

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Windstream Ohio, Inc. to Add Language ) Case No. 15-950-TP-ATA  
and Rates for Access to Poles, Conduit, )  
Rights-of-Way by Public Utilities to the )  
Access Tariff. )

In the Matter of the Application of )  
Windstream Western Reserve, Inc. to Add ) Case No. 15-951-TP-ATA  
Language and Rates for Access to Poles, )  
Conduit, Rights-of-Way by Public Utilities )  
to the Access Tariff. )

**OBJECTIONS OF  
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

August 3, 2015

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## **I. Introduction**

The Ohio Cable Telecommunications Association (“OCTA”), representing the interests of Ohio’s cable television and telecommunications industry,<sup>1</sup> hereby files objections to the pole attachment tariff applications of Windstream Ohio, Inc. and Windstream Western Reserve, Inc. (collectively referred to as “Windstream”). These objections are timely submitted, in accordance with the schedule contained in the April 22, 2015 Entry of the Public Utilities Commission of Ohio (“Commission”) issued in *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 (hereinafter “Pole Attachment Rules”).<sup>2</sup>

Rule 4901:1-3-03(A)(1) of the Ohio Administrative Code requires Windstream to have nondiscriminatory rates, terms and conditions that are both just and reasonable. Windstream does not have an existing pole attachment tariff, but has proposed pole attachment tariffs in both cases. Upon review of both sets of proposed tariffs, however, the OCTA objects to the absence of certain language to their proposed pole attachment tariff terms and conditions that would be consistent with the requirements of Rule 4901:1-3-03. As of this date, the OCTA has been unable to verify the accuracy of the calculation of the pole attachment rate in both cases. Moreover, new information was filed under seal by Windstream on July 31, 2015. The OCTA urges the Commission staff to seek information from Windstream to verify the accuracy of the

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<sup>1</sup> As noted in its Motion to Intervene, the OCTA represents the cable television and telecommunications industry in the Ohio. The OCTA’s members have existing and potential business interests in the State and, in particular, in Windstream’s service territories, which will be directly and substantially affected by the outcome of this proceeding. Access to the poles, conduits and rights-of-way of Ohio’s public utilities is a vitally important aspect of the OCTA’s members’ provision of services in Ohio. More specifically, that access is essential for the OCTA’s members to provide a variety of communications services, including video, voice, and Internet access services, in Windstream’s service territories.

<sup>2</sup> In its April 22, 2015 Entry, the Commission specified that objections are due August 1, 2015, which falls on a Saturday. Pursuant to Commission Rule 4901-1-07, if the Commission Office is closed to the public on the day that is the last day for doing an act, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

calculations and the validity of the pole attachment rates. The OCTA also reserves the right to supplement these comments once the OCTA has the opportunity to obtain the information from Windstream necessary to verify the inputs used to calculate its rates.

## **II. Background**

On July 30, 2014, as revised on October 15, 2014, the Commission adopted new administrative rules in Chapter 4901:1-3, Ohio Administrative Code, regarding access to poles, ducts, conduits, and rights-of-way of the public utilities.<sup>3</sup> The new rules became effective in January 2015. On February 25, 2015, as revised on April 22, 2015, in the Pole Attachment Rules docket, the Commission ordered all public utility pole owners in Ohio to file amended tariffs that correspond with the Commission's newly adopted administrative rules. At the same time, the Commission established August 1, 2015, as the deadline for filing motions to intervene and objections in the tariff application dockets.

Windstream filed its proposed tariff applications on May 12, 2015.<sup>4</sup> The OCTA has been unsuccessful thus far in obtaining information regarding specific inputs used from Windstream in order to verify the accuracy of the calculations and the validity of the proposed rates in the applications. Moreover, one business day prior to the objection deadline, Windstream filed additional information in both dockets. That information was filed under seal and the OCTA has not had an opportunity to evaluate it either.

The OCTA has previously moved to intervene in both proceedings. It respectfully and timely submits these objections to the proposed terms and conditions contained in both tariff applications, which are virtually identical to each other. The OCTA also objects to the proposed pole attachment rates in the absence of information and requests that the Staff seek information

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<sup>3</sup> *Access to Poles, supra.*

<sup>4</sup> The applications were originally docketed in *Access to Poles, supra*, and later moved to the above-captioned dockets.

from Windstream in order to verify such proposed rates. Because the OCTA has not had access to the information necessary to verify Windstream's proposed rates, it reserves the right to supplement these comments once the OCTA has the opportunity to obtain this information from Windstream.

