BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

September 9, 2019

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I. Introduction

The Ohio Cable Telecommunications Association ("OCTA") and its members have actively participated in the development of critical revisions to the existing pole attachment rules to ensure fair and nondiscriminatory access to Ohio's poles, ducts, conduits and rights-of-way that are exclusively owned and controlled by the state's investor-owned utilities. The OCTA supports revised rules that will spur the innovation and deployment of advanced communications services in Ohio. To that end, the OCTA urges the Public Utilities Commission of Ohio ("Commission") to adopt the rule revisions as presented by the Staff and modified by the OCTA in its initial comments. The OCTA also supports certain other parties' initial comments that will help to accomplish these goals and avoid problems encountered under the current rules.[1]

The OCTA's reply comments focus, first, on three groups of proposals by the electric utilities that would seriously undermine the deployment of advanced communications services in Ohio and fundamentally reconfigure, for the worse, well-established practices. First, the Ohio electric utilities seek to inappropriately treat overlashing as an attachment for permitting purposes. Overlashing has been performed for decades without incident or unreasonable burdens imposed by the electric utilities. Indeed, overlashing has been a key component of successful growth and development of facilities-based communications services, and the electric utilities' arguments already have been raised and rejected on a national level. Staff's overlashing framework, with the OCTA's modest revisions, appropriately strengthens the rules and is modeled after the rules recently adopted by the Federal Communications Commission ("FCC") after similar debate and careful consideration.

[1] For ease of reference, the OCTA refers in these comments to the individual rules in Chapter 4901:1-3 as "Rule 3-__."

Second, the OCTA urges the Commission to reject, at least for the time being, requests to incorporate one-touch make ready ("OTMR") provisions. The FCC only recently adopted OTMR rules, and the process is untested. The OCTA therefore urges the Commission to hold off on considering OTMR until after the FCC's rules are tested.

Finally, two anti-competitive and punitive proposals related to concerns over "double wood" should also be rejected. The pole owner's proposals to prohibit new attachers from installing a new pole as an alternative to prohibitive make-ready or be denied access, is unreasonable. In addition, the proposed fee for not removing the attachments on a pole when other attachers are likely to still be on that pole, arbitrarily penalizes the wrong attacher. Subjecting attachers to arbitrary and excessive penalties would be unfair given that attachers often are unable to transfer for various reasons. These unjustified and unnecessary proposals will undermine Ohio's broadband deployment by making routine pole-related activity much more costly and unpredictable.

II. Comments

A. Staff's overlashing proposals should be adopted.

1. Rule 3-01: The definition of "overlashing" should not include strand-mounted equipment.

Crown Castle Fiber, LLC ("Crown Castle") suggests in its initial comments that "overlashing" should be defined in Ohio to include not only the cables, but also strand-mounted wireless equipment.[2] The OCTA disagrees with this proposal. The OCTA believes that strand-mounted facilities should not be subject to permitting, as they are part of the attacher's previously-permitted attachment. Overlashing, however, is different – it is the physical tying of

[2] Initial Comments of Crown Castle Fiber, LLC at 3-5 ("Crown Castle Initial Comments").

additional wires or cables to the wires or cables already secured to the pole.[3] Overlashing is done routinely *to add strands of fiber or cable* to build out facilities.[4] Adding equipment to the strand is an entirely different concept.

That said, the OCTA would welcome Commission acknowledgement that strand-mounted wireless equipment may be deployed without unreasonable interference from utilities and that additional rent cannot be illegally imposed.

2. Rule 3-03: The Commission should ensure that utility pole owners may not require permits or fees for overlashing.

The OCTA strongly supports the Staff's proposed overlash provisions in Chapter 4901:1-3, subject to the limited modifications proposed in the OCTA's initial comments. Overlashing is an efficient and cost-effective technique that communications providers have used for decades, but which became particularly important in the late 1980s and early 1990s when providers deployed lightweight fiber-optic cables on a mass scale. Overlashing is critical to the continued efficient rollout of broadband services for the State's consumers and also for a variety of mobile applications, including 5G and other wireless backhaul functions. Overlashing is the stock-in-trade of broadband expansion and all aerial electronic communications networks.

