

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Cincinnati Bell Telephone Company LLC)
to Add Language and Rates for Access to) **Case No. 15-973-TP-ATA**
Pole, Conduit, and Rights-of-Way by)
Public Utilities to the Access Tariff.)

**RESPONSE OF CINCINNATI BELL TELEPHONE COMPANY LLC TO THE
OBJECTIONS OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

In accordance with the Attorney Examiner's August 7, 2015 Entry, Cincinnati Bell Telephone Company LLC ("CBT") hereby responds to the Objections of the Ohio Cable Telecommunications Association's ("OCTA") to CBT's pole attachment tariff.

I. Introduction and Procedural History.

Through its Finding and Order entered July 30, 2014 in Case 13-579-AU-ORD, the Commission adopted Ohio Adm. Code Chapter 4901:1-3, establishing pole attachment rules in Ohio. One of the new rules, Ohio Adm. Code 4901:1-3-04 ("Rule 3-04"), adopted a single pole attachment rate consistent with the FCC's cable television rate formula. The Commission revised various parts of the rules in an October 15, 2014 Entry on Rehearing.

On February 25, 2015, the Commission issued an Entry directing each telephone company and electric distribution utility pole owner to file an appropriate company-specific tariff amendment applications, including the applicable calculations based on 2014 data, to render its filed tariff consistent with Rule 3-04. Rule 3-04 established the new single pole attachment rate formula. The Commission did not order pole owners to address any of the other rules in these tariff amendment applications. Unless suspended by the Commission, the tariff revisions,

including the new rates, were to be automatically effective July 1, 2015. On April 22, 2015, the Commission issued an Entry in response to the OCTA's Motion for Clarification extending the filing deadline to May 15, 2015 and the automatic approval date to September 1, 2015. The Commission did not alter the substance of the required filing. Any objections to the pole attachment tariff amendments were to be filed by August 1, 2015.

On May 15, 2015, CBT filed an application to amend its pole attachment tariff in Case 15-0973-TP-ATA. The application changed the rates in Section 3.1.2 to have a single pole attachment rate consistent with the formula in Rule 3-04, established a new conduit occupancy rate, and deleted previous verbiage from Note 1 regarding historical conduit occupancy charges. Otherwise, CBT's tariff remained unchanged. As required by the April 22, 2015 Entry, CBT's filing contained calculations supporting the new rates. In response to a Staff inquiry, CBT filed an Amended Application on June 26, 2015, to use a lower rate of return, which resulted in slightly different rates.

The OCTA moved to intervene in CBT's tariff application proceeding on June 26, 2015. It then conducted discovery directed solely to the rate calculations. On August 3, 2015, the OCTA filed objections to CBT's tariff. The OCTA made no comment or objection to any part of CBT's rate calculations or the proposed rates for pole attachments or conduit occupancy, the only issues that pole owners had been ordered to address in their tariff amendment filings. Instead, the OCTA's objections solely addressed "the absence of certain changes to its existing pole attachment tariff terms and conditions." OCTA Objections, p. 1. The OCTA's objections mischaracterized the Commission's February 25, 2015 Entry, as revised by the April 22, 2015 Entry, as ordering all utility pole owners "to file amended tariffs that correspond with the Commission's newly adopted administrative rules." OCTA Objections, p. 2. Those orders were

limited to requiring those filings as were necessary to make the tariffed rates consistent with Rule 3-04.

II. The OCTA's Objections Are Beyond The Scope of This Proceeding and Should Be Denied

A. CBT's Revised Pole Attachment and Conduit Occupancy Rates Are Unchallenged and Should Be Allowed to Go Into Effect.

None of the OCTA's objections addressed CBT's rates, the rate calculations, or any other matter covered by Rule 3-04, the only matters that the Commission required pole owners to address in the May 15, 2015 applications to amend tariffs. The OCTA begins the substance of its objections by accurately noting that CBT only made changes to page 40 of its tariff dealing with rates. That is all the Commission ordered pole owners to do. No amendments addressing any rules other than Rule 3-04 were required. OCTA has offered no objections to the tariff changes that CBT did make or to the rate calculations, so those rates and tariff changes should be approved as filed.

