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DOCKET # Docket No. 43453
DOCUMENT # 244/183713

In Re:

Implementing

Order Implementing House Bill 244

ORDER IMPLEMENTING HOUSE BILL 244

I. STATEMENT OF PROCEEDINGS

A. House Bill 244

On September 8, 2020, the Georgia Public Service Commission issued its Procedural and Scheduling Order ("PSO") in the above-styled docket to implement House Bill 244. The General Assembly passed House Bill 244 in the 2020 legislative session. Notice of the proceeding was provided to all communications service providers and electric membership corporations in Georgia.

As outlined in the PSO, House Bill 244 amended Part 2 of Article 4 of Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to corporate purposes and powers of electric membership corporations, so as to require electric membership corporations to comply with certain requirements in determining the rates, fees, terms, conditions, and specifications for attachments to utility poles by communications service providers; to provide for certain rates, fees, terms, conditions, and specifications for such attachments to be determined by the Commission; to provide for the commission to promulgate certain rules and regulations; to provide for definitions; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes. The Act is entitled the Georgia Broadband Opportunity Act.

The intent of House Bill 244 is to promote the deployment of broadband services in this state. To achieve this goal, House Bill 244 charged the Commission with determining the rates, fees, terms, conditions and specifications in any pole attachment agreement entered into by a communications service provider and an EMC on and after July 1, 2021. House Bill 244 further requires that the Commission publish the pole attachment rates, fees, terms, conditions, and specifications on or before January 1, 2021. However, House Bill 244 did contain two specific exemptions:

- 1) Any existing agreement between a communications service provider and an electric membership corporation shall remain in effect until the date of its natural expiration or lawful termination.
- 2) Any EMC provider may enter into a mutual agreement as to the rates, fees, terms, conditions, and specifications for attachments to utility poles by communications service providers that differ from those set by the Commission.

In addition, House Bill 244 stipulated that the Commission's determination of pole attachment rates, fees, terms, conditions, and specifications must be made only after consideration of what is just, reasonable, nondiscriminatory, and commercially reasonable through providing all interested parties the opportunity to be heard and to present evidence. As such, House Bill 244 required that the Commission host an expedited adjudication of these matters and granted the Commission jurisdiction over all electric membership corporations to enforce compliance. On September 8, 2020, consistent with O.C.G.A. § 46-3-200.4(b), the Commission adopted rules prescribing the process for making this determination that provides all interested parties the opportunity to be heard and to present evidence. The schedule in the Commission's PSO was as follows:

September 9, 2020: The Commission Staff issued its first set of data requests to parties.

September 23, 2020: Parties responding to discovery were required to notify Staff of any objections to its discovery.

October 9, 2020: Parties were required to provide responses to Staff data requests that were issued on September 9th.

October 21, 2020: Interested parties were required to file direct testimony with the Commission.

November 9, 2020: Interested parties were required to file rebuttal testimony with the Commission.

November 17-20, 2020: The Commission conducted hearings on the direct and rebuttal testimony pursuant to O.C.G.A. § 46-2-59(g).

December 7, 2020: All briefs and proposed Orders were required to be filed with the Commission.

December 15, 2020: A final decision in this proceeding was rendered at the Commission's regularly scheduled Administrative Session.

The schedule was designed to enable the Commission to meet the statutory deadline to publish the pole attachment rates, fees, terms conditions and specifications by January 1, 2021. *See*, O.C.G.A. § 46-3-200.4(b).

B. Interventions

Georgia Cable Association (“GCA”) filed an Application for Leave to Intervene and an Amended Application for Leave to Intervene on September 21, 2020 and October 8, 2020, respectively. On October 5, 2020, Georgia Electric Membership Corporation and 38 of its members (collectively “GEMC” or “EMCs”) also filed for intervention. The next day, GEMC filed an objection to GCA’s application, later withdrawing it on October 14. BellSouth Telecommunications, LLC d/b/a AT&T Georgia (“AT&T”) and the Georgia Telecommunications Association (“GTA”) filed to intervene, respectively, on October 7 and October 8.

C. Hearings and Pleadings

On September 9, 2020, Commission Staff issued its first set of data requests to the member companies of GEMC and the GCA. Commission Staff issued its first set of data requests to AT&T and GTA and its second set to GEMC on October 16.

On October 21 and November 9, respectively, parties submitted direct and rebuttal testimony. GEMC filed the direct and rebuttal testimony and exhibits of: Christopher Stephens; Wendy Sellers; Danny Nichols; Todd Payne; Wilfred Arnett; Dr. Bridger Mitchell; the panel of Dilbon Rene Smith, Titus Diamond, Keith Brown, and Herschel Arant, Jr.; Gregory Booth, PE; Jeff Chandler; and Allen Bell. In addition, GEMC filed the rebuttal testimony of Christopher S. Edwards, CPA, CVA, MAFF. GCA pre-filed direct and rebuttal testimony and exhibits for Dr. Lawrence M. Slavin; Dr. Michelle Connolly; Jim Davies; Douglas Frank; James Yates; Jason M. Gumbs; and Patricia D. Kravtin. GCA witness Frank Vales only pre-filed rebuttal testimony. AT&T filed direct and rebuttal testimony and exhibits for Daniel Rhinehart and Mark Peters. GTA submitted direct and rebuttal testimony for Douglas Meredith.

On November 9, 2020, the Commission issued its Order on Objections and Motion to Limit Testimony, which addressed GEMC’s objections to the interventions of AT&T and GTA and motion to limit testimony to preclude testimony on joint use agreements. The Commission granted the interventions of GCA and GTA, reserved the issue of whether joint use agreements are within the scope of this proceeding, and directed the parties to address the rates, fees, terms, conditions and specifications of joint use agreements in their rebuttal testimony.

The Commission held hearings in this proceeding from November 17, 2020 through November 20, 2020. The witnesses listed above either presented live testimony and stood for cross-examination, or had their pre-filed testimony stipulated into the record by all parties.

GEMC, GCA, AT&T, and GTA each filed a post-hearing brief and/or a proposed order on December 7, 2020.

D. Positions of the Parties

Issue 1: After considering what is just, reasonable, nondiscriminatory, and commercially reasonable, what rates, fees, terms, conditions, and specifications should be set by the Commission for pole attachment agreements entered into on and after July 1, 2021?

- Issue 2:** *What methodology or methodologies should the Commission adopt in the determination of pole attachment rates, fees, terms, conditions and specifications?*
- Issue 4:** *Are EMC pole-owner costs, such as actual net investment, associated expenses and plant-in-service data relevant to the determination of rates, fees, terms, conditions and specifications? If so, how much are these costs, and how should they be considered for purposes of making this determination?*
- Issue 5:** *In setting rates, fees, terms, conditions, and specifications, should the Commission consider whether they will promote the deployment of broadband services in this state? If so, how should such consideration be factored into the rates, fees, terms, conditions, and specifications?*
- Issue 6:** *In setting rates, fees, terms, conditions, and specifications, should the Commission consider whether they will promote the deployment of broadband services in unserved or underserved areas, such as the areas identified as unserved in the Georgia Department of Community Affairs' Georgia Broadband Deployment Initiative ("Georgia Broadband Map")? If so:*
- a) *How should such consideration be factored into the rates, fees, terms, conditions, and specifications?*
 - b) *Should the Commission set different rates, fees, terms, conditions, or specifications for unserved or underserved areas in order to promote the deployment of broadband in such areas? If so, how should they be determined?*
 - c) *Can the Georgia Broadband Map be incorporated into the cost model or methodology approved by the Commission and, if so, how?*
 - d) *Can the rates and fees set for areas identified as served be used, indirectly or directly, to offset rates and fees for areas identified as unserved or underserved? If so, how should this be done?*

GEMC

GEMC contended that strict application of the Federal Communications Commission's ("FCC") cable formula, as proposed for use by GCA and GTA, would result in a pole attachment rental rate insufficient to reimburse the EMCs for a fair share of their costs to build and maintain utility poles and to address the engineering, safety, and reliability issues that are created by cable attachments. GEMC contended that, if the pole attachment rate adopted by the Commission does not allocate a fair share of costs to the cable attachers, then the EMCs will be required to replace this revenue to cover costs. Replacing these revenues, GEMC argued, would require their member companies to look in their budgets for line-items to reduce costs or increase their electricity rates to their member-owners.

GEMC proposed a pole attachment rate of \$37.95 ("Initial Georgia Rate") for cable and competitive local exchange carrier ("CLEC") attachments in the one-foot communication space, which GEMC later updated to \$34.72 ("Modified Georgia Rate") (Initial Georgia Rate and

Modified Georgia Rate referred to herein collectively as the “Georgia Rate”). The Georgia Rate is based on GEMC’s proprietary pole attachment rental rate methodology (“Georgia Formula”). The Georgia Formula proposed by GEMC makes use of elements of both the FCC’s cable pole attachment formula codified as 47 CFR §1.1406(d) (“FCC Cable Formula”) and the pole attachment rental rate formula utilized by the Tennessee Valley Authority (“TVA”), with select modifications to each.

The Georgia Formula proposed by GEMC would be calculated pursuant to a state-wide pole attachment methodology that determines the space allocation percentage that is used to calculate the Georgia Rate. The Georgia Formula allocates the annual costs associated with owning and maintaining a 37.5 foot utility pole by multiplying three factors: (i) net cost of a bare pole; (ii) carrying charges; and (iii) the space allocation percentage (i.e., the percentage share of the total pole costs to be paid for by the attacher). The Georgia Formula proposed by GEMC would use the net cost of a bare pole calculation and the same carrying charge calculation used by the FCC, with the following exceptions: 1) inclusion of “pole grounds” in its calculation of the net cost of a bare pole, 2) removal of underground services in Account 369 when calculating the maintenance charge percentage, and 3) utilization of a lower 8.5% rate of return on investment for purposes of calculating the carrying charges. In applying the Georgia Formula to arrive at the Georgia Rate, GEMC calculated the annual pole costs for each of its 38 member companies using their respective net costs of a bare pole and carrying charge calculations. Once those annual pole costs were determined, GEMC then applied the Georgia Formula’s proprietary space allocation percentage of 31.42% to determine the pole attachment rate for each of its 38 member companies under the Georgia Formula. Lastly, GEMC calculated the weighted average of the individual attachment rates based on the number of attachments billed by each of the EMCs, which resulted in the Georgia Rate of \$37.95.

