

**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.)	

**MOTION FOR CLARIFICATION, OR, IN THE ALTERNATIVE,
APPLICATION FOR REHEARING**

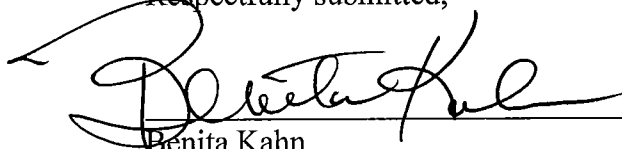
Pursuant to Rule 4901-1-12 of the Ohio Administrative Code, the Ohio Cable Telecommunications Association (“the OCTA” or “the Association”) moves for clarification and reconsideration of the Commission’s February 25, 2015 Entry in this docket. The Association, a trade association representing the interests of Ohio’s cable television industry, participated throughout this proceeding. Specifically, the OCTA respectfully requests that the Commission clarify its February 25, 2015 Entry by indicating that if a pole attachment rate or conduit rate that is filed by an electric distribution utility or a telephone company on or before May 1, 2015 is an increase from an existing tariffed pole attachment or conduit occupancy rate, then the electric distribution utility or telephone company must follow the statutorily mandated provisions of Section 4909.18 for a rate increase application or the provisions of a self-complaint case pursuant to Section 4905.26, Revised Code. The Association further respectfully requests that the Commission extend the automatic effective date for the filed tariff revisions to August 1, 2015, at a minimum.

In the alternative, the Association requests that this pleading be considered as an application for rehearing filed pursuant to Section 4903.10, Revised Code and Rule 4901-1-35 of the Ohio Administrative Code. The Association respectfully requests that the Commission find that its February 25, 2015 Entry was unreasonable and unlawful in two respects. First, to the extent the Commission in

its Entry permits an electric distribution utility or a telephone company to increase its pole attachment rate or conduit rate without following the statutorily mandated procedure for a rate increase contained in Sections 4909.18-4909.19, Revised Code or through a self-complaint process in Section 4905.26, Revised Code. Second, for those entities, like the members of the Association, that will be affected by the pole attachment and conduit tariff filings, the automatic effective date of July 1, 2015 does not provide sufficient time to review and comment on the filings and should be extended, at a minimum, to August 1, 2015.

WHEREFORE, the Ohio Cable Telecommunications Association respectfully requests that the Commission clarify its February 25, 2015 Entry, or, in the alternative, grant rehearing and find that an electric distribution utility or a telephone company that seeks to increase its existing pole attachment rate or conduit occupancy rate be required to follow the statutory requirements of either Sections 4909.18-4909.19, Revised Code as an application for a rate increase or to follow the procedures set forth in Section 4905.26, Revised Code for a self-complaint case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benita Kahn", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

This rulemaking proceeding began 24 months ago with a workshop followed by initial comments filed by twelve parties, reply comments filed by ten parties, a July 30, 2014 Finding and Order, three applications for rehearing, eight responses/memoranda contra, and two Entries on Rehearing. Pursuant to its July 30, 2014 Finding and Order in this case, the Public Utilities Commission of Ohio (the “Commission”) adopted rules for the provision of attachments to a pole and use of ducts, conduit and rights-of-way owned or controlled by a utility under rates, terms and conditions that are just and reasonable. These rules include definitions (Rule 4901:1-3-01), purpose and scope (Rule 4901:1-3-02), requirements for access to poles, ducts, conduits and rights-of-way (Rule 4901:1-3-03), rate formulas for just and reasonable rates (Rule 4901:1-3-04), complaint procedures (Rule 4901:1-3-05) and mediation and arbitration procedures (Rule 4901:1-3-06).

Specifically, Rule 4901:1-3-04 of the Ohio Administrative Code requires use of a single pole attachment rate formula be used for establishing the rates, which is consistent with the cable television (CATV) rate formula and allocated based on the percentage of usable space occupied by the attachment. Additionally, the Commission concluded that the current Federal Communications Commission (FCC) presumptive inputs for the pole attachment be adopted for the purpose of calculating the single rate formula.

