an existing attachment may modify the attachment.
11 Modification shall be consistent with the specified make-ready before the date
12 established for completion;

13 4. State that the utility may assert the utility's right to up to fifteen (15) additional days to
14 complete make-ready;

15 5. State that if make-ready is not completed by the completion date established by the
16 utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15)
17 day right of control, fifteen (15) days later), the new attacher may complete the make-
18 ready, which shall be completed as specified pursuant to subparagraph 1. of this
19 paragraph; and

20 6. State the name, telephone number, and email address of a person to contact for
21 more information about the make-ready procedure.

22 (c) Once a utility provides the notices required by this subsection, the utility shall provide
23 the new attacher with a copy of the notices and the existing attachers' contact

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1 information and address where the utility sent the notices. The new attacher shall be
2 responsible for coordinating with existing attachers to encourage completion of make-
3 ready by the dates established by the utility pursuant to paragraph (a)2. of this
4 subsection for communications space attachments or paragraph (b)2. of this subsection
5 for attachments above the communications space.

6 (5) A utility shall complete its make-ready in the communications space by the same
7 dates established for existing attachers in subsection (4)(a)2. of this section or its make-
8 ready above the communications space by the same dates for existing attachers in
9 subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of
10 control, fifteen (15) days later).

11 ~~(6) An attacher shall, within five (5) business days following completion of an~~
12 ~~attachment, provide written notice to a utility in the manner and form stated in the~~
13 ~~utility's tariff.~~

14 ~~(7) Final invoice.~~

15 (a) Within a reasonable period, not to exceed 120 days after a utility completes the
16 utility's make-ready, the utility shall provide the new attacher:

17 1. A detailed, itemized final invoice of the actual survey charges incurred if the final
18 survey costs for an application differ from any estimate previously paid for the survey
19 work or if no estimate was previously paid; and

20 2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably
21 calculable, of the actual make ready costs to accommodate attachments if the final
22 make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this
23 section.

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1 (b) Limitations on make ready costs.

2 1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to
3 bring poles, attachments, or third-party or utility equipment into compliance with current
4 published safety, reliability, and pole owner construction standards if the poles,
5 attachments, or third-party or utility equipment were out of compliance because of work
6 performed by a party other than the new attacher prior to the new attachment.

7 2. A utility shall not charge a new attacher, as part of any invoice for make ready, the
8 cost to replace any red tagged pole with a replacement pole of the same type and
9 height.

10 3. If a red tagged pole is replaced with a pole of a different type or height, then the new
11 attacher shall be responsible, as part of any invoice for make ready, only for the
12 difference, if any, between the cost for the replacement pole and the cost for a new
13 utility pole of the type and height that the utility would have installed in the same location
14 in the absence of the new attachment.

15 4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced
16 with a new utility pole to accommodate the new attacher's attachment shall be charged
17 in accordance with the utility's tariff or a special contract regarding pole attachments
18 between the utility and the new attacher.

19 (8) For the purposes of compliance with the time periods in this section:

20 (a) A utility shall apply the timeline as established in subsections (2) through (4) of this
21 section to all requests for attachment up to the lesser of 500 [300] poles or zero and
22 seven and one half [five]-tenths (0.75) percent of the utility's poles in the state;

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Deleted: (b) A utility may, for every 500-pole increment, add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 3,000 [4,000] poles or 3 [4.50] percent of the utility's poles in Kentucky;¶
(c) A utility may, for every 500-pole increment, add up to twenty (20) [forty-five (45)] days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 3,000 [4,000] poles or 3 [4.50] percent of the utility's poles in Kentucky;

1 (b) A utility ~~and a new attacher~~ shall negotiate ~~a special contract~~ in good faith the timing
2 of all requests for attachment ~~that will exceed~~ the lesser of ~~1,500~~~~[1,000]~~ poles or ~~3~~~~[1-5]~~
3 percent of the utility's poles in Kentucky ~~during any six (6) month period.~~~~;~~ ~~The special~~
4 ~~contract, at a minimum, shall contain:~~

