BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of CenturyTel of Ohio, Inc. d/b/a CenturyLink to Introduce a Pole Attachment Conduit Occupancy Tariff.	**)**	**Case No. 15-890-TP-ATA**
In the Matter of the Application of United Telephone Company of Ohio, Inc. d/b/a CenturyLink to Introduce a Pole Attachment Conduit Occupancy Tariff.	**)**	**Case No. 15-889-TP-ATA**

OBJECTIONS OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

August 3, 2015

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I. Introduction

The Ohio Cable Telecommunications Association ("OCTA"), representing the interests of Ohio's cable television and telecommunications industry,[1] hereby files objections to the pole attachment tariff application of CenturyTel of Ohio, Inc. d/b/a CenturyLink ("CTO/CenturyLink") and the pole attachment tariff application of United Telephone Company of Ohio, Inc. d/b/a CenturyLink ("UTO/CenturyLink"). These objections are timely submitted, in accordance with the schedule contained in the April 22, 2015 Entry of the Public Utilities Commission of Ohio ("Commission") issued in *In the Matter of the Adoption of Chapter 4901:1-3, Ohio Administrative Code, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way by Public Utilities*, Case No. 13-579-AU-ORD (hereinafter "Pole Attachment Rules").[2] When both CTO/CenturyLink and UTO/CenturyLink are referenced, these objections will refer to them jointly as "CenturyLink" or "the CenturyLink companies."

CTO/CenturyLink proposes an entirely new pole attachment and conduit occupancy tariff in its proceeding, to replace its existing language in Section 8 of its General Exchange Tariff, P.U.C.O. No. 12. That company noted that all of its current Attachers[3] are doing so through pole attachment agreements, not pursuant to its existing tariff.[4] UTO/CenturyLink does not have an existing pole attachment and conduit occupancy tariff. UTO/CenturyLink pointed out that a tariff

[1] As noted in its Motion to Intervene, the OCTA represents the cable television and telecommunications industry in the Ohio. The OCTA's members have existing and potential business interests in the State and, in particular, in CTO/CenturyLink's service territory, which will be directly and substantially affected by the outcome of this proceeding. Access to the poles, conduits and rights-of-way of Ohio's public utilities is a vitally important aspect of the OCTA's members' provision of services in Ohio. More specifically, that access is essential for the OCTA's members to provide a variety of communications services, including video, voice, and Internet access services, in CTO/CenturyLink's service territory.

[2] In its April 22, 2015 Entry, the Commission specified that objections are due August 1, 2015, which falls on a Saturday. Pursuant to Commission Rule 4901-1-07, if the Commission office is closed to the public on the day that is the last day for doing an act, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

[3] The CenturyLink proposed tariffs use the term "Licensee" when referring to the entity authorized by CenturyLink to attach to its facilities. *See, e.g.*, Section 1.1 of the Proposed Tariff. The OCTA understands that, in this context, a licensee is an attaching entity and will refer to it as an "Attacher" throughout these objections.

[4] CTO/CenturyLink Application Exhibits B and C.

negotiated with the OCTA is pending before the Commission in Case No. 11-602-TP-UNC, but has not been approved.[5] In the instant proceedings, both CenturyLink companies propose the same terms and conditions, save for the rates. The OCTA files these objections in both dockets given that the issues and concerns are identical.

Rule 4901:1-3-03(A)(1), Ohio Revised Code, requires CenturyLink to have nondiscriminatory rates, terms and conditions that are both just and reasonable. Upon review of CenturyLink's proposed tariffs, however, the OCTA objects to several provisions in the proposed terms and conditions as unfair and one-sided.

