

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
) CASE NO. 2023-00416
ELECTRONIC INVESTIGATION OF POLE)
ATTACHMENTS)
) **KBCA COMMENTS ON PROPOSED**
) **EMERGENCY REGULATIONS**
)
)
)

The Kentucky Broadband and Cable Association appreciates the Kentucky Public Service Commission’s good faith efforts to advance the Commonwealth’s policy mandate to “facilitat[e] the deployment of broadband internet service to unserved and underserved citizens in the Commonwealth” on an expedited basis through emergency regulations. Senate Joint Resolution 175.

As the Commission is aware, in its initial written comments, KBCA offered a series of targeted changes to the existing pole attachment regulations that it believes are critical for removing unreasonable barriers to broadband deployment, expediting pole attachment request processing, and reducing the existing pole attachment request backlog. While KBCA’s requested changes are not fully reflected in the draft regulations circulated by the Commission on May 17, 2024, the Commission can make meaningful progress towards advancing a more efficient and effective pole attachment regime in Kentucky with the adoption of the targeted clarifications and adjustments outlined below. In that context, KBCA respectfully requests that the Commission seriously consider these limited changes, which are designed to streamline and simplify the

emergency regulations to minimize the risk that they are the basis for any potential confusion, delays, or disputes.

1. *Poles vs. Applications (multiple pages)*. As discussed over the course of these proceedings, the Commission needs to be clear that its access timeframe and rules are tied to the number of *poles* to which an attacher requests access, rather than the number of applications submitted. As noted during the last hearing, the number of poles an attacher is able to include on a single application often cover a relatively small number of poles (on average, 75), and therefore, an attacher must submit multiple applications to identify all of the poles to which it is requesting access. Most of the timelines in the regulations thus logically refer to the number of total poles at issue, not the number of applications or the size of any one application. To avoid confusion on this key point, KBCA proposes that the Commission identify and refer to access requests to less than 500 poles as “small orders,” and 501 to 3,000 poles as “large orders.” This change allows for references to groups of poles not tied to the number of poles in any given application.

2. *Certification (page 10)*.¹ If attachers are required to certify their applications, they should be required to certify only that, to the best of their knowledge, the applications are complete and to designate the appropriate personnel to address attachment-related issues. Requiring broader certifications, including to potentially shifting and differing utility “requirements,” will only serve to create additional administrative burdens and potential pitfalls that are unnecessary given the utility is going to review the application for completeness *and on the merits* regardless of whether an attacher submits any certification.

¹ Page references correspond to KBCA’s redline draft of the proposed regulations, which is being submitted contemporaneously with these comments.

Additionally, identifying a single “manager responsible for overseeing all attachments” is not practical or appropriate given that, as a national entity operating throughout various regions including Kentucky, Charter (and other operator) personnel responsible for pole attachments often have overlapping responsibilities in different regions that would make them hard to identify in a useful way on a given certification form. Furthermore, in accordance with the discussions at the May 17, 2024, meeting, KBCA proposes changes to clarify that utilities are also required to provide the same contact information as attachers to ensure attachment-related issues are addressed in a timely manner.

3. *Completeness (page 12).* A utility should have 12 days to review all orders, large or small. This is a reasonable compromise whereby a utility has two extra days beyond the minimum 10 days, but not an excessive 20-day review period. There is no record evidence to support affording utilities more time simply to determine whether a given application is complete. That is particularly the case if the application, as submitted, has already been certified as complete. Giving a utility additional time for each 500-pole increment will create multiple, confusing timelines that are difficult to operationalize and can allow a utility to take up to an additional 10 business days (or 20 business days/four weeks total) simply to review an application for completeness. Such added delay is unwarranted and does not advance the policy mandate to remove barriers to deployment and expedite the review process.

4. *“Accepted for filing” (page 12).* As discussed at hearing, this term of art means the time period to complete the survey has begun to run. KBCA’s clarification makes that explicit.

5. *Large orders (pages 12 and 19).* The Commission should remove its 500-pole escalators and uniformly apply the same deadlines to all large orders, consistent with the FCC standards. This will avoid confusion and different deadlines applying to different applications.

The Commission should also have a uniform definition for large orders, *i.e.* as 3,000 poles or 3% of the utility's poles in Kentucky, instead of an average number of poles for any three months in a five-month period, which again creates ambiguity and uncertainty over the applicable rules and timeframes. That confusing approach may also spawn disputes over when self-help or good-faith negotiations is available. The Commission should clarify this regulation to clearly demarcate between different pole number timelines and applicable rules.

