

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
UNITED TELEPHONE COMPANY OF OHIO,
INC., DBA CENTURYLINK, TO INTRODUCE
A POLE ATTACHMENT CONDUIT
OCCUPANCY TARIFF.

CASE NO. 15-889-TP-ATA

IN THE MATTER OF THE APPLICATION OF
CENTURYTEL OF OHIO, INC., DBA
CENTURYLINK, TO INTRODUCE A POLE
ATTACHMENT CONDUIT OCCUPANCY
TARIFF.

CASE NO. 15-890-TP-ATA

FINDING AND ORDER

Entered in the Journal on June 1, 2016

I. SUMMARY

{¶ 1} The Commission finds that United Telephone Company of Ohio, Inc. dba CenturyLink (United) and CenturyTel of Ohio, Inc. dba CenturyLink (CenturyTel) (collectively, CenturyLink) should file final tariffs consistent with the determinations set forth in this Finding and Order. Additionally, the Ohio Cable Telecommunications Association's (OCTA) motion for leave to file a reply is denied. Further, CenturyLink's motion for admissions pro hac vice is granted. Finally, United is directed to file for withdrawal of its proposed tariff in Case No. 11-602-TP-UNC (11-602), *In re the Application of United Telephone Company of Ohio dba CenturyLink to Introduce a Pole Attachment and Conduit Occupancy Tariff*.

II. APPLICABLE LAW

{¶ 2} R.C. 4905.51 and 4905.71 authorize the Commission to determine the reasonable terms, conditions, and charges that a public utility may impose upon any person or entity seeking to attach any wire, cable, facility, or apparatus to a public utilities' poles, pedestals, conduit space, or right-of-way.

III. PROCEDURAL BACKGROUND

{¶ 3} On July 30, 2014, as revised on October 15, 2014, the Commission in Case No. 13-579-TP-ORD (*Pole Attachment Rules Case*), *In re the Adoption of Chapter 4901:1-3, Ohio Administrative Code, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way by Public Utilities*, adopted new administrative rules regarding access to poles, ducts, conduits, and rights-of-way of the public utilities. The new rules became effective in January 8, 2015. On February 25, 2015, as revised on April 22, 2015, the Commission, in *Pole Attachment Rules Case* ordered all public utility pole owners in Ohio to file the appropriate company-specific tariff amendment application, including the applicable calculations based on 2014 data. The automatic approval date for the pole attachment amendments was extended until September 1, 2015. 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.

{¶ 4} On May 14, 2015, United filed its tariff amendment application in the above captioned Case No. 15-889-TP-ATA (15-889). United does not currently have a Commission-approved pole attachment tariff. It previously filed a tariff that was negotiated with OCTA and is currently pending before the Commission in 11-602. On May 14, 2015, CenturyTel filed its tariff amendment application in the above captioned Case No. 15-890-TP-ATA (15-890). 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.

{¶ 5} On June 26, 2015, OCTA filed a motion to intervene in these proceedings.

{¶ 6} On August 3, 2015, OCTA filed objections relative to the tariff amendment applications.

{¶ 7} Pursuant to the attorney examiner Entry of August 7, 2015, the tariff amendment applications were suspended and removed from the automatic approval process. Additionally, the motion to intervene filed by OCTA was granted.

{¶ 8} On August 24, 2015, CenturyLink filed a response to OCTA's objections.

{¶ 9} On September 10, 2015, OCTA filed a motion for leave to file a reply and a request for an expedited ruling. OCTA explains that its motion is appropriate in order ensure that the Commission has further information upon which to consider certain disputed issues in this proceeding. OCTA also offers a proposal for the next procedural steps in this case. Specifically, OCTA proposes that an informal conference be scheduled so that CenturyLink, OCTA, and the Commission Staff (Staff) can discuss outstanding issues with the intent of avoiding a hearing.

{¶ 10} On August 7, 2015, a motion for permission to practice pro hac vice was filed by Thomas M. Dethlefs pursuant to Gov.Bar R. XII(6). Specifically, Mr. Dethlefs seeks permission to appear and participate as counsel on behalf on CenturyLink in these proceedings.

IV. DISCUSSION

A. *OCTA's Motion for Leave to file a Reply*

{¶ 11} In regard to OCTA's September 10, 2015, motion for leave to file a reply, the Commission finds that the request is denied. The Commission notes that the procedural schedule set forth in the Entries of February 25, 2015, and April 22, 2015, did not contemplate the filing of replies to the responses to objections. Additionally, the Commission finds that OCTA's reply fails to raise additional arguments of significance for the Commission's consideration. Further, the Commission does not believe that an informal conference will be productive at this time.