Facilities-based communications service providers in Ohio need a set of consistent overlashing rules. Currently, each pole owner in Ohio seems to require a different process, which makes it difficult for facilities-based attachers to streamline their own processes statewide. In Ohio, overlashing requirements run the gamut from notice-free "just-do-it-safely"

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[3] *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 ¶ 59 (1998) ("*1998 FCC Pole Order*") ("Overlashing, whereby a service provider physically ties its wiring to other wiring already secured to the pole is routinely used to accommodate additional strands of fiber or coaxial cable on existing pole attachments"); s*ee also* 47 C.F.R. § 1.1415 (Overlash Rules) (referring broadly to "[a]n existing attacher that overlashes its existing wires on a pole," without defining overlashing to mean only fiber cables).

[4] *1998 FCC Pole Order*, 13 FCC Rcd. 6777 ¶¶ 59 and 60.

arrangements, to, very recently, a complete prohibition on overlashing. In addition, certain pole owners have recently begun to change their overlashing processes every few months or so, making deployment decisions difficult and unpredictable. A consistent, reasonable set of rules, modeled after the FCC rules, is needed now.

"Overlashing" is the lashing or tying of an additional communications coaxial cable or fiber to an existing, permitted communications attachment.[5] Typically, OCTA members lash a new fiber optic or coaxial cable to an existing coaxial cable in order to repair, upgrade services or efficiently extend communications plant to serve customers.[6] Because overlashed conductors are not attached to the pole and are typically lightweight, standard industry practice, including in Ohio, has been to allow overlashing without permitting. OCTA members have safely conducted overlashing for decades, relying on the practice as one of the most efficient means to expand and enhance their broadband services for customers without adding unreasonable burden on the poles.[7]

Nevertheless, pole owners in this proceeding have begun to impose or seek to impose onerous restrictions on overlashing, including requiring full-blown applications meant for mainline pole attachments. Some pole owners would require or have required attachers to wait the standard 45 days for approval, operate under excessive advanced notice timeframes, and/or

[5] *1998 FCC Pole Order* at 6777 ¶ 59.

[6] *Id.*

[7] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 FCC Rcd. 7705, 7761 ¶ 115 (2018) ("*2018 FCC Pole Order*") ("[T]he ability to overlash often 'marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment'"); *Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12103, 12141 ¶ 73 (2001) ("*2001 FCC Pole Order*") ("Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand capacity of existing communications facilities, by tying communications conductors to existing, supporting strands of cable on poles. The 1996 [Telecommunications] Act was designed to accelerate rapid deployment of telecommunications and other services, and to increase competition among providers of these services. Overlashing existing cables reduces construction disruption and associated expense.").

have treated overlashing as a separate attachment, subject to annual rent.[8] Some pole owners have even taken the unprecedented position of imposing an outright ban on overlashing. These pole owners contend that overlashing cannot be done safely without treating overlashing like a mainline attachment to a pole.[9] This contention defies decades of practice and has been rejected by pole attachment expert regulators, whose decisions have been judicially affirmed.

This Commission has already determined that "[a] wire overlashed to an existing facility/pole attachment *is not an attachment subject to an attachment fee*."[10] Similarly, for nearly 25 years, the FCC has consistently encouraged overlashing. In so doing, it has prohibited pole owners from imposing unwarranted impediments to the practice, including requiring permits. Beginning in 1995, the FCC "caution[ed] owners of utility poles against restricting cable operators from overlashing their own pole attachments with fiber optic cable."[11] In its *1998 Pole Order*, the FCC reaffirmed its "policy that encourages overlashing" as an important "facet of a procompetitive market" for broadband services, and stressed that "[t]o the extent that overlashing does create an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices."[12]

In 2001, the FCC affirmed its "policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing

[8] Initial Comments of Duke Energy Ohio, Inc. and Ohio Power Company at 11-22 ("Duke/AEP Initial Comments"); Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company at 3-8 ("FirstEnergy Initial Comments"); Initial Comments of The Dayton Power and Light Company at 2-13 ("DP&L Initial Comments").

[9] *See e.g.*, FirstEnergy Initial Comments at 4-5.

[10] *In the Matter of the Application of Ohio Power Company to Amend its Pole Attachment Tariff*, Case No. 15-974-EL-ATA, Finding and Order at ¶ 25 (Sep. 7, 2016) (emphasis added).

