

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Chapter)	
4901:1-3, Ohio Administrative Code,)	Case No. 13-579-AU-ORD
Concerning Access to Poles, Ducts, Conduits,)	
and Rights-of-Way by Public Utilities.)	

**REPLY OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

On March 27, 2015, the Ohio Cable Telecommunications Association (“the OCTA” or “the Association”) moved for clarification and reconsideration of the Commission’s February 25, 2015 Entry in this docket with two requests. The Association requested that the Commission issue an Entry clarifying the process for comments and extending the timing of the automatic approval for the tariff amendments that would be filed on May 1, 2015. Secondly, the Association requested that the Commission issue an Entry clarifying that if an electric distribution utility or a telephone company sought to propose a pole attachment rate or conduit occupancy rate that constituted an increase over an existing tariffed rate, that either the rate increase application process of Section 4909.18, Revised Code or the self-complaint process under Section 4905.26, Revised Code applied and must be followed. In the alternative, the OCTA asked for rehearing (the motion for clarification and application for rehearing jointly referred to as the “OCTA Filing”).

On April 6, 2015, the AT&T Entities filed a memorandum contra as did the Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, The

Ohio Power Company, The Dayton Power & Light Company and Duke Energy Ohio (the “Electric Utilities”). This brief reply responds to both memoranda contra.

I. PROCEDURAL ISSUE

The Electric Utilities argue that the OCTA’s motion for clarification should be treated only as an application for rehearing. As support, the Electric Utilities cite the Commission’s December 6, 2006 Finding and Order in Case No. 06-685-AU-ORD for the proposition that the Commission will eliminate “motions for clarification”. The OCTA disagrees.

Case No. 06-685-AU-ORD must be placed in the proper context. Case No. 06-685 was a review of the Commission’s procedural rules. While the Electric Utilities and AT&T Ohio were parties to that case, the OCTA was not.

In Case No. 06-685, the Commission Staff proposed an amendment to Rule 4901-1-35 of the Ohio Administrative Code that “A motion requesting clarification of any Commission Order will be considered an application for rehearing if it would result in an amendment of the Order.” FirstEnergy, in Case No. 06-685-AU-ORD, stated that motions for clarification are used as a mechanism to better understand the intent of a Commission Order in hopes of avoiding an application for rehearing. See the June 26, 2006 Comments of FirstEnergy at page 10. Duke Energy Ohio also stated in Case No. 06-685-AU-ORD that motions for clarification are necessary when a portion of an Order is not clear in its intent. See the Duke Initial Comments of June 26, 2006 in Case No. 06-685-AU-ORD at page 8.

The Commission never adopted the Staff’s proposed amended language. Nowhere in Rule 4901-1-12 or Rule 4901-1-35 is there an express prohibition against filing a motion for clarification; only the dicta in Finding 59 of the December 6, 2006 Entry. As FirstEnergy and

Duke pointed out in their comments in Case No. 06-685, motions for clarification are useful mechanisms and necessary when a portion of an Order is not clear.

The OCTA also disagrees with the argument made by the Electric Utilities that the OCTA Filing is a belated challenge to the pole attachment and conduit Rules. This argument relies primarily on Rule 4901:1-3-03(A)(5)(b),¹ implying that this rule eliminates the obligations of the statutory requirements of O.R.C. 4909.18. However, Rule 4901:1-3-03(A)(5)(b) merely addresses the requirement to notify attaching entities in the event there will be an increase in pole attachment rates. Thus, the rule does not supersede or preempt the requirements specified in O.R.C. 4909.18.

The Electric Utilities also rely on the Rules that implement a rate formula for pole attachments and conduit occupancy. Rule 4901:1-3-04(D)(1) provides that the Commission shall determine rates, terms and conditions in a complaint proceeding or tariff filing. Other than setting forth the formulas to be used, specifics of the procedure for the complaint proceeding or the means required to demonstrate the proper inputs is not addressed. The Commission appears to recognize that more than just the resulting rate would be necessary in the application when stating in its February 25, 2015 Entry that the application should include the “applicable calculations”. What remains open for clarification is the necessary evidence that should be included for the inputs in the event implementation of the formula results in an increase.

The AT&T Entities (“AT&T”) recognized that the Commission had not laid out the mechanism to implement the pole attachment and conduit occupancy tariffs in the AT&T memorandum contra. In that memorandum, AT&T specifically states that the Commission “deferred ruling on the mechanism to be used to implement revised rates to comport with the

¹ In the memo contra, the Ohio Electric Distribution Utilities refer to this as 4901:1-3-03(B)(5)(2), but based on the reference to notice in 60 days, the OCTA assumes the reference was intended to be to 4901:1-3-03(A)(5)(b)

rules it adopted.” AT&T further stated that the February 25, 2015 Entry laid out that mechanism. This is what the OCTA is addressing and believes that O.R.C. 4909.18 and the applicable rules for this statutory section address the mechanism and the appropriate procedural process for implementing tariffs with rates that result in an increase.

