**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**

**STATE OF GEORGIA**

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| In Re: Generic Proceeding to Implement House Bill 244 | :: | Docket No. 43453 |

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| **REBUTTAL TESTIMONY AND EXHIBITS****OF****GREGORY L. BOOTH, P.E.** |

**ON BEHALF OF GEMC**

**AND 38 OF ITS EMC MEMBERS**

TABLE OF CONTENTS

[I. INTRODUCTION AND BACKGROUND 1](#_Toc55821835)

[II. REBUTTAL TO DR. LAWRENCE M. SLAVIN’S TESTIMONY 2](#_Toc55821836)

[III. REBUTTAL TO JIM DAVIES’ TESTIMONY 8](#_Toc55821837)

[IV. REBUTTAL TO JAMES YATES’ TESTIMONY 12](#_Toc55821838)

[V. GCA, GTA, AND AT&T FAIL TO PROPOSE TERMS AND CONDITIONS THAT ADDRESS THE REAL PROBLEMS IN GEORGIA 15](#_Toc55821839)

[VI. JOINT USE AGREEMENT REGULATIONS 20](#_Toc55821840)

[VII. CONCLUSION 21](#_Toc55821841)

**BEFORE THE**

**GEORGIA PUBLIC SERVICE COMMISSION**

**REBUTTAL TESTIMONY AND EXHIBITS OF**

**GREGORY L. BOOTH, P.E.**

**ON BEHALF OF**

**GEORGIA ELECTRIC MEMBERSHIP CORPORATION**

**DOCKET NO. 43453**

# INTRODUCTION AND BACKGROUND

1. Please state your name and business address.
	1. My name is Gregory L. Booth. I am employed by Gregory L. Booth, PLLC (“Booth, PLLC”) with my business address at 14460 Falls of Neuse Road Suite 149-110, Raleigh, North Carolina 27614.
2. On whose behalf are you testifying today?
	1. My testimony is offered on behalf of Georgia Electric Membership Corporation (“GEMC”) and its thirty-eight (38) not-for-profit cooperative members (“Georgia EMCs”) that are subject to the Georgia Broadband Opportunity Act.
3. What is the purpose of your rebuttal testimony?
	1. The purpose of my rebuttal testimony is to respond to the direct written testimony of Dr. Lawrence M. Slavin, Jim Davies, and James Yates. All three provided testimony that is inconsistent with the National Electrical Safety Code (“NESC”) and common industry practice. Further, their testimony fails to acknowledge the common bad pole attacher practices that are shown by the EMC Engineer Panel. Additionally, I will address several concerning terms and conditions proposed by Georgia Cable Association, Georgia Telecommunications Association, and AT&T that are not commercially reasonable and, in fact, would threaten the integrity of the pole plant and potentially the public if employed. Last, I have attached proposed reasonable terms and conditions for joint use agreements if the Commission determines it has jurisdiction over joint use agreements.

# REBUTTAL TO DR. LAWRENCE M. SLAVIN’S TESTIMONY

1. Have you reviewed the direct written testimony of Dr. Lawrence M. Slavin submitted by the Georgia Cable Association (“GCA”)?
	1. Yes, and I found concerning and, at times, incorrect statements in Dr. Slavin’s written testimony. First and foremost, Dr. Slavin testified that he and his team provide design engineering services in Georgia; if this is true, such design and engineering services would require he hold a professional engineering (PE) license in Georgia – which he does not hold. The Georgia Code Title 43 Chapter 15 was enacted to safeguard life, health and property and promote the public welfare. In Georgia, like nearly every state, a person shall be a licensed PE to practice the art and science of engineering which shall include any professional service such as consultation, investigation, evaluation, planning, design and many other activities in connection with any public or private utilities (including electric and communication utilities). A person must not only go through a rigorous set of requirements to become a licensed PE, they must continue to enhance their education and training and renewal process to maintain that license in order to provide such services. It has been my experience that these communications companies that attach to utility poles throughout Georgia (and elsewhere for that matter) not only fail to use the services of a PE on their design and construction but generally do not have a single PE within their entire company.
2. Dr. Slavin testifies that all cable operators desire a safe and reliable pole infrastructure and any practice in conflict with these objectives would be self-destructive.[[1]](#footnote-1) Do you agree?
	1. No.