[11] *1998 FCC Pole Order*, 13 FCC Rcd. 6777 ¶ 60 (citing *Common Carrier Bureau Cautions Owners of Utility Poles*, Public Notice, DA 95-35 (Jan. 11, 1995)).

[12] *1998 FCC Pole Order*, 13 FCC Rcd. 6777 ¶ 60.

other than the approval obtained for the host attachment."[13] The FCC reasoned that "an overlashing entity does not occupy additional space on a pole" and "[a]n overlashed cable is still only attached to the pole by the original single attachment."[14] Because overlashing only involves a physical connection to other wires and not the pole itself – i.e., "no additional usable space [is] occupied," the FCC also concluded that a pole owner cannot charge overlashing parties for pole space.[15] When pole owners challenged these rulings in the U.S. Court of Appeals for the D.C. Circuit, that court unanimously affirmed the FCC's conclusions as "permissible construction[s]" of the federal Pole Attachment Act that "show due consideration for the utilities' statutory rights and financial concerns."[16]

In 2018, the FCC decided to codify its "longstanding policy that utilities may not require an attacher to obtain its approval for overlashing,"[17] and allow for no more than 15 days' prior notice. As is the case in this proceeding, pole owners in the rulemaking that led to the new FCC overlash rules, also argued that pre-approval for overlashing is necessary to ensure safety, despite decades of practice forbidding such pre-approval. As it did for the last 20 years, the FCC rejected these arguments, finding "that an approach to overlashing that allows for pre-notification without requiring pre-approval is superior" because "the record reflects that an advance notice requirement has been sufficient to address safety and reliability concerns, as it provides utilities with the opportunity to conduct any engineering studies or inspections either

[13] *2001 FCC Pole Order*, 16 FCC Rcd. 12141 ¶ 75.

[14] *Id*. at 12133 ¶ 58.

[15] *Id*. at 12142 ¶ 76.

[16] *S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002); *see also Cable Television Ass'n of Georgia v. Georgia Power Co*., File No. PA 01-002, Order, 18 FCC Rcd. 16333, 16340-41, ¶ 13 (Enforcement Bureau 2003) (holding contract provision giving utility 30 days to approve or deny overlashing request was "unjust and unreasonable on its face").

[17] *2018 FCC Pole Order*, 33 FCC Rcd. 7761 ¶ 115 (2018); *see also* 47 C.F.R. § 1.1415.

prior to the overlash being completed or after completion."[18] The FCC explained that, "requiring that attachers receive prior approval for overlashing would unnecessarily increase costs for attachers and delay deployment."[19] And as is the case in this proceeding, the FCC considered and rejected requests by utilities that they be allowed to require up to 45 days' prior notice of overlashing, holding instead that because "pre-approval for overlashing is not required, such a lengthy notice period should not be necessary."[20]

The poles in the 30 FCC-governed states are no different than the poles in Ohio.[21] Therefore, mirroring the FCC's approach to overlashing—which prohibits prior approval, permitting, engineering fees and rent, but allows for notice—is the right regulatory policy to ensure timely and safe deployment of the next generation of advanced broadband services to Ohioans.[22]

By contrast, the unnecessary overlashing requirements advocated (or in some cases, already unilaterally implemented) by the utility pole owners in Ohio increases the costs of and retards broadband deployment. For example, DP&L and Ohio Edison require OCTA members to submit formal overlashing applications through the SPANS notification system and then wait for the utilities' approval before proceeding. Response times to these applications varies from

[18] *2018 FCC Pole Order*, 33 FCC Rcd. 7763-64 ¶ 117. The FCC added that it "has consistently found that overlashers must ensure that they are complying with reasonable safety, reliability, and engineering practices." *Id*. at 77665-66 ¶ 119.

[19] *Id*. at 7764 ¶ 117.

[20] *Id*. at 7765 n.443. Here, the FirstEnergy companies argue that a 15-day notice period is too short and gives overlashers "priority processing." FirstEnergy Initial Comments at 6 and 8.

[21] Several of the parent companies of the utility pole owners in this proceeding already operate in those FCC jurisdictions, and therefore should be familiar with the FCC's policy on overlashing.

