

Andy Beshear
Governor

Rebecca W. Goodman
Secretary
Energy and Environment Cabinet



Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
psc.ky.gov

Angie Hatton
Chair

Mary Pat Regan
Commissioner

John Will Stacy
Commissioner

MEMORANDUM

TO: Robert Stivers, Senate President
David W. Osborne, Speaker of the House

FROM: Linda C. Bridwell, PE
Executive Director
Kentucky Public Service Commission

DATE: September 30, 2024

RE: September 2024 Report on Pole Attachments for Broadband Service

A handwritten signature in blue ink that reads "Linda C. Bridwell".

Attached please find the initial report from the Kentucky Public Service Commission (PSC) regarding the progress made in expediting utility pole attachment requests for broadband service. As you know, Senate Joint Resolution 175, (SJR 175) passed during the 2024 Regular Session of the Kentucky General Assembly and enacted on April 4, 2024, directed the PSC to promulgate emergency amendments to its pole attachment regulations to, among other things, expedite the processing of broadband requests for pole attachments and reduce the backlog of pole attachment requests. SJR 175 also directed the PSC to prepare and submit a quarterly report to the Legislative Research Commission for referral to the Interim Joint Committee on Natural Resources and Energy, beginning September 30, 2024. This report is submitted as the first quarterly report in fulfillment of the legislative mandate.

Please do not hesitate to call me if you have any questions.

**Report on the Progress Made in Expediting Pole Attachment Requests for
Broadband Service
in Kentucky**

**A Report to the
Legislative Research Commission
for Referral to
the Interim Joint Committee on
Natural Resources and Energy
Pursuant to 2024 SJR 175**

by the

Kentucky Public Service Commission

September 30, 2024

Executive Summary

SJR 175, a joint resolution “facilitating the deployment of broadband internet service to unserved and underserved citizens in the Commonwealth and declaring an emergency,” recognized the importance of broadband internet access to broadband internet service and that lack of internet access in rural areas places unserved or underserved citizens at a disadvantage. SJR 175 noted that broadband providers have and will receive significant monies to fund broadband deployment in the Commonwealth and found that the PSC should make every effort to remove unnecessary delays in how broadband attachment requests are received and processed by pole-owning utilities.

SJR 175 directed the PSC to promulgate emergency amendments to its pole attachment regulations to, among other things, expedite the processing of broadband requests for pole attachments, reduce the backlog of pole attachment requests and establish parameters to expedite the processing of pole attachment requests for unserved and underserved areas. SJR 175 directed the PSC to establish a docket on pole attachment issues to receive comments from affected parties and find resolutions that will expedite pole attachment requests and broadband deployment. Finally, SJR 175 directed the PSC to prepare and submit a quarterly report to the Legislative Research Commission for referral to the Interim Joint Committee on Natural Resources and Energy, beginning September 30, 2024. This report is submitted as the first quarterly report in fulfillment of the legislative mandate.

Background

Pursuant to KRS Chapters 74, 278, 279, and parts of 61, the PSC is obligated to ensure that rates for electric, gas, water, sewer, and telecommunications services are fair, just and reasonable. In addition to its regulation of utility rates, the PSC is also responsible for ensuring that utility services are adequate, efficient and reasonable. The nearly 1,100 utilities under the PSC jurisdiction include investor-owned and cooperative electric companies, natural gas distributors and pipeline companies, water and sewer providers including districts, associations and investor-owned utilities, and cooperative telephone companies. The PSC does not regulate the rates and service of utilities subject to the control of cities or rural electric cooperatives served by the Tennessee Valley Authority (TVA).

The United States Congress, on February 21, 1978, by Public Law 95-234, 92 Stat. 33, 47 U.S.C. § 224, amended the Federal Communications Act to grant regulatory jurisdiction over cable television (CATV) pole attachments to the Federal Communications Commission (FCC) in those states which did not exercise such regulation. The new law exempted cooperative-formed electric and telephone utilities from the FCC's pole attachment jurisdiction. Congress, however, allowed states to "reverse preempt" the FCC and assert state jurisdiction over CATV attachments to utility poles.