First, Dr. Slavin does not appear to have any electric utility design experience which would be necessary to form an opinion regarding practices related to a safe and reliable electric utility pole infrastructure.

Second, Dr. Slavin’s statements are in stark contradiction to the realities in Georgia. As discussed in my direct written testimony, and at length in the EMC Engineer Panel direct written testimony, cable operators in Georgia do not routinely employ work practices that support safe and reliable pole infrastructure. Hundreds of pictures submitted to the Commission show NESC violation after NESC violation by cable companies, including the overloading of electric utility poles. These violations are representative of many others existing throughout the Georgia EMCs’ territories.

Third, it is not self-destructive for a cable company to have reckless pole attacher habits because the cable companies do not have the responsibility for maintaining the pole plant. And, many times, a cable attacher’s bad pole practice may cause a pole reliability issue, but the issue is resolved – by the pole owner – before electricity or cable service is lost. And, in many other instances, when a power pole breaks, the cable service often remains active. Once the pole owner changes out the pole, the cable operator can just move their attachment over to the new pole. I have heard cable company employees state more times than I can count, that a cable line can still provide service if it is on the ground (even though it is a NESC violation). Of course, that is not the case for an electric line. Dr. Slavin’s testimony concerning alleged “safe and reliable” practices by cable attachers is hardly reliable given the vast, and real, issues provided by the EMC Engineer Panel testimony and exhibits.

1. The alleged “commercial reasonableness” of cable’s proposed terms and conditions and reliance on the National Electrical Safety Code (“NESC”) as maximum design and engineering standards are themes Dr. Slavin repeats throughout his testimony.[[2]](#footnote-2) Do you agree with him?
	1. No. First, the NESC is not the design and constructional manual or the maximum guidelines for an electric utility or a communication utility. Based on my experience, all electric utilities (EMCs or IOUs) have their own specific manuals, specific technical specifications, and specific construction standards that have been developed to protect their pole plant and allow them to deliver safe and reliable service in their unique environment. Dr. Slavin’s apparent opinion that an EMC’s specific standards should be thrown aside is misguided and inconsistent with accepted good and customary utility engineering practices as expected by the NESC. Second, while the NESC is a thorough and comprehensive set of rules for the installation, maintenance, and operation of overhead and underground electrical supply and communication lines, the NESC is, by its own terms, not intended to be either “design instruction” or a set of “design specifications” and cannot be used as such.[[3]](#footnote-3)

Moreover, as explained in the IEEE’s NESC Handbook: “The Code recognizes that design specifications and work methods vary from utility to utility depending on many factors such as location, typical climate conditions, terrain, etc.” NESC Rule 012 also makes clear that: “[f]or all particulars not specified, but within the scope of these rules . . . construction and maintenance should be done in accordance with accepted good practices for the given local conditions known by those responsible for the construction and maintenance of the communications or supply lines and equipment.” In addition, the Telcordia Blue Book – Manual of Construction Procedures, which is cited by Dr. Slavin as a guiding reference document for construction of communications plant, including where attachments are made to poles owned by electric utilities, contains the following passage: “The national safety codes such as NESC and NEC provide a “defacto minimum” set of baseline principles that are added to by the design and engineering departments of utilities using their experience and knowledge of products and applications. One does not design to minimum safety standards, but good designs start from and seriously take into consideration the baseline guidance provided by such codes. (Blue Book – Manual of Construction Procedures, Section 1.2)”

Dr. Slavin does not have a professional engineering license and is not qualified to provide design and engineering services in Georgia and specifically as applied to the subject matter of this proceeding.

