PUBLIC FILING DOCUMENT

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

STATE OF GEORGIA

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

REBUTTAL TESTIMONY AND

EXHIBITS

OF

GREGORY L. BOOTH, P.E.

ON BEHALF OF GEMC
AND 38 OF ITS EMC MEMBERS

TABLE OF CONTENTS

PUBLIC FILING DOCUMENT

PUBLIC FILING DOCUMENT

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

I. INTRODUCTION AND BACKGROUND

Q. Please state your name and business address.

A. 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.

Q. On whose behalf are you testifying today?

A. 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.

Q. What is the purpose of your rebuttal testimony?

A. 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.

II. REBUTTAL TO DR. LAWRENCE M. SLAVIN'S TESTIMONY

Q. Have you reviewed the direct written testimony of Dr. Lawrence M. Slavin submitted by the Georgia Cable Association ("GCA")?

A. 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.

Q. 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] Do you agree?

A. 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

[1] *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 5.

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.

Q. 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] Do you agree with him?

A. 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

[2] *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 6-9.

be either "design instruction" or a set of "design specifications" and cannot be used as such.[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.

[3] *See* NESC Rule 010.

Q. 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?

A. No. First, Dr. Slavin testifies that the placement of messengers and overlashing are methods consistent with the NESC.[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] 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.

[4] *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 9.

[5] *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 10.

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] 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] 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

[6] *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 11-21.

[7] *See* Pre-Filed Direct Testimony of Dr. Lawrence M. Slavin, 23.

rules. Again, Dr. Slavin wants to impose the risk on the Georgia EMC and the public because this practice is "easiest".

Q. Do you have any other response to Dr. Slavin's testimony?

A. 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.

III. REBUTTAL TO JIM DAVIES' TESTIMONY

Q. Have you reviewed the direct written testimony of Jim Davies submitted by the Georgia Cable Association ("GCA")

A. 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.

Q. 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?

A. 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.

Q. 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] Do you agree with this statement?

[8] *See* Pre-Filed Direct Testimony of Jim Davies, 29-30.

A. 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.

Q. 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] Do you agree?

A. 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

[9] *See* Pre-Filed Direct Testimony of Jim Davies, 30-31.

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.

Q. 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] Is this appropriate?

A. 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.

[10] *See* Pre-Filed Direct Testimony of Jim Davies, 31-34.

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.

IV. REBUTTAL TO JAMES YATES' TESTIMONY

Q. Have you reviewed the direct written testimony of James Yates submitted on behalf of GCA?

A. 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.

Q. Mr. Yates testifies that EMC poles and Georgia Power poles are "basically the same."[11] Do you agree with this statement?

A. 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,

[11] *See* Pre-Filed Direct Testimony of James Yates, 7.

costs associated with installing and maintaining a pole vary based on ownership – even among the EMCs.

Q. Mr. Yates states that maintenance costs for an EMC pole are "relatively low."[12] Do you agree?

A. 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.

Q. Mr. Yates testifies that the coaxial and fiber-optic cable attached to EMC poles are "very light."[13] Does this matter in terms of the stress the pole attachment places on the EMC poles?

A. 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,

[12] *See* Pre-Filed Direct Testimony of James Yates, 8.

[13] *See* Pre-Filed Direct Testimony of James Yates, 13.

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).

Q. Mr. Yates, like Mr. Davies, does not like cable attachments being subject to safety inspections.[14] Do you believe safety inspection and fee provisions are needed as part of the terms and conditions in a pole attachment agreement?

A. 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] Someone must inspect the pole plant, and given the frequency of

[14] *See* Pre-Filed Direct Testimony of James Yates, 17-18.

[15] *See* IEEE Handbook, p. 178, Rule 214.

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.

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

Q. Do you believe the proposed terms and conditions proposed by GCA, GTA, and AT&T witnesses are just, reasonable, commercially reasonable, and nondiscriminatory?

A. 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.

Q. Have you seen similar testimony from cable companies, CLECs, or ILECs in other jurisdictions?

A. 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] 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] 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.

Q. 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?

A. 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] 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

[16] *See* Pre-Filed Direct Testimony of Douglas Frank, 25; Pre-Filed Direct Testimony of James Yates, 16.

[17] *See* Pre-Filed Direct Testimony of Douglas Frank, 25; Pre-Filed Direct Testimony of James Yates, 16.

[18] *See* Pre-Filed Direct Testimony of Jim Davies, 35-37.

contractors."[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.

Q. Do you believe some sort of self-help provision is needed?

A. 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.

Q. Why do you think a "self-help" provision is not advisable?

[19] *See* Pre-Filed Direct Testimony of James Yates, 18.

A. 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.

Q. Does the FCC allow self-help concerning electric facilities?

A. 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.

Q. Last, Mr. Yates requests the Commission prohibit the EMCs from requiring attachers to indemnify EMCs for the EMCs' own negligence.[20] Do you agree with this limitation?

A. 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.

VI. JOINT USE AGREEMENT REGULATIONS

Q. Please describe the proposed regulations the Georgia EMCs submitted for the Commission's consideration.

A. 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

[20] *See* Pre-Filed Direct Testimony of James Yates, 20.

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.

Q. 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?

A. 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.

VII. CONCLUSION

Q. Does this conclude your rebuttal testimony?

A. Yes.

GEMC EX. 169 (GB-11)

REGULATIONS FOR THE
GEORGIA PUBLIC SERVICE COMMISSION
FOR FUTURE RECIPROCAL WIRELINE ATTACHMENTS
BY INCUMBENT LOCAL EXCHANGE CARRIERS AND
ELECTRIC MEMBERSHIP CORPORATIONS
(Proposed by the Georgia EMCs)

Preamble

In order to promote the deployment of broadband services in this state, the Commission promulgates the following rules and regulations. The Commission notes that the Georgia Broadband Opportunity Act, as codified at O.C.G.A. § 46-3-200.4, and pursuant to which these rules and regulations are promulgated, grants the Commission jurisdiction over attachments to poles owned by electric membership corporations, but not attachments by electric membership corporations, or communications service providers more generally, to poles owned by incumbent local exchange carriers. The Commission acknowledges and appreciates that incumbent local exchange carriers (ILECs) and electric membership corporations have been parties to privately and mutually negotiated joint use agreements for decades that differ significantly from pole attachment agreements. The Commission also appreciates that these joint use agreements contain evergreen provisions providing that the terms and conditions of the joint use agreements shall continue to govern existing and future attachments made on any poles that had an ILEC attachment at the time of termination, even after termination of the agreement. Given the uniqueness of these legacy joint use agreements, their reciprocal nature, and accompanying complexity, the Commission will not disrupt these long-standing, privately negotiated agreements (which shall be referred to herein as "Legacy Joint Use Agreements") consistent with O.C.G.A. 46-3-200.4(d).