### **III. Objections as to Windstream Proposed Terms and Conditions**

The Commission's rules promulgated in Case No. 13-579-AU-ORD require that certain changes be made to the terms and conditions of Windstream's tariff. Windstream does not have an existing pole attachment/conduit occupancy tariff; it proposed new tariff sheets in both cases.

The OCTA has one issue to which it objects in the Windstream proposed Terms and Conditions and one issue that it believes needs clarification to result in just and reasonable terms and conditions. The OCTA objects to the absence of certain language which, if added, will make the tariffs consistent with the Commission's new rules. As to the tariff issue that requires clarification, the Windstream tariff proposals do address a very common practice associated with pole attachments – overlashing, but revisions are necessary to avoid any future disputes on handling overlashing notices. The OCTA recommends that Commission direct Windstream to modify their Access Service Tariffs, PUCO No. 1, in the following manner:

- (1) *Sheet No. 12, Section S2.2.3(F), "Attachment and Occupancy Applications"*: OCTA objects because this paragraph does not contain the requirements contained in the Commission's Rule 4901:1-3-03 of the Ohio Administrative Code. The OCTA recommends that the Commission direct Windstream in both proceedings to add the following language (in its entirety) to item F.1 on Sheet 12 to make it consistent with Rule 4901:01-3-03 of the Ohio Administrative Code:

An application refers to a written request filed by an attachee for permission to utilize specific poles or conduit to place its own facilities. A complete application is an application that provides that telephone company with the information reasonably necessary under its procedures

to begin to survey the poles. For the purpose of determining order size, multiple applications filed by an attachee will be aggregated and treated as one request when the requests are filed within a rolling thirty- (30) day period of one another. Large Orders shall consist of 301 to 2,999 poles; Normal Orders shall consist of 300 or less poles and a Sizable Order shall consist of greater than 3,000 poles.

Attachee agrees to limit the filing of applications for pole attachment authorizations to include not more than 300 poles on any Normal Order and less than 3,000 poles on all applications which are pending approval by the Company at any one time. Such limitations will apply to poles located within a single plant construction district of the Company. The Company may permit the preceding limitations to be exceeded or modified if so requested in writing by the attachee when the circumstances of a particular job warrant such. Attachee further agrees to designate a desired priority of completion of the pre-licensed survey and Make Ready Work for each application relative to all other of its applications on file with the Company at the same time.

When an application for attachment to a pole is submitted by an attachee, a pre-licensed survey will be required to determine the existing adequacy of a pole to accommodate attachee's communications facilities. The Company will advise the attachee in writing of the estimated Make Ready Charges for all activities required to prepare the structure for attaching party's proposed attachments. Attachee shall have twenty-one (21) days to send notification to the Company of its acceptance of the estimate, unless the Company receives a written dispute or request of additional information regarding the scope of work or allocation of costs of the work from the Attachee, in which case the twenty-one (21) day period will be held in abeyance until the dispute or inquiry is resolved.

Following the attachee's submission of payment of the estimated cost, the Company shall initiate the required Make Ready Work. Following receipt of payment for attachments in the communications space, the Company shall make every reasonable effort to complete Make Ready Work within sixty (60) days for Normal Orders; within one hundred and five (105) days for Large Orders; and within the negotiated interval for Sizable Orders. Following a receipt of payment of wireless attachments above the communications space, the Company shall make every reasonable effort to complete Make Ready Work within ninety (90) days for Normal Orders; within one hundred and thirty-five (135) days for Large Orders; and within the negotiated interval for Sizable Orders. The completion dates of Make Ready Work for Sizable Orders, regardless of location, shall be negotiated by the attachee and the Company. Provided the Company cannot demonstrate good and sufficient cause for exceeding the timeline for Make Ready Work, the attachee may hire a contractor authorized by the Company for Make Ready Work for attachments in the communications space.