1. Dr. Slavin testifies that several of cable’s attachment practices or proposed practices comply with the NESC. Do you agree that all of cable’s attachment practices comply with the NESC?
	1. No. First, Dr. Slavin testifies that the placement of messengers and overlashing are methods consistent with the NESC.[[4]](#footnote-4) But Dr. Slavin fails to state that these practices are only consistent with the NESC if the messengers and overlashing procedure are designed in a way that the resulting placement of messengers or addition of overlashing comply with the NESC and the calculations and loading and strength requirements of Sections 25 and 26.

Second, Dr. Slavin testifies that to determine whether a pole can support additional cable lines or overlashing, no prior loading and strength analysis is needed; rather, the “easiest” way to determine whether a pole can support additional cable lines or overlashing is through comparing it to another pole that already has additional cables or overlashing.[[5]](#footnote-5) Dr. Slavin’s proposed “easiest” practice violates the NESC requirements contained in Sections 25 and 26 that require knowledge that the calculation and strength requirements are met when attaching cable attachments to electric utility poles. The easiest way is not always the right way, particularly when it comes to protecting an electric utility’s pole plant and the safety of the public. Then, even more troubling, Dr. Slavin suggests that an “educated” guess is appropriate when it comes to understanding loading and strength of a utility pole. This is simply wrong and does not comport with the NESC.

 Dr. Slavin submitted some “mathematical” analysis to support his “easy” determination that “detailed loading studies are unnecessary for many communications attachments as well as for almost all overlashing” and to demonstrate the alleged “minimal” loading impact overlashing creates.[[6]](#footnote-6) His example, however, uses a Class 3 pole and an assumption of a 150 foot span between poles. These formula inputs are wholly inapplicable to the Georgia EMC’s pole plant. Most EMC poles are Class 5 and Class 4, and the typical rural span between poles, is typically much longer than 150 feet and often is 300 to 350 feet. Dr. Slavin’s academic example has no application to what is actually on the ground in the Georgia EMCs’ service territories. Dr. Slavin’s testimony supports the Georgia EMCs’ position that the EMC needs to be involved in pre-inspection or post-inspection, in the case of Georgia One Touch Make Ready, because Dr. Slavin’s position is simply not accurate.

 Last, Dr. Slavin’s testimony regarding the communication worker safety zone (“CWSZ”) utterly fails to recognize that the 30-inch exceptions to the 40 inch rule is not common practice in Georgia.[[7]](#footnote-7) In order for the 30-inch exception to the CWSZ to apply, both parties must agree to the reduction, and the NESC requirements contained in Section 9 must be met. Absent routine inspection and assurance of bonding and grounding of the cable attachment, the 30-inch exception is typically improper and results in a hazard work environment for the communication worker in violation of the NESC and OSHA work rules. Again, Dr. Slavin wants to impose the risk on the Georgia EMC and the public because this practice is “easiest”.

1. Do you have any other response to Dr. Slavin’s testimony?
	1. Yes. Dr. Slavin’s testimony is a theoretical, academic, discussion that ignores all Georgia EMC specific information and data available to him. The testimony assumes 100% compliance by cable companies with bonding and grounded neutral systems – which cable companies cannot be expected to maintain. The testimony also assumes that an EMC overdesigned a utility pole in such a way that a cable company can do anything it wants without regard for loading, strength, and clearances. The Commission should reject the bulk of Dr. Slavin’s testimony as being inapplicable to the Georgia EMCs and this case. Furthermore, as explained more fully in by pre-filed rebuttal testimony below, the Commission should reject Dr. Slavin’s mistaken premise that the pole networks built and maintained by Georgia Power Company and the Georgia EMCs are essentially the same. They are in fact different utility systems and which different construction techniques.

