

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
) CASE NO. 2023-00416
ELECTRONIC INVESTIGATION OF POLE)
ATTACHMENTS)
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**KBCA COMMENTS ON THE COMMISSION’S
PROPOSED EMERGENCY AMENDMENTS TO
EMERGENCY POLE ATTACHMENT REGULATIONS**

The Kentucky Broadband and Cable Association (“KBCA”) submits these comments on the Kentucky Public Service Commission’s (“Commission’s”) proposed emergency amendments to 807 KAR 5:015. During the 2024 Regular Session, the General Assembly enacted Senate Joint Resolution 175 (“SJR 175”) to promote the “deployment of broadband internet service to unserved and underserved citizens in the Commonwealth.” To achieve this goal, SJR 175 specifically directed the Commission to:

(1) Remove any unreasonable utility pole attachment-related impediments to the deployment of broadband service,

(2) Establish parameters to expedite the processing of pole attachment requests for unserved and underserved areas of the Commonwealth in accordance with the Broadband Equity Access and Deployment (“BEAD”) Program and other government-funded initiatives, and

(3) Reduce the existing staggering backlog of already-pending utility pole attachment requests.

KBCA appreciates the Commission's efforts to date to implement emergency regulations to comply with the Governor's and Legislature's mandate and meet its policy objectives. However, we believe that the Commission can and is statutorily obligated to do more. In our view, the current amendments proposed on February 3, 2025, fail to address practical issues that, if left unresolved, will slow permitting and construction processes and exacerbate (instead of alleviate) the pole attachment delays in Kentucky directly contrary to the General Assembly's mandate. As we previously explained, the required level of pole attachment activity is expected to increase dramatically as approximately \$2 billion is being or will be invested through the FCC RDOF program, state and local grant initiatives, BEAD, and additional private sector funding.

Given that KBCA's members are currently deploying and will continue to expand their broadband networks in rural areas, they and other communications attachers are best positioned to understand and bring to the Commission's attention how best it can remove existing impediments and streamline processes necessary to expedite RDOF, BEAD, and other government-funded build-outs and unlock the benefits that broadband promises for rural Kentucky. As a result, we strongly urge the Commission to adopt key KBCA proposals that we proposed in our written comments filed on December 9 and 30, 2024, including:

- Clarifying that the Commission's regulatory definition of "pole" includes any pole that is used for distribution purposes (*i.e.*, mixed-use poles), thus ensuring there is no confusion or disputes over access to all distribution poles necessary to deploy broadband facilities;
- Removing the existing confusing and burdensome 500-pole increment sliding scale for application completeness review, survey and engineering, and make-ready construction deadlines, thus eliminating potential counting disputes and related delays;
- Aligning survey and make-ready construction deadlines with FCC timelines, which will ensure that attachers are not delayed **four months** for a survey and **five and a half months** for make ready before they can even consider let alone exercise self-help;
- Eliminating any mandatory special contract negotiations where fair, reasonable, and uniform terms that promote deployment should be set by the Commission; and

- Shortening the Commission’s overlashing timeline to meet the well-considered and pro-deployment FCC standard.

In addition to the need to address these issues, the Commission’s current proposed amendments also create new problems that need to be corrected. Specifically, the Commission accepted utility-proposed language that make ready can be delayed until utilities receive “payment for survey costs invoiced *or otherwise owed to-date.*” 807 KAR 5:015(E) § 4(4) (emphasis added). The addition of the language “otherwise owed to-date” injects needless confusion and uncertainty concerning the circumstances under which a utility may delay make ready – it is vague, ambiguous, and ripe for abuse. It is important to note that KBCA members agree that a utility is entitled to payment for make ready work *prior* to the commencement of that work. But any such costs must be evidenced by an invoice and relate only to the specific attachment application for which make ready is sought. As written, the Commission’s new language could allow a utility to delay make ready construction until it receives payment for unrelated costs, such as costs for other projects or applications, work that has not yet been invoiced, or for unrelated payment disputes, none of which is a proper basis for a utility to delay make ready work that has been invoiced and paid for by an attacher. Accordingly, it is imperative for the Commission to remove this highly-problematic language, which threatens to create confusion and disputes and ultimately delay broadband deployment.

KBCA appreciates the work the Commission has put into the Emergency Regulations. But there remains more work for the Commission to do here in order for the Emergency Regulations to fulfill their purpose – and ensure timely broadband deployment in Kentucky. The Commission thus needs to act swiftly to implement the key changes proposed by KBCA’s members to truly expedite the attachment process, rather than allowing utilities to delay the process with confusing, lengthy, and vague regulations.

Dated: February 12, 2025

Respectfully submitted,

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