- (2) *Sheet No. 21, Section S2.2.3(G)(6)(c), "Loading"*: This refers to the practice of an attachee lashing its cable (commonly referred to as overlashing). The OCTA recommends that this paragraph be modified as follows:

Attachee may lash its cable to its previously permitted strand of cable or to the strand of another attachee with such attachee's consent, with fifteen (15) days' notice to the Company. ~~Where this is acceptable to all other attachees and the Company.~~ Maximum tension of attachee's strand shall not exceed sixty percent of the breaking strength under applicable storm loading, as defined by the National Electrical Safety Code (Rule 251). Where any governmental authority designates a heavier degree of loading than the NESC, the local requirements shall govern.

This specific language was not created in a vacuum. The Federal Communications Commission has found that overlashing does not require an attachment application and that prior notice is up to the parties to negotiate.<sup>5</sup> The OCTA is proposing here to provide Windstream with prior written notice more than two weeks in advance of the overlashing.<sup>6</sup>

These additions are just, reasonable, necessary and appropriate for Windstream's tariff. Also, they will make Windstream's tariff clearer and help avoid future disputes. Accordingly, the OCTA recommends that the above language be included in the Windstream pole attachment tariff being reviewed in this proceeding.

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<sup>5</sup> See, *Implementation of Section 703(E) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6807, ¶¶ 59-69 (rel. Feb. 6, 1998); *Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd. 12103, 12141-12145 (rel. May 25, 2001) (overlasher is not required to obtain prior consent of the pole owner, but should provide notice); see also *S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002) ("The Commission \* \* \* clarified that an overlashing party does not need to obtain advance consent from a utility if that party has a primary wire attachment already in place \* \* \* however \* \* \* a utility is entitled to notice of the overlashing \* \* \*." (internal citation and quotation omitted)); *Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd. 16333, 16340-41 (rel. Aug. 8, 2003) (affirming policy that no prior consent may be required for overlashing).

<sup>6</sup> At least one Ohio public utility has negotiated notice for overlashing and agreed to this OCTA language for its pole attachment tariff. On March 21, 2014, United Telephone Company of Ohio dba CenturyLink agreed with this specific language for its proposed pole attachment tariff in *In the Matter of the Application of United Telephone Company of Ohio dba CenturyLink to Introduce a Pole Attachment and Conduit Occupancy Tariff P.U.C.O. No. 1, Case No. 11-602-TP-UNC*.

The changes proposed above are intended to bring the Windstream proposed terms and conditions consistent with Rule 4901:1-3-03 of the Ohio Administrative Code and to clarify the issue of overloading.

#### **IV. Objections as to Windstream Proposed Pole Attachment Rate**

Windstream Ohio has proposed a pole attachment rate of \$2.46 per pole per year and a conduit rate of \$0.18 per duct foot. The current Windstream pole attachment rates are \$1.75 per pole per year for three specific exchanges and \$2.85 per pole per year for twelve other exchanges. The current conduit rate is \$0.75 per duct foot.

Windstream Western Reserve has proposed to decrease to its conduit occupancy rate from \$0.75 per duct foot to \$0.35 per duct foot, but to increase its pole attachment rate from \$2.00 per pole per year to \$3.20 per pole per year, a 60 percent increase.

The OCTA has served discovery on Windstream seeking information relating to the inputs of the rate calculations, including:

- the 2014 pole maintenance expense
- the pole rental expense
- the total numbers of poles in ARMIS Account 2411
- the gross pole investment in ARMIS Account 2411
- the gross plant investment in ARMIS Account 2001
- the accumulated depreciation in Account 3100
- the accumulated depreciation related to ARMIS Account 2411
- the Total General and Administrative Expenses in ARMIS Accounts 6710 and 6720
- the Accumulated Deferred Taxes (plant) Accounts 4100 and 4340
- the Accumulated Deferred Taxes (poles) Accounts 4100 and 4340
- the rental expense
- the depreciation rate for gross pole investment, and the operating taxes account 7200

Windstream has responded to the OCTA discovery and characterized the information sought as confidential and proprietary and would not provide it absent a mutually acceptable non-disclosure agreement. While the OCTA and Windstream are working on a protective



agreement, a negotiated protective agreement has not been reached. In addition, on July 31, 2015, Windstream submitted under seal in both cases certain redacted materials. The public version indicates that these materials provide 2014 account balances with respect to certain accounts comprising gross investment, depreciation reserve, deferred taxes, net investment, annual carrying charge rates, and the percentage of a net investment as well as cost of capital figures. The OCTA does not yet have access to the confidential information that was submitted on July 31. Thus, the OCTA does not yet possess the pertinent information to verify the accuracy of the calculations and the validity of the proposed pole attachment rates.