[22] Several certified states also have adopted rules that prohibit prior approval or consent to overlashing. For example, in 2018, the Maine Public Utilities Commission adopted new pole attachment rules that provide that overlashers "need not submit a request to overlash to existing facilities, so long as [it] provides written notice of the overlash within 10 days after making it." Code Me. R. tit. 65-407 Ch. 880, § 2(A)(1); *see also Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure*, Order Amending Rule and Factual and Policy Basis, Dkt. No. 2017-00247, at 18 (Maine PUC Jan. 12, 2018); 18-1 Vt. Code R. § 8:3.708(I).

days, to weeks, to months *and even years, in some cases*. Attachers cannot serve their customers adequately under these unreasonable and unpredictable conditions.

The electric utilities argue that the Commission's proposed Rule 3-03(A)(7), which would require advance notice of planned overlashing, rather than applications, "unreasonably place[s] too much discretion in the hands of attachers," and "glosses-over" concerns for capacity, safety, and reliability.[23] However, as the FCC previously explained, providing advance notice of overlashing already allows pole owners to "monitor and ensure the safety, integrity, and reliability of its poles both before and after the overlash is completed without overburdening overlashers or requiring multiple trips to the pole."[24] Likewise, because OCTA members have already installed facilities on the poles, they have just as much interest as the pole owners in ensuring safe and reliable plant, networks, and support structures. Indeed, pole attachment agreements require attachers to indemnify pole owners for any damage. Moreover, as mentioned above, attachers in Ohio historically were not subjected to the permit process and overlashed without incident.

The Ohio electric utilities also demand that overlashers pay the costs of any engineering review of a proposed overlash, and in some cases, do not even process overlashing requests unless the requester pays up front.[25] While, the OCTA does not have an issue with the pole owners performing engineering studies, in most cases, these are not necessary, and the attacher should not have to pay for unnecessary and costly engineering. Indeed, the FCC has rightfully held that "a utility may not charge a fee to the party seeking to overlash for the utility's review of

[23] FirstEnergy Initial Comments at 5; Duke/AEP Initial Comments at 15-16.

[24] *2018 FCC Pole Order*, 33 FCC Rcd. 7764-76 ¶ 118.

[25] *See* Duke/AEP Initial Comments at 16-17; FirstEnergy Initial Comments at 7-8.

the proposed overlash, as such fees will increase the costs of deployment."[26] In reaching that conclusion, the FCC rejected the "assertion that the costs of performing a pre-overlash engineering analysis are incremental costs caused by the new attacher and, as a result, electric utilities are entitled to recover them."[27] Moreover, if there are issues with overlashing, attachers are required to fix any issues.[28]

Finally, the utility pole owners take issue with third parties overlashing onto existing attachments even with the permission of the host attaching entity.[29] For example DP&L argues that "there needs to be a contractual relationship between the overlashing entity and the pole owner" because otherwise, "the pole owner will not know who or how to contact the overlashing entity in cases where notifications are required."[30] As an initial matter, OCTA members are not aware of, and generally do not allow, third party overlashing onto their facilities. In any case, third-party overlashing (which is physically performed by the first-party attacher) is no different than first-party overlashing. For that reason, the FCC determined that "[a]llowing third party overlashing reduces construction disruption and associated expenses which would otherwise be incurred by third parties installing new poles and separate attachments."[31] In its *2018 Order*, the FCC also reaffirmed that that pole owners "may not require pre-approval for third party overlashing of an existing attachment, when such overlashing is conducted with the permission of an existing attacher."[32] To the extent a pole owner is concerned about how to contact the

[26] *2018 FCC Pole Order*, 33 FCC Rcd. 7763 ¶ 116; *see also* 47 C.F.R. § 1.1415(c) ("A utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash.").

[27] *2018 FCC Pole Order*, 33 FCC Rcd. at n.431.

[28] *2001 FCC Pole Order*, 16 FCC Rcd. 12133 ¶ 58.

[29] Duke/AEP Initial Comments at 7; DP&L Initial Comments at 6.

[30] DP&L Initial Comments at 6.

[31] *2001 FCC Pole Order*, 16 FCC Rcd. 12134, 12141 ¶¶ 61 and 75.

[32] *2018 FCC Pole Order*, 33 FCC Rcd. 7761-62 ¶ 115; *see also* 47 C.F.R. § 1.1415(a)(ii).

third-party overlasher, that pole owner can easily contact the host attaching entity with whom the pole owner already has an existing pole agreement.