6. *Large order timelines (pages 12 and 15).* The Commission should not increase the survey and make ready timelines for large orders beyond what the regulations already provide for. As the regulations stand, utilities already have 45 days to perform surveys (and arguably the existing 10-day completeness timeline falls within the overall 45-day period). Moreover, this timeline does not include the 60-day notice period prior to the filing of an application. Requiring attachers to wait 120 days – four months – to determine if a utility is going to complete a survey or make-ready for large orders before the attacher can even engage in self-help is unreasonable and will impede rather than expedite broadband deployment. There is no evidence utilities need or would use such additional time, or that allowing the additional time would solve the resource constraints utilities have raised in this proceeding. Rather than providing more time for further delay, the Commission should empower attachers to quickly engage in self-help (as it has with pole replacements). Similarly, the Commission should clarify that the 45-day period applies to small orders, if an attacher has not submitted its own surveys as permitted by the regulations.

7. *Prioritization (page 12).* The record supports the Commission's amendment providing an attacher a right to prioritize applications in a utility's review queue and that change advances the legislative mandate to expedite review and deployment in rural areas.

The Commission should, however, clarify the timing relationship between the prioritized and de-prioritized applications to make clear that the timelines applicable to the de-prioritized application is not “suspended,” but instead just assumes the relevant timeline otherwise applicable to the prioritized application.

8. *Special contracts (pages 19 and 20).* KBCA appreciates the Commission’s innovative concept of special contracts as a potential method of promoting efficient and effective broadband deployment. It suggests a few minor changes to the Commission’s proposal on this issue. The Commission should allow, at the attacher’s option, attachers and utilities to enter special contracts for orders exceeding large orders. Utilities must negotiate in good faith regarding the timeline of orders that exceed the large order threshold. The purpose of these regulations is to set clear rules that make time consuming, expensive, inconsistent, contract negotiations unnecessary. Requiring such contracts will only lead to more contractual disputes before the Commission and, with that, delay in broadband deployment contrary to the policy mandate and purpose of these emergency regulations.

The Commission should further provide for expedited treatment of disputes involving negotiation of special contracts *and* the timing of requests above large orders outside the context of special contract negotiations. KBCA’s suggested changes include a requirement for the attacher to provide notice to the Commission that it has requested to engage in negotiations with the utility to ensure the Commission has adequate advance notice for staffing purposes.

9. *Multiple Requests (page 20).* KBCA believes it would be beneficial for utilities and pole owners to treat multiple orders within a given calendar month, rather than within 30 days, as a single application.

10. Pole replacements (page 23). KBCA appreciates the Commission's change allowing for self-help for pole replacements. As discussed at the May 17, 2024 meeting, self-help would also, of course, only come into play where a utility failed to meet its regulatory obligations.

11. Expedited Access Dispute Resolution Process (page 34). Any dispute alleging a barrier or delay in broadband deployment should be subject to an expedited review process similar to or the same as special contract negotiations. Consistent with its initial comments filed on April 19, 2024, KBCA has provided a proposed change that would include a mediation process. As an alternative, KBCA supports an identical dispute resolution process to the provision related to special contracts for issues arising within the context of the regulation, whereby the Commission would render a decision within 20 business days after receipt of a complaint.

Dated: May 21, 2024

Respectfully submitted,

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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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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 laws complete,
12 to the best of the attacher's knowledge and ability. The form shall require attacher to
13 designate an attachment manager generally responsible for overseeing all attachments
14 with the utility, as well as an application contact associated with each
15 application appropriate personnel, who shall be responsible for coordinating with the
16 utility and ensuring that attachment-related issues are addressed in a timely manner;

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

19 (c) Construction standards for attachments; and

20 (d) Contact information for appropriate personnel from the utility to ensure issues are
21 addressed in a timely manner. .

22 (6)[(5)] Overlashing.

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

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

4 (b)

- 5 1. A utility shall not prevent an attacher from overlashing because another existing
- 6 attacher has not fixed a preexisting violation.
- 7 2. A utility shall not require an existing attacher that overlashes its existing wires on a
- 8 pole to fix preexisting violations caused by another existing attacher, unless failing to fix
- 9 the preexisting violation would create a capacity, safety, reliability, or engineering issue.