B. Motion to practice pro hac vice

{¶ 12} In regard to the motion for permission to practice pro hac vice, the Commission finds that the motion is reasonable and should be granted for the limited purpose of this proceeding.

C. Overlashing

{¶ 13} In its first objection, OCTA claims that the common practice of overlashing is not addressed in the definitions section or elsewhere in CenturyLink's tariff proposals. OCTA interprets CenturyLink's definition of "Attachment" as not prohibiting overlashing an existing pole attachment and not requiring overlashing to go through the full attachment application process. (Objections at 4.)

{¶ 14} Specifically, OCTA proposes that the proposed definition of "Attachment" and "Modification" be amended to reflect that the terms do not include overlashing to an existing attachment and that overlashing of an existing permitted attachment or riser cable can occur without a Company-approved application upon at least 15 days advanced written notice to the Company. OCTA argues that clarification in CenturyLink's tariff proposals is extremely important to avoid any future issues and disputes regarding the handling of overlashing work. OCTA asserts that the Federal Communications Commission (FCC) in *In re Implementation of Section 703(E) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments, (Section 703 Order)* Report and Order, 13 FCC Rcd 6777, 6807(rel. Feb. 6, 1998) et. al, has found that overlashing does not require an attachment application and that the issue of prior notice for overlashing should be negotiated by the parties. OCTA also contends that CenturyLink has already agreed with the proposed clarifying language in 11-602. (Objections at 2-5.)

{¶ 15} According to CenturyLink, overlashing occurs when a service provider ties wire to other wire already secured to a pole. CenturyLink argues that 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. CenturyLink contends that while the tariffs do not prohibit overlashing, they do require that requests for overlashing go through the normal application process in order to determine whether any make-ready work is necessary. CenturyLink asserts that none of the FCC decisions cited by OCTA support the claim that overlashing does not require an attachment application or that prior notice is up to the parties to negotiate. (Response at 3-4.)

{¶ 16} In addition, CenturyLink believes that 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. (Response at 4.)

{¶ 17} CenturyLink opines that the pole attachment rules do not create any exceptions for overlashing. Rather, CenturyLink states that it should have the right to deny overlashing consistent with the criteria set forth in Ohio Adm.Code 4901:1-3-03(A)(1). (Response at 5.)

{¶ 18} The Commission finds that overlashing is outside the scope of the rules set forth in the *Pole Attachment Rules Case* and need not be addressed in the pole attachment tariff incorporating charges for attachments to poles or conduit occupancy. The definition of attachor's communications facilities in conjunction with the definition of pole attachment should only define those facilities/pole attachments that have associated charges set forth in CenturyLink's tariff. A wire overlashed to an existing facility/pole attachment is not an attachment subject to the attachment fee and, therefore, is not included in the definition of attachee's communications facilities. The purpose and scope of Ohio Adm.Code Chapter 4901:1-3, as codified in Ohio Adm.Code 4901:1-3-02(B), is to "establish rules for the provision of attachments to a pole, duct, conduit, or right-of-way owned or controlled by a utility under rates, terms, and conditions that are just and

reasonable.” This rule amplifies R.C. 4905.71, which states that every telephone, electric company and incumbent local exchange company “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 *** by any person or entity other than a public utility ***.”

{¶ 19} Further, the Commission recognizes that overloading can affect the loading of a pole and that a 15-day notice requirement to allow for overloading may not provide adequate time to evaluate whether a pole can accommodate the additional load.

{¶ 20} As such, CenturyLink does not have to amend its tariff to address overloading. Therefore, any terms and conditions associated with overloading not addressed in its tariff should be established through negotiated agreements subject to the review of the Commission pursuant to Ohio Adm.Code 4901:1-3-06.