The rules and regulations the Commission now promulgates may only apply to those reciprocal wireline pole attachments made by ILECs and electric membership corporations to poles belonging to the other party on or after July 1, 2021. These rules and regulations shall only apply to attachments made to poles that are not already subject to a Legacy Joint Use Agreement and if one party certifies in writing to the other, that it wishes to invoke these rules and regulations for future attachments. Within six months of such written certification, the parties are required to negotiate, in good faith, a new Regulated Joint Use Agreement that is consistent with these rules and regulations. Said new agreement shall govern only new reciprocal wireline attachments that are made to poles that are not already subject to a Legacy Joint Use Agreement. In the event the parties are unable to agree upon a new Regulated Joint Use Agreement with terms and conditions that are consistent with these rules and regulations for future reciprocal wirelines attachments by ILECS and electric membership corporations, the ILEC shall seek to attach to any pole owned by an electric membership corporation under a Pole Attachment Agreement as described and governed by Section ____.

Nothing herein shall be construed to prohibit electric membership corporations and ILECs from entering Pole Attachment Agreements as described and governed by Section ____ as a matter of preference, nor shall anything herein be construed to prohibit electric membership corporations and incumbent ILECs from entering into any other mutually agreed upon terms and conditions for attachment as provided for in O.C.G.A. § 46-3-200.4(e).

Purpose, Applicability and Scope

1. Authority. The rules and regulations contained herein are promulgated pursuant to, and in accordance with, The Georgia Broadband Opportunity Act, as codified at O.C.G.A. § 46-3-200.4.

2. Applicability. Upon written certification by an incumbent local exchange carrier or an electric membership corporation that it wishes to invoke the rules and regulations of this Section ___, these rules apply to joint use agreements entered into by an incumbent local exchange carrier and an electric membership corporation on or after July 1, 2021. These rules do not apply to Legacy Joint Use Agreements, nor do they apply to any existing or future attachments made to any poles that had an incumbent local exchange carrier's attachment(s) at the time of termination where such terminated Legacy Joint Use Agreements were in effect prior to July 1, 2021 and contained an evergreen provision which provides for the continued application of the terminated joint use agreements terms and conditions to such attachments. Finally, these rules and regulations do not apply to any attachments or agreements governing attachments to poles owned by Tennessee Valley Authority distributors in Georgia.

3. Purpose and Scope

(a) These rules govern the Georgia Public Service Commission's regulation of the rates, fees, terms, conditions and specifications by which Pole Attachments may be made to poles subject to the jurisdiction of the Commission and in the absence of a mutually negotiated Legacy Joint Use Agreement between parties.

(b) These rules also govern the processes and procedures by which the Commission shall hear and resolve, on an expedited basis, complaints arising from a dispute between Regulated Joint Use Licensees and Joint Use Pole Owners over compliance with these rules and/or a Joint Use Licensee's and Joint Use Pole Owner's failure to reach a mutually negotiated Regulated Joint Use Agreement. The Commission may engage an administrative law judge for purposes of adjudicating any such complaints.

4. Negotiated Agreements. It is the Commission's preference that electric membership corporations and incumbent local exchange carriers negotiate their own rates, fees, terms, conditions, and specifications for joint use agreements and/or pole attachment agreements. Nothing in these rules or in O.C.G.A § 46-3-200.4 prohibits nor shall be construed to prohibit electric membership corporations and incumbent local exchange carriers from entering into a mutually negotiated joint use agreement, or pole attachment agreement as the parties may so choose, regarding the rates, fees, terms, conditions and specifications for Pole Attachments. The right set forth in O.C.G.A § 46-3-200.4(e) of an electric membership corporation and communications service provider to enter into a mutual agreement as to rates, fees, terms, conditions and specification for attachments to utility poles by communications service providers that differ from those set forth herein is expressly preserved. Nothing in these rules shall be interpreted to supersede or modify any lawful rate, fee, term, or condition of such a mutually negotiated joint use agreement or pole attachment agreement. Absent a change in law, or a change in the Commission's rules governing Pole Attachments, the Commission will not hear or resolve

complaints concerning a rate, fee, term, condition or specification contained in a mutually negotiated joint use agreement or pole attachment agreement. In the event however, an incumbent local exchange carrier or electric membership corporation elects to invoke the rules of this Section ___ for purposes of negotiating a new Regulated Joint Use Agreement with an electric membership corporation or incumbent local exchange carrier, the terms of such Regulated Joint Use Agreement shall not be inconsistent with the rules and regulations of this Section ___.

Definitions

(a) "Actual Costs" means all costs incurred, including but not limited to the cost of materials and equipment, fully loaded direct and indirect labor, engineering, supervision and overhead.

(b) "Attaching Entity" means a communications service provider attaching to a pole owned by an electric membership corporation or an incumbent local exchange carrier.

(c) "Broadband services" shall have the same meaning as provided for the term "broadband service" in O.C.G.A. § 46-5-221.

(d) "Communications Space" means the lower usable space on a utility pole located at or above the lowest height above ground level necessary for wireline attachments to achieve minimum mid-span clearance, which typically is reserved for low-voltage communications equipment.

(e) "Complex Make-Ready Work" means Transfers and work within the Communications Space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, and any work involving the space above the Safety Space (i.e., the power space) are to be considered complex.

(f) "Imposition Fee" is a 25% fee on top of Actual Costs associated with performance by the Pole Owner of certain tasks as specified in these regulations, where the Attaching Entity fails to comply, after notice.

(g) "Joint Use Licensee" is the party having the right pursuant to a Regulated Joint Use Agreement to make and maintain Pole Attachments on a Joint Use Pole owned by the other party to the Regulated Joint Use Agreement.

(h) "Joint Use Pole" is a pole for which joint use is established or continued pursuant to the terms of a Regulated Joint Use Agreement entered into after the effective date of these regulations.

(i) "Joint Use Pole Owner" is the party in the Regulated Joint Use Agreement, whether incumbent local exchange carrier or electric membership corporation

having ownership of a Joint Use Pole and permitting the other party to the Regulated Joint Use Agreement to make and maintain Pole Attachments on the Joint Use Pole.

(j) "Joint Use Adjustment Rate" means the annual amount per pole that the Joint Use Licensee must pay to the Joint Use Pole Owner in order to affix its Pole Attachment(s) to the Joint Use Pole.

(k) "Legacy Joint Use Agreement" means a pre-existing, mutually negotiated, written agreement between an electric membership corporation and incumbent local exchange carrier regarding the rates, terms, conditions and/or specifications for reciprocal wireline Pole Attachments entered into prior to July 1, 2021 that either has not been terminated or that has been terminated but contains evergreen provisions providing that the terms and conditions of the joint use agreement shall continue to govern existing and/or future attachments made on any poles that contained an ILEC attachment at the time of termination, even after termination of the joint use agreement.