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5 ~~1. An agreement for a prepaid account from the new attacher to cover the cost of the~~
6 ~~request;~~

7 ~~2. Direction from the new attacher regarding make ready work that the utility can~~
8 ~~complete without further direction from the new attacher including:~~

9 ~~a. The maximum cost per pole;~~

10 ~~b. The total cost for make ready work for each project or line of each project;~~

11 ~~3. The new attacher's prioritization of projects if the new attacher has submitted multiple~~
12 ~~requests for attachment;~~

13 ~~4. Contact information, including phone numbers and email addresses, for all necessary~~
14 ~~utility and new attacher personnel;~~

15 ~~5. The cadence, location, and necessary personnel for each project; and~~

16 ~~6. The timing of surveys and make ready.~~

17 ~~(e) If a special contract identified in paragraph (d) of this subsection can not be agreed~~
18 ~~to within thirty (30) business days from submission of a formal written request to engage~~
19 ~~from the attacher, the new attacher may file a complaint with the commission on which~~
20 ~~the commission shall rule within twenty (20) business days of the deadline set by the~~
21 ~~commission for the utility to file a response to of the complaint.~~

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22 (e) A utility may treat multiple requests from a single new attacher as one (1) request if
23 the requests are submitted within thirty (30) days of one another; and

1 (f) As soon as reasonably practicable, but no less than sixty (60) days before the new
2 attacher expects to submit an application in which the number of requests exceed the
3 lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall
4 provide written notice to a utility in the manner and form stated in the utility's tariff that
5 the new attacher expects to submit a [high volume] request.

6 (8) Deviations from make-ready timeline.

7 (a) A utility may deviate from the time limits specified in this section before offering an
8 estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or
9 in a special contract between the utility and the new attacher.

10 (b) A utility may deviate from the time limits established in this section during
11 performance of make-ready for good and sufficient cause that renders it infeasible for
12 the utility to complete make-ready within the time limits established in this section. A
13 utility that so deviates shall immediately notify, in writing, the new attacher and affected
14 existing attachers and shall identify the affected poles and include a detailed
15 explanation of the reason for the deviation and a new completion date. The utility shall
16 deviate from the time limits established in this section for a period no longer than
17 necessary to complete make-ready on the affected poles and shall resume make-ready
18 without discrimination once the utility returns to routine operations.

19 (c) An existing attacher may deviate from the time limits established in this section
20 during performance of complex make-ready for reasons of safety or service interruption
21 that renders it infeasible for the existing attacher to complete complex make-ready
22 within the time limits established in this section. An existing attacher that so deviates
23 shall immediately notify, in writing, the new attacher and other affected existing

1 attachers and shall identify the affected poles and include a detailed explanation of the
2 basis for the deviation and a new completion date, which shall not extend beyond sixty
3 (60) days from the completion date provided in the notice specified in subsection (4) of
4 this section as sent by the utility (or up to 105 days in the case of larger orders specified
5 in subsection (6)(b) and (c) of this section). The existing attacher shall not deviate from
6 the time limits established in this section for a period for longer than necessary to
7 complete make-ready on the affected poles.

8 (9) Self-help remedy.

9 (a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of
10 this section, then a new attacher may conduct the survey in place of the utility by hiring
11 a contractor to complete a survey, which shall be completed as specified in Section 5 of
12 this administrative regulation.

13 1. A new attacher shall allow the affected utility and existing attachers to be present for
14 any field inspection conducted as part of the new attacher's survey.

15 2. A new attacher shall use commercially reasonable efforts to provide the affected
16 utility and existing attachers with advance notice of not less than five (5) business days
17 of a field inspection as part of any survey the attacher conducts.

18 3. The notice shall include the date and time of the survey, a description of the work
19 involved, and the name of the contractor being used by the new attacher.