GEMC proposed that the Georgia Rate be a single pole attachment rate for all existing cable attachments to EMC poles and new cable attachments to EMC poles in all of Georgia’s served areas. Under GEMC’s proposal, the Georgia Rate would be fixed for five-years, subject to annual escalation calculated by the commonly used Handy Whitman Index (“HWI”). In year six, the EMCs would resubmit their costs and number of poles owned to the Commission so that the Georgia Formula can be used to update the Georgia Rate that will then go into effect.

As to whether the Commission should consider what rates, fees, terms, conditions, and specifications will promote the deployment of broadband services in unserved or underserved areas of Georgia, GEMC argued that pole attachment rates are not a barrier to the deployment of broadband, and the Commission’s adoption of the FCC rate will not promote the deployment of broadband in Georgia. GEMC stated that broadband has not been deployed to certain areas of Georgia because the population density in those areas is too low, which increases the costs associated with deploying broadband to those areas while, at the same time, reducing potential profits. In support of their position, GEMC stated that cable companies have had the FCC pole attachment rate in Georgia Power and other investor-owned utility territories since 1978; however, only 37% of Georgia Power’s service territory is currently served by broadband. Consequently, GEMC argued that the Commission’s adoption of the FCC rate, which is lower than the negotiated pole attachment rate currently used by most of the EMCs, would not result in broadband deployment, would not lower the rates paid by broadband and cable users for broadband service,

and would not meaningfully lower the costs actually associated with new broadband deployment. Rather, GEMC concluded, requiring Georgia's electric cooperatives to adopt the FCC Rate would merely shift the costs associated with pole attachments to someone else, which, in this case, would be Georgia's not-for-profit electric cooperatives and their member-owners.

Nevertheless, in spite of its position that pole attachment rates are not a barrier to the deployment of broadband, GEMC proposed to encourage rural broadband expansion and incentivize cable broadband providers in areas defined as unserved by the Georgia Broadband Map by offering an introductory pole attachment rate. Specifically, GEMC proposed that, if the Commission adopts its requested formula and resulting \$37.95 rate, its members would be willing to provide an introductory pole attachment rate of \$1.00 per pole, per year, for five years to any otherwise qualified cable broadband provider, attaching in the one-foot cable/CLEC space, for any new pole attachment that provider makes on EMC poles to which they have yet to attach in an unserved area so long as the new attachments are made to provide broadband services to an unserved area (referred to herein as the "One Buck Deal"). GEMC stated that the One Buck Deal would promote broadband deployment by creating a real incentive to deploy broadband in Georgia. It further stated that it would give the Commission accountability to ensure that the discount the cable companies request is used for the purpose set forth in the Georgia Broadband Opportunity Act. GEMC argued that, using its proposal, the Commission could meet the stated purpose of the Georgia Broadband Opportunity Act and promote the deployment of broadband in Georgia with just, reasonable, nondiscriminatory, and commercially reasonable rates.

GCA

GCA advocated for adoption of the FCC Cable Formula for calculating pole rates state-wide. GCA contended that such adoption would not only adequately compensate the EMCs but would also ensure consistency and predictability with respect to attachment rates in Georgia that would improve the business case for investment. GCA stated that the FCC Cable Formula has been deemed to be fully compensatory by the FCC and the U.S. Supreme Court.

GCA stated that pole attachment rates factor into a cable company's decision as to where to deploy broadband service, and that this is especially true in rural areas, where more poles must be passed to reach potential customers. As a result, even if the costs were small, any marginally higher costs or risk of higher costs in the future, would, all else equal, skew deployment decisions away from such areas. This is because the higher the pole attachment rates, the higher the capital costs per mile, and the lower the expected profits from deploying that extra mile. As such, higher than competitively justifiable pole attachment rates would negatively impact overall broadband deployment, and this would be exacerbated in rural areas where more poles are needed to reach the average consumer. Consequently, GCA argued, the fact that the EMCs' current and proposed pole attachment rates are, on average, over three times and over five times more per year, respectively, than the attachment rates for poles owned by Georgia Power and AT&T would be a deterrent to expanding broadband.

GCA also responded to GEMC's argument that pole attachment fees account for an immaterial portion of the costs associated with broadband deployment. GCA stated that deployment costs are one-off fixed cost (capital for initial deployment) events, while pole

attachment rental fees are recurring annual costs. As a result, it is not sufficient to only consider one year of this cost. Instead, GCA argued it is more appropriate to compare the present (discounted) value of all future pole attachment costs, and the present value of those future pole attachment fees is not immaterial to the overall cost of broadband deployment.

As to whether the Commission should consider what rates, fees, terms, conditions, and specifications will promote the deployment of broadband services in unserved or underserved areas of Georgia, GCA requested that the Commission adopt the FCC Cable Formula for the determination of pole attachment rental rates state-wide. GCA stated that, while high pole attachment rates are a deterrent to rural broadband development, it was not in favor of adopting different rates for served versus unserved areas of Georgia. Indeed, GCA argued that it would not be enough for the EMC rates to be lowered only in unserved portions of the state. GCA witness Douglas Frank testified that it is unclear how the proposed bifurcated rate structure would work because the Georgia Broadband Map is a static document that no longer accurately reflects which areas in Georgia today are served or unserved. GCA contended that adoption of the One Buck Deal would create uncertainty for pole attachers, and any factor which negatively impacts expected profits in one geographic area will, at the margin, lead to an increased likelihood that investments will instead be made elsewhere.

GCA also contended that the One Buck Deal would not provide any revenue savings to the communications service provider pole attachers. To the contrary, when combined with GEMC's proposed Georgia Rate, the One Buck Deal would result in increased costs to the EMCs' pole attachers. Indeed, GCA stated that, even in unserved areas where the One Buck Deal would apply, the present value cost of pole rents under GEMC's proposed Georgia Rate would increase costs above the already excessive rates, such that it would take approximately 21 years at the \$1 rate before an attacher would realize any revenue savings from the One Buck Deal. This position was supported by GCA witness, Ms. Kravtin, who stated that there was no economic justification for the two-rate approach underlying the GEMC rate proposal, as "when combined with an excessively high permanent rate [it] is more gimmicky than meaningful from an economics and public policy perspective." For this reason, GCA stated that the One Buck Deal would be insufficient to incent broadband deployment to rural areas, given the higher pole rates faced by communications providers in the rest of the state. The One Buck Deal, GCA argued, when combined with the higher rates GEMC proposed as part of this proceeding, would increase a cable company's pole attachment costs and provide a disincentive for cable companies to invest in broadband in Georgia given the high rates that they would face for pole attachments after the expiration of the limited five-year term for new attachments in the unserved areas. As to this last point, GCA expressed concerns that the limited five-year duration of the unserved areas, combined with the fixed high monopoly rate level for served areas, would introduce more market distortions, as well as create opportunities for the EMCs to subsidize their own broadband operations, and discriminate against different classes of providers.

Instead of a bifurcated rate structure based on whether an area is served or unserved according to the Georgia Broadband Map, GCA proposed the FCC Cable Formula used to calculate rates for cable attachments state-wide. In support of its recommendation, GCA stated that the evidence in this proceeding demonstrates that low, uniform rates are necessary to garner the investment in broadband networks essential to closing the digital divide in Georgia. The

Commission's adoption of a uniform approach to establishing pole attachment rates by EMCs throughout the state based the FCC Cable Formula would establish statewide affordability, consistency, and predictability with respect to pole attachments. Such conditions, GCA stated, would improve the business environment in Georgia necessary to incentivize and expedite more broadband investment and competition, particularly in rural areas. Adoption of the FCC Cable Formula state-wide, GCA contended, would ensure consistency and predictability with respect to attachment rates in Georgia that would improve the business case for investment.

AT&T

AT&T requested that the Commission adopt the FCC's pole attachment rules codified in 47 C.F.R. §§1.1401-1.1415 ("New Telecom Formula"). Specifically, AT&T proposed that the Commission require EMCs to establish pole attachment rates by using what is commonly known as the New Telecom Formula as promulgated in FCC regulations at 47 C.F.R. 1.1406(d)(2). The New Telecom Formula, AT&T explained, is in use today in Georgia both by investor-owned electric utilities and AT&T. AT&T further requested that the Commission adopt pole attachment rates for individual EMCs based on individual EMC costs. AT&T proposed that these individual pole attachment rates be determined pursuant to the FCC's New Telecom Formula, with a maximum rate of return of 8.00%. AT&T explained that the maximum rate of return of 8.00% would be determined consistent with Commission precedent established under the Universal Access Fund process, pursuant to which individual EMC margins would be set on a company-specific basis premised on an allowed return on equity of 9.60%, blended with the actual cost of debt and debt-equity mix, with a capped rate of return of 8.00%. AT&T proposed that the New Telecom Formula be used to determine all pole attachment rates, including both pole attachments made pursuant to pole attachment agreements in the one-foot communication space by cable and CLECs, and those made pursuant to joint use agreements. AT&T stated that, should the Commission adopt the New Telecom Formula, AT&T would be willing to reciprocally apply the same New Telecom Formula rates to an EMC or its broadband affiliate for attachments to any poles owned by AT&T Georgia.

AT&T maintained that the goal of House Bill 244 to promote broadband deployment is not limited to unserved or underserved areas. In support of this position, AT&T stated that there is no reference to either the term "unserved" or "underserved" in Senate Bill 2 or in House Bill 244, and even if Senate Bill 2 or House Bill 244 had included such a reference, the Georgia Broadband Map would provide no meaningful guidance to the Commission in considering the concepts of "unserved" or "underserved" in this docket. AT&T further argued that rates established by application of the FCC New Telecom Formula, or any other method, should not be modified based on the geographic location within a given EMC's service territory, as doing so could introduce discrimination among broadband service providers and impose non cost-based cross-subsidy burdens on attachment rates in served areas. Lastly, AT&T postulated that there would be significant implementation issues related to determining which pole attachments on which pole lines would be eligible for subsidized or reduced attachment rates.