B. None of the OCTA's Objections to CBT's Tariff Are Within the Scope of This Proceeding.

The scope of this proceeding was framed by the Commission's February 25, 2015 Entry in Case 13-579-AU-ORD. The scope does not include any Rule other than Rule 3-04. None of the OCTA's objections are based upon Rule 3-04. They are all based on parts of Ohio Adm. Code 4901:1-3-03 ("Rule 3-03) or on grounds not even found in the Commission's Rules. And, none of the OCTA's objections are based upon any changes that CBT proposed to its tariff – all of the objections are based upon the "absence" of changes, which CBT was not required to make. Thus, all of the objections are baseless and should be denied as beyond the scope of this proceeding.

Even if the Commission was inclined to consider parts of the tariff that are not governed by Rule 3-04, the objections raised by the OCTA should be denied: Section 2.3.1(B) of CBT's tariff already provides that it and attaching parties are subject at all times to all laws, ordinances and regulations which in any manner affect their rights and obligations. So both CBT and the attaching parties are automatically subject to the Commission's rules and it is unnecessary to replicating the rules in the tariff. To do so is surplusage.

1. There Is No Requirement That CBT Address Overlashing.

The OCTA begins its objections by demanding revisions to CBT's tariff to address the issue of overlashing. This objection has nothing to do with compliance the Commission's pole attachment rules, as nothing in the rules addresses overlashing in any way. There is no basis for the OCTA to contend that CBT should have amended its tariff to be consistent with something that does not appear in the Commission's rules. This may be a topic that the OCTA is interested in, but there is nothing in the Commission's rules about it, the Commission did not order any utility to address this topic, and there is no legal requirement anywhere for the request OCTA is now making.

Even if they were relevant, the OCTA's proposed amendment is unreasonable. Its proposed language would exclude any type of overlashed wires from consideration as attachments, no matter how much space they occupied, how much they weighed, how far they sagged between poles, or how they might affect the integrity of poles or other attachments. These issues should not be eliminated from consideration through the stroke of a pen by amending a definition. In addition to excluding overlashing, and with no discussion or reasons, the OCTA would eliminate vertical riser cables from the definition of an attachment. Again, there is nothing in the Commission's rules about vertical rise cables, so there is no reason to change any tariff to address them in this proceeding. The manner in which riser cables are

attached to poles can affect the other usable space on a pole, the ability to make other horizontal attachments in the area were the vertical attachments run, the ability to climb the pole and other matters. These are issues that should not simply be eliminated from the consideration by pole owners by changing a definition. The OCTA's changes should be rejected.

2. The OCTA's Proposal to Change the Notice Period in Section 2.2.4(B) Is Not Required to Be Consistent with Commission Rules.

This proposal addresses Rule 3-03(A)(5), but this change is not necessary to make CBT's tariff consistent with the rules. The 30 day provision referenced in Section 2.2.4(B) addresses the time within which an attachee must respond to a notice of deficiency described in Section 2.2.4(A). That is not the same time period that is addressed by Rule 3-03(5)(a).

The cited rule does not concern the time an attaching party has to respond to a notice of deficiency; it only addresses the amount of notice that a utility must give before actually *removing* pole attachments. That issue is separately addressed in Section 2.3.3(G) of CBT's tariff, which already gives an attaching party 60 days from the time an attachment authorization is terminated within which to remove its facilities before CBT would take action to remove the attachment. Thus, the 60 day period referenced in Rule 3-03(5)(a) is already reflected in CBT's tariff in Section 2.3.3(G) and there is no basis for changing Section 2.2.4(B) of the tariff, which addresses a different issue. The 60 day provision in the cited rule and the 30 day provision in tariff Section 2.2.4(B) involve different events and there is no cause to change Section 2.2.4(B). To do so would give non-compliant attachers too much time to address deficiencies and the OCTA's proposed change should be rejected.

