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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: December 30, 2024

RE: December 2024 Report on Pole Attachments for Broadband Service

Attached please find the second quarterly 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 second 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**

December 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 second 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 2021 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

Since the filing of the first quarterly report on September 30, 2024, the PSC has hosted three 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 as well as the efficacy of the emergency amendments to 807 KAR 5:015. During these conferences the Commission solicited updates from attachers and utilities regarding the status of attachment applications, including identifying areas of particular concern that delay the processing of pole attachment applications and pole attachments. Copies of the most recent updates and projected deployment numbers are attached to this report.

The PSC also solicited suggested amendments to the 807 KAR 5:015 and the emergency amendments made to 807 KAR 5:015. The emergency amendments to 807 KAR 5:015E will expire in late February 2025 and the Commission intends to replace the emergency amendments with an emergency regulation, accompanied with an ordinary regulation.

To that end the PSC requested that utilities and pole attachers file proposed amendments to 807 KAR 5:015E. The proposed amendments were filed on December 9, 2024, and were discussed on December 13, 2024 at a conference at the Commission’s offices.

The Commission will review the proposed amendments and make edits to 807 KAR 5:015E. The Commission will convene another conference in January 2025 to review its proposed edits to 807 KAR 5:015E with the stakeholders before finalizing amendments to 807 KAR 5:015E and filing those amendments with the Legislative Research Commission.

The PSC, in the open docket Case No.2023-00416, in addition to hosting stakeholder conferences to resolve issues pertaining to pole attachments, also will continually require 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.

Since the implementation of the pole attachment regulation, 807 KAR 5:015, in March 2022, no attacher has filed a complaint against a utility.

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 filed emergency amendments to 807 KAR 5:015E, in addition to an original regulation.



Spectrum Broadband Deployment

KENTUCKY

PSC Meeting 12/13/24

Current Poles in Progress – *Kentucky Utilities*

KATAPULT DATA AS OF 12/06/24

POLES CURRENTLY IN EACH PHASE OF PROCESS						
STATUS	RESPONSIBLE	TOTAL POLES	POLES ON TIME	POLES LATE	% POLES ON TIME	% POLES LATE
FIELD SURVEY and ENGINEERING (30 days)	KU	1,178	1,153	25	97.88%	2.12%
MAKE READY ESTIMATE (14 days)	KU	0	0	0	0.00%	0.00%
MAKE READY PAYMENT (14 days)	CHARTER	2,075	54	2,021	2.60%	97.40%
MAKE READY CONSTRUCTION (no timeline)	KU	8,955	N/A	N/A	N/A	N/A
COMMS MAKE READY / INSTALLATION (60 days)	CHARTER	7,043	2,164	4,879	30.73%	69.27%
POST-CONSTRUCTION INSPECTION (60 days)	KU	375	336	39	89.60%	10.40%
INSTALLATION DEFECT DETECTED	CHARTER	343	343	0	100.00%	0.00%
COMPLETE	N/A	26	N/A	N/A	0.00%	0.00%
TRANSMISSION (no timeline)	KU	1379	N/A	N/A	N/A	N/A
CANCELED	N/A	414	N/A	N/A	N/A	N/A