GTA

GTA requested that the Commission adopt the FCC's Cable Formula as the default rate for determining the pole attachment rental rates for broadband service in Georgia. GTA further requested that the Commission's adoption of the FCC Cable Formula for the determination of pole attachment rental rates include both those that are found in entitled "Pole Attachment Agreements" or "Joint Use Agreements," as both cover agreements governing the connection or fastening of a wire or cable to a utility pole. GTA rooted its request in its belief that, if an attachment in the communications space is going to be used for broadband service or any combination of broadband service and other services, the FCC's Cable Formula rate development would provide sufficient certainty and guidance for EMCs and communications service providers. GTA further reasoned that the FCC Cable Formula has been thoroughly vetted at the federal level and has been upheld by the courts as just, reasonable, and fully compensatory. As yet additional support for its request, GTA stated that the use of the Cable Rate Formula by other self-certifying states allays concerns that the formula does not provide adequate attention to both the customers of the entity using the attachment and the customers of the utility. GTA based its recommendation on its perception that the purpose of House Bill 244 is to expand broadband in the State of Georgia, and while the parties in this proceeding could dispute whether the FCC rates will lead to broadband expansion, no evidence in the record of this proceeding supported the idea that GEMC's proposed Georgia Rate would do so.

As to whether the Commission should consider what rates, fees, terms, conditions, and specifications will promote the deployment of broadband services in unserved or underserved areas of Georgia, GTA proposed that the Commission adopt the FCC Cable Formula for the determination of pole attachment rental rates state-wide. Like AT&T, GTA supported its position with the argument that the plain language of the statute and its legislative history indicate that the General Assembly did not intend to limit or focus House Bill 244 solely on unserved or underserved areas. GTA concluded that, even absent this context, the lower pole attachment rates that would result from the Commission's adoption of the FCC Cable Formula would encourage broadband deployment across the state, including in such currently unserved or underserved areas.

Moreover, GTA argued that the evidence in the record of this proceeding indicated that the Georgia Rate and One Buck Deal would deter the spread of broadband to rural areas. GTA, thus, urged the Commission to adopt the FCC Cable Formula for the determination of all EMC pole attachment rental rates state-wide.

Issue 3: What terms and conditions should be included in pole attachment agreements?

GEMC

GEMC's proposal for what terms and conditions should be included in pole attachment agreements is contained in GEMC Exhibit 40, which was attached to the Direct Testimony of EMC witness Booth. In GEMC Exhibit 140, GEMC proposed specific regulations and enforcement mechanisms with associated fees imposed to incentivize compliance by the attaching entities. GEMC's proposals are summarized below.

Concerning regulations proposed related to issues of safety, GEMC proposed that both cable and communications attachments be required to comply with the latest requirements and specifications of the National Electrical Safety Code (“NESC”), Georgia Department of Transportation, Occupational Safety and Health Administration, United States Department of Agriculture Rural Utilities Service (“RUS”), 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 the design and operational standards developed by the EMCs in the future. As to safety inspections, GEMC proposed that the EMCs be granted authority during any inspection (whether accompanied by the attacher or not) to identify any non-compliant attachment or other safety issue on site, demand correction by the offending party, and, if not corrected, the EMC can either have the work performed or perform the corrective work itself and assess the full cost to the attacher. GEMC proposed an Imposition Fee provision that authorizes the EMC to assess a twenty-five percent (25%) mark-up on the actual cost of any work the cooperative is forced to perform because the attacher, after receiving notice, failed to do so. This provision would create an incentive for the attachers to not only do it right the first time, but also to correct something they did wrong immediately after receiving notice that there is a problem.

GEMC also proposed regulations for a pre-inspection process. Under these proposed regulations, if the pole owner identifies an issue during these inspections, the attacher would be required to immediately fix the identified issue at its own cost. If the attacher fails to fix the identified issue at its own cost within fifteen (15) days, the pole owner would have the discretion to fix the issue and seek reimbursement from the cable company. In addition, GEMC proposed regulations that would require attachers to maintain and repair existing attachments at the attachers’ own cost, and any work on an existing attachment would be required to be done with a contractor certified by the attaching entity to be fully qualified and trained to perform the work (and not disqualified by the EMC for good cause). GEMC’s proposed regulations would also allow EMC members to conduct periodic safety and attachment audits to determine: (1) whether a third-party attachment complies with the safety and operational requirements; and (2) the number (and ownership) of attachments. GEMC proposed that the audits be conducted no more frequently than every three years, but not less than every five years, unless the EMC believes (in good faith) that: (a) an attacher’s attachments are unsafe; and/or (b) the reported number of attachments is inaccurate. In which case, the pole owner could perform an inventory, as necessary, in its sole discretion. Attaching entities would be required to participate in these audits and pay their prorated share of the costs of the audit. Attaching entities would be required to correct any violations not causing immediate threats within sixty (60) days. Any imminent threat to public, employee or property safety would be required to be remedied immediately at the cost of the violating attacher.

On the subject of space reservations, GEMC proposed that the Commission adopt the proposed regulations on space reservation as submitted and as they have existed under the CTAG Agreement. As proposed, the pole owner would be allowed to reserve Supply Space for its future use without qualification. Should a cable company’s (or other attacher’s) attachments occupy the intended Supply Space for whatever reason, that attacher would be required to, upon receipt of thirty (30) days’ notice, either: (1) vacate the space by removing the attachments at its own expense, (2) relocate its attachment at its own expense, or (3) if the EMC decides to replace the pole with a larger pole that can accommodate the existing attachments, the attachers whose

facilities were last added to the pole and caused the need for its replacement would bear the expense of such replacement, and transfer its attachments to the new pole. GEMC explained that, the pole owner engineers its system to anticipate future expansion of its electrical facilities including, but not limited to the addition of transformers and services to serve new consumers. It also anticipates third-party attachers and installation of taller poles to accommodate their presence. If the presence of those attachers, however, encroaches upon the reserved Supply Space, the pole owner should be allowed to reclaim that space with the full cost be borne by the attaching entity that encroached.

For any new attachments to the EMCs' poles, including secondary poles, and for all new overlappings, GEMC proposed that an attaching cable company must pay a \$50.00 application fee, and pay the pre-work inspection and estimated-pre-costs. GEMC proposed that, in general, the pole owner have twenty (20) days to approve or reject the application. GEMC further proposed that a pole owner be required to use its best efforts to commence accepted make-ready work within twenty (20) days and complete the work within sixty (60) days.

As to make-ready work, GEMC proposed a "Georgia One-Touch Make-Ready" ("GOTMR") process. Under GEMC's proposal, the GOTMR process would be an option that could be selected by the new attacher (or an existing attacher making a new attachment or overlapping). Before submitting its attachment application, a new attacher would be required to notify the pole owner and existing attachers that it intends to conduct a survey of the pole to determine if GOTMR is an option. The pole owner and existing attachers would be free to attend the survey at their own cost. The surveyor, who would be required to be certified by the attacher as qualified to do the work (and not rejected by the pole owner for good cause), would determine whether the pole is eligible for GOTMR by determining whether the necessary make-ready work will be "Simple" or "Complex." If the work is "Simple" the pole would be eligible for GOTMR. "Simple" make-ready work involves nothing more than rearranging the existing wireline attachments in a manner that will create space for the new attachment (or overlapping). If the make-ready work involves splicing or cutting wireline attachments (or anything else that might create a service interruption), work in the power space, or work on a wireless attachment, then the make-ready work is deemed "Complex" and GOTMR would not be an option. GEMC proposed that any Complex make-ready must default to the normal permitting process in order to protect everyone involved. Concerning overlapping, absent an existing violation, GEMC proposed that most overlapping be considered "Simple" make-ready and qualify for the GOTMR process. If the pole is eligible for the GOTMR process, the new attacher would submit the application to the pole owner with a GOTMR designation. The pole owner would then review the application under expedited timelines. The new attacher would have the responsibility of notifying existing attachers of the scheduled work pending pole owner approval of the application. Once the application is approved, the new attacher would be free to proceed with the work so long as they have provided sufficient notice to all concerned parties. Both the pole owner and existing attachers would be allowed to be present when the work is performed (at their own cost). The new attacher would be required to immediately report any damage to existing facilities to the pole owner and/or existing attachers. The pole owner and existing attachers would have the right to require immediate repairs as well as the right to complete a post-work inspection (at the new attacher's expense), even in cases where no damage is reported. Costs and liability for the work would both be borne by the

new attacher. Assuming the work is done correctly during that scheduled visit, the attachment is installed, and the process would be complete.

In the standard, non-GOTMR attachment process, which is also the process that would be used if the make-ready is "Complex", the new attacher would submit its application to the pole owner. If the application is approved, the existing attachers would be notified of the upcoming make-ready work. Then, the existing attachers, and the pole owner if necessary, would separately complete make-ready work on their individual attachments. Only after that make-ready work is complete could the new attacher perform work to install its attachment. When multiple attachers need to perform work, completion of work on one attachment is often dependent on prior completion of work on another attachment (often times the new attacher's competition). In such an instance, the new attacher would be forced to wait on multiple parties (including its competitors) to complete work.

Concerning pole abandonments, GEMC proposed regulations, pursuant to which the pole owner would be required to provide sixty (60) days' notice to the attaching entity of the pole owner's intent to have the attaching entity transfer its attachments or abandon a pole. Within this 60-day time period, the attacher would be required to remove its attachments and, if authorized by the pole owner, transfer its facilities to the nearest pole owned by the EMC or take other action not inconsistent with the pole attachment agreement to transfer the attachment from the subject pole. At the expiration of the 60-day period, at the option of the pole owner (with notice to the attaching entity), the attaching entity failing to remove or transfer its attachments would become the legal owner of the old pole until removed (and shall pay a \$500 per month fee to the EMC until the pole is removed). Alternatively, if the EMC did not wish to transfer ownership of the pole, the attacher that has failed to transfer would be charged double the applicable pole attachment rate for that pole starting at the expiration of the 60-day period. In either scenario, the pole owner would also have the option to transfer the attachments (or pay a qualified contractor to make the transfer) and remove the pole. If the pole owner were to exercise this option, it would be reimbursed for the actual costs incurred, plus the twenty-five percent (25%) Imposition Fee.

On the issue of performance security, GEMC proposed to modify this provision of the EMCs' existing CTAG Agreements to required insurance of \$10,000 or \$35 per attachment, whichever is larger. This proposal would increase the per attachment figure from \$25 to \$35. The proposed regulation also made clear that these security provisions would survive any agreed-upon assignment of the pole attachment agreement.

As to dispute resolution processes, GEMC proposed that negotiated agreements should be encouraged, preferred, and enforced. GEMC expressed its belief that the Commission should not tolerate "sign and sue" behavior. Second, GEMC proposed that the Commission and the Georgia Superior Court should have concurrent jurisdiction over enforcement or collections actions within the scope of the pole attachment agreement in order to allow the EMCs to pursue collections (or other applicable matters) in state and/or federal courts.

Concerning disputes filed by cable companies with the Commission, GEMC proposed two tracks. For any dispute relating to the standards and specifications and compliance therewith, a truly technical dispute, the proposal set out by GEMC in its filed Pole Attachment Regulations

maintained the same kind of “referee procedures” that have been available for decades in the CTAG Agreement. As to all other disputes, GEMC proposed a dispute resolution process that is consistent with the charge set forth in the Act.

Lastly, as to the ability of attaching entities to sell their systems and assign the applicable pole attachment agreement, GEMC proposed that any purchasing entity be required to satisfy specified security requirements prior to sale or transfer. GEMC also proposed that the selling entity be required to be in good standing with respect to the pole owner at time of sale or transfer; and, if not in good standing, that the selling entity be required to remain responsible for any unsatisfied contractual obligations.

GCA

GCA submitted a redlined version of GEMC’s proposed terms and conditions. GCA’s redlined version is part of the administrative record but was not moved into evidence. GCA asserted that most of its proposals are modifications and/or additions to GEMC’s proposed terms and conditions that track federal law and FCC regulations and clarify GCA members’ rights to attach to GEMC poles. GCA further asserted that its modifications and/or additions would streamline pole attachment processes going forward, lower costs, and facilitate broadband development in rural areas.

GCA first proposed that the Commission allow overlashing pursuant to a notice requirement and reject calls by GEMC that engineering and load studies be conducted prior to overlashing. To this end, GCA proposed that attachers be able to overlash GEMC poles so long as they provide pole owners at least 15 days’ advance notice. GCA asserted that this approach is consistent with the FCC’s rules and Georgia Power’s overlashing process. GCA also asserted that this consistency would bring much needed uniformity to overlashing procedures in Georgia.

As to the Georgia One-Touch Make Ready procedures proposed by GEMC, GCA contended that, adopting GOTMR procedures would provide an efficient, affordable solution to construction delays that also reduces burdens for the utility pole owner. However, GCA requested that the Commission adopt the timeframes and procedures found in the FCC’s One-Touch Make Ready rules. GCA also requested that the Commission adopt the FCC’s self-help remedies. GCA reasoned that the Commission’s alignment with other industry regulators on timeframes, procedures, and self-help remedies would promote broadband deployment throughout the state.

On this topic, GCA also requested that the Commission require the EMCs to provide sufficient detail in billing for pre-construction charges and make-ready estimates. GCA stated that this detailed billing requirement would minimize the potential for disputes in the future. GCA stated that this provision would be of particular importance going forward as more EMCs begin to compete in the broadband business.

In a similar vein, GCA requested that the Commission prohibit the EMCs from requiring new attachers to pay to correct pre-existing non-compliance of others as part of the make-ready processes. GCA further proposed that pole owners be prohibited from denying access to potential attachers based on a preexisting violation not caused by any prior attachment of the requesting party. GCA’s stated basis for these additions was its belief that, absent such provisions, pole

owners could prevent or hold up attachers' access to utility poles unless and until the requesting attacher pays to correct existing violations that it did not cause.

GCA also requested that the Commission establish the NESC as the uniform technical standard governing EMC pole attachments to promote uniform and consistent specifications across Georgia. Additionally, GCA stated that the Commission should prohibit the imposition of penalties for technical non-compliance given the ability of EMCs to leverage their control over their poles to disadvantage GCA members, who increasingly may be competing against one another in the provision of broadband.

GCA also requested that the Commission ensure non-discriminatory access be granted to the EMCs' utility poles by limiting their ability to reserve space on their poles without justification. GCA explained that the rules and Model Agreement proposed by GEMC would permit the EMCs to reserve space on their poles without any limitations. GCA expressed concerns that the EMCs could misuse this ability to discriminate against potential attachers and competing broadband competitors. For this reason, GCA requested that the proposed EMC rules and Model Agreement be modified to limit an EMC's ability to reserve space on its poles to core utility purposes pursuant to a bona-fide plan and ensure that GCA members receive non-discriminatory access. Finally, GCA requested that the Commission prohibit pole access denials for reasons other than insufficient capacity, safety, reliability, and general engineering purposes.

Concerning fees and penalties, GCA requested that the Commission adopt the FCC's approach to unauthorized attachment penalties and limit charges of billing inventory audits. Under such an approach, the Commission would eliminate the flat fee of \$100 per unauthorized attachment and adopt the FCC's limitation on unauthorized attachment fees, which is generally limited to a maximum of five years back rent. GCA also requested that the Commission limit the charges that can be assessed for billing inventories. Lastly, GCA requested that the Commission put in place rules permitting attachers to participate in the designing and planning of audits, observe the audits themselves, approve the costs to be incurred in conducting the audits, and review and obtain a copy of the audit inventory results and related documentation.

Concerning non-rate charges, GCA requested that the Commission limit non-rate charges to only those just and reasonable actual costs. Specifically, GCA requested that the Commission put in place rules which ensure that non-recurring charges such as application fees, preconstruction engineering and make-ready costs are limited to reasonable, actual costs of the EMC. GCA further requested that the Commission's rules and the Model Agreement require that pole owner nonrecurring charges, including for application processing, pre-attachment inspections, make-ready work, post construction and periodic safety inspections, and billing inventories are nondiscriminatory, cost-based and commercially reasonable, and, to avoid double recovery, that they are not already recovered through the annual pole attachment rental fees.

As to dispute resolution, GCA requested that the Commission adopt an expedited complaint process for resolving disputes. GCA stated that GEMC's proposed binding referee process has proved too slow and cumbersome to be useful. As a result, rather than proposing tweaks to GEMC's proposed binding referee process, GCA advocated for replacing it entirely with a bilateral negotiation provision that would require the parties to engage in executive level

discussions, which, if unsuccessful, would then require that formal complaints be taken directly to the Commission. GCA stated that the combination of an executive level negotiation requirement, with recourse to the Commission, would encourage prompt resolution and reduce the likelihood of parties advancing frivolous positions.

Finally, GCA requested that the Commission require that pole attachment agreements contain just and reasonable indemnification provisions. GCA explained that GEMC's proposed Model Agreement includes one-sided, unjust indemnification provisions which require the attacher to indemnify the pole owner from third-party claims arising from the attacher's negligence but do not provide the attacher with similar indemnification protections from claims arising from the pole owner's negligence. GCA requested that the Commission instruct the parties to incorporate reciprocal indemnification provisions into a new Model Agreement.

AT&T

AT&T requested that the Commission establish certain overarching bright line principles with which any agreement addressing any communications service provider's attachments to any EMC pole must comply, unless the parties mutually agree otherwise. AT&T proposed that the Commission allow parties to negotiate non-rate terms and conditions among themselves within those parameters and, if necessary, bring any unresolved issues to the Commission for resolution. AT&T argued that such an approach would provide the industry with the statutorily-required guidance it needs to move forward effectively and efficiently without imposing a one-size-fits-all paradigm that, even if appropriate and desirable today, could quickly become inappropriate and undesirable as technology and broadband deployment continues to evolve.

AT&T proposed a number of non-rate terms, conditions, or specifications. AT&T's first proposal was that the Commission adopt the FCC's pole attachment rules. Second, AT&T proposed that the Commission clarify that its decisions do not apply to the extent they are inconsistent with any existing collective bargaining agreements, particularly if it decides to adopt self-help remedies for attaching entities or one-touch make-ready provisions. Third, AT&T proposed that the Commission clarify that all agreements affected by this docket must provide for nondiscriminatory access to EMC poles. As to GEMC's proposed GOTMR provisions, AT&T proposed that the Commission adopt rules that would allow broadband providers wanting to overlash to provide EMCs advance notice before they do so, along with assurances that the overlash will not violate applicable pole loading limits or ground clearances. Concerning the imposition of penalties proposed by the EMCs, AT&T argued that the Commission should require the EMCs and attachers to participate in periodic meetings to resolve pole attachment issues. AT&T further argued that the Commission should require EMCs and all attachers to have appropriate field and supervisory personnel participate in good faith in periodic meetings to discuss and resolve pole attachment violations.

GTA

GTA stated that the Commission should adopt the terms and conditions that have been promulgated, tested, applied, and approved by the FCC. GTA criticized the terms and conditions provided by GEMC for being neither bilateral nor commercially reasonable.

GTA also argued that the Commission should establish a rule that all mutual pole attachment agreements between EMCs and communications service providers be required to be filed with the Commission and available for public online inspection so that any third party seeking an agreement with an EMC will be able to adopt the rates, fees, terms, conditions, or specifications for use in a Commission-approved agreement. GTA stated that such a most-favored-nation provision would protect against discrimination.

Joint Use Agreements Issue:

The parties disagreed over whether the Georgia Broadband Opportunity Act applies to joint use agreements. At issue is whether a joint use agreement is distinct from a pole attachment agreement, or whether it is a type of pole attachment agreement. A joint use agreement is an agreement between two pole owning utilities that permits each utility access to the other utility's pole. AT&T and GTA members own poles in EMC territory, and as a result, both have entered into joint use agreements with individual EMCs.

GEMC

GEMC argued that a joint use agreement is not a pole attachment agreement. As explained in the November 9, 2020 Commission Order:

... GEMC has argued that “joint use,” “joint use agreement,” “pole attachment” and “pole attachment agreement” are “widely understood terms of art.” GEMC states that joint use “is sharing the use of poles, by mutual agreement between two pole-owning utilities, usually the incumbent local exchange company (“ILEC”) and the electric utility.” GEMC argues pole attachment agreements are between a pole owning utility and a non-pole owning company, and provide the non-pole owning company license to attach to the pole. (*citations omitted*)

GEMC also argued that the statute that was repealed by the Act refers separately to “pole attachment agreements” and “joint use agreements”; whereas the Act doesn't reference “joint use agreements.”

GCA

GCA argued that House Bill 244 applies to joint use agreements because the statute expressly applies to “any” pole attachment agreement.

