

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of CenturyTel	)	
of Ohio, Inc. d/b/a CenturyLink to Introduce a	)	Case No. 15-890-TP-ATA
Pole Attachment Conduit Occupancy Tariff.	)	

In the Matter of the Application of United	)	
Telephone Company of Ohio, Inc. d/b/a	)	Case No. 15-889-TP-ATA
CenturyLink to Introduce a Pole Attachment	)	
Conduit Occupancy Tariff.	)	

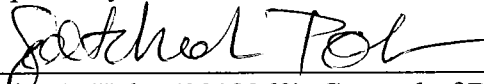
---

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE A REPLY *INSTANTER*  
AND  
MOTION FOR AN EXPEDITED RULING**

---

Now comes The Ohio Cable Telecommunications Association ("OCTA"), who seeks leave to file a reply *instanter* to the response filed by CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio, Inc. d/b/a CenturyLink on August 24, 2015, in these proceedings. The OCTA makes this motion to (a) ensure that the Public Utilities Commission of Ohio has further information upon which to consider certain disputed issues in this matter and (b) present a proposal for the next procedural steps. The OCTA requests an expedited ruling on the motion for leave so that this motion can be considered expeditiously and not unduly delay the proceedings. The reasons supporting the OCTA's motion for leave and motion for an expedited ruling are set forth more fully in the attached Memorandum in Support.

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](mailto:bakahn@vorys.com)

[smhoward@vorys.com](mailto:smhoward@vorys.com)

[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

*Attorneys for the Ohio Cable Telecommunications Association*

**MEMORANDUM IN SUPPORT  
OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE A REPLY *INSTANTER*  
AND  
MOTION FOR EXPEDITED RULING**

On February 25, 2015, as revised on April 22, 2015, the Public Utilities Commission of Ohio (“Commission”) ordered all public utility pole owners in Ohio to file amended tariffs that correspond with the Commission’s newly adopted administrative rules.<sup>1</sup> 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. CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio, Inc. d/b/a CenturyLink (collectively, “CenturyLink”) filed tariff applications on May 13, 2015, and the Ohio Cable Telecommunications Association (“OCTA”) timely filed motions to intervene and objections in both dockets. By Entry issued on August 7, 2015, the Commission granted the OCTA’s intervention requests and allowed CenturyLink the opportunity to respond to the OCTA’s objections.<sup>2</sup> CenturyLink filed one response for both dockets on August 24.

The August 7 Entry did not provide for an opportunity to reply to CenturyLink’s response, or provide any indication as to how this matter would proceed after the pole owner’s response was filed. Now that the OCTA has reviewed CenturyLink’s response (as well as those in the other pole attachment/conduit occupancy cases in which the OCTA is involved), the OCTA believes that a brief, targeted reply can complete the arguments in support of the

---

<sup>1</sup> The Entry was 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.

<sup>2</sup> The Entry was issued in these two cases, as well as nine other dockets involving applications to establish new pole attachment and conduit occupancy tariff provisions.

remaining issues and assist the Commission in determining the next procedural steps in in this proceeding.

The OCTA stands by the arguments it made in its objections in these cases. In its objections, the OCTA raised several concerns with CenturyLink's proposed pole attachment tariff revisions. CenturyLink responded to those objections, but CenturyLink did not accept all of the OCTA's objections. Thus, there are issues remaining for Commission resolution. The OCTA wishes to reply regarding:

- Important issues involving overlapping and various tariff provisions upon which CenturyLink previously agreed – responding to new information and arguments from CenturyLink.
- Next procedural steps – suggesting that the Commission order an informal conference be held between CenturyLink, the OCTA and the Commission Staff for possible informal resolution of the remaining tariff issues. In the event that a complete resolution is not reached, then a hearing may be held so that the parties have the opportunity to present the facts and arguments needed for determining the appropriate tariff provisions for the remaining issues.