For all of these reasons, the OCTA urges the Commission to adopt the Staff-proposed overlash rules, subject to the OCTA's proposed modifications contained in its initial comments.

B. One-Touch Make-Ready is untested.

Crown Castle, the Ohio Telecom Association ("OTA") and Duke/AEP propose to include the FCC's OTMR process in Rules 3-01 and 3-03.[33] FirstEnergy also proposed two OTMR-related proposals. Specifically, FirstEnergy proposes that in Rule 3-03(B)(5) the Commission remove the language identifying who can perform make-ready work above the communications space.[34] FirstEnergy also proposes that, in Rule 3-03(C), the Commission allow only the utility or its contractors to perform make-ready above the communications space.[35]

The OCTA opposes each of these requests. The FCC's OTMR system is newly adopted and only took effect several months ago in May 2019. The OCTA members have had little experience with this new process to date, and there appears to be generally little operational experience with the FCC's OTMR process. For these reasons, the Commission should delay consideration of OTMR. The Staff, likewise, is not recommending adoption of the OTMR system as it was not included in the Staff proposal. The Commission should follow the OCTA and Staff approach and not adopt, incorporate or mirror the FCC's OTMR system at this time. Rather, the OCTA believes that maintaining Staff's "wait and see" approach is appropriate.

[33] *See* Crown Castle Initial Comments at 5-6; OTA Initial Comments at 2-3; Duke/AEP Initial Comments at 21-22.

[34] FirstEnergy Initial Comments at 8-9.

[35] *Id*.

C. DP&L's penalty-based proposals associated with "double wood" for Rules 3-03(B)(3) and 3-04 are unwarranted.

DP&L presents two suggestions that are unfair and unworkable, and they should be rejected. First, DP&L proposes that a public utility should be allowed to deny access to an attacher if the attacher does not agree to all make-ready on all other poles in the same pole line and instead opts to install its own poles.[36] Specifically, DP&L proposes to include the following language in Rule 3-03(B)(3):

> Public utilities may deny access to one or more poles in a pole line, even if access can be made available with no additional make-ready work, if there are other poles in the same pole line that would require make ready work and the attaching entity has declined such make ready work and, instead, installs or seeks to install, its own poles.

This attempt to restrict access because an attacher opts to install its own pole if that would be the more economically-efficient option is unreasonable on its face. DP&L's proposal would force attachers to either increase the cost of broadband deployment or lose their right to attach. This proposal is unjust, unreasonable and must be rejected. The OCTA knows of no similar rule that has been adopted in any other state.

DP&L also proposes to include in Rule 3-04 a mandate that the public utilities' tariffs include a charge of up to $100 per pole per day if an attacher, who is obligated to move its attachment to a new pole and remove the old pole, fails to comply within 30 days.[37] Such a rule is unprecedented, is unnecessary and, in many cases, penalizes attachers for circumstances beyond their control. Indeed, often, an attacher is unable to transfer its attachments to a new pole until other attachers or the pole owner itself transfers its own facilities. The 30-day time period is also arbitrary. When faced with dozens of unexpected transfer notices, an attacher simply

[36] DP&L Initial Comments at 14-15.

[37] *Id*.

cannot physically transfer all of its attachments in such a compressed time period. The proposed penalty is also arbitrary and excessive. DP&L, moreover, has failed to explain on what legal or rational basis it may charge (and financially benefit from the imposition of) such an excessive penalty scheme. It is important to note that these types of issues can be and typically are most effectively handled between the attacher and the pole owner in negotiated arrangements. For these reasons, the Commission must reject this proposal that will inevitably lead to constant field disputes and the deterioration of joint-use relationships.

D. The OCTA supports rules that encourage cost-effective and timely deployment of communications services in Ohio by providing for details, avoiding ambiguity and providing reasonable timeframes for action.

1. Rule 3-03(A)(4): Reasonable revisions to the language in Rule 3-03(A)(4) can eliminate problematic behavior experienced.

The OCTA agrees with Crown Castle that a blanket denial in response to an access request does not comport with the Commission's existing rules.[38] Blanket denials are contrary to Rule 3-03(A)(4), which requires that the public utility's denial of access "be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information related to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards." The OCTA members, nonetheless, have been subject to blanket denials and, for that reason agree with Crown Castle's suggestion to add into Rule 3-03(A)(4) the following:

> Blanket prohibitions on access incorporated into a public utility's construction standards or pole attachment agreements or unsupported assertions that a denial of access is based on capacity, safety, reliability, or engineering principles shall not be interpreted as specific relevant evidence to support a denial of access.