AT&T

AT&T argued that the Commission's determinations apply to every agreement addressing attachments to EMC poles, whether the agreement is labeled a pole attachment agreement or joint use agreement. AT&T supported this position by citing the language of House Bill 244 stating that the Commission's determinations in this proceeding apply to “any pole attachment agreement.” AT&T then explained that House Bill 244 defines “pole” and “attachment,” and when

read and interpreted in accordance with their defined meanings, the phrase “any pole attachment agreement” includes joint use agreements. On this basis, AT&T asserted that joint use agreements are a subset of pole attachment agreements that are subject to the Commission’s determinations in this proceeding

GTA

Like AT&T and GCA, GTA argued that House Bill 244 governs both joint use agreements and pole attachment agreements. GTA explained that House Bill 244 applies to “any” pole attachment agreement, and the words “attachment” and “utility poles” are both defined in House Bill 244. As there is no definition for pole attachment agreement, GTA argued that House Bill 244 regulates any contract that addresses attachments to poles.

II. Jurisdiction

The Commission has general jurisdiction to determine the rates, fees, terms, conditions and specifications in any pole attachment agreement entered into by a communications service provider and an EMC on and after July 1, 2021, provided that an EMC and a communications service provider may enter into a mutual agreement that varies from what the Commission ordered. O.C.G.A. § 46-3-200.4

III. Staff Recommendation

On December 9, 2020, Staff submitted a three-part recommendation to the Commission and interested parties. Part One addressed Issues 1, 2, and 4 from the PSO by recommending a methodology for the Commission to adopt for determining just, reasonable, nondiscriminatory, and commercially reasonable pole attachment rates based on the evidence in the record of Docket No. 43453. Part One also addressed PSO Issues 5 and 6 as to whether, in setting rates, fees, terms, conditions, and specifications, the Commission should promote the deployment of broadband services in this state, and if so, Staff’s proposal for how this would be best accomplished.

Part Two of Staff’s recommendation responded to the question presented in PSO Issue 3 of what fees, terms, and conditions should be included in pole attachment agreements.

Part Three of Staff’s recommendation addressed the issue of whether the legislature intended for the Commission to set rates for joint use agreements.

A. Staff Recommendation, Part One

The record evidence indicated that each EMC is unique, in so much as the EMCs serve differing populations, differing geography with differing climates, and disparate costs associated with serving their respective customers. Accordingly, Staff found that the imposition of one, ubiquitous, universal rate for all of the EMCs would not be appropriate.

For areas designated as “served” in the Georgia Broadband Map, Commissioner Advisory Staff recommended that the Commission resolve any disagreement for both new and existing pole

attachments utilizing the pole attachment rental rate formula proposed by GEMC, with the following modifications:

1. Remove grounding investment;
2. Remove 3.33 foot safety space from support space calculation;
3. Attribute 2/3 of the support space to attachers; and
4. Reduce support space from 26 feet to 24 feet.

AT&T Witness Rhinehart, in his rebuttal testimony, argued that inclusion of the grounding investment was expressly rejected by the FCC. The FCC found that "Lightning protectors and grounding installed on poles by utilities are equipment specific to the electric utility's core business services and not related to the general cost of the pole plant." Rhinehart stated that the FCC's conclusion is further reinforced by the account in which the ground wire is included under Federal Energy Regulatory Commission accounting guidelines. Ground wires are not accounted for as pole investment. Rhinehart also stated that in AT&T's own accounting systems ground wires are not included in pole investment but are instead included in AT&T's aerial cable account and therefore excluded from AT&T's own pole attachment rates. Staff found Rhinehart's testimony persuasive and recommended removal of the grounding investment.

Rhinehart testified that GEMC's proposed formula improperly adjusts the space factor in three ways:

1. Shifting the 3.33 feet of safety space to support space,
2. Including 100 percent of support space in the space factor instead of only two-thirds, and
3. Increasing the amount of normal support space from 24 to 26.

Regarding the safety space, the FCC has found that "It is the presence of the potentially hazardous electric lines that makes the safety space necessary and but for the presence of those lines, the space could be used by cable and telecommunications attachers. The space is usable and is used by the electric utilities." Rhinehart further testified that 25 of the 38 EMCs in this proceeding use the safety space for their own purposes, such as streetlights and sometimes for fiber. Regarding the support space, Rhinehart testified that GEMC's proposed rate improperly attributes 100% of the support space to attachers, whereas the FCC New Telecom Formula attributes two thirds to attachers and one third to the pole owner.

While Staff did not recommend adoption of the FCC New Telecom rate, it found that it was appropriate to attribute a percentage of the support space to the pole owner. Finally, regarding GEMC's proposed support space of 26 feet, Rhinehart testified that the FCC considered and rejected an increase in the above-ground support space from 18 feet to 20 feet. In an order issued in April of 2000, the FCC "considered numerous studies submitted to us before concluding that the 18-foot figure was an appropriate tool to estimate usable space. The data provided by the utilities regarding sag does not demonstrate the same rigor as the studies on which our Usable Space Order was based." Staff found Rhinehart's adjustments reasonable and recommended adoption of these modifications.

Staff's proposed rate formula for served areas results in rates ranging from \$9.17 to \$33.54 with a weighted average of \$18.67.

As an incentive to deploy broadband facilities in areas designated as "unserved," Staff further recommended that a Number of Attachers Cost Allocator be applied to new pole attachments using the EMCs' calculated average number of attachers of 2.72. While there was testimony to support increasing the number of attachers in the allocator to 3, Staff believed it was appropriate to use the EMCs' actual data where possible. Staff noted that it would not recommend that the Number of Attachers Cost Allocator be applied to currently existing pole attachments in areas designated as "unserved."

Staff's proposed rate formula for unserved areas results in rates ranging from \$3.70 to \$13.54 with a weighted average of \$7.54.

Staff recommended that the Commission leave these rates in place for a period of five years. Determination of whether an area is served or unserved should be based on the Georgia Broadband Map as of the date an order is issued setting rates in this docket. At the conclusion of this five-year period, Staff recommended that the Commission conduct a proceeding to determine: (1) if the rates set in this proceeding are still just and reasonable, (2) if broadband access has expanded in the areas shown as unserved in the current Georgia Broadband Map, (3) whether the Georgia Broadband Map has been updated since the Commission's decision, and (4) whether to continue to use the Georgia Broadband Map to determine served and unserved areas, and, if not, what source should be used to make that determination. Staff noted that nothing in this paragraph is intended to affect the right of any party to petition the Commission for changes to the pole attachment rates.

Assuming that there is no increase in the number of pole attachments, Staff's proposed rates would result in an average loss of pole attachment revenue of about 20% for the EMCs versus their existing rates. However, the rate formulas proposed by Staff were cost-based and used the data of each EMC to arrive at unique EMC-specific rates for both served and unserved areas. Because the EMCs' existing rates were negotiated, with the pole owners having most of the negotiating power, Staff argued that it makes sense that the negotiated rates would be higher than cost-based rates. As such Staff found that, while it is appropriate to consider the existing pole attachment revenues for comparison purposes, the "just, reasonable, non-discriminatory, and commercially reasonable" standard does not require the Commission to ensure that the EMCs continue to receive 100% of existing revenues. With that in mind, the initial reduction in pole attachment revenue from Staff's proposed rate formulas may in fact be offset by the following: 1) Because of the lower rate in served areas, communications service providers may attach to additional poles in areas currently served by other broadband providers; 2) Communications service providers may, and hopefully will, attach to many more poles in unserved areas producing revenue that would not have existed absent the much lower incentivized rate in unserved areas; 3) EMC broadband affiliates will pay the same rates as any other attachers, and will therefore, have a strong incentive to deploy in both served and unserved areas.

Staff recommended that the rates it proposed be in effect for a period of one year beginning July 1, 2021. The rates would then be adjusted annually based on the change in the Handy-Whitman Index, with the new rates taking effect on July 1 of the following year.

Staff proposed the following annual filing requirements for the EMCs beginning on June 1, 2022 and continuing on June 1 of each subsequent year:

1. Each EMC (or GEMC on behalf of each EMC) shall file its updated pole attachment rates based on the change in the Handy-Whitman Index.
2. Each EMC (or GEMC on behalf of each EMC) shall file its total pole attachment revenue and the total number of attachments, broken out by “served” and “unserved” areas pursuant to the Georgia Broadband Map, for each of the prior two years.

The application of Staff’s proposed formula was based on Pole Owners’ utility pole revenue requirements. Pole Owners’ revenue requirements can be determined from readily available data sources, such as the RUS Uniform System of Accounts (“USoA”) data for not-for-profit utilities. Using readily available data sources that are updated annually facilitates transparency and consistency in the Commission’s application of its pole attachment rental rate formula. As such, when parties are unable to agree on a privately negotiated rate, Staff recommended that the Commission approve and implement a pole attachment rental rate formula based on Pole Owners’ individual costs of service revenue requirements. Accordingly, the allowed rate of return should be set at the individual EMCs weighted average cost of capital (“WACC”), subject to a cap of not greater than 8.5%. Staff found that a cap on the EMCs’ allowed rate of return of 8.5% produces pole attachment rates that are just, reasonable, nondiscriminatory, and commercially reasonable. As GEMC witness Will Arnett testified, “the 8.5% is the same rate specified in the TVA formula and is lower than the 10.0% provided for in the FCC formula for utilities that do not have a state-specified rate of return.” Arnett also explained that the 8.5% is appropriate in light of how EMCs finance their business. Furthermore, AT&T witness Rhinehart agreed that the 8.5% could be within a zone of reasonableness. While Staff recommended approval of the WACC proposed by GEMC, it recommended this percentage as a cap, which was not part of GEMC’s proposal. Staff recommended that the Commission set EMC margins on a company-specific basis premised on an EMCs actual cost of capital, subject to a capped rate of return of 8.50%.

The pole attachment rate that Staff recommended followed this standard revenue requirement procedure, and was supported, in part by the formula proposed by GEMC and in part by the formula utilized by the Federal Communications Commission for telecommunications carriers or cable operators providing telecommunications services. This formula contained five basic formula components:

1. Net Pole Investment Allocable to Attachments = (Gross Pole Investment (Acct. 364) – Accumulated Depreciation for Poles) * Bare Pole Factor;
2. Net Cost per Bare Pole = (Net Value in Pole Investment Allocable to Attachments / Total Number of Poles);
3. Total Carrying Charge = Administration Carrying Charge + Maintenance Carrying

Charge + Depreciation Carrying Charge + Taxes Carrying Charge.