Both CenturyLink companies propose tariffs that do not adequately specify that overlashing an existing attachment or riser cable is permitted upon advance notice and is outside the pole attachment application process. Additionally, they propose provisions that allow them to solely determine the make-ready work necessary and to mandate that the Attacher pay for that work with a certain time period. CenturyLink proposes to give itself the sole ability to mandate attachment modifications for any reason, tree trimming and clearing. There is no opportunity or process set forth in the proposed tariff to question or discuss such determinations, or to allow for resolution in the event of a dispute. Further, CenturyLink seeks to severely limit the application process – not allowing more than 1 application within a 14-day period. Also, the proposed tariffs allow CenturyLink to revoke a license at any time for any reason whatsoever. The proposed tariff requires execution of a separate pole attachment agreement, but none of those terms/conditions are include in the tariffs, which is contrary to the enabling statute (Section 4905.71, Revised Code). Further, there are several other provisions that differ significantly from

[5] UTO/CenturyLink Application Exhibit A, referencing *In the Matter of the Application of United Telephone Company of Ohio dba CenturyLink to Introduce a Pole Attachment and Conduit Occupancy Tariff PUCO No. 1*, Case No. 11-602-TP-UNC.

what CenturyLink agreed to previously and are unjust and unreasonable, and therefore should be modified to match what CenturyLink has already accepted.

II. Background

On July 30, 2014, as revised on October 15, 2014, the Commission adopted new administrative rules in Chapter 4901:1-3, Ohio Administrative Code, regarding access to poles, ducts, conduits, and rights-of-way of the public utilities.[6] The new rules became effective in January 2015. On February 25, 2015, as revised on April 22, 2015, in the Pole Attachment Rules docket, the Commission ordered all public utility pole owners in Ohio to file amended tariffs that correspond with the Commission's newly adopted administrative rules. At the same time, the Commission established August 1, 2015, as the deadline for filing motions to intervene and objections in the tariff application dockets.

The CenturyLink companies filed tariff applications on May 13, 2015, in these dockets. The OCTA has previously moved to intervene in both proceedings. The OCTA respectfully and timely submits its objections to certain terms and conditions contained in the CenturyLink tariff applications, which are detailed below.

III. Objections as to Proposed Terms and Conditions

A. Overlashing

The CenturyLink companies have proposed tariff that defines "Attachment" as follows:

> Attachment - Any placement of Licensee Equipment on or to Telephone Company Facilities. The definition of Attachment also includes the Licensee Equipment itself that is physically attached and/or placed on or to Telephone Company Facilities. Any reference in this tariff to an Attachment being made "to" or "on" Telephone Company Facilities will also mean "in" or "occupying" any Telephone Company Facilities

[6] *Access to Poles, supra*.

The OCTA interprets CenturyLink's definition of "Attachment" as not prohibiting overlashing an existing pole attachment and also as not requiring overlashing to go through the full Attachment application process. The tariff should not require overlashing of an existing pole attachment or rise cable to go through any approval process.[7] However, neither that definition, nor another provision elsewhere in CenturyLink's tariff proposals expressly addresses a very common practice associated with pole attachments – overlashing. The OCTA believes that clarification in CenturyLink's tariff proposals is extremely important to avoid any future issues and disputes on handling overlashing work. In addition, CenturyLink has agreed in the past to include clarifying language for its tariff on this very point. The OCTA strongly recommends that the language to which CenturyLink previously agreed be added to its tariff proposals in these proceedings as follows:

(1) *Definition of "Attachment", add at the end*: "The definition of Attachment does not include a wire overlashed onto an existing attachment or riser cable to the extent that it runs vertically on the Pole owned by Licensor and begins or ends at the base of the Pole, in duct or direct buried and extends vertically to the point of horizontal attachment of the cable and/or strand owned by the Licensee on the Pole."

(2) *Definition of "Modification," add at the end*: "Modification does not include overlashing an existing permitted attachment."

(3) *Section 1.3, add the underlined words as follows:* "A Telephone Company-approved Application is required for every Attachment provided, however, that Licensee may overlash an existing, permitted attachment without a Telephone Company-approved Application upon at least fifteen (15) days advance written notice to Telephone Company."

[7] Overlashing an existing pole attachment or riser cable is not an attachment to a pole controlled by the public utility and is not accessing a pole, duct, conduit or right-of-way. See, Rules 3-01(N) and 3-03(A)(2).

The Federal Communications Commission ("FCC") has found that overlashing does not require an attachment application and that prior notice is up to the parties to negotiate.[8] The OCTA is proposing here to provide CenturyLink with prior written notice more than two weeks in advance of overlashing.