D. Make Ready Survey, Make Ready Work, and Company-Required Modification

{¶ 21} OCTA argues that CenturyLink’s definitions of “Make Ready Survey” and “Make Ready Work” and the “Company-Required Modifications,” incorporated in proposed Sections 1.1, 2.2, 2.4, and 4.3, attempt to dictate the attachment process for these processes. OCTA highlights that pursuant to CenturyLink’s proposed language, the “Make Ready Survey” and “Make Ready Work” shall be the necessary work as solely determined by CenturyLink. OCTA asserts that CenturyLink’s proposed tariffs provide no opportunity or process for an attaching entity to question or discuss such determinations. Specifically, OCTA contends that CenturyLink’s proposed language provides that CenturyLink may deny the attachment application if the attachor does not agree with CenturyLink’s cost estimate following a “Make Ready Survey” or “Make Ready Work.” Specifically, OCTA believes that the proposed tariff language effectively establishes a “take it or leave it” situation. (Objections at 5-6.)

{¶ 22} OCTA claims that CenturyLink's proposed tariff language in Section 2.4, that addresses unauthorized attachment charges, does not take into account the dispute process established by Ohio Adm.Code 4901:1-3-03(A)(6). OCTA believes that given the importance of the attachor's ability to dispute an unauthorized attachment claim; additional language should be added to the first subparagraph in Section 2.4, consistent with Ohio Adm.Code 4901:1-3-03(A)(6). (Objections at 6.)

{¶ 23} With respect to Section 4.3, OCTA asserts that, pursuant to the proposed language, CenturyLink can require an attachor to make modifications at any time and for any reason and that the attachor must complete that modification within 60 days of being notified of the modification and pay for it. OCTA claims that if this language is approved by the Commission, it could sanction unfettered abuse. (Objections at 6.)

{¶ 24} CenturyLink asserts that the Commission should not modify the tariffs as OCTA proposes as none of the changes are necessary or warranted. Although CenturyLink contends that there are no conflicts between the Commission's most recent adopted pole attachment rules and the proposed tariffs, to the extent that such conflicts do exist, the rules would control. (Response at 7.)

{¶ 25} CenturyLink argues that as the pole owner, it has the right to determine in the first instance what make-ready work is necessary. In addition, CenturyLink states there is nothing in Section 1.1 or 2.2 that prevents an attachor from disputing whether specific make-ready work is necessary. CenturyLink does not object to OCTA revisions to the sentence in Section 2.2 that 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." (Response at 5-6.)

{¶ 26} CenturyLink believes that OCTA's objections regarding Sections 2.4 and 4.3 are completely misplaced because an attachor's right to seek dispute resolution before the

Commission concerning unauthorized attachment charges or to challenge a modification request has not been eliminated (Objections at 5-6). Additionally, CenturyLink opines that the Commission should not approve OCTA's proposed language that the "Licensee will be reimbursed for its costs incurred in conducting the Licensor required modification." In support of its position, CenturyLink considers such a requirement to be unjust due to the fact that there are certain circumstances that are outside of CenturyLink's control. For example, CenturyLink notes that it should not have to reimburse an attachor for costs incurred in order to move an entity when the pole has to be replaced or for costs incurred 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. (Response at 7.)

{¶ 27} Consistent with Ohio Adm.Code 4901:1-3-03(A)(6), the Commission agrees with CenturyLink that the definitions of "Make- Ready Survey," "Make-Ready Work," and "Company Required Modifications," do not prevent an attachor from disputing whether the specific make ready work is necessary. In addition, the Commission agrees with both parties to amend Section 2.2 of CenturyLink's tariff to add the agreed upon language. The Commission finds no other amendments are necessary.

E. Costs of Tree Trimming and Clearing Work

{¶ 28} OCTA asserts that CenturyLink's proposed tariff language in Section 1.6 permits CenturyLink to unilaterally decide the costs to be paid by the attachor related to tree trimming and clearing work. OCTA believes that there is no opportunity or process in the proposed tariff to question or discuss such determinations or if CenturyLink's costs for removal are reasonable. OCTA claims that these terms are one-sided, unfair, and not just or reasonable, as required by Ohio Adm.Code 4901:1-3-03(A)(1).

{¶ 29} Additionally, OCTA contends that the expense for trimming and clearing work is already a component of the expenses in the pole attachment rate. Inasmuch as attachors already pay for the expense of trimming and clearing on an annual basis, OCTA

believes that it would be improper to allow CenturyLink to impose an additional charge for the same work. (Objections at 10-11.)

