

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 POLES, CONDUITS, RIGHTS-OF-
WAY BY PUBLIC UTILITIES TO THE ACCESS
TARIFF.

CASE NO. 15-973-TP-ATA

ENTRY ON REHEARING

Entered in the Journal on July 13, 2016

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission denies the application for rehearing filed by the Ohio Cable Telecommunications Association, regarding Cincinnati Bell Telephone Company LLC's amendment of its tariffs specific to access to poles, ducts, conduits, and right-of-way.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 4905.51 and 4905.71 authorize the Commission to determine the reasonable terms, conditions, and charges that a public utility may impose upon any person or entity seeking to attach any wire, cable, facility, or apparatus to a public utilities' poles, pedestals, conduit space, or right-of-way.

{¶ 3} Cincinnati Bell Telephone Company LLC (Cincinnati Bell) is a telephone company under R.C. 4905.03 and a public utility under R.C. 4905.02 and is, therefore, subject to the Commission's jurisdiction.

{¶ 4} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

B. Procedural History

{¶ 5} On July 30, 2014, as revised on October 15, 2014, the Commission in Case No. 13-579-TP-ORD (*Pole Attachment Rules Case*), *In re the Adoption of Chapter 4901:1-3, Ohio Administrative Code, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way by Public Utilities*, adopted new administrative rules regarding access to poles, ducts, conduits, and rights-of-way of the public utilities. The new rules became effective January 8, 2015. On February 25, 2015, as revised on April 22, 2015, the Commission, in the *Pole Attachment Rules Case*, ordered all public utility pole owners in Ohio to file the appropriate company-specific tariff amendment application, including the applicable calculations based on 2014 data. The automatic approval date for the pole attachment amendments was extended until September 1, 2015. 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.

{¶ 6} On May 15, 2015, as amended on June 26, 2015, Cincinnati Bell filed its tariff amendment application in this docket.

{¶ 7} On June 26, 2015, the Ohio Cable Telecommunications Association (OCTA) filed a motion to intervene in this proceeding.

{¶ 8} On August 3, 2015, OCTA filed its objections in this proceeding.

{¶ 9} Pursuant to the attorney examiner Entry of August 7, 2015, the tariff amendment application was suspended and removed from the automatic approval process. Additionally, the motion to intervene filed by OCTA was granted.

{¶ 10} On August 24, 2015, Cincinnati Bell filed a response to OCTA's comments.

{¶ 11} On May 18, 2016, the Commission issued its Finding and Order establishing the rates, terms, and conditions to be incorporated into Cincinnati Bell's pole attachment tariff.

{¶ 12} On June 17, 2016, OCTA filed an application for rehearing regarding the Commission's Finding and Order of May 18, 2016.

{¶ 13} On June 27, 2016, Cincinnati Bell filed its memorandum contra the application for rehearing.

C. Assignment of Error Raised by OCTA

{¶ 14} As its first assignment of error, OCTA asserts that the Commission erred in concluding that Cincinnati Bell's ten percent mark-up is attributable to nonrecurring costs for all work performed under the tariff, including but not limited to surveys, inspections, and make-ready work. In support of its contention, OCTA asserts that the record contains nothing but unsubstantiated claims regarding the basis for Cincinnati Bell's ten percent mark-up and that the tariff application did not include any data or information to support the requested mark-up and to determine the justness and reasonableness of the proposed request. Further, OCTA submits that the Commission did not investigate the appropriateness of Cincinnati Bell's recovery of additional overhead expenses and did not assess whether a Commission cost recovery decision made in the 1980s is still appropriate going forward in light of the new pole attachment rules.

{¶ 15} Relying upon *In re the Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 92 FCC 2d 59, ¶29 (rel. May 23, 1979), OCTA argues that the Federal Communications Commission (FCC) determined that preconstruction, survey, engineering, make-ready, and change-out costs are to be included as additional costs but only to the extent that they are out-of-pocket expenses specifically attributable to cable television attachments or facilities. OCTA further states that in *In re Texas Cable Telecomm. Assoc. v. Energy Services Inc. et al.*, 14 FCC Rcd. 9138, ¶10 (rel. Jun. 9, 1999), the FCC rejected an administrative surcharge of \$10 imposed on top of the actual costs of any necessary engineering surveys for make-

ready work and determined that attachers only “obligation [was] to reimburse [the pole owner] for the actual cost of necessary engineering survey expenses.”

{¶ 16} In response to OCTA’s request for rehearing, Cincinnati Bell contends that the only changes it proposed in this proceeding were for the purpose of amending the pole attachment rates in §3.1.2 in order to have a single pole attachment rate consistent with the formula in Ohio Adm.Code 4901:1-3-04, to establish a new conduit occupancy rate, and to delete previous language regarding historical conduit occupancy charges. In particular, Cincinnati Bell notes that OCTA only objected to §3.2.1 of Cincinnati Bell’s tariff, which pertains to nonrecurring charges associated with pole attachments, and not the pole attachment or conduit occupancy rates addressed in Cincinnati Bell’s tariff amendment. Cincinnati Bell points out that the tariff provision that OCTA now objects to has been in its tariff since January 12, 1983. According to Cincinnati Bell, as it did not propose any change to §3.2.1 of its tariff, it did not place the provision at issue and, therefore, it does not have the burden of proving the reasonableness of this tariff language.

{¶ 17} Further, Cincinnati Bell contends that, to the extent that OCTA is objecting to an existing tariff provision, the intervenor has not satisfied its burden of proof regarding its claim that §3.2.1 of the tariff is unjust or unreasonable. Additionally, Cincinnati Bell asserts that it did not have to include any data or information in this docket to support the tariffed ten percent mark-up since it was not proposing a change to that section of the tariff.

{¶ 18} Based on the arguments raised regarding this assignment of error, the Commission finds that the application for rehearing should be denied as OCTA has failed to raise any new arguments for the Commission’s consideration. In reaching this decision, the Commission notes that the tariff section disputed by OCTA was not the subject of the proposed tariff amendment filed by Cincinnati Bell, and has been in effect since 1983. To the extent that OCTA now objects to previously undisputed

tariff language, it should file the appropriate complaint case setting forth such allegation.

III. ORDER

{¶ 19} It is, therefore,


{¶ 20} ORDERED, That the application for rehearing filed by OCTA be denied as set forth above. It is, further,

{¶ 21} ORDERED, That a copy of this Entry on Rehearing be served upon OCTA, Cincinnati Bell, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



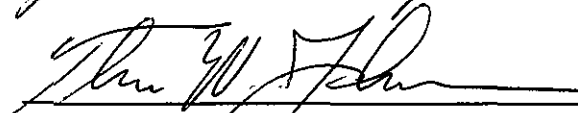
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



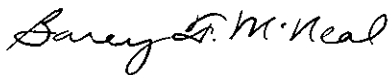
Thomas W. Johnson

M. Howard Petricoff

JSA/dah

Entered in the Journal

JUL 13 2016



Barcy F. McNeal
Secretary