(l) "Make-Ready Work" means engineering or construction activities necessary to make a pole or similar structure available for a new pole attachment, pole attachment modification, or additional facilities including, but not limited to, rearrangement, removal and replacement of the pole, Transfers and other work incident thereto.

(m) "NEC" means the National Electrical Code published by the National Fire Protection Association.

(n) "NESC" means the American National Standards Institute's National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc.

(o) "Overlash"/"Overlashing" means the attachment of additional wires and/or cables to existing facilities that already are attached to a pole. An Overlash is not considered a separate pole attachment.

(p) "Pole Attachment" means the connection or fastening of a wire or cable to a Joint Use Pole.

(q) "Pole Attachment Agreement" means a mutually negotiated, written agreement between an electric membership corporation and a cable television provider, incumbent local exchange carrier (if the attachments are not subject to a Legacy Joint Use Agreement and the incumbent local exchange carrier and/or electric membership corporation failed to enter into a Regulated Joint Use Agreement), or a competitive local exchange carrier regarding the rates, fees, terms, conditions and specifications for Pole Attachments. Any such Pole Attachment Agreement shall be governed by the rules and regulations set forth in Section ___ and shall not be subject to the rules and regulations described in this Section ___.

(r) “Pole Attachment Audit” means any audit done at the option of the Pole Owner to count the number of Pole Attachments by one or more Attaching Entities.

(s) “Qualified Contractor” shall mean a contractor that meets all of the minimum requirements set forth in Section 4(i) of these regulations.

(t) “Regulated Joint Use Agreement” means a mutually negotiated, written agreement between an electric membership corporation and incumbent local exchange carrier regarding the rates, terms, conditions and specifications for reciprocal wireline Pole Attachments entered into on or after July 1, 2021 and after one party certifies in writing to the other, that it wishes to invoke these rules and regulations for future attachments that are made to poles that are not already subject to a Legacy Joint Use Agreement.

(u) “Referee” means the party selected to resolve a dispute regarding any compliance or non-compliance with the standards and specifications applicable to Pole Attachments as set forth in the Dispute Resolution section of these regulations.

(v) “Safety Inspection” means any inspection done at the option of the Pole Owner to ensure Pole Attachments comply with applicable safety standards and specifications.

(w) “Safety Space” means The Communication Worker Safety Zone as defined in the current issue of the NESC, which in general is the space located between the areas to which electric conductors and communications circuitry may be attached.

(x) “Service Drop” means any connection from distribution facilities to the building or structure being served that does not require guys under standard industry design practice.

(y) “Simple Make-Ready Work” is work in the Communications Space of the pole where facilities can be rearranged without any service outage or facility damage and does not require splicing of any existing communications attachment.

(z) “Transfer” means the removal of Pole Attachments from one pole and the placement of those or substantially similar Pole Attachments upon another pole.

(aa) “Unauthorized Attachment” means any affixation of any Pole Attachment or other equipment of any nature to any Joint Use Pole (or other property owned by a Joint Use Pole Owner) which has not been previously authorized pursuant to these regulations or a Regulated Joint Use Agreement. Overlashing of existing facilities without complying with these regulations or the applicable Regulated Joint Use Agreement shall also be considered an Unauthorized Attachment.

Access and Removal

1. Contracts and Permits

(a) Prior to making any Pole Attachment, the Joint Use Licensee shall have a written and executed Regulated Joint Use Agreement. Pole Attachments made without a written and executed Regulated Joint Use Agreement shall be deemed Unauthorized Attachments and subject to processes for removal at the Joint Use Licensee's expense as detailed elsewhere in these regulations.

(b) Joint Use Licensees shall obtain a permit from the Joint Use Pole Owner for each Pole Attachment and/or Overlash. Pole Attachments and Overlashing made without a permit from the Joint Use Pole Owner shall be deemed Unauthorized Attachments and subject to processes for removal at the Joint Use Licensee's expense as detailed elsewhere in these regulations.

(c) Absent a Regulated Joint Use Agreement stating otherwise, and except as to the installation of a new pole where none currently exists and road widening projects, a Joint Use Pole Owner may charge an application fee of Fifty Dollars ($50) for the Joint Use Pole Owner to process the application. Failure to pay the fees contemporaneous with the application will result, at the Joint Use Pole Owner's option, in the returning of the application as unapproved or holding the application (and stopping any associated deadlines and time clocks) until payment is received.

(d) Joint Use Licensees shall promptly reimburse the Joint Use Pole Owner for all Actual Costs, including all labor, materials, transportation, normal overhead, and appropriate and reasonable other costs incurred by the Joint Use Pole Owner in performing any necessary field inspections, engineering and attachment preparation work (at any point during any work on a Joint Use Pole).

(e) Joint Use Licensees shall not be required to obtain a permit prior to installing a Service Drop provided installation of the Service Drop can be made in compliance with the NESC, the NEC, and any and all other applicable laws, rules, regulations, ordinances, industry standards, or terms and conditions of the Regulated Joint Use Agreement. The Joint Use Licensee shall account for and report the Service Drop attachment in compliance with the Regulated Joint Use Agreement with the Joint Use Pole Owner or, if not specified therein, on a quarterly basis.

2. Pole Attachment Applications

(a) Pole Attachment applications and/or access requests shall be made in writing to the Joint Use Pole Owner.

(b) Joint Use Pole Owners may, but need not, require the following information from Joint Use Licensees as part of a permit application or access request:

i. The location of the pole where access is requested;

ii. The amount of space requested;

iii. The number and type of Pole Attachment;

iv. The physical characteristics of the Pole Attachment, including, to the extent applicable, weight, height, width, and depth;

v. The location on the pole where access is requested;

vi. The proposed route(s), if applicable;

vii. Proof of easement or other property right, if requested;

viii. The proposed schedule for construction;

ix. The purpose of the Pole Attachment and/or the services to be supported by or provided via the Pole Attachment; and

x. Any other information reasonably necessary for the Joint Use Pole Owner to evaluate and process the request.

A complete application for access shall be one that provides all of the foregoing information or all of the information required by the negotiated Regulated Joint Use Agreement.

(c) For Overlashing, Joint Use Pole Owners may require Overlashing entities to identify in the application the size and type of facilities to be Overlashed, the location of the relevant poles and facilities, the proposed date of Overlashing, the services to be provided via the Overlashing facilities, and proof of consent to the Overlash from the host entity, if the Overlasher seeks to Overlash a third party's facilities.

(d) Joint Use Pole Owners may identify, account for, and charge Joint Use Licensees actual engineering and administrative costs and fees associated with both (1) a request to make a Pole Attachment and inspection of Overlashed facilities and (2) estimating the Make-Ready Work necessary to complete the Pole Attachment (or Make-Ready Work or corrective work relating to an Overlash). In the event a Joint Use Pole Owner charges Joint Use Licensees actual engineering and administrative costs and fees, Joint Use Pole Owners shall identify and account for those costs in any invoices or payment requests issued to Joint Use Licensees. Payment for invoices issued by Joint Use Pole Owners shall be timely made, but in no event shall payment be made later than sixty (60) days from the date of invoice, regardless of whether the Joint Use Licensee elects to proceed with the Pole Attachment or Overlash. Interest in accordance with the rate of judgment interest set forth in O.C.G.A § 7-4-12 shall accrue on any costs and fees not timely paid.