The OCTA again points out that CenturyLink already has agreed with all of this specific clarifying language in proposed tariff revisions it filed on March 21, 2014.[9] These additions are necessary and appropriate for CenturyLink's tariff. Also, they will make CenturyLink's tariffs clearer and help avoid future disputes. Accordingly, the OCTA recommends that the above language be included in both CenturyLink pole attachment tariffs being reviewed in these proceedings.

B. Definitions of "Make Ready Survey" and "Make Ready Work" and Company-Required Modifications (Proposed Sections 1.1, 2.2, 2.4 and 4.3)

In these four sections, CenturyLink attempts to dictate each of these steps in the attachment process. In Proposed Section 1.1, "Make Ready Survey" and "Make Ready Work" shall be the necessary work as solely determined by CenturyLink. There is no opportunity or process in the definitions or otherwise in the proposed tariffs to question or discuss such determinations. Moreover, in Section 2.2., the proposed language states that CenturyLink may deny the attachment application if the Attacher does not agree with CenturyLink's cost estimate

[8] *See, Implementation of Section 703(E) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6807, ¶¶ 59-69 (rel. Feb. 6, 1998); *Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd. 12103, 12141-12145 (rel. May 25, 2001) (overlasher is not required to obtain prior consent of the pole owner, but should provide notice); *see also S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002) ("The Commission * * * clarified that an overlashing party does not need to obtain advance consent from a utility if that party has a primary wire attachment already in place * * * however * * * a utility is entitled to notice of the overlashing * * *." (internal citation and quotation omitted)); *Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd. 16333, 16340-41 (rel. Aug. 8, 2003) (affirming policy that no prior consent may be required for overlashing).

[9] *In the Matter of the Application of United Telephone Company of Ohio dba CenturyLink to Introduce a Pole Attachment and Conduit Occupancy Tariff P.U.C.O. No. 1*, Case No. 11-602-TP-UNC.

following a Make Ready Survey or Make Ready Work. This language effectively establishes a "take it or leave it" situation.

The Commission's newly adopted rules, however, do not permit such "take it or leave it" authority on the part of the public utility. Rule 4901:1-3-03(A)(1), Ohio Administrative Code,[10] allows a public utility to deny an access to its poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis where there is "insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes." Nothing in that Pole Attachment Rules states that a disagreement with a cost estimate is a valid basis for denying access. Moreover, Rules 3-03(B)(2)(c) and 3-03(C) allow an Attacher to dispute a cost estimate and allow the Attacher to hire a contractor for the make-ready surveys and make-ready work as a means to resolve cost estimate disputes. As a result, CenturyLink's proposed language in both Sections 1.1 and 2.2 do not comply with the new regulations.

In Section 2.4, CenturyLink addresses Unauthorized Attachment Charges. This section sets forth what will happen when an unauthorized attachment is discovery. This proposed language, however, does not take into account the dispute process established by Rule 3-03(A)(6). Given the importance of the Attacher's ability to dispute an unauthorized attachment claim; additional language should be added to the first subparagraph in Section 2.4, consistent with Rule 3-03(A)(6).

CenturyLink proposes in Section 4.3 that, when an attachment is in place, the companies can require an Attacher to make modifications "at any time and for any reason" and that the Attacher must complete that modification within 60 days of being notified of the modification and pay for it. This language, if approved by the Commission, could sanction unfettered abuse.

[10] For ease, future references in these objections to the rules in Chapter 4901:1-3, will simply be referenced as "Rule 3-XX."

That strikes at the heart of the fundamental duty of the public utility – to provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it under rates, terms and conditions that are just and reasonable." *See*, Rule 3-03(A)(1). Moreover, Rule 3-03(A)(5) specifically recognizes that the public utility can conduct modifications. CenturyLink's proposed language in Section 4.3 does not even address the situation set forth in Rule 3-03(A)(5), as it only envisions that the public utility will make modifications when the Attacher is not notified of the utility-mandated modification or when the Attacher does not immediately conduct the modification. Plus, Section 4.3 could be interpreted to allow the utility, unilaterally, to require the Attacher to make any and all modifications. As drafted, Section 4.3 likewise does not comport with Rule 3-03(A)(6) because it does not envision that an Attacher can challenge a modification request. Taken altogether, proposed Section 4.3 does not comport with the new Commission rules, and it will likely lead to many more complaint filings at the Commission (permissible per Rule 3-05). The Commission should not adopt tariff language that will lead to further litigation.