# REBUTTAL TO JIM DAVIES’ TESTIMONY

1. Have you reviewed the direct written testimony of Jim Davies submitted by the Georgia Cable Association (“GCA”)
	1. Yes. Mr. Davies is not a licensed engineer nor is he degreed in a way to be an engineer capable of performing engineering calculations. Yet, GCA offers him as a witness regarding terms and conditions concerning the safety and reliability of the Georgia EMCs pole networks.
2. Mr. Davies provides GCA Exhibit JD-2, which contains two photos of “typical” spans of Spectrum’s aerial plant attached to EMC poles. Do you agree with the statements Mr. Davies made with respect to this Exhibit?
	1. No. I certainly do not. Mr. Davies testifies that appropriate separation is maintained between the attachment and the electric utility facilities with a single example. But this is impossible to determine given there are no measurements to support the statement. Furthermore, a single picture does not tell the real story whereas the large number of EMC pictures depict the truth of the matter. And the few pictures sponsored by Mr. Davies fail to show the separation at the top of the pole. Further, Mr. Davies testifies that the attachment depicted in GCA Exhibit JD-2 seems to be in sound and workmanlike manner. Again, there is no testimony showing a loading analysis or clearance details so it is impossible to determine whether the attachments on these photographs comply with the NESC.

Last, while these pictures depict typical overlashing, as shown by the pictures submitted with the EMC Engineer Panel testimony, “typical” overlashing is not always the case in Georgia and absent EMC involvement on the pre-inspection or, in the case of Georgia One-Touch Make-Ready, post-inspection, compliance with accepted good practice is a pure guess and most likely incorrect.

1. Mr. Davies also states that EMCs perform pole audits to generate additional revenue not to determine where unauthorized attachments are located on the EMCs’ systems.[[8]](#footnote-8) Do you agree with this statement?
	1. Absolutely not. There would be no unauthorized attachment costs to the communication companies if they simply followed the permit process rather than attempting to avoid paying pole attachment rental rates and attaching without authorization. The pole audits are done so that EMCs know where communication companies are attached to their poles and how many attachments they have. Spectrum appears to request the Commission permit it to attach to EMC poles without notifying the EMC and without any consequences when they get caught. There must be a negative consequence for failure to follow the rules that are in place for the safety and reliability of the electrical system to incentivize better behavior. Spectrum’s complaints about “bounties” on unauthorized attachments appears to me to be an effort at deflection. Regardless of how the inspector is paid, if an unauthorized attachment is found, the attaching entity bypassed the permitting and engineering process (and avoiding rent) – it is not just a back-rent issue. As we have explained in direct and rebuttal testimony, the pre-engineering and post-inspection (just post-inspection in the case of the GOTMR proposal) is an important part of maintaining the safety and reliability of the Georgia EMCs’ pole networks. So what Spectrum is really complaining about is getting caught.
2. Mr. Davies goes on to complain about safety audits. He claims that it is difficult to determine what entity created the violations identified in the safety audit.[[9]](#footnote-9) Do you agree?
	1. Absolutely not. The poles have defined supply space, communication worker safety zone, and communications space, as show in GEMC Ex. 133 (GB-3) attached to my direct written testimony. It is not difficult to determine when a communication company attaches in violation of the NESC, outside the communications space, or otherwise compromises the CWSZ. In my experience in this field, and based on my review of the hundreds of photographs submitted by the EMC Engineering Panel showing EMC poles, it is my opinion that the violations identified in safety audits are typically caused by the communications attacher. As I said in my direct testimony, work on the Georgia EMCs’ facilities is done by humans and, therefore, not perfect. That said, the electric utilities do a much better job of training, quality control, inspection and correction.
3. Like Dr. Slavin, Mr. Davies requests the Commission to mandate that the NESC is the only standard that cable companies must comply with in attaching to EMC poles.[[10]](#footnote-10) Is this appropriate?
	1. No. As I have stated already, the NESC lacks the specificity needed to create clear design and construction standards relevant to pole attachments to EMC poles. The technical specifications and manuals created by the electric utility – whether an EMC or IOU – must control. The electric utility is in the best position to identify specifications and design requirements for its pole plant. Cable companies appear to forget that the EMCs own their pole plant and are the experts related to the electric utility poles. Cable companies are guests on the EMCs’ poles and do not own any portion of the pole plant. Mr. Davies’ attempt to request that the Commission accept terms and conditions that do not comport with the design and construction requirements of the EMC is unreasonable and will only result in even more widespread violation of the NESC by the communication companies. The cable companies have pushed this agenda in many other forums (including the attacher-friendly FCC) to no avail. That cable wants to minimize the applicable safety standards in light of what we have shown the Commission about their construction practices is alarming.