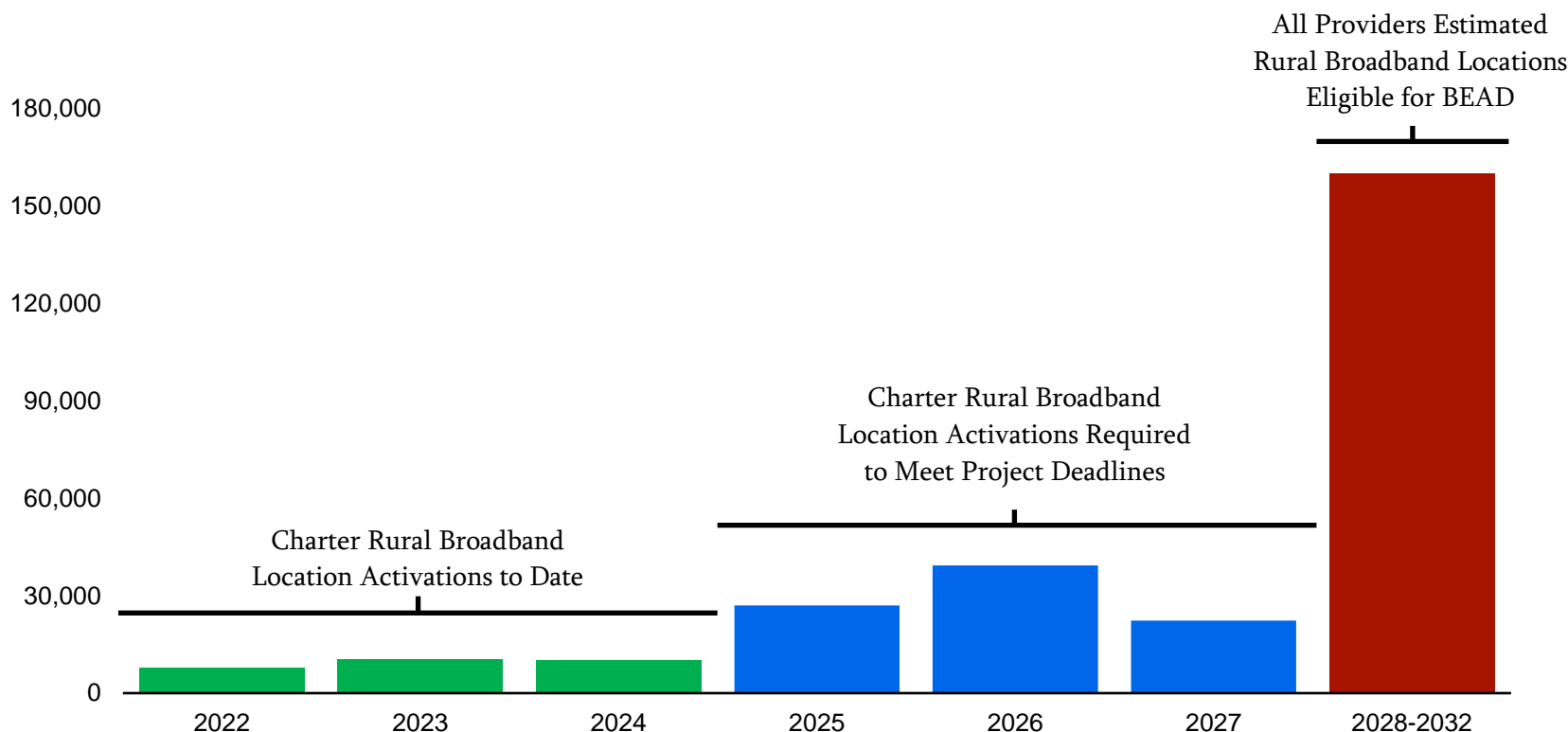
Current Poles in Progress – Co-Ops

ALDEN ONE/SPECTRUM PRISM DATA AS OF 11/26/24

		CATEGORY	Blue Grass Energy	Clark Energy	Owen Electric	South Ky RECC	Taylor County RECC	Inter-County Energy	Fleming-Mason Energy	Grand Total
Pre-Draft	Attacher	Not Submitted	379	663	68	11	16	427	123	1,687
Review	Attacher	Acknowledgment Overdue	49							49
		Revise Application		475	356	60		2		893
		Application Review		48						48
Survey	Pole Owner	Survey	272	413		772		717		2,174
		Survey Review		198	168			32	450	848
Estimate	Pole Owner	Estimate Make-Ready Costs	72		126					198
		Make-Ready Construction Pending	234	99				488		821
	Attacher	Awaiting Customer Response	36	117						153
		Customer Response Overdue	212	139				185	35	571
		Awaiting Make-Ready Payment	201					5	753	959
		Make-Ready Payment Overdue	282					158	102	542
Construction	Pole Owner	Make-Ready	720	147	15				428	1,310
		Make-Ready Overdue		101				36		137
	Attacher	Ready To Attach	4,299	696	1,052	72	3	2,169	2,723	11,014
		Ready to Overlash	411							411
		Attachment Extension Review	3,344	497	369	160	3	2,044	3,092	9,509
		Attachment Extension	464		408			281	65	1,218
Post Inspection	Pole Owner	Post Inspection	777	19	273			556	2,425	4,050
	Attacher	Corrections Needed	3,456		1,945			1,221	527	7,149
Final	Pole Owner	True-Up Billing	2	7				12		21
Canceled & Completed	No Action Needed	Cancel	659	160	376	13		339	339	1,886
		Complete	2		7			12	8	29
Grand Total			15,871	3,779	5,163	1,088	22	8,684	11,070	45,677



Projected Kentucky Network Expansion Outlook



Detail of Charter Rural Broadband Projects				
	State Grant (Round 1)	State Grant (Round 2)	Local Projects	FCC RDOF
Completion Due Date (Average)	2025	2026	Various pre-2026	Various pre-2027
Project Locations (Estimate)	18,700	36,218	16,726	31,000
Public & Private Investment (Estimate)	\$118 million	\$242 million	\$57 million	\$160 million

BEAD Projections
(Detail for All Providers)
<ul style="list-style-type: none"> 160,000 Estimated Locations* \$1.1 billion in Public Investment Completion Date: Various 2028-2032

* Source: <https://www.broadband.io/c/kentucky-broadband/meet-meghan>

KY Broadband Office mapping data is currently subject of review; final number may be adjusted based upon NTIA approval of BEAD eligibility data.