{¶ 30} CenturyLink states that in utilizing its discretion regarding tree trimming expenses, it is bound by a reasonableness limitation. As the pole owner, CenturyLink believes that it makes sense for it to be the entity that determines if tree trimming is required. Further, CenturyLink does not believe that Section 1.6 is one-sided. Specifically, CenturyLink notes that the tariff does not prevent an attachor from questioning or discussing determinations as to whether to conduct tree trimming or whether the associated costs were reasonable. Finally, OCTA clarifies that the expenses for trimming are charged to the aerial cable account, and not the pole maintenance account. Therefore CenturyLink states that the tree trimming addressed in Section 1.6 is not recovered in the pole attachment rate. (CenturyLink Response to Objections at 8-9.)

{¶ 31} While the Commission agrees with the framework set forth in Section 1.6 regarding an attachor paying its pro rata share of the cost of trimming and clearing, the Commission believes that the proposed tariff language should be clarified to state that the pro rata share should be calculated consistent with the percentage of usable space occupied by the attachor on a pole. Additionally, the Commission agrees with CenturyLink that nothing in Section 1.6 prevents an attachor from questioning or discussing determinations made by CenturyLink as to whether to conduct tree trimming or whether the costs for removal were reasonable. Further, the Commission notes that an attachor can always pursue a formal complaint if necessary.

F. Number of Applications

{¶ 32} OCTA contends that CenturyLink's limitation on the number of applications/modifications (i.e., one per every 14 days) does not comport with Ohio Adm.Code 4901:1-3-03(B)(6)(e) wherein the Commission determined that multiple requests from a single attachor can be treated as one request when they are filed within 30

days of each other. OCTA argues that there is nothing in the rules that limits the submission of an application/modification simply because the attachor submitted one within the prior 14 days. OCTA believes that CenturyLink's proposed limitation will unreasonably delay the attachment process and the application process. (Objections at 11-12.)

{¶ 33} CenturyLink claims that the purpose for the language in Section 2.2 is to protect it from being inundated with attachment applications. Contrary to OCTA's position, CenturyLink argues that Ohio Adm.Code 4901:1-3-03(B)(6)(e) does not prohibit a pole owner from limiting the frequency of applications and merely authorizes the pole owner to treat multiple applications submitted within a 30-day period as a single request. CenturyLink believes that the proposed 14-day spacing requirement can co-exist with the requirements set forth in Ohio Adm.Code 4901:1-3-03(B)(6)(e). According to CenturyLink Section 2.2 does not delay the application process, but merely provides an incentive for attachers to group their attachment requests and to make fewer applications. (Response at 9.)

{¶ 34} The Commission understands that the language in Section 2.2 is intended to protect CenturyLink from being inundated with attachment applications. However, the Commission agrees with OCTA that CenturyLink's limitation on the number of applications (one per every 14 days) does not comport with Ohio Adm.Code 4901:1-3-03(B)(6)(e) wherein the Commission determined that multiple requests from a single attachor can be treated as one request when they are filed within 30 days of each other. Therefore, the Commission directs CenturyLink to amend its tariff in Section 2.2 to comply with the Commission rules.

G. Notice of Modification

{¶ 35} OCTA claims that CenturyLink's Section 2.3 gives CenturyLink the sole discretion to unilaterally revoke a license. Moreover, OCTA argues that in conjunction

with the proposed tariff indemnification language, CenturyLink could claim that it is insulated from claims related to a license revocation as well. OCTA asserts that CenturyLink's proposed Section 2.3 does not comport with the grounds for denial set forth in Ohio Adm.Code 4901:1-3-03(A)(1). OCTA also contends that CenturyLink's proposed language does not allow for 60 days advance notice, which is required for modifications, and does not allow for the opportunity for the attachor to seek a temporary stay, as permitted under Ohio Adm.Code 4901:1-3-03(A)(5) and (6). (Objections at 12-13.)

{¶ 36} CenturyLink argues that the Commission should reject OCTA's modifications to Section 2.3 because Section 2.3 properly reflects R.C. 4905.71(A) and Ohio Adm.Code 4901:1-3-03(A)(1), when read together. Therefore, CenturyLink claims that it is consistent with R.C. 4905.71(A) to permit the revocation of a license where there are "technical interference problems with the Telephone Company Facilities or the equipment of Joint Owners or Existing Attachers." In addition, CenturyLink asserts that 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 Ohio Adm.Code 4901:1-3-03(A)(5) and (6). (Response at 10-11.)

