

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case Nos. 11-351-EL-AIR
Ohio Power Company, Individually and, if)	11-352-EL AIR
Their Proposed Merger is Approved, as a)	
Merged Company (Collectively, AEP Ohio))	
for an Increase in Electric Distribution Rates)	
)	
In the Matter of the Application of Columbus)	
Southern Power Company and Ohio Power)	
Company, Individually, and if Their Proposed)	Case Nos. 11-353-EL-ATA
Merger is Approved, as a Merged Company)	11-354-EL-ATA
(collectively, AEP Ohio) for Tariff Approval.)	
)	
In the Matter of the Application of Columbus)	
Southern Power Company and Ohio Power)	
Company, Individually, and if Their Proposed)	Case Nos. 11 -356-EL-AAM
Merger is Approved, as a Merged Company)	11-358-EL-AAM
(collectively, AEP Ohio) for Approval to)	
Change Accounting Methods.)	

DIRECT TESTIMONY

OF

EDWARD KOZELEK

SUBMITTED ON

BEHALF OF

THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

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**DIRECT TESTIMONY OF EDWARD KOZELEK SUBMITTED ON BEHALF OF
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1 **Q: PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

2 **A:** My name is Edward Francis Kozelek. I am the President of the Ohio Cable
3 Telecommunications Association ("OCTA") Board of Directors. I was employed
4 by the OCTA from January 1990 until June 30, 2006. I am currently employed by
5 Time Warner Cable ("TWC"), where I serve as the Regional Vice President,
6 Government Relations for the Midwest Region. My business address is 1015
7 Olentangy River Road, Columbus, Ohio 43212.

1 **Q: WHAT IS THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION?**

2 A: OCTA is a not-for-profit organization that was formed over 40 years ago with the
3 mission of representing the interests of the cable television and
4 telecommunications industry in the legislative and regulatory arenas. OCTA
5 continues to pursue this mission today by addressing issues of importance to the
6 cable telecommunications industry before the Ohio legislature, the Ohio Public
7 Utilities Commission, Congress and the courts.

8 **Q: WHY IS ACCESS TO UTILITY POLES ON REASONABLE AND NON-**
9 **DISCRIMINATORY RATES, TERMS AND CONDITIONS IMPORTANT TO**
10 **CABLE OPERATORS?**

11 A: I cannot overstate the importance to cable operators in Ohio (and elsewhere) of
12 access to utility poles on reasonable and non-discriminatory rates, terms and
13 conditions. In essence, utility poles represent an “essential” or “bottleneck”
14 facility that cable operators must have access to in order to deliver
15 communications services to their customers. For a number of reasons, including
16 zoning and rights-of-way restrictions, it is simply impractical and frequently
17 unlawful for cable operators to erect their own set of utility poles to support their
18 communications wires. The enormous cost of erecting a duplicative set of utility
19 poles makes doing so prohibitive. In recognition of these realities, Congress
20 ultimately set national policy in 1978 with the enactment of the Pole Attachment
21 Act to ensure cable operators access to utility poles on reasonable and non-
22 discriminatory rates, terms and conditions. See 47 U.S.C. § 224.

1 Over time, a variety of tribunals including the United States Supreme Court and
2 other federal courts have held that cable operators do not have any real
3 alternative to attaching their communications wires to existing poles owned by
4 utilities in order to construct their networks. ^{1/} This is especially so once cable
5 operators have already built their networks aerially in reliance on utility poles,
6 because, at that point, rebuilding their networks underground from scratch is
7 financially impossible. Indeed, even in places where cable operators have not
8 yet constructed any plant, it is frequently infeasible and prohibitively expensive to
9 place their wires underground. (As a general rule, underground construction of
10 cable wires costs considerably more than what aerial plant construction costs.)

