BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-3 of the Ohio Administrative Code, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way	)))))	Case No. 19-834-EL-ORD

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

/s/ Robert M. Endris
Robert M. Endris (#0089886)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 384-5728
(330) 384-3875 (fax)
rendris@firstenergycorp.com

Attorney for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

I. INTRODUCTION

A common theme in the comments of the electric distribution utility ("EDU") pole owners is the need to maintain a safe and reliable electric grid. A common theme in the comments of the telecommunications attachers is their desire for faster and less expensive access to EDU poles. These objectives are not mutually exclusive, as evidenced by AEP Ohio's recommendation on One Touch Make Ready ("OTMR").[1] However, the attachers' recommendations overlook the reality that generally when safety and reliability are held constant, faster access is not less expensive. While safety and reliability are explicitly required by statute for pole attachments,[2] faster and less expensive access is merely a commercial objective.[3] Indeed, there is direct evidence that communications service reliability depends upon reliability of the electric distribution poles[4], while there is no evidence that the relatively minimal extra time and expense to ensure safety and reliability will prevent broadband deployment in Ohio.

EDUs are the "owners" of the safe and reliable operation of their distribution systems—not the attachers whose recommendations would decrease that performance. EDUs alone are held accountable for compliance with a myriad of safety and reliability rules for electric service found in the Ohio Administrative Code. Their role as the experts on their electric systems should not be subjugated to attachers' commercial interests.

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[1] See Joint Comments of AEP Ohio and Duke Energy Ohio. The Companies supported an appropriate OTMR process in the FCC's Enhancing Broadband Deployment proceeding, Docket No. WC 17-84.

[2] *See* 4905.71, R.C., for tariff attachments ("so long as the attachment does not interfere, obstruct, or delay the service and operation of the company or carrier, or create a hazard to safety."); *see also*, 4905.51, R.C., for public utility attachments:. ("and that such use or joint use will not result in irreparable injury to the owner or other users of such equipment or any substantial detriment to the service to be rendered by such owners or other users.")

[3] The $275 billion investment cited by Sprint represents private investment not subject to regulation of profits.

[4] See, *Public Safety and Homeland Security Bureau Seeks Comment on Improving Wireless Network Resiliency through Encouraging Coordination with Power Companies,* PS Docket No. 11-60.

The Federal Communications Commission ("FCC") treats EDUs like a pole attachment business, with a business of providing electric distribution service on the side. The comments of attachers in this proceeding reflect the same mistaken view of EDUs. This Commission, however, regulates the electric operations of EDUs with a goal of ensuring safe and reliable electric distribution service for the benefit of all Ohioans. Perfect alignment among rules is not necessary for attachers to effectively operate in multiple states as they already deal with many unique state laws and rules for business purposes such as labor and employment, insurance, contracts, property, taxes, and courts. As explained below, the Commission should reject the ill-conceived proposals of communications attachers which would put commercial objectives over EDUs' provision of safe and reliable electric service.

II. COMMENTS

Overlashing

A number of attachers support Staff's proposed amendments that suffer from the deficiencies noted by the Companies and other EDUs in their initial Comments.[5] Regrettably, some commenters irresponsibly urge the Commission to go even farther in the wrong direction. For example, Crown Castle urges the Commission to include "strand mounted wireless facilities" within the definition of overlashing.[6] Strand mounted wireless facilities, however, are far different from fiber cables and splice boxes. Strand mounted wireless facilities can weigh several hundred pounds and present an ice- and wind-loading profile far beyond that of a single cable wrapped around a wireline attachment. To illustrate what Crown Castle is proposing as an "overlash",

[5] See, generally, Comments of: Companies; Dayton Power & Light Company; and Joint Comments of AEP Ohio and Duke Energy Ohio.
[6] Comments of Crown Castle at p. 3-5.

Exhibit 1 attached to these Reply Comments is a picture of the strand mounted wireless facilities demonstration at the Crown Castle headquarters.

Further, Crown Castle's Comments regarding 5G rollout[7] fail to acknowledge that recently enacted law in Ohio makes alternative deployment more feasible. Specifically, 2018 HB 478[8] limited the fees and restrictions that some municipalities had imposed on carriers perceived as hampering small cell deployment on municipal structures and in municipalities' rights-of-way.[9] In light of 2018 HB 478, EDU poles are not the only choice. Further, EDU poles might not be the most economical choice, given the costs for EDUs to maintain electric distribution system integrity. While the Companies are ready, willing, and able to host small cell antennae and fiber wireline facilities, they must adhere to their engineering and construction standards to maintain system integrity. Recommendations to subordinate these standards to prevent *alleged* stalled deployment or reduced economic growth should be rejected.