- a. Administration Carrying Charge = Total General and Administrative / Total Plant in Service;
 - b. Maintenance Carrying Charge = Maintenance Expenses for Overhead Lines / Net Pole Investment in Accounts 364, 365, and 369;
 - c. Depreciation Carrying Charge = Depreciation Rate for Gross Pole Investment x (Gross Pole Investment / Net Pole Investment);
 - d. Tax Carrying Charge = Tax Expense / Total Plant in Service;
4. Total Cost per Pole = Net Cost per Bare Pole x Total Carrying Charges;
5. Attachment Rate = Total Cost per Pole x Attacher Space Allocation (%).

B. Staff Recommendation, Part Two

Staff proposed unique terms and conditions which incorporated elements of those proposed by the parties in an effort to balance the interests of the parties. Staff argued that its proposed terms and conditions were just, reasonable, nondiscriminatory, and commercially reasonable.

C. Staff Recommendation, Part Three

The parties disagreed over whether House Bill 244 applies to joint use agreements. At issue is whether a joint use agreement is distinct from a pole attachment agreement or whether it is a type of pole attachment agreement. A joint use agreement is an agreement between two pole owning utilities that permits each utility access to the other utility's pole. AT&T and GTA members own poles in EMC territory, and as a result, both have entered into joint use agreements with individual EMCs.

Staff recommended that the Commission find House Bill 244 applied to joint use agreements. While House Bill 244 does not specifically reference joint use agreements, as did the version of the statute it amended, the bill includes definitions of the terms "utility pole" and "attachment" that were not included in the version of the statute before the Act. "Utility pole" is defined to mean "a pole or similar structure that is used in whole or in part for electric distribution by an electric membership corporation or an affiliate thereof." O.C.G.A. § 46-3-200.4(a)(4). An "attachment" is "the connection or fastening of a wire or cable to a utility pole." O.C.G.A. § 46-3-200.4(a)(1). The Act goes on to charge the Commission with setting the rates, fees, terms, conditions, and specifications for "any pole attachment agreement." O.C.G.A. § 46-3-200.4(b). A joint use agreement involves the "connection or fastening of a wire or cable to a" "pole or similar structure that is used in whole or in part for electric distribution by an electric membership corporation or an affiliate thereof." While a joint use agreement also provides for the attachment of wire or cable to the pole of a utility that is not an EMC, the inclusion of this additional

component does not alter the fact that a joint use agreement includes the elements of a pole attachment agreement consistent with the relevant statutory definitions.

Notwithstanding the foregoing, the Commission's charge to set the rates, fees, terms, conditions and specifications in any pole attachment agreement should not be construed to require the Commission to develop rates to correspond with any potential terms and conditions that a party may desire. Instead, Staff concluded the charge is more fairly understood to mean that the Commission may fulfill its obligations under the Act by setting rates, fees, terms, conditions and specifications for a pole attachment agreement that any communications service provider may choose to take, regardless of whether that communications service provider also owns poles. In summary, Staff construed the Act to authorize the Commission to set the rates, fees, terms, conditions, and specifications for joint use agreements, but the Commission is not obligated to do so.¹

Staff concluded that the Act expressly permits an EMC and a communications service provider to mutually agree upon the rates, fees, terms, conditions and specifications for pole attachments that differ from what is ordered by the Commission. O.C.G.A. § 46-3-200.4(e). Accordingly, if a communications service provider wants access to an EMC's pole that differs from what is provided for in the Commission's decision, the communications service provider may negotiate with the EMC.

IV. Commission Decision

The Commission adopts the terms and conditions proposed by GEMC with the following modification: The 60-day period for the attaching entity to complete the designated work after proposed notice from the pole owner shall be deleted and replaced with a requirement that the work be commenced within 30 days and completed within 45 days after proper notice from the pole owner.

The Commission also adopts the rates proposed by GEMC, with the following modifications: First, for the portions of the state designated as "served" on the Georgia Broadband Map, the Commission assumed a standard 40-foot pole and did not include grounding in the rate. These adjustments result in a modified rate for attachments in the one-foot communication space of \$27.71 for served areas. This rate will be guaranteed for five years beginning July 1, 2021. Second, for the portions of the state shown as "unserved" on the Georgia Broadband Map, the Commission voted that the One Buck Deal proposed by GEMC should be in place for six years as opposed to the five years proposed by GEMC. Subsequent to the vote, GEMC agreed to this modification. Any communications service provider may choose to attach to an EMC pole under the rates, fees, terms, conditions and specifications adopted by the Commission. At the end of the

¹ To be clear, while the Commission has the authority to set rates, fees, terms, conditions, and specifications for joint use agreements, it does not have the authority to rewrite or void any existing joint use agreements just as it does not have the authority to rewrite or void any other existing pole attachment agreements.

six-year promotional rate period, the pole attachment rate for unserved areas will increase to be the same as the rate for served areas in effect at that time.

Two years from the effective date of the new rates, and every two years thereafter, the Commission will review the status of broadband deployment in Georgia and the impact of the Commission's Order on that deployment. If the Order has not been effective in promoting the deployment of broadband services in Georgia, the Commission may make such modifications as appropriate. To facilitate this review, each EMC (or GEMC on behalf of each GEMC) shall file on June 1st, 2022, and every other June 1st thereafter, its total pole attachment revenue and total number of attachments broken out by served and unserved areas pursuant to the Georgia Broadband Map for the prior two years. Further, every communications provider participating in the biennial review shall file on June 1st, 2022, and every other June 1st thereafter, its total new broadband investment in EMC territory and a total number of broadband customers in EMC territory, broken out by served and unserved areas pursuant to the Georgia Broadband Map for the prior two years.

V. Findings of Fact

1.

GEMC's "Modified Georgia Rate," GCA and GTA's "FCC Cable Rate," and AT&T's "FCC New Telecom Rate" were all generated using a pole attachment rate formula with the same three factors: (1) net cost of a bare pole; (2) annual carrying charges for poles; and (3) space allocation percentage for attachers.

2.

GEMC's proposal allocates the annual costs associated with owning and maintaining a 37.5 foot utility pole by multiplying three factors: (i) net cost of a bare pole; (ii) carrying charges; and (iii) the space allocation percentage (i.e., the percentage share of the total pole costs to be paid for by the attacher). The Commission finds that this approach is reasonable, but that the calculation should be performed using a 40 foot pole because that size pole is necessary to accommodate the EMCs' facilities and the facilities of those communications service provider attachers. This finding is consistent with the testimony of EMC witness Booth who uses a 40 foot pole for purposes of illustrating the EMC rate formula space allocation. In addition, the joint use agreement between EMCs and AT&T defines a normal joint use pole as 40 feet.

3.

In calculating the net cost of a bare pole, GEMC includes pole grounds, while GCA, GTA and AT&T did not. Based on the record, the Commission finds that grounding installed on poles by utilities is not related to the general cost of the pole plant, that ground wires are not accounted for as pole investment and that ground wires are excluded from AT&T's own pole attachment rates. Therefore, the Commission finds that costs related to grounding should not be included in the pole attachment rate for served areas within Georgia.

4.

The annual carrying charges proposed by GEMC are reasonable. These charges are expressed as a percentage and reflect the following five categories of annual costs associated with the pole plant: (a) administrative, (b) maintenance, (c) depreciation, (d) taxes, and (e) rate of return. GEMC's calculation of the annual carrying charge did not include the cost of underground services in FERC Account 369. This is reasonable because the EMC poles that cable and telephone companies attach to are above-ground utility poles, not underground facilities. The Commission adopts a rate of return equal to 8.5%. GEMC witness Arnett testified that 8.5% is the same rate specified in the TVA formula and is lower than the 10.0% provided for in the FCC formula for utilities that do not have a state-specified rate of return. Arnett also explained that the 8.5% is appropriate in light of how EMCs finance their business. Furthermore, AT&T witness Rhinehart agreed that the 8.5% could be within a zone of reasonableness.

5.

The space allocation percentage is used to apportion the annual cost of pole ownership among the attaching entities, including the pole owner. The Commission incorporated a space allocation percentage of 26.94% into its calculation. This calculation was based on a 40 foot pole height and an average of three attachers to the pole. GEMC witness Arnett testified that, "Although an average of three attaching entities per pole exceeds the current number, the One Buck Deal should encourage additional expansion of broadband and additional attaching entities, so that in the future the average number will be driven up to three." The Commission finds this testimony to be credible and persuasive.

6.

The Commission finds reasonable GEMC's proposal that the pole attachment rate be a single pole attachment rate for all existing cable attachments to EMC poles and new cable attachments to EMC poles in all of Georgia's served areas.

7.

The Commission finds that making the adjustments discussed above to the pole attachment rate proposed by GEMC for unserved areas results in rate for a communications service provider to attach in the one-foot communication space of \$27.71.

8.

The Commission finds that the One Buck Deal as proposed by GEMC to be offered in unserved areas should be in place for six years. The Commission finds that this promotional rate is designed to encourage broadband deployment in unserved areas in Georgia. At the conclusion of the six-year promotional period, it is reasonable for the pole attachment rate to increase to be

the same as the rate in effect in the unserved areas so that EMCs have the opportunity to recover their costs.

9.

The Commission finds that the rates adopted herein are just, reasonable, non-discriminatory and commercially reasonable. The record reflects that what constitutes a commercially reasonable rate may vary depending on whether the area is served or unserved. The offering of a promotional rate for six years in those areas identified as unserved recognizes this difference and addresses a concern expressed throughout the evidentiary record that communications service providers are reluctant to deploy service into those areas in Georgia that are currently unserved. The Commission acknowledges that there is no certainty as to what level of additional deployment will result from this Order. Therefore, it is prudent for the Commission to monitor periodically the impact that the pole attachment rates are having and to make any appropriate modifications. Further, the rates should be set to permit an EMC the opportunity to recover its costs. The rate that the Commission has adopted for served areas is cost-based. The rate is non-discriminatory as any communication service provider may choose to attach to an EMC's poles under the rates, fees, terms, conditions and specifications adopted in this order.

10.

The Commission finds the fees, terms, conditions and specifications as proposed by GEMC are just, reasonable, non-discriminatory and commercially reasonable; however, one modification is warranted. The Commission finds that a 45-day period, instead of a 60-day period, for the attaching entity to complete the designated work after proposed notice from the pole owner will better serve public safety and welfare. The Commission also finds that this work should be commenced within 30 days of the notice to ensure that the work will be completed within the 45-day period.

