

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.)	

THE AT&T ENTITIES' MEMORANDUM CONTRA
THE OCTA'S MOTION FOR CLARIFICATION, OR, IN THE ALTERNATIVE,
APPLICATION FOR REHEARING

1. Introduction

The AT&T Entities¹ ("AT&T"), by their attorney and pursuant to O. A. C. §§ 4901-1-12(B) and 4901-1-35(B), oppose the Motion for Clarification, or, in the Alternative, Application for Rehearing ("Motion") filed by the Ohio Cable Telecommunications Association ("OCTA") on March 27, 2015.

2. The Commission Need Not, And Should Not, Limit The Options In The Manner Proposed By OCTA

At the heart of OCTA's motion is the claim that:

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.

Motion, p. 6. OCTA provides no legal citation or support for this broad, and inaccurate, proposition. Both its motion and the alternative relief it seeks should, therefore, be denied.

¹ 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.

In the “good old days,” pole attachment rates were generally set in major utility rate cases.² On occasion, a complaint has been brought challenging established pole attachment rates. OCTA’s largest member filed such a complaint.³ However, nothing in Ohio law or the Commission’s rules limits the Commission to those procedural vehicles in determining appropriate pole attachment rates.

R.C. § 4905.71 provides as follows:

(A) Every telephone or electric light company that is a public utility as defined by section 4905.02 of the Revised Code shall permit, ***upon reasonable terms and conditions and the payment of reasonable charges***, the attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of same in conduit duct space, by any person or entity other than a public utility that is authorized and has obtained, under law, any necessary public or private authorization and permission to construct and maintain the attachment, so long as the attachment does not interfere, obstruct, or delay the service and operation of the telephone or electric light company, or create a hazard to safety. Every such telephone or electric light company ***shall file tariffs with the public utilities commission containing the charges, terms, and conditions established for such use.***

(B) ***The commission shall regulate the justness and reasonableness of the charges, terms, and conditions contained in any such tariff***, and may, upon complaint of any persons in which it appears that reasonable grounds for complaint are stated, or upon its own initiative, investigate such charges, terms, and conditions and conduct a hearing to establish just and reasonable charges, terms, and conditions, and to resolve any controversy that may arise among the parties as to such attachment.

R. C. § 4905.71 (emphasis added). The statute is straightforward: it requires the tariffing of reasonable charges, terms, and conditions for pole attachments and conduit occupancy. And, it

² See, e.g., In the Matter of the Application of The Chillicothe Telephone Company for an Increase in its Rates and Charges for Telephone Service, 85-995-TP-AIR, 1986 Ohio PUC LEXIS 20, November 12, 1986; In the Matter of the Application of Monongahela Power Company for Authority to Amend and to Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service in the State of Ohio, 85-1778-EL-AIR, 1986 Ohio PUC LEXIS 8, December 16, 1986; and In the Matter of the Application of Cincinnati Bell Telephone Company for authority to increase and adjust its rates and charges and to change regulations and practices affecting the same; In the Matter of the Application of Cincinnati Bell Telephone Company for authority to revise its Pole and Anchor Attachment and Conduit Occupancy Accommodations Tariff PUCO No. 1; In the Matter of the Application of Cincinnati Bell Telephone Company to file a New Tariff entitled Pole and Anchor Attachment and Conduit Occupancy Accommodations PUCO No. 1, 84-1272-TP-AIR; 83-415-TP-ATA; 81-1310-TP-ATA, 1985 Ohio PUC LEXIS 790, April 18, 1985.

³ In the Matter of the Complaint of Time Warner NY Cable LLC, Complainant, v. Cincinnati Bell Telephone Company LLC, Respondent, Case No. 09-379-TP-CSS, 2009 Ohio PUC LEXIS 353, May 21, 2009.

directs the Commission to regulate the justness and reasonableness of the charges, terms, and conditions contained in any such tariff. The statute does not limit the Commission's choice of a procedural vehicle in carrying out such regulation. OCTA is simply wrong when it argues that this regulation may only be carried out in the context of a rate case or a self-complaint case when a pole or conduit owner seeks to increase its rates.

Nothing in Ohio law requires that increases to pole attachment rates may only be accomplished through a traditional rate case under R. C. § 4905.18 or a self-complaint case filed under R. C. § 4905.26. But that is the unsupported claim made by OCTA in its Motion.

In its Finding and Order adopted on July 30, 2014 in this case, the Commission largely adopted the FCC's formula and approach in establishing pole attachment rates in Ohio. The Commission deferred ruling on the mechanism to be used to implement revised rates to comport with the rules it adopted. The Commission's February 25, 2015 Entry laid out an appropriate mechanism by which to do so.

The Commission has adopted a process in order to assure that pole attachment rates comply with its revised rules. The formulas set forth in the FCC's rules at 47 CFR §1.1409, the benchmarks adopted in the revised rules, are designed to ensure just and reasonable rates and precisely define the parameters for the rate calculations. With the fundamental rate criteria so established, a streamlined process for adopting new rates calculated through the application of these formulas is both appropriate and consistent with the State of Ohio's

Common Sense Initiative. There is no need to impose additional, burdensome procedural requirements.

Moreover, the procedure established by the Commission ensures due process for all parties. To the extent more time is needed to examine a revised rate or other aspect of a tariff application, the automatic approval of the tariff application can be suspended. Should a party have reason to question or dispute a proposed rate, the Commission has emphasized - - twice - - that the complaint process will be available to any party once the rates are revised. Finding and Order, July 30, 2014, p. 41; Entry, February 25, 2015, p. 1.

In limiting the procedural options for pole attachment and conduit occupancy rate increases, OCTA would hamstring both the Commission and the pole owners by subjecting them to needless bureaucracy and processes that are relics of a bygone era.

3. Conclusion

For all of the foregoing reasons, the Commission should deny OCTA's motion and the alternative relief that it seeks. In doing so, the Commission will properly stay on its current path, which will result in the establishment of just and reasonable pole attachment rates in Ohio, with due process for all.

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 6th day of April, 2015 by e-mail, as noted below, on the parties listed below.

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Summary: Memorandum contra the OCTA's motion for clarification, or, in the alternative, application for rehearing electronically filed by Jon F Kelly on behalf of The AT&T Entities