[38] Crown Castle Initial Comments at 8.

The OCTA also agrees with the OTA's suggestion[39] to insert 10 days as a specific time period (instead of the undefined "timely" language) in Rule 3-03(A)(4), so that the pole owners must inform the attacher when the attachment application is deemed incomplete, in a specified timeframe.

2. Rule 3-03: The completeness determination should be provided more expeditiously to expedite deployment.

The OCTA supports Crown Castle's proposal[40] that a pole owner notify an attacher about the completeness of an attachment application within 10 business days and that modification be reflected in Rule 3-03.

3. Rule 3-03(B)(2): Cost estimates for make-ready work should be specific.

The OCTA supports Crown Castle's suggestion[41] that make-ready work estimates be specific and contain the information needed by the attacher to make informed decisions.

4. Rule 3-03(B)(3)(a)(ii): Expedited deployment should be supported with shorter timeframes for completion of complex make-ready.

The OCTA supports Crown Castle's and OTA's suggestions[42] that the time to complete "complex" make-ready in the communications space should be decreased from 60 days to 30 days (or from 105 to 75 days in the case of larger orders). This is consistent with the FCC's new rules and will help expedite deployment of broadband services to Ohio's consumers. As OTA noted, under certain circumstances already recognized by the Commission and set forth in Rule 3-03(B)(7), different timeframes may apply.

[39] OTA Initial Comments at 4.

[40] Crown Castle Initial Comments at 6.

[41] *Id*. at 8-9.

[42] *Id*. at 7 and OTA Initial Comments at 3.

5. Rules 3-03(B)(4), (B)(5) and (C): Self-help should be further delineated when the public utility fails to complete the survey and make-ready work in the specific timeframes.

Self-help options should also be incorporated into the rules, as the OCTA suggested in its initial comments.[43] These revisions are necessary to avoid delays and incentivize pole owners to act within the timeframes. Self-help is consistent with FCC rules, as well as with rules in place in other certified states.[44]

6. Rule 3-03(E): Clarification as to who can be charged for bringing facilities into compliance is an important safeguard to ensure cost-effective broadband deployment.

The OCTA agrees with Crown Castle that pre-existing, noncompliant situations must not be a barrier to deployment. The OCTA further agrees with Crown Castle's proposal in its initial comments[45] to include in Rule 3-03(E) the following language consistent with 47 CFR § 1.1411(d)(4) so that a new attacher is not burdened or penalized for another's noncompliance:

> Provided, however, that a public utility may not charge an attaching entity to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and public utility pole owner construction standards and guidelines if such poles, attachments, or third-party equipment is out of compliance because of work performed by (or which has failed to be performed by) a party other than the attaching entity prior to the new attachment.

[43] OCTA Initial Comments at 8-10; s*ee also* OTA Initial Comments at 4-5 and 6-7; Crown Castle Initial Comments at 7.

[44] For example, the Maine Public Utilities Commission adopted self-help rules. *See* Code Me. R. tit. 65-407 Ch. 880, §§ 2(A)(9) & 2(A)(10); *see also Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure*, Order Amending Rule and Factual and Policy Basis, Dkt. No. 2017-00247, at 22 (Maine PUC Jan. 12, 2018).

[45] Crown Castle Initial Comments at 9-10.

7. Rule 3-05(A): More expedited timeframes for resolving complaints are appropriate.

The OCTA supports the comments filed by Crown Castle[46] urging the adoption of the FCC's shorter timeframes for resolving complaints. Crown Castle's comment was consistent with the OCTA's initial comment.[47]

III. Conclusion

The OCTA supports revised pole rules that will spur the innovation and deployment of advanced communications services in Ohio. The OCTA urges the Commission to adopt the rule revisions as presented by the Staff and modified by the OCTA in its initial and these reply comments. As noted above, the OCTA also supports certain other parties' initial comments that will help to accomplish these goals and avoid problems encountered under the state's existing rules.

Respectfully submitted,

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[46] *Id*. at 10-11.

[47] OCTA Initial Comments at 15-17.

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 9th day of September 2019 upon the persons listed below.

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