(e) If the applicant does not invoke the Georgia One-Touch Make-Ready process, as outlined in these regulations, Joint Use Pole Owners shall approve or deny Pole Attachment applications as soon as reasonably practicable, but in no event later than:

i. 20 days after receipt of a complete Pole Attachment application(s) for attachment to no more than 300 poles in any 30-day period;

ii. 45 days after receipt of a complete Pole Attachment application(s) for attachment to more than 300 poles but less than 500 poles in any 30-day period; or

iii. Any mutually-negotiated period after receipt of a complete Pole Attachment application(s) for attachment to 500 poles or more in any 30-day period.

(f) Joint Use Pole Owners may condition approval of a Pole Attachment application on completion of Make-Ready Work. Joint Use Pole Owners are permitted to extend the deadline to approve or deny any Pole Attachment request an additional 20 days. Joint Use Pole Owners may only extend the deadline by providing the applicant with notice of the extension of the deadline and the specific reasons therefore. If the Pole Attachment application exceeds the above limits, the parties shall work in good faith to negotiate a mutually agreeable timeframe. Nothing in this subsection shall prohibit any parties from mutually agreeing to a different timeframe for Pole Attachment application approval.

3. Standard Make-Ready Process

(a) If the Joint Use Pole Owner grants a Pole Attachment application that requires Make-Ready Work, the Joint Use Pole Owner shall provide, in writing, a detailed list of Make-Ready Work necessary to accommodate the proposed Pole Attachment. Such detailed list shall include the activities and materials to be used in the Make-Ready Work, along with a cost estimate, within fifteen (15) days from the date of approval of the Pole Attachment application.

(b) Within fifteen (15) days of the receipt of the Make-Ready Work estimate from the Joint Use Pole Owner, the applicant shall provide a written response either accepting the estimate and making payment arrangements as provided in the Regulated Joint Use Agreement, or, if the applicant has a disagreement with the Make-Ready Work estimate, or the estimated number of days to complete the work, it shall provide, in writing, a list of any areas of disagreement to the Joint Use Pole Owner. The Joint Use Pole Owner will have fifteen (15) days from receipt of the applicant's disagreement response to provide a response to the applicant.

(c) If the Joint Use Pole Owner approves an application requiring Make-Ready Work, and the applicant accepts the Make-Ready Work estimate for the application, the Joint Use Pole Owner may, at its option, timely proceed with completion of the Make-Ready Work at the applicant's expense, or retain a Qualified Contractor to perform the work within the same time frame, at the applicant's expense.

(d) Unless otherwise agreed to by the parties in their Regulated Joint Use Agreement, or rendered impossible or impractical due to circumstances beyond the Joint Use Pole Owner's control, Make-Ready Work shall be commenced within twenty (20) business days from the date the applicant made payment for the Make-Ready Work estimate, and shall be completed in a timely manner, at a reasonable cost, and as soon as reasonably practicable after the date payment is received from the applicant, but not later than:

i. 60 days (90 days for attachments above the Safety Space) after the date payment is received for applications requesting attachment to no more than 300 poles in any 30-day period;

ii. 75 days (105 days for attachments above the Safety Space) after the date payment is received for applications requesting attachment to more than 300 but less than 500 poles in any 30-day period.

If an application seeks attachment to 500 poles or more, or multiple applications submitted by the same applicant within a thirty-day period total 500 poles or more, the parties shall negotiate a reasonable timeframe for completion of the Make-Ready Work covered by the application(s).

(e) Both the Joint Use Pole Owner and the Joint Use Licensee shall place, Transfer and rearrange their own attachments, and shall place guys and anchors to sustain any unbalanced load caused by their attachments. On existing Joint Use Poles, each party will perform any tree trimming or cutting necessary for their installation or additional attachments. Anchors and guys shall be in place and in effect prior to the installation of attachments. Each party shall, with due diligence, attempt at all times to execute such work promptly and in such a manner as to not interfere with the service of the other party.

4. Georgia One-Touch Make Ready ("GOTMR")

(a) *Invoking GOTMR*. A Joint Use Licensee may apply to a Pole Owner to make a new Pole Attachment and/or Overlash and, when so doing, elect to invoke GOTMR. When a Joint Use Licensee elects to utilize GOTMR, the Joint Use Pole Owner and Joint Use Licensee shall abide by the following procedures for processing the Pole Attachment application and completing the Make-Ready Work. It is the responsibility of the new attacher to ensure that its contractor determines whether the Make-Ready Work requested in an attachment application is Simple Make-Ready Work (and not Complex Make-Ready Work).

(b) *Initial Application Review*. Any GOTMR Pole Attachment application must be certified by a Qualified Contractor, stating that the Make-Ready Work required for every Joint Use Pole in the application does not require a pole replacement or anything more than Simple Make-Ready Work. A Joint Use Pole Owner shall review a new GOTMR Pole Attachment application for completeness within ten (10) business days of receipt of the application and notify the applicant within those same ten (10) business days if the application is not complete. A Pole Attachment application is considered complete if it provides the Joint Use Pole Owner with the certification and information reasonably necessary to make an informed decision on the application. Failure to notify the applicant that the application is not complete, or failure to timely specify the reason the application is incomplete, will render the application complete.

i. If the Joint Use Pole Owner notifies the applicant that the application is not complete, the applicant may submit the missing information to complete the application and continue with the application process. If the applicant fails to timely submit the missing information, within five (5) days following such notice, the application shall be deemed abandoned and the Joint Use Pole Owner shall have no further obligation to take any action.

(c) *Application Review on the Merits*. A Joint Use Pole Owner shall review a completed application requesting GOTMR and respond to the applicant either granting or denying an application within fifteen (15) days of the Joint Use Pole Owner's receipt of a complete application. A Joint Use Pole Owner shall be allowed thirty (30) days for applications seeking access, via the GOTMR process, to three hundred (300) or more poles.

(d) *Joint Use Pole Owner Objection to Make-Ready Work Designation.* Prior to the deadline for issuing its decision on the merits of the application, the Joint Use Pole Owner may object to the applicant's designation that certain of the work required is Simple Make-Ready Work. If the Joint Use Pole Owner objects, then the work is deemed Complex Make- Ready Work and the GOTMR process is not available to the Joint Use Licensee and the application must be processed under the standard Make-Ready provisions set forth in these regulations. The Joint Use Pole Owner's determination is final and determinative so long as it is specific, in writing and includes all relevant evidence and information relied upon by the Joint Use Pole Owner to support the decision, is made in good faith, and explains how such evidence and information relate to a determination that the process will involve Complex Make-Ready Work.

