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

UNITED TELEPHONE COMPANY OF OHIO D/B/A CENTURYLINK AND CENTURYTEL OF OHIO, INC. D/B/A CENTURYLINK'S RESPONSE TO OBJECTIONS OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

August 24, 2015

TABLE OF CONTENTS

I. Introduction and Background

United Telephone Company of Ohio ("United") and CenturyTel of Ohio, Inc. ("CenturyTel")("collectively, "CenturyLink") submit this response to the objections of the Ohio Cable Telecommunications Association ("OCTA") to the pole attachment tariffs filed in Case Nos. 15-889-TP-ATA and 15-890-TP-ATA (the "Tariffs"). The Tariffs were timely filed in accordance with the schedule contained in the April 22, 2015 Entry of the Public Utilities Commission of Ohio (the "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").

The tariffs filed by CenturyTel and United are virtually identical except for the rates. The CenturyTel tariff contains a pole attachment rate of $2.09 per foot of space per pole per year. The United tariff contains a pole attachment rate of $1.62 per foot of space per pole per year. OCTA does not object to the rates contained in these tariffs.

CenturyTel's tariff is intended to replace the existing pole attachment language contained in Section 8 of its General Exchange Tariff, P.U.C.O. No. 12. United does not have a Commission-approved pole attachment tariff. It filed a tariff that it negotiated with OCTA and that is pending before the Commission in Case No. 11-602-TP-UNC (the "Negotiated Tariff"), but which has not been approved.[1] The Negotiated Tariff was the result of a bargained-for-exchange in which United made certain concessions in its terms and conditions in exchange for a higher pole attachment rate that reflects a pole height adjustment to the FCC's cable rate

[1] *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.

calculated using 2010 inputs. The pole attachment rate in the Negotiated Tariff is $3.32 per foot of space per pole per year, or approximately twice the rates contained in the Tariffs now at issue.

In its objections, OCTA repeatedly and incorrectly claims that CenturyLink agreed in Case No. 11-602-TP-UNC to certain terms and conditions that OCTA proposes be included as revisions to the Tariffs. That is a gross distortion of the facts. In fact, neither CenturyTel nor United ever agreed to any of the terms and conditions OCTA now proposes as stand-alone terms. Only United was a party to Case No. 11-602-TP-UNC, and United only agreed to a compromise. In exchange for a $3.32 pole attachment rate, United was willing to agree to certain other terms and conditions as a concession. The concessions United made in the Negotiated Tariff have operational and financial significance to United, and United would not have made them without OCTA's agreement to the $3.32 pole attachment rate. In its objections, OCTA does not agree to pay the $3.32 pole attachment rate in the Negotiated Tariff. Accordingly, OCTA should not be heard now to claim that CenturyLink has agreed to any of the tariff revisions OCTA is proposing.

CenturyLink responds as follows to the specific objections OCTA has raised.

II. Responses to Objections as to Proposed Terms and Conditions

A. Overlashing

Overlashing occurs when a service provider ties wire to other wiring already secured to a pole. Overlashing puts an additional load on a pole and must be evaluated just like any other attachment to determine whether the pole can withstand the additional load and whether any make ready work is necessary. In some cases, it may be necessary to change out poles to accommodate the overlashing, particularly where the poles are old or there is a heavy load with the overlashing.

While the Tariffs do not prohibit overlashing, they do require that requests for overlashing go through the normal application process. This gives CenturyLink engineers the opportunity to determine whether any make ready work is necessary. Under the Tariffs, overlashing may be denied where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

OCTA claims erroneously that the FCC has found that overlashing does not require an attachment application and that prior notice is up to the parties to negotiate. In fact, none of the FCC decisions cited by OCTA support this claim. Furthermore, the cited decisions actually state that advance notice of overlashing is required.[2] In CenturyLink's process, advance notice is provided in the application form CenturyLink uses, wherein the overlashing party must identify the poles at issue and describe the overlashing that it intends to perform.