3. The OCTA's Requested Addition to Section 2.5.1(B) Should Be Rejected.

The OCTA contends that this change is necessary to conform CBT's tariff to Rule 3-03(B)(6). Even if the Commission is inclined to expand this proceeding to include compliance

with Rule 03-03, the OCTA's change goes too far. OCTA proposes insertion of an entirely new paragraph for CBT's tariff that cobbles together various provisions from different parts of the Commission's rule. There is no reason to insert this paragraph in CBT's tariff, as CBT is already subject to the rules when it addresses attachment requests. The rule cited by the OCTA addresses the time periods a public utility has to conduct surveys, to provide cost estimates and to do make ready work in response to requests for pole attachments. At best, it might be appropriate to change the numbers in the existing text from 200 to 300 and from 1,000 to 3,000 to be consistent with rules, but there is no reason for the entirely new paragraph.

4. The Commission Should Reject OCTA's Request to Insert Time Deadlines for Make-Ready Estimates.

This proposal is based upon Rule 3-03(B)(2)(b), not anything in Rule 3-04. And there is no reason for the change proposed by the OCTA. The time frames for acceptance of a make-ready estimate are specified in the Commission's Rules and it is unnecessary to repeat everything in the tariff. Nothing in the tariff is inconsistent or contradictory to the rule, so there is no reason to change the tariff.

5. The Commission Should Reject OCTA's Request to Change Section 2.6.1(D).

Even if the Commission is inclined to entertain objections beyond the scope of Rule 3-04, it should reject the OCTA's proposal. First, CBT's tariff actually allows an attaching party *more* time to accept and pay for a make-ready request than is required by the rules. Second, the OCTA would strike the portion of CBT's tariff that addresses the situation where a second request for attachment is made during the time when a make-ready estimate is outstanding. The Commission's rules do not address how to handle such a situation, so there is no good reason to eliminate that provision from CBT's tariff.

6. The Commission Should Reject OCTA's Request to Add a Paragraph to the End of Section 2.6.1(E).

The OCTA proposes to add an entire new paragraph dealing with the time frames applicable to various make-ready scenarios. The proposed language paraphrases and conflates various parts of different rule sections and potentially changes its meaning. Like the OCTA's previous proposals, this addition to the tariff is unnecessary as all of these issues are addressed in the Commission's rules and all parties are subject to these time frames regardless. There is no reason it needs to be added to the tariff.

7. The Commission Should Not Change Section 3.2.1 of CBT's Tariff.

The OCTA objects to Section 3.2.1 of CBT's tariff to the extent it describes a 10% markup to cost. Section 3.2.1 addresses non-recurring costs, not pole attachment or conduit occupancy rates, so this objection has nothing to do with CBT's current filing. This provision has appeared in CBT's pole attachment tariff since the 1980s when it was stipulated as part of a rate case. This provision described how CBT's fully distributed costs were determined. The parties stipulated that 10% was the recoverable amount of CBT's common costs that it was authorized to add to its direct costs to represent overhead expense. CBT should still be entitled to recover its full cost of doing work necessary to provide pole attachments, which would include overhead charges. There is no basis for deleting that provision from the tariff.

III. Conclusion

The purpose of this proceeding was for telephone companies and electrical distribution utilities that owned utility poles to update their tariffs to conform to the Commission's new rate formula contained in Rule 3-04. The OCTA has said nothing about CBT's rates for pole attachments or conduit occupancy or the calculations that lead to those rates. Therefore, CBT's tariff filing should be approved and allowed to go into effect.

None of the OCTA's objections in this proceeding have anything to do with Rule 3-04. They all pertain to parts of Rule 3-03 (or in the case of overlapping, *no* Commission rule) and are beyond the scope of this proceeding. In any event, none of the proposed changes are necessary to make CBT's tariff consistent with Commission rules. There are no inconsistencies between the tariff and the rules. The OCTA's proposed changes would do nothing other than paraphrase bits and pieces of certain rules within the tariff, when the tariff is already subject to the Commission's rules generally. The objections should be overruled and the proposed changes rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I served the foregoing upon Benita A. Kahn, Stephen M. Howard and Gretchen L. Petrucci, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43216-1008, by electronic mail to bakahn@vorys.com, smhoward@vorys.com and glpetrucci@vorys.com this 24th day of August, 2015.

/s/ Douglas E. Hart

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Summary: Response to the Objections of the Ohio Cable Telecommunications Association electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Telephone Company LLC