11 If cable operators did not have access to critical pole infrastructure erected and
12 owned by utilities at reasonable rates and on reasonable terms and conditions,
13 they would be unable to serve their customers. Accordingly, OCTA is very
14 interested in the rates, terms and conditions that AEP (which throughout my
15 testimony I use to mean Columbus Southern Power Company ("Columbus
16 Southern" or "CSCo") and / or Ohio Power Company ("Ohio Power" or "OPCo")
17 and its predecessors-in-interest) has included in its Proposed Pole

^{1/} See, e.g., *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) ("Cable Television operators, in order to deliver television signals to their subscribers, must have a physical carrier for the cable; in most instances underground installation of the necessary cables is impossible or impracticable. Utility company poles provide, under such circumstances, virtually the only practical medium for the installation of television cables."); *Southern Co. v. FCC*, 293 F.3d 1338, 1341 (11th Cir. 2002) ("As a practical matter, cable companies have had little choice but to" attach "their distribution cable to utility poles owned and maintained by power and telephone companies."); *Texas Utils. Elec. Co. v. FCC*, 997 F.2d 925, 927 (D.C. Cir. 1993) ("[T]he nascent cable television industry turned to the poles owned by telephone and electric utilities as the only feasible method for building a network to access customers.").

Attachment/Conduit Occupancy Tariff.

Q: DO UTILITY POLE ATTACHMENT RATES, TERMS AND CONDITIONS AFFECT COMPETITION?

A: Yes. The fact is that as utilities and telephone companies move to compete against cable operators in the provision of video and other communications services, their ownership and control of poles that cable operators must have access to in order to provide their customers with service presents them with the clear opportunity to impose anti-competitive rates, terms and conditions to secure an unfair and unlawful competitive advantage. In fact, this concern in part animates the Federal Pole Attachment Act. 2/ And that concern is very real. For example, and as I will discuss in greater detail below, AEP has proposed tariff language relating to audits and inventory that is both ambiguous and potentially sweeping. This would be of particular concern to OCTA members if AEP were ever to implement these provisions – and we have to assume that AEP will do so.

Q: IS THERE ANY OTHER REASON TO BE PARTICULARLY CONCERNED WITH SUCH RATES, TERMS AND CONDITIONS AT THIS TIME?

A: Certainly. Cable operators in many places, including here in Ohio, are

2/ See 47 U.S.C. § 224; see generally *Florida Power*, 480 U.S. at 247 (Pole Attachment Act was intended “as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service”); *Selkirk Communications, Inc. v. Florida Power & Light Co.*, 8 F.C.C.R. 387, 390 n.11 (CCB 1993) (“Congress, in enacting Section 224 of the Communications Act was concerned about the overreaching and anti-competitive activities of utilities and telephone companies in providing pole attachments to cable television operators.”)

1 anticipating significant amounts of construction activity on the aerial distribution
2 plant to implement utilities' SmartGrid plans. There is little controversy that a
3 "smarter" grid could produce lots of efficiencies and other benefits. But if poles
4 become a focal point for new utility construction to support these technologies, it
5 is important to ensure that the processes and costs associated with these
6 deployments are rational – and fair. In particular, whenever construction activity
7 on poles is anticipated, it is important that the costs associated with such new
8 construction are not shifted to others who are not causing these new costs.

9 **Q: DO YOU THINK THAT THIS COULD BE ANTICIPATING A PROBLEM THAT**
10 **DOES NOT YET EXIST?**

11 **A:** No, because I believe that is best to anticipate what the issues will be before they
12 become problems because it has been my experience that problems can quickly
13 devolve into full disputes. In fact, there is some very relevant history here that I
14 believe illustrates this point. Specifically, I am aware that another utility (whose
15 rates, terms and conditions recently were subject to review before this
16 Commission) launched a sweeping audit of TWC's facilities on its poles after that
17 utility had formed a joint venture in 2005 to launch a broadband over power line
18 service in direct competition with TWC. In addition, TWC complained to that
19 utility that the venture's practices were creating safety violations affecting TWC's
20 plant. The rates, terms and conditions that pole owners impose on cable
21 operators are thus more important than ever now that electric utilities are
22 pursuing ventures that closely parallel the functions that OCTA members offer.
23 Telephone companies, who also own significant numbers of poles, are also

1 increasingly in direct competition with virtually all cable operators' service
2 offerings.