(e) *GOTMR Surveys.* The applicant is responsible for coordinating all surveys required as part of the GOTMR process and shall use a Qualified Contractor as set forth in these regulations.

(f) *Notice to Pole Owners and Existing Attachers.* Applicants for a new Pole Attachment shall make commercially reasonable efforts to provide at least three (3) business days advance notice to Joint Use Pole Owners and existing attachers to allow them to be present for any surveys performed in advance of a GOTMR application (or desired GOTMR application). The notice shall include the date, time, and location of the surveys and the name of the contractor performing the surveys. Joint Use Pole Owners and existing attachers attending pre-GOTMR application surveys shall do so at their own cost.

(g) *Completion of the Make-Ready Work.* If the applicant's application is approved and if it has provided fifteen (15) days prior written notice of the Make-Ready Work to the affected Joint Use Pole Owner and existing Attaching Entities, the applicant may proceed with the Make-Ready Work using a Qualified Contractor.

i. The applicant's prior written notice to the Joint Use Pole Owner and existing attachers shall include the date and time of the Make-Ready Work to be performed to allow interested parties an opportunity to be present at their cost.

ii. The applicant shall notify any affected Joint Use Pole Owner and/or existing Attaching Entity(ies) immediately if the Make-Ready Work performed damages any equipment or facilities of the Joint Use Pole Owner or of an existing Attaching Entity. Upon receiving notice from the applicant, the Joint Use Pole Owner or existing Attaching Entity(ies) may each make the decision either to: (A) complete any necessary remedial work and bill the applicant for the actual costs incurred related to fixing the damage or outage, or (B) require the applicant to fix the damage or outage at its expense immediately following notice from the Joint Use Pole Owner or any existing attacher.

iii. In performing the Make-Ready Work, if the applicant or Joint Use Pole Owner determines that Make-Ready Work previously classified as Simple Make-Ready Work is actually Complex Make-Ready Work, then that specific Make-Ready Work must be halted and the determining party must

provide immediate notice to the other party of its determination and the impacted poles. The remaining Make-Ready Work shall be completed in accordance with the regulations for standard Make-Ready Work.

(h) *Post-Make-Ready Work*. The applicant shall notify the Joint Use Pole Owner and existing attachers within fifteen (15) days after the Make-Ready Work is completed on a particular pole. The Joint Use Pole Owner shall have ninety (90) days from receipt of the notice to inspect the Make-Ready Work at the applicant's cost. Joint Use Pole Owners and any existing Attaching Entities shall then have fourteen (14) days from the completion of their inspection to notify the applicant of any damage or new code violations on their pole, facilities, or equipment that was caused by the GOTMR process. The Joint Use Pole Owner and existing Attaching Entities shall have the option to complete any necessary remedial work and bill the applicant for the actual costs incurred or require the applicant to fix the damage and/or code violations at its expense within fourteen (14) days following notice from the Joint Use Pole Owner or existing Attaching Entity.

(i) *Qualified Contractors*. All contractors certifying whether Make-Ready Work requires pole replacement, certifying whether Make-Ready Work is Simple Make-Ready Work, or performing Make-Ready Work, whether Simple Make-Ready Work or Complex Make-Ready Work, must meet the following minimum requirements:

i. The contractor has agreed to follow all published safety and operational guidelines of the Joint Use Pole Owner, if available, and if unavailable, the contractor has agreed to follow NESC guidelines;

ii. The contractor has acknowledged that it knows how to read and follow the engineered pole designs for Make-Ready Work, if required by the Joint Use Pole Owner;

iii. The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational Safety and Health Administration (OSHA) rules;

iv. The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the Joint Use Pole Owner, if made available;

v. The contractor is adequately insured or will provide an adequate performance bond for the Make-Ready Work it will perform, including work it will perform on facilities owned by existing attachers; and

vi. The contractor is licensed to do business in the State of Georgia.

(j) *Joint Use Pole Owner Objection to Contractor*. Joint Use Pole Owners may object to an applicant or Attaching Entity's selected contractor but must do so in writing. Such objection must be provided in sufficient time for the applicant or Attaching Entity to identify and select another Qualified Contractor to perform the work. A Joint Use Pole Owner may only object to an applicant or Attaching Entity's selected contractor for one of the following reasons:

i. The contractor has at least one instance of failing to safely and properly engineer or complete work on the Joint Use Pole Owner's facilities and equipment within the past five years, even if the contractor is a Qualified Contractor under these regulations; or

ii. The contractor fails to meet the requirements for a Qualified Contractor under these regulations.

A Joint Use Pole Owner does not have to accept a certification from, and no Make-Ready Work shall be completed by, a Qualified Contractor to which a Joint Use Pole Owner has objected to in good faith in accordance with this subsection (j).

5. Reservation of Space

(a) Joint Use Pole Owners may, without qualification, reserve space on their own poles or facilities for future provision of their services.

(b) Within sixty (60) days of written notice that reserved space is actually needed by the Joint Use Pole Owner, the Joint Use Licensee occupying the reserved space must vacate the space at the Joint Use Licensee's expense. Joint Use Licensees may submit a request to the Joint Use Pole Owner to expand capacity, or otherwise modify the pole, to maintain the Pole Attachment. In the event the Joint Use Pole Owner grants such request, the Joint Use Licensee shall cover the actual costs of expanding capacity or modifying the pole.

6. Joint Use Licensee's Failure to Perform Work

To the extent not otherwise governed elsewhere in these rules, in any instance where a Joint Use Pole Owner requests that a Joint Use Licensee perform work on their Pole Attachment(s) to (1) complete a Transfer; (2) bring the Pole Attachment(s) into compliance with applicable laws, codes, rules, regulations, standards or other applicable authorities; (3) accommodate a new Attaching Entity; (4) comply with the terms of a Joint Use Agreement; or (5) satisfy any other obligation permissibly imposed on the Joint Use Licensee by these rules or the applicable Regulated Joint Use Agreement, and the Joint Use Licensee fails to timely perform such work within sixty (60) days of proper notice from the Joint Use Pole Owner, the Joint Use Pole Owner shall have the right to perform the work without notice to the Joint Use Licensee and charge the Actual Cost of the work plus the Imposition Fee to the Joint Use Licensee. The Joint Use Licensee shall have sixty (60) days from the date of Joint Use Pole Owner's invoice for such sums to reimburse Joint Use Pole Owner. Interest in accordance with the rate of judgment interest set forth in O.C.G.A § 7-4-12 shall accrue on any Actual Costs and Imposition Fees not timely paid. The Joint Use Pole Owner shall further have the right to collect the associated costs from any previously paid deposit, letter of credit, surety bond or other performance assurance provided by the Joint Use Licensee, if provided under the terms of the Joint Use Agreement. Except in cases of gross negligence or willful misconduct, the Joint Use Pole Owner shall not be liable for any damages or disruptions in service that may occur as a result of work performed due to the Joint Use Licensee's failure to timely perform the work.