20 (b) Make-ready. If make-ready is not complete by the applicable date established in
21 subsection (4) of this section, then a new attacher may conduct the make-ready in place
22 of the utility and existing attachers by hiring a contractor to complete the make-ready,
23 which shall be completed as specified in Section 5 of this administrative regulation. **The**

Deleted: from the utility's list of approved contractors on the utility's website

1 make-ready shall be performed in compliance with this regulation, the utility's tariff, and
2 the construction standards listed on the utility's website.

3 1. A new attacher shall allow the affected utility and existing attachers to be present for
4 any make-ready.

5 2. A new attacher shall use commercially reasonable efforts to provide the affected
6 utility and existing attachers with advance notice of not less than seven (7) days of the
7 impending make-ready.

8 3. The notice shall include the date and time of the make-ready, a description of the
9 work involved, and the name of the contractor being used by the new attacher.

10 (c) The new attacher shall notify an affected utility or existing attacher immediately if
11 make-ready damages the equipment of a utility or an existing attacher or causes an
12 outage that is reasonably likely to interrupt the service of a utility or existing attacher.

13 (d) Pole replacements. Self-help shall not be available for pole replacements except as
14 set forth in a utility's tariff or in a special contract. [(d) Pole replacements. Self-help shall
15 not be available for pole replacements.]

16 (10) One-touch make-ready option. For attachments involving simple make-ready, new
17 attachers may elect to proceed with the process established in this subsection in lieu of
18 the attachment process established in subsections (2) through (6) and (9) of this
19 section.

20 (a) Attachment application.

21 1. A new attacher electing the one-touch make-ready process shall elect the one-touch
22 make-ready process in writing in its attachment application and shall identify the simple
23 make-ready that it will perform. It is the responsibility of the new attacher to ensure that

1 its contractor determines if the make-ready requested in an attachment application is
2 simple.

3 2. Application completeness.

4 a. The utility shall review the new attacher's attachment application for completeness
5 before reviewing the application on its merits and shall notify the new attacher within ten
6 (10) business days after receipt of the new attachers attachment application whether or
7 not the application is complete.

8 b. An attachment application shall be considered complete if the application provides
9 the utility with the information necessary under its procedures, as established in the
10 utility's applicable tariff or a special contract regarding pole attachments between the
11 utility and the new attacher, to make an informed decision on the application.

12 c. If the utility notifies the new attacher that an attachment application is not complete,
13 then the utility shall state all reasons for finding the application incomplete.

14 d. If the utility fails to notify a new attacher in writing that an application is incomplete
15 within ten (10) business days of receipt, then the application shall be deemed complete.

16 3. Application review on the merits. The utility shall review on the merits a complete
17 application requesting one-touch make-ready and respond to the new attacher either
18 granting or denying an application within fifteen (15) days of the utility's receipt of a
19 complete application (or within thirty (30) days in the case of larger orders as
20 established in subsection (7)(b) of this section or within a time negotiated in good faith
21 for requests equal to or larger than those established in (7)(d)).

1 a. If the utility denies the application on its merits, then the utility's decision shall be
2 specific, shall include all relevant evidence and information supporting its decision, and
3 shall explain how the evidence and information relate to a denial of access.

4 b. Within the fifteen (15) day application review period (or within thirty (30) days in the
5 case of larger orders as established in subsection (7)(b) of this section or within a time
6 negotiated in good faith for requests equal to or larger than those established in (7)(d)),
7 a utility or an existing attacher may object to the designation by the new attacher's
8 contractor that certain make-ready is simple.

9 c. An objection made pursuant to clause b. of this subparagraph shall be specific and in
10 writing, include all relevant evidence and information supporting the objection, be made
11 in good faith, and explain how the evidence and information relate to a determination
12 that the make-ready is not simple.

13 d. If the utility's or the existing attacher's objection to the new attacher's determination
14 that make-ready is simple complies with clause c. of this subparagraph, then the make-
15 ready shall be deemed to be complex and the new attacher shall not proceed with the
16 affected proposed one-touch make-ready.

17 (b) Surveys.

18 1. The new attacher shall be responsible for all surveys required as part of the one-
19 touch make-ready process and shall use a contractor as established in Section 5(2) of
20 this administrative regulation to complete surveys.