3 **Q: HOW DOES THIS RELATE TO THE PROPOSED AEP TARIFFS?**

4 A: Some of the revisions that AEP proposes in its tariffs are very significant. The
5 language of the tariff itself causes some concern because it imposes substantial
6 new costs in the form of unauthorized attachment penalties of up to \$100. In
7 fact, the testimony of AEP witness Andrea Moore indicates that AEP, in addition
8 to seeking penalties for unauthorized attachments, is seeking penalties for
9 violations of safety and construction standards. If this is the case, it would be
10 extremely problematic, and, among other things, the windfall profits that
11 conceivably could be generated would present a considerable danger of abuse. I
12 also note that the proposed changes in the tariff represent a major change from
13 what exists today in OCTA members' agreements. Current agreements limit
14 unauthorized attachment penalties to back rent, with a five-year rental cap if the
15 precise attachment date cannot be determined. But if the attachment date
16 cannot be determined, and the attachment was made within the five-year back-
17 rent period, a substantial penalty has been imposed. Moreover, the across-the-
18 board inconsistency with of existing agreements and working practices that AEP
19 is seeking, particularly at a time when AEP may be anticipating installing
20 additional communications-related facilities on its pole to support its SmartGrid
21 initiatives, could be quite detrimental to OCTA members.

22 **Q: ARE YOU CONCERNED ONLY ABOUT THE PROPOSED TERMS AND**

1 **CONDITIONS IN THE TARIFF?**

2 A: No. I am also concerned about the rates that AEP has proposed. While I do
3 recognize that it has been awhile since AEP or its predecessors have raised
4 rates, in one fell swoop AEP is seeking to increase its rates by approximately
5 150% on average. AEP's rates today are \$2.83 and \$3.72 for CSCo and OPCo,
6 respectively. Yet AEP seeks to raise those rates to \$8.12. This would be the
7 highest pole attachment rate – by far – of any investor-owned utility in Ohio.

8 **Q: DO YOU HAVE OTHER CONCERNS WITH THE TERMS AND CONDITIONS IN**
9 **THE TARIFF REVISIONS?**

10 A: Yes. There is an item in the new tariff that is called an "initial contact fee." This
11 appears to be some sort of administrative charge. It is not clear whether this fee
12 is an application fee, or whether there are other elements embedded in that as
13 well. In addition, and while it *appears* that it would apply to new attachments, I
14 am not certain that the costs it ostensibly seeks to recover are not already
15 recovered elsewhere, including in the pole rent.

16 **Q: DO YOU HAVE CONCERNS WITH STAFF RECOMMENDATIONS MADE IN**
17 **THE STAFF REPORT AS IT RELATES TO AEP'S POLE ATTACHMENT-**
18 **RELATED ISSUES?**

19 A: As to the terms and conditions, I am not sure that Staff has yet had the
20 opportunity to investigate how AEP's proposed terms and conditions revisions in
21 the tariff could affect Ohio's communications companies. In addition, Staff's

1 rates appear somewhat different from the rates calculated by Ms. Kravtin, the
2 economist and rate expert submitting testimony on behalf of OCTA, although I
3 believe that Staff and Ms. Kravtin agree that AEP's proposed rates are
4 excessive.

5 **Q: YOU MENTIONED THE ANNUAL RENTAL RATE. DOES OCTA HAVE AN**
6 **OPINION ON WHAT THE RATE SHOULD BE?**

7 A: Yes. OCTA's economic consultant and rate expert, Ms. Kravtin, has found a
8 number of errors and inconsistencies in AEP's calculations which, when
9 corrected, yield a rate in the amount of \$7.51 for Columbus Southern and \$5.62
10 for Ohio Power, which Ms. Kravtin notes produces a blended average rate of
11 \$6.26. I should also mention that even these adjusted rates represent very
12 significant increases. Given the importance of advance planning and, particularly
13 in strained economic times, budgeting is a particularly difficult task – a task which
14 I believe would be made somewhat easier if the increases were spread over a
15 two- to three-year period, instead of in one large jump.

16 **Terms and Conditions**

17 **Q: COULD YOU PLEASE EXPAND UPON YOUR CONCERNS REGARDING THE**
18 **TERMS AND CONDITIONS REVISIONS THAT AEP IS SEEKING IN ITS**
19 **PROPOSAL TO MODIFY THE CSCO AND OPCO TARIFFS?**

20 A: Certainly. But at the outset it might be useful to understand that I am neither an
21 engineer nor a communications network construction expert. I have, however,

1 been deeply involved in the cable and communications business for more than
2 20 years – and have been particularly deeply involved in a number of
3 infrastructure and pole-related discussions and formal proceedings during that
4 time. This experience started from my earliest days in the industry, for all my 16
5 years at the OCTA, and it continues to this day. Over the years I have been
6 involved in business, legislative and policy negotiations on these issues with
7 virtually every kind of utility pole owner: investor-owned electrics, cooperatives,
8 municipally-owned power companies and large and small telephone companies.
9 As a result, I have what I believe is a good working knowledge of the importance
10 generally of pole attachments to a healthy broadband environment here in Ohio.
11 But I also believe that I have acquired a detailed understanding of how this
12 “ecosystem” operates – not just as it related to my current employer, Time
13 Warner Cable, but to other OCTA members as well.