7. Notice of Removal

(a) Unless specified otherwise in a privately negotiated agreement, a Joint Use Pole Owner shall provide the Joint Use Licensee sixty (60) days' written notice prior to:

i. Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, fee, term, condition or specification of the Regulated Joint Use Agreement;

ii. Any modification of facilities other than routine maintenance or modification in response to emergencies.

(b) Notwithstanding the above, Joint Use Pole Owners shall have the discretion to immediately remove or modify facilities without notice if removal or modification is required due to imminent danger to life or property. Joint Use Pole Owners shall have the discretion to restore the facilities at the Joint Use Licensee's cost after the imminent danger has been alleviated, or, alternatively to not restore the facilities but inform the Joint Use Licensee within ten (10) days of the removal or modification and the need to restore the facilities.

(c) In the interest of preserving the safety and reliability of the pole networks in this state, and protecting the customers of the services provided over those networks, the Joint Use Pole Owner may remove Unauthorized Attachments and abandoned Pole Attachments within ninety (90) days of discovery.

i. Upon discovering Unauthorized or abandoned Pole Attachments, Joint Use Pole Owners shall, as soon as reasonably practicable, notify the owner of the discovery and of the Joint Use Pole Owner's right to remove the attachments within sixty (60) days at the responsible Joint Use Licensee's expense.

ii. Upon being notified of the discovery of the Unauthorized Attachments or abandoned Pole Attachment, the Joint Use Licensee shall have thirty (30) days to submit a complete Pole Attachment application for the Unauthorized Attachment at issue, or remove the Unauthorized or abandoned Pole Attachments prior to the Joint Use Pole Owner's removal.

iii. If the responsible Joint Use Licensee fails to timely submit a completed Pole Attachment application for the Unauthorized Attachment, or, as the case may be, fails to remove the abandoned attachment, and the Joint Use Pole Owner proceeds with removal, the responsible Joint Use Licensee shall be liable for any and all actual costs incurred by the Joint Use Pole Owner in removing the attachments. Following removal of the Unauthorized Attachment or abandoned attachments, the Joint Use Pole Owner shall submit to the Commission and the responsible Joint Use Licensee, an accounting of all actions taken and actual costs incurred by the Joint Use Pole Owner in removal. Within sixty (60) days of receipt of the Joint Use Pole Owner's accounting, the responsible Joint Use Licensee shall fully reimburse the Joint Use Pole Owner for all Actual Costs incurred and also

pay the Imposition Fee. Interest in accordance with the rate of judgment interest set forth in O.C.G.A § 7-4-12 shall accrue on any Actual Costs and Imposition Fees not timely paid.

Reciprocal Rate, Terms, and Conditions

(a) In any Regulated Joint Use Agreement, in order for an incumbent local exchange carrier to invoke the terms and conditions set forth in these regulations, due to the reciprocal nature of these agreements, the incumbent local exchange carrier must agree to offer the same, reciprocal terms and conditions to the electric membership corporation to which it seeks to attach for that electric membership corporation's attachments to such incumbent local exchange carrier's poles.

In any Regulated Joint Use Agreement the Joint Use Adjustment Rate charged by the Joint Use Pole Owner to the Joint Use Licensee shall be an equivalent and reciprocal rate calculated, in both cases, by using the space allocation formula adopted by this Commission provided that in the case of the incumbent local exchange carrier (which presumptively occupies 2 feet of space on the Joint Use Pole), 2 shall be used as the first input in the space allocation formula and in case of the electric membership corporation (which presumptively occupies 7.5 feet of space on the Joint Use Pole) 7.5 shall be used as the first input in the space allocation formula. The space allocation percentage shall be applied to the pole cost and carrying charge rate of each party, respectively, to determine the Joint Use Adjustment Rate.

(b) Absent a contrary mutual agreement, any provision in a Regulated Joint Use Agreement which does not assess equivalent and reciprocal Joint Use Adjustment Rates to both parties to the Regulated Joint Use Agreement as provided for herein shall be presumptively deemed unjust and unreasonable and subject to immediate revision by the Commission in the absence of satisfactory rebuttal by the party charging the inequitable rate.

Standards and Specifications

(a) At a minimum, Pole Attachments and Overlashing shall be installed and maintained in accordance with:

i. The edition of the NESC and NEC in effect at the time the Pole Attachment is installed;

ii. U.S. Department of Agriculture's Rural Utilities Service regulations and standards as they apply to Pole Attachments;

iii. The Bellcore Manual of Construction Procedures (Blue Book) and subsequent revisions thereof;

ii. the Society of Cable Television Engineer's *Recommended Practices for Coaxial Cable Construction and Testing* and *Recommended Practices for Optical Fiber Cable Construction and Testing* and subsequent revisions thereof;

v. The codes, rules, or regulations of any federal, state or local governing body having jurisdiction; and

vi. The Joint Use Pole Owner's engineering or other standards/specifications for safety and reliability.

(b) Where there is a disagreement between the above-referenced specifications, the more stringent shall apply. The requirements of the NESC are minimum requirements and certain requirements of the Joint Use Pole Owner may exceed or supplement the NESC.

(c) Upon receiving actual or constructive notice from any party, Joint Use Licensees shall immediately repair any NESC or NEC violation associated with their Pole Attachments or Overlashing if that violation poses an imminent danger to life or property. If the repairing entity did not cause the violation, the repairing entity may seek reimbursement from the violation causer but only after repair of the violation has been made.

(d) Upon receiving actual or constructive notice from any party, Joint Use Licensees shall repair any NESC or NEC violation not posing an imminent danger to life or property, within thirty (30) days except in extraordinary circumstances, the burden of proof of which shall be borne by the party whose Pole Attachment or Overlashing are non-compliant. If the repairing party is responsible for the violation, they shall bear the actual cost of repair. If a third-party is responsible for the violation, they shall correct the violation within thirty (30) days of notice from the party whose Pole Attachment or Overlashing are non-compliant.

Prohibition against Redundant Poles

(a) Redundant poles are prohibited. Redundant poles are those poles located within close geographic proximity of one another and one or both of the poles possess sufficient existing capacity to support the attachments of both poles without compromising the needs and services of the Pole Owner or Attaching Entities.

(b) Joint Use Licensees shall remove their Pole Attachments and Overlashing from any poles removed, replaced, or abandoned by the Joint Use Pole Owner within sixty (60) days of being notified of the Joint Use Pole Owner's removal, replacement, or abandonment. Joint Use Licensees will have the option to Transfer their Pole Attachments and/or Overlashing to any newly installed nearby pole with sufficient capacity or remove their Pole Attachments and/or Overlashing entirely.

