

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                                              |   |                        |
|----------------------------------------------|---|------------------------|
| In the Matter of the Adoption of Chapter     | ) |                        |
| 4901:1-3, Ohio Administrative Code,          | ) |                        |
| Concerning Access to Poles, Ducts, Conduits, | ) | Case No. 13-579-AU-ORD |
| and Rights-of-Way by Public Utilities        | ) |                        |

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**COMMENTS OF tw telecom of ohio llc**

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**I. INTRODUCTION**

By its May 15, 2013, Entry, the Commission issued for comment Staff's proposed rules to be codified in Ohio Administrative Code ("O.A.C.") Chapter 4901:1-3, specifically dedicated to access to poles, ducts, conduits, and rights-of-way provided by public utilities ("Proposed Rules"). Pursuant to the amended schedule set forth in the Attorney Examiner's June 4, 2013, Entry, tw telecom of ohio llc ("TWTC") now submits its comments regarding Staff's Proposed Rules.

TWTC was the first facilities-based competitive local exchange carrier to be certified to provide local exchange telecommunications services to business customers in Ohio, its original territory. Since that time in 1996, TWTC has expanded its state-of-the-art fiber network to encompass 75 markets in 40 states and continues to expand its network footprint in Ohio. As an expanding facilities-based CLEC, TWTC has a significant stake in an efficient, non-discriminatory process for accessing poles and ducts put in place by incumbent utilities. Accordingly, TWTC hereby submits its comments as an interested stakeholder in this matter.

**II. COMMENTS**

TWTC supports the creation of a stand-alone facilities access rule and urges the Commission to adopt Staff's Proposed Rules for O.A.C. Chapter 4901:1-3. Staff's Proposed

Rules are substantially similar in relevant portion to O.A.C. Rule 4901:1-7-23, recently revised by the Commission and submitted to the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, but eventually withdrawn. TWTC had previously commented upon these rules and supported their adoption by the Commission. TWTC believes that placing the facility access rules in separate section of the Administrative Code will place any remaining ambiguity concerning the scope of the rules' applicability beyond reasonable question. This step is necessary. Even in the wake of the Commission's unequivocal clarification in the October 31, 2012, Finding and Order in Case No. 12-922-TP-ORD, it appears that a level of confusion still exists regarding current regulations for facility access in Ohio.

Despite the fact that since at least the mid-1990s the Commission has had regulations in place designed to facilitate timely, non-discriminatory access to all jurisdictional utility poles by CLECs, TWTC continues to encounter confusion about the applicability of O.A.C. Rule 4901:1-7-23 on the part of Ohio electric distribution utilities ("EDUs"). There are recent and continuing instances where TWTC has attempted to quickly reach negotiated access terms and conditions with those EDUs only to be told that O.A.C. Rule 4901:1-7-23 does not apply. This confusion has contributed to delays and discriminatory treatment of the kind that the Commission's current rules were intended to prevent. The confusion takes at least two forms. First, there continues to be confusion (or denial) over the applicability of the facility access regulations as currently situated in O.A.C. Rule 4901:1-7-23. Second, there is confusion (feigned or genuine) over the relationship between the FCC's facility access regulations and the Commission's reliance on those regulations in its facility access regulations specifically as it pertains to pole attachment pricing. It is for this reason that TWTC supports the Staff Proposal to carve-out the current rules from O.A.C. Chapter

4901:1-7 and create a free standing facility access section in the administrative code in order to once and for all clear up these points of confusion.

As to the first variety, when in the context of negotiations a request is made to the EDU to demonstrate how its attachment rate complies with the Commission's rules, the claim by the EDU is that O.A.C. Rule 4901:1-7-23 applies only to telecommunications poles, not to them. The argument is that O.A.C. Rule 4901:1-7-02(A) limits the applicability of O.A.C. Rule 4901:1-7-23 to "telecommunications carriers."<sup>1</sup> It seems not to matter that the Commission's regulations have clearly applied to "utilities" within its jurisdiction since *at least* 1996 when the Commission issued its 95-845 Guidelines. Those rules were unequivocal in their applicability to all types of utilities, despite being the guidelines for "the establishment of local exchange competition and other competitive issues." Section XII.B.2. of the 95-845 Guidelines provided:

Access to poles, ducts, conduits, and right-of-way shall be on a first come, first-serve basis. A utility providing telecommunications or video services may not reserve excess capacity for its own future needs when allocating pole, duct, or conduit space to competitors. **Electric utilities are subject to C.F.R. §51** (sic) (emphasis added)

It is clear that from the very beginning competitive local exchange services in Ohio, EDUs were subject to these guidelines where relevant to allowing CLEC access to their poles and ducts. These rules clearly called for negotiated access agreements with the FCC's pricing rules serving as a price ceiling<sup>2</sup> – the same basic rule structure that exists today.

Moreover, while the Commission applied its facility access regulations to electric utilities as it regulated the rates, terms and conditions for utility facility access for the purposes of retaining

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<sup>1</sup> See Attachment 1 (e-mail correspondence from Jean Kingery to Adriane Leonard, June 19, 2012).

<sup>2</sup> *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Issues*, Case No. 95-845-TP-COI (Entry on Rehearing November 8, 1996) Finding 73, p. 51.

jurisdiction pursuant to 47 U.S.C. 224<sup>3</sup>, it is also abundantly clear that the Commission relied on the FCC's rules implementing Section 224 for its own, Ohio-specific regulations.

This language from the 95-845 Guidelines is also instructive on the second point of confusion. In its Order adopting these guidelines, the Commission made clear that it was retaining its authority to regulate the terms and conditions for facility access, consistent with the provisions of 47 U.S.C. §224. Equally clear from the above quoted provision from the 95-845 Guidelines, the Commission was adopting certain of the regulations promulgated by the FCC governing facility access, including pricing. This reliance on FCC regulations for the purposes of exercising its own authority over the terms and conditions of facility access has been a constant up until the present day, and will continue under the Staff's Proposal<sup>4</sup>. So while Ohio is not "an FCC" state in the sense that the Commission retains direct control over the rates, terms and conditions of attachments, it is incorrect to assert that that FCC regulations as they relate to pricing are not part and parcel of Ohio regulation. Yet when questions arise regarding the rates charged by EDUs and whether those rates are compliant with the calculations reflected in the FCC's rules, the response is made that "Ohio isn't an FCC state." For the purposes of calculating the price ceiling on attachment rates, Ohio is an FCC state for telecommunications carriers seeking to attach to any jurisdictional utility pole, not just telecommunications carrier poles. The Commission underscored this point most recently in its Finding and Order dated October 31, 2012, in Case No. 12-922-TP-ORD (at p. 11) that O.A.C. Rule 4901:1-7-23 applies to all "public utilities" and not merely a subset of utilities such as "telephone companies." In its comments during the Business Impact Analysis phase of 12-922-TP-ORD, TWTC proposed a simple clarification of Rule

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<sup>3</sup> *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Issues*, Case No. 95-845-TP-COI (Entry on Rehearing November 8, 1996) Finding 69, pp. 49-50.

<sup>4</sup> See, Case No. 99-998-TP-COI (Opinion & Order February 13, 2003) pp. 30-31 and Case No. 06-1344-TP-ORD (Opinion & Order August 8, 2007) pp. 71-72.

4901:1-7-23(B) intended to clarify (rather than change) its scope . It its October 31, 2012, Finding and Order, at Paragraph 22, the Commission agreed with TWTC:

the rule should more clearly reflect that paragraph (B) applies to all "public utilities" and not merely a subset of utilities such as "telephone companies." Therefore, we have added language to paragraph (B) which references the definition of "public utility" found in Section 4905.02, Revised Code, as well as the other relevant definitions from 47 CF.R. 1.1402.

