

FILE

10

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Cincinnati Bell Telephone Company LLC) Case No. 15-973-TP-ATA
to Add 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

RECEIVED - DOCKETING DIV
2015 AUG - 3 PM 12:40
PUCO

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician TC Date Processed AUG 03 2015

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Background.....	1
III.	Objections as to CBT Proposed Terms and Conditions.....	2
IV.	Conclusion	7
	CERTIFICATE OF SERVICE	8

I. Introduction

The Ohio Cable Telecommunications Association (“OCTA”), representing the interests of Ohio’s cable television and telecommunications industry,¹ hereby files objections to the pole attachment tariff application of Cincinnati Bell Telephone Company (“CBT”). 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”).²

Rule 4901:1-3-03(A)(1) of the Ohio Administrative Code requires CBT to have nondiscriminatory rates, terms and conditions that are both just and reasonable. Upon review of CBT’s proposed tariffs, however, the OCTA objects to the absence of certain changes to its existing pole attachment tariff terms and conditions.

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.³ The new rules became effective in January 2015. On February 25, 2015, as revised on April 22, 2015, in the Pole Attachment Rules

¹ 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 CBT’s service territory, 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 CBT’s service territory.

² 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.

³ *Access to Poles, supra.*

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.

CBT filed its tariff application on May 15, 2015. The OCTA has previously moved to intervene in this proceeding. It respectfully and timely submits these objections to the lack of clarity regarding overloading and the absence of proposed changes to the existing terms and conditions so as to make the tariff comply with the new rules.

III. Objections as to CBT Proposed Terms and Conditions

CBT only proposed changes in this case to page 40 of its Pole Anchor Attachment and Conduit Occupancy Accommodations Tariff PUCO No. 1(hereafter, the "Pole Tariff"). Page 40 contains primarily rates. First, the CBT Pole Tariff proposal does not expressly address a very common practice associated with pole attachments – overloading. The OCTA believes that clarification of the CBT Pole Tariff proposal is extremely important to avoid any future issues and disputes on handling overloading notices.

Second, the Commission's rules promulgated in Case No. 13-579-AU-ORD require that certain changes be made to the terms and conditions of CBT's Pole Tariff. However, CBT did not propose tariff terms and conditions revisions to comply with all of the Commission's new rules. The OCTA objects to the absence of these changes which, if added, will make the tariff consistent with the Commission's new rules. Finally, the OCTA objects to the unreasonable and unlawful proposed mark-up of ten percent to the cost of furnishing pole, anchor and conduit system accommodations. The OCTA recommends that the Commission direct CBT to modify its current Pole and Anchor Attachment and Conduit Occupancy Accommodations Tariff PUCO No. 1 in the following manner:

- (1) Overlashing. The OCTA recommends the following revisions to the CBT Pole Tariff to address and clarify how overlashing will be addressed by CBT:

(a) *Original Page 8, Section 2.1, add at the end of the definition of "Attachee's Communication Facilities" the following sentence:*

The definition of Attachee's Communications Facilities does not include a wire overlashed onto an existing attachment or riser cable to the extent that it runs vertically on the Pole owned by the Telephone Company and begins or ends at the base of the Pole, in duct, or direct buried and extends vertically to the point of horizontal attachment of the cable and/or strand owned by the Attachee.

(b) *Original Page 15, Section 2.3.3(C):* This section should be modified to make clear that, in addition, overlashing over previously permitted facilities requires fifteen (15) days' notice and this section should read as follows:

Attachee shall notify the Telephone Company in writing at least fifteen (15) days before adding to, overlashing, relocating, replacing or otherwise modifying its permitted facilities attached to a pole.

This specific overlashing 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.⁴ The OCTA is proposing here to provide CBT with prior written notice more than two weeks in advance of the overlashing.⁵

⁴ 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).

⁵ 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.

