

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

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In the Matter of:	)	
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ELECTRONIC INVESTIGATION OF POLE	)	CASE NO. 2023-00416
ATTACHMENTS	)	
	)	KBCA PROPOSED AMENDMENTS
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	)	
_____	)	

Pursuant to the Kentucky Public Service Commission’s (“PSC’s” or “Commission’s”) April 11, 2024, Order, the Kentucky Broadband and Cable Association (“KBCA”)<sup>1</sup> respectfully presents the following list of issues and proposed solutions, including amendments to the Commission’s existing pole attachment regulations, for consideration during the upcoming conference on April 26, 2024. In support of this submission, KBCA states as follows:

During the 2024 Regular Session, the General Assembly enacted Senate Joint Resolution 175 (“SJR 175”), which was intended to assist “facilitating the deployment of broadband internet service to unserved and underserved citizens in the Commonwealth.” SJR 175 directs the Commission to promulgate emergency regulations designed 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 Kentucky in accordance with the Broadband Equity Access and Deployment (“BEAD”)

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

Program and other government-funded initiatives, and (3) reduce the backlog of utility pole attachment requests.

Prior to SJR 175, the Commission established the underlying matter to discuss and investigate issues related to pole attachment issues, particularly related to broadband deployment. In 2024, it has already held four informal conferences for the Commission, its Staff, and stakeholders to discuss impediments on and potential solutions to this issue. As a result of SJR 175, the Commission indicated that amendments to 807 KAR 5:015 are “the most reasonable and efficient method to comply with SJR 175.” The Commission accordingly requested participants in this matter submit proposed amendments to that regulation no later than April 19, 2024.

KBCA’s proposed amendments are designed to address the three objectives identified above. They are our initial, forward-looking comments aimed not only to address the significant existing backlog of pole attachment application requests but also to alleviate anticipated future problems as providers endeavor to deploy broadband in unserved and underserved areas across the Commonwealth. While we believe these are reasonable and important amendments to speed deployment, KBCA is open to other solutions to streamline and expedite the pole permitting and construction processes.

**I. The Commission should clarify and tighten its existing application processing timelines.**

- The review and approval of applications has been a significant factor delaying broadband deployment – more so than any of the construction delays pole attachers face. These major delays in application review are an impediment to timely broadband deployment in the Commonwealth.
- Based upon our experience, one of the most serious problems is that utilities frequently fail to respond to an attacher’s application with the ten (10) days allotted by 807 KAR 5:015, Section 4(2)(a)(1). As a result, it is not clear whether the application has been accepted as complete, and whether the deadlines set forth in 807 KAR 5:015, Section 4(2)(b) have been triggered, or whether the utility requires any additional information. As the comments offered at the Commission’s informal conferences made clear, there is no consensus among the parties regarding when an application is deemed complete and when the shot clock has been triggered for the utility to complete the merit review of an application and perform a survey as set forth in 807 KAR 5:015, Section 4(2)(b) (despite the language of 807 KAR 5:015, Section 4(2)(a)(4)).
- Additionally, if a utility determines that an application is incomplete, there is no timeline for its review of any resubmission. Clarifying that a timeline applies to resubmitted applications will help to avoid unnecessary delays and provide additional predictability around the application process. Ultimately, these changes should aid in reducing future pole attachment application backlogs that currently exist in the Commonwealth today.

**Proposed Solution:**

- The Commission should address these problems by clarifying when the deadlines set forth in Section 4 of 807 KAR 5:015 are triggered following the submission of an application or the resubmission of a revised application.
- The Commission should state that if a utility fails to respond to an application, or rejects an application without specifying any deficiencies, within ten (10) business days of its submission, the applicable survey deadlines [forty-five (45) days or sixty (60) days for large orders] are triggered the day after the expiration of the ten (10) business-day period.

- The Commission should also require that any resubmitted application need only supplement the previous application by addressing the utility’s reasons for finding the original application incomplete. The Commission should require utilities to review any resubmission within five (5) business days. If a utility fails to respond within five (5) business days, or rejects the application again as incomplete but fails to identify any deficiencies, then the application shall be deemed complete, and the survey timeline will be triggered the day after the expiration of the five (5) business day period.
- These revisions will help avoid unnecessary delays and confusion that arises during the existing application review process. They will also help the parties understand how and when the clock is initiated for subsequent deadlines.
- These revisions to the Commission’s regulations would be consistent with the existing regulations and rule interpretations by the Federal Communications Commission (“FCC”) to its existing rules and orders.

**Proposed Regulatory Change:**

- Amendment to 807 KAR 5:015, Section 4(2)(a)(4): If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reason in the utility’s response, then the application shall be deemed complete and the survey period in 807 KAR 5:015, Section 4(2)(b)(1) shall begin to run on the next day.
- New subparagraph 807 KAR 5:015, Section 4(2)(a)(5): Any resubmitted application need only address the utility’s reasons for finding the original application incomplete. If the utility fails to respond within five (5) business days, or again rejects the application but fails to specify any reason or state how the resubmission did not sufficiently address the previously identified deficiencies, then the application shall be deemed complete, and the survey period in 807 KAR 5:015, Section 4(2)(b)(1) shall begin to run on the next day. The new attacher may follow the resubmission procedure as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility’s review.