14 **Q: PLEASE DESCRIBE WHAT YOU DID TO PREPARE THIS TESTIMONY.**

15 A: Because I am particularly oriented toward operations issues, I focused on how
16 AEP’s proposals would affect those issues and sought to compare what is in the
17 tariff proposal with existing OCTA members’ agreements and practices.

18 **Q: WHAT DID YOU DISCOVER?**

19 A: I have confirmed my concerns that the tariff provisions in fact represent AEP’s
20 attempt to overhaul the operating terms and conditions, particularly as to the
21 critical issues of attachment standards and cost responsibility.

1 **Q: PLEASE ELABORATE.**

2 A: As I indicated earlier, the tariff contains a new provision relating to plant surveys
3 and inspections. It states, in pertinent part, that "[t]he Company reserves the
4 right to inspect each new installation . . . on its poles . . . and to make periodic
5 inspections/inventories every five (5) years or more often if, in the Company's
6 sole discretion, the conditions may warrant."

7 My first source of concern simply is that it is not clear what the purpose of such
8 "inspections/inventories" is. Are they to inventory attachments for billing
9 purposes? Are they to monitor compliance with engineering and construction
10 standards? To do both? It seems like it would be simply the former, but AEP
11 witness Andrea Moore has noted that it is for both attachment inventories and
12 standard compliance

13 **Q: DO YOU HAVE OTHER CONCERNS?**

14
15 A: Yes, several. First, as I indicated before, I am concerned that they are
16 inconsistent with existing agreements between AEP and OCTA members.

17 **Q: DO THEY?**

18 A: I don't know ultimately whether they do or not, but it seems to me that this is
19 AEP's intention.

20 **Q: PLEASE EXPLAIN.**

21 A: After reviewing the tariff provisions, and working with the OCTA team and
22 members, we reviewed the existing agreement terms and other issues. In
23 essence, there are very significant differences between the agreements in effect

1 today, on the one hand, and the tariff provisions that AEP seeks to put into effect,
2 on the other. Many of the AEP agreements in effect today call for inspections no
3 more frequently than once every five years, while the tariff attempts to allow AEP
4 to call for inspections as frequently as it deems fit.

5 **Q: ARE THERE OTHER ISSUES?**

6 A: Yes. The tariff establishes a harsh penalty regime for unauthorized attachments
7 – \$50 per occurrence if a licensee (an attacher) participates in the survey, \$100 if
8 it does not. Again, it is not clear whether these utility-mandated fines would
9 apply in situations where the paperwork authorizing a particular attachment could
10 not be located, or whether it would also apply when AEP undertook a “safety
11 inspection” of a licensee’s facilities and applied penalties for attachments that did
12 not comply with prescribed separations between attachments at the pole, and
13 wires in the span between the poles.

14 **Q: AND DO YOU BELIEVE THAT THIS COULD CREATE PROBLEMS?**

15 A: Yes. Cooperation between and among all attaching entities, including the pole
16 owner, is necessary because poles do not exist in a controlled environment.
17 They are subject to a variety of natural and man-made forces, including heat,
18 cold, ice, vehicular accidents, physical deterioration, vegetation and neglect.
19 Additionally, poles are used by multiple entities, including authorized and
20 unauthorized attachers, and are in public open spaces where attachments can
21 be, and frequently are, moved without the consent or knowledge of either the
22 pole owner or the owner of the attachments. While there no doubt are poles that
23 have safety violations, and even poles with violations that are the responsibility of

OCTA members, AEP or other attachers, it is difficult, and sometimes impossible, to ascertain who (if anyone) is responsible for a particular violation. For these reasons, the design, implementation, and execution of any sort of inspection are complicated and require cooperation among all stakeholders – the attaching entities, the pole owner, and their contractors and agents.

Q: FROM YOUR EXPERIENCE IN THE INDUSTRY, INCLUDING WORKING WITH ENGINEERING AND CONSTRUCTION PERSONNEL OVER THE YEARS, DO YOU THINK IT IS REASONABLE TO REQUIRE INVENTORIES AND INSPECTIONS?