Since the OCTA has not been able to obtain access to this information prior to the due date for these objections, it objects to Windstream's proposed pole attachment rates and urges the Staff to obtain the information necessary to verify the accuracy of the rate calculations and the validity of the proposed pole attachment rates. To the extent that the OCTA does obtain the requested information from Windstream, it reserves the right to supplement these objections and file more-specific information with respect to the proposed rates just as soon as it is able to evaluate the companies' information, once provided.

With respect to Windstream Western Reserve's proposed pole attachment rate from \$2.00 to \$3.20 per pole, this represents an increase of 60 percent. Subject to the any supplemental objections regarding that proposed increase, should the Commission ultimately determine that the correct rate for Windstream Western Reserve results in more than a 20% increase in its rate, the OCTA urges the Commission to apply the principal of gradualism in implementing an increase of this size. For decades, the Commission has applied principles of gradualism or rate continuity in setting rates in order to avoid potential problems of disrupting customer demands

where there is a substantial rate increase proposed.<sup>7</sup> The Commission has stated that gradualism is an important regulatory principle and a useful tool in managing overall customer impacts when implementing new rates.<sup>8</sup>

The principle of gradualism, therefore, is used to avoid the “rate shock” effect on a utility’s customers. The Commission has determined that it possesses the statutory authority under Section 4905.04, Revised Code, to structure an appropriate phase-in plan, and such a phase-in could last as long as ten years.<sup>9</sup>

In the present case, the Commission is confronted with a proposed pole attachment rate increase of 60%. Implementing an increase of this size all at once is bound to have a disruptive impact on attachees and their customers, particularly in a market where cable companies must compete with satellite providers. The significance of the proposed rate increase to attachees and their customers cannot be overlooked. Windstream Western Reserve owns 65,343 poles,<sup>10</sup> which, at the proposed rate, would be an immediate increase costing over \$78,000 to the attachees and their customers. The OCTA believes that an immediate increase of this magnitude would have a disruptive impact on attachees and their customers, and thus, warrants the application of the principle of gradualism and the establishment of a phase-in plan of approximately 20% each year until the authorized rate level is achieved.

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<sup>7</sup> See, e.g., the Commission’s October 6, 1982 Entry on Rehearing, citing to the discussion of pricing of terminal equipment in its April 26, 1982 Opinion and Order in *General Telephone Company of Ohio*, Case No. 81-383-TP-AIR, at pp. 52-54, wherein the Commission dealt with proposed increases of 151.5%, 73.6% and 81.9% for three groups of terminal equipment.

<sup>8</sup> See, the December 19, 2008 Entry on Rehearing, In re The East Ohio Gas Company dba Dominion East Ohio, Case Nos. 07-829-GA-AIR, et al., 2008 Ohio PUCO Lexis 779, at p. 7. See also, the January 21, 2009 Opinion and Order, *In Re Ohio Edison Company, et al.*, Case No. 07-551-EL-AIR, et al., 2009 Ohio PUCO Lexis 58 at p. 18, Footnote 3.

<sup>9</sup> See, the May 12, 1992 Opinion and Order, *In Re The Cincinnati Gas & Electric Company*, Case No. 91-410-EL-AIR, 1992 Ohio PUCO Lexis 316, at pp. 55-56.

<sup>10</sup> Windstream Western Reserve Application at Exhibit D.

## V. Conclusion

For all the foregoing reasons, the OCTA reserves the right to file supplemental objections regarding Windstream's proposed pole attachment rates. Additionally, the OCTA respectfully requests that the Commission delay the implementation of Windstream's proposed tariffs and pole attachment rates in both cases until modified, or in the case of the rates, OCTA has had the opportunity to supplement these comments once it obtains information from Windstream and the rates are verified by the Staff, as set forth above.

Respectfully submitted,



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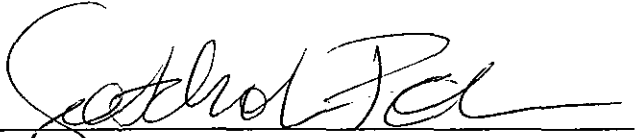
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**CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 3rd day of August 2015, upon the person listed below.

  
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