Sprint argues that an overlasher should have the same non-discriminatory rights of access to overlashing a competitor's wirelines that an attaching entity has for access to a public utility's poles, and that an overlasher should not even have to seek permission from the existing attacher.[10] In the effort to secure comparable rights, Sprint notes that the current definition of an "attaching entity" does not expressly include overlashers. Similarly, Ohio Cable Telecommunications Association ("OCTA") argues that the Commission previously has held that overlashing is "not an attachment."[11] These arguments highlight a significant legal issue—R.C. 4905.51 (the tariff

[7] Crown Castle Comments, p. 1-3.
[8] Effective August 1, 2018. Note that the law does not modify engineering and construction standards of EDUs.
[9] Accomplishing the objective of the article referenced by Crown Castle at p. 2 of its Comments.
[10] Sprint Comments at p. 2-3. Notably, Sprint offers no reference to support Commission jurisdiction over cable companies in order to command access.
[11] OCTA Comments at p. 6. OCTA also asserts, falsely, that Commission precedent prohibits a pole owner from instituting a ban on overlashing. (at p. 7). In fact, OCTA had requested the Commission order the Companies to add tariff language that overlashing explicitly be permitted, and the Commission denied this request. The Commission further found that "overlashing can affect the loading of a pole and a 15-day notice requirement to allow for

statute) provides a right of access for attachments only, and R.C. 4905.71 (the joint use statute) provides for use of equipment by another public utility only, not for entities other than public utilities. In addition, both statutes require the payment of compensation for such attachment or joint use—not a free ride. Thus, it is unlawful to require public utilities to allow overlashing to all attachers without compensation.

The Commission should define or treat overlashing as a pole attachment, with all of the same rights and obligations as other pole attachments. The Companies' proposal would clarify the applicability of tariffs and joint use agreements to overlashing, as well as the availability of the Commission's complaint procedures and other protections in the pole attachment rules.[12] The Companies' proposal will avoid the adoption of special complicated overlashing rules that will likely leave numerous gaps requiring litigation to resolve. Moreover, treating overlashing like a normal attachment (or defining it as such) gives EDUs an opportunity to perform the necessary survey, engineering, and make-ready construction necessary to avoid compromising the integrity of the Companies' system, the primary purpose of which is to deliver electric service. This approach also ensures non-discriminatory access as the Companies described in their Comments. The Commission should adopt the Companies' recommendations and reject contrary proposals.

Self-Help in the Electric Space

Crown Castle proposes that "self-help" be extended to give communications attachers the ability to hire contractors to perform make-ready construction in the electric space.[13] While the Companies have endorsed a One Touch Make Ready process which involves significant time and

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overlashing may not provide adequate time to evaluate whether a pole can accommodate the additional load." See, Case No. 15-975-EL-ATA, Finding and Order, September 7, 2016, at para. 68.

[12] Companies' Comments, p. 7.

[13] Crown Castle Comments, p.6-8.

cost savings from self-help in the communications space,[14] the Companies oppose any third-party exercising control over the Companies' electric utility system assets and operations. While it is reasonable for a communications company to hire a contractor to handle communications facilities, it is unsafe and unreasonable for a communications attacher to direct a contractor in handling electric utility equipment. Notably, even large industrial customers who manage sophisticated behind-the-meter electric distribution systems are not permitted by Commission rules to do what Crown Castle demands and the FCC permits.[15] The very idea is so fraught with danger that the Companies directly communicated their concerns to the FCC's Chairman Pai (attached hereto as Exhibit 2).[16]

Further, Crown Castle recommends adopting the FCC's approach to adding contractors to the utility's approved list. This approach allows communications attachers to add contractors that meet only minimal qualifications to the list of those allowed to work on equipment in the power space,[17] while allowing disqualification only after a contractor has a track record of violations. This approach poses a grave safety risk as new and insufficiently experienced contractors enter the business in response to significant Congressional funding grants. Allowing attachers to add preferred but unqualified contractors to the list, subject to removal only after safety and reliability violations have been committed and discovered, is unreasonable. The Commission should reject this recommendation and affirm that only EDU employees and their direct contractors be allowed to work on electric equipment in the power space.