The issues are technical and not straight-forward. CenturyLink's response raised, for the first time, arguments to which the OCTA would like to reply. Also, the issues involve the inaugural tariffs for CenturyLink following the Commission's adoption of new industry-wide rules. As such, the OCTA believes that these disputed issues warrant careful deliberations so that CenturyLink's pole attachment tariff will be fully compliant with the Commission's new rules and the public interest. The OCTA seeks leave to reply in a targeted manner to a few arguments made by CenturyLink in its response. This brief additional reply can provide a fuller picture for the Commission to understand the complexities of these few issues. For these reasons, the OCTA seeks leave to reply to the new arguments.

In addition, in reviewing the pole owner's response in Case No. 15-971-EL-ATA (The Dayton Power and Light Company's pole attachment case), the OCTA believes there is merit to

suggest an informal conference so that CenturyLink, the OCTA and Commission Staff can discuss the outstanding issues. This is another avenue for resolving the disputed issues – as a means for avoiding a hearing.<sup>3</sup> In the event that a complete resolution is not reached, then a hearing may be necessary so that the parties have a full opportunity to present evidence for the Commission to appropriately resolve the remaining disputed tariff provisions. Accordingly, the OCTA also seeks leave to put forth that procedural suggestion to the Commission.

Nothing in the Commission’s rules precludes the OCTA’s leave request. Moreover, as has been found by the Ohio Supreme Court, the Commission has the discretion to manage its dockets, including allowing leave to file the requested reply:

As the Ohio Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets, including the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business.<sup>4</sup>

The OCTA’s request is akin to the reply memorandum under the motion cycle set forth in in Rule 4901-1-12, Ohio Administrative Code:

<b>Motion Cycle</b>	<b>Procedure Set Forth in this Case</b>
Motion	Objections
Memoranda Contra	Response
Rely Memorandum	Reply (requested by OCTA)

Finally, the OCTA notes that its motion for leave will not *unduly* delay this proceeding. Automatic approval of the proposed tariff has been suspended and there is no timetable under

---

<sup>3</sup> The OCTA’s requested informal conference is an alternative dispute resolution option that seems appropriate when considering the Commission Staff’s knowledge on the technical considerations involved. The Commission has incorporated another more formal alternative dispute resolution option for parties who are unable to agree on rates, terms, or conditions for a pole attachment/conduit occupancy agreement. *See*, Rule 4901:1-3-06, Ohio Administrative Code.

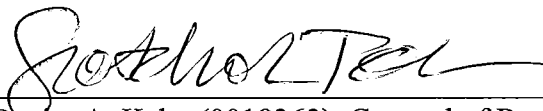
<sup>4</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al, Entry on Rehearing at 36 (May 28, 2015), citing *Duff v. Pub. Util. Comm.*, 56 Ohio St. 2d 367, 384 N.E. 2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 433 N.E. 2d 212 (1982).

which this matter will move forward. Moreover, the OCTA's Reply is being filed along with this motion for leave (as Attachment A) so that prompt consideration can be given.

In sum, the Commission has the flexibility and discretion to allow the filing of the reply. Also, the OCTA's motion for leave to file a reply *instantly* is reasonable and presented for good cause. No harm will come from granting OCTA's request for leave. Rather, granting the OCTA leave will allow the OCTA to provide the Commission with more information regarding the disputed issues and also suggest informal discussions among CenturyLink, the OCTA and the Commission Staff, which could possibly resolve the remaining issues. Therefore, the Commission should grant the OCTA's motion.

Finally, the OCTA requests that the Commission issue an expedited ruling on this leave request. The OCTA has contacted CenturyLink (the only other party in this proceeding) to determine if it objects to the issuance of an ruling on this motion without the filing of memoranda, as allowed under Rule 4901-1-12(C), Ohio Administrative Code. CenturyLink does not object to the issuance of an immediate ruling and does not oppose the motion for leave.