Several Kentucky utilities requested that the PSC exercise "reverse preemption" and, in August 1981, the PSC issued an order asserting jurisdiction over CATV attachments and reverse preempted the FCC. See, PSC Case No. 8040, *The Regulation of Rates, Terms and Conditions for the Provision of Pole Attachment Space to Cable Television Systems by Telephone Companies* (Ky. PSC Aug. 26, 1981). Unlike the FCC's jurisdiction, the PSC's jurisdiction over CATV attachments extended to electric and telephone cooperatives. Kentucky is currently one of 24 states and the District of Columbia that exercise jurisdiction over pole attachments.

The Kentucky Court of Appeals denied a jurisdictional challenge from several CATV providers finding that the PSC had, "jurisdiction over the utility companies, and that jurisdiction extends to their poles and the "services" and "rates" generated by pole attachment agreements." *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393, 396 (Ky. App. 1983).

The PSC also adopted a methodology for calculating pole attachment rates. See, *The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments*, (Ky. PSC Sept. 17, 1982). The PSC required pole-owning utilities to file pole attachment tariffs setting out the rates and conditions of service for CATV attachments.

From the early eighties until the late 2010s, the PSC handled issued relating to pole attachments, including non-CATV attachments, on an *ad hoc* basis. The PSC would address these issues through Staff Opinions or Orders as required by the nature of each case. However, as broadband deployment increased, and to a lesser extent requests to

attach small cell antennas, it became apparent that a comprehensive regulation was necessary to address the increasing importance of third-party pole attachments.

The PSC, thus, in late 2019, completed a draft of a new regulation designed to comprehensively address pole attachments to the poles of jurisdictional utilities. In February of 2020 the PSC sent the proposed regulation to interested parties and held several meetings in February and March 2020 with the intent of promulgating the regulation by May 2020. The PSC had to postpone several meetings and the filing of the regulation due to COVID-19 but in December of 2020 the PSC restarted the meetings relating to the proposed pole attachment regulation.

The PSC, therefore, was well situated to promulgate a pole attachment regulation when, during the 2023 Regular Session, the General Assembly, on March 30, 2021, enacted House Bill 320, 2021 Ky. Acts ch. 171, sec. 1, which required, among other things, that the PSC, by December 31, 2021, promulgate regulations regarding pole attachments, including those necessary for the provisions of broadband service.

The PSC filed the new broadband regulation (codified as 807 KAR 5:015) with the Legislative Research Commission on May 14, 2021, more than seven months before the deadline established by the General Assembly. 807 KAR 5:015 became effective in late January 2022 and pole owning utilities filed conforming tariffs on or before February 28, 2022. The Kentucky Broadband and Cable Association (KBCA) filed objections to each file tariff and, pursuant to KRS 278.190, the PSC suspended the utilities' proposed pole attachment tariffs to conduct further investigation of the tariffs. On December 22, 2022, the PSC issued Orders approving, with modifications, the utilities' various tariffs.

The PSC, after promulgating 807 KAR 5:015 and approving pole attachment tariffs, received no complaints from utilities or attachers regarding problems with the implementation of the new pole attachment regime. The PSC first became aware that attachers had issues with how pole attachments were being processed when members of KBCA raised these concerns at the December 11, 2023, meeting of the Investments in Information Technology Improvement & Modernization Projects Oversight Board.

In response to these newly discovered concerns the PSC, on December 14, 2023, initiated a case to "create a stakeholder process to discuss and investigate issues and lessons learned relating to pole attachments." The purpose of the case was, "to identify issues regarding pole attachments, particularly regarding the extension of broadband services that might be addressed through changes in the regulations, rules, or tariffs governing pole attachments." See Case No. 2023-00416, *Electronic Investigation of Pole Attachments*, (Order issued Dec. 14, 2023). The PSC convened a series of conferences between stakeholders to determine what changes, if any, were necessary to address issues arising from requests for pole attachments.