10 (c)

- 11 1. A utility shall not require more than thirty (30) days' advance notice of planned
- 12 overlashing.
- 13 2. If a utility requires advance notice for overlashing, then the utility shall include the
- 14 notice requirement in its tariff or include the notice requirement in the attachment
- 15 agreement with the existing attacher.
- 16 3. If, after receiving advance notice, the utility determines that an overlash would create
- 17 a capacity, safety, reliability, or engineering issue, it shall provide specific
- 18 documentation of the issue to the party seeking to overlash within the thirty (30) day
- 19 advance notice period and the party seeking to overlash shall address any identified
- 20 issues before continuing with the overlash either by modifying its proposal or by
- 21 explaining why, in the party's view, a modification is unnecessary.

22 (d)

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

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

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

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

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

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

17 4. The utility shall either:

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

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

1 ~~(7)~~[(6)] Signed standard contracts or licenses for attachments allowed by subsection (2)
2 of this section shall be submitted to the commission but shall not be filed pursuant to
3 807 KAR 5:011, Section 13.

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

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

8 (1) All time limits established in this section shall be calculated according to 807 KAR
9 5:001, Section 4(7).

10 (2) Application review and survey.

11 (a) Application completeness.

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

20 ~~2~~[4]. A utility shall review a new attacher's pole attachment application for completeness
21 before reviewing the application on its merits and shall notify the new attacher within ten
22 (10) business days after receipt of the new attacher's pole attachment application if the
23 application is incomplete.

1 3[2]. A new attacher's pole attachment application shall be considered complete if the
2 application provides the utility with the information necessary under its procedures, as
3 established in the utility's applicable tariff or a special contract regarding pole
4 attachments between the utility and the new attacher, to begin to survey the affected
5 poles.

6 4[3]. If the utility notifies a new attacher that its attachment application is not complete,
7 then the utility shall state all reasons for finding it incomplete.

8 5[4]. A utility shall not require a new attacher to submit a survey as a filing requirement
9 for an application.

10 6. A new attacher may submit a survey ~~with an application of 500 poles or less~~for a
11 small order, as described in subsection (7) below, which the utility shall accept if the
12 new ~~attached attacher~~ used an approved contractor listed on the utility's website and
13 the survey was conducted no longer than forty-five (45) days prior to submission. A
14 utility shall conduct the survey for ~~applications exceeding 500 poles~~orders exceeding
15 small orders.

16 7. If a utility rejects an application the rejection shall state the reason for the denial and
17 shall include specific citations to the regulation and the utility's tariff that form the basis
18 of the rejection. ~~If the attacher resubmits the application, the resubmitted application~~
19 ~~need only address the utility's reasons for finding the original application incomplete. If~~
20 ~~the utility fails to respond within five (5) business days, or again rejects the application~~
21 ~~but fails to specify any reason or state how the resubmission did not sufficiently address~~
22 ~~the previously identified deficiencies, then the application shall be deemed complete.~~
23 The new attacher may follow the resubmission procedure as many times as it chooses

1 so long as in each case it makes a bona fide attempt to correct the reasons identified by
2 the utility, and in each case the deadline set forth in this paragraph shall apply to the
3 utility's review.

4 8. A utility shall complete a review of a an application of 500 poles a small order and
5 large orders or less within ten (10) twelve (12) business days after receipt of the
6 application. A utility shall have an additional two five (25) business days to complete its
7 review for each 500-pole increment in an application large order applications.

8 9. A new attacher if it submits an application while a previous application is still under
9 review may reprioritize the order in which a utility shall review the applications.

10 Reprioritizing an application suspends-reorders the timelines applicable to the pending
11 applications such that the de-prioritized application assumes the timeline applicable to
12 the prioritized application and vice versa the review time for a new attacher's other
13 applications currently under review.

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

19 (b) Survey and application review on the merits.

20 1. If an attacher has not submitted a survey for small orders as set forth in Section
21 2(a)(6). Aa utility shall complete a survey of poles for which access has been requested
22 within forty-five (45) days of receipt of a complete application to attach facilities to its
23 utility poles (or within one hundred twenty six (12060) [sixty (60)] days in the case of

1 larger orders as established in subsection (7) of this section) for the purpose of
2 determining if the attachments may be made and identifying any make-ready to be
3 completed to allow for 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-twentysixty (60) [sixty (60)] days in the case of larger
23 orders as 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) Invoices and pPayment for the estimate must clearly identify the application or
7 project for which invoice and 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 ~~twenty (20)~~seventy-five (75) [seventy-five (75)] days in the case of larger orders as
17 established in 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-

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 135 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

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)~~ fifteen (15) business days following completion of an
12 attachment all attachments within an application, provide written notice to a utility in the
13 manner and form stated in the utility's tariff.