OCTA's proposed revisions to the definitions of "Attachment" and "Modification" and to Section 1.3 would circumvent the standard engineering evaluation process that should take place with both new attachments and overlashing. As the FCC recognized in the very cases OCTA cites, "[t]o the extent that the overlashing does create an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices."[3] The FCC has also recognized that "if the addition of overlashed wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the

[2] *Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12144, ¶82 (rel. May 25, 2001)("We agree that the utility pole owner has a right to know the character of, and the parties responsible for, attachments on its poles, including third party overlashers."); *S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002)(noting that the FCC has held that "a utility is entitled to notice of the overlashing").
[3] *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, 6807-08, ¶64 (rel. Feb. 6, 1998).

cable sag to increase to a point below safety standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole."[4]

CenturyLink recognizes that overlashing is a common practice and is not insisting that OCTA obtain CenturyLink's approval before it overlash. However, CenturyLink believes that the normal application process and timelines should be followed before OCTA engages in overlashing so that CenturyLink can determine whether any make-ready work is required. Taking overlashing out of the normal process and affording CenturyLink only 15 day advance notice is simply not workable given that the same make ready survey work has to be performed whether new cable is being placed or existing cable overlashed. Accordingly, the same timelines should apply.

Finally, CenturyLink notes that the Pole Attachment Rules do not create any exceptions for overlashing. Accordingly, while CenturyLink anticipates that it would rarely happen, CenturyLink should also have the right to deny overlashing "where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes."[5]

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)

OCTA objects to the definitions of "Make Ready Survey" and "Make Ready Work" in Section 1.1 and the language of Section 2.2 to the extent that the phrase "in Telephone Company's sole reasonable discretion" is used. According to OCTA, this phrase gives CenturyLink the right to solely determine what make ready work is required. However, all this phrase actually does is to give CenturyLink the right to determine in the first instance what make ready work is necessary. As the pole owner, that is CenturyLink's prerogative. Moreover, the

[4] *Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd. 12103, 12142, ¶77 (rel. May 25, 2001).
[5] O.A.C. 4901:1-3-03(A)(1).

phrase includes a reasonableness limitation, so it is not true that CenturyLink has unfettered discretion as OCTA claims. In addition, nothing in Section 1.1 or 2.2 prevents an Attacher from disputing whether specific make ready work is necessary. Accordingly, the Commission should reject OCTA's request to remove the phrase "in Telephone Company's sole reasonable discretion" from sections 1.1 and 2.2.

OCTA also objects to the sentence in Section 2.2 that allows CenturyLink to deny an application if the applicant does not agree with a make ready cost estimate. CenturyLink does not object to OCTA's revisions to this sentence to remove the words "may deny the Application" and to add the words "Telephone Company 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."

OCTA objects to Section 2.4 solely because it does not include a specific dispute resolution provision. OCTA's objection is completely misplaced. Section 2.4 does not eliminate an Attacher's right to seek dispute resolution before the Commission concerning unauthorized attachment charges and it certainly does not conflict with Rule 4901:1-3-03(A)(6). In fact, Rule 4901:1-3-03(A)(6) does not even address unauthorized attachment charges. Moreover, whatever rights Rule 4901:1-3-03(A)(6) confers on Attachers exist regardless of what is contained in the Tariff, since the Commission's rules are controlling. Accordingly, the Commission should reject OCTA's proposed changes to Section 2.4.

OCTA objects to Section 4.3 based on general assertions that Section 4.3 does not comport with the Commission's rules. OCTA does not identify any language in Section 4.3 that actually conflicts with the Pole Attachment Rules because Section 4.3 does not conflict with the rules. In fact, the second sentence of Section 4.3 very clearly conditions the Attacher's

obligation to perform a requested modification and the time to do it with the clause "except as otherwise required…by Applicable Law."

