

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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APPLICATION FOR REHEARING OF THE AT&T ENTITIES

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The AT&T Entities<sup>1</sup> (“AT&T”), by their attorney and pursuant to R. C. § 4903.10 and O. A. C. § 4901-1-35, apply for rehearing of the Finding and Order (“Order”) adopted on July 30, 2014 in the captioned case. The Order is unreasonable in the following respects:

1. The text of the Order adopted July 1, 2014 as the reference date for federal law and the FCC rules, but the rule that was adopted has an April 1, 2014 reference date.
2. The time frames for pole attachments do not uniformly reflect the 60-day time frame adopted for large orders.
3. The time frames for pole attachments do not allow the parties to mutually agree to longer time frames on a case-by-case basis, thus imparting much-needed flexibility to the process.

These issues are fully explained in the attached memorandum in support.

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<sup>1</sup> The AT&T Entities are The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Corp., Teleport Communications America, LLC, and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

Respectfully submitted,

The AT&T Entities

By:                                 /s/ Jon F. Kelly                                

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MEMORANDUM IN SUPPORT OF THE  
APPLICATION FOR REHEARING OF THE AT&T ENTITIES

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The Commission's Order is unreasonable in the following respects:

1. The text of the Order adopted July 1, 2014 as the reference date for federal law and the FCC rules, but the rule that was adopted has an April 1, 2014 reference date.

In discussing the issue of incorporating or simply referencing federal law and the FCC rules in its own rules, the Commission concluded as follows:

Finally, the Commission sua sponte determines that the effective date of the cited sections of the U.S.C. and C.F.R. should be July 1, 2014, in order to be more contemporaneous with the adoption of the pole attachment rules.

Order, p. 8. However, the adopted rule, 4901:1-3-02(A), has an April 1, 2014 reference date.

The date in the rule should be changed to July 1, 2014 to reflect the Commission's conclusion that was adopted in its Order.

2. The time frames for pole attachments do not uniformly reflect the 60-day time frame adopted for large orders.

The adopted rule, 4901:1-3-03, contains a provision that allows 60 days to confirm a denial of access for larger orders:

(4) A public utility shall notify the attaching entity in a timely manner if the application to attach facilities to its poles is deemed to be incomplete. If access is not granted within forty-five days of the request for access, the public utility must confirm the denial in writing by the forty-fifth day (*or by the sixtieth day in the case of larger orders as described in paragraph (B)(6) of this section*). The public utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards. A request for access to a public utility's poles, ducts, conduits, or rights-of-way that is not denied in writing within forty-five days of the request shall be deemed to be granted. (Emphasis added.)

The exception for larger orders, though, was not repeated in the last sentence of the division, and it should be. Otherwise, the 45-day automatic approval process would apply to orders that are on a 60-day, and not a 45-day, time line. Thus, the last sentence in that division should be amended to read as follows:

A request for access to a public utility's poles, ducts, conduits, or rights-of-way that is not denied in writing within forty-five days of the request (*or within sixty days in the case of larger orders as described in paragraph (B)(6) of this section*) shall be deemed to be granted. (Emphasis added.)

3. The time frames for pole attachments do not allow the parties to mutually agree to longer time frames on a case-by-case basis, thus imparting much-needed flexibility to the process.

The adoption of the “automatic approval” process in the rule previously discussed underscores another shortcoming in the rule. Adopted rule 4901:1-3-03 allows for deviation from the time limits specified in the rule in two circumstances: first, where the parties have a pole attachment agreement that specifies longer time frames and, second, where an emergency exists, as detailed in the rule. 4901:1-3-03(B)(7)(a) and (b). Apart from the situations where a pole attachment agreement is in place or an emergency exists, the rule should reflect another consideration: where the parties agree, on a case-by-case basis, to extend the time limits. This approach would reflect a common-sense solution to the problems associated with the application of inflexible time limits in all circumstances. Moreover, this change may reduce the number of waiver requests that might otherwise need to be filed pursuant to adopted rule 4901:1-3-02(D) and (E). This would, in turn, reduce the administrative burdens on the parties and the Commission. The rule should be amended to read as follows:

(7) A public utility may not deviate from the time limits specified in this section unless:

\* \* \*

*(c) The parties mutually agree to a reasonable extension of the time limits on a case-by-case basis.* (Emphasis added.)

For all of the foregoing reasons, the Commission should grant rehearing and should amend the adopted rules in the manner suggested by the AT&T Entities.

Respectfully submitted,

The AT&T Entities

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## Certificate of Service

I hereby certify that a copy of the foregoing has been served this 29<sup>th</sup> day of August, 2014 by e-mail, as noted below, on the parties listed below.

/s/ Jon F. Kelly

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Summary: Application for rehearing and memorandum in support electronically filed by Jon F Kelly on behalf of The AT&T Entities