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

The following addresses the revisions that are necessary to make the CBT Pole Tariff compliant with Rule 4901:1-3-03(A):

- (2) *Original Page 12, Section 2.2.4(B):* The phrase "(30) days" should be changed to "(60) days" in order to be in compliance with Rule 4901:1-3-03(A)(5).
- (3) *Original Page 24, Section 2.5(B):* This section should be rewritten to address the issue of the number of poles in multiple applications as provided in Rule 4901:1-03(B)(6) and should read as follows:

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 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 (200) poles on any application Normal Order and (1,000) less than 3,000 poles on all Large Orders on any all applications which are pending approval by the Telephone Company at any one time. Such limitations will apply to poles located within a single plant construction district of the Telephone Company. The Telephone Company, ~~in its sole judgment,~~ may permit the preceding limitations to be exceeded 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 Telephone Company at the same time.

- (4) *Original Page 31, Section 2.6.1(A):* This section should be rewritten to address the twenty-one (21) day acceptance for estimated Make Ready Charges consistent with Rule 4901:1-3-03(B)(2)(b) and should read as follows:

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 Telephone Company will advise the Attachee in writing of the estimated charges that will apply for such pre-licensed survey and receive written authorization from the attachee before undertaking any portion of the pre-licensed survey. Attachee shall have twenty-one (21) days to send notification to the Telephone Company of its acceptance of the estimate, unless the Company receives a written dispute or request for 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 will be held in abeyance until the dispute or inquiry is resolved.

- (5) *Original Page 33, Section 2.6.1(D):* The last paragraph should be modified to become consistent with Rule 4901:1-3-03(B)(2)(b) as follows:

Attachee shall have ~~(30)~~ 21 days from receipt of said written notification ~~to indicate its authorization for completion of the required make-ready work and acceptance of the resulting charges of a valid estimate and to make payment.~~ However, if the Telephone Company receives a request from an additional applicant for attachment to a pole for which written notification has been sent to an initial attachee, the initial attachee must authorize completion of the pending make-ready work within (10) days after receipt of written notification from the Telephone Company of the additional attachment request or until the end of the aforementioned ~~(30)~~ day period, whichever period of time is shorter.

- (6) *Original Page 33, Section 2.6.1(E):* The following paragraph should be added to the end of paragraph E to address the time periods for completion of Make Ready Work as set forth in Rule 4901:1-3-03(B)(3):

Following the Attachee's submission of payment of the estimated cost, the Telephone Company shall initiate the required make-ready work. Following receipt of payment for attachments in the communications space, the Telephone 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 Telephone

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 Sizeable Orders. The completion dates of make-ready work for Sizable Orders, regardless of location, shall be negotiated by the Attachee and the Telephone Company. Provided the Telephone Company cannot demonstrate good and sufficient cause for exceeding the timeline for make-ready work, if the timeline is exceeded, the Attachee may hire a contractor authorized by the Telephone Company for make-ready work for attachments in the communications space.

Finally, the CBT Pole Tariff imposes a 10% mark-up when it furnishes poles, anchors and conduit system accommodation without any explanation or support in the new Rules for this mark-up.

- (7) *Revised Page 40, Section 3.2.1:* This paragraph appears to allow CBT to charge an Attachee for the full cost of furnishing pole, anchor and conduit system accommodations plus ten percent of such amount for the performance of such work. The Commission rules do not authorize a ten percent mark-up. A ten percent mark-up is unjust and unreasonable. The OCTA objects to this provision and requests that Section 3.2.1 on Page 40 of the CBT proposed tariff be revised to delete the phrase “plus ten percent of such amount.”

The changes proposed above are intended to address the issue of overlashing and to make the CBT existing terms and conditions consistent with Rule 4901:1-3-03 of the Ohio Administrative Code.

IV. Conclusion

For all the foregoing reasons, the OCTA respectfully requests that the Commission delay the implementation of CBT's proposed tariff until the terms and conditions contained in its existing tariff are modified as set forth above.

Respectfully submitted,



Benita A. Kahn (0018363), Counsel of Record

Stephen M. Howard (0022421)

Gretchen L. Petrucci (0046608)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

Columbus, Ohio 43216-1008

Tel. (614) 464-6487

bakahn@vorys.com

smhoward@vorys.com

glpetrucci@vorys.com

*Attorneys for the Ohio Cable Telecommunications
Association*

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.


Gretchen L. Petrucci

Douglas E. Hart at dhart@douglasshart.com