Despite the straightforward language in the Commission's rule since its inception, EDUs continue to deny the applicability of the Commission's rules to their facilities. In such instances, the grossly unequal bargaining power of CLECs like TWTC leaves them in the position of attempting to *bargain down* to the lawful price ceiling, rather than having the option to just *accept* that price in the interests of expediency. The only recourse left to requesting telecommunications carriers is to file a complaint with the Commission in order to enforce the applicable rules, but this option does not provide the necessary timely access when customer service is at stake. TWTC has recently encountered this problem with Ohio Edison Company, and, because new customers were awaiting service, TWTC was forced into a no-win situation—either sign an attachment agreement with a unilaterally-imposed “market based” rate under protest, rather than wait for the outcome of a complaint proceeding and forgo serving new customers.<sup>5</sup> But the purpose of these rules in the first instance is to provide clear, unambiguous guidance regarding the duties and obligations of all utilities for allowing access to requesting carriers. These rules should *prevent* the need for a complaint to enforce the rule to the extent possible. Apparently, the situation of these rules in the Commission's Carrier-to-Carrier rules makes them too hard to find for EDUs. Staff's Proposed Rule will make the rule easier to find and understand.

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<sup>5</sup> See Attachment 2. These negotiations with Ohio Edison began around January 8, 2013 and have still not concluded as of the date of this filing. This situation only underscores the need for a highly standardized access process if competition is to grow in Ohio.

### III. CONCLUSION

TWTC believes that the creation of a separate set of rules, outside the context of the Carrier-to-Carrier rules serves to remove any remaining ambiguity surrounding the applicability of the Commission's facility access rules and will help CLECs like TWTC gain access to jurisdictional utility poles in the manner contemplated by the current rules.

TWTC appreciates the opportunity to comment on the Staff's proposed draft rules and requests that the Commission carefully consider the points raised herein.

Respectfully submitted on behalf of  
**tw telecom of ohio llc**



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Thomas J. O'Brien  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-2335  
Facsimile: (614) 227-2370  
E-Mail: [tobrien@bricker.com](mailto:tobrien@bricker.com)

## ATTACHMENT 1

**Hollick, Pamela**

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**From:** Kingery, Jeanne W [Jeanne.Kingery@duke-energy.com]  
**Sent:** Tuesday, June 19, 2012 2:50 PM  
**To:** Leonard, Adrienne  
**Cc:** Hollick, Pamela; Mack, Karol P; Riggins, Jeff; Bryan, Van H  
**Subject:** RE: PAA Rates in OH  
**Follow Up Flag:** Flagged  
**Flag Status:** Red

Adrienne –

Duke Energy Ohio and Duke Energy Kentucky have evaluated your request for an adjustment of the rate charged under the Telecommunications Pole Attachment Agreement dated June 22, 2005, between tw telecom of Ohio llc (successor in interest to Time Warner Telecom of Ohio LLC) and Duke Energy Ohio (successor in interest to the Cincinnati Gas & Electric Company) and under the Telecommunications Pole Attachment Agreement dated August 7, 2002, between tw telecom of Ohio and Duke Energy Kentucky (successor in interest to Union Light Heat & Power).

As you are aware, Ohio and Kentucky are tariff states. That fact does not change based on whether an applicable tariff exists. The FCC's jurisdiction is nevertheless limited by the states' status as tariff states.

We would also point out that the Ohio rule that you reference does not apply. O.A.C. Rule 4901:1-7-02 (B) states, in unequivocal terms, that the rules in Chapter 4901:1-7 apply only to telephone companies. Thus, O.A.C. Rule 4901:1-7-23 does not apply to rates to be charged by Duke Energy Ohio. Further, even if that rule were applicable, it would not mandate the use of the formula that was adopted by the FCC on April 7, 2011. The federal rules, as they existed on August 22, 2007, are what are incorporated by reference into the Ohio Administrative Code. (See O.A.C. Rule 4901:1-7-02(A).) With regard to Kentucky, we have found no applicable rules.

Based on our research, it appears that any change that Duke Energy Ohio or Duke Energy Kentucky might agree to would be entirely elective. As we continue our discussions, we note, however, that our records do not show that Duke Energy Ohio has issued any bills to tw telecom of Ohio. We would, therefore, ask that tw telecom supply a listing of all current attachments in the Duke Energy Ohio and Duke Energy Kentucky territories, as well as proof of billings therefor. We refer you to Section 4.4 of each Agreement, in which it is agreed that it is your duty to maintain accurate records of your attachments.