14 (6) 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.

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 (7) 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 (a "small
23 order");

1 (b) A utility may, ~~for every 500-pole increment,~~ add up to fifteen (15) days to the survey
2 period established in subsection (4) of this section to larger orders up to the lesser of
3 3,000 [4,000] poles or 3 [4.50] percent of the utility's poles in Kentucky (a "large order");

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

8 (d) A utility ~~and a new attacher~~ shall negotiate ~~a special contract~~ in good faith the timing
9 of all requests for attachment larger than the lesser of 3,000[4,000] poles or 3[4.50]
10 percent of the utility's poles in Kentucky. As part of good faith negotiations, at the
11 attacher's option, the utility and attacher may negotiate a special contract. ~~or upon~~
12 receipt of three (3) separate applications for averaging 1,000 poles or 3 percent of the
13 utility's poles in Kentucky for any three (3) months over a five (5) month period.[:] ~~The~~
14 special contract, at a minimum, shall may contain:

- 15 1. An agreement for a prepaid account from the new attacher to cover the cost of the
16 request;
- 17 2. Direction from the new attacher regarding make ready work that the utility can
18 complete without further direction from the new attacher including;
 - 19 a. _____ The maximum cost per pole;
 - 20 b. _____ The total cost for make ready work for each project or line of each project;
- 21 3. The new attacher's prioritization of projects if the new attacher has submitted multiple
22 requests for attachment;

- 1 4. Contact information, including phone numbers and email addresses, for all necessary
2 utility and new attacher personnel;
3 5. The cadence, location, and necessary personnel for each project; and
4 6. The timing of surveys and make ready.

5 (e) If a utility and an attacher cannot agree on timing for requests above a large order,
6 or if a special contract identified in paragraph (d) of this subsection can-not be agreed
7 to within fifteen (15) business days from submission of a formal written request to
8 engage from the attacher, the new attacher may file a complaint with the commission on
9 which the commission shall rule within twenty (20) business days of filing of the
10 complaint. An attacher shall notify the Commission when it submits a formal written
11 request to engage from the attacher.

12 (e) A utility may treat multiple requests from a single new attacher as one (1) request if
13 the requests are submitted ~~within thirty (30) days~~ during the same calendar month as of
14 one another; and

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

20 (8) Deviations from make-ready timeline.

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

1 (b) A utility may deviate from the time limits established in this section during
2 performance of make-ready for good and sufficient cause that renders it infeasible for
3 the utility to complete make-ready within the time limits established in this section. A
4 utility that so deviates shall immediately notify, in writing, the new attacher and affected
5 existing attachers and shall identify the affected poles and include a detailed
6 explanation of the reason for the deviation and a new completion date. The utility shall
7 deviate from the time limits established in this section for a period no longer than
8 necessary to complete make-ready on the affected poles and shall resume make-ready
9 without discrimination once the utility returns to routine operations.

10 (c) An existing attacher may deviate from the time limits established in this section
11 during performance of complex make-ready for reasons of safety or service interruption
12 that renders it infeasible for the existing attacher to complete complex make-ready
13 within the time limits established in this section. An existing attacher that so deviates
14 shall immediately notify, in writing, the new attacher and other affected existing
15 attachers and shall identify the affected poles and include a detailed explanation of the
16 basis for the deviation and a new completion date, which shall not extend beyond sixty
17 (60) days from the completion date provided in the notice specified in subsection (4) of
18 this section as sent by the utility (or up to 105 days in the case of larger orders specified
19 in subsection (6)(b) and (c) of this section). The existing attacher shall not deviate from
20 the time limits established in this section for a period for longer than necessary to
21 complete make-ready on the affected poles.

22 (9) Self-help remedy.

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

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

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

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

12 (b) Make-ready. If make-ready is not complete by the applicable date established in
13 subsection (4) of this section, then a new attacher may conduct the make-ready in place
14 of the utility and existing attachers by hiring a contractor from the utility's list of approved
15 contractors on the utility's website to complete the make-ready, which shall be
16 completed as specified in Section 5 of this administrative regulation. The make-ready
17 shall be performed in compliance with this regulation, the utility's tariff, and the
18 construction standards listed on the utility's website.

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

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

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

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

6 ~~[(d) Pole replacements. Self-help shall not be available for pole replacements.]~~

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

11 (a) Attachment application.