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[14] See, Comments of CCU and Petition for Reconsideration in Docket WC 17-84. Notably, the Companies supported a requirement that approved contractors perform the survey and engineering to ensure that the poles in question are indeed "simple."

[15] The FCC's electric space self-help rules remain under challenge in Petition for Reconsideration as well as an appeal to the Court of Appeals.

[16] Letter to Chairman Pai, Docket No. WC 17-84.

[17] For communications space self-help, OCTA recommends that contractors merely acknowledge an ability to "read and follow licensed engineered pole designs"—not that they be capable of *producing* licensed engineered pole designs.

Crown Castle further recommends that ten (10) days after submitting an application to attach to poles an application be "deemed complete." Crown Castle asserts that this provides "public utility pole owners assurance that all information needed for the utility to evaluate an application is present."[18] To the contrary, this "deemed complete" proposal provides no such assurance.[19] It could simply mean that a mistake was made either by the applicant or the pole owner, or simply glitch in the software, not that the utility may rest assured that all information is present. Given that the end result of the process could be an attachment that causes a safety or reliability violation by the applicant, the Commission should require a positive confirmation effort by the applicant that an application was submitted.

Pre-existing violations

Crown Castle urges the Commission to prevent a new attacher from bearing the cost of correcting pre-existing violations.[20] Crown Castle's recommendation fails to address the circumstances contributing to the pre-existing violation. As explained by the Companies' initial Comments,[21] violations may arise over time as standards advance—not because of the actions or inactions of one or more existing attachers causing a violation. In such a situation, the new attachment application triggered the need to correct. Also, rearrangement of existing attachers could fully clear the pre-existing violation but a pole replacement could still be needed to accommodate the new attachment. In this case, the full cost of the pole replacement should be borne by the new attacher.

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[18] Crown Castle Comments at p. 6-7.
[19] OCTA similarly cites the FCC rule on overlashing as "ensuring safety," when in fact the FCC disregarded hundreds of pages of EDU comments to the contrary and adopted rules that are pending both a petition for reconsideration as well as an appeal to the courts. OCTA Comments at p. 6.
[20] Crown Castle Comments at p. 9-10.
[21] See, Companies' Comments, at fn 14.

Several other scenarios could implicate the responsibility-based cost allocation; however, the most troublesome circumstance as recently observed by the Companies' neighboring Pennsylvania affiliate, is when a new unauthorized attacher on a congested pole moved other attachments into violation in order to place its own attachment.[22] All too often the effort to identify the source of a pre-existing violation yields all attachers claiming that some other culprit moved their attachments out of compliance. Unless such a culprit is caught in the act, the pole owner may not be able to identify and assign appropriate cost responsibility. A pole owner should bear none of the cost arising simply because certain parties take advantage of a system which favors attachments.

In many cases only two parties benefit from such correction—the attacher whose violation gets fixed and the new attacher whose attachment is thereby made possible. The simplest solution for allocating cost to correct a pre-existing violation is to adopt a 50/50 split between existing violators and new attachers. This solution acknowledges that, in the majority of circumstances, it is the new attacher's request which triggers correction of an otherwise grandfathered violation.[23] Alternatively, the Commission could recognize the long-standing practice in Ohio and elsewhere of "taking the pole as you find it." Under this practice, when a new attacher encounters a pole with available capacity previously paid for by an existing attacher, the new attacher pays no share of the previous attacher's cost. But if there is make-ready needed, even if there is a pre-existing violation, the new attacher pays 100%. New attachers should not be permitted to obtain the as-found capacity for free while also paying nothing just because a pole is found to have a pre-existing violation and the correction provides additional capacity. Under this approach, sometimes the new

[22] And also required working too close to energized lines.
[23] In other words, the pole is not one which causes a public safety hazard, but which NESC or the Companies' standards require correction the next time a modification is made to the pole.

attacher will obtain as-found capacity for free, and sometimes the new attacher will have to pay. The Commission should either continue the industry tradition of taking the pole as it is found, or, alternatively, split the cost 50/50 between existing attachers and the new attacher.