21 2. The new attacher shall allow the utility and any existing attachers on the affected
22 poles to be present for any field inspection conducted as part of the new attacher's
23 surveys.

1 3. The new attacher shall use commercially reasonable efforts to provide the utility and
2 affected existing attachers with advance notice of not less than five (5) business days of
3 a field inspection as part of any survey and shall provide the date, time, and location of
4 the surveys, and name of the contractor performing the surveys.

5 (c) Make-ready. If the new attacher's attachment application is approved by the pole
6 owner and if the attacher has provided at least fifteen (15) days prior written notice of
7 the make-ready to the affected utility and existing attachers, the new attacher may
8 proceed with make-ready. The new attacher shall use a contractor in the manner
9 established for simple make-ready in Section 5(2) of this administrative regulation.

10 1. The prior written notice shall include the date and time of the make-ready, a
11 description of the work involved, the name of the contractor being used by the new
12 attacher, and provide the affected utility and existing attachers a reasonable opportunity
13 to be present for any make-ready.

14 2. The new attacher shall notify an affected utility or existing attacher immediately if
15 make-ready damages the equipment of a utility or an existing attacher or causes an
16 outage that is reasonably likely to interrupt the service of a utility or existing attacher.

17 3. In performing make-ready, if the new attacher or the utility determines that make-
18 ready classified as simple is complex, then all make-ready on the impacted poles shall
19 be halted and the determining party shall provide immediate notice to the other party of
20 its determination and the impacted poles. All remaining make-ready on the impacted
21 poles shall then be governed by subsections (2) through (9) of this section, and the
22 utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4)
23 of this section as soon as reasonably practicable.

1 (d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing
2 attachers within ~~five~~ ~~fifteen~~ ~~(15)~~ days after completion of make-ready on a one-touch
3 make ready application.

4 Section 5. Contractors for Survey and Make-ready.

5 (1) Contractors for self-help complex and above the communications space make-
6 ready. A utility shall make available and keep up-to-date a reasonably sufficient list of
7 contractors the utility authorizes to perform self-help surveys and make-ready that is
8 complex and self-help surveys and make-ready that is above the communications
9 space on the utility's poles. The new attacher shall use a contractor from this list to
10 perform self-help work that is complex or above the communications space. New and
11 existing attachers may request the addition to the list of any contractor that meets the
12 minimum qualifications in subsection (3) of this section and the utility shall not
13 unreasonably withhold its consent.

14 (2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably
15 sufficient list of contractors the utility authorizes to perform surveys and simple make-
16 ready. If a utility provides this list, then the new attacher shall choose a contractor from
17 the list to perform the work. New and existing attachers may request the addition to the
18 list of any contractor that meets the minimum qualifications in subsection (3) of this
19 section and the utility shall not unreasonably withhold its consent.

20 (a)

21 1. If the utility does not provide a list of approved contractors for surveys or simple
22 make-ready or no utility-approved contractor is available within a reasonable time

1 period, then the new attacher may choose its own qualified contractor that shall meet
2 the requirements in subsection (3) of this section.

3 2. If choosing a contractor that is not on a utility-provided list, the new attacher shall
4 certify to the utility that the attacher's contractor meets the minimum qualifications
5 established in subsection (3) of this section upon providing notices required by Section
6 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

7 (b)

8 1. The utility may disqualify any contractor chosen by the new attacher that is not on a
9 utility-provided list, but a disqualification shall be based on reasonable safety or
10 reliability concerns related to the contractor's failure to meet any of the minimum
11 qualifications established in subsection (3) of this section or to meet the utility's publicly
12 available and commercially reasonable safety or reliability standards.

13 2. The utility shall provide notice of the utility's objection to the contractor within the
14 notice periods established by the new attacher in Section 4(9)(a)2., (9)(b)2., (10)(b)3.,
15 and (10)(c) of this administrative regulation and in the utility's objection must identify at
16 least one available qualified contractor.