10.

The GOTMR program, proposed by GEMC was supported by the testimony of multiple GEMC witnesses. The Commission finds that GOTMR is just, reasonable, nondiscriminatory, and commercially reasonable, and that it is designed to promote the deployment of broadband in Georgia.

11.

GEMC provided substantial evidence that pole attachment agreements must contain contractual provisions that are designed to address the improper and dangerous pole attachment practices seen throughout the EMCs' service territory. Specifically, the GEMC Engineer Panel provided photographs showing (1) unauthorized attachments, where a cable or telephone company had attached without permission or a permit, undermining the EMCs' ability to maintain a reliable pole plant; (2) attachments with insufficient ground clearance, endangering pedestrians and motorists; (3) attachments that were installed too close to the electrical facilities or to the facilities of another communications provider, endangering communications workers, who are not trained to work near electric facilities, and the general public; (4) attachments made without or with

inadequate guys and anchors, putting undo stress on the EMCs' poles, which often results in pole failure or premature pole replacement; and (5) attachments not timely transferred from an old EMC pole to a newly installed EMC pole, creating redundant poles, safety hazards, reliability issues, and additional costs. The photographs admitted into evidence showed that these problems exist throughout the EMCs' service territories and with all communication service providers. GEMC further established that the bulk of these violations were undisputedly caused by attachers, not the EMCs.

12.

The current state of the pole attachments on the EMCs' poles under the existing terms and conditions between the parties raises concerns that support the terms and conditions proposed by GEMC. Pole attachment agreements must ensure that the EMCs have the ability to address the improper attachment practices that currently exist in Georgia.

13.

The record supports that GEMC's Proposed Pole Attachment Regulations as amended by the Commission, attached hereto as **Exhibit A**, are just, reasonable, nondiscriminatory, and commercially reasonable. The limited proposals by GCA, GTA, and AT&T in evidence before the Commission are not just, reasonable, nondiscriminatory, nor commercially reasonable. For example, GTA, through testimony, requested that the Commission adopt a provision that limits the pole owner's ability to deny an attachment application which is patently unreasonable. The Commission further finds that GEMC's Proposed Pole Attachment Regulations are appropriately designed to ensure the EMCs' pole plant remains safe and reliable. The Commission also determines the Georgia One-Touch Make-Ready proposal will result in the promotion of broadband deployment in Georgia. Accordingly, the Commission adopts fully the pole attachment regulations proposed by GEMC.

VI. Conclusions of Law

1.

On and after July 1, 2021, the rates, fees, terms, conditions and specifications in any pole attachment agreement entered into by a communications service provider and an EMC, except as required by the Tennessee Valley Authority for its distributors in this state, shall be as determined by the Commission, provided that any existing agreement between a communications service provider and an EMC shall remain in effect until the date of its natural expiration or lawful termination, and provided further that an EMC and a communications service provider may enter into a mutual agreement as to the rates, fees, terms, conditions and specifications for attachments to utility poles by communications service providers that differ from those adopted by the Commission. O.C.G.A. § 46-3-200.4(b),(d),(e).

2.

The Commission is charged with publishing the rates, fees, terms, conditions and specifications for pole attachment agreements by January 1, 2021. O.C.G.A. § 46-3-200.4(b).

3.

House Bill 244 defines “utility pole” to mean a “pole or similar structure that is used in whole or in part for electric distribution by an electric membership corporation or an affiliate thereof.” O.C.G.A. § 46-3-200.4(a)(3). Under House Bill 244, “attachment” is defined as “the connection or fastening of a wire or cable to a utility pole.” O.C.G.A. § 46-3-200.4(a)(1).

4.

The rates, fees, terms, conditions and specifications for pole attachment agreements shall be just, reasonable, non-discriminatory and commercially reasonable. O.C.G.A. § 46-3-200.4(b). For the reasons stated herein, the Commission decision complies with this requirement.

5.

The Commission was charged with setting the rates, fees, terms, conditions and specifications in pole attachment agreements “[i]n order to promote the deployment of broadband services in this state.” O.C.G.A. § 46-3-200.4(b). The Commission decision accomplishes this goal by adoption of the One Buck Deal for six years.

VI. ORDERING PARAGRAPHS

WHEREFORE IT IS ORDERED, that the Commission adopts the terms and conditions proposed by GEMC with the following modification: The 60-day time period for the attaching entity to complete the designated work after proposed notice from the pole owner shall be deleted and replaced with a requirement that the work be commenced within 30 days and completed within 45 days after proper notice from the pole owner.

ORDERED FURTHER, that, for those portions of the state designated as “served” on the Georgia Broadband Map, the rate for a communications service provider to attach in the one-foot communication space shall be \$27.71. This rate will be guaranteed for five years beginning July 1, 2021. Any communications service provider may choose to attach to an EMC’s pole in a served area of Georgia at this rate and under the terms and conditions adopted in this Order.

ORDERED FURTHER, for those portions of the state designated as “unserved” on the Georgia Broadband Map, the Commission adopts the One Buck Deal proposed by GEMC. The One Buck Deal shall be in place for six years commencing on July 1, 2021, as opposed to the five years proposed by GEMC. At the conclusion of the six-year period, the pole attachment rate for unserved areas shall be the same as the rate in served areas in effect at that time.

ORDERED FURTHER, that two years from the effective date of the new rates, and every two years thereafter, the Commission will review the status of broadband deployment in Georgia and the impact of the Commission's order on that deployment. If the order has not been effective in promoting the deployment of broadband services in Georgia, the Commission may make such modifications as appropriate. To facilitate this review, each EMC or GEMC on behalf of each

GEMC shall file on June 1st, 2022, and every other June 1st thereafter, its total pole attachment revenue and total number of attachments broken out by served and unserved areas pursuant to the Georgia Broadband Map for the prior two years. Further, every communications provider participating in the biennial review shall file on June 1st, 2022, and every other June 1st thereafter, its total new broadband investment in EMC territory and a total number of broadband customers in EMC territory, broken out by served and unserved areas pursuant to the Georgia Broadband Map for the prior two years.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 15th day of December 2020.



Reece McAlister
Executive Secretary



Chuck Eaton
Chairman

12-30-20
Date

12/30/20
Date

EXHIBIT A
POLE ATTACHMENT REGULATIONS
FOR THE
GEORGIA PUBLIC SERVICE COMMISSION

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.* These rules apply to Pole Attachment Agreements entered into by a communications service provider and an electric membership corporation for attachments to utility poles owned by electric membership corporations on or after July 1, 2021. Unless otherwise specified, these rules do not apply to joint use agreements, to attachments made to electric membership corporation poles by a joint owner of that pole, to any Pole Attachment Agreement entered into prior to July 1, 2021 or 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 Pole Attachment 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 Attaching Entities and electric membership corporations over compliance with these rules and/or an Attaching Entity and electric membership corporation's failure to reach a mutually negotiated Pole Attachment 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 Attaching Entities negotiate their own rates, fees, terms, conditions, and specifications for Pole Attachments. Nothing in these rules or in O.C.G.A § 46-3-200.4 prohibits or shall be construed to prohibit electric membership corporations and Attaching Entities from entering into a mutually negotiated Pole Attachment Agreement 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 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 Pole Attachment Agreement.

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 that is subject to the jurisdiction of the Georgia Public Service Commission established in O.C.G.A. § 46-3-200.4 and that is attaching pursuant to a license set forth in a Pole Attachment Agreement.
- (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, when the Attaching Entity fails to comply, after notice.
- (g) "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.
- (h) "NEC" means the National Electrical Code published by the National Fire Protection Association.
- (i) "NESC" means the American National Standards Institute's National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc.

- (j) “Overlash”/“Overlapping” 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.
- (k) “Pole Attachment” means the connection or fastening of a wire or cable to utility pole.
- (l) “Pole Attachment Agreement” means a mutually negotiated, written agreement between an electric membership corporation and a communications service provider regarding the rates, fees, terms, conditions and specifications for Pole Attachments.
- (m) “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.
- (n) “Pole Attachment Rental Fee” means the annual amount per pole that the Attaching Entity must pay to the electric membership corporation in order to affix its Attachment(s) to the Utility Pole.
- (o) “Pole Owner” means an electric membership corporation subject to the jurisdiction of this Commission pursuant to O.C.G.A § 46-3-200.4.
- (p) “Qualified Contractor” shall mean a contractor that meets all of the minimum requirements set forth in Section 4(i) of these regulations.
- (q) “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.
- (r) “Safety Inspection” means any inspection done at the option of the Pole Owner to ensure Pole Attachments comply with applicable safety standards and specifications.
- (s) “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.
- (t) “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.
- (u) “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.
- (v) “Transfer” means the removal of Pole Attachments from one pole and the placement of those or substantially similar Pole Attachments upon another pole.

- (w) "Unauthorized Attachment" means any affixation of any Pole Attachment or other equipment of any nature to any Utility Pole (or other property owned by a Pole Owner) which has not been previously authorized pursuant to these regulations or a Pole Attachment Agreement. Overlashing of existing facilities without complying with these regulations or the applicable Pole Attachment Agreement shall also be considered an Unauthorized Attachment.
- (x) "Utility Pole" means a pole or similar structure that is used in whole or in part for electric distribution by an electric membership corporation or an affiliate thereof.

Access and Removal

1. Contracts and Permits

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

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

(c) Absent a Pole Attachment Agreement stating otherwise, and except as to installation of a new pole where none currently exists and road widening projects, a Pole Owner may charge an application fee of Fifty Dollars (\$50) for the Pole Owner to process the application. Failure to pay the fees contemporaneous with the application will result, at the 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) Attaching Entities shall promptly reimburse the Pole Owner for all Actual Costs, including all labor, materials, transportation, normal overhead, and appropriate and reasonable other costs incurred by the Pole Owner in performing any necessary field inspections, engineering and attachment preparation work (at any point during any work on a Utility Pole).

(e) Attaching Entities shall not be required to obtain a permit prior to installing a Service Drop provided that 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, and terms and conditions of the Pole Attachment Agreement. The Attaching Entity shall account for and report the Service Drop attachment in compliance with the Pole Attachment Agreement with the 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 Pole Owner.

(b) Pole Owners may, but need not, require the following information from Attaching Entities 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 Pole Owner to evaluate and process the request.

