

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
) CASE NO. 2023-00416
ELECTRONIC INVESTIGATION OF POLE)
ATTACHMENTS) **KBCA EMERGENCY REGULATIONS**
) **REDLINES**
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The Kentucky Broadband and Cable Association (“KBCA”) appreciates the Kentucky Public Service Commission’s (“KPSC’s” or “Commission’s”) interest in further revising the agency’s Emergency Regulations, 807 KAR 5:015E, to promote timely and efficient broadband deployment in Kentucky. In accordance with the Commission’s November 18, 2024, Order, KBCA provides these comments on its proposed redlines to 807 KAR 5:015E. KBCA’s comments are intended to minimize the potential for confusion and disputes between pole owners and attachers by modifying sections of the regulations on which questions or operational concerns have arisen.

KBCA has also proposed redlines specifically intended to expedite broadband deployment in accordance with the Commonwealth’s directive to “facilitat[e] the deployment of broadband internet service to unserved and underserved citizens in the Commonwealth.” Senate Joint Resolution 175. As KBCA has noted in its other submissions, it expects the volume of pole attachment applications to increase dramatically as attachers work to meet state and federal broadband deployment deadlines. As such, it is imperative for the Commission to remove

barriers to broadband deployment. In its changes, KBCA respectfully requests that the Commission:

- Clarify that the definition of “pole” includes any pole that is used for distribution purposes,
- Expand the definition of red-tagged poles to align with the FCC definition,
- Revise the certification requirement to match real world realities in the field,
- Shorten the advance-notice period for overlashing,
- Shorten the time for a utility to determine application completeness,
- Provide a timeline for reviewing resubmitted applications,
- Remove the confusing 500-pole increment sliding scale for deadlines,
- Make special contracts permissive where it is more efficient to rely on the Commission’s regulations, and
- Require utilities to notify attachers when they know they will not be able to meet regulatory deadlines so that an attacher may promptly engage in self-help.

As the Commonwealth made clear in its directive, broadband deployment is a priority for Kentucky. Taking actions like these will help to ensure that Kentucky remains a leader in rural broadband.

I. Definition of Transmission And Distribution Poles (Section 1(1), page 2, lines 10 - 11)

- **Issue of Concern:** KBCA’s members face challenges obtaining timely access to “transmission” poles where the poles are “mixed use” poles – that is, poles that support both distribution and transmission services and related facilities. While utilities often assert

otherwise, such poles are properly encompassed within the poles to which KBCA members have access rights and the timelines set forth in the Commission's regulations.

- **Proposed Solution:** The Commission should clarify that the definition of "pole" includes any pole that is used for distribution purposes, even if it is also used for transmission purposes.

II. Red Tagged Pole (Section 1(10), page 3, lines 15-17; and Section 4(7)(b)(5), page 16, lines 15-16).

- **Issue of Concern:** The Emergency Regulations contain a definition of "red-tagged poles" that would allow a utility to improperly shift the entire cost of a pole replacement to an attacher in situations other than those in which a pole must be replaced for lack of capacity. Further, attachers currently do not receive any notification of red tagged poles identified in their applications, making it impossible for attachers to determine if and when a utility properly designates a pole as red tagged.

- **Proposed Solution:** The Commission should expand the definition of "red tagged poles" to align with the FCC's definition, which includes any pole "that the utility has identified as needing replacement for any reason other than the pole's lack of capacity." FCC December 15, 2023, Order at paras. 39-40 & 42. This definition encompasses the current Kentucky definition of "red tagged poles," which includes any utility owned pole that "(a) is designated for replacement based on the pole's non-compliance with an applicable safety standard; (b) is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or (c) would have needed to be replaced at the time of replacement even if the new attachment were not made," but is appropriately broader and would include instances currently not captured by the Kentucky

definition. To ensure overall compliance and improved transparency, the Commission should also require utilities to notify attachers of each red tagged pole identified in an attacher's application when the utility responds to the attacher granting or denying access, and in the detailed make-ready estimate. This will allow attachers to effectively track the red tagged poles that a utility needs to replace during the make ready process and ensure proper pole replacement cost allocation and invoicing.

III. Certification Requirement (Section 3(5)(b)(1), page 6, lines 8-11; and Section 4(2)(b), page 9, lines 10-13)

- **Issue of Concern:** The Emergency Regulations require attachers to certify their applications meet legal and tariff requirements, and to identify personnel responsible for overseeing all attachments. Requiring broad certifications, which include potentially shifting and differing utility "requirements," creates additional administrative burdens and difficulties that are unnecessary given that the utility still reviews an application for completeness and on the merits regardless of any certification. Additionally, there may not be a single person responsible for "all attachments" in a utility's footprint.

- **Proposed Solution:** Attachers should only be required to designate the appropriate personnel to address attachment-related issues.

IV. Overlapping Notice (Section 3(6)(c)(1) & (3), page 7, lines 12 and 19)

- **Issue of Concern:** Overlapping is a critical, uniformly-recognized, and longstanding practice for deploying broadband on a timely and cost-effective basis. It is critical for maintaining KBCA members' systems across Kentucky. The Commission's regulations provide for overlapping on 30 days' advance notice, which unnecessarily delays broadband deployment.

- **Proposed Solution:** The Commission should amend its regulations to reduce the advance-notice required for overlashing from 30 to 15 days. The 15 day advance-notice period is consistent with the FCC Overlash notification rules, and those of surrounding states. *See* 47 C.F.R. § 1.1416(c).