17 (3) Contractor minimum qualification requirements. Utilities shall ensure that contractors
18 on a utility-provided list, and new attachers shall ensure that contractors selected
19 pursuant to subsection (2)(a) of this section, meet the minimum requirements
20 established in paragraphs (a) through (e) of this subsection.

21 (a) The contractor has agreed to follow published safety and operational guidelines of
22 the utility, if available, but if unavailable, the contractor shall agree to follow National
23 Electrical Safety Code (NESC) guidelines.

1 (b) The contractor has acknowledged that the contractor knows how to read and follow
2 licensed-engineered pole designs for make-ready, if required by the utility.

3 (c) The contractor has agreed to follow all local, state, and federal laws and regulations
4 including the rules regarding Qualified and Competent Persons under the requirements
5 of the Occupational and Safety Health Administration (OSHA) rules.

6 (d) The contractor has agreed to meet or exceed any uniformly applied and reasonable
7 safety and reliability thresholds established by the utility, if made available.

8 (e) The contractor shall be adequately insured or shall establish an adequate
9 performance bond for the make-ready the contractor will perform, including work the
10 contractor will perform on facilities owned by existing attachers.

11 (4) A consulting representative of a utility may make final determinations, on a
12 nondiscriminatory basis, if there is insufficient capacity and for reasons of safety,
13 reliability, and generally applicable engineering purposes.

14 Section 6. Notice of Changes to Existing Attachers.

15 (1) Unless otherwise established in a joint use agreement or special contract, a utility
16 shall provide an existing attacher no less than sixty (60) days written notice prior to:

17 (a) Removal of facilities or termination of any service to those facilities if that removal or
18 termination arises out of a rate, term, or condition of the utility's pole attachment tariff or
19 any special contract regarding pole attachments between the utility and the attacher; or

20 (b) Any modification of facilities by the utility other than make-ready noticed pursuant to
21 Section 4 of this administrative regulation, routine maintenance, or modifications in
22 response to emergencies.

1 (2) Stays from removals, terminations, and modifications noticed pursuant to subsection
2 (1) of this section.

3 (a) An existing attacher may request a stay of the action contained in a notice received
4 pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001,
5 Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to
6 subsection (1) of this section.

7 (b) The motion shall be served on the utility that provided the notice pursuant to 807
8 KAR 5:001, Section 5(1).

9 (c) The motion shall not be considered unless it includes the relief sought, the reasons
10 for such relief, including a showing of irreparable harm and likely cessation of cable
11 television system operator or telecommunication service, a copy of the notice, and a
12 certification that service was provided pursuant to paragraph (b) of this subsection.

13 (d) The utility may file a response within ten (10) days of the date the motion for a
14 temporary stay was filed.

15 (e) No further filings under this subsection shall be considered unless requested or
16 authorized by the commission.

17 (3) Transfer of attachments to new poles.

18 (a) Unless an applicable tariff or special contract or Section 4 of this administrative
19 regulation establishes a different timeframe, existing attachers shall transfer their
20 attachments within sixty (60) days of receiving written notice from the utility pole owner.

21 (b) Existing attachers may deviate from the time limit established in paragraph (a) of this
22 subsection for good and sufficient cause that renders it infeasible for the existing
23 attacher to complete the transfer within the time limit established. An existing attacher

1 that requires such a deviation shall immediately notify, in writing, the utility and shall
2 identify the affected poles and include a detailed explanation of the reason for the
3 deviation and the date by which the attacher shall complete the transfer. An existing
4 attacher shall deviate from the time limits established in paragraph (a) of this subsection
5 for a period no longer than is necessary to complete the transfer.

6 (c) If an existing attacher fails to transfer its attachments within the timeframe
7 established in paragraph (a) of this subsection and the existing attacher has not notified
8 the utility of good and sufficient cause for extending the time limit pursuant to paragraph
9 (a) of this subsection, a utility pole owner may transfer attachments and the transfer
10 shall be at the existing attacher's expense.

11 (d) A utility pole owner may transfer an existing attacher's attachment prior to the
12 expiration of any period established by paragraph (a) or (b) of this subsection if an
13 expedited transfer is necessary for safety or reliability purposes.