This background information is intended only to outline the efforts the PSC has taken to regulate pole attachments prior to the enactment of SJR 175.

Efforts to Expedite Broadband Deployment

Beginning in January 2024 the PSC hosted six informal conferences between the PSC, PSC Staff, utilities and broadband attachers to better understand challenges with the pole attachment process, particularly the practical “on the ground” challenges attachers and utilities faced in processing pole attachment applications. The information gathered from these six conferences helped form the emergency amendments the PSC has made to 807 KAR 5:015 pursuant to SJR 175, which is the most significant step that the PSC has taken to hasten the processing of pole attachment applications and promote broadband deployment.

The emergency amendments are summarized below.

1. Expedite the time spent reviewing for completeness applications for pole attachments by:
 - Requiring utilities to maintain a website with construction standards and rules and requires contact information for appropriate personnel.
 - Stakeholders have identified the lack of clarity around what should be included in an application as a problem in the timely processing of an application.
 - Clarifying the minimum contents of a pole attachment application including a certification of compliance and appropriate personnel for each application.
 - The stakeholders had identified the lack of certification and clear identification of the appropriate personnel slowed down the application review process.
 - Clarifying when the next procedural step begins absent utility action within the prescribed time.
 - The utilities and pole attachers had differing views of when the next procedural step begins, which start new time periods for utility action.
2. Allow the attachers, if they have multiple pending applications, to prioritize a particular application.
 - Attachers have stated that the nature of their projects may change and a subsequent application for attachment may be more time sensitive than an application already submitted and that is being processed.
 - The PSC also makes clear how applicable time periods apply to “de-prioritized” applications.
3. Increase the maximum number of poles, from 1,000 to 3,000, that may be requested in an application and to which regulatory timelines for processing apply.

Previously any application over 1,000 poles requires the utility and pole attacher to negotiate a special contract.

- The amendments do increase the time in which the attachments can be made, but they also triple the maximum number of poles that can be processed without resorting to a special contract.
4. Address concerns regarding clarity of invoices and payments from both utilities and pole attachers that expedites invoicing and payment.
 - Lack of payment identified as a significant slowdown in making attachments.
 - Stakeholders stated that invoices and payments often did not clearly identify to which project or application the invoice/payment referred.
 5. Increases from 60 to 90 days the notice time in which an attacher will be filing an application for attachments exceeding 3,000 poles.
 6. Establishes minimum contents of special contracts for applications of greater than 3,000 poles.
 - Such large orders are resource-intensive for utilities, particularly regarding the personnel to perform the work necessary to make the attachments.
 - The stakeholders confirmed that for such large orders there needs to be a “meeting of minds” to marshal the necessary resources and timing of work.
 7. Establishes an expedited complaint and resolution process if a special contract cannot be negotiated within 15 business days of the beginning of good faith negotiations.
 - Beginning of negotiations must be made in writing.
 - The PSC must issue a final order within 20 business days of the filing of a complaint.
 8. For other complaints, reduces from 180 to 60 days the time in which the PSC must issue a final order.
 - The PSC or the parties (by agreement) may extend this to 180 days.
 - Previous maximum was 360 days.

The PSC will continue holding informal conferences to gather additional information regarding implementation and application of the amended pole attachment regulation and to see how effective the emergency regulations are in addressing the processing of pole attachment applications. For that reason, the emergency amendments to 807 KAR 5:015 were not followed with an ordinary regulation as the PSC will likely make further changes to the regulation resulting from future conferences.

The PSC, in the open docket, Case No.2023-00416, in addition to hosting stakeholder conferences to resolve issues pertaining to pole attachments, also requires updates from certain attachers and pole owners regarding the status of pole attachment applications, including any backlog of applications, and the efforts of the interested parties to address it. This information will assist the PSC in determining where significant bottlenecks occur in the pole attachment process and inform the PSC and stakeholders what changes would be necessary to address the bottlenecks.

The PSC, by the time the next report is filed, will have conducted more conferences, received further information on the status of pole attachment applications, and have information regarding the implementation of the emergency amendments to 807 KAR 5:015.