# REBUTTAL TO JAMES YATES’ TESTIMONY

1. Have you reviewed the direct written testimony of James Yates submitted on behalf of GCA?
	1. Yes. Mr. Yates, like Dr. Slavin and Mr. Davies, fail to appreciate the realities of Georgia EMCs’ pole plant and the attachment practices of cable.
2. Mr. Yates testifies that EMC poles and Georgia Power poles are “basically the same.”[[11]](#footnote-11) Do you agree with this statement?
	1. No. I am familiar with Georgia Power’s pole plant and the Georgia EMCs’ pole plant. They are not the same. Georgia Power is one of the Southern Company utility systems. I have provided engineering services for the Southern Company. Throughout my career I have also provided engineering services to approximately fourteen (14) of the Georgia EMCs, including work order inspection certifications. Georgia Power’s poles are typically much taller and larger pole class. Additionally, Georgia Power’s electric system typically contains shorter spans between poles and due to the density of consumers typically are already built out with transformers and services on a much greater number of poles. Georgia Power’s poles, as built, typically have already used the space Georgia Power needs and do not have to deal with cable companies attempting to utilize reserved space. Further, costs associated with installing and maintaining a pole vary based on ownership – even among the EMCs.
3. Mr. Yates states that maintenance costs for an EMC pole are “relatively low.”[[12]](#footnote-12) Do you agree?
	1. Absolutely not. First, the basis for Mr. Yates’ determination is unclear. Mr. Yates does not appear to have the background necessary to provide an opinion on the maintenance costs for an electric utility pole, particularly a Georgia EMC pole. Second, the costs to install and maintain the pole, particularly given the issues created by bad pole attachments, are not low to Georgia’s EMCs. Rather, such costs are significant. And, Mr. Yates fails to identify the costs incurred related to cable attachments and the NESC violations created by cable attachments, such as reduction of pole life and decreasing the reliability of electrical service.
4. Mr. Yates testifies that the coaxial and fiber-optic cable attached to EMC poles are “very light.”[[13]](#footnote-13) Does this matter in terms of the stress the pole attachment places on the EMC poles?
	1. Not at all. The weight means very little. One major issue is that a cable attachment pulls the messenger in at high tension and overstresses the loading on the poles. Typically, it is a matter of simply poor engineering on the cable company’s part. Also, cable companies’ installations of the large diameter lines and overlashing create much greater ice and wind loading and often can overload the strength of the pole if not engineered properly. Again, the weight argument made by Mr. Yates shows a lack of understanding concerning cable system design requirements and the NESC, particularly from an engineering perspective, as it relates to the stress their attachments place on Georgia EMCs’ poles. This lack of understanding is directly addressed by the EMC’s Proposed Pole Attachment Regulations which require appropriate pre-engineering and post-inspection (post-inspection only in the case of the proposed GOTMR process).
5. Mr. Yates, like Mr. Davies, does not like cable attachments being subject to safety inspections.[[14]](#footnote-14) Do you believe safety inspection and fee provisions are needed as part of the terms and conditions in a pole attachment agreement?
	1. Absolutely. Mr. Yates fails to point out that the NESC Rule 214 contains mandatory inspection requirements that cable companies regularly fail to meet. Without safety inspections, a cable company’s bad pole attachment can turn into an ultimate pole failure which undermines the reliability of the pole plant and endangers the public. NESC Rule 214 expects an inspection upon initial installation since that is the only way to determine that lines and equipment comply with NESC rules. Then, lines and equipment shall be inspected at such intervals as experience has shown to be necessary. The Georgia EMCs recognize, consistent with the NESC, that: “facilities placed in service may have various opportunities and propensities to wear, break, become damaged, or otherwise be affected adversely by conditions such that continued services in that state would be inappropriate for safety reasons.”[[15]](#footnote-15) Someone must inspect the pole plant, and given the frequency of violations by cable companies in Georgia and the cable companies’ apparent lack of an inspection program, it cannot be the cable company. The safety inspection process proposed by the Georgia EMCs is necessary and certainly just, reasonable, non-discriminatory and commercially reasonable.