(c) If all Attaching Entities, including Joint Use Licensees, have timely removed their Pole Attachments and/or Overlashing from a Joint Use Pole Owner's abandoned pole, the Joint Use Pole Owner shall have thirty (30) days to remove the pole and restore the real property, as much as reasonably possible, to its pre-pole installation condition.

(d) If a Joint Use Licensee and/or Attaching Entity fails to timely remove its Pole Attachments and/or Overlashing from a Joint Use Pole Owner's abandoned pole, and a redundant pole with sufficient capacity to support the Pole Attachments and/or Overlashing exists nearby, legal title to the abandoned pole, and all associated responsibilities and liabilities, shall transfer, if notice is given by the Joint Use Pole Owner, on the sixty-first (61st) day after the Joint Use Pole

Owner's abandonment notice, on a pro-rata basis, to all entities with Pole Attachments and/or Overlashing remaining on the abandoned pole. Beginning on the date legal title of the abandoned pole transfers, Joint Use Licensee and Attaching Entities shall pay to the Joint Use Pole Owner a $500 per month fee for every month in which the abandoned pole remains installed while a nearby redundant pole exists. The fee shall be assessed to the remaining Joint Use Licensee and Attaching Entities on a pro-rata basis if title to the abandoned pole transfers to multiple parties.

(e) In the event the Joint Use Pole Owner does not invoke the ownership transfer provision set forth above, any Joint Use Licensee, and/or Attaching Entity, that has failed to transfer shall pay double the applicable pole attachment rate for that pole starting at the expiration of the 60-day period.

(f) Regardless of whether the Joint Use Pole Owner invokes the ownership transfer provision set forth above, the Joint Use Pole Owner will always have the option of making the Transfer(s) themselves (or hiring a Qualified Contractor to make the Transfer(s)) and recovering from the attacher the Actual Costs for the Transfer work (including the Imposition Fee). In the event of multiple attachers, the attachers will be responsible for the pro-rata share of the Actual Costs of the Transfer work, but each attacher will be responsible for its own Imposition Fee in the full amount. The attacher(s) shall indemnify, defend, and hold harmless the Joint Use Pole Owner from all obligations, liabilities, damages, costs, expenses or charges arising from or relating to the transferred attachments.

Pole Attachment Audits

(a) All Joint Use Pole Owners and Joint Use Licensees, in control of, or using poles, Pole Attachments, or Overlashed facilities subject to the jurisdiction of the Commission shall jointly participate in audits of those facilities for purposes of counting the number of Pole Attachments and Overlashed facilities by Joint Use Licensees.

(b) Audits and the reasonable procedures by which they will be completed shall be coordinated by Joint Use Pole Owners and conducted at least every five (5) years but not more frequently than every three (3) years.

(c) Joint Use Pole owners shall provide at least six months' advance written notice of Pole Attachment Audits to Joint Use Licensees.

(d) Joint Use Licensees shall pay a pro-rata share of the Joint Use Pole Owner's audit costs and will incur its own costs to participate in such periodic inspections.

(e) For every Unauthorized Attachment discovered during the Pole Attachment Audit, the Joint Use Licensee shall pay to the Joint Use Pole Owner a one-time fee of one hundred dollars ($100) per Unauthorized Attachment plus a sum equal to the Joint Use Adjustment Rate that would have been payable from and after the date the Unauthorized Attachment was made. If the date of such attachment cannot be determined, then the Joint Use Licensee will pay to the Joint Use Pole Owner a sum equal to the Joint Use Adjustment Rate that would have been payable from and after the date the last Pole Attachment Audit was conducted. Such Unauthorized Attachments are also subject to review by the Joint Use Pole Owner (at the Joint Use Licensee's expense) to determine

compliance with all applicable standards and specifications. Should corrective work be necessary, it shall be at the Joint Use Licensee's expense and addressed consistent with these regulations.

Safety Inspections

(a) All Joint Use Pole Owners and Joint Use Licensees owning, in control of, or using poles, Pole Attachments or Overlashed facilities subject to the jurisdiction of the Commission shall jointly participate in safety inspections of those facilities.

(b) Safety Inspections and the reasonable procedures by which they will be completed shall be coordinated by Joint Use Pole Owners and conducted at least every five (5) years but not more frequently than every three (3) years. Parties are free to privately negotiate other terms of conducting Safety Inspections, as well as other Safety Inspections, so long as the inspections required by these regulations are conducted.

(c) For Safety Inspections required by these regulations, Joint Use Pole Owners shall provide at least six (6) months' advance written notice to Joint Use Licensees.

(d) Joint Use Licensees shall pay a pro-rata share of the Joint Use Pole Owner's inspection costs and will incur its own costs to participate in such periodic inspections.

(e) Any safety issue identified during the safety inspection shall be cured by the party whose attachment or facility is the source of the safety issue within thirty (30) days of the inspection identifying the issue. Separate written notice from the Joint Use Pole Owner (or any other party) to the responsible party shall not be required to trigger the thirty-day deadline to cure of the safety issue. Joint Use Licensees may request additional time to cure the safety issue from the Joint Use Pole Owner. The Joint Use Pole Owner may grant or deny additional time to cure in its reasonable discretion. The thirty-day cure period shall not apply to any safety issues causing imminent danger to life or property. Safety issues causing imminent danger to life or property shall be cured immediately.

Modification Costs

(a) When any entity, whether Joint Use Pole Owner or Joint Use Licensee, requires a new pole to accommodate an additional attachment or facility, or has another need for additional capacity of any kind, the entity causing the need for the new pole shall pay the full, actual replacement cost of such pole, including the cost of removing the existing pole, less any salvage value.

(b) When an existing pole must be replaced for safety or reliability reasons as a result of normal wear and tear or other natural causes, and not as the result of any particular Pole Attachment or Overlashed facility, or the actions of any other third-party, the Joint Use Pole Owner shall be responsible for the cost of removing the old pole and the cost of the replacement pole.

(c) In either scenario described in subsection (a) or (b) above, both the Joint Use Pole Owner and any Joint Use Licensee shall place, Transfer and rearrange its own attachments, and shall place guys and anchors to sustain any unbalanced load caused by their attachments. On existing Joint Use Poles, each party will perform any tree trimming or cutting necessary for their

installation or additional attachments. Anchors and guys shall be in place and in effect prior to the installation of attachments. Each party shall, with due diligence, attempt at all times to execute such work promptly and in such a manner as to not interfere with the service of the other party.

Assignment

(a) Prior to the assignment, in whole or in part, of an existing Joint Use Agreement, a Joint Use Licensee shall obtain consent from the Joint Use Pole Owner to the assignment.

(b) No assignment of all or any portion of a Joint Use Agreement shall be valid or effective unless the assigning party is in good standing at the time of the assignment and the party to whom the agreement is to be assigned first satisfies all pre-requisites to attachment in the existing Joint Use Agreement, including proof of insurance, security, bond or other assurance.