Thank you, and we look forward to hearing back from you.

Jeanne

**Jeanne W. Kingery**  
Associate General Counsel  
Duke Energy Business Services LLC

7/9/2012

155 East Broad Street, 21st Floor  
Columbus, Ohio 43215  
(614) 222-1334  
(614) 593-1401 cell

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**From:** Kingery, Jeanne W [mailto:Jeanne.Kingery@duke-energy.com]  
**Sent:** Tuesday, June 05, 2012 8:29 AM  
**To:** Leonard, Adrienne  
**Subject:** FW: PAA Rates in OH


Adrienne –

Karol Mack has forwarded your letter to me. I understand the issue and will get back to you with a substantive response as quickly as possible and, in any event, within the next few days.

Jeanne

**Jeanne W. Kingery**

Associate General Counsel  
Duke Energy Business Services LLC  
155 East Broad Street, 21st Floor  
Columbus, Ohio 43215  
(614) 222-1334  
(614) 593-1401 cell

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**From:** Leonard, Adrienne [mailto:Adrienne.Leonard@twtelecom.com]  
**Sent:** Monday, June 04, 2012 4:54 PM  
**To:** Mack, Karol P  
**Cc:** Hollick, Pamela  
**Subject:** PAA Rates in OH  
**Importance:** High

Hi Karol,

Attached is my letter to you dated May 17, 2012 requesting an adjustment in the telecom rate TWTC pays to Duke in OH. Having not heard back from you, I am following up.

Please advise when you will be able to send me the information requested and when our rates will be adjusted.

7/9/2012



Thank you for your time.

Best regards, Adrienne

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7/9/2012

**Hollick, Pamela**

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**To:** Hollick, Pamela  
**Subject:** FW: TWTC & OE pole attachment agreement

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**From:** Leonard, Adrienne  
**Sent:** Wednesday, June 19, 2013 2:49 PM  
**To:** [dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)  
**Cc:** Hollick, Pamela  
**Subject:** TWTC & OE pole attachment agreement

Hi Dave,

Just to reiterate, based on my call with you yesterday, you indicated that if we wanted to get the cable rate, which is a tariffed rate, we'd have to file the application you sent us back in April to obtain the tariffed rate. Because my company does not provide cable tv services, you indicated that such an application to obtain the tariffed rate would be denied.

I mentioned to you yesterday, as I have in the past, that the FCC's April 7, 2011 Order held that the telecom pole attachment rate should be at or near the cable rate and the FCC provided in its Order formula calculations for achieving that goal. As we've discussed and communicated via email, we do agree with you that Ohio is a "non FCC state" in so far as it has exercised reverse preemption pursuant to 47 U.S.C. § 224(c); 47 C.F.R. §§ 1.1401-1.1418. Ohio has certified that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments, including a specific methodology for such regulation which has been made publicly available in the state. O.A.C. 4901:1-7-02(B) contains the rules and regulations under which the PUCO has implemented its authority over pole attachments. It does not limit the applicability of the rule to only telecommunications utilities. Rule 7-23 very clearly has language that applies to LECs on the one hand, and "public utilities" on the other -- just like Section 224 of the Act.

In the past when TWTC has discussed this issue with the Ohio staff, the Ohio staff has indicated that they clearly view Ohio as following the FCC's methodology on pole attachments. Because electric companies, like yours, seemed confused about the applicability of the FCC's pole attachment methodology, TWTC urged the PUCO to clarify its rules, which the PUCO has done in the proposed rules. The proposed rules clarify and confirm the PUCO's position that the FCC's rules should apply when the parties disagree in their negotiations as to the rates.

TWTC has been requesting of OE that the FCC formula calculations be incorporated into our proposed pole attachment agreement. You indicated that because the PUCO rules are only proposed rules which have yet to be finally adopted, OE is refusing to incorporate such rules or the concepts into our pole attachment agreement.

Because OE has rejected our request to incorporate the FCC formula calculations, TWTC has been requesting the inclusion of a reservation of rights provision in the pole attachment agreement, which has also been rejected on several occasions, including during my call with you yesterday. In explaining the rejection of such a provision, you advised that the statement in section 36 of the pole attachment agreement which says "This Agreement shall be construed under and in accordance with the laws of the State of Ohio" is adequate. As I stated above, OH law currently provides that the parties are to negotiate the rate and failing successful negotiation, the FCC rules are to apply. The newly proposed PUCO rules merely confirm and clarify that law. Yet, OE continues to reject application of the FCC's methodology for determining the telecom rate.

It is hard to understand how your proposed \$25 rate per pole can comply with anything close to a cost based rate when your tariff, only offered to cable companies, and designed pursuant to a rate case to ensure the rate recovers your cost, only charges \$4.69 per pole. We have asked for your calculations, inputs and formulas and have yet to receive those

figures from you. Your company's proposal to charge telecom companies \$25 per pole and cable companies \$4.69 per pole are clearly not in parity and cannot be cost justified as telecom attachments impose no additional burden on the pole.

Because TWTC has a customer waiting for service, we are being compelled to execute the pole attachment agreement with the rate (\$25 for telecom attachments) and yearly increases (automatic 4% per year) as proposed by OE, but we disagree that this is an appropriate cost based rate and disagree that this rate complies with the PUCO rules and regulations. Additionally, to be clear, the \$25 telecom rate and the automatic 4% annual increase in OE's standard pole attachment agreement are NOT negotiated rates.

I would greatly appreciate your sharing this email with your attorney as I do not have his email address, even though I have requested it.

Please feel free to let me know if you have any additional comments.

Sincerely,

Adrienne

**Regards,**  
**Adrienne C. Leonard**



*Adrienne C. Leonard*  
*Senior Counsel*  
*10475 Park Meadows Drive*  
*Littleton, CO 80124*  
*T 303.542.4588*  
*F 303.566.1010*  
[adrienne.leonard@twtelecom.com](mailto:adrienne.leonard@twtelecom.com)

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**From:** Leonard, Adrienne  
**Sent:** Tuesday, April 16, 2013 2:02 PM  
**To:** 'dhawk@firstenergycorp.com'  
**Subject:** TWTC & OE pole attachment agreement

We already submitted the attached application back in January of this year.

Please explain why we need to complete this additional application in regards to receiving your OH tariff information. We do not understand the relevance.

Thank you.

**From:** [dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com) [<mailto:dhawk@firstenergycorp.com>]  
**Sent:** Tuesday, April 16, 2013 1:21 PM  
**To:** Leonard, Adrienne  
**Subject:** RE: TWTC & OE pole attachment agreement

Adrienne,

Please complete the attached application in regards to the Ohio tariff.

Thanks,

Dave

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## Hollick, Pamela

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**To:** Hollick, Pamela  
**Subject:** FW: TWTC & OE pole attachment agreement

**From:** Hollick, Pamela [<mailto:Pamela.Hollick@twtelecom.com>]  
**Sent:** Thursday, April 25, 2013 06:11 PM  
**To:** [dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com) <[dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)>  
**Cc:** Witt, Gary <[Gary.Witt@twtelecom.com](mailto:Gary.Witt@twtelecom.com)>; O'Brien, Thomas; Leonard, Adrienne <[Adrienne.Leonard@twtelecom.com](mailto:Adrienne.Leonard@twtelecom.com)>  
**Subject:** RE: TWTC & OE pole attachment agreement

Dave,

Can you give me the contact information for the person in your legal department that reviewed our request and approved the "market based" rate response you provided below? Shall I contact Steve Schafer? We'd like to have a discussion with your attorney about Ohio rules and regulations to see if we can resolve this matter prior to taking it to the Commission.