**II. The Commission should amend its existing regulations to provide for expedited review of a pole attachment application if an attacher provides a survey to the utility with its pole attachment application.**

- As a general matter, it is a utility’s responsibility to complete a survey of poles for which access has been requested.<sup>2</sup> However, attachers often elect to take on the

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<sup>2</sup> See 807 KAR 5:015, Section 4(2)(b)(1) (“A **utility** shall complete a survey of poles . . .”) (emphasis added); see *In The Matter Of Implementation Of Section 224 Of The Act A National*

responsibility to provide surveys to the utilities with their pole attachment applications in an effort to expedite the application review process (and ultimately the construction process as well). Despite this effort, utilities have been taking the entire forty-five (45) day survey time afforded by the Kentucky regulations (if not longer) to review the already completed survey.

**Proposed Solution:**

- The Commission should amend its regulations to state that if an attacher provides a survey to the utility with its pole attachment application, the utility has ten (10) business days after receipt of a complete application in which either to notify the attacher of any material issues with the survey or to grant the attacher access to the pole.
- Should the utility fail to respond to the attacher and its survey within ten (10) business days of receipt of a complete application, or reject the survey without stating a reason, the pole attachment application shall be deemed granted.

**Proposed Regulatory Change:**

- Add a new section to the regulation that requires a utility to review an application and grant or deny access in an expedited timeframe if an attacher provides a survey as part of its application:
- A utility must, within ten (10) business days of receipt of a complete application in which an attacher provided a survey, either notify the attacher of any material issues associated with the survey or grant or deny access.
- If the utility does not respond within ten (10) business days after receipt of a complete application, or if the utility rejects the survey or denies the application without stating a material reason, the pole attachment application shall be deemed granted.

**III. The Commission should amend its existing regulations to increase the size of large pole orders subject to its timelines, clarify that its timelines apply to the first 3,000 poles submitted by an attacher, consider future changes to its regulations regarding large-volume attachment requests based on future changes to FCC rules, and prohibit a utility from limiting the number of attachment requests an attacher may submit.**

- The Commission should revise its regulations to increase, on a uniform basis, its existing limits for large orders to conform to FCC limits, and should prohibit

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*Broadband Plan For Our Future*, WC Dkt. 07-245, Report and Order on Reconsideration, at 14 (F.C.C. Apr. 7, 2011) (stating it is the pole “owner duty” to “conduct engineering survey”).

utilities from limiting the number of attachment requests an attacher may submit or that the utility will process.

- The FCC limits were adopted on a full record, and provide the Commission a forward-looking framework to ease existing application backlogs and prevent similar problems in the future. While KBCA believes these numbers will assist attachers in meeting BEAD requirements, there currently is no data related to the increased level of volume of attachment requests that will flow from BEAD. We anticipate that the FCC would adopt different rules on attachment requests if future data demonstrates the need for regulatory changes. To address potential changing circumstances, we suggest that the Commission review and consider revisions to its rules within thirty (30) days of the FCC issuing additional rules related to large-volume attachment requests, acknowledging efficiencies will result from reliance on FCC proceedings and uniform standards.
- The Commission should also clarify that, consistent with the December 2023 FCC Order, a utility is required to process the maximum number of poles (up to those in a large order) in a submission that exceeds a large order by the applicable deadlines set forth in Kentucky's regulations for each threshold quantity.
- All of these revisions are necessary to ensure that a larger number of pole requests are subject to Commission timelines, which are intended to promote timely deployment necessary to enhance broadband connectivity. Importantly, they will also allow utilities to have a more complete picture of an attacher's planned build so that they can adequately manage their resources and plan for an increased volume of pole attachment applications, surveys, and inspections.

**Proposed Solution:**

- The Commission should increase the definition of "large order" to include 3,000 poles or five (5) percent of the utility's poles in Kentucky.
- The Commission should clarify that the lesser of the first 3,000 or five (5) percent of poles submitted by an attacher are subject to the timeframes set forth in Section 4 of 807 KAR 5:015.
- The Commission should also clarify that a utility may not limit the number of attachment requests an attacher may submit.
- The Commission should review and consider revisions to its rules within thirty (30) days of the FCC issuing additional rules related to large-volume attachment requests, acknowledging efficiencies will result from reliance on FCC proceedings and uniform standards.

**Proposed Regulatory Change:**

- Amendments and additions to 807 KAR 5:015, Section 4(7):

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(b) A utility may 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 ~~1,000~~ 3,000 poles or ~~1.50~~ five (5) percent of the utility's poles in Kentucky;

(c) A utility may add up to forty-five (45) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of ~~1,000~~ 3,000 poles or ~~1.50~~ five (5) percent of the utility's poles in Kentucky;

(d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of ~~1,000~~ 3,000 poles or ~~1.50~~ five (5) percent of the utility's poles in Kentucky.