In sum, these four provisions are one-sided, unjust and unreasonable. These also do not completely reflect what CenturyLink previously agreed to include in its tariff. They are not in compliance with by the newly adopted rules and should not be adopted. They should be revised as follows:

> *Section 1.1 Definitions*
> Make Ready Survey - All work necessary**~~, in Telephone Company's sole reasonable discretion,~~** to determine the Make Ready Work required to accommodate an Attachment, including field inspections, engineering and administrative processes.
>
> Make Ready Work - All work performed or to be performed as is necessary**~~, in Telephone Company's sole reasonable discretion,~~** to prepare Telephone Company Facilities for an Attachment where such work is required solely to accommodate such an Attachment, including surveying, clearing obstructions, repairing or modifying Telephone

Company Facilities, or Rearranging, Transferring, replacing or removing any items on Telephone Company Facilities.

Section 2.2 Application

Before making an Attachment, Licensee must submit a completed Application for the desired Attachment to Telephone Company. * * * Telephone Company~~**, at Telephone Company's sole reasonable discretion,**~~ may determine that a Make Ready Survey and/or Make Ready Work are required. Telephone Company will provide an estimate of the Cost of the Make Ready Survey and/or Make Ready Work. If Licensee agrees to the estimated Cost, Licensee will be obligated to pay for all Make Ready Costs associated with the Application. If Licensee does not agree, then Telephone Company ~~**may deny the Application**~~ and Licensee will negotiate in good faith for a reasonable period of time, or seek mediation or arbitration from the Public Utilities Commission of Ohio. ~~**Detailed provisions from Application submission to Attachment completion will be set forth in the associated License Agreement.**~~

Section 2.4 Unauthorized Attachment Charge

(a) If Telephone Company discovers an Unauthorized Attachment, Telephone Company shall give notice of the Unauthorized Attachment to Licensee. Telephone Company shall provide Licensee with sufficient information to identify with particularity the actual location of any Unauthorized Attachment so that it may make an Application for the Unauthorized Attachment. Licensee will have 30 days from receipt of the notice to make an application for the Unauthorized Attachment. If no Application is received by Telephone Company within the 30 day time period, Licensee must, unless notified otherwise by Telephone Company, remove its Unauthorized Attachment, at its own expense, within 60 days of notice to remove.

If it disputes the characterization of the Attachment as Unauthorized, the Licensee may file with the Commission a petition for temporary stay of the notice to remove within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in precise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of service and a copy of the notice. The Telephone Company may file an answer within 7 days of the date of the petition for temporary stay was filed. If the Commission does not rule on the petition within 30 days after the filing of the answer, the petition shall be deemed denied unless suspended.

*Section 4.3 ~~**Licensor-Required**~~ **Modification***

Telephone Company ~~**may at any time and for any reason require**~~ will provide Licensee notice 60 days in advance of performing any

modification of Licensee's Attachment, unless it is routine maintenance or in response to an emergency**to conduct a Modification**. Licensor may request that Licensee perform modifications. Licensee may contest such notices or requests and seek a temporary stay as permitted under the Public Utilities Commission of Ohio rules. **Except as otherwise required in this tariff, the associated License Agreement or by Applicable Law, Licensee will perform any Licensor-requested Modification for and on the account of Licensor within 60 days of its receipt of Licensor's notice regarding the Modification.** Upon completion of the Modification, **Licensee** the party doing the Modification will provide notice of completion to **Licensor**the other. If Licensee performs the Modification, it will not be required to submit an Application under this tariff **or the associated License Agreement** for the Modification done under this paragraph 4.3. **If Licensee cannot conduct a Modification to meet any applicable timing requirements of Licensor, Licensor may perform Licensee's Modification at Licensee's sole Cost.** If Licensee performs the Modification, it will not be required to conduct any Make Ready Survey or Make Ready Work in connection with **a Licensor-requested the** Modification. If the Modification **required by Licensor** can reasonably be expected to take more than 60 days to implement, then Licensor and Licensee will agree upon a reasonable **extension of the initial 60-day** time period for completion of the Modification. Licensee will be reimbursed for its Costs incurred in conducting the Licensor-required modification.