As to the claims of the Electric Utilities to dismiss the motion for clarification, the OCTA filed its motion for clarification, or, in the alternative as an application for rehearing. It did not file a stand-alone motion for clarification. Likewise, the application for rehearing filed by the OCTA was not a belated objection to the pole attachment and conduit occupancy rules. The Commission should not treat the OCTA pleading of March 27 solely as an application for rehearing and should not dismiss the OCTA Filing as a late-filed application for rehearing.

II. SUBSTANTIVE ISSUE

The AT&T Entities argue that nothing in Ohio law requires that increases to pole attachment rates may only be accomplished through a traditional rate case under Section 4909.18 or a self-complaint case under Section 4905.26, Revised Code. The Electric Utilities argue that pole attachments are not a utility service, that OCTA confuses the filing of a formula rate with its implementation and that the Commission should reject OCTA’s request to delay the effective date of the tariffs.

None of these arguments address the simple premise contained in the OCTA March 27, 2015 pleading. The Commission cannot act without legislative authority. Section 4905.71, Revised Code requires pole attachment rates to be tarified. Whenever a public utility files an application for an increase in any tarified rate, Section 4909.18, Revised Code requires a process to be followed and the filing of certain exhibits. The General Assembly could have carved out an exception for pole attachment rates, but the fact remains, it did not.

The Commission must follow the statutory mandate.

III. THE REQUESTED EXTENSIONS.

OCTA requested that the Commission provide sufficient time to review and comment on the fifty (50) tariff filings by extending the automatic effective date to August 1, 2015. The Ohio Rural Broadband Association filed a motion requesting that the Commission extend the date for its members to prepare and file the calculations and tariff amendments from May 1 to June 1, 2015.² OCTA neither supports nor objects to the extension requested by the Ohio Rural Broadband Association. If the Commission grants it, however, the OCTA requests that the automatic effective date for the tariff filings of the Ohio Rural Broadband Association (or whoever else is granted this extension by the Commission) be extended to September 1, 2015.

The Electric Utilities argue that the Commission should reject the request for an extension to August 1, 2015³ to review the fifty (50) tariffs that will be filed on May 1, arguing that with the formulas this is a simple “plug and play” process.⁴ While the Rules formalize the use of the FCC formulas, the Commission has used the formulas in prior rate cases. The Commission certainly can recall the disputes that have historically occurred with respect to the proper inputs and operating costs when using the formula. Questions can arise regarding the pole costs and recordkeeping counts. Or, if a utility rebuts the presumptions specified, that requires review by the attaching parties. This takes time and it is an unusual circumstance that all the telephone companies and electric utilities will file tariffs at the same time as will occur here.⁵

² Based on its filing, the Ohio Rural Broadband Association represents 32 small Ohio ILECs.

³ This would be September 1, 2015 if the motion for extension filed by the Ohio Rural Broadband Association is granted.

⁴ It should be noted that AT&T neither supported nor objected to the extension requested by OCTA.

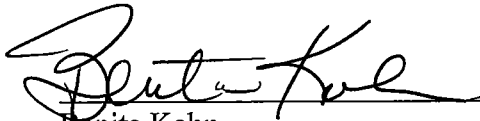
⁵ The Electric Utilities try to argue that if the Commission grants the relief requested by the Ohio Rural Broadband Association, that will result in 32 of the 50 filings being moved a month. First, there is no reason to believe that the Commission would not grant this extension to all companies that are filing tariffs. Second, if the extension is only

The Electric Utilities indicate that the staff is fully capable to review all fifty (50) tariffs in 60 days. The OCTA respects the Commission's staff and its ability to review the tariff filings. Its member, however, are the attaching parties to these poles and users of the conduit that are acquired from monopoly owners. Pole attachments and conduit occupancy are significant cost inputs for the services provided by OCTA's members. The OCTA and its members should be granted the additional limited extension of time requested to review the large number of tariffs that are to be filed for this significant cost input.

IV. CONCLUSION

The Association simply requests that the Commission clarify and address the issues it raised in its March 27, 2015 pleading.

Respectfully submitted,



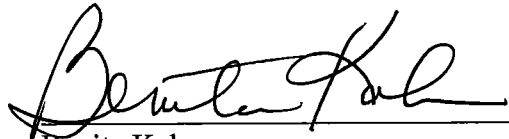
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granted to the Ohio Rural Broadband Association, that still leaves only 60 days to review 18 filings (for entities that own the majority of the poles) if filed on May 1 and 60 days to review the 32 filed on June 1 by the Ohio Rural Broadband Association.

CERTIFICATE OF SERVICE

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Summary: Reply Reply electronically filed by Benita Kahn on behalf of Ohio Cable Telecommunications Association