To further our discussion, here is our position. We do agree with you that Ohio is a "non FCC state" in so far as it has exercised reverse preemption pursuant to 47 U.S.C. § 224(c); 47 C.F.R. §§ 1.1401-1.1418. Ohio has certified that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments, including a specific methodology for such regulation which has been made publicly available in the state. O.A.C. 4901:1-7-02(B) contains the rules and regulations under which the PUCO has implemented its authority over pole attachments. It does not limit the applicability of the rule to only telecommunications utilities. Rule 7-23 very clearly has language that applies to LECs on the one hand, and "public utilities" on the other -- just like Section 224 of the Act. In the past when I've discussed this issue with the Ohio staff, they clearly view Ohio as following the FCC's methodology on pole attachments. We have encountered confusion from other electric companies in Ohio on the rate issue before and encouraged the Ohio Commission to clarify its rules, and it has recently initiated a rulemaking to do just that. However, the existing rules make clear that the federal rules on pole attachments are incorporated into Ohio rules.

Here is the relevant language:

### (B) Rates, terms, and conditions

Rates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and right-of-way shall be established through negotiated arrangements or tariffs. Such access shall be established pursuant to 47 U.S.C. 224 ; 47 C.F.R 1.1401 to 47 C.F.R 1.1403 ; 47 C.F.R 1.1416 to 47 C.F.R 1.1418 ; and the formulas in 47 C.F.R 1.1409(e), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. The commission will address, on a case-by-case basis, any fact-specific issues related to access to poles, ducts, conduits, and right-of-way. Any change in the public utility's tariffed rates, terms, and conditions for access to poles, ducts, conduits, or right-of-way shall be filed in a UNC proceeding.

Therefore, we asked for clarification and justification on the proposed annual rental rate of \$34.88 per pole, plus the automatic yearly increase of 4% each year. It is hard to understand how that can comply with anything close to a cost based rate when your tariff, also designed pursuant to a rate case to ensure the rate recovers your cost, only charges \$4.69 per pole.

Again, the standard is not that you can charge as high a rate as someone is willing to pay. The pole attachment rate is derived from a very specific formula that is designed to ensure utilities, like yours, recover their costs plus a contribution. If your costs to non-utilities, like cable companies, is only \$4.69, then how can your costs to utilities, like telecom providers, be \$34.88?

We look forward to discussing this matter with you.

Regards,  
Pamela H. Hollick  
Vice President of Regulatory  
tw telecom  
4625 W. 86<sup>th</sup> Street, Suite 500  
Indianapolis, IN 46268  
317-713-8977  
317-703-0882 (Mobile)  
[Pamela.hollick@twtelecom.com](mailto:Pamela.hollick@twtelecom.com)

**From:** <[dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)>  
**Date:** April 25, 2013, 9:18:05 AM HST  
**To:** <[adrienne.leonard@twtelecom.com](mailto:adrienne.leonard@twtelecom.com)>  
**Cc:** <[gary.witt@twtelecom.com](mailto:gary.witt@twtelecom.com)>, <[sschafer@firstenergycorp.com](mailto:sschafer@firstenergycorp.com)>, <[gaking2@firstenergycorp.com](mailto:gaking2@firstenergycorp.com)>  
**Subject: Re: Fw: TWTC & OE pole attachment agreement**

Adrienne,

Ohio is a non FCC state and according to rules our tariff rate is not applicable to other utilities. It is a negotiated rate which is market based which means that it is in line with what we charge other similar utilities. The reason we will not provide the information requested is simply because it is not based upon those determinants which are irrelevant in the context of a market based rate.

We are willing to negotiate the rate within reason and look forward to your counter-proposal towards that end and receipt of your completed application so we can begin our pole attachment agreement process.

Thanks,

Dave Hawk,  
Advanced Distribution Specialist  
FirstEnergy - Joint Use

From: "Leonard, Adrienne" <[Adrienne.Leonard@twtelecom.com](mailto:Adrienne.Leonard@twtelecom.com)>  
To: "[dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)" <[dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)>  
Cc: "Hollick, Pamela" <[Pamela.Hollick@twtelecom.com](mailto:Pamela.Hollick@twtelecom.com)>, "Spaw, Terry" <[Terry.Spaw@twtelecom.com](mailto:Terry.Spaw@twtelecom.com)>  
Date: 04/18/2013 12:50 PM  
Subject: TWTC & OE pole attachment agreement

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Dave,

We are not requesting to be qualified to attach under OE's Pole Attachment Tariff as tw telecom of ohio llc is a public utility. Attached is our CPCN granted by the PUCO.