A: Yes. They are very important and part of the every-day routine already. Before a cable operator files an application for a new permit, it conducts a pre-inspection of the plant. That is often followed up by a joint ride-out of the cable operator, the pole owner and other parties on the routes or poles in question so that they can agree – on the spot – on the best way to install the new facilities. After the proposal is accepted and the attachment is installed, very often the pole owner will conduct a post-inspection to ensure that attachments actually were made consistent with the permit specifications.

I also think that it is important to update attachment counts, possibly through field inventories, because it is important that the pole owners be compensated for the actual number of attachments occupied by pole users.

Q: ASSUMING THAT INSPECTIONS, OTHER THAN THE PERMIT- OR ROUTE-SPECIFIC PROCEDURES YOU DISCUSSED ABOVE ARE CONDUCTED, HOW DO YOU THINK THOSE SHOULD OCCUR?

1 A: First, I believe that the purpose of the inspection should be established by
2 agreement among all the stakeholders. Is this to be an attachment count or is it
3 to be a safety inspection? That is the first question that must be answered. If it
4 is an attachment count, a precise definition of "attachment" must be established.
5 Is it in the agreement, or are there other definitions that need to be reconciled?
6 Once that is set, then, it seems to me, it is a matter of how the inventory is
7 performed, who it is to be performed by and how much it will cost.

8 **Q: ARE THERE DIFFERENT CONSIDERATIONS FOR SAFETY INSPECTIONS?**

9 A: Yes. These are inherently much more difficult undertakings because they involve
10 not just a simple count of facilities, but multiple (perhaps thousands or even
11 many hundreds of thousands) of determinations about whether or not facilities
12 are in violation, who (or what) caused the violations, how they should be fixed
13 and who should pay for them. And, just as an attachment inventory must start
14 with defining what exactly is an "attachment," a safety inspection must start by
15 specifying what safety standard should be applied.

16 **Q: WHAT STANDARD DO YOU THINK SHOULD BE APPLIED?**

17 A: That is a question that really would be better left for others, but I do know that the
18 National Electrical Safety Code ("NESC") is the most widely used standard.
19 The NESC reflects trans-industry consensus on the construction standards for
20 communications and electric facilities that are necessary to protect the safety of
21 workers and the public. The NESC itself makes clear that there are no safety
22 reasons to exceed the standards it sets.

23 **Q: DO YOU HAVE A RECOMMENDATION FOR REVISING THIS TARIFF?**

1 A: Yes. I believe that the tariff provision – at most – should address attachment
2 inventories, not safety inspections. To the extent that safety inspections may be
3 required, I believe that these should be left to individual agreement and individual
4 negotiations. Attached as Exhibit EFK 1 is my specific proposal for revising the
5 tariff.

6 **Q: WHAT DO YOU BELIEVE ARE IMPORTANT CONSIDERATIONS IN A**
7 **SAFETY INSPECTION?**

8 A: The first thing is that if there needs to be a safety inspection, all attachers need to
9 participate and it has to be done with the participation and buy-in of all the
10 parties, including on the following elements:

- 11 • Necessity of conducting audit
- 12 • Selection of auditors (outside contractors)
- 13 • Allocation of costs for auditors
- 14 • Standards to be agreed upon in advance: the NESC should be the
- 15 prevailing standard
- 16 • Opportunity of all to ride-along and participate in audit
- 17 • Verification of recording and processing and analysis of data
- 18 • Agreement on cause (and causers) of violations.
- 19 • Agreement on remediation techniques and approaches
- 20 • Rational prioritization of remediation
- 21 • Rational cost allocation for remediation

22
23 If a safety inspection incorporates these elements, then I believe that the
24 likelihood that such an inspection becomes ineffective, unreasonably expensive
25 and contentious would be reduced considerably. I would like to emphasize,
26 however, that I believe that imposing penalties for supposed safety violations is
27 extremely unwise and, perhaps more than any other element in the proposed
28 tariff could invite abuse and destabilize what essentially are good working
29 relationships and a reasonably stable operating climate.

