BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL COMMENTS OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

August 15, 2019

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I. Introduction

The Ohio Cable Telecommunications Association ("OCTA") and its members support Ohio's current framework in Ohio Administrative Code Chapter 4901:1-3 for access to the poles, ducts, conduits and rights-of-way owned by the public utilities in Ohio. The OCTA also supports modifications that reflect the current standard used to notify pole owners of overlashing an existing attachment, as well as language that would require unamortized excess accumulated deferred income taxes to be fully recognized in the pole attachment and conduit occupancy rate formulas. These modifications will provide much-needed clarity that is welcomed and appreciated by the OCTA and its members as they are the appropriate policy conclusions and their inclusion in the rules will help avoid disputes and litigation in the future.

In these initial comments, the OCTA also presents additional suggestions that fine-tune certain principles and language in the rules based on actual access experiences with Ohio's public utilities and public utilities nationwide. For example, any new overlashing rules must account for all types of cables, not just fiber. The overlash rules should also circumscribe the type of information that may be required in overlashing notices, so that the notice requirement is uniformly applied and is not tantamount to a full-blown application. In addition, the use of contractors for surveys and make-ready work should be flexible and allow attachers to use their own qualified contractors so that broadband deployment work is performed in a timely manner. The OCTA also includes suggestions intended to make the Commission's automatic tariff approval process more effective, balanced and transparent. The OCTA has been an active participant in many tariff-related proceedings at the Commission. The process has worked well in some instances but not in others. The Commission should list the information needed for tariff applications, require cooperation and incorporate the proposed suspension process. The Commission should accept the OCTA's proposals as outlined in these comments.

For ease of reference, the OCTA refers in these comments to the individual rules in Chapter 4901:1-3 as "Rule 3-__."

II. Comments

A. Rule 3-01 Definitions.

1. "Overlashing."

The Staff proposes one new definition for Chapter 4901:1-3 to define "overlashing" as follows:

> "Overlashing" means the tying or lashing of an attached entity's additional fiber optic cables or similar incidental equipment such as fiber-splice closures to the attaching entity's own existing communications wires, cables, or supporting strand already attached to poles.

Given the proposed overlashing provisions in Rule 3-03(A)(7), which are identical to the rules recently adopted by the Federal Communications Commission ("FCC") and which the OCTA supports, the OCTA recommends two modifications to the proposed definition. First, with regard to the cables, OCTA members do not only overlash fiber optic cable; they also overlash coaxial cable or other cables. Therefore, OCTA recommends removing the words "fiber optic," after the word "additional," and referencing the different cables to ensure there is no dispute over what OCTA members overlash. Second, the OCTA suggests deleting the words "or similar incidental equipment such as fiber splice enclosures" because cable companies do not consider that to be overlashing. For that reason, the OCTA recommends that the definition of "overlashing" simply specify the overlashing of cables.

In sum, the OCTA supports the following definition of "overlashing:"

> "Overlashing" means the tying or lashing of an attached entity's additional ~~**fiber optic**~~ cables **(including coaxial, fiber optic, or other cables)** ~~**or similar incidental equipment such as fiber-splice closures**~~ to the attaching entity's own existing communications wires, cables, or supporting strand already attached to poles.

2. "Customer service drop."

Having considered the proposal in its entirety, the OCTA recommends that an additional definition be included in Rule 3-01. The OCTA recommends that "customer service drop" be defined and, as explained later in these comments, the rules make clear that a customer service drop is an attachment for rental rate purposes (when it is attached directly to a drop pole (i.e., by a j-hook)), but the public utility may not require an application for customer service drops. Specifically, the OCTA recommends the following definition be included in Rule 3-01:

> "Customer service drop" means a pole attachment that extends from a pole directly to a customer's premises.

Again, the OCTA recommends this definition so that its additional recommendation later in these comments makes it abundantly clear when and for which types of equipment a pole attachment application is required.

B. Rule 3-02 Purpose and Scope.

1. Paragraph (A) – The effective date of the statutes and regulations incorporated by reference should not be a future date.

In Paragraph (A), it is proposed that any cited United States Code section or Code of Federal Regulation be the version effective on October 1, 2019. The trigger date listed in Rule 3-02(A) affects most rules in Chapter 4901:1-3. Obviously, the October 1, 2019 versions of the U.S. Code and Code of Federal Regulations are not yet in effect. By proposing a future date as the trigger date, parties cannot effectively consider and comment today on what impact, if any, would occur from such a change in the rules. The Commission should not modify Rule 3-02(A) with a future date. Instead, it can update to the current date – when parties are presenting their initial comments – because parties are in a position to comment effectively on the proposed change as of the date of their comment filings.