...

(g) If an attacher requests access to the lesser of 3,000 or five (5) percent of a utility's poles in Kentucky, the lesser of the first 3,000 or five (5) percent shall be subject to the timeframes established in subsections (2) through (4), so long as the attacher designates which poles are to be prioritized.

(h) A covered utility may not limit the number of attachment requests an attacher may submit or that the covered utility will process and review within a specific time period, such as by refusing to accept more than a certain number of attachment requests, by suspending or delaying its review of applications once the number of access requests within such applications reach a certain number within a specified time period, or otherwise.

(i) Should the FCC adopt additional rules related to order sizes, the Commission shall review and consider revisions to its rules within thirty (30) days of the FCC issuing additional rules, acknowledging efficiencies will result from reliance on FCC proceedings and uniform standards.

**IV. The Commission should amend its existing regulations to require utilities to attain all necessary resources and personnel to meet applicable timelines by a prompt but reasonable date certain, and mandate clear remedies for attachers if and when utilities fail to meet their obligations.**

- Utilities' ongoing challenges with securing the necessary resources and personnel to process applications and complete make ready is severely delaying broadband deployment in the Commonwealth. The current remedies available to attachers when a utility fails to meet its obligations in a timely fashion are costly and time consuming and therefore necessarily delay and increase the cost of deployment.
- The regulations need to be amended to establish practical and efficient remedies available if and when utilities fail to comply with Kentucky pole regulations.

### **Proposed Solution:**

- Utilities should be required to obtain and apply resources necessary to process pole attachment applications, including, critically, for large orders, in compliance with the Commission’s review and make-ready timelines.
- Pole attachment applications should be deemed granted if utilities fail to meet their regulatory obligations, including Commission-mandated review and approval timelines.
- If a pole attacher believes that a utility has not obtained the necessary resources or personnel to comply with Kentucky regulations, the pole attacher should provide notice to the utility and the Commission of this perceived deficiency. Following this notice, the utility should be obligated to negotiate in good faith with attachers over potential solutions that will enable both parties to address pole permitting delays. Utilities should be obligated to consider all possible solutions, including those that have worked in other regions like conditional licenses and temporary attachments.

### **Proposed Regulatory Change:**

- Add a new Subsection before the current Subsection (8) (“Deviations from make-ready timeline”) of 807 KAR 5:015, Section 4:
- (a) A utility shall obtain all necessary resources and personnel to meet applicable timelines within thirty (30) days of receipt of a complete application. If a utility is unable to meet its regulatory deadlines, before the expiration of any applicable deadline, the utility shall negotiate in good faith with attachers regarding solutions that will enable attachers timely to deploy their networks, including negotiating conditional licenses or temporary attachments. Such negotiations shall be triggered upon an attacher notice to the utility filed with the Commission.
- (b) Should a utility fail to meet the deadlines set forth in these regulations related to the processing of a pole attachment application, the application shall be deemed granted, and an attacher may engage in self-help with a contractor of its choosing, provided the contractor meets all safety standards.

### **V. The Commission should establish an expedited mediation process for disputes related to pole access.**

- When disputes arise involving access to utility poles to deploy additional facilities, resolution of these matters in a fair and timely manner is crucial to minimizing the impact on broadband deployment.
- Under existing regulations, a party may need to wait up to a year to obtain a decision about whether a communications service provider can attach to a pole – creating significant risk and uncertainty to broadband deployment plans.



### **Proposed Solution:**

- The Commission should establish an expedited, informal dispute resolution process for disputes related to pole access.
- Upon request from one party, the Commission, through one or more Commissioner(s) or Staff, should conduct an expedited commission review related to any pole attachment dispute that alleges an impediment or delay in the deployment of broadband facilities. In its request for an expedited review, the requesting party should submit a letter explaining the nature of the access dispute and attaching any documentary evidence it deems relevant. The responding party should have seven (7) business days in which to respond and attach to its letter any documentary evidence it seems relevant. The Commission should commence its initial meeting of the parties within fifteen (15) business days of the original request.
- This informal process will foster expedited resolution of disputes related to pole access, and decrease the time and expense incurred in protracted formal complaint litigation.

### **Proposed Regulatory Change:**

- New subsection to 807 KAR 5:015, Section 7(9): Upon request from either a utility or an attacher, the Commission, through one or more Commissioner(s) or Staff, shall commence an expedited review related to any pole attachment dispute that alleges an impediment or delay in the deployment of broadband facilities. The party requesting expedited review shall do so via letter to the Commission, and attach any documentary evidence it deems relevant to the dispute. The responding party shall have seven (7) business days in which to submit a letter in response, attaching any documentary evidence it deems relevant. The Commission or its Staff shall schedule an initial meeting of the parties within fifteen (15) business days of the original request unless the utility and attacher agree to a different time period.

Dated: April 19, 2024

Respectfully submitted,

*/s/ M. Todd Osterloh* \_\_\_\_\_

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