# GCA, GTA, AND AT&T FAIL TO PROPOSE TERMS AND CONDITIONS THAT ADDRESS THE REAL PROBLEMS IN GEORGIA

1. Do you believe the proposed terms and conditions proposed by GCA, GTA, and AT&T witnesses are just, reasonable, commercially reasonable, and nondiscriminatory?
	1. No. As outlined above, the witnesses proposed the NESC as the maximum standard and request the Commission disregard an EMC’s specific design requirements related to attachments on its poles. Additionally, GCA witnesses complain over and over again about the requirement that its attachments be inspected for safety violations and for authorized use. The terms and conditions proposed by GCA, AT&T, and GTA are based on what these entities believe is the “best case scenario” for them to get their equipment on the Georgia EMC poles as fast as possible with minimal consequences for poor practices. As shown by the EMC Engineer Panel testimony, the real-world in Georgia is not the best-case scenario. Speed to market for communications services should never trump concerns over the safety and reliability of the electric grid. The terms and conditions proposed by Georgia’s EMCs that ensure the pole plant is reliable and safe are reasonable and, in fact, necessary to protect the public and the electric consumer and utility worker.
2. Have you seen similar testimony from cable companies, CLECs, or ILECs in other jurisdictions?
	1. Yes. This is the academic case for terms and conditions I have seen over and over again. I have seen the arguments set forth by GCA, GTA, and AT&T before and many do not even apply to Georgia. For example, Mr. Frank and Mr. Yates both claim that detailed billing on a pole by pole basis is needed;[[16]](#footnote-16) however, under the CTAG Agreement, Georgia’s EMCs already do this even though it presents a burden on the EMC. Similarly, Mr. Frank and Mr. Yates both testify that “application processing, pre-attachment inspections, make-ready work” and “post-construction work” should be “cost-based.”[[17]](#footnote-17) Again, under the CTAG Agreement, this is already done. These are just a few examples of where Mr. Frank and Mr. Yates have clearly “cut and paste” their standard case hoping it will stick in Georgia.
3. How do you respond to the suggestion from the GCA, GTA and AT&T witnesses that the Commission should allow self-help on poles owned by the Georgia EMCs?
	1. The Commission should not adopt the vague proposal a few of the cable witnesses made concerning “self-help.” Mr. Davies generally suggests that the Commission adopt the “FCC’s pole attachment regulations.”[[18]](#footnote-18) Mr. Yates asks for self-help to allow “an attacher to perform make-ready work that another attacher ***or the pole owner*** fails to complete within the required timelines” using “qualified attacher employees or approved contractors.”[[19]](#footnote-19) Mr. Yates in no way limits his request to work in the Communications Space and, with the inclusion of the “or the pole owner” language appears to suggest that self-help be available concerning the electric supply facilities of the Georgia EMCs. The Commission should in no way allow cable and/or communications attachers to work on electric facilities. As I pointed out in my direct testimony, and as compellingly documented in the direct testimony of the EMC Engineer Panel, these entities have a tough enough time working on their own facilities in a safe and reliable manner.
4. Do you believe some sort of self-help provision is needed?
	1. No. I have seen no evidence introduced in this proceeding that suggests that the Georgia EMCs have been less than timely in processing permit applications and/or performing make-ready work. The Georgia EMCs have proposed turnaround times for processing applications and for the complete of make-ready work. The Georgia EMCs have proposed Georgia One-Touch Make-Ready, which is itself a limited self-help provision. If, in the future, an attacher experiences unreasonable delays, there is an expedited dispute resolution in the Georgia Broadband Opportunity Act and the Georgia EMCs proposed terms and conditions to implement the dispute resolution process. The cable and communications attachers have just, reasonable, non-discriminatory and commercially reasonable protections – unarticulated “self-help” rights (particularly outside the Communications Space) are neither needed nor advisable.
5. Why do you think a “self-help” provision is not advisable?
	1. Because any self-help that would be allowed in the Supply Space (involving the Georgia EMCs’ facilities in any way) would pose serious issues with respect to the safety and reliability of the Georgia EMCs’ distribution system. Working on or in the electric space in close proximity to live electric wires and equipment is exponentially more dangerous than work performed solely in the Communications Space. From a reliability perspective, the interconnected nature of an electric grid means that an incident involving the equipment on one utility pole can result in service outages to hundreds or thousands of customers (and some critical facilities like hospitals). The fact that they have an “or” suggestion that the work could be performed by an approved contractor does not render it safe. The EMC technical specifications and RUS specifications are unique to the electric cooperatives and each cooperative has its own special construction considerations. This is why much of the work is performed by EMC own crews or contractors who have been working on the specific EMC system for years. Without careful planning and supervision by the Georgia EMCs themselves, mistakes involving electric facilities can be greatly compounded – both from a safety and reliability perspective.