1 **Q: PLEASE ELABORATE.**

2 **A:** I do not believe that AEP should have the authority to penalize cable operators
3 for safety violations that it asserts, in its sole discretion, cable operators
4 committed. Utility poles exist in organic environments and all attachers' facilities
5 may fall out of compliance for any number of reasons, such as weather or other
6 exigencies, or actions of other attachers. As a result, the question of which
7 attacher created any given violation is not easily answered, and often leads to
8 heated disputes among the attaching parties. These disputes would become
9 even more acrimonious and counterproductive, and potentially never-ending, if
10 AEP could unilaterally impose a penalty on the party to whom it assigns fault.

11 The results of "safety" inspections that utilities perform can be unreliable and
12 riddled with errors that seriously undermine its reliability and usefulness.

13 Problems such as inspector errors, coding errors and errors in standards
14 interpretations create problems. In one inspection of TWC facilities, the alleged
15 "safety" violations were the result of utility contractors' holding TWC's old plant to
16 newly-adopted standards that were not in existence at the time the attachments
17 were made. These types of errors require particular caution in granting utilities
18 unilateral authority to penalize cable operators for supposed safety violations .

19 Allowing AEP to have such authority indeed would be highly unusual. No other
20 utility in Ohio has authority to penalize cable operators (or any other attacher for
21 that matter) for safety violations.

22 Furthermore, AEP has not demonstrated any reason why it is necessary for it to

1 have that authority here. AEP has not offered anything to suggest that it incurs
2 any costs as a result of safety violations created by third parties, or that it should
3 receive a payment for such violations. The fact that no other utility imposes
4 penalties on attachers for safety violations further suggests that such penalties
5 are unnecessary to ensure that its poles are kept in a safe condition.

6 If the Commission were to conclude that some form of penalty is appropriate for
7 safety violations created by pole attachers, it should institute a rulemaking to
8 determine the penalty mechanism, which it should apply to all attachers,
9 including the pole owner and joint users, equally.

10 **Q: SHOULD AEP'S TARIFF ANYWHERE ALLOW IT TO EXERCISE**
11 **UNFETTERED DISCRETION?**

12 **A:** No. AEP should not be permitted to exercise unfettered discretion in any area of
13 its tariff. Such discretion can be wielded for anti-competitive and other
14 impermissible purposes.

15 **Q: SHOULD AEP BE ALLOWED TO CHARGE CABLE OPERATORS FOR THE**
16 **ENTIRE COST OF INSPECTIONS THAT IT CONDUCTS WHENEVER IT**
17 **WANTS?**

18 **A:** No. As currently drafted, AEP's proposed tariff could be interpreted to
19 allow AEP to collect from cable operators a wide array of costs associated with
20 almost any inventory or inspection it wanted to undertake. It is clearly
21 unreasonable for AEP to require cable operators to bear the full costs of

1 inspections that benefit it and other attachers. Instead, AEP should only be
2 allowed to require cable operators to reimburse it for the proportion of inspection
3 costs that benefits cable operators.

4 **Q: DOES THIS MEAN THAT YOU BELIEVE THAT THERE IS SUCH A RISK**
5 **THAT THESE PENALTIES AND OTHER CHARGES COULD BE ROLLED OUT**
6 **AND PUT INTO PRACTICE NOW?**

7 **A:** I think that there is, certainly if the tariff is approved in its current form. But I think
8 this potential exists primarily because of the conflict between what is in the
9 agreements and what are the field practices, on the one hand – and what is in
10 the proposed tariff, on the other. The possibility of migration to SmartGrid
11 technologies, or perhaps other significant aerial construction by AEP or others
12 adds significantly to these risk factors. And, again, the temptation of high
13 penalties greatly increases the potential for volatility and dispute.

14 Notwithstanding these very serious concerns, I believe that it is fair to point out
15 that OCTA members generally enjoy solid working relationships around the state
16 with AEP – and OCTA is hopeful that if AEP and others fully appreciate the
17 magnitude of the utilities' proposals, an acceptable resolution of these pole-
18 related rates, terms and conditions will be within reach.

19 **Q: ARE THERE ANY OTHER ISSUES IN THE TARIFF THAT YOU BELIEVE**
20 **NEED TO BE ADDRESSED?**

21 **A:** Yes, one. One provision in the proposed tariff calls for an initial contact fee in the

1 amount of \$3.78. As I indicated earlier, this is a significant jump from the existing
2 tariff, which sets this fee at \$1.19 and I am not sure what it covers. It is my
3 understanding that these costs that this fee seeks to recover already are
4 recovered by the administrative carrying charge component of the pole rent and
5 that AEP may be seeking double recovery here. In any case, and whether or not
6 the supposed costs that this fee supposedly recovers are recovered elsewhere, I
7 believe that additional information is needed on this question before it can be
8 decided to maintain this element in its current form.