14 Section 7. Complaints for Violations of This Administrative Regulation.

15 (1) Contents of complaint. Each complaint shall be headed "Before the Public Service
16 Commission," shall establish the names of the complainant and the defendant, and shall
17 state:

18 (a) The full name and post office address of the complainant;

19 (b) The full name and post office address of the defendant;

20 (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint
21 is made, with a reference, if practicable, to the law, order, or administrative regulation,
22 of which a failure to comply is alleged, and other matters, or facts, if any, as necessary
23 to acquaint the commission fully with the details of the alleged failure; and

1 (d) The relief sought.

2 (2) Signature. The complainant or his or her attorney, if applicable, shall sign the
3 complaint. A complaint by a corporation, association, or another organization with the
4 right to file a complaint, shall be signed by its attorney.

5 (3) How filed.

6 (a) Complaints shall be filed in accordance with the electronic filing procedures in 807
7 KAR 5:001, Section 8; ~~and~~

8 ~~(b) The filing party shall file two (2) copies in paper medium with the commission in the~~
9 ~~manner required by 807 KAR 5:001, Section 8(12)(a)2.~~

10 (4) Procedure on filing of complaint.

11 (a) Upon the filing of a complaint, the commission shall immediately examine the
12 complaint to ascertain if it establishes a prima facie case and conforms to this
13 administrative regulation.

14 1. If the commission finds that the complaint does not establish a prima facie case or
15 does not conform to this administrative regulation, the commission shall notify the
16 complainant and provide the complainant an opportunity to amend the complaint within
17 a stated time.

18 2. If the complaint is not amended within the time or the extension as the commission,
19 for good cause shown, shall grant, the complaint shall be dismissed.

20 (b) If the complaint, either as originally filed or as amended, establishes a prima facie
21 case and conforms to this administrative regulation, the commission shall serve an
22 order upon the person complained of, accompanied by a copy of the complaint, directed
23 to the person complained of and requiring that the matter complained of be satisfied, or

1 that the complaint be answered in writing within ten (10) days from the date of service of
2 the order. The commission may require the answer to be filed within a shorter period if
3 the complaint involves an emergency situation or otherwise would be detrimental to the
4 public interest.

5 (5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or
6 she shall submit to the commission, within the time allowed for satisfaction or answer, a
7 statement of the relief that the defendant is willing to give. Upon the acceptance of this
8 offer by the complainant and with the approval of the commission, pursuant to KRS
9 Chapter 278 and this administrative regulation, the case shall be dismissed.

10 (6) Answer to complaint. If the complainant is not satisfied with the relief offered, the
11 defendant shall file an answer to the complaint within the time stated in the order or the
12 extension as the commission, for good cause shown, shall grant.

13 (a) The answer shall contain a specific denial of the material allegations of the complaint
14 as controverted by the defendant and also a statement of any new matters constituting
15 a defense.

16 (b) If the defendant does not have information sufficient to answer an allegation of the
17 complaint, the defendant may so state in the answer and place the denial upon that
18 ground.

19 (7) Burden of proof.

20 (a) The complainant has the burden of establishing it is entitled to the relief sought.

21 (b) The commission may presume that a pole replaced to accommodate a new
22 attachment was a red tagged pole if:

23 1. There is a dispute regarding the condition of the pole at the time it was replaced; and

1 2. The utility failed to document and maintain records that inspections were conducted
2 pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at
3 issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility
4 failed to periodically inspect and document the condition of its poles.

5 (8) Time for final action.

6 (a) The commission shall take final action on a complaint regarding the rates, terms, or
7 conditions for access to a utility's pole, duct, conduit, or right-of-way within 180 days of a
8 complaint establishing a prima facie case being filed, unless the commission finds it is
9 necessary to continue the proceeding for good cause for up to 360 days from the date
10 the complaint establishing a prima facie case is filed.

11 (b) The period within which final action shall be taken may be extended beyond 360
12 days upon agreement of the complainant and defendant and approval of the
13 commission.