{¶ 37} The Commission agrees with CenturyLink that Section 2.3 properly reflects Ohio Adm.Code 4901:1-3-03(A)(1), which permits CenturyLink to deny access to its poles, "where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purpose." The Commission also finds that Section 2.3 is not inconsistent with R.C. 4905.71(A), which provides for attachments under reasonable terms, conditions, and charges "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." However, consistent with the arguments raised by OCTA, the Commission finds that Section 2.3 should be amended to incorporate the notice requirements and stay rights set forth in Ohio Adm.Code 4901:1-3-03(A)(5) and (6).

H. Reference to License Agreement

{¶ 38} OCTA argues that while CenturyLink's tariff language repeatedly refers to a required, associated License Agreement, the terms and conditions of the agreement are not spelled out in CenturyLink's proposed tariff. Therefore, OCTA avers that 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. As such, OCTA believes that CenturyLink's tariff proposals are incomplete and in violation of R.C. 4905.71 and Ohio Adm.Code 4901:1-3-04(A). Therefore, OCTA proposes that the Commission require CenturyLink to either (a) remove all references to the License Agreement and submit a new tariff proposal that adds in the other rates, terms, and conditions; or (b) add the License Agreement to the tariff as a stand-alone attachment. (Objections at 13-14.)

{¶ 39} CenturyLink contends that the License Agreement is intended to address terms and conditions that are unique to a particular attachor or that may change over time in an insignificant manner. CenturyLink states that it 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 be brought before the Commission if it cannot be worked out by the parties. (Response at 11.)

{¶ 40} The Commission notes that, consistent with its pole attachment rules, non-utility attachers, such as OCTA can pursue attachments either pursuant to tariff or pursuant to negotiated agreement. The Commission determines that although CenturyLink does not have to include the actual License Agreement as part of its tariff, it should provide a copy to an entity upon request. Further, the rates, terms and conditions incorporated in the License Agreement should be extended to all similarly situated customers purchasing service pursuant to CenturyLink's tariffs. In reaching this decision the Commission recognizes, as noted above, that CenturyLink has committed to provide a copy of the License Agreement referenced in its tariff to any requesting entity and

acknowledges that if there is a dispute concerning the agreement, the dispute can be brought before the Commission if it cannot be worked out by the parties.

I. Production of Records

{¶ 41} OCTA objects to CenturyLink's proposed language in Section 5.5 that requires a licensee to provide records at its expense within 14 days of a request from CenturyLink and that the obligation of the licensee be in place for 10 years after the expiration or termination of the tariff. OCTA believes that the time period to respond to a request should be 30 days instead of 14 days and the obligation should remain in place for 5 years instead of 10 years. (Objections at 14.)

{¶ 42} CenturyLink states that Section 5.5 of its tariff requires the attachor to maintain pole attachment records for a period of 10 years after termination of the tariff and provide the records to CenturyLink upon request within 14 days. CenturyLink believes neither of these periods is unreasonable. CenturyLink argues that pole attachment records are permanent property records that should be maintained indefinitely. (Response at 11-12.)

{¶ 43} The Commission agrees with CenturyLink that the pole attachment records are permanent property records that should be maintained indefinitely. Furthermore, the Commission finds that OCTA has no legitimate basis for objecting to Section 5.5 other than CenturyLink agreed to the time periods within its application in 11-602 which has not been approved and is outside the scope of this proceeding. Therefore, the Commission finds no amendments are necessary.

J. Sharing of Audit Costs

{¶ 44} Rather than CenturyTel's equal sharing based on the number of attaching entities on a pole, OCTA believes that the total audit cost should be shared proportionately among CenturyLink, the Licensee, and, if applicable, any other existing attachors based on

an entity's number of attachments. In addition, OCTA argues that CenturyLink seeks to impose the entire cost of an audit upon an attachor if an audit establishes that five percent or more of the attachments of a licensee are either (i) unlicensed, or (ii) constitute any National Electrical Safety Code violations. OCTA believes that this proposal is unreasonable and unjust because it does not take into account the fact that the actions of subsequent attaching entities may have caused the first attaching entity to be out of compliance with respect to its attachment. (Objections at 15-16.)

{¶ 45} CenturyLink claims that it generally undertakes audits targeting its poles within a particular exchange in which there is often just a single attachor. As a result, CenturyLink argues that it will almost always be the case that the audit cost will be split between CenturyLink and a single attachor. In addition, CenturyLink contends that OCTA presents no details as to how an attachment might be noncompliant due to the actions of a subsequent attachor. CenturyLink states that, to the extent that this concern is applicable, the five percent cushion addresses this possibility. Specifically, CenturyLink points out that the attachor does not bear the full cost of the audit unless the five percent threshold is reached. (Response at 12.)