With respect to the calculation of conduit occupancy rates, the Commission adopted the definitions, assumptions, and methodologies set forth in 47 C.F.R. 1.1409(e)(3) , including those related to the net conduit investment and carrying charge rates.

The Commission stated in its Finding and Order that the issue of filing tariffs that are consistent with the adopted rules would be addressed in a future Entry. In its Entry the Commission directed all affected telephone company and electric distribution utility pole owners to each file the appropriate company-specific tariff amendment application, including terms of access consistent with the newly adopted rules and rates using the rate formulas based on 2014 data. To allow for the timely review and the implementation of the requisite pole attachment and conduit occupancy tariff revisions, the applications for amendment are to be filed on or before May 1, 2015. Consistent with the Commission's June 4, 2014 Opinion and Order in Case No. 13-1690-WW-AIR, *In Re Camplands Water LLC*, an FCC rate of return company may use ten percent as its default cost of capital for the purposes of its calculations or make the appropriate company-specific demonstration based upon its unique circumstances. The Commission directed that FCC price cap carriers should use their respective weighted average cost of capital in their requisite calculations. The electric utilities were directed to use the most recently approved cost of capital from their last respective rate case.

The Commission stated that unless otherwise suspended, the tariff revisions, including new rates, were to automatically become effective on July 1, 2015. The Commission also stated that for those pole owners that fail to make the requisite applications on a timely basis, the applicable effective pole attachment rates will be "presumed" as unjust and unreasonable and collected subject to refund based upon the Commission's final decision in a future compliance proceeding.

One of the vitally important aspects of the OCTA's members provision of service in Ohio is access to the poles, conduits and rights-of-way of Ohio public utilities at just and reasonable terms and

rates. The OCTA filed initial and reply comments and participated in Case No. 13-579-AU-ORD. The Association has several concerns with the February 25, 2015 Entry. Because of the importance of access to poles, conduits and rights-of-way, the Association and its members are concerned with the failure to include in the Entry procedures to allow input into the proposed tariff amendments. The Association may have concerns that specific terms in an amended tariff are inconsistent with the pole attachment and conduit Rules or that the inputs used in the rate calculations are improper.

Based on the number of electric distribution utilities and incumbent local exchange companies, it is possible that 50 tariff amendments will be filed on May 1, 2015. The Entry addresses the need for timely review and implementation of the requisite pole attachment and conduit occupancy tariff revisions, but does not appear to consider the time that might be required by those affected by the filings to review this large number of filings and provide comment and input. Based on the current date of July 1, 2015 for automatic approval of the tariff filings, the Entry only provides forty-two (42) business days to review and file comments on the possible 50 filings. The Association believes that the automatic effective date should be extended to allow those affected by the filings sufficient time to review and to provide input. The Association requests that the Commission issue an Entry clarifying the process for comment and extending the timing of the automatic approval to no earlier than August 1, 2015. In the alternative, the Association requests rehearing so the Commission can address these issues, as failure to extend the automatic approval to no earlier than August 1, 2015 to allow sufficient time for the affected parties to review and comment on the tariff filings would be unreasonable and unlawful.

The Entry raises a second area of concern for the Association. Although it is anticipated that most pole attachment rates and conduit occupancy rates calculated with the required formulas would be decreased in the immediate future, it is possible that under the new rule an electric distribution utility or a telephone company could file a proposed pole attachment rate or conduit occupancy rate in its tariff

amendment that would be an increase over its existing pole attachment rate or conduit occupancy rate. In such an event, Ohio law mandates that the public utility either file a Section 4909.18, Revised Code application for a rate increase¹ or follow the process of a self-complaint under Section 4905.26, Revised Code² in order to implement such a rate increase instead of allowing the proposed increase to automatically go into effect on July 1, 2015 (or August 1, 2015 or later, as requested above).

