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Case No. 13-579-AU-ORD

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## MEMORANDUM

**TO:** Angela Hawkins, Chief Legal Counsel, Public Utilities Commission of Ohio

**FROM:** Mark Hamlin, Director of Regulatory Policy

**DATE:** March 14, 2014

**RE:** CSI Review – Access to Poles, Ducts, Conduits, and Rights-of-Way (OAC 4901:1-3-01, 4901:1-3-02, 4901:1-3-03, 4901:1-3-04, 4901:1-3-05, and 4901:1-3-06)

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

### Analysis

This rule package consists of six new rules being proposed by the Public Utilities Commission of Ohio. The rules will govern how public utilities and other entities attach cables, wires, or other attachments to utility poles, ducts, conduits, and rights-of-way. The BIA notes that the Commission has had authority over pole attachments for decades, but is adopting these rules due to an increase in disputes over attachments as a result of increased competition.

The proposed rules establish the duty of a pole owner to provide access to an attaching entity (such as cable operators, other utilities, telecommunications carriers, etc.) and a process for requesting access. Generally, the rules attempt to create a framework for parties to negotiate rates, terms, and conditions; but the rules also allow for PUCO intervention when necessary. There are a number of requirements for various business entities to submit information, either to the PUCO or to other parties in the negotiations, and these requirements constitute the primary adverse business impacts as defined in ORC 107.52.

The PUCO received 21 comments (including both initial and reply comments) during the review

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period. The comments – all of them representing various elements of industry – expressed a range of opinions about the proposed rules. Many of the commenters expressed general support for the rules, including the overall alignment with Federal Communications Commission (FCC) guidelines, but made specific suggestions for improvement to the rules. One commenter expressed support for PUCO regulation, but encouraged strict adherence to the FCC rules without any of the changes proposed by PUCO staff. Finally, one comment on behalf of Ohio’s electric utilities expressed general opposition to the rules, citing a lack of a problem with pole attachment disputes and unnecessary and unintended consequences from certain rule provisions.

Based on a review of the initial PUCO order proposing the rules, it seems evident that pole attachments will be subject to regulation, either through these proposed PUCO rules or through existing FCC rules. Moreover, as discussed above, it does appear that the PUCO has structured the rules in a way to avoid overregulation by providing a framework for the negotiations between the parties to an attachment, but avoiding direct PUCO involvement unless and until those negotiations break down. As such, the CSI Office does believe that the purpose of the rules is justified. In terms of the additional comments to either strictly adhere to the FCC requirements or to go beyond them in terms of dictating additional specific requirements for attachments, the CSI Office will defer to the PUCO on where best to draw those lines, with the understanding that in the Commission’s final order it will address its rationale and the specific suggestions of the commenters.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the PUCO should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.