

In the Matter of the Commission's)
Review of Ohio Adm. Code Chapter 4901:1-3,) Case No. 19-834-AU-ORD
Concerning Access to Poles, Ducts, Conduits,)
And Right-of-Way)

Sprint Communications Company L.P., Sprint Spectrum, L.P., and SprintCom, Inc. (collectively, “Sprint”); hereby submits its Comments in Case No. 19-834-AU-ORD in accordance with the Public Utilities Commission of Ohio’s (“Commission”) order dated July 17, 2019 (the “Order”).

As drafted, Proposed Rule 4901:1-3-03(A)(7) appears to give an existing attaching entity the power to grant or withhold permission for a third party to overlash its own equipment. It is

not clear to Sprint why an existing attacher should have the right to grant or withhold such permission. The proposed rules clearly state that overlashing entities are responsible for ensuring their equipment complies with all applicable safety, reliability, and engineering practices. Overlashing entities are also clearly held responsible, at their own expense, for any necessary repairs resulting from damage done to a pole or other existing attachment.¹ Existing attachers should not have the power to withhold consent from an overlashing entity when they are essentially held harmless from any damage that could be caused by the overlasher's equipment. As drafted, the proposed rule contains no prohibitions, limits, or constraints on an existing attacher's ability to withhold consent. Under this standard, an existing attacher could withhold consent for no other reason than simply to impede another carrier and obtain a competitive advantage.

A better approach would be a notice requirement rather than a permission requirement; i.e., requiring a potential overlasher to provide reasonable notice of its intention to an existing attacher. This would put existing attachers on equal footing with the public utilities that own the poles, who are entitled under the rules to "notice" from overlashers.² There is no reason why existing attachers should have more power over third party overlashers than the pole owner.

For example, Sec. 4901:1-3-03(A)(7)(a)(ii) should be amended to read as follows:

- (ii) For the third party overlashing of an existing attachment that is conducted **upon [reasonable notice or xx days' notice] provided to** an existing attaching entity.

Likewise, Sec. 4901:1-3-03(A)(7)(d) should be amended as follows:

- (d) An existing attaching entity or third party overlashing **upon [reasonable notice or xx days' notice] provided to an existing attaching entity** (overlashing party) that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing or overlashing work

¹ Proposed Rule Sec. 4901:1-3-03(A)(7)(d).

² See Sec. 4901:1-3-03(A)(7)(c) and (e).

causes safety or engineering standard violations, then the overloading party is responsible at its expense for any necessary repairs.

Furthermore, it is not clear to Sprint that the complaint process in Sec. 4901:1-3-05 would extend to third party overloaders. By its terms, the complaint process applies to “attaching entities.” Sprint notes that the current definition of “attaching entity” does not expressly include overloaders.³ If the overloading process is to be exempt from Commission approval requirements (which Sprint supports), it should be clear that third party overloaders have a forum to bring complaints against pole owners or existing attachers before the Commission for resolution. This would be particularly important under the current language which essentially provides existing attachers with unlimited latitude to capriciously withhold permission from a third party overloader. Even if the permission requirement is changed to a notice requirement as Sprint recommends above, Sprint supports expanding the complaint resolution process to encompass overloaders.

Sprint recommends that Sec. 4901:1-3-05 be amended as follows:

(A) Any attaching entity **or overloading party as defined in rule 4901:1-3-03(A)(7)** may file a complaint against a public utility pursuant to section 4905.26 or 4927.21 of the Revised Code, as applicable to address claims that it has been denied access to a public utility pole, duct, conduit, or right-of-way in violation of section 4905.51 of the Revised Code or 47 U.S.C. 224, as effective in paragraph (A) of rule 4901:1-3-02 of the Administrative Code; and/or that a rate, term, or condition for a pole attachment are not just and reasonable. . . .

Sprint appreciates the opportunity to submit these comments, and looks forward to working with the Commission.

³ Sec. 4901:1-3-01(A).

Respectfully submitted,

/s/ Diane Browning

Counsel, State Regulatory Affairs

6450 Sprint Parkway

Overland Park, KS 66251

(913) 315-9284 (phone)

(913) 523-0571 (fax)

diane.c.browning@sprint.com

Attorney for Sprint

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Summary: Comments of Sprint electronically filed by Ms. Diane Browning on behalf of Sprint Corporation