9 **Q: ARE THERE OTHER CONCERNS?**

10 A: Yes, there are two more. First, the last sentence in the Availability of Service
11 section in the proposed tariffs for the Companies is an incomplete sentence, so
12 we are not certain what is proposed. Once the Companies clarify this sentence,
13 the OCTA may have additional concerns to raise. Second, the Companies have
14 proposed to raise the one-time charge for unpaid balances to 12%. This interest
15 rate, a 50% jump for one company and an even greater jump for the other, is not
16 justified when considering today's economic environment.

17 **Q; DO YOU HAVE OTHER CONCERNS THAT ARE RELATED TO THE ISSUES**
18 **YOU HAVE RAISED IN YOUR TESTIMONY?**

19 A: Yes. In the course of preparing this testimony I have come to learn that some
20 OCTA members are encountering difficulties with pole access. Specifically, I
21 have learned that one OCTA member is having difficulties bringing broadband to
22 unserved rural areas in Eastern Ohio because the charges of the engineering

1 contractor that AEP requires this OCTA member to use are extremely high.

2 Certainly the pole owner should be entitled to recover the costs associated with a
3 cable operator's access to its poles, but in rural unserved areas like these, if the
4 charges are unreasonably high, more than just economic or financial harm to the
5 operator results: entire rural communities can be forced to do without broadband.
6 I do not believe that this is a good outcome, or consistent with objectives that this
7 Commission and others in Ohio are trying to accomplish.

8 One final note: in addition to higher monetary costs, access delays continue to be
9 a problem elsewhere in Ohio, with permit applications sometimes languishing for
10 many months, or even longer, before they are granted. Earlier this year the FCC
11 adopted highly structured pole access timelines to ensure that broadband
12 facilities are deployed in a timely manner. If the problems associated with delays
13 and high access costs become more severe here in Ohio, it may be appropriate
14 for the Commission to consider adoption of FCC-style access principles.

15 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 **A.** Yes, it does. Thank you.
17

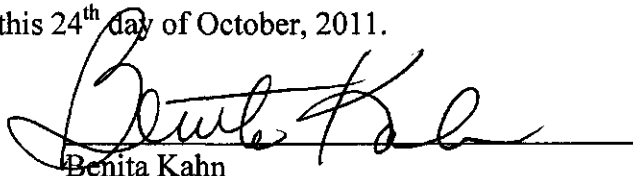
Exhibit EFK 1

Attachment Inventories

The Company reserves the right to conduct periodic inventories of Licensee installations on its poles for the purpose of ensuring the accuracy of pole-attachment rental invoices. The Company shall have the right to conduct such inventories every five (5) years or more often if, in the Company's reasonable discretion, conditions warrant. Licensee shall reimburse the Company for Licensee's reasonable share of the actual expense associated with such inventory. The Company's right to conduct such inventory shall not relieve Licensee of any responsibility, obligation, or liability imposed by law or assumed under the Agreement. The Company shall provide Licensee with no less than 90 days' advance written notice of its intention to conduct such attachment inventory and shall provide to Licensee a reasonable opportunity to participate in the planning and implementation of the inventory. The first inventory conducted after the effective date of the revision contained on this Sheet shall be for the purposes of determining a base line count of Licensee attachments (the "Base Inventory"). To the extent that the Base Inventory results in a number of attachments greater than the number of attachments reflected in Licensee's pole invoices, or in Company records, the Company shall be entitled to collect an amount not to exceed "Back Rent," which shall be defined as the lesser amount of (i) five (5) years' rent at the prevailing per-unit rental rate in effect during each of the applicable years; or (ii) the number of lesser actual years that the attachments have been installed, at the prevailing applicable per-unit rate; or (iii) the number of years, less than five (5), back to a prior inventory. With respect to future inventories conducted after the Base Inventory, to the extent that such inventory results in a number of attachments greater than that contained in the Base Inventory, the Company shall be entitled to collect from Licensee (a) an unauthorized attachment or occupancy sanction in the amount of \$25 per occurrence, plus (b) Back Rent.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon the following persons via email this 24th day of October, 2011.



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