Again, that the cable and communications attachers would make this type of request in the face of the overwhelming evidence of their poor construction practices is alarming.

1. Does the FCC allow self-help concerning electric facilities?
	1. Unfortunately, yes. As is their historical practice, the FCC gives attaching entities just about everything they ask for. Here, however, even the FCC was wise enough to greatly limit the scope of the self-help right. Cable and communications attachers’ self-help remedy to work performed by an approved contractor and specifically excludes pole change-outs. The FCC stated: “We agree with parties that argue that the self-help remedy should not be available when pole replacements are required as part of make-ready. The record shows that pole replacements can be complicated to execute and are more likely to cause service outages or facilities damage. Given the particularly disruptive nature of this type of work, we make clear that pole replacements are not eligible for self-help.” So, the Commission should not afford cable and communications attachers in Georgia any self-help (beyond that implicit in the GOTMR process). If the Commission chooses to do otherwise, it should limit any such self-help to the Communications Space only. To do otherwise seems to fly in the face of the NESC’s “Communications Worker Safety Zone” which exists to keep communications workers away from electric equipment. Self-help should not be allowed in the Supply Space at all (and certainly not where pole replacements are required). Both NESC Part 4 work rules and the OSHA standards contain dramatically different work rules for communication workers and electric utility workers. The equipment, training, personal protective equipment and need for specialized knowledge is dramatically different. The customary practice in the electric utility industry, even between electric utilities including IOUs, is that only the contractors used by the specific utility are allowed to work on that utilities system. This is because of the many differences in construction work rule and safety and reliability issues. To deviate from this industry wide practice would mean construction work was allowed to fall far below the standard of care across Georgia electric utility systems.
2. Last, Mr. Yates requests the Commission prohibit the EMCs from requiring attachers to indemnify EMCs for the EMCs’ own negligence.[[20]](#footnote-20) Do you agree with this limitation?
	1. No, the Commission should not make a stark rule as requested by Mr. Yates. From my understanding there are public policy limitation in Georgia law regarding indemnity provisions. As it relates to indemnity provisions in pole attachment agreements (and, if the Commission determines it has jurisdiction, joint use agreements), the Commission’s only limitation should be that the parties should negotiate a provision consistent with Georgia law.

# JOINT USE AGREEMENT REGULATIONS

1. Please describe the proposed regulations the Georgia EMCs submitted for the Commission’s consideration.
	1. In my direct testimony, the Georgia EMCs proposed a set of Proposed Pole Attachment Regulations, and I discussed those regulations and why the fees, terms, conditions and specifications set forth in the proposed regulations are just, reasonable, non-discriminatory and commercially reasonable. I understand that the Commission has requested the parties to the proceeding promulgate terms and conditions for joint use agreements between EMCs and ILEC attachers. If the Commission determines that the Georgia Broadband Opportunity Act also covers joint use agreements, the proposed Pole Attachment Regulations attached to my direct testimony would not apply to the joint use relationship between EMCs and ILECs. The proposed Regulations for the Georgia Public Commission for Future Reciprocal Wireline Attachments by Incumbent Local Exchange Carriers and Electric Membership Corporations (“Joint Use Regulations”) are attached hereto as GEMC Ex. 167 (GB-11). Mr. Stephens’s rebuttal testimony explains how the proposed Joint Use Regulations would practically work given the EMCs’ current joint use relationships.
2. You previously testified that the proposed Pole Attachment Regulations are just, reasonable, and commercially reasonable, do the Joint Use Regulations meet this standard as well?
	1. Yes. The Joint Use Regulations and Pole Attachment Regulations are similar, and the Joint Use Regulations are just, reasonable, and commercially reasonable, for the reasons I explained in my direct written testimony. Namely, the terms and conditions outlined in both are necessary to protect the integrity of the EMCs’ pole plant and ensure the safety of the public.

# CONCLUSION

1. Does this conclude your rebuttal testimony?
	1. Yes.
1. *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 5. [↑](#footnote-ref-1)
2. *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 6-9. [↑](#footnote-ref-2)
3. *See* NESC Rule 010. [↑](#footnote-ref-3)
4. *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 9. [↑](#footnote-ref-4)
5. *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 10. [↑](#footnote-ref-5)
6. *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 11-21. [↑](#footnote-ref-6)
7. *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 23. [↑](#footnote-ref-7)
8. *See* Pre-Filed Direct Testimony of Jim Davies, 29-30. [↑](#footnote-ref-8)
9. *See* Pre-Filed Direct Testimony of Jim Davies, 30-31. [↑](#footnote-ref-9)
10. *See* Pre-Filed Direct Testimony of Jim Davies, 31-34. [↑](#footnote-ref-10)
11. *See* Pre-Filed Direct Testimony of James Yates, 7. [↑](#footnote-ref-11)
12. *See* Pre-Filed Direct Testimony of James Yates, 8. [↑](#footnote-ref-12)
13. *See* Pre-Filed Direct Testimony of James Yates, 13. [↑](#footnote-ref-13)
14. *See* Pre-Filed Direct Testimony of James Yates, 17-18. [↑](#footnote-ref-14)
15. *See* IEEE Handbook, p. 178, Rule 214. [↑](#footnote-ref-15)
16. *See* Pre-Filed Direct Testimony of Douglas Frank, 25; Pre-Filed Direct Testimony of James Yates, 16. [↑](#footnote-ref-16)
17. *See* Pre-Filed Direct Testimony of Douglas Frank, 25; Pre-Filed Direct Testimony of James Yates, 16. [↑](#footnote-ref-17)
18. *See* Pre-Filed Direct Testimony of Jim Davies, 35-37. [↑](#footnote-ref-18)
19. *See* Pre-Filed Direct Testimony of James Yates, 18. [↑](#footnote-ref-19)
20. *See* Pre-Filed Direct Testimony of James Yates, 20. [↑](#footnote-ref-20)