{¶ 46} The Commission agrees with CenturyLink that OCTA presents no details as to how an attachment might be noncompliant due to a subsequent attachor. Furthermore, in the *Section 703 Order*, Report and Order, 13 FCC Rcd 6777 at paragraph 58, the FCC rejected MCI's proposal to allocate costs "based on the number of attachments, rather than on the number of attaching parties." As such, the Commission finds that the term "proportionately" applies to the number of attaching parties and not the number of attachments. Therefore, the Commission finds that no amendments are necessary.

K. Bond Cap

{¶ 47} OCTA argues that in 11-602, CenturyLink had agreed to a \$100,000 cap on the possible amount of the bond required. OCTA believes that this cap is reasonable and should be inserted in Section 6.6 of CenturyLink proposed tariff. (Objections at 17.)

{¶ 48} CenturyLink suggests that 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. CenturyLink believes that there is no principled basis for capping the bond amount. According to CenturyLink the larger the number of attachments placed by an attachor, the greater the risk associated with the attachor's nonperformance.

{¶ 49} While CenturyLink acknowledges that it agreed to a cap in the tariff negotiated in 11-602, it claims that the cap was part of a bargained for exchange between the company and OCTA 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 (Response at 13).

{¶ 50} The Commission agrees with CenturyLink that OCTA's sole primary argument in support of a cap is the fact that CenturyLink agreed to it in 11-602. The Commission notes that the proposal in 11-602 was not approved and is outside the scope of this proceeding. Therefore, the Commission finds that the proposed amendment to Section 6.6 should be denied.

L. Service Drop Notice

{¶ 51} OCTA claims that it is operationally impossible to comply with the required three-day period set forth in Section 1.3 to provide post-attachment notice of service drops by CenturyLink. Rather, OCTA believes that the time frame agreed to by CenturyLink in 11-602 is workable and should be included in the proposed tariff. (Objections at 17.)

{¶ 52} CenturyLink argues that the time period for three days specified in Section 1.3 is to ensure that attachers implement a timely procedure of submitting applications immediately after the service drop is attached. CenturyLink states 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. (Response at 13-14.)

{¶ 53} According to CenturyLink, in 11-602, it was willing to accept a slower process 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, CenturyLink points out that in this case, OCTA is not accepting the \$3.32 per attachment rate negotiated in 11-602. Therefore, CenturyLink believes that a three-day turnaround is now appropriate in order to ensure that CenturyLink does not suffer the financial loss it would otherwise experience with a slower process. (Response at 13-14.)

{¶ 54} The Commission finds that OCTA's arguments in regards to CenturyLink's agreed-upon time frames in 11-602 is outside the scope of this proceeding. First, the Commission points out that the tariff provisions proposed in 11-602 have not been approved by the Commission. Additionally, the Commission agrees with CenturyLink that the proposed time frames contained in the proposed tariff in 11-602 must not be considered on a stand-alone basis but, rather, as a term that was negotiated as part of an entire agreement. Further, the Commission notes that although OCTA contends that the proposed three-day notice period is unworkable, it fails to provide an explanation as to why this is the case. Therefore, the Commission finds that the no amendments are necessary specific to Section 1.3.

{¶ 55} Consistent with the determinations set forth in this Finding and Order, United and CenturyTel are each directed to file a final pole attachment tariff on or before June 20, 2016.

{¶ 56} Finally, due to the fact that the Commission is now addressing the requisite tariff provisions applicable to the relationship between OCTA and CenturyLink, the Commission finds that United should now file for the withdrawal of its proposed tariff in 11-602.

V. ORDER

{¶ 57} It is, therefore,

{¶ 58} ORDERED, That on or before June 20, 2016, United and CenturyTel each file its final pole attachment tariff consistent with the determinations set forth in this Finding and Order. It is, further,

{¶ 59} ORDERED, That all other arguments not addressed in this Finding and Order be denied. It is, further,

{¶ 60} ORDERED, That OCTA's motion for leave to file a reply be denied as set forth above. It is, further,

{¶ 61} ORDERED, That the motion for admission pro hac vice be granted as set forth above. It is, further,

{¶ 62} ORDERED, That United file for the withdrawal of its proposed tariff in 11-602 in accordance with the findings as set forth above. It is, further,

{¶ 63} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

Commissioners Voting: Asim Z. Haque, Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.

JSA/dah/vrm