If **Licensor requires Licensee to conduct a Modification or Attachment removal due to, in Licensor's sole reasonable discretion, there is** an immediate safety threat or emergency, Licensor will make a reasonable effort to notify Licensee of the need for an emergency Modification or Attachment removal **so that Licensee can complete the required work. Such notification will be given under the terms of the associated License Agreement**. If the safety threat or emergency arose because of Licensee's actions or Attachment, either (a) Licensee will conduct the Modification or Attachment removal at its sole Cost**,** or (b) **. If Licensor's reasonable efforts to give Licensee notice are not successful, or if Licensee, after receipt of such notice, does not immediately dispatch personnel and conduct the Modification or Attachment removal, then Licensor may conduct the Modification or Attachment removal itself and will, within a reasonable period of time after completion, give Licensee notice of the Modification or Attachment removal.** Licensor will conduct the Modification or Attachment removal **at its own Cost, unless the safety threat or emergency arose because of Licensee's actions or Attachment**, in which case Licensee will reimburse Licensor for the Cost of the Modification or Attachment removal within 30 days of the invoice date for an invoice from Licensor for the Cost.

C. Tree Trimming and Other Clearing (Proposed Section 1.6)

Proposed Section 1.6 states in part:

> Unless otherwise governed by Applicable Law, Telephone Company will, in its sole reasonable discretion, determine from time to time if, solely by reason of Licensee's Attachments, tree trimming or other clearing in any Right-of-Way or land is necessary, including upon initial Attachment. Provided the grantor of the Right-of-Way or owner of the land gives permission, tree trimming and clearing will be performed by contractors under Telephone Company's direction. Licensee will reimburse Telephone Company for the Cost of trimming and clearing within 30 days of the invoice date for an invoice from the Telephone Company for the Cost. Tree trimming and clearing needed, in Telephone Company's sole reasonable discretion, solely as a result of adverse weather conditions such as wind, snow or ice storms, may be performed by Telephone Company or its agents, and Licensee will pay, along with any other allowed users of the Telephone Company Facility, its pro rata share of the Cost for the trimming and clearing, within 30 days of the invoice date for an invoice for the Cost. (Emphasis added.)

Again, we see proposed language that permits CenturyLink to decide solely about tree trimming and clearing work, and then the tariffs mandating that the Attacher pay whatever costs are assigned by CenturyLink, as solely decided by CenturyLink, within 30 days of the invoice. There is no opportunity or process in the proposed tariffs to question or discuss such determinations or if CenturyLink's costs for removal were reasonable. These terms are one-sided, unfair, and not just or reasonable, as required by Rule 3-03(A)(1). Moreover, given the proximity of Attachers' attachments, trimming and clearing work will ultimately be beneficial to all attaching entities. However, CenturyLink's language appears to impose the costs of such just on one Attacher exclusively. In addition, the expense for trimming and clearing is a component of the expenses in the pole attachment rate – namely, the maintenance component of the carrying charge. Thus, on a yearly basis, Attachers pay for the expense of trimming and clearing and it would be contrary to Ohio law to allow CenturyLink to impose additional charge for the same

work. As a result, this section of the proposed tariff can be modified to eliminate the problem. The OCTA recommends that the Commission modify proposed Section 1.6 as follows:

> Unless otherwise governed by Applicable Law, Telephone Company ~~**will, in its sole reasonable discretion,**~~ **may** determine from time to time ~~**if, solely by reason of Licensee's Attachments, that**~~ tree trimming or other clearing in any Right-of-Way or land around Licensee's Attachments is necessary, including upon initial Attachment. Provided the grantor of the Right-of-Way or owner of the land gives permission, tree trimming and clearing will be performed by contractors under Telephone Company's direction. Telephone Company will notify Licensee 30 days in advance of any such planned tree trimming or other clearing, along with an estimated cost for such. Tree trimming and clearing reasonably needed~~, in Telephone Company's sole reasonable discretion,~~ solely as a result of adverse weather conditions such as wind, snow or ice storms, may be performed by Telephone Company or its agents.