Tariff amendment process

OCTA continues to seek to avoid the outcome of its previous endorsement of using the FCC's rate formula approach to determine annual rental rates. In FCC-jurisdiction states, pole owners simply re-calculate the rental rates every year based on FERC Form 1 data and issue the annual invoices. There is no suspension process at the FCC, and there certainly is no requirement to serve attachers with supporting evidence at each annual update as OCTA advocates. Contrary to OCTA's recommendation, the Companies are not required to serve certain special parties every time they file an application for a tariff amendment or update to their electric rates. There is nothing unique about pole attachment tariffs that warrants the special processes desired by OCTA customers as compared to electric customers. The Commission has standard practices for 'ATA' filings, and OCTA has presented no compelling reason for departure from them.

Complaint Resolution

OCTA proposes that timelines be shortened for resolution of formal complaints filed with the Commission. Crown Castle's proposal to expand Staff's proposed shifts in the burden of proof and the evidentiary standard in favor of all attachers—and not just incumbent local exchange carriers ("ILECs")—illustrates the fundamental unfairness and lopsidedness of these rules, namely, that basic protections for pole owners are lacking. Take, for example, one of the most basic tools available to EDUs for electric service but not for pole attachments—disconnection and/or denial of service for nonpayment. The

Companies should be allowed to disconnect or at the very least to deny new attachments requested by attachers who do not pay the bills for their existing attachments. Or another fundamental and necessary tool: the right to disconnect and assess appropriate charges where tampering or theft have been discovered that must be paid before reconnection.[24]

As a modest step towards providing EDUs with such fundamental and necessary tools to minimize the cost to other customers from attacher misbehavior, and to balance the rights of both attachers and pole owners in the complaint process, the Companies propose the following be added to either Section 4901:1-3-03 or 4901:1-3-05:

> **a) A pole owner may deny access for reasons of non-payment of annual rental, make-ready, or unauthorized attachment charges, or failure to correct violations of safety and reliability standards.**

Miscellaneous

The Companies disagree with OCTA's proposal that service drops not follow an application process.[25] The Companies need to know about and evaluate attachments to their poles. In addition, the Companies disagree that pole owners be required to provide detailed pole-by-pole breakdowns in the cost estimates for make-ready construction.[26] The Companies' work order management system is not designed to produce such breakdowns, and any manual effort to do so should be fully billable to the requesting party.

[24] Unauthorized attachments and pre-existing violations, for example, are similar in nature to tampering and theft of electricity.
[25] OCTA Comments, p. 5.
[26] Crown Castle Comments, p. 8-9.

III. CONCLUSION

The General Assembly conditioned the right of attachment to and joint use of utility poles upon the principle of not harming the pole owner's service delivery.[27] The Companies' primary business is to operate a safe and reliable electric distribution businesses. While the electric distribution business make poles available for attachers to use in providing communications services, safe and reliable electric service must always come first. That order of priority preserves the quality of service for both electric and communications customers. The Companies respectfully request the Commission adopt the Companies' recommendations above and in their initial Comments.

Respectfully submitted,

/s/ Robert M. Endris
Robert M. Endris (#0089886)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 384-5728
(330) 384-3875 (fax)
rendris@firstenergycorp.com