Section 4905.71, Revised Code provides that every telephone company and every electric light company that owns poles or has conduit space must file tariffs with the Commission containing the charges, terms and conditions established for such use. The statute also gives the Commission authority to regulate the justness and reasonableness of the charges, terms and conditions contained in any such tariff. Public utilities must follow the rate increase application procedure set forth in Section 4909.18, Revised Code, or, follow the self-complaint process in Section 4905.26, Revised Code if they want to increase existing pole attachment and conduit occupancy rates. Unless an electric distribution utility or a telephone company falls under an exception both are public utilities pursuant to Sections 4905.02, 4905.03(A) and (C), Revised Code. Section 4905.02(A) provides the exceptions with respect to what electric distribution utility or telephone company would not be a public utility, generally covering not for profit utilities or utilities owned by municipal corporations. Section 4905.02(A)(5) provides exemptions from being a public utility with respect to its provision of specified services, but that subsection does not include the provisioning of access to poles, ducts, conduits and rights-of-way as an exception. Thus, a rate increase application for poles, ducts, conduits or rights-of-way by an electric distribution utility or a telephone company would be subject to the requirements of Section 4909.18, Revised Code or a self-complaint under Section 4905.26, Revised Code.

¹ A rate increase application requires the filing of certain exhibits, publication of notice, a Staff Report of Investigation, objections, and a potential hearing where the burden of proof is on the public utility.

² A self-complaint requires notice, a hearing and places the burden of proof on the public utility who filed the self-complaint.

Further, Section 4927.15, Revised Code, requires pole attachments and conduit occupancy rates, terms and conditions of a telephone company to be approved and tariffed by the Commission. This section also requires that the tariffing be done in the manner prescribed by rule adopted by the Commission and subject to the applicable laws, including rules or regulations adopted and Orders issued by the Commission or by the FCC.

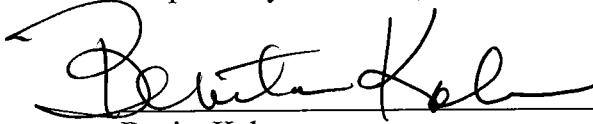
Chapter 4901-7 of the Ohio Administrative Code is a rule issued by the Commission which prescribes the Standard Filing Requirements for electric, gas, water, and telephone utilities who seek to file an application for an increase in rates. Appendix A to Chapter 4901-7 of the Ohio Administrative Code contains several references to electric distribution utilities and telephone companies. It is clear that the Commission still contemplates that when an electric distribution utility or a telephone company seeks to increase an existing rate, a standardized procedure (the Standard Filing Requirements) for increasing rates must be followed.

The Association respectfully requests that the Commission issue an Entry clarifying that if an electric distribution utility or a telephone company seeks to propose a pole attachment rate or conduit occupancy rate that constitutes an increase over an existing tariffed rate, that either the rate increase application process of Section 4909.18, Revised Code or the self-complaint process under Section 4905.26, Revised Code applies and must be followed. In the alternative, the Association respectfully requests that the Commission grant rehearing and find that the February 25, 2015 Entry is unreasonable and unlawful to the extent an electric distribution utility or a telephone company may seek to increase an existing tariffed pole attachment rate or a conduit occupancy rate without following either Sections 4909.18 or 4905.26, Revised Code to implement such a rate increase.

The OCTA further asks the Commission to clarify its February 25, 2015 Entry by providing the procedures and sufficient time for the Association and its members who attach to electric distribution

utility and telephone company poles or occupy conduit to review the proposed tariff amendments and comment on the rates, terms and conditions for access to poles, ducts, conduit and rights-of-way. At a minimum, the timing for automatic approval of the proposed tariff amendments should be extended to August 1, 2015.

Respectfully submitted,

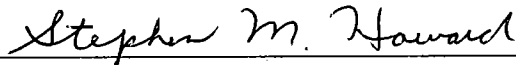
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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case (those individuals are marked with an asterisk below). In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail or by regular U.S. Mail) on the 27th day of March, 2015 upon all persons/entities listed below.


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Summary: Motion Motion for Clarification, or, in the Alternative, Application for Rehearing
electronically filed by Benita Kahn on behalf of Ohio Cable Telecommunications Association