

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of AT&T)
Ohio to Update Its Pole Attachment and) **Case No. 16-2117-TP-ATA**
Conduit Rates.)

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION’S
MEMORANDUM CONTRA
THE MOTION FOR A PROTECTIVE ORDER OF AT&T OHIO**

AT&T Ohio (“AT&T”) filed this application to update its pole attachment and conduit occupancy rates less than three weeks after the Public Utilities Commission of Ohio (“Commission”) approved new pole attachment and conduit occupancy rates in Case No. 15-920-TP-ATA.¹ AT&T did not include **any** information with its application as to how it calculated its newly proposed rates. Ten days later and apparently because the Commission Staff asked,² AT&T filed its calculation spreadsheets under seal, along with a motion for a protective order of its calculations. An unredacted copy of the spreadsheets was not filed with the Commission.

The Ohio Cable Telecommunications Association (“OCTA”), representing the interests of Ohio’s cable television and telecommunications industry, files this memorandum contra the request for a protective order, in accordance with Rule 4901-1-12(B)(1), Ohio Administrative Code. The OCTA’s members have existing and potential business interests in AT&T’s service territory, and will be directly and substantially affected by the outcome of this proceeding. Access to the poles and conduits is essential for the OCTA’s members to provide a variety of communications services, including video, voice, and Internet access services, in AT&T’s

¹ The Commission adopted new pole and conduit occupancy rules 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. After they became effective, 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&T did so in Case No. 15-920-TP-ATA. That case remained pending until very recently – the Commission approved the final revised tariffs on October 12, 2016.

² See, AT&T’s November 10, 2016 correspondence supplementing the record.

service territory. The OCTA and its members, therefore, have a significant stake in ensuring that AT&T's application in this matter fully complies with the Commission's newly adopted administrative rules in Chapter 4901:1-3, Ohio Administrative Code, and is just and reasonable. (Through a separate filing made this same date, the OCTA is also seeking to intervene in this proceeding.)

AT&T currently seeks confidential treatment for the rate calculations underlying the new proposed rates in the Company's November 1, 2016 application. AT&T claims that its rate calculation information should be protective because similar information of related AT&T entities is treated as confidential business information and is kept confidential.³

OCTA opposes AT&T's motion for protective treatment of this information for several reasons. First, AT&T sought the same confidential treatment in its last pole attachment and conduit occupancy rate case (Case No. 15-920-TP-ATA). The Commission denied protective treatment in the last case earlier this year, stating:⁴

In reaching this determination the Commission first notes that nowhere in its motion and the corresponding memorandum in support does AT&T Ohio identify the specific information for which it seeks protection. Rather, it simply refers to "rate calculations underlying the proposed rates in the Company's tariff application filed on May 15, 2015." Notwithstanding AT&T Ohio's contention that the rate calculations are treated by the AT&T Entities as confidential relative to similar filings made at the FCC and in other states, the Commission determines that all of the requisite inputs are either obtainable from AT&T Ohio's publicly available annual report information, can be derived from such information, or are publicly available in other Commission dockets. Therefore, the Commission finds that the criteria set forth in R.C. 1333.61(D) has not been satisfied.

³ AT&T's Motion for Protective Order at 2, 5.

⁴ *In the Matter of AT&T Ohio to Update its Pole Attachment Provisions*, Case No. 15-920-TP-ATA, Finding and Order at ¶ 39 (May 18, 2016).

AT&T did not appeal that ruling and the information was thereafter publicly released by the Commission. There is no reason for a different outcome in this proceeding when AT&T fails to identify the specific information for which it seeks protection, and seeks to seal the same types of rate calculation inputs based on the same arguments that were rejected just a few short months ago.

Second, as AT&T acknowledges,⁵ this Commission prefers open proceedings.⁶ The Company has expressly asked the Commission to determine if the new proposed rates are just and reasonable. Sealing the rate calculation does not allow for an open proceeding relative to a key aspect of the instant application.

Third, when the Commission established its process for the pole attachment and conduit occupancy proceedings, the Commission did not even suggest that any of the required calculation information would be sealed. In its July 30, 2014 Finding and Order in *Poles, Ducts, Conduits, etc., supra*, the Commission concluded that a single rate formula should be adopted as the default tariff rate by the Ohio public utilities that own poles. Then, in the April 22, 2015 Entry, the Commission clarified that interested stakeholders would have the opportunity to challenge the justness and reasonableness of the proposed tariffs. With the calculation spreadsheets under seal, interested stakeholders do not have the ability to analyze or challenge the justness and reasonableness of AT&T's proposed tariffs in an open forum.

Fourth, when the public utility pole owners all filed proposed tariff applications in 2015 pursuant to the Commission's directive in *Poles, Ducts, Conduits, etc., supra*, none of those other utility companies sought confidential treatment for *any* of their rate calculation information. This

⁵ AT&T's Motion for Protective Order at 3.

⁶Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as is consistent with the purposes of Title 49 of the Revised Code.

is highly indicative that the information for which AT&T now seeks a protective order is not confidential business information.

For all of the foregoing reasons, the OCTA respectfully requests that the Commission deny AT&T's November 10, 2016 motion for a protective order.

Respectfully Submitted,

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci (0046608), Counsel of Record
Stephen M. Howard (0022421)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43216-1008
Tel. (614) 464-5407
glpetrucci@vorys.com
smhoward@vorys.com

*Attorneys for the Ohio Cable Telecommunications
Association*

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/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

Mark R. Ortlieb at mo2753@att.com

William Wright at william.wright@ohioattorneygeneral.gov

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Summary: Memorandum Memorandum Contra the Motion for a Protective Order of AT&T
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