Under OE's Pole Attachment Tariff, OE charges an annual rate of \$4.69 per pole attachment to attachers other than public utilities. You quoted us an annual rental rate of \$34.88 per pole, plus an automatic yearly increase of 4% per year, clearly a significantly higher rate even though our attachments would be no more burdensome on a pole. The rate OE is quoting us appears to be discriminatory.

What we are asking to receive are the calculations and inputs used by OE for determining the rate of \$34.88, including but not limited to OE's charges that form the basis for the calculations, such as the carrying charge, net cost of a bare pole, depreciation costs, operation and maintenance, administration costs, costs of capital, and each of the components thereof, plus the space factor (and components thereof, including the number of attachers) and other inputs into the FCC formula used to arrive at the rate of \$34.88.

I first asked for this information March 27 and we've yet to receive it. If we do not receive this information by close of business tomorrow, I will assume that OE is refusing to provide it.

Thank you for your time. Adrienne

From: "Leonard, Adrienne" <[Adrienne.Leonard@twtelecom.com](mailto:Adrienne.Leonard@twtelecom.com)>  
To: "dhawk@firstenergycorp.com" <[dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)>  
Cc: "Hollick, Pamela" <[Pamela.Hollick@twtelecom.com](mailto:Pamela.Hollick@twtelecom.com)>, "Spaw, Terry" <[Terry.Spaw@twtelecom.com](mailto:Terry.Spaw@twtelecom.com)>, "Frenette, Steve" <[Steve.Frenette@twtelecom.com](mailto:Steve.Frenette@twtelecom.com)>  
Date: 03/27/2013 08:02 PM  
Subject: Tw & OE 3.19.13.doc

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Hi Dave,

We have reviewed your comments and the proposed revisions in the agreement to which you object and have the following comments:

1. Please provide the calculations for the pole rental rate of \$34.88, including the inputs into the FCC formula.
2. Please provide support under the FCC rules and regulations (or otherwise) for an automatic 4% increase each year in the pole rental rate.
3. In regards to paragraph 20, please explain what is meant that there could be others besides a third party. We do not understand that comment.
4. Our insurance policy only covers those interests which are insurable so we request you reconsider including that in paragraph 21.
5. We cannot name another party as additional insured for workers' compensation, as by nature of the insurance type - coverage only extends to our company and our employees. Naming another party as an additional insured under workers' compensation is commercially unavailable. In Ohio, we have to go through the state insurance fund for workers' compensation coverage. Attached is a memorandum from the Ohio Bureau of Workers' Compensation explaining the limits and confirming that we cannot add another party as an additional insured to our workers' compensation policy.
6. Although we believe our proposed language in the Confidentiality section is substantially similar to the original language proposed by OE and is more clear, we will accept leaving the language as is.

In order to expedite the resolution of the insurance matters, our Risk Manager is available to further discuss these insurance matters with the appropriate person at OE who handles insurance. His name is Steve Frenette and his phone number is 303-542-6643 and email address is above.

Thank you for your time. Adrienne

**From:** [dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com) [<mailto:dhawk@firstenergycorp.com>]  
**Sent:** Tuesday, March 19, 2013 4:43 PM  
**To:** Leonard, Adrienne  
**Cc:** [dhawk@firstenergycorp.com](mailto:dhawk@firstenergycorp.com)  
**Subject:** Tw & OE 3.19.13.doc

Leonard,

Our pole attachment rate for Ohio is \$34.88 + 4% a year. (not \$25.00)

Your revisions for par. 3 & 8 are acceptable.

Par. 20 (third party) is not acceptable. There could be others beyond just a third party  
gross conduct and willfull misconduct is not acceptable - all our language must stay  
par. 21 "insurable" limits is not acceptable

c. except worker's compensation is not acceptable

The \$1000.00 is a one time agreement prep fee.

All our confidentiality language must stay. The revision is not acceptable.

Thanks,

Dave

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/12/2013 2:59:17 PM**

**in**

**Case No(s). 13-0579-AU-ORD**

Summary: Comments of tw telecom of ohio llc electronically filed by Teresa Orahod on behalf of Thomas O'Brien