V. Completeness Review (Section 4(2)(a)(2), page 9, lines 15-16; Section 4(2)(a)(8), page 10, lines 11-12; Section 4(2)(a)(11), page 11 lines 1-2)

- **Issue of Concern:** The Emergency Regulations allow utilities to take up to three weeks (15 business days) simply to determine whether an application is complete. This is before any survey or engineering work is initiated, and there is no apparent operational justification or specific need for this additional time. Moreover, changing the review period for each 500-pole increment creates multiple, confusing timelines that are difficult for pole owners and attachers to track and operationalize.

- **Proposed Solution:** The Commission should allow a utility a fixed time-period of up to 10 business days to review all pole attachment applications for completeness, in accordance with the Commission's original regulations and the FCC standards. *See* 47 C.F.R. § 1.1411(c)(1)(i).

VI. Resubmitted Applications (Section 4(2)(a)(10)*new, page 10, lines 17-23)

- **Issue of Concern:** There are currently no timeframes associated with a utility's review of any application resubmitted for incompleteness.

- **Proposed Solution:** In order to create certainty regarding the timing of this process, the Commission should require pole owners to review any resubmitted application within five (5) business days. Any application resubmitted for incompleteness need only address the utility's reasons for finding the application incomplete, and shall be deemed complete within

five (5) business days after its resubmission unless the utility specifies in that time period the reasons for incompleteness that were not sufficiently addressed in the resubmitted application. This revision to the Commission's regulations would conform the existing regulations to the FCC rules. *See* 47 C.F.R. § 1.1411(c)(1)(ii). It would also avoid unnecessary delays that arise during the application review process, and would assist all parties in understanding when the regulatory clock starts for all subsequent deadlines.

VII. Survey and Make-Ready Timelines (Section 4(2)(b)(1), page 11, line 8; Section 4(2)(b)(4), page 12, lines 5-6; Section 4(4)(a)(2), page 13, line 22; Section 4(4)(b)(2), page 14, line 11; Section 4(8)(b), page 16, line 21; Section 4(8)(c), page 17, line 1; Section 4(9)(c), page 19, line 12)

- **Issue of Concern:** The increased survey and make ready timelines for each 500-pole increment increase the access timelines by four (4) months, and create operational confusion and shifting deadlines that will delay broadband deployment.

Survey and Engineering. For survey and engineering, the Emergency Regulations allow utilities up to 120 days to complete the work for large orders. This is double the amount of time allowed under the existing, permanent rules (*i.e.*, 60 days), and it requires an attacher to wait an additional two (2) months before the attacher can invoke the self-help process to complete the survey and engineering work. Requiring attachers to wait 120 days – four months – to learn whether a utility has completed a survey and granted or denied access, and before an attacher is able to engage in self-help, is unreasonable.

Make-Ready. Similarly, for make-ready, the Emergency Regulations add a total of seventy-five (75) days (up to forty-five (45) days for work in the communication space and thirty (30) days for work above the communication space) to the access timeframes. In the

communication space, the Emergency Regulations add fifteen (15) days to the completion deadline for make-ready of small orders and add up to forty-five (45) days to the completion deadline for make-ready of large orders on a sliding 500-pole scale. For large order make-ready above the communication space, the Emergency Regulations add thirty (30) days to the completion deadlines. Attachers are unable to avail themselves of the self-help process until these new, longer, time periods run.

It is important to note that the additional 135 total days (approximately 4.5 months) that the Emergency Regulations added to complete survey/engineering and make-ready work do not include the 90-day notice period (required under the Emergency Regulations) prior to the filing of an application for a large order, or the time allowed for a utility to review an application for completeness after it has been submitted. There is no evidence to suggest that the utilities need this additional time, or that these additional timeframes will address the ongoing challenges pole owners are facing with increasing pole application volume (*i.e.* resource constraints).

- **Proposed Solution:** The Commission should not increase the survey and make ready timelines for large orders beyond those allowed by the FCC. There should not be a sliding 500-pole increment scale used to determine the applicable timeframe. *See* 47 C.F.R. § 1.1411(e)(2).

Survey time periods should revert back to the existing, permanent rules and be fixed for small and large orders (*i.e.*, 45 days for small orders and 60 days for large orders).

Similarly, make-ready completion deadlines should revert back to the existing, permanent rules and be fixed for small and large orders. Specifically, small order make-ready work in the communication space should revert back to 30 days; large order make-ready work in the

communication space should revert back to 75 days; and large order make-ready above the communication space should revert back to 135 days.

VIII. Special Contracts (Section 4(8)(d), page 17, lines 4-9)

- **Issue of Concern:** The Emergency Regulations *require* attachers and pole owners to enter special contracts for all requests for attachments exceeding 3,000 poles or 3% of the utility's poles in Kentucky. Although these types of individualized, negotiated contracts may be beneficial under certain circumstances, pole owners and attachers should not be mandated to pursue them.

- **Proposed Solution:** Such contracts should be permissive, not mandatory.

IX. Notification Of Inability To Meet Deadlines (Section 4(8)(h)*new, page 18, lines 12-15)

- **Issue of Concern:** Utilities continue to face some challenges with securing the necessary resources and personnel to process applications and complete make ready in a timely manner. As a result, an attacher should not have to wait for months after submitting an application before learning that a utility does not have the ability to complete necessary survey or make-ready work.

- **Proposed Solution:** The Commission should require utilities to notify attachers within 15 days of receiving a complete pole attachment application if they will be unable to meet the survey or make ready deadlines, so that the attacher can pursue self-help earlier in the process.

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Respectfully submitted,

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