

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
AT&T OHIO TO UPDATE ITS POLE CASE NO. 15-920-TP-ATA  
ATTACHMENT TARIFF.

ENTRY ON REHEARING

Entered in the Journal on July 13, 2016

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission denies the application for rehearing filed by the Ohio Cable Telecommunications Association, regarding AT&T Ohio's amendment of its tariff specific to access to poles, ducts, conduits, and right-of-way.

II. DISCUSSION

A. *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.

{¶ 3} AT&T Ohio is a telephone company under R.C. 4905.03 and a public utility under R.C. 4905.02 and is, therefore, subject to the Commission's jurisdiction.

{¶ 4} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

B. *Procedural History*

{¶ 5} 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 January 8, 2015. On February 25, 2015, as revised on April 22, 2015, the Commission, in the *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.

{¶ 6} On May 15, 2015, as amended on May 21, 2015, AT&T Ohio filed its tariff amendment application in this docket.

{¶ 7} On June 5, 2015, the Ohio Cable Telecommunications Association (OCTA) filed a motion to intervene in this proceeding.

{¶ 8} On August 3, 2015, OCTA filed its objections in this proceeding.

{¶ 9} Pursuant to the attorney examiner Entry of August 7, 2015, AT&T Ohio's tariff amendment application was suspended and removed from the automatic approval process. Additionally, the motion to intervene filed by OCTA was granted.

{¶ 10} On August 24, 2015, AT&T Ohio filed a response to OCTA's objections.

{¶ 11} On May 18, 2016, the Commission issued its Finding and Order establishing the rates, terms, and conditions to be incorporated into AT&T Ohio's pole attachment tariff.

{¶ 12} On June 17, 2016, OCTA filed an application for rehearing regarding the Commission's Finding and Order of May 18, 2016.

{¶ 13} On June 27, 2016, AT&T Ohio filed its memorandum contra the application for rehearing.

C. *Assignments of Error Raised by OCTA*

{¶ 14} As its first assignment of error, OCTA asserts that the Commission erred in concluding that AT&T Ohio's proposed separate nonrecurring \$200 per pole attachment request administrative fee is just and reasonable. In support of its position, OCTA contends that AT&T Ohio has presented claims, but no cost data on the record, to support its proposed fee. Rather, according to OCTA, the only evidence relied upon by AT&T Ohio to justify its administrative fee is a reference to an old cost study that was not even presented as evidence in this case. OCTA argues that this old cost study has no bearing at all regarding what AT&T Ohio's costs are today or how costs are allocated relative to AT&T Ohio's pole attachment rental formula. Further, OCTA, citing *In re Texas Cable and Telecomm. Assoc. et al. v. Energy Servs., Inc., et al.*, 14 FCC Rcd. 9138 (rel. June 9, 1999) and *In re Texas Cable and Telecomm. Assoc. v. GTE Southwest Inc.*, 14 FCC Rcd 2975 (rel. Feb. 18, 1999) submits that in all cases where the Federal Communications Commission (FCC) has addressed this issue, the FCC has never affirmed a separate administrative charge.

{¶ 15} In its second assignment of error, OCTA submits that there is no evidence in the record as to which costs AT&T Ohio has included in the administrative fee, and whether and how it deducts those costs from the accounts it uses to calculate its pole attachment fee in order to avoid double recovery. OCTA submits that the Commission should have requested more information from AT&T Ohio to determine if any costs recovered through the separate administrative fee were not otherwise recovered directly through the annual pole attachment fee. Alternatively, OCTA states that the Commission should have also considered whether the costs included in the administrative fee have been improperly excluded from the administrative costs that are included in the carrying charge of the annual fee. Finally, OCTA contends that the Commission's pole attachment rules do not allow for separate administrative fees.

Rather, OCTA states that the Commission implemented a single fee approach based on a formula adopted by the FCC and that the formula includes administrative and general expenses in the carrying charge element of the annual rate, which is intended to reflect all of the costs incurred by the utility owning and maintaining the pole attachment infrastructure.

{¶ 16} In its June 27, 2016 memorandum contra, AT&T Ohio asserts that it has previously explained in this docket that the costs recovered by the nonrecurring \$200 administrative fee were not included in its rate development of the \$2.48/year fee for pole attachments. Specific to the administrative fee, AT&T Ohio explains that the costs in the \$200 administrative fee are booked to Account 6535- "OSP Planning and OSP Design." In regard to the annual \$2.48 recurring annual pole attachment fee, AT&T Ohio states that the associated administrative cost factor, is based on costs identified in accounts 67XX. According to AT&T Ohio, these are separate accounts that track completely different costs and OCTA has failed to demonstrate otherwise. Therefore, AT&T Ohio insists that there is no improper double recovery of pole attachment costs.