2. Paragraph (G) – The proposed suspension process should apply only to pending Commission applications and should be placed in Rule 3-04(A) instead.

The proposal includes a new Paragraph (G) that sets forth the Commission's ability to suspend the automatic approval process associated with "pending applications." It differs from the suspension process the Commission established in November 2016[1] in that this new proposal would allow full or partial suspensions and allows a two-step suspension. The intent of the proposal appears to involve only the applications outlined in Rule 3-04 – namely, the tariff applications filed with the Commission (and not the attachment applications submitted to the public utility). The OCTA agrees with the proposed process and agrees that the suspension process should apply to the tariff applications filed with the Commission.

Because the tariff application process is addressed in another rule, the OCTA recommends that the suspension process likewise be placed in that other rule, instead of Rule 3-02. Placement of the suspension process in the broad-based rule describing the "purpose and scope" of the chapter creates the opportunity for either confusion or encourages claims that the referenced "pending application" involves more than the just tariff applications filed with the Commission. Additionally, the OCTA suggests that the wording for the suspension process specify the applications filed with the Commission. Altogether, the OCTA suggests that Paragraph (G) be moved into Rule 3-04(A), and details be added to the language. These changes are detailed below in the section of these comments addressing Rule 3-04.

[1] *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, Entry at ¶ 17 (November 30, 2016).

C. Rule 3-03 Access to Poles, Ducts, Conduits, and Rights-of-Way.

1. Paragraph (A)(2) – Clarification is needed so that a public utility does not require an attachment application for a customer service drop.

The OCTA recommends an important clarification for Paragraph (A)(2) consistent with its earlier comment that not only should a customer service drop be defined in the rules, but the public utility should not be allowed to require an attacher to submit an application for a customer service drop. To that end, the OCTA recommends the following:

> (2) Requests for access to a public utility's poles, ducts, conduits, or rights-of-way must be in writing. A complete application is an application that provides the public utility with the information reasonably necessary under its procedures to begin to survey the poles. **A public utility shall not require an application for a customer service drop.**

This clarification will appropriately identify when an application for an attachment is and is not required. This clarification is consistent with proposed Paragraph (A)(7) in this same rule, which also identifies circumstances under which an application shall not be required.

2. Paragraph (A)(7) – Overlashing may not be prohibited or subject to a fee, and key details regarding the advance notice should also be included in the rule.

As proposed, Paragraph (A)(7) would require advance notice of planned overlashing, rather than an application. This is consistent with the Commission's prior finding that "[a] wire overlashed to an existing facility/pole attachment is not an attachment subject to an attachment fee." *See In the Matter of the Application of Ohio Power Company to Amend its Pole Attachment Tariff*, Case No. 15-974-EL-ATA, Finding and Order at ¶25 (September 7, 2016). The Commission's proposal is also consistent with the new overlash rules adopted by the FCC in

2018; rules used in approximately 30 "FCC" states.[2] These rules are intended to speed cost-effective broadband deployment, while ensuring safety.[3]

The OCTA supports the Commission's proposed overlash provisions in Chapter 4901:1-3 because the absence of any rules governing overlashing has caused confusion since the Commission adopted the Chapter in 2014 without them. *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, Finding and Order (July 30, 2014) and Entry on Rehearing (October 15, 2014). Moreover, as the FCC found, "the ability to overlash often 'marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment.'"

While the OCTA fully supports the substance of the rules, the OCTA suggests important and practical clarifications to proposed Paragraph (A)(7) so that a public utility does not prohibit overlashing and the advance notice obligation is better detailed. The OCTA believes these additions will provide greater consistency among the different pole-owning utilities in Ohio and avoid disputes. Moreover, these clarifications just make good common sense. The OCTA recommends that proposed subsections (b) and (c) be revised as follows:

> (b) **A public utility may not prohibit overlashing.** A public utility may not prevent an existing attaching entity from overlashing because another existing attaching entity has not fixed a preexisting violation. A public utility may not require an existing attaching entity that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attaching entity.

[2] *See* 47 C.F.R. §1.1415 (Overlash Rules).

[3] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, ¶¶ 115-120 ("In codifying the existing overlash precedent while adopting a pre-notification option, we seek to promote faster, less expensive broadband deployment while addressing important safety concerns relating to overlashing.")

(c) A public utility may require no more than 15 days' advance notice of **an attacher's** planned overlashing. If a public utility requires advance notice of overlashing**,** then the public utility must provide existing attaching entities with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attaching entity. If after receiving advance notice the public utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the attaching entity seeking to overlash within the 15 day**s'** advance notice period and the attaching entity seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or explaining why in the attaching entity's view, a modification is not necessary. A public utility may not charge a fee to the attaching entity seeking to overlash for the public utility's review of the proposed overlash **or charge a rate (rent) for the overlashing**. **The advance notice should identify at most the location, size and type of cable, and anticipated date to conduct the overlashing. Nothing in this paragraph entitles the public utility to require additional information in the advance notice of an attacher's planned overlashing.**

The above additional language makes clear that the public utility cannot prevent overlashing by prohibiting it and cannot charge a rent for overlashing. These details were omitted from the proposal and are key aspects of overlashing not only in Ohio, but across the country. The OCTA also suggests listing the maximum information that a utility may require in an advance notice so that no abuse takes place – i.e., to avoid utility notice requirements that are onerous or akin to a full-blown attachment application and so the rule is consistently applied across the state. Simplicity and clarity in both rule definitions and processes is vitally important. Pole owners in Ohio and elsewhere are confronting OCTA members with attempts to define overlashing and the notification process so as to make "notification" tantamount to a full-blown application. OCTA members have also faced an outright ban on overlashing, in contravention of Commission precedent[4] and standard practice. Lastly, these revisions are also consistent with other Commission rules in this chapter that identify what needs to be included in a rule-required

[4] *Ohio Power Company*, *supra*.

notice. *See* Rule 3-03(A)(3)(a)(b) regarding notices from the public utility related to make-ready work. For all of these reasons, the Commission should adopt the OCTA's proposed Rules 3-03(A)(7)(b) and (c) as set forth above.

3. Paragraph (C) – Greater flexibility for use of qualified, capable contractors should be incorporated into the rules.

The OCTA's final proposed revision in Rule 3-03 relates to Paragraph (C), which addresses contractors used for survey and make-ready work. Based on events and experiences in Ohio, as well as in other states, the OCTA believes that greater detail and flexibility are needed so that qualified, capable contractors chosen by attachers are also allowed to perform work, so that broadband deployment delays occur and abuses are avoided. The OCTA suggests that, when an attacher uses "self-help" because a utility fails to perform work in a timely manner, the attaching entity be able to choose its own qualified contractors, approved by the utility, rather than be forced to use a utility-chosen contractor. To that end, the OCTA proposes a reasonable process to get qualified contractors on the self-help list. These edits are consistent with the FCC's new contractor rules for surveys and make-ready in the communications space.[5] The attaching entity should not be further penalized by delay when the public utility fails to comply.

Specifically, the OCTA recommends the following:

(C) Contractors for survey and make-ready

~~**(1)**~~ A public utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform **self-help** surveys and make-ready in the communications space on its poles in cases where the public utility has failed to meet deadlines specified in paragraph (B) of this rule. **If a public utility provides such a list, then an attaching entity must choose a contractor from the list to perform the work.**

~~**(2)**~~ **(1)** ~~**If an attaching entity hires a contractor for purposes specified in paragraph (B) of this rule, it shall choose from among the public utility's list of authorized contractors**~~ **Attaching entities may request**

[5] *See* 47 C.F.R. §1.1412(b)-(c).

the addition to the list of any contractor that meets the minimum qualifications in paragraph (C)(3) of this rule, and the public entity may not unreasonably withhold its consent.

(a) If the public utility does not provide a list of approved contractors to perform self-help surveys and make-ready in the communications space on its poles, or if no utility-approved contractor is available within a reasonable time period, then the attaching entity may choose its own qualified contractor that meets the requirements in paragraph (C)(3) of this rule. The attaching entity must provide the public utility with advance notice of at least three business days of its intent to use its own qualified contractor.

(b) The public utility may disqualify any contractor chosen by the attaching entity that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (C)(3) of this rule or to meet the public utility's publicly available and commercially reasonable safety or reliability standards. The public utility must provide notice of its contractor objection within the three business days' notice provided by the attaching entity in paragraph (C)(1)(a) of this rule, and its objection must identify at least one available qualified contractor.

~~(3)~~ (2) An attaching entity that hires a contractor for survey or make-ready work in the communications space shall provide the public utility with a reasonable opportunity for a public utility representative to accompany and consult with the authorized contractor and the attaching entity.

(3) Public utilities must ensure that contractors on a utility-provided list, and attaching entities must ensure that contractors they select pursuant to paragraph (C)(1)(a) of this rule, meet the following minimum requirements:

(a) The contractor has agreed to follow published safety and operational guidelines of the public utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(b) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the public utility;

(c) The contractor has agreed to follow all applicable state, and federal laws and regulations including, but not limited to, the regulations of the Occupational Safety and Health Act;

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the public utility, if made available; and

(e) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attaching entities.

(4) The consulting representative of an electric utility or telephone company may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

The OCTA unfortunately believes that these additions are necessary for the contractor provision of the Commission's rules. The OCTA language will ensure the use of qualified and capable contractors – just as the current rules intend. The OCTA recommendation is intended to avoid unwarranted delays or anticompetitive behavior and, instead, provide a competitive marketplace that is fair and balanced. This OCTA-proposed language is reasonable and, given prior experiences, necessary for Ohio.

D. Rule 3-04 Rates, Terms, and Conditions for Poles, Ducts, and Conduits.

1. Paragraph (A) – Tariff applications should be consistent with all applicable rules, be just and reasonable, and be subject to a simple automatic approval process and suspension process detailed in this paragraph.

The OCTA believes, first, an important but small adjustment is appropriate for Paragraph (A). Currently, the paragraph reflects that a tariff application must be consistent with the parameters in Rule 3-03. The OCTA agrees with that statement, although it is unclear why the tariff application would not also have to be consistent with all other applicable rules in Chapter 4901:1-3, including for instance the rate formulas in Rule 3-04. Second, the OCTA also

believes the tariff application must be just and reasonable and that Paragraph (A) should include that specifically. Ohio law requires it. *See* Ohio Revised Code Sections 4905.22, 4927.02(A)(3), and 4927.21.

Third, as explained above, the OCTA recommends that the suspension process (proposed in Paragraph (G) of Rule 3-02) be incorporated here into Paragraph (A) instead because the Staff proposal places the current 60-day automatic approval process in Rule 3-04(A).

Fourth, the Staff proposal includes in Paragraph (A) a 60-day automatic approval process like what the Commission adopted 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, Entry (November 30, 2016). The proposal, however, does not refer to the Commission's adopted timeframe for objections (21 days after the filing of the application) or the timeframe for replying to objections (10 days after the filing of objections). It is unclear whether the proposal intends to continue those two timeframes. The OCTA presumes that those two timeframes are intended to continue, or at least will continue unless the Commission affirmatively ends those obligations by express ruling. The OCTA recommends that the timeframes for objections and replies not be incorporated or continued. This is based on experience.

The Commission likely already recognizes that some tariff applications went through the process smoothly, while others did not. The timeframe for objections and replies should not be detrimental to the Commission's ability to address the issues and concerns raised with the pole tariff applications. They were detrimental in practice. The OCTA was in a position in the past of filing objections to a tariff application based on a preliminary review, prior to receipt of discovery responses, because of the 21-day deadline for objections. *See* Workshop Transcript at

18-19. Also, the OCTA was in the position of not being able to present further findings, such as by supplemental objections, because the automatic timeframe did not allow sufficient opportunity. *Id*. These situations are concerning and the procedural process should not effectively preclude a full and fair presentation by interested stakeholders like the OCTA or the Commission's ability to address the issues and concerns.

The OCTA has considered various approaches. In conjunction with the OCTA's comments and suggestions below for more complete tariff application filings and a more cooperative approach, the OCTA recommends that the Commission eliminate the 21-day timeframe for objections and the corresponding 10-day timeframe for replies to objections. This recommendation should not be interpreted as the OCTA giving up the right to object, file comments, etc. Rather, the OCTA is suggesting that since those two deadlines in the process have not worked well, they not be continued. The Commission still can establish a procedural schedule in the tariff applications as necessary. Altogether, the OCTA suggests a simpler process be adopted in Paragraph (A) as follows:

> (A) Rates, terms, and conditions for nondiscriminatory access to poles, ducts, conduits, and right-of-way of a telephone company or electric light company by an entity that is not a public utility are established through tariffs pursuant to section 4905.71 of the Revised Code. Initial implementation of such tariff or any subsequent change in the tariffed rates, terms, and conditions for access to poles, ducts, conduits, or rights-of-way shall be filed ~~**in the appropriate proceedings**~~ **with the Commission as an application for tariff amendment and served on the attachers' Ohio trade association. The application will be approved in accordance with a sixty-day automatic approval process. The tariffed rates, terms and conditions must be** consistent with **all applicable** parameters established in ~~**rule 4901:1-3-03**~~ **Chapter 4901:1-3** of the Administrative Code **and be just and reasonable**. Nothing in this chapter prohibits an attaching entity that is not a public utility from negotiating rates, terms, and conditions for access to poles, ducts, conduits, and rights-of-way of a telephone company or electric light company through voluntarily negotiated agreements.

> Unless the law specifically precludes suspension of an automatic **commission** approval process, a pending application **filed with the commission** under full or partial suspension will be automatically approved thirty days from the date of suspension if all issues are resolved. If all issues are not resolved by the thirtieth day, the application will either be dismissed ~~**by entry**~~ or suspended a second time **by commission entry**. Any such second suspension shall be accompanied by notice **from the commission** to the applicant explaining the **commission's** rationale for the additional suspension. Applications under a second suspension cannot be approved without a commission entry or order.
>
> (1) Under this paragraph, an application **filed with the commission** under full suspension is entirely precluded from taking effect.
>
> (2) Under this paragraph, an application **filed with the commission** under partial suspension is permitted to take effect, in part or in its entirety, under the proposed terms and conditions subject to further review by the commission. The applicant is put on notice that the commission, subsequent to further review, may modify the rates and/or terms and conditions of tariffed pole, duct, conduit, and rights-of-way access affected by the application~~s~~.

2. Paragraph (D) – Requiring additional details in the application materials, followed by cooperation among the parties may allow for more successful review and analysis of proposed tariff applications.

As one of the few parties who regularly participates in the review of the tariff applications, the Commission should give great weight to the suggestions presented by the OCTA. The tariff applications, at the time of filing, should be providing the necessary information for the Staff and interested parties to review, verify and analyze the proposal. Importantly, the formula inputs need to make sense – not just mathematically, but also conceptually. The tariff applications should be transparent, complete, and understandable.

In practice, tariff applications have included necessary information and, when completed, the review process worked smoothly. At other times, information was vague, confusing, not substantiated, etc. To avoid the latter situations, the OCTA recommends that the Commission

rules contain a list of the information that should be included in the tariff applications. This will make the applications consistent, and allow the Staff to have all of the information needed from the time of filing to begin review under the automatic approval process. This will also allow any interested stakeholders, of which the OCTA is one, to also review and analyze the applications filing from the beginning of the automatic timeframe. In addition, the OCTA recommends that the rule obligate the public utility to respond in good faith to requests for additional information needed to evaluate the application. The public utility should not use the Commission process as a means to avoid review by Staff and interested parties. For all of these reasons, the OCTA recommends that Paragraph (D) be revised as follows:

(4) **Applications proposing to change the rate shall include a calculation sheet, identification of the specific sources of the formula inputs, workpapers, and any company-specific records/data underlying the formula inputs including the appurtenance factor, pole height and pole count. The application shall identify the manner in which the unamortized excess accumulated deferred income tax has been deducted and the amortization schedule(s) relied upon.**

(5) With respect to the formula referenced in paragraph (D)(2) of this rule, the space occupied by an attachment is presumed to be one foot. The amount of usable space is presumed to be thirteen and one-half feet. The amount of unusable space is presumed to be twenty-four feet. The pole height is presumed to be thirty-seven and one-half feet. These presumptions may be rebutted by either party.

(6) The public utility shall work with and respond in good faith to timely requests for additional information to evaluate the application, including requests to understand the rationale for a proposed change in terms and conditions, or for reasonable expedited discovery.

~~(5)~~ **(7)** Relative to joint use agreements, the default rates may be negotiated or determined by the commission in the context of a complaint case.

3. Paragraph (D)(1) – The proposed directive to recognize unamortized excess accumulated deferred income taxes is a terrific addition to the rules in Chapter 4901:1-3.

The OCTA strongly supports the proposed language for inclusion in Paragraph (D)(1), which would require when calculating the pole attachment and conduit occupancy rates that unamortized excess accumulated deferred income taxes resulting from the Tax Cut and Jobs Act of 2017 be deducted from the gross plant and gross pole investment total. The OCTA believes this language is consistent with the prior decision issued by the Commission. *See In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Ohio Regulated Utility Companies*, Case No. 18-47-AU-ORD, Finding and Order at ¶30 (October 24, 2018). The OCTA fully supports this language in the administrative rules as presented in the proposal.

E. Rule 3-05 Complaints.

1. Paragraph (A) – Clarification regarding complaints and a shorter timeframe for Commission review are appropriate.

Paragraph (A) allows an attaching entity to file a complaint at the Commission. The OCTA suggests revisions consistent with those mentioned at the workshop. *See* Workshop Transcript at 19-20. The OCTA recommends modifications so that this rule cannot be interpreted as allowing only limited types of claims. As currently written, the rule reflects two types of claims. Ohio law does not limit the types of claims, however. *See, e.g.*, Sections 4905.26 and 4927.21 of the Revised Code. Additional verbiage can easily clarify this point in the rule.

In addition, the OCTA supports a shorter timeframe for the Commission to resolve a filed complaint. The OCTA believes that a shorter framework like that adopted by the FCC is appropriate for inclusion in this paragraph as well. The FCC found that 180 days was an

appropriate time period for review and resolution of access denial complaints[6] and 270 days was an appropriate time period for review and resolution of the other pole attachment complaints.[7] That is likewise a logical framework for this Commission. Given that the Commission has determined and adopted an expedited timeframe for implementing tariff changes, the Commission should also adopt a more expedited timeframe for resolving disputes that have and potentially can have widespread implications for all attaching parties and the competitive telecommunications marketplace. Currently, Rule 3-05 allows the Commission nearly one year to resolve a complaint filed by an attaching party that is related to the attachment. That is simply too long and potentially that timeframe alone could impact not only the attaching entity but the underlying customer or customers involved. The OCTA notes also that there is an expedited timeframe for disputes related to public way fees under Section 4939.06 of the Revised Code that involve rate-related complaints for public way fees. Certainly a shorter timeframe for attachment-related complaints is in order as well. The OCTA's proposal is more than reasonable under the circumstances. The OCTA certainly wishes to avoid filing complaints with the Commission, and its suggestions for Rule 3-05(A) are not intended to prompt complaints. The OCTA, however, urges the Commission to put in place a more expedited framework for when a complaint does arise.

> (A) Any attaching entity 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 **may include but are not limited to (a)** it has been denied access to a public utility pole, duct, conduit, or right-of-way in violation of Section 4905.51 of the

[6] *See* 47 C.F.R. § 1.1414(a) and *In the Matter of Accelerating Wireline Broadband Deployment By Removing Barriers to Infrastructure Investment, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, 32 FCC Rcd 11128, 11132, ¶ 9 (2017).

[7] *See* 47 C.F.R. §§ 1.1414(b) and 1.740; and *In the Matter of Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Report and Order, ¶ 21 (2018).

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**~~ **(b)** a rate, term, or condition for a pole attachment ~~**are**~~**is** not just and reasonable**; and/or (c) a violation of the commission's rules or Ohio law has occurred.** The provisions and procedures set forth in Section 4905.26 and 4927.21 of the Revised Code, and Chapters 4901-1 and 4901-9 of the Administrative Code, shall apply. The commission shall issue a decision resolving issues presented in a complaint filed pursuant to this rule within a reasonable time not to exceed ~~**three hundred and sixty**~~ **one hundred eighty days after the filing of an access denial complaint or two hundred seventy** days after the filing of **a** complaint **involving other attachment complaints**.

III. Conclusion

The OCTA supports the major proposals contained in the Commission's July 17 Entry in this proceeding. Through the OCTA's suggested changes explained above, the OCTA has presented improvements that can provide greater clarity in the rules and avoid disputes and litigation. The OCTA based its suggestions on its widespread experience and desire for an effective, efficient attachment process that will support the competitive broadband marketplace in Ohio. The OCTA urges the Commission to adopt the proposed revisions in the July 17 Staff proposal, along with the above revisions presented by the OCTA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, I certify that a copy of the foregoing document was served via electronic mail on all parties who have or will be submitting initial comments in Case No. 19-834-AU-ORD this 15th day of August 2019, or shortly thereafter when the identity of such commenter is known.

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

Summary: Comments -- Initial Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telelcommunications Association