D. Limitation on Number of Attachment Applications and Modifications (Proposed Sections 2.2 and 4.2)

Section 2.2 states that an Attacher "will not submit more than one Application every 14 days." This limitation also applies to all modifications desired by an Attacher, per Section 4.2. Perhaps, through this language, CenturyLink seeks to avoid being inundated with attachment applications or avoid receiving many complex applications. The OCTA understands those concerns. However, CenturyLink's language is not just and reasonable. First, CenturyLink's limitation on the number of applications/modifications (one per every 14 days) does not comport with Rule 3-03(B)(6)(e), wherein the Commission determined that multiple requests from a single Attacher can be treated as one request when they are filed within 30 days of each other. There is nothing in the rules that limits the submission of an application/modification because the Attacher submitted one within the prior 14 days. It is clear from comparing CenturyLink's proposed language and the Commission's rule, the Commission has adopted a completely different limitation on the submission of applications and therefore, CenturyLink's language should be modified accordingly. Second, CenturyLink's proposed limitation will unreasonably

delay the attachment process. It will not facilitate coordination among attachment requests, as it precludes submission of them together or anything less than 14 days apart. Moreover, it does not recognize that many attachment applications are not complex. Additionally, this limitation could be interpreted to apply to amended attachment applications. The effect of this language is to delay the application process, unreasonably. As a result, Sections 2.2 should be modified to delete the sentence "Licensee will not submit more than one Application every 14 days." This deletion will appropriately modify Section 2.2 and also ensure that the modification process will likewise not be so restricted.

E. Unlimited Discretion to Revoke a License (Proposed Section 2.3)

Section 2.3 allows CenturyLink to revoke a license at any time. It states in full:

> For reasons of safety, reliability or general engineering principles, including insufficient Telephone Company Facility capacity and technical interference problems with Telephone Company Facilities or the equipment of Joint Owners or Existing Attachers, Telephone Company may, in its sole reasonable discretion, at any time revoke a License granted under this tariff or the associated License Agreement or deny an Application.

This provision gives CenturyLink the sole discretion to revoke a license, which could be abused, at the mercy of the Attacher. Moreover, with the proposed tariffs' indemnification language, CenturyLink could argue that it is insulated from claims related to a license revocation as well. Under the new rules, attachment denials are permitted but only "where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes." *See*, Rule 3-03(A)(1). Given that limitation for attachment requests, it would not be appropriate to allow for the right to revoke an attachment, and then establish different bases for the revocation. CenturyLink's proposed Section 2.3 does not follow Rule 3-03(A)(1) completely. Moreover, CenturyLink's proposed language does not allow for 60 days advance notice, which is required for modifications (a revocation of a license would result in a modification of the

facilities) and does not allow for the opportunity for the Attacher to seek a temporary stay, as permitted under Rules 3-03(A)(5) and (6). As such, Section 2.3 should be modified as follows:

> For reasons of safety, reliability, ~~**or**~~ generally applicable engineering principles, ~~**including**~~ **or** insufficient ~~**Telephone Company Facility**~~ capacity ~~**and technical interference problems with the Telephone Company Facilities or the equipment of Joint Owners or Existing Attachers,**~~ Telephone Company may~~**, in its sole reasonable discretion,**~~ at any time revoke a License granted under this tariff ~~**or the associated License Agreement**~~ or deny an Application. Telephone Company will provide Licensee at least 60 days advance written notice and Licensee may seek a temporary stay as permitted under the Public Utilities Commission of Ohio rules.

F. Associated License Agreement (Numerous Sections of the Proposed Tariff)

CenturyLink's tariff language repeatedly refers to a required, associated License Agreement. The terms and condition of that required License Agreement are not spelled out in CenturyLink's proposed tariff. Thus, CenturyLink's tariff proposal includes some, but not all of the rates, terms and conditions under which they will provide pole attachment and conduit occupancy. Section 4905.71, Revised Code, however, states that every telephone or electric light company that is a public utility "shall file a tariff with the public utilities commission containing the charges, terms, and conditions" for attachments. That statutory language does not say that the tariff can contain some, but not all, of the charges, terms and conditions for attachments. Nor does the statute allow for other unknown rates/terms/conditions to be applicable without having been reviewed and approved by the Commission. Rather, the statute envisions that, if a tariff exists, all the applicable charges, terms and conditions under that tariff will be contained in the tariff itself.

