

Re: Case Record for 13-0579-AU-ORD; Case Title: Adoption of Chapter 4901:1:1-3, Ohio Administrative Code Concerning Access

Zayo Group, LLC (“Zayo”) respectfully submits these comments (“Comments”) to the Public Utilities Commission of Ohio (“PUCO”) regarding the above-referenced Case. Zayo is commenting in support of PUCO adopting Chapter 4901:1:1-3.

Zayo is a telecommunications company certified by the State of Ohio to provide, among other things, local exchange and toll-free service, pursuant to its Certificate of Public Convenience and Necessity No. 90-9363. Zayo is a provider of bandwidth infrastructure solutions, offering telecommunications services to carrier and enterprise customers over a fiber-optic network in metropolitan markets from coast-to-coast, including in Ohio. Additional information is available on our website (www.zayo.com). In Ohio, Zayo is attached to more than 2500 private utility poles. When Zayo is building a business case for whether to enter into or expand further within a given market, the cost of installing and maintaining the new network is one of our primary considerations. Therefore, Zayo submits these Comments in support of the PUCO continuing to regulate attachment rates charged to telecommunications companies by utilities companies in Ohio, as proposed.

Continued regulation of rates serves the public interest

The importance of increasing the public’s access to advanced telecommunications services has become a driving force among policymakers nationwide. In its 2011 Order, the Federal Communications Commission (“FCC”) acknowledged its mandate to encourage the deployment of these services to all Americans.¹ The Commission noted that “the record here demonstrates that pole rental rates play a significant role in the deployment and availability” of broadband infrastructure.² By the 2011 Order, the Commission sought to remove disincentives to the telecommunications industry’s investment in such infrastructure to ensure that the public has access to service at affordable prices. By that time, twenty one (21) States had already considered these issues, and enacted regulations consistent with the Commission’s objectives.³ Ohio was one of those States. The public policy objectives advanced by such regulations are broadly categorized as (i) availability and (ii) affordability.

Availability. In today’s reality, communities need advanced broadband infrastructure in order to thrive. The examples are numerous, but to name a few of the constituencies that depend on such advancement: businesses seeking greater efficiency, consumers making purchases and conducting financial transactions on online, hospitals and educational institutions needing to connect to share data, municipalities requiring more bandwidth to connect traffic lights, police and fire stations, and students preparing to enter the workforce in a connected world. Recently, the growth of mobile usage of the Internet has placed even greater burden on networks already constrained from a bandwidth perspective. In the largest urban centers, these expanding markets may provide sufficient incentive for industry investment. However, it is often the exurban and rural areas that are left out due to lack of population density, and the difficulty and expense inherent in executing underground installation in remote areas. By regulating and reducing pole attachment rates charged by utilities, whose poles are

¹ *Id.* at page 1.

² *Id.* at page 77.

³ *Id.* at page 132 (listing States that were able to opt-out of FCC regulation by certifying that they had enacted regulations implementing their regulatory authority over pole attachments).

already located in these areas, large swaths of the public will benefit from growth in advanced broadband services.

Affordability. The cost of deployment and maintenance is one of the paramount considerations any industry participant makes when considering a network expansion. More cost effective installation and maintenance enables more potential market participants to enter the market. Increased competition drives down cost to end users over time. Additionally, even in markets where investment incentives remain strong despite high costs, those costs are often passed through to consumers. Therefore, reduced pole attachment costs ultimately will lower prices to consumers through competition and reduced pass-through costs. Further, lower cost allows telecoms to bring services to market more quickly, and enables faster service restoration in the event of outages.

Regulation of rates serves the public interest by promoting economic development

Regulation of pole attachment rates will introduce significant additional competition into the Ohio telecommunications market, which promotes the economic development interests of the State. First, regulation of rates to reasonable levels will incentivize telecommunications companies to enter into and/or expand within Ohio markets. Cost is a substantial barrier to entry into the telecommunications market. Any reduction in the cost of installation and maintenance of the network increases the economic incentive to invest in a community. Second, regulation normalizes rates (and therefore costs) across industry competitors, removing barriers for new entrants. While regulation is not always the answer when certain market participants enjoy a competitive advantage, the FCC has noted that experience with private contract negotiations have highlighted a need for a more detailed framework around rates.⁴ Putting new entrants on a level playing field with legacy carriers is key to fostering robust competition. A telecommunications market with robust competition among carriers brings many benefits to the business community, including innovation, an expanded array of service offerings and lower consumer costs.

Access to advanced broadband infrastructure services at affordable prices has become critical to an ever-growing number of businesses across the country. Communities that pursue policies promoting affordable access to such services are more attractive places to do business for new and growing companies, and especially heavy bandwidth users in the financial, health care, education and technology-based industries.

Regulation of rates does not deter investment by pole owners in new infrastructure

Zayo acknowledges that any regulation of rates must balance the foregoing benefits along with legitimate utility industry concerns. The utility industry commonly argues that reduced rates will create a disincentive to the deployment of new utility poles. Zayo finds these arguments without merit. First, broadband build out tends to follow growth in population and economic activity. Therefore, in most instances, the utilities will have incentive to expand their systems completely independent of considerations related to pole attachment rates.

Second, utilities may argue that rate reduction adversely affects their financials, but in reality these changes do not materially minimal utility bottom lines. The core business of utilities is to provide utility

⁴ FCC Order No. 11-50 (2011), page 3 (“...the Commission’s experience during the past 15 years has revealed the need to establish a more detailed framework to govern the rates...”).

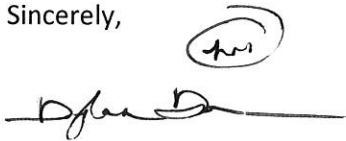
service to their customers. Leasing pole space to telecoms serves merely as a supplementary revenue source, and will remain so even after reduced rates are implemented. Therefore, adopting reduced telecom rates will not materially impact utility company financials.

Third, regulated rates do not equate to unreasonably low rates. Zayo urges the PUCO to regulate pole attachment rates on the same compensatory basis as the FCC promulgated under the 2011 Order.⁵ Under that approach the pole attachment fees are designed to allow a utility to recover costs associated with the telecom company's attachments, which are administrative in nature and exclusive of capital costs.⁶ The utility can recover capital costs through make-ready fees imposed upfront.

Conclusion

The PUCO has always agreed that it is in the public interest to regulate attachment rates, and in the past State regulation has tracked Federal regulation. For the reasons set forth in these Comments, Zayo respectfully urges the PUCO to continue to do so now, by enacting the proposed rules regulating and reducing attachment rates in accord with the FCC's 2011 Order. Doing so will promote critical public policy and economic interests in Ohio for the benefit of constituents and other consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Dylan T. DeVito", with a circular stamp containing the initials "ZS" above it.

Dylan T. DeVito
Senior Director, Network Development/Associate General Counsel
Zayo Group, LLC

⁵ *Id.* at 82.

⁶ *Id.*

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Summary: Comments Comments for Case 13-0579-AU-ORD on behalf of Zayo Group, LLC electronically filed by Mr. Omar F Guzman on behalf of Zayo Group and Mr. Dylan T. DeVito