

KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:)
)
)
ELECTRONIC INVESTIGATION OF POLE) CASE NO. 2023-00416
ATTACHMENTS)
)
) **KBCA LIST OF ISSUES TO BE**
) **DISCUSSED AT FEBRUARY 9, 2024,**
) **CONFERENCE**
)
)

Pursuant to the Kentucky Public Service Commission’s (“PSC’s” or “Commission’s”) January 22, 2024, Order, the Kentucky Broadband and Cable Association (“KBCA”)¹ submits this list of issues for discussion at the Commission’s February 9, 2024, informal conference.

As KBCA noted at the last meeting, its members continue to work with pole owners to resolve issues that contribute to the backlog of attachment applications. However, without timely action by the Commission, that backlog will only continue to grow as the dramatic surge in broadband construction continues in Kentucky. KBCA provides this list with a focus on immediate needs for efficient broadband expansion as well as providing a list of long term issues for the Commission to consider, all of which to benefit expanded access throughout the Commonwealth. To ensure timely deployment of broadband in Kentucky, the Commission and the parties should continue to address:

¹ The KBCA’s members are Access Cable, Armstrong, C&W Cable, Charter Communications, Comcast, Inter Mountain Cable, Lycom Communications, Mediacom, Suddenlink, and TVS Cable.

IMMEDIATE NEED ISSUES

1. ***Pole Attachment Applications.*** As KBCA noted at the parties' last meeting, the Commission should increase the number of poles that can be submitted for small and large attachment orders, and prohibit caps on the number of poles that can be submitted at any time, even if the number of poles exceeds the large order threshold. A pole owner must also be required to process the maximum number of poles (up to those in a large order) in a submission that exceeds a large order, as the Federal Communication Commission recently held in its December 15, 2023 Order.² The FCC classifies large orders as the lesser of 3,000 poles or 5% of the utility's poles in the state. This will address concerns raised by certain pole owners prior to and at the January hearing regarding visibility into the scope of attachers' builds, and allow pole owners to promptly raise concerns regarding their resources.

2. ***Process Efficiencies.*** As they currently exist, some pole owner processes for completing pre-construction surveys and engineering, and issuing invoices, are inefficient and are causing delays in broadband expansion throughout the Commonwealth. The Commission should require pole owners to deliver prospective attachers an invoice within a reasonable timeframe as well as process payment within a reasonable timeframe after receipt. Broadband providers have a significant backlog in their expansion projects as they wait for pole owners to perform these tasks.

² *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Reporter & Order, Declaratory Ruling, & Third Further Notice of Proposed Rulemaking, FCC 23-109, paras. 39 & 50 (2023), available at <https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf> ("FCC December 15, 2023, Order") (providing the "first 3,000 poles in an attachment application are subject to the processing timeline set forth in section 1.1411(g)(3)," the processing timeline for large orders).

3. ***Conditional Licenses.*** The Commission should require pole owners to provide a conditional license and allow attachers to install attachments on poles where no make-ready work is required, if make-ready timelines are not met.

4. ***Notification of Inability to Meet Deadlines.*** The Commission should require utilities to notify attachers within 15 days of receiving a complete pole attachment application if the utility will be unable to meet survey or other make ready deadlines, so that the attacher can elect self-help. This will allow attachers to consider whether they can make use of self-help remedies in a timely manner.

LONG TERM ISSUES

5. ***Pole Replacement Self-Help.*** The Commission should allow attachers to perform self-help for pole replacements if a utility fails to meet make-ready timelines, provided that the attacher uses a contractor approved by the pole owner to complete the pole replacement. Using a contractor approved by the pole owner will alleviate the safety concerns referenced by certain pole owners at the parties' last meeting.

6. ***FCC Order.*** The Commission should update Commission rules and regulations to ensure attachers benefit from the FCC's most recent Order to expedite broadband deployment.

- a. ***"Red-Tagged Poles."*** The Commission should expand the definition of "red tagged poles" to align with the FCC's new definition, which includes any pole "that the utility has identified as needing replacement for any reason other than the pole's lack of capacity."³ This definition encompasses the current Kentucky definition of "red tagged poles," which includes any utility owned pole that "(a) is designated for replacement based on the pole's non-compliance with an

³ FCC December 15, 2023, Order at paras. 39-40 & 42.

applicable safety standard; (b) is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or (c) would have needed to be replaced at the time of replacement even if the new attachment were not made,"⁴ but is broader and would include instances beyond the current definition in Kentucky.

- b. ***Easements.*** The Commission should require utilities to “provide potential attachers with a copy of a utility’s easement before a utility may refuse to let the attacher share that easement or require the attacher to obtain its own easement,” as set forth in the FCC’s December 15, 2023, Order.⁵

⁴ 807 KAR 5:015(1)(10).

⁵ FCC December 15, 2023, Order at para. 49.

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Respectfully submitted,

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