Rule 3-04(A) makes this point even clearer. That rules states an attaching party that is not a public utility has the opportunity to attach to the utility's facilities either (a) pursuant to the utility's tariff offering or (b) pursuant to a privately negotiated agreement with the utility. That

negotiated pole attachment agreement opportunity, however, is completely separate from the tariff offer. Thus, Rule 3-04(A) also does not allow what AEP Ohio's tariff language attempts to mandate for its attachments – the pole attachment terms in the tariff as well as other non-negotiated pole attachment terms mandated through a separate, unknown agreement.

In addition, Rule 3-04(A) states that the rates, terms and conditions for nondiscriminatory access to poles, ducts, conduits, and rights-of-way of a telephone or electric light company by an entity that is not a public utility "are established through tariffs." This too confirms the expectation that the tariffs would include all of the charges, terms and conditions for attachments. There is no doubt that CenturyLink's May 13 tariff proposals are incomplete and that CenturyLink intends to mandate other unknown rates, terms and conditions through the mandated License Agreement. CenturyLink should not be allowed to mandate execution of a separate, non-negotiated agreement in order for parties who want the tariff offering to attach to CenturyLink's facilities.

The Commission should require CenturyLink either (a) to remove all references to the License Agreement and submit a new tariff proposal that adds in the other rates, terms and conditions; or (b) to add the License Agreement to the tariff as a stand-alone attachment.[11] Under either scenario, those new tariff provisions should be put out for comment so that interested parties have an opportunity to review and comment on their justness and reasonableness.

G. Maintenance of Records

In Section 5.5 of the proposed tariff, CenturyLink proposes that a Licensee must provide records at its expense within 14 days of a request from CenturyLink. The proposed tariff also requires that this obligation of the Licensee be in place for 10 years after the expiration or

[11] The Dayton Power and Light Company's current tariff includes its attachment agreement (P.U.C.O. No. 2), and its new proposal also includes an attachment agreement. *See*, *In the Matter of the Application of The Dayton Power and Light Company to Amend Its Pole Attachment Tariffs*, Case No. 15-971-EL-ATA, Amendment Application (June 12, 2015).

termination of the tariff. The OCTA objects and requests that this time period to respond to a request for records be 30 days instead of 14 days and that the obligation remain in place for 5 years instead of 10 years. Both of these time periods were agreed to by CenturyLink in Case No. 11-602-TP-UNC and there is no justification for such unreasonable terms. The OCTA requests that Section 5.5 be modified as follows:

> Licensee must compile and maintain current and accurate records consisting of the number of Attachments, the type and size of Licensee Equipment Attached, when each Attachment was made, the location of each Attachment and all Telephone Company-approved Applications. Licensee will, at its sole expense and within ~~**14**~~ **30** days of a request from Telephone Company, deliver to Telephone Company, complete, accurate, current and legible copies of all such records. Licensee's obligations under this section of the tariff and the associated License Agreement will survive for a period of ~~**10**~~ **5** years from the expiration or termination of this tariff and the associated License Agreement.

H. Audits

In Section 5.6, CenturyLink addresses the issue of a shared-cost audit that can be performed no greater than once every 5 years in a particular area to determine if any Attachments are unauthorized or noncompliant. Rule 3-03(B)(8) envisions that the public utility may conduct inspection/audits, and it requires an attacher who is found to not be in compliance to pay for corrections. CenturyLink proposes an "equal" sharing of cost on the basis of the number of attachees to poles; however, this approach would be discriminatory against those attachees who only have a miniscule number of Attachments. "Shared equally" by the company and attachees means that each party shares equally in the costs. That works fairly when each party has an equal number of attachments on the pole(s), but will not be proportional when there are an uneven number of attachments as between the parties. This is contrary to Section 4905.71 and Rule 3-03(A)(1). The Commission rules emphasize the concept of proportionality. The OCTA believes that the total audit cost should be shared proportionately among the Telephone Company,

Licensee and if applicable, any other existing attachers on the basis of the number of Attachments.