OCTA asserts that Section 4.3 gives CenturyLink the right to request any modification "at any time for any reason" and claims that that Section 4.3 "does not envision that an Attacher can challenge a modification request." However, that is simply not the case. Rule 4901:1-3-03(A)(6) gives an Attacher the right to challenge a modification request and nothing in Section 4.3 purports to take away that right.

Section 4.3 was not intended to be repetitive of the Commission's rules, yet that is what OCTA attempts to accomplish in the edits it proposes. The Commission should not modify the Tariffs as OCTA proposes, as none of the changes are necessary or warranted. The Commission's rules govern in case of a conflict, and thus far OCTA has not identified any actual conflicts.

In particular, the Commission should not approve the sentence OCTA has added at the end of the first paragraph of Section 4.3 that provides: "Licensee will be reimbursed for its Costs incurred in conducting the Licensor-required modification." This addition is a particularly unjust provision because it attempts to make CenturyLink responsible for the costs an Attacher incurs under circumstances that are outside of CenturyLink's control. For example, CenturyLink should not have to reimburse an Attacher for costs incurred in order to move an attachment when a pole has to be replaced. An Attacher knows when it attaches to a pole that the pole may at some point have to be replaced and should have to bear its own costs when that happens. Similarly, CenturyLink should not be required to compensate an Attacher when an attachment has to be moved as a result of a government order or regulation, customer complaint or to accommodate a third party's attachment. In these and other circumstances, CenturyLink is

merely the messenger when it requests a modification and there is no principled basis for making CenturyLink responsible for the Attacher's costs. Moreover, nothing in the Commission's rules requires it.

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

OCTA objects to the second paragraph of Section 1.6, which addresses tree trimming, on four grounds, none of which withstand scrutiny. First, OCTA argues that CenturyLink has the sole discretion to determine whether tree trimming or other clearing is required. In fact, CenturyLink's discretion is bounded by a reasonableness limitation. Someone has to determine in the first instance whether tree trimming is required and it makes sense for CenturyLink as the pole owner to be that entity.

Second, OCTA asserts that Section 1.6 is one-sided because 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. However, it is also true that the tariff does not prevent an Attacher from questioning or discussing determinations as to whether to conduct tree trimming or whether the costs for removal were reasonable. Thus, Section 1.6 is not one-sided as OCTA claims.

Third, OCTA argues incorrectly that CenturyLink's language appears to impose the costs of tree trimming on just one Attacher even if the tree trimming is beneficial to other attaching entities. This argument ignores the qualifier in the first sentence of the second paragraph of Section 1.6, which authorizes tree trimming if necessary "solely by reason of Licensee's attachments." To be sure, the circumstance in which tree trimming is beneficial to other Attachers is not even addressed in the language OCTA criticizes.

Finally, OCTA erroneously claims that 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. In fact, CenturyLink charges tree trimming performed by contractors to the aerial cable account, not the pole maintenance account. The tree trimming addressed in Section 1.6 is not recovered in the pole attachment rate.

OCTA's proposed redlines to Section 1.6 should be rejected. In addition, it is important to note that the redlines to Section 1.6 on page 11 of OCTA's objections do not reflect the correct language for Section 1.6 in the Tariffs.[6]

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

Section 2.2 of the Tariffs states that an Attacher "will not submit more than one Application every 14 days." The purpose of this language is to protect CenturyLink from being inundated with attachment applications. OCTA recognizes this as a legitimate concern but nonetheless objects ostensibly on the grounds that Section 2.2 does not comport with Rule 4901:1-3-03(B)(6)(e). However, Rule 4901:1-3-03(B)(6)(e) does not prohibit a pole owner from limiting the frequency of applications. Rule 4901:1-3-03(B)(6)(e) merely authorizes the pole owner to treat multiple applications submitted within a 30 day period as a single request. Under the Tariffs, that is still the case even with Section 2.2's 14 day spacing requirement.