Attorney for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

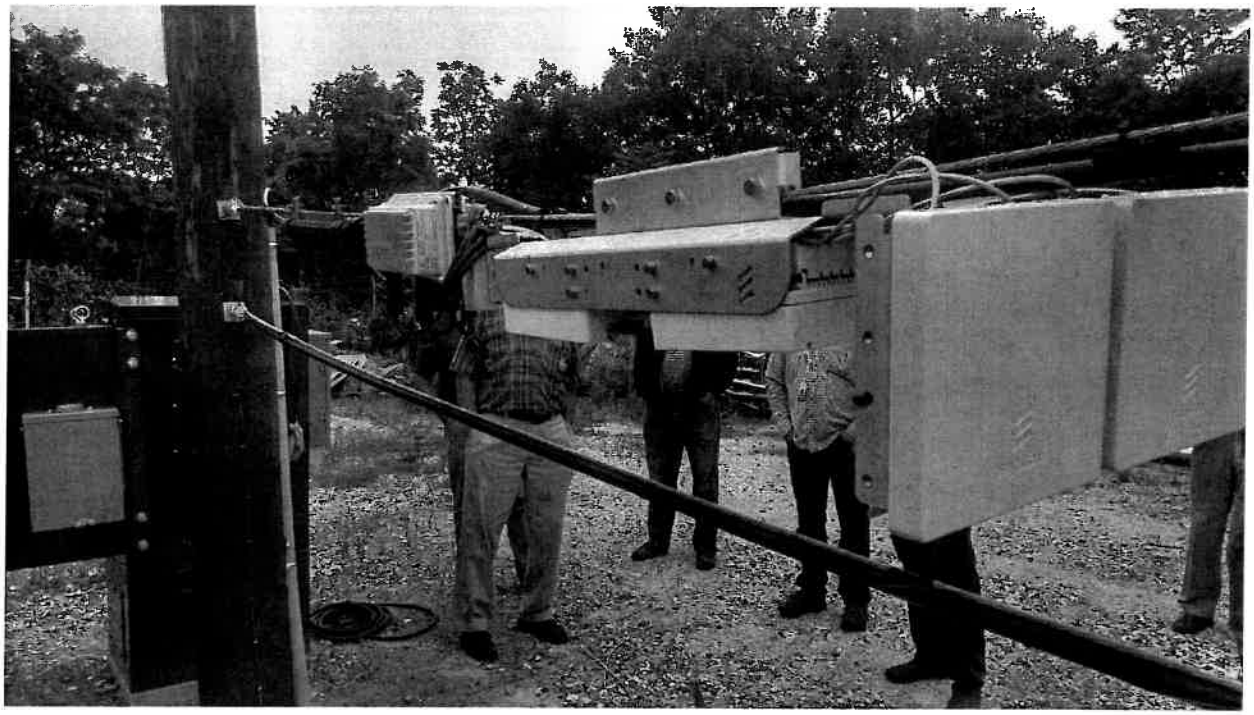
[27] See, R.C. 4905.51 and R.C. 4905.71.

CERTIFICATE OF SERVICE

On September 9, 2019, the foregoing document was filed with the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document.

/s/ Robert M. Endris
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

Exhibit 1



Strand mounted wireless facilities

FirstEnergy

76 South Main Street
Akron, Ohio 44308

1-800-646-0400

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, Southwest
Washington, DC 20554

Re: *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84*

Dear Mr. Chairman,

I am writing to you today about the Draft Order issued by the Commission on July 12, 2018, regarding rules designed to enhance broadband deployment. While FirstEnergy Corp.'s electric distribution utility operating companies in FCC states (collectively "FirstEnergy") are members of the Coalition of Concerned Utilities, and support all of its comments previously filed in this proceeding, there are a number of issues raised by the Draft Order that deserve further comment before the vote is taken August 2. The most serious of these many issues is self-help in the power space.

First, as explained in CCU's comments in this proceeding, as the owners and operators of a complex electric distribution grid it is imperative that FirstEnergy retain control of the contractors performing make-ready work in the power space. While there are many responsible telecommunications providers who can be trusted to direct contractors' efforts to follow the applicable construction and safety standards, there are also many who will apply relentless pressure to cut corners to increase speed and lower costs. Work in the communications space alone is already quite dangerous, as dozens of workers are badly injured or killed each year. It is abundantly clear to FirstEnergy through years of experience that its telecommunications provider partners simply do not place the same emphasis on safety that FirstEnergy does, and many of them do not have electrical or structural engineers on staff qualified to direct power space construction by contractors. One split-second lack of safety precautions and someone doesn't go home to loved ones that night. It is FirstEnergy's primary objective to prevent injury—not react after it occurs.

FirstEnergy places safety as our #1 priority, and reliability of electric service as #2. Allowing other companies to work on our facilities will seriously jeopardize these priorities. As for safety, FirstEnergy considers OSHA and NESC as the minimum accepted standard for safety—our Company standards often exceed these minimums in order to better protect workers and the public. Will third party self-help contractors—with whom FirstEnergy would not have privity of contract—stringently apply FirstEnergy's safety rules, for just one

example, using "glove and sleeve" for voltages above 15 kV? Many attacher comments and ex parte communications in this proceeding clearly articulate disagreement with—and outright animosity towards—any standard going above and beyond the bare minimums.