In addition, CenturyLink seeks to impose the entire cost of an audit upon an Attachee if an audit evidences that 5% or more of the Attachments of a Licensee are either (i) unlicensed, or (ii) constitute any National Electrical Safety Code violations. This is unreasonable and unjust because it does not take into account the fact that the actions of subsequent Attachees may have caused the first Attachee to be out of compliance with respect to its Attachment. If the Licensee did not cause the noncompliant condition, then it should not be held responsible. This portion of Section 5.6 should be eliminated. Accordingly, Section 5.6 should be rewritten as follows:

> At any time, at a frequency no greater than once every 5 years in a particular area, Telephone Company may, in Telephone Company's sole discretion, conduct a shared cost audit to determine if any Attachments are unauthorized or noncompliant. Telephone Company shall give at least thirty (30) days advance notice to Licensee of its intent to conduct such an audit. ~~**The total cost will be shared equally among Telephone Company, Licensee, and if applicable, any other existing Attachers. (For example, if only Licensee is attached, Licensee will pay one half of the audit cost and Telephone Company will pay one half of the audit cost. If another existing Attacher is attached, then Telephone Company, Licensee and the other Attacher will pay one third of the cost of the audit.)**~~ Telephone Company and Licensee will pay the audit cost on a pro rata basis, the total cost to be apportioned proportionately among Telephone Company, Licensee, and if applicable, any other existing Attachers. For example, if 10,000 of the existing Attachers are attached to 5,000 poles, the Telephone Company would be responsible for fifty percent (50%) of the audit cost, Licensee would be responsible for twenty-five percent (25%) of the audit cost, and other existing Attachers would be responsible for twenty-five percent (25%) of the audit cost. Licensee will reimburse Telephone Company for its share of the Telephone Company's total Audit cost within 30 days of the invoice. ~~**In addition to unauthorized attachment fees and other fees required to be assessed based upon the results of the audit, if an audit evidences that 5% or more of the Attachments of Licensee are either (i) unlicensed, or (ii) constitute NESC violations, then Licensee shall pay the entire cost of the audit and Telephone Company may conduct additional annual audits of Licensee Attachments at Licensee's sole cost until the number of Licensee unlicensed Attachments and/or NESC violations found drops below 1%.**~~ Telephone Company may

conduct additional audits for which the cost is not shared, as frequently as Telephone Company so chooses.

I. Attachment Bond

In Case No. 11-602-TP-UNC, CenturyLink had agreed to a $100,000 cap on the possible amount of the bond required. This cap was not contained in the proposed Section 6.6 of the proposed tariff in these cases. This cap is reasonable and should be inserted in Section 6.6.

The second sentence of Section 6.6 should be rewritten as follows:

> The Bond will be equal to five times the cumulative amount of the Annual License Fees or Five Hundred Dollars ($500.00), whichever is greater, except that no bond shall be required to exceed $100,000.

J. Post-Attachment Notice of Service Drops (Section 1.3)

In Section 1.3, CenturyLink includes the following;

> No Attachment may be made to any Telephone Company Facility identified in an Application until Telephone Company has approved the Application in writing; provided, however, Licensee may attach a service drop wire without advance notice to Telephone Company and without receiving approval of an Application from Telephone Company in advance. Licensee must submit an Application within (3) days after attaching a service drop to a Pole. The Licensee will be required to post bond and evidence of insurance.

The OCTA finds that three days to provide such notice is operationally impossible. CenturyLink agreed in 11-602-TP-UNC to providing that notice within 30 days. The OCTA believes that timeframe is workable and it should be included in the tariff here. CenturyLink has the burden of establishing that its proposal is just and reasonable. Three days is insufficient and CenturyLink has already agreed upon a timeframe for this very process. Accordingly, that 30-day period should be inserted into Section 1.3.

IV. Conclusion

As demonstrated with the above-cited terms/conditions, the CenturyLink tariffs contain numerous one-sided and unfair provisions that should not be adopted as proposed. In addition,

the CenturyLink tariff should also include a number of reasonable, already-agreed-upon provisions related to overlashing (expressly exempting overlashing from the attachments and modifications), as well as a number of other important pole attachment issues. For all of the foregoing reasons, the OCTA respectfully requests that the Commission delay the implementation of the CenturyLink pole attachment tariff until modified to incorporate the OCTA's proposed revisions set forth above.

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. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 3rd day of August 2015, upon the persons listed below.

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

Christen M. Blend at cblend@porterwright.com

Summary: Objection electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telelcommunications Association