

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INITIAL COMMENTS OF ONECOMMUNITY**

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## **TABLE OF CONTENTS**

I. INTRODUCTION .....	3
II. ONECOMMUNITY IS AN INTERESTED PARTY .....	3
III. THE IMPORTANCE OF BROADBAND .....	4
IV. CONVERGENCE.....	6
V. THE COMMISSION SHOULD ADOPT A RATE STRUCTURE FOR POLE ATTACHMENTS THAT APPLIES TO ALL ATTACHING ENTITIES REGARDLESS OF BUSINESS CLASSIFICATION. ....	6
VI. CONCLUSION.....	9

## **I. INTRODUCTION**

On April 3, 2013, the Public Utilities Commission of Ohio (“Commission”) issued an Entry by which it gave notice that it was considering adopting a new chapter of rules in the Ohio Administrative Code specifically dedicated to access to poles, ducts, conduits, and rights-of-way provided by public utilities. This Entry further gave notice that Commission Staff would hold a workshop on April 17, 2013 to consider the proposed rules. Subsequently, on May 15, 2013, the Commission issued another Entry releasing the proposed rules of Chapter 4901:1-3 of the Ohio Administrative Code and inviting comments on said rules by June 14, 2013. This deadline was later amended to July 12, 2013. It is pursuant to this invitation that OneCommunity (“OC”) now submits the following comments in response to the proposed rules of Chapter 4901:1-3 of the Ohio Administrative Code.

## **II. ONECOMMUNITY IS AN INTERESTED PARTY**

OC is an Ohio non-profit organization that provides application-based data communications services. OC is authorized to provide data transport services as a Competitive Local Exchange Carrier (“CLEC”) in the State of Ohio. OC was granted its Certificate to provide application-based communications services within the State of Ohio in PUCO Case No. 11-4253-TP-ACE.

In connection with the provision of OC’s communications services, OC has developed a community fiber network designed to connect more than 1,500 community anchor institutions such as hospitals, physician clinics, universities, K-12 schools, governmental entities, public safety agencies, and nonprofit organizations. The construction of such a fiber network necessitates the attachment of wires, cables, or other similar apparatuses to poles and conduit that

are owned by other public utilities. As a result, OC has a vested interest in the above-captioned proceedings.

Moreover, OC received a \$44.8 million stimulus grant that funded 64% of a nearly \$70 million fiber network construction project targeting Northeast Ohio. The grant, awarded by the U.S. Department of Commerce's Comprehensive Community Infrastructure ("CCI") program, added nearly 1,000 miles of fiber-optic cable to OC's high-speed broadband network, enlarging its total footprint to 27 counties, and creating nearly 500 jobs in Northeast Ohio.

OC's application was one of three tightly integrated proposals totaling \$141 million in requested federal funds submitted under the umbrella of the Ohio Middle Mile Consortium ("OMMC"). The consortium was formed to maximize the opportunities for the State of Ohio to create a single, unified and seamless broadband backbone for the entire state and its citizenry. All the lead applicants for the OMMC – OC, Horizon Telcom and Com Net – working in close collaboration with Ohio Academic Research Network (OARnet) and other state agencies, have received awards through the CCI program. The OMMC was formed with the strong leadership and support of then Governor Ted Strickland and the Ohio Board of Regents.

### **III. THE IMPORTANCE OF BROADBAND**

President Obama has stated "building a nationwide broadband network will strengthen our economy and put more Americans back to work." By connecting every corner of our country to the digital age, we can help our businesses become more competitive, our students become more informed and our citizens become more engaged." To further that statement, the White House announced in 2010 that "High-speed internet infrastructure is key to a 21st century information economy. Through \$7 billion in targeted investments from the Recovery Act, the Administration has expanded broadband access nationwide, improved high-speed connectivity in

rural areas and public computer centers, and increased Internet capacity in schools, libraries, public safety offices, and other community buildings.”

In addition, Governor John Kasich, on February 7, 2012 announced that Ohio, via the Ohio Academic Resources Network (“OARnet”), would deploy a 100 gigabit fiber optic network to make OARnet one of the most advanced fiber networks in the world. OC also intends to deploy a 100 gigabit fiber optic network.

Therefore, the deployment of broadband is a priority for both the United States of America and the State of Ohio. If the State of Ohio is to develop economically and move forward into the post-industrial society, the ubiquitous deployment of high-speed broadband is essential.

The deployment of high-speed broadband is accomplished primarily by fiber optic cable. These fiber optic cables are constructed either by attaching them to existing poles or by placing them in conduits. Therefore, the timing of this rule-making proceeding is providential in that the Public Utilities Commission of Ohio can accomplish the goals of both the United States of America and the State of Ohio by making it easier and cheaper for broadband deployment to occur in Ohio.

OC will not be arguing that pole owners should be subsidizing or not recovering their costs related to pole attachments. We will be arguing, however, that the costs charged to OC should be fair, non-discriminatory and related directly to the costs incurred by the pole owners. In addition, the timing of the rules for attachment need to be streamlined to assure that companies providing broadband services, such as OC, can do so in a timely manner.