Second, even for the responsible actors, it is almost certain that third party oversight of work on electric distribution facilities will reduce reliability of the electric grid and lower the quality of electric service. It is difficult to convey the full complexity of the interconnected grid and the intricacies of coordinating work which often includes scheduled outages for pole attachment work as well as for regular electric system work. Lines are not de-energized at single poles—they are de-energized for entire circuits or sections of circuits, resulting in the deliberate or unplanned re-routing of energy flows onto other circuits. Not infrequently such re-routing implicates transmission lines as well as distribution lines, potentially affecting hundreds or thousands of customers. Without careful coordination, unplanned changes in energy flows are likely to overload circuits and may cause wider area forced outages. Further, FirstEnergy protocols provide for a longer notice of unforced outages to customers—14 days for outages affecting more than 10 customers—nearly three times an attacher's required notice under the Draft Order. PJM requires *six months* advanced notice for scheduled outages more than four days in duration if there could be an impact on transmission lines.

Illustrating the high standard of reliability expected for electric service, the back-to-back heavy snowstorms that hit New Jersey earlier this year led numerous communities to demand faster restoration of electric service after storm events, while the only complaint about the same delays in restoring broadband seemed to be why there were no bill credits for the lack of service during outages. In every state where FirstEnergy operates, there are statutes, rules and/or standards for electric reliability performance. Electric customers should not have to pay for faster pole attachments with more forced outages of service and reduced notice of scheduled outages.

Self-help in the Draft Order strays far afield from mere attachment to electric *poles* and instead impinges safe and reliable operation of the electric *system*. FirstEnergy does not allow its own contractors to perform any circuit switching beyond a defined set of "simple switching." Will FirstEnergy be required to accommodate self-help contractors on their schedule, or would they have the right under this order to do their own switching? There is equipment on FirstEnergy's system, such as certain types of sectionalizing devices, with which even its own contractors simply are not familiar. Will third-party self-help contractors be forcibly permitted under the Draft Order rules to operate these devices? Contractors employed by FirstEnergy to work on its system are viewed as an extension of its own employees, and all of their work is coordinated through at least one internal employee. This goes for engineering, design, and construction. Just as important, FirstEnergy must have "visibility" of all crews working on its system, especially during outage restoration and during operational switching, for both safety and reliability reasons. Self-help in the power space under the Draft Order threatens the viability of such coordination.

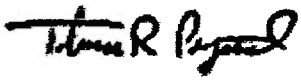
Third, setting aside for now the question whether Congress has granted the Commission jurisdiction and authority to order self-help make-ready construction in the power space, FirstEnergy must seriously reconsider its willingness to increase capacity for attachers if it

means reduced control over the safe and reliable operation of its electric system as discussed above. The Draft Order power-space self-help provisions as written would force FirstEnergy to risk loss of control for every expansion of capacity to accommodate new attachments. Congress unambiguously reserved to pole owners the right to deny applications for new attachments due to a lack of capacity. Further, Congress granted the Commission jurisdiction over attachment to the *poles*, not the *electrical equipment* attached to the poles. The Commission cannot experiment with forcing FirstEnergy and other electric distribution utilities to allow telecommunications providers to functionally operate, move, or reconstruct electric wires, transformers, arrestors, cutouts, relays, insulators, and sectionalizers to increase capacity. The jurisdictional implications of expansion of Commission regulatory action from space on poles into electric operations may be of concern to state public utility commissions and the Federal Energy Regulatory Commission as well.

Finally, the coincidence of shortening the make-ready construction deadline by 30 days seems likely to increase the occurrence of missed deadlines and the likelihood of self-help power space make-ready construction, especially to the extent that storm or emergency electric service restoration efforts are not considered part of timeline performance. Together with new "stimulus" funds being earmarked for broadband and small cell deployment, the existing strained contractor resources previously noted by CCU suggests new entrants to the market who may lack industry knowledge and experience in power space engineering and construction—particularly Company-specific standards. These developments will combine to increase the complications discussed above if FirstEnergy's direct privity of contract is precluded by FCC rules.

In closing, while FirstEnergy anticipates other issues will be raised regarding problems or unanswered questions elsewhere in the Draft Order, it views the self-help make-ready construction in the power space as nothing short of a looming disaster. At an industry conference last year on joint use, one participant commented that "It's not a question of 'if' a communications worker will be injured or killed, it's 'when.'" With self-help make-ready in the power space, it's not a question of if or when, but how many.

Sincerely,



Thomas R. Pryatel, P.E.
Director, Energy Delivery-Operations Services
FirstEnergy Service Company

CC:
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel

Summary: Comments Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company