Dispute Resolution

(a) Disputes concerning Pole Attachments to Joint Use Poles shall be resolved, on an expedited basis, in accordance with the rules stated herein. The Commission may engage an administrative law judge for administration of any dispute described herein.

(b) In the event of a dispute regarding any compliance or non-compliance with the standards and specifications applicable to Pole Attachments to Joint Use Poles, either party may submit the matter to the Commission for binding resolution by Referee.

i. Binding resolution by Referee will be initiated by either party's submission of a letter to the Commission requesting appointment of a Referee by the Commission, with a copy to the other party's representative. The letter requesting appointment of a Referee shall include a concise summary of the dispute and will designate the party's point of contact for the dispute.

ii. The other party shall, within ten (10) business days of receipt of the letter requesting appointment of a Referee, respond with a letter similarly sent and copied that provides such party's summary of the dispute and designation of the party's point of contact.

iii. The Commission shall appoint a Referee for binding resolution of the dispute with fifteen (15) business days of receipt of the other party's letter as follows:

1. Each party will appoint an outside Professional Engineer licensed in the State of Georgia and these two (2) engineers will appoint a third outside Professional Engineer licensed in the State of Georgia or other qualified person to serve as the Referee.

2. In the event that the two (2) engineers so appointed are unable within ten (10) business days of receipt of the second letter to agree upon a third outside engineer or other qualified person who is willing and able to serve as the Referee, then the Referee will be appointed as

follows: Three (3) names will be blindly drawn from the list of persons then comprising the NESC committee whose work is most closely related to the dispute (e.g., Clearances Committee or Strength and Loading Committee), or such other group as may be mutually agreed upon. Each party will strike one such name and the remaining person will serve as the Referee. If the parties strike the same name, then the Referee will be selected from the remaining two (2) names by coin toss. If the NESC committee member so selected is unwilling or unable to serve as Referee, then this procedure will be repeated (starting with the blind drawing of three different names as provided above) as necessary until a Referee that is acceptable to the Commission is selected who is willing and able to serve as Referee. If all committee member names of the NESC committee first selected are exhausted without a Referee being appointed who is willing and able to serve as Referee, then the parties will repeat the above-described procedure with the next NESC committee whose work is most closely related to the dispute, and so on until a Referee that is acceptable to the Commission is selected who is willing and able to serve as Referee.

iv. The Referee will make such investigation of the dispute as deemed appropriate in his or her discretion, which will include conferring with each party, in whatever manner the Referee deems appropriate, so long as each party is afforded equal opportunity.

v. The Referee shall issue a binding decision in writing to the parties, from which there will be no appeal, within ninety (90) days of appointment to the matter by the Commission. Upon good cause shown, the Referee may apply for a limited extension to issue a binding decision. The party whose position is not upheld by the Referee shall be responsible to pay the Referee's fees and expenses. If both parties' positions are upheld in part, they will share the Referee's fees and expenses equally.

vi. Nothing herein shall preclude the parties, at any time, from independently resolving a dispute concerning any compliance or non-compliance with the standards and specifications applicable to Pole Attachments to Joint Use Poles prior to the Referee's issuance of a binding resolution. Upon appointment of a Referee by the Commission, the parties agree to be bound to pay the Referee's fees and expenses, irrespective of any subsequent resolution by the parties.

(c) Complaints alleging that an electric membership corporation is not complying with the terms of the Georgia Broadband Opportunity Act or these regulations shall be filed with the Commission and resolved on an expedited basis.

i. The complaining party shall have the burden of establishing a prima facie case that the rate, fee, term, condition, or specification is not just,

reasonable, nondiscriminatory or commercially reasonable. The complaint shall include:

1. A concise and specific statement of why a rate, fee, term, condition or specification in any Joint Use Agreement with an electric membership corporation is not just, reasonable, nondiscriminatory or commercially reasonable, the harm caused by such rate, fee, term, condition or specification, and with all data and information supporting such statement.

2. A concise and specific statement that the rate, fee, term, condition or specification was not mutually agreed upon by the parties and all data and information supporting such statement.

3. A complete copy of the relevant Regulated Joint Use Agreement; or, if no Regulated Joint Use Agreement has been entered by the parties, a statement to that effect and the reasons therefor.

4. A certification of service of the named defendant.

ii. The defendant shall file a response to the complaint within thirty (30) days of receipt of service of the complaint. The response shall respond to the complaint and, at a minimum, include:

1. A concise and specific statement of why the allegedly improper rate, fee, term, condition or specification is just, reasonable, nondiscriminatory or commercially reasonable, does or does not cause the harm allegedly suffered, and all data and information supporting such statement, or alternatively, why the complaining party failed to establish a prima facie case in the complaint.

2. A concise and specific statement that the rate, fee, term, condition or specification was or was not mutually agreed upon by the parties and all data and information supporting such statement.

3. A complete copy of the relevant Regulated Joint Use Agreement if the defendant contends that the copy submitted with the complaint is incorrect or inaccurate in any fashion.

4. A certification of service of the named defendant.

iii. No additional filings by either party shall be permitted unless expressly granted by the Commission. Upon its own motion or motion of the parties, the Commission shall have discretion to order, grant, or deny any hearings, testimony, live or otherwise, oral argument or form of discovery or supplemental briefing it believes will aid in resolution of the complaint. Any such hearings, testimony, arguments or form of discovery or briefing shall

not delay resolution of the complaint beyond the deadline detailed in subsection (d) below.

iv. The Commission shall either grant or deny the complaint, in whole or in part, for any reason supporting such decision. If the Commission determines that the rate, fee, term, condition or specification is not just, reasonable, nondiscriminatory, or commercially reasonable, it may:

1. Prescribe a replacement rate, fee, term, condition or specification that is as close as possible to the challenged rate, fee, term, condition, or specification but is just, reasonable, non-discriminatory, and commercially reasonable;

2. Sever and terminate the invalid rate, fee, term, condition or specification from the pole attachment agreement;

3. Direct the parties to reach agreement on a new rate, fee, term, condition or specification with or without guidance from the Commission;

4. Grant other such equitable relief as the Commission may deem appropriate.

(d) Complaints alleging that an electric membership corporation is not complying with the terms of the Georgia Broadband Opportunity Act or these regulations shall be resolved by decision of the Commission within one hundred eighty (180) days from the date of the filing of the complaint. Under extraordinary circumstances, the Commission shall have the discretion to extend the deadline for decision.

(e) At any time, the Commission shall have authority to order the parties to participate in mediation, arbitration, settlement conference or other form of alternative dispute resolution before a Commission appointed administrative law judge(s), officer(s), mediator(s), arbitrator(s) or other individual(s). The deadline for resolution of the complaint shall be stayed pending the Commission's referral of the complaint and the parties' completion of alternative dispute resolution.