Respectfully submitted,



---

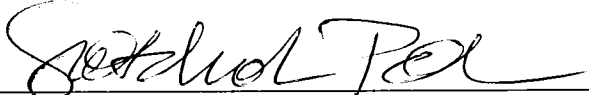
Benita A. Kahn (0018363), Counsel of Record  
Stephen M. Howard (0022421)  
Gretchen L. Petrucci (0046608)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
Columbus, Ohio 43216-1008  
Tel. (614) 464-6487  
[bakahn@vorys.com](mailto:bakahn@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[glpetrucci@vorys.com](mailto: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 certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 10<sup>th</sup> day of September 2015 upon all persons/entities listed below:

Christen M. Blend at [cblend@porterwright.com](mailto:cblend@porterwright.com)

  
\_\_\_\_\_  
Gretchen L. Petrucci

**ATTACHMENT A  
to the OCTA Motion  
for Leave to file a Reply**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of CenturyTel	)	
of Ohio, Inc. d/b/a CenturyLink to Introduce a	)	Case No. 15-890-TP-ATA
Pole Attachment Conduit Occupancy Tariff.	)	

In the Matter of the Application of United	)	
Telephone Company of Ohio, Inc. d/b/a	)	Case No. 15-889-TP-ATA
CenturyLink to Introduce a Pole Attachment	)	
Conduit Occupancy Tariff.	)	

---

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S  
REPLY TO THE RESPONSE OF  
CENTURYTEL OF OHIO, INC. D/B/A CENTURYLINK  
AND  
UNITED TELEPHONE COMPANY OF OHIO, INC. D/B/A CENTURYLINK**

---

**I. Introduction**

CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio, Inc. d/b/a CenturyLink (collectively, "CenturyLink") filed pole attachment/conduit occupancy tariff applications on May 13, 2015, and the Ohio Cable Telecommunications Association ("OCTA") timely filed motions to intervene and objections in both dockets. By Entry issued August 7, 2015, the Public Utilities Commission of Ohio ("Commission") granted the OCTA's intervention requests and allowed CenturyLink the opportunity to respond to the OCTA's objections,<sup>1</sup> which it did on August 24.

---

<sup>1</sup> The Entry was issued in these two cases, as well as nine other dockets involving applications to establish new pole attachment and conduit occupancy tariff provisions.



The OCTA has reviewed CenturyLink's response (as well as those in the other pole attachment/conduit occupancy cases in which the OCTA is an intervenor), and files this pleading to briefly reply to the CenturyLink response. The OCTA believes that this targeted reply will ensure that the Commission has further information upon which to consider a few of the remaining issues and assist the Commission in determining the next procedural steps in this proceeding.

## **II. Important Issues in Dispute**

The OCTA raised several objections about the following in CenturyLink's tariff:

- Overlashing
- Definitions of "Make Ready Survey" and "Make Ready Work," and Access to pole attachments
- Tree trimming and other clearing
- Limitations on the number of attachments and modifications
- Revocation of a license
- Separate, associated license agreement
- Maintenance of records
- Audits
- Attachment bond
- Post-attachment notice of service drops

This will be the inaugural pole attachment tariff for CenturyLink following the Commission's adoption of new industry-wide rules.<sup>2</sup> Thus, these disputed issues warrant careful deliberations so that CenturyLink's pole attachment tariffs will be fully compliant with the Commission's new rules. These issues are technical and not straight-forward. In reply to the arguments made by CenturyLink, the OCTA wishes to provide the Commission with further information for purposes of evaluating the issues raised in this matter regarding overlashing.

---

<sup>2</sup> CenturyTel of Ohio d/b/a CenturyLink seeks to replace the existing language in its general exchange tariff with the proposed tariff language. United Telephone Company of Ohio d/b/a CenturyLink ("UTO/CenturyLink") seeks approval of the proposed tariff language to establish a pole attachment and conduit occupancy tariff provisions for the first time.

*Overlashing:* The OCTA reviewed CenturyLink's tariff and interpreted it as not prohibiting overlashing an existing pole attachment and as not requiring overlashing to go through the full Attachment application process. In particular, the OCTA pointed to the definition of "Attachment" as not including overlashing:

Attachment – Any placement of Licensee Equipment on or to Telephone Company Facilities. The definition of Attachment also includes the Licensee Equipment itself that is physically attached and/or placed on or to Telephone Company Facilities. Any reference in this tariff to an Attachment being made "to" or "on" Telephone Company Facilities will also mean "in" or "occupying" any Telephone Company Facilities.

CenturyLink has presented conflicting statements in its response about overlashing. On the one hand, CenturyLink stated that its tariff language does not prohibit overlashing, but it does require overlashing to be requested and to go through the normal application process.<sup>3</sup> On the other hand, CenturyLink stated that it is not insisting that the OCTA obtain CenturyLink's approval before it overlashes, but it should have the right to deny overlashing.<sup>4</sup> CenturyLink then goes on to contend that the OCTA's proposed 15-day advance notice is "not workable" and the make-ready work timelines should apply.<sup>5</sup> CenturyLink also states in its response that there are multiple considerations before overlashing can take place.<sup>6</sup> CenturyLink is presenting multiple, conflicting positions on the topic of overlashing. Certainly, there is a difference of fact and opinion between the OCTA and CenturyLink, and an opportunity to present facts and arguments to the Commission is warranted for this issue.

Overlashing is a simple and safe way for an attaching party with an existing attachment to add a wire or cable to its strand to allow the provision of new services or service to new customers. The cable operator adds a light fiber or coaxial cable to its existing facilities, without

---

<sup>3</sup> CenturyLink Objections at 4.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.*

<sup>6</sup> CenturyLink Response at 4.

making a new attachment or creating any issues regarding use of pole space. While pole loading can be impacted, the typical increase in ice or windloading is minimal and can safely be reviewed by the pole owner after the fact. That is why the Federal Communications Commission (“FCC”) has held that overlashing does not require permitting and does not even require prior notice.<sup>7</sup> It is also why CenturyLink agreed to this language in its prior tariff filing in Case No. 11-602-TP-UNC.<sup>8</sup> CenturyLink should not now be permitted to argue that a procedure it recently agreed to can create safety concerns. It would not.

Additionally, even though the FCC has held that overlashing does not require prior notice, OCTA believes providing 15 days’ notice prior to overlashing would best benefit all interests involved. However, the OCTA also urged the Commission to expressly distinguish between an attachment and overlashing in CenturyLink’s tariff so that there is no misunderstanding or a lack of clarity. In other words, the OCTA urges the Commission to expressly distinguish between an attachment and overlashing in CenturyLink’s tariff and to treat these different matters differently. To that end, the OCTA recommended that appropriate clarifying language be added in CenturyLink’s proposed tariff, as follows:

- (1) *Definition of “Attachment”, add at the end: “The definition of Attachment 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 Licensor and begins or ends at the base of the Pole, in duct or direct buried and extends vertically to the point of*

---

<sup>7</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>8</sup> *In the Matter of the Application of United Telephone Company of Ohio d/b/a CenturyLink to Introduce a Pole Attachment and Conduit Occupancy Tariff* PUCO No. 1, Case No. 11-602-TP-UNC.

horizontal attachment of the cable and/or strand owned by the Licensee on the Pole.”

- (2) *Definition of “Modification,” add at the end: “Modification does not include overlashing an existing permitted attachment.”*
- (3) *Section 1.3, add the underlined words as follows: “A Telephone Company-approved Application is required for every Attachment provided, however, that Licensee may overlash an existing, permitted attachment without a Telephone Company-approved Application upon at least fifteen (15) days advance written notice to Telephone Company.”*

These proposed additions are what UTO/CenturyLink negotiated and agreed-upon with the OCTA and which are pending before the Commission in Case No. 11-602-TP-UNC. In the CenturyLink response, it argued that this language was not agreed upon on a stand-alone basis and was specifically tied to the negotiated pole attachment rate.<sup>9</sup> CenturyLink is unwilling to agree to include these sentences in its tariff because the pole attachment rate is different.

Overlashing presents critical competitive issues and it is important that the tariff not allow CenturyLink to gain a competitive advantage through its pole ownership. For example, if a potential customer in an office park requests high-speed Internet access service from a cable operator attached to CenturyLink’s poles, a new fiber optic cable may be necessary. If CenturyLink were allowed to delay the cable operator’s overlashing without limit for “consideration” of possible issues, CenturyLink would likely get the business itself, because it need not engage in the same type of “consideration” process and thus would have an unfair competitive advantage. CenturyLink has previously agreed to the overlashing terms that the OCTA seeks to include in the tariff now. CenturyLink should not be permitted to give itself a competitive advantage because the Commission has now required that a different formula be

---

<sup>9</sup> CenturyLink Objections at 3.

used in creating pole attachment rates, which has resulted in a lower pole attachment rate for CenturyLink.

*Other Tariff Provisions:* A comparison of the OCTA objections and CenturyLink's response shows that there are multiple other tariff provisions with which CenturyLink and the OCTA disagree. CenturyLink opposes nearly all of the OCTA's recommended changes to the terms and conditions. Moreover, CenturyLink argues that the OCTA recommendation to incorporate terms and conditions from UTO/CenturyLink's prior agreement in Case No. 11-602-TP-UNC is inappropriate because those were entirely contingent upon the negotiated pole attachment rate.<sup>10</sup> Given that UTO/CenturyLink was required, after that tariff was negotiated, to calculate its pole attachment rate under new Commission rules with a different formula and the rate is less expensive (\$1.62 as opposed to \$3.32), CenturyLink is unwilling to agree to any of those terms and conditions. The facts and the effects of these other provisions as proposed need to be addressed and resolved. What CenturyLink is proposing is a step backward and, in a number of circumstances explained in the OCTA's objections, the cited tariff provisions are not compliant with the Commission's new rules. CenturyLink has not demonstrated that the cited proposed terms are just or reasonable.

### **III. Next Procedural Steps**

The OCTA wishes to present a proposal for the next procedural steps in this matter. The OCTA suggests that the Commission order an informal conference to be held between CenturyLink, the OCTA and the Commission Staff for further discussions and possible resolution of the remaining tariff issues. The issues in this matter are limited in number, but nonetheless important on a going-forward basis. The OCTA believes that this approach can be

---

<sup>10</sup> CenturyLink Response at 3.

effective to work through the issues efficiently. This is another avenue for resolving the disputed issues – as a means for avoiding a hearing.<sup>11</sup>

In the event that a complete resolution of issues does not result from the informal conference, then a hearing may be necessary so that the parties have a full opportunity to present the facts and arguments needed and the Commission can appropriately resolve the remaining disputed tariff provisions. The issues herein are technical and important. The tariff provisions that will be established in this proceeding will have a significant impact on pole attachments for years to come. The OCTA strongly urges the Commission to order that informal discussions be held between CenturyLink, the OCTA and the Commission Staff. To the extent that a difference of opinion remains after the informal discussions, the OCTA suggests that a hearing be held.

The OCTA further believes that this approach will help establish just and reasonable pole attachment/conduit occupancy tariff provisions on a going-forward basis that are compliant with the Commission's new rules.

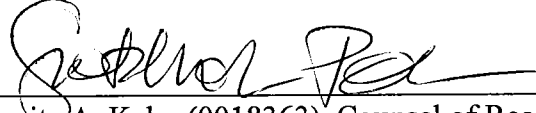
#### **IV. Conclusion**

The OCTA appreciates the opportunity to reply to CenturyLink's response in these dockets. The OCTA urges the Commission to order its Staff to schedule an informal conference between CenturyLink, the OCTA and the Commission Staff for further discussions and possible resolution of the remaining tariff issues. In the event that a complete resolution is not reached, then a hearing may be necessary to determine the appropriate tariff provisions for the remaining issues in the cases.

---

<sup>11</sup> The OCTA's suggested informal conference is an alternative dispute resolution option that seems appropriate when considering the Commission Staff's knowledge on the technical considerations involved. The Commission has incorporated another more formal alternative dispute resolution option for parties who are unable to agree on rates, terms, or conditions for a pole attachment/conduit occupancy agreement. *See*, Rule 4901:1-3-06, Ohio Administrative Code.

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](mailto:bakahn@vorys.com)

[smhoward@vorys.com](mailto:smhoward@vorys.com)

[glpetrucci@vorys.com](mailto: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 certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 10<sup>th</sup> day of September 2015 upon all persons/entities listed below:

Christen M. Blend at [cblend@porterwright.com](mailto:cblend@porterwright.com)

  
\_\_\_\_\_  
Gretchen L. Petrucci



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/10/2015 4:15:04 PM**

**in**

**Case No(s). 15-0890-TP-ATA, 15-0889-TP-ATA**

Summary: Motion Motion for Leave to File a Reply Instanter and Motion for an Expedited Ruling electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association