{¶ 17} As further support for its position, AT&T Ohio notes that the \$200 administrative fee was approved by in the Commission in its May 8, 2003 Finding and Order in Case No. 97-1658-TP-ATA (97-1658), *In re SBC Ohio to Propose Changes to its Pole Attachment and Occupancy Accommodation Tariff, as well as to Introduce the Structure Access Guidelines as an Addendum to the Tariff*. AT&T Ohio submits that the administrative fee has been just and reasonable for over a decade and OCTA's allegations are insufficient to justify a challenge to the rate at this time.

{¶ 18} Finally, AT&T Ohio submits that, while the FCC has determined that pole owners cannot charge a separate fee for administrative costs if the costs are already included in the rate development for the recurring pole attachment rate, there is no rule against having an application fee for pole attachments. In support of its position, AT&T

Ohio notes that a \$200 nonrecurring administrative fee is also charged by AT&T incumbent local exchange companies in Indiana, Illinois, Michigan, and Wisconsin.

{¶ 19} The Commission finds that OCTA's application for rehearing should be denied inasmuch as OCTA fails to raise any new arguments for the Commission's consideration that were not fully considered and addressed in the Commission's May 18, 2016 Finding and Order in this matter.


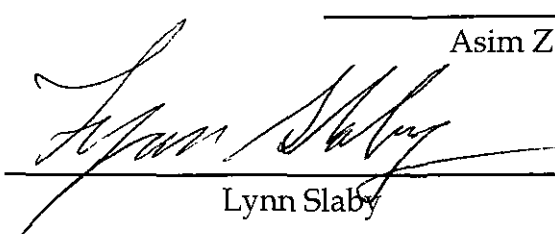
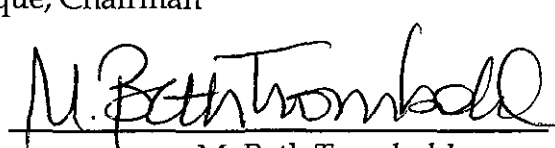
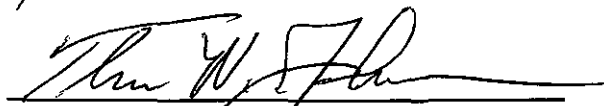

{¶ 20} The Commission finds that there is no specific provision set forth in Ohio Adm.Code Chapter 4901:1-3 prohibiting the application of an administrative fee in conjunction with the annual recurring pole attachment fee. In the May 18, 2016 Finding and Order in this docket, the Commission determined that there is no improper cost recovery of an administrative fee due to the fact that the costs comprising the administrative fee were not included in AT&T Ohio's pole attachment rate. As noted by AT&T Ohio in its memorandum contra, the costs associated with the administrative fee are booked to Account 6535- "OSP Planning and OSP Design," while the costs associated with the administrative cost factor incorporated as part of the annual pole attachment rate are based on costs identified in accounts 67XX. In light of this accounting of costs, there is no improper double recovery of pole attachment costs. In reaching this determination, the Commission notes that the administrative fee was previously approved in 97-1658 and there has been no demonstration that such charge is no longer reasonable. To the extent, OCTA believes that such fee is no longer reasonable, it should file the appropriate complaint case setting forth such allegation.

**III. ORDER**

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the application for rehearing filed by OCTA be denied as set forth above. It is, further,

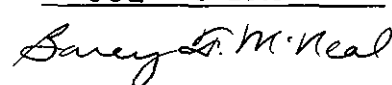
{¶ 23} ORDERED, That a copy of this Entry on Rehearing be served upon OCTA, AT&T Ohio, and all other interested persons of record.

**THE PUBLIC UTILITIES COMMISSION OF OHIO**  
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Asim Z. Haque, Chairman  
\_\_\_\_\_  
Lynn Slaby  
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M. Beth Trombold  
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Thomas W. Johnson  
\_\_\_\_\_  
M. Howard Petricoff

JSA/dah

Entered in the Journal

**JUL 13 2016**

  
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Barcy F. McNeal  
Secretary