12 1. A new attacher electing the one-touch make-ready process shall elect the one-touch
13 make-ready process in writing in its attachment application and shall identify the simple
14 make-ready that it will perform. It is the responsibility of the new attacher to ensure that
15 its contractor determines if the make-ready requested in an attachment application is
16 simple.

17 2. Application completeness.

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

22 b. An attachment application shall be considered complete if the application provides
23 the utility with the information necessary under its procedures, as established in the

1 utility's applicable tariff or a special contract regarding pole attachments between the
2 utility and the new attacher, to make an informed decision on the application.

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

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

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

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

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

21 c. An objection made pursuant to clause b. of this subparagraph shall be specific and in
22 writing, include all relevant evidence and information supporting the objection, be made

1 in good faith, and explain how the evidence and information relate to a determination
2 that the make-ready is not simple.

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

7 (b) Surveys.

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

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

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

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

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

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

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

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

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

19 (1) Contractors for self-help complex and above the communications space make-
20 ready. A utility shall make available and keep up-to-date a reasonably sufficient list of
21 contractors the utility authorizes to perform self-help surveys and make-ready that is
22 complex and self-help surveys and make-ready that is above the communications
23 space on the utility's poles. The new attacher shall use a contractor from this list to

1 perform self-help work that is complex or above the communications space. New and
2 existing attachers may request the addition to the list of any contractor that meets the
3 minimum qualifications in subsection (3) of this section and the utility shall not
4 unreasonably withhold its consent.

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

11 (a)

12 1. If the utility does not provide a list of approved contractors for surveys or simple
13 make-ready or no utility-approved contractor is available within a reasonable time
14 period, then the new attacher may choose its own qualified contractor that shall meet
15 the requirements in subsection (3) of this section.

16 2. If choosing a contractor that is not on a utility-provided list, the new attacher shall
17 certify to the utility that the attacher's contractor meets the minimum qualifications
18 established in subsection (3) of this section upon providing notices required by Section
19 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

20 (b)

21 1. The utility may disqualify any contractor chosen by the new attacher that is not on a
22 utility-provided list, but a disqualification shall be based on reasonable safety or
23 reliability concerns related to the contractor's failure to meet any of the minimum

1 qualifications established in subsection (3) of this section or to meet the utility's publicly
2 available and commercially reasonable safety or reliability standards.

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

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

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

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

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

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

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

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

4 Section 6. Notice of Changes to Existing Attachers.

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

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

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

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

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

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

21 (c) The motion shall not be considered unless it includes the relief sought, the reasons
22 for such relief, including a showing of irreparable harm and likely cessation of cable

1 television system operator or telecommunication service, a copy of the notice, and a
2 certification that service was provided pursuant to paragraph (b) of this subsection.

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

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

7 (3) Transfer of attachments to new poles.

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

11 (b) Existing attachers may deviate from the time limit established in paragraph (a) of this
12 subsection for good and sufficient cause that renders it infeasible for the existing
13 attacher to complete the transfer within the time limit established. An existing attacher
14 that requires such a deviation shall immediately notify, in writing, the utility and shall
15 identify the affected poles and include a detailed explanation of the reason for the
16 deviation and the date by which the attacher shall complete the transfer. An existing
17 attacher shall deviate from the time limits established in paragraph (a) of this subsection
18 for a period no longer than is necessary to complete the transfer.

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

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

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

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

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

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

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

14 (d) The relief sought.

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

18 (3) How filed.

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

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

23 (4) Procedure on filing of complaint.

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

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

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

10 (b) If the complaint, either as originally filed or as amended, establishes a prima facie
11 case and conforms to this administrative regulation, the commission shall serve an
12 order upon the person complained of, accompanied by a copy of the complaint, directed
13 to the person complained of and requiring that the matter complained of be satisfied, or
14 that the complaint be answered in writing within ten (10) days from the date of service of
15 the order. The commission may require the answer to be filed within a shorter period if
16 the complaint involves an emergency situation or otherwise would be detrimental to the
17 public interest.

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

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

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

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

10 (7) Burden of proof.

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

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

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

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

19 (8) Time for final action.

20 (a) The commission shall take final action on a complaint regarding the rates, terms, or
21 conditions for access to a utility's pole, duct, conduit, or right-of-way within 180 days of a
22 complaint establishing a prima facie case being filed, unless the commission finds it is

1 necessary to continue the proceeding for good cause for up to 360 days from the date
2 the complaint establishing a prima facie case is filed.

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

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

15