OCTA also erroneously claims that Section 2.2 unreasonably delays the application process. In fact, Section 2.2 does not delay the application process at all. It merely provides an incentive for Attachers to group their attachment requests and to make fewer applications. The 14 day spacing requirement in the Tariffs is a reasonable provision. It should not be deleted.

[6] Compare changes on page 11 of OCTA's comments to the Tariff language quoted on page 10 of its comments.

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

Section 2.3 of the Tariffs authorizes CenturyLink to revoke a license "[f]or reasons of safety, reliability or general engineering principles, including insufficient Telephone Company Facility capacity and technical interference problems with Telephone Company Facilities or equipment of Joint Owners or Existing Attachers." OCTA claims that Section 2.3 does not follow Rule 4901:1-3-03(A)(1) completely and argues incorrectly that Section 2.3 should be modified to reflect the precise language of Rule 4901:1-3-03(A)(1).

The Commission should reject OCTA's modifications to Section 2.3 because Section 2.3 properly reflects the O.R.C. 4905.71(A) and Rule 4901:1-3-03(A)(1), when read together. Under O.R.C. 4905.71(A), CenturyLink is only required to permit an attachment to its poles "so long as the attachment does not interfere, obstruct, or delay the service and operation of the telephone…company, or create a hazard to safety." Rule 4901:1-3-03(A)(1) permits CenturyLink to deny access to its poles "where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes" but does not otherwise limit CenturyLink's rights to deny access under O.R.C. 4905.71(A). Accordingly, the clause in Section 2.3 that permits revocation of a license where there are "technical interference problems with the Telephone Company Facilities or the equipment of Joint Owners or Existing Attachers" is authorized by O.R.C. 4905.71(A).

OCTA also asserts incorrectly that CenturyLink's proposed Section 2.3 does not allow for 60 days advance notice for modifications or for the opportunity for the Attacher to seek a temporary stay under Rules 4901:1-3-03(A)(5) and (6). In fact, Section 2.3 is silent on advance notice and stay rights and does not in any way contradict or eliminate any notice requirements or stay rights set forth in Rules 4901:1-3-03(A)(5) and (6). Thus, the Commission's rules continue

to apply and OCTA's proposed addition at the end of Section 2.3 serves no purpose. The Commission should reject OCTA's proposed modifications to Section 2.3.

F. Associated License Agreement

CenturyLink's Tariffs contemplate that Attachers will enter into a license agreement with CenturyLink that addresses such mundane issues as to whom notices should be sent and the forms Attachers should use for such things as applications and other submissions. The License Agreement is intended to address terms and conditions that are unique to a particular Attacher or that may change over time in insignificant ways. Section 1.3 only requires a license agreement before attachments are made for the first time by a particular Attacher.

OCTA asserts that O.R.C. 4905.71 and Rule 4901:1-3-04(A) require all rates, terms and conditions pertaining to pole attachments be spelled out in the telephone company's tariff. However, there is nothing in either O.R.C. 4905.71 or Rule 4901:1-3-04(A) that prevents a pole owner from including as one of its tariff provisions a requirement that the Attacher have entered into a license agreement. That is all that the Tariffs require.

OCTA suggests in its objections that CenturyLink is attempting to conceal "unknown" terms and conditions from Attachers and to shield these "unknown" terms and conditions from Commission review. That is simply not the case. CenturyLink will provide a copy of its proposed license agreement to any requesting party, and if there is a dispute concerning the agreement, the dispute can obviously be brought before the Commission if it cannot be worked out by the parties privately.

G. Maintenance of Records

Section 5.5 of the Tariff requires the Attacher to maintain pole attachment records for a period of 10 years after termination of the Tariff and to provide the records to CenturyLink upon

request within 14 days. Neither of these time periods is unreasonable. Pole attachment records are permanent property records that should be maintained indefinitely. Thus, OCTA has no legitimate basis for objecting to the 10 year requirement. A 14 day turnaround for producing copies of pole attachment records is also reasonable. The Commission should reject OCTA's changes to Section 5.5 of the Tariffs.