A complete application for access shall be one that provides all of the information requested by the Pole Owner or all of the information required by the negotiated Pole Attachment Agreement.

(c) For Overlapping, Pole Owners may require Overlapping 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 Overlapping, the services to be provided via the Overlapping facilities, and proof of consent to the Overlap from the host entity, if the Overlaser seeks to Overlap a third party's facilities.

(d) Pole Owners may identify, account for, and charge Attaching Entities 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 Overlap). In the event a Pole Owner charges Attaching Entities actual engineering and administrative costs and fees, Pole Owners shall identify and account for those costs in any invoices or payment requests issued to Attaching Entities. Payment for invoices issued by 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 Attaching Entity elects to proceed with the Pole Attachment or Overlap. 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, 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) Pole Owners may condition approval of a Pole Attachment application on completion of Make-Ready Work. Pole Owners are permitted to extend the deadline to approve or deny any Pole Attachment request an additional 20 days. 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 Pole Owner grants a Pole Attachment application that requires Make-Ready Work, the 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 Pole Owner, the applicant shall provide a written response either accepting the estimate and making payment arrangements as provided in the Pole Attachment 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 Pole Owner. The 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 Pole Owner approves an application requiring Make-Ready Work, and the applicant accepts the Make-Ready Work estimate for the application, the 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 Pole Attachment Agreement, or rendered impossible or impractical due to circumstances beyond the 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 Pole Owner and the Attaching Entity 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 Utility 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.* Any Attaching Entity may apply to a Pole Owner to make a new Pole Attachment and/or Overlash and, when so doing, elect to invoke GOTMR. When an Attaching Entity elects to utilize GOTMR, the Pole Owner and Attaching Entity shall abide by the following procedures for processing the Pole Attachment application and completing the Make-Ready Work. It is the responsibility of the Attaching Entity 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 that is going to complete the Make-Ready Work, stating that the Make-Ready Work required for every Utility Pole in the application does not require a pole replacement or anything more than Simple Make-Ready Work. A 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 utility 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 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 5 days following such notice, the application shall be deemed abandoned and the Pole Owner shall have no further obligation to take any action.

(c) *Application Review on the Merits.* A 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 Pole Owner's receipt of a complete application. A Pole Owner shall be allowed thirty (30) days for applications seeking access, via the GOTMR process, to three hundred (300) or more poles.

(d) *Pole Owner Objection to Make-Ready Work Designation.* Prior to the deadline for issuing its decision on the merits of the application, the Pole Owner may object to the applicant's designation that certain of the work required is Simple Make-Ready Work. If the Pole Owner objects, then the work is deemed Complex Make-Ready Work and the GOTMR process is not available to the Attaching Entity and the application must be processed under the standard Make-Ready provisions set forth in these regulations. The 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 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 that is going to complete the Make-Ready Work 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 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. 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 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 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 Pole Owner and/or existing Attaching Entity immediately if the Make-Ready Work performed damages any equipment or facilities of the Pole Owner or of an existing Attaching Entity. Upon receiving notice from the applicant, the Pole Owner or existing Attaching Entity 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 Pole Owner or any existing attacher.

- iii. In performing the Make-Ready Work, if the applicant or Pole Owner determines that Make-Ready Work previously classified as Simply 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 Pole Owner and existing attachers within fifteen (15) days after the Make-Ready Work is completed on a particular pole. The Pole Owner shall have ninety (90) days from receipt of the notice to inspect the Make-Ready Work at the applicant's cost. 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 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 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 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 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 and Safety 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 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) *Pole Owner Objection to Contractor.* Pole Owners may object to an Attaching Entity's selected contractor but must do so in writing. Such objection must be provided to the Attaching Entity in sufficient time for the Attaching Entity to identify and select another Qualified Contractor to perform the work. A Pole Owner may only object to an 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 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 Pole Owner does not have to accept a certification from, and no Make-Ready Work shall be completed by, any contractor to which a Pole Owner has objected to in good faith in accordance with this subsection (j).

5. *Reservation of Space*

(a) 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 Pole Owner, the Attaching Entity occupying the reserved space must vacate the space at the Attaching Entity's expense. Attaching Entities may submit a request to the Pole Owner to expand capacity, or otherwise modify the pole, to maintain the Pole Attachment. In the event the Pole Owner grants such request, the Attaching Entity shall cover the actual costs of expanding capacity or modifying the pole.

6. *Attaching Entity's Failure to Perform Work*

To the extent not otherwise governed elsewhere in these rules, in any instance where a Pole Owner requests that an Attaching Entity 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 Pole Attachment Agreement; or (5) satisfy any other obligation permissibly imposed on the Attaching Entity by these rules or the applicable Pole Attachment Agreement, and the Attaching Entity fails to timely perform such work within forty-five (45) days of proper notice from the Pole Owner, the Pole Owner shall have the right to perform the work without notice to the Attaching Entity and charge the Actual Cost of the work plus the Imposition Fee to the Attaching Entity. The Attaching Entity shall have sixty (60) days from the date of Pole

Owner's invoice for such sums to reimburse 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 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 Attaching Entity, if provided under the terms of the Pole Attachment Agreement. Except in cases of gross negligence or willful misconduct, the 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 Attaching Entity's failure to timely perform work.

7. *Notice of Removal*

(a) Unless specified otherwise in a privately negotiated agreement, a Pole Owner shall provide Attaching Entities 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 Pole Attachment Agreement);
- ii. Any modification of facilities other than routine maintenance or modification in response to emergencies.

(b) Notwithstanding the above, 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. Pole Owners shall have the discretion to restore the facilities at the Attaching Entity's cost after the imminent danger has been alleviated, or, alternatively to not restore the facilities but inform the Attaching Entity within ten (10) days of the removal or modification of 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 Pole Owner may remove Unauthorized Attachments and abandoned Pole Attachments within ninety (90) days of discovery.

- i. Upon discovering Unauthorized or abandoned Pole Attachments, Pole Owners shall, as soon as reasonably practicable, notify the owner of the discovery and of the Pole Owner's right to remove the attachments within forty-five (45) days at the responsible Attaching Entity's expense.
- ii. Upon being notified of the discovery of the Unauthorized Attachments or abandoned Pole Attachment, the responsible Attaching Entity 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 Pole Owner's removal.
- iii. If the responsible Attaching Entity fails to timely submit a completed Pole Attachment application for the Unauthorized Attachment, or, as the case may be, fails to remove the Unauthorized Attachment or abandoned attachment, and the Pole Owner proceeds with removal, the responsible Attaching Entity shall

be liable for any and all actual costs incurred by the Pole Owner. Following removal of the Unauthorized Attachments or abandoned attachments, the Pole Owner shall submit to the Commission and the responsible Attaching Entity, an accounting of all actions taken and actual costs incurred by the Pole Owner in removal. Within sixty (60) days of receipt of the Pole Owner's accounting, the responsible Attaching Entity shall fully reimburse the 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.

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 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 Pole Owner may exceed or supplement the NESC.

(c) Upon receiving actual or constructive notice from any party, Attaching Entities 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, Attaching Entities 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, the responsible third-party 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 when one or both of the poles possess sufficient existing capacity to alone support the attachments of both poles without compromising the needs and services of the Pole Owner or Attaching Entities.

(b) Attaching Entities shall remove their Pole Attachments and Overlashing from any poles removed, replaced, or abandoned by the Pole Owner within forty-five (45) days of being notified of the Pole Owner's removal, replacement, or abandonment. Attaching Entities will have the option to Transfer their Pole Attachments and/or Overlashing to any newly installed nearby pole with sufficient capacity or to remove their Pole Attachments and/or Overlashing entirely.

(c) If all Attaching Entities have timely removed their Pole Attachments and/or Overlashing from a Pole Owner's abandoned pole, the 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 an Attaching Entity fails to timely remove its Pole Attachments and/or Overlashing from a 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 Pole Owner, on the sixty-first (61st) day after the 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, Attaching Entities shall pay to the 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 Attaching Entities on a pro-rata basis if title to the abandoned pole transfers to multiple Attaching Entities.

(e) In the event the Pole Owner does not invoke the ownership transfer provision set forth above, any Attaching Entity that has failed to transfer shall pay double the applicable pole attachment rate for that pole starting at the expiration of the 45-day period.

(f) Regardless of whether the Pole Owner invokes the ownership transfer provision set forth above, the 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 Pole Owner from all obligations, liabilities, damages, costs, expenses or charges arising from, or relating to, the transferred attachments.

Pole Attachment Audits

(a) All Pole Owners and Attaching Entities 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 Attaching Entities

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

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

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

(e) For every Unauthorized Attachment discovered during the Pole Attachment Audit, the Attaching Entity shall pay to the Pole Owner a one-time fee of one hundred dollars (\$100) per Unauthorized Attachment plus a sum equal to the Pole Attachment Rental Fee 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 Attaching Entity will pay to the Pole Owner a sum equal to the Pole Attachment Rental Fee 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 Pole Owner (at the Attaching Entity's expense) to determine compliance with all applicable standards and specifications. Should corrective work be necessary, it shall be at the Attaching Entity's expense and addressed consistent with these regulations.

Safety Inspections

(a) All Pole Owners and Attaching Entities 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 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, Pole Owners shall provide at least six months' advance written notice to Attaching Entities.

(d) Attaching Entities shall pay a pro-rata share of the Pole Owner's inspection costs and will incur their 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 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. Attaching Entities may request additional time to cure the safety issue from the Pole Owner. The Pole Owner may grant or deny additional time to cure in its reasonable discretion. The thirty (30) 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 Pole Owner or Attaching Entity, 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 or capacity 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 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 Pole Owner and any Attaching Entity 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 Utility 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) In either scenario described in subsection (a) or (b) above, prior to the assignment, in whole or in part, of an existing Pole Attachment Agreement, an Attaching Entity shall obtain consent from the Pole Owner to the assignment.

(b) No assignment of all or any portion of a Pole Attachment 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 Pole Attachment Agreement, including proof of insurance, security, bond or other assurance.

Dispute Resolution

(a) Disputes concerning Pole Attachments to Utility 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 Utility 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 sent 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 Utility 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 Pole Attachment 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 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 Pole Attachment Agreement; or, if no Pole Attachment 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 Pole Attachment 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 complainant.
- iii. No additional filings by either party shall be permitted unless expressly granted by the Commission. Upon its own motion or by 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; and/or
 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.