

**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)	Case No. 13-579-AU-ORD
Utilities)	
)	
)	
)	

REPLY COMMENTS OF DATA RECOVERY SERVICES, LLC

Gregory J. Dunn (0007353) (Counsel of Record)
Direct Dial: (614) 462-2339
E-mail: Gregory.Dunn@icemiller.com
Christopher L. Miller (0063259)
Direct Dial: (614) 462-5033
E-mail: Christopher.Miller@icemiller.com
Chris W. Michael (0086879)
Direct Dial: (614) 462-1148
E-mail: Chris.Michael@icemiller.com
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Attorneys for Data Recovery Services, LLC

TABLE OF CONTENTS

I. INTRODUCTION	3
II. DRS REAFFIRMS ITS POSITIONS SET FORTH IN ITS INITIAL COMMENTS FILED WITH THE COMMISSION JULY 12, 2013.	3
III. CONCLUSION.....	4

I. INTRODUCTION

Pursuant to the Public Utilities Commission of Ohio (“Commission”) Entry dated July 22, 2013, Data Recovery Services, LLC (“DRS”) hereby submits the following Reply Comments in response to the Commission’s consideration of the proposed rules of Chapter 4901:1-3 of the Ohio Administrative Code regarding access to poles, ducts, conduits, and rights-of-way provided by public utilities. DRS submits these Reply Comments to reaffirm its position that the Commission should adopt more expansive rules that establish a specific and clear timeline for processing pole attachment requests and ensuring timely completion of such requests, as well as ensuring that costs associated with pole attachments are properly and proportionately born by the cost-causing entity.

II. DRS REAFFIRMS ITS POSITIONS SET FORTH IN ITS INITIAL COMMENTS FILED WITH THE COMMISSION JULY 12, 2013.

DRS is appreciative of the Commission’s time and consideration, as well as its desire to craft a sustainable and fair regulatory policy addressing such access. However, DRS would again like to emphasize the need for the Commission to promulgate rules which will enable innovative, modern high-tech companies like DRS to provide sophisticated services to customers in a timely manner without having significant delays from the utility pole owners.

Many of the initial comments filed by the various commenting parties recognize that the absence of a specific and established timeline for pole attachments may subject attaching companies to prolonged and excessive delays. These delays cause companies like DRS to incur additional costs, business uncertainty, and prevent the provision of service to customers in a timely manner.

In addition, DRS agrees with the positions set forth by Fiber Technologies Networks, LLC (“Fibertech”), OneCommunity (“OC”), and the Ohio Cable Telecommunications

Association (“OCTA”) in their Initial Comments advocating for clear timelines for the processing of pole attachment requests and ensuring timely completion of such requests. Specifically, Fibertech’s proposal providing for a standard ninety day (90) timeline, forty-five (45) day for smaller requests, and one hundred twenty (120) days for large requests is an appropriate example of how the Commission can expand the regulatory framework in Ohio beyond the Federal Communication Commission’s (“FCC”) Rules in order to allow for the increased deployment of broadband within Ohio and ensure fair and reasonable access for attaching entities.

Further, the assertion that the “cost-causer” should bear its proportionate share of costs associated with pole attachments is supported by nearly every non-utility which provided comments in this proceeding. DRS further supports the position taken by OC in its Initial Comments regarding “convergence” in the broadband industry. Accordingly, DRS restates and reaffirms its position that the Commission should reject the FCC’s two-tiered cost structure approach for attaching entities and establish a single set of rates for all attaching entities, as well as adopt rules requiring the “cost-causer” to proportionately share in the costs associated with pole adjustment or pole replacement regardless of whether the adjustment or replacement was brought about by a new attaching entity.

III. CONCLUSION

It is essential that utility companies (pole owners) recognize and understand that the issues that exist with broadband expansion are not going to improve unless the State of Ohio has a specific documented process that places an equal amount of importance on all types of pole attachment work. It is almost impossible for pole owners in today’s environment to control the workflow unless a process is created and put into place that appropriately and equitably delineates the responsibilities amongst all parties. Further, DRS again urges the Commission to

consider establishing a subcommittee of professionals in the industry to review and establish a set of minimum standard operating rules, procedures and penalties for everyone to follow, not just pole owners, but any entity intending to operate on poles in the state of Ohio.

Respectfully submitted,

/s/ Chris W. Michael

Gregory J. Dunn (0007353)

(Counsel of Record)

Direct Dial: (614) 462-2339

E-mail: Gregory.Dunn@icemiller.com

Christopher L. Miller (0063259)

Direct Dial: (614) 462-5033

E-mail: Christopher.Miller@icemiller.com

Chris W. Michael (0086879)

Direct Dial: (614) 462-1148

E-mail: Chris.Michael@icemiller.com

Ice Miller LLP

250 West Street

Columbus, Ohio 43215

Attorneys for Data Recovery Services, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 29 day of August, 2013 via electronic transmission.

/s/ Chris W. Michael

Chris W. Michael

Fiber Technologies Networks, LLC

Kimberly W. Bojko

Rebecca L. Hussey

Mallory M. Mohler

Carpenter, Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, OH 43215

Bojko@carpenterlipps.com

Hussey@carpenterlipps.com

Mohler@carpenterlipps.com

Zayo Group, LLC

Dylan T. Devito

Zayo Group, LLC

1805 29th Street

Boulder, CO 80301

The Ohio Telecom Association

Scott E. Elisar

McNees, Wallace & Nurick 21 E. State Street,
17th Floor

Columbus, OH 43215

selisar@mwncmh.com

Frontier North, Inc.

Cassandra Cole

1300 Columbus Sandusky Road Marion, OH
43302

Cassandra.cole@ftr.com

PCIA-The Wireless Infrastructure
Association and The Hetnet Forum

D. Zachary Champ

Jonathan M. Campbell

Alexander B. Reynolds

500 Montgomery Street, Suite 500

Alexandria, VA 22314

Ohio Power Company, Ohio Edison
Company, The Cleveland Electric
Illuminating Company, The Toledo
Edison Company, The Dayton Power
and Light Company, and Duke Energy
Ohio, Inc.

Amy B. Spiller

Elizabeth H. Watts

Duke Energy Ohio, Inc.

139 East Fourth Street

Cincinnati, OH 45201

Randall V. Griffin

The Dayton Power and Light Company

1065 Woodman Drive

Dayton, OH 45432

James W. Burk
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza
Columbus, OH 43215-2373

Ohio Cable Telecommunications

Association

Benita Kahn
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P. O. Box 1008
Columbus, OH 43216-1008
bakahn@vorys.com
smhoward@vorys.com

Gardner F. Gillespie
John Davidson Thomas
Sheppard, Mullin, Richter & Hampton
1300 I Street NW, 11th Floor East
Washington, DC 20005-3314
ggillespie@sheppardmullin.com
dthomas@sheppardmullin.com

The AT&T Entities

Jon F. Kelly
AT&T Services, Inc.
150 E. Gay St., Rm. 4-A
Columbus, Ohio 43215

tw telecom of ohio llc

Thomas J. O'Brien
Bricker & Eckler LLP
100 S. Third St.
Columbus, OH 43215-4291
tobrien@bricker.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/29/2013 4:49:37 PM

in

Case No(s). 13-0579-AU-ORD

Summary: Reply electronically filed by Mr. Christopher W. Michael on behalf of Data Recovery Services, LLC