H. Audits

Section 5.6 of the Tariffs contains the terms and conditions governing pole attachment audits. OCTA objects to Section 5.6 for two reasons. First, OCTA argues hypothetically that Section 5.6 does not apportion audit costs proportionally when there are an uneven number of attachments as between the parties. However, the hypothetical that OCTA poses rarely if ever occurs. CenturyLink generally undertakes audits targeting its poles within a particular exchange on which there is often just a single Attacher. As a result, it will almost always be the case that the audit cost will be split between CenturyLink and a single Attacher.

Second, OCTA objects to the portion of Section 5.6 that allocates the full cost of the audit to the Attacher where 5% or more of the attachments are either unauthorized or NESC violations. OCTA poses a hypothetical that an attachment might be noncompliant because a subsequent Attacher made it so. OCTA presents no details as to how this hypothetical could occur or any evidence that this hypothetical occurs with any frequency. In any event, Section 5.6 provides a 5% cushion that allows for this possibility. The Attacher does not bear the full cost of the audit unless the 5% threshold is reached.

The Commission should reject OCTA's proposed modifications to Section 5.6 of the Tariffs.

I. Attachment Bond

Section 6.6 of the Tariffs requires an attachment bond guaranteeing the Attacher's performance of its obligations under the Tariffs. This is a standard requirement in the industry. The bond amount required by the Tariffs is five times the cumulative amount of the annual license fees under the Tariff or $500 whichever is greater. OCTA proposes that this bond requirement be capped at $100,000. However, there is no principled basis for capping the bond amount. The larger the number of attachments an Attacher has placed, the greater the risk associated with the Attacher's non-performance.

OCTA's sole argument for capping the bond amount is that CenturyLink agreed to such a cap in the tariff it negotiated in Docket 11-602-TP-UNC. However, that was part of a bargained-for exchange between OCTA and United under which United would be compensated for the added risk of nonperformance by a pole attachment rate roughly double what is now contained in the Tariffs. The Commission should not cap the bond amount given that OCTA is unwilling to honor the higher pole attachment rate it agreed to in the Negotiated Tariff.

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

Section 1.3 of the Tariffs provides that a Licensee may submit an application for a service drop attachment after the fact, as long as it is submitted within three days after attaching a service drop to a Pole. The time period specified in Section 1.3 is three days to ensure that Attachers implement a timely procedure of submitting applications immediately after the service drop is attached. The longer the delay permitted for submitting applications, the more likely it is that the personnel attaching the service drop will forget where they made attachments or the number of poles on which attachments were made. A prompt three day turnaround requirement

ensures that operational practices are adopted that capture all service drop attachments that are made.

United was willing to accept a slower process (i.e. 30 days) in exchange for a higher pole attachment rate to compensate for the increased risk of unreported service drop attachments that results from a slower process. However, OCTA and its members have determined not to honor the $3.32 per attachment rate negotiated in Docket 11-602-TP-UNC. Accordingly, CenturyLink believes that a 3 day turnaround is now appropriate to ensure that CenturyLink does not suffer the financial loss it would otherwise experience with a slower process.

III. Conclusion

The Tariffs filed by CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink contain just and reasonable terms and conditions and should be approved. The revisions OCTA has proposed were not previously agreed to by CenturyLink and should not be adopted. For the foregoing reasons and except where noted, the Commission should reject OCTA's objections and approve the Tariffs as filed.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by e-mail upon the following counsel of record on this 24th day of August, 2015.

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Summary: Response United Telephone Company of Ohio d/b/a CenturyLink and CenturyTel of Ohio, Inc. d/b/a CenturyLink's Response to Objections of the Ohio Cable Telecommunications Association electronically filed by Ms. Christen M. Blend on behalf of CenturyTel of Ohio Inc. dba CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink