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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF CROWN CASTLE FIBER LLC

I. Introduction

Earlier this year, the Public Utilities Commission of Ohio ("Commission") opened the above-captioned docket to review the rules regarding pole attachments in Ohio Administrative Code Chapter 4901:1-3 ("Chapter 4901:1-3"). On June 17, 2019, the Commission issued an Entry requesting comments on proposed changes to Chapter 4901:1-3. Several parties including Crown Castle Fiber LLC ("Crown Castle") submitted initial comments in this docket on August 15, 2019.

Per the Entry, reply comments were due on August 30, 2019. On August 23, 2019, the Ohio Cable Telecommunications Association ("OCTA"), Ohio Telecommunications Association ("OTA"), and Crown Castle filed a Joint Motion for Extension of Time to File Reply Comments and an Expedited Ruling request, seeking for all parties an extension until September 9, 2019 for all parties to file reply comments. The Attorney Examiner granted this request on August 26, 2019.

Crown Castle hereby submits its reply comments for the Commission's consideration.

II. Discussion

A. Overlashing

1. <u>All Strand-Mounted Equipment Must be Able to be Overlashed in a Non-Discriminatory Manner.</u>

As described in its Initial Comments, Crown Castle supports Staff's recommendation to add a definition for overlashing to Rule 4901:1-3-01 and to incorporate the terms and spirit of 47 C.F.R. 1.1415 into Rule 4901:1-3-03. However, in order to ensure that overlashing is accomplished on a non-discriminatory basis, the Commission should amend the language of Proposed Rule 4901:1-3-01(N) as follows:

> (N) "Overlashing" means the tying or lashing of an attaching 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.

Equipment such as fiber splice cases, fiber snow shoes, cable TV amplifiers, cable TV taps, copper splitters, wi-fi enclosures, and fiber to the home multi-port cases have been overlashed by attaching entities to their own strands for many, many years. Any attempts to categorize the equipment overlashed in strand-mounted wireless solutions differently from equipment that has consistently been deployed on existing attaching entities' strand over the years will result in differential and thus, discriminatory, treatment of the deployment of one technology versus another. So as long as any overlash of equipment by an existing attaching entity on its own strand complies with all radio frequency safety limits established by the FCC, the overlash of such equipment should be permitted under the notice provisions of Proposed Rule 4901:1-3-03(A)(7).

Duke Energy Ohio, Inc. and The Ohio Power Company ("Duke/AEP") contend that the draft definition of overlashing should be revised to exclude materials other than cables. This proposed revision, however, conflicts with longstanding interpretations that overlashing may include cable or equipment. Restricting the interpretation of what may be overlashed at this time

would present serious hardships to attaching entities, creating opportunities for such equipment, deployed years ago, to be deemed unauthorized, or creating confusion around the application of grandfathering to previously deployed equipment. Having relied on interpretations over the years that overlashing of equipment is authorized, attaching entities should not now be forced to engineer deployments differently to account for the new definition of overlash and potentially encumber even more valuable pole real estate under these redesigns.

2. **Fifteen Days' Advance Notice Prior to Overlashing is the Maximum Reasonable Interval for Public Utility Review.**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy") argue that overlashing should be accomplished via the same process as any other attachments – i.e., the 45-day survey and engineering period, followed by the estimate and make-ready phases if make-ready is needed. In contrast, Crown Castle contends that the 15-day advance notice period in Proposed Rule 4901:1-3-03(A)(7)(c), together with the 90-day inspection period provided under Proposed Rule 4901:1-3-03(A)(7)(e), provide the requisite period of time for initial review of overlash and a reasonably sufficient interval for inspection of the same to ascertain compliance with the NESC and utility construction standards.

When proposing to overlash, most attaching entities have already applied for and, assuming that public utility pole owners have met their timelines and obligations, received proper licenses for their attachments. It would be unreasonable for a pole owner to require an existing attaching entity to utilize the same lengthy process for review of an overlash to be accomplished on its own strand when that strand has already been permitted and the overlash requires no additional attachment. Overlash is utilized in order to facilitate timely deployment of additional resources via an attaching entity's existing attachment. A review interval of more than the 15 days provided

in Proposed Rule 4901:1-3-03(A)(7)(c) would undermine the ability of attaching entities to quickly deploy additional network support when they already pay attachment rentals. Moreover, it should be noted that the FCC timeline for a utility's merit review of an attaching entity's application for simple make-ready under the One Touch Make-Ready ("OTMR") processes in 47 CFR 1.1411(j) is 15 days. Crown Castle and others, including Duke/AEP and OTA, have advocated for Commission adoption of the FCC's OTMR regulations and definitions. Further, Duke/AEP support the portions of the draft rule that expressly allow a pole owner to require up to 15 days' advance notice of overlashing. Therefore, 15 days for review of overlash, which will not, in most instances, require an additional attachment to the pole as required by OTMR, is appropriate. Further, per Proposed Rule 4901:1-3-03(7)(e), as supported by Duke/AEP, Crown Castle, and others, if upon inspection, any overlash has been deployed unsafely, the attaching entity will be forced to remedy the violation and any equipment damage caused by the overlash. Therefore, the combined effect of Proposed Rule 4901:1-3-03(7)(c) and (e) offer more than sufficient safeguards to public utilities and existing attaching entities when another existing attaching entity proposes to overlash its own attachment.

3. **Competitive Considerations Demand that Existing Attaching Entities Should Not be Precluded from Overlashing Because of Preexisting Safety Violations or Other Non-Compliant Conditions Caused by Other Existing Attaching Entities or Public Utility Pole Owners.**

The use of overlashing is vital to maximizing the effectiveness of valuable utility pole real estate and quickly densifying communications networks. Crown Castle strongly supports the adoption of Proposed Rule 4901:1-3-03(A)(7), with minor edits as discussed *infra*, as it will expedite the utility review process for proposed overlash and affirm that overlashing cannot be untimely delayed because of the failure of another existing attaching entity to correct a pre-existing violation.

In order to level the playing field between attaching entities and utility pole owners regarding pre-existing violations or non-compliant pole conditions, Crown Castle recommends the following changes to Proposed Rule 4901:1-3-03(A)(7):

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

As presently drafted, the existing attachers who wish to overlash cannot be prevented from overlashing only on the basis of preexisting violations caused by another existing attaching entity. Unfortunately, this language may not consider safety violations or other non-compliant conditions for which the public utility pole owner is ultimately responsible. Without the addition of the language above regarding safety violations or non-compliant conditions caused by existing attaching entities or the public utility pole owner, existing attaching entities who wish to overlash their own strand are at the mercy of other existing attaching entities or the pole owner to remedy the non-compliant condition before overlashing may occur.

Commenters such as Dayton Power & Light ("DP&L"), Duke/AEP, and FirstEnergy contend that the adoption of a rule that permits an attaching entity to overlash its own facilities when another existing attaching entity has failed to remedy preexisting violations poses safety risks. Existing attaching entities are often competitors of the party wishing to overlash, and so are incentivized not to timely remedy or pay to remedy preexisting violations or non-complaint conditions, as those violations may keep a competitor from expanding service. Further, the utility pole owner has no specific incentive to quickly remedy the non-compliant condition to facilitate the overlash. In fact, remedying a preexisting non-compliant condition may be a costly endeavor from an economic and timing perspective for a public utility pole owner. In order to avoid

deployment delays and eliminate barriers to deployment for overlashing that may be safely accomplished, and to ensure that the party causing the non-compliant condition maintains the burden to remedy the condition, Proposed Rule 4901:1-3-03(A)(7) should be amended as reflected above. Demonstration that the overlash may be safely undertaken may be proven by means of a loading study or other reasonable means.

4. <u>The Commission Should Not Adopt DP&L's Proposed Proxy Loading Increase Values for Overlashing.</u>

DP&L has proposed that the PUCO allow pole owners to apply default percentage pole loading increase values to poles for which the pole owner had previously performed a loading study. DP&L purports to propose the use of proxy loading increase values because existing attaching entities typically do not submit a loading study with their overlash notices. DP&L is proposing the use of a 1.7% proxy value for the increase in loading associated with ½ inch overlashed cables and a 3.0% proxy value for the increase in loading associated with 1 inch overlashed cables, stating that such proxy values are "more typical for overlashes of attachments to three phase poles that are more prevalent in urban and suburban settings" than the up to 5.4% increase DP&L has calculated for rural settings.

Crown Castle opposes the adoption of DP&L's proxy values for increases in loading due to overlashing on the basis that the 1.7% and 3.0% proxy loading increases respectively associated with overlashing a ½ inch cable and a 1-inch cable are greater than the actual impacts observed by Crown Castle in loading studies performed in association with overlashing cables of these sizes. Further, the range of cable sizes for which the 1.7% proxy increase or 3% proxy increase would apply is too broad based on the ½ inch and 1-inch diameters proposed. For instance, for any cable greater than ½ an inch in diameter, the proxy loading increase to be applied will automatically be assigned the 3% value. Practically speaking, whether an existing attaching entity is overlashing a

96-count fiber optic cable or a 432-count fiber optic cable, either of which exceed ½ inch but are less than 1 inch in diameter, both will be treated as though they result in a 3% loading increase.

Crown Castle further opposes the adoption of proxy values representing the increase in loading associated with overlash because those values do not account for overlashing equipment on existing strand. As explained previously, restricting attaching entities' ability to overlash equipment by limiting the definition of overlash to cables only, as DP&L has proposed, reverses course on several years of practice regarding such equipment. Adopting the proxy values proposed by DP&L would unreasonably reinforce DP&L's position on the definition of overlashing.

B. Double Wood

1. <u>The Commission Should Not Adopt Proposed 4901:1-3-03(B)(3)(d), as it may Unfairly Deny Access to Attachers and Frustrate the Rights of Municipalities to Permit Additional Poles Where They Deem Such Poles Necessary or Convenient.</u>

DP&L proposes two solutions to the "perennial problem known as double wood" for the Commission's consideration. Crown Castle recommends that the Commission adopts neither proposed solution. In describing the phenomenon of double wood, DP&L contends that it typically arises in one of two ways: either (a) the failure of an attacher to timely move its attachments to a new pole and remove an old pole, or (b) the installation by an attacher of its own poles to avoid make-ready work by the utility. Regarding scenario (b), DP&L contends that after a make-ready analysis has been performed and pole replacements have been indicated as necessary, attaching entities often decide to only attach to those poles where no make-ready work is required, and for those poles where a replacement is necessary, the new attacher will set its own small, short, and cheap pole very close to the utility pole. DP&L proposes to eliminate this practice by including in Rule 4901:1-3-03(B)(3) a new paragraph (d) that allows public utilities to deny access to certain

poles in a pole line if an attaching entity sets or attempts to set its own poles to avoid replacing a public utility's poles.

Although Crown Castle only speaks for itself, the depiction of scenario (b) above ignores that most attaching entities do not engage in the practice of setting temporary or other poles to avoid pole replacements. Although Crown Castle recognizes that double poles are an issue in certain areas in the state, it does not support any attempt to deny access by a public utility in order to address the issue. Crown Castle further does not support any attempt to limit the authority of a municipality to allow a party other than an electric distribution utility or an incumbent local exchange carrier to set a pole in the public right of way. The language proposed as (d) functionally denies an attaching entity access to existing structures if the attaching entity seeks municipal authorization to place a new pole. The Commission should not permit this approach.

2. DP&L's Proposed Amendment of Rule 4901:1-3-04(A) Does Not Properly Take Into Account the Sequencing of Transfers.

Although DP&L correctly posits that most double wood scenarios arise from the replacement of poles without timely transfers of attachments or removal of the old pole, the solution DP&L proposes may unfairly penalize parties who cannot complete their transfers within 30 days based on the failure of another attaching entity to timely complete its transfer. DP&L proposes to add to Rule 4901:1-3-04 a provision that requires public utility tariffs to include a charge to an attaching entity of up to $100 a day if the attaching entity is under an obligation to move its attachment to a new pole and fails to comply with the same within 30 days of notice. There is a strong potential for abuse of this proposal, however. Pole transfers are typically sequenced. For purposes of safety and efficiency, public utilities may sequence any necessary transfers, with notice to be provided to existing attaching entities that they need to transfer their facilities to a new pole through the public utility's electronic joint use notification systems. It is

unclear from DP&L's proposal whether the 30-day transfer interval applies to each existing attaching entity or whether the 30 days is afforded to the transfer period as a whole. If the entire transfer period is 30 days, and an existing attacher that should move first for the sake of safety and efficiency fails to complete its transfer until day 29, all other existing attachers that aren't able to complete their transfers by day 30 could be subject to a penalty of up to $100 a day. This unfairly penalizes attaching entities whose transfers should logically be completed later in the process. As such, the Commission should not adopt the proposed section.

C. OTMR, Make-Ready Timelines, and Qualification of Contractors Should be Adopted by the Commission as Reflected in FCC Regulations.

1. OTMR Definitions and Processes Should be Adopted.

Crown Castle advocated for the Commission's adoption of OTMR definitions and procedures, the alignment of the Commission's make-ready timelines with those recently adopted by the FCC, and the ability for attachers, etc., to qualify additional contractors as utility-approved contractors for the purpose of conducting certain make-ready in its initial comments. It was not alone: other various parties advocated for the same in their initial comments.

Based on expedited deployment timelines, the ability of an attaching entity to take make-ready processes into its own hands, and the alleviation of work for public utility pole owners, Crown Castle strongly advocates for the Commission's adoption of the FCC definitions of simple and complex make-ready, as well as the processes for conducting OTMR under 47 C.F.R. 1.1411. As mentioned previously, both Duke/AEP and OTA also support the Commission's adoption of the OTMR rules. As pole owners, their endorsement of the Commission's adoption of OTMR should significantly alleviate concerns the Commission may have about utilizing this practice. Because of the opportunities for safe, expeditious deployment that OTMR brings, Crown Castle urges the Commission to incorporate OTMR processes and definitions into its rules.

2. Ohio's Make-Ready Timelines Should Be Updated to Reflect Those Adopted by the FCC.

Crown Castle advocated for alignment of the make-ready timelines in the Ohio rules with those recently enacted by the FCC under 47 C.F.R. 1.1411. Specifically, Crown Castle asked the Commission to adopt the ten business day application review period in 47 C.F.R. 1.1411(c)(1) during which a pole owner must inform an attaching entity whether its application is complete. If the utility pole owner does not inform the attaching entity within 10 business days that its application is complete (or incomplete), the application is deemed complete and the survey period begins. Likewise, Crown Castle advocated for the Commission's adoption of a 30-day timeline for completion of make-ready that is considered "complex" in the communications space (versus the current 60-day timeline) in order to expedite deployment timeframes. Like Crown Castle, OTA recommended adoption of the application review phase and the shortened timeline for completion of complex make-ready in the communications space. The Commission should take steps to secure expedited deployment by adopting both of these provisions.

3. The Ohio Rules Should Include Provisions to Allow Qualified Contractors to be Utilized and added to Public Utility Approved Contractor Lists.

The Ohio Cable Telecommunications Association ("OCTA"), OTA, and Crown Castle each advocated in their initial comments for the inclusion of provisions in the Ohio regulations similar to those set forth in 47 C.F.R. 1.1412 relating to the qualification of contractors for survey and make-ready. In order to ensure that attaching entities have the requisite resources to conduct self-help for the survey or make-ready phases, either in the communications space or the power space, the Commission should incorporate into its rules the ability to qualify additional contractors by means of the five criteria set forth in 47 C.F.R. 1.1412(c)(1) through (5). These criteria ensure that any contractor to be qualified meets certain objective safety requirements and is properly

insured or bonded. Where survey or make-ready bottlenecks develop, the ability to qualify additional contract resources will play a key role in alleviating deployment delay.

D. Crown Castle Supports a Rule Clarification that Attachment Applications Are Not Required for Service Drops.

Crown Castle supports OCTA's requested addition in Proposed Rule 4901:1-3-03(A)(2) in clarifying that a public utility may not require an attacher to submit an application for a customer service drop. An interpretation of the rule that requires applications to be submitted for service drops would pose a hardship to attaching entities attempting to timely serve customers without any supportable benefit to the public utility. OCTA's proposed rule modification, in connection with the addition of a definition of "customer service drop," will alleviate any doubt about whether applications must be submitted for service drops. Crown Castle supports these additions to the Commission's rules.

E. Complaint resolution timelines under Rule 4901:1-3-05(A) should be modified to mirror the FCC's.

As advanced in its initial comments, Crown Castle supports the modification of Rule 4901:1-3-05(A) to provide for resolution of complaints on (a) the denial of access to a public utility pole, duct, conduit, or right of way within 180 days, and (b) a rate, term, or condition for a pole attachment within 270 days after the filing of the complaint. OCTA also advanced these important changes in its initial comments. In order to expedite the deployment of next-generation technologies, the Commission should strongly consider abridging the access complaint timeline for resolution to 180 days and the resolution period for other complaints on pole attachments, namely those involving the rates, terms, or conditions of attachments, to 270 days.

III. Conclusion

Crown Castle thanks the Commission for its commitments to timely reviewing its rules and considering what changes are needed to its rules to accommodate and promote the deployment of critical next-generation telecommunications services. For the foregoing reasons and those previously advanced, Crown Castle requests that the Commission adopt the modifications to the pole attachment rules described in this pleading and its initial comments.

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 in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below via electronic mail this 9th day of September, 2019.

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