#### **IV. CONVERGENCE**

The Federal Communications Commission (“FCC”) has been anticipating a phenomenon it calls “convergence” since at least 2005. Convergence, in its simplest terms, is the combining of three separate business lines: phones, cable TV, and internet. The technology driving convergence is internet protocol (“IP”) which is now being used for phone via voice over internet protocol (“VOIP”) and video streaming in the case of cable television. Essentially, in the near future, IP will carry voice, video and data to homes and businesses regardless of whether it is delivered by an internet company, a phone company, or a cable television cable company. Unfortunately, the regulatory scheme created by the FCC has for years regulated communications by line of business; a separate set of rules for cable television, a separate set of rules for phone service and the deregulation of internet service.

Regarding the applicability of convergence to pole attachment rates, it would appear that the important issue is not what particular line of business the pole attacher is in, but the key issue is what burden does the attachment put on the poles? Pole attachment rules should be agnostic regarding the type or format of data, video and voice being transmitted via the line attached to the pole. The only issue of any importance is the cost and burden the attachments place upon the pole owner. For that reason we will argue that all attachers should be treated equally.

#### **V. THE COMMISSION SHOULD ADOPT A RATE STRUCTURE FOR POLE ATTACHMENTS THAT APPLIES TO ALL ATTACHING ENTITIES REGARDLESS OF BUSINESS CLASSIFICATION.**

Consistent with the foregoing, OC submits that the Commission should adopt a rate structure for pole attachments that applies to all attaching entities regardless of how a business is classified or what line of business the attaching entity operates. This will eliminate the outdated and arbitrary distinctions that the FCC has established for cable companies, telecommunications

providers, and suppliers of broadband. In return, a universal rate structure that applies to all attaching entities will assist public utilities with processing pole attachment requests in a timelier manner, which will lead to cost savings for both the utility and the attaching entity.

Proposed rule 4901:1-3-04 purports to regulate the rates, terms, and conditions for poles, ducts, and conduits. Division (A) of this rule will require that all rates, terms, and conditions for non-public utility attaching entities are to be established through tariffs under existing R.C. 4905.71. Non-public utility attaching entities will still be permitted to negotiate rates, terms, and conditions through voluntary agreements. However, access to poles, ducts, conduits, and rights-of-way under the proposed rule are to be established under the authority of 47 U.S.C. 224. This presents a couple of issues that the Commission should address.

While 4901:1-3-04(A) does not make a distinction between the business classification of any attaching entity, industry practice has resulted in the establishment of tariffs that apply different rates and rate formulas to attaching entities depending on whether the entity is a cable television company or not. For example, the current tariff in effect for the Cleveland Electric Illuminating Company, a subsidiary of First Energy Corp., contains a Part A and Part B that establishes the rates, terms, and conditions for pole attachments. Part A applies to cable television and private communication systems and sets forth attachment rental fees at \$4.29 per pole attachment per year and \$7.00 per anchor attachment per year. However, Part B of the tariff applies to any “noncable television, nonprivate communication, nonpublic or nonmunicipal utility system attachment,” and grants the Company the discretion to determine the costs to be paid by an attaching entity. As the foregoing suggests, this distinction is arbitrary and impractical in today’s industry.

Further, in terms of access to poles, ducts, conduits, and rights-of-way, 47 U.S.C. 224 gives cable television systems and telecommunications carriers the right to nondiscriminatory access. As a result, the statute itself does provide for a limitation on nondiscriminatory access to poles, ducts, conduits, and rights-of-way. For example, an incumbent local exchange carrier (“ILEC”) is not afforded nondiscriminatory access under 47 U.S.C. 224. This statute has been the subject of much FCC discussion in recent years as ILEC’s have seen their share of pole ownership decrease while the utilities now own a significant majority. Accordingly, the Commission should be careful to clearly articulate what entities should be afforded nondiscriminatory access.

Finally, Division (B) of proposed rule 4901:1-3-04 requires public utilities to establish rates, terms, and conditions for pole attachment access through negotiated agreements. This is a practice that currently exists in Ohio that utility companies have used to the detriment of non-utility attaching entities. Essentially, agreements are entered into between the utilities that allow access for lesser rates, which result in the utilities not paying their fair share of costs when subsequent non-utility attaching entities request access. The Commission must set a baseline for rates, terms, and conditions that public utilities shall adhere to when entering into these agreements with other public utilities.

Accordingly, the Commission should prevent the utility companies from creating these arbitrary rate structures by establishing a base set of rates, terms, and conditions that applies to all attaching entities. Public utilities will still have the ability to negotiate with attaching entities for additional terms and conditions should the need arise, but it is imperative that a baseline is set for attaching entities to follow.

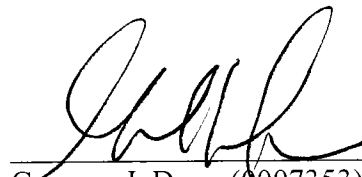


Moreover, OC supports the comments filed by Data Recovery Services, LLC in this proceeding. Allowing for non-discriminatory access to poles, ducts, conduits, and rights-of way, as well as the establishment of a universal time requirement and rate structure is essential to the deployment of high-speed broadband.

## **VI. CONCLUSION**

OC respectfully requests that the Commission take the aforementioned concerns and issues under advisement to ensure that proposed Chapter 4901:1-3 creates a fair and just policy regarding pole attachments in Ohio. Given Ohio's juxtaposition at the forefront of economic development, the State is well-positioned to lead the charge for the continued deployment of broadband within Ohio. Ensuring fair access and rates for attaching entities will significantly help to foster this endeavor.

Respectfully submitted,



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