

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING  
OF  
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

**I. Introduction**

The Ohio Cable Telecommunications Association (“OCTA”) files this application for rehearing to seek clarification or modification from the Public Utilities Commission of Ohio (“Commission”) of the adopted definition of “overlashing” in its April 7, 2021 Finding and Order. The OCTA strongly supports the Commission’s new rules, and its decision to recognize overlashing as an essential component of deploying competitive networks in Ohio and to incorporate by reference the overlashing rules in 47 C.F.R. § 1.1415. Overlashing is critical to the continued efficient and cost-effective rollout of broadband services and mobile applications. The prior omission of overlashing in the Commission’s rules historically has caused disparate treatment in Ohio,<sup>1</sup> among other ills.

The Commission has remedied the omission but has unreasonably limited the definition of “overlashing” to the tying or lashing of only *fiber optic* cables to wires, cables or strands already attached to a pole, thereby excluding other kinds of conductors routinely used in modern communications networks—particularly coaxial cable. Uncorrected, limiting the definition of

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<sup>1</sup> The OCTA described the disparate treatment on pages 3-4 and 7-8 of its reply comments filed in this proceeding on September 9, 2019.

overlashing only to fiber optic cables will impede the Commission's expressed policy goals as well as generate numerous adverse and perverse effects such as precluding existing overlashed cables, preventing similar future overlashing, and prescribing the cable and communications industries' network design and deployment choices. The OCTA, moreover, knows of no other regulatory body, including the Federal Communications Commission ("FCC"), which has such a limitation. Indeed, reference to only fiber optic cables in the Commission's definition is not consistent with federal precedent, although the Commission sought to avoid differing state and federal regulations in the area of overlashing. For these reasons, the OCTA files this application for rehearing pursuant to Ohio Revised Code Section ("R.C.") 4903.10 and alleges the following assignment of error:

It was unreasonable and unlawful for the Commission to define overlashing as the tying or lashing of only fiber optic cables because limiting overlashing to only fiber optic cables (a) adversely and perversely precludes existing overlashed cables other than fiber, prevents similar future overlashing other than fiber, and mandates a specific design for attachers' networks; and (b) is not consistent with federal precedent or the Commission's stated desire to avoid differing state and federal regulations in the area of overlashing.

The Commission should clarify and modify its April 7, 2021 decision and Rule 4901:1-3-01 to state that "overlashing" is "the tying or lashing of additional cables (including coaxial, fiber optic, or other cables) to existing communications wires, cables, or supporting strands already attached to poles."<sup>2</sup>

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<sup>2</sup> The specific revision to the adopted definition is as follows: "the tying or lashing of ~~an~~ additional ~~fiber-optic~~ cables (including coaxial, fiber optic, or other cables) to ~~an~~ existing communications wires, cables, or supporting strands already attached to poles."

## II. Argument

- A. **It was unreasonable and unlawful for the Commission to define overlashing as the tying or lashing of only fiber optic cables because limiting overlashing to only fiber optic cables adversely and perversely precludes existing overlashed cables other than fiber, prevents similar future overlashing other than fiber, and mandates a specific design for attachers' networks.**

Without clarification or modification by the Commission, the rules could be interpreted to limit overlashing to only fiber optic cable because the overlashing authorized by the rules will be defined as the tying or lashing of only “additional fiber optic cables” to existing communications wires, cables or supporting strands already attached to poles. If allowed to take effect without clarification or modification, this limitation will have multiple adverse and perverse impacts, including constraining communications providers’ technology choices. It could also potentially require the unreasonable modification or even abandonment of long-standing industry overlashing practices. In addition, if the definition stands, Ohio would be a unique outlier, an anomaly among other states, for allowing overlashing, but only for one kind of communications conductor. This will require OCTA members (and perhaps others) to substantially modify their operational practices, and/or their technology choices without any underlying policy rationale or objective.

For example, existing tied or lashed cables that are not fiber optic cables might no longer be permissible by certain pole owners. Attachers, including OCTA members, have tied or lashed different kinds of cables to wires, cables or strands already attached to poles in Ohio. The use of different kinds of cable for overlashing has been the practice for many decades—since the first cable systems underwent their initial upgrades. If overlashing non-fiber-optic cables is effectively prohibited, existing services to millions of Ohioans will be affected. It is also

possible that pole owners will rely on the new definition as a basis to file lawsuits alleging noncompliance, and seeking removal of overlashed non-fiber optic cables along with damages.

Also, pole owners could rely on the definition to prevent new overlashing unless the overlashing consists of fiber optic cable. OCTA members plan to continue overlashing in Ohio using fiber as well as other types of cable, including particularly coaxial cable—a staple of high-capacity, high-function electronic communications networks since coaxial cable was first put into commercial use in the United States in the early 1940s. Excluding “co-ax” (as it is known), or at the very least potentially exposing it to cumbersome and unnecessary deployment procedures and other treatment that could flow from a flawed rule definition, would constrain providers’ ability to meet their customers’ needs and hobble existing and future design, deployments and service plans. The OCTA and its members are concerned that pole owners may rely on the definition to enjoin new overlashing or erect other barriers (including costly procedures and charges and assessments) in order to preclude the overlashing of non-fiber-optic cables. This limitation could delay or impede services and upgrades that customers desire.

Last, the rules could effectively mandate a particular system design and construction unique to Ohio because only fiber optic cable would be eligible for the efficiencies of overlashing. The Commission, however, has always been meticulous about steering clear from design-based pole attachment rules. For example, the Commission does not mandate any specific wire, cable or strand be used to attach to a pole: “[p]ole attachment’ means **any attachment** by an attaching entity....” *See* Ohio Adm. Code 4901:1-3-01(N), emphasis added. Similarly, the Commission does not mandate any specific manner to attach to a pole. Rather, attachments are permissible unless non-compliant with safety, reliability, and generally

applicable engineering standards, or for insufficient pole capacity. *See* Ohio Adm.Code 4901:1-3-03(A)(1), (A)(4), and (B)(8). The effective limit on overlashing that the current definition imposes excludes these legitimate access standards and considerations.

In sum, the definition as adopted will likely adversely affect attachers' current and planned overlashing. The impact would be perverse as well because attachers will be forced to design and construct their overlashing with fiber optic cable exclusively, regardless of numerous key considerations such as safety, reliability, engineering, existing inventory, technological application and cost. The Commission should not design all overlashing in Ohio by limiting it to the tying or lashing of solely fiber optic cables.

**B. It was unreasonable and unlawful for the Commission to define overlashing as the tying or lashing of only fiber optic cables because it is not consistent with federal precedent and the Commission's stated desire to avoid differing state and federal regulations in the area of overlashing.**

The Federal Communications Commission ("FCC") acknowledged decades ago that different kinds of cables are tied or lashed:

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.

*Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 59 (FCC Feb. 6, 1998), emphasis added.<sup>3</sup> Importantly, the FCC still does not limit overlashing to the tying or lashing of only one particular kind of cable. *See* 47 CFR § 1.1415.

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<sup>3</sup> Other states have likewise defined "overlashing" to include more than just fiber optic cable. For example, Maine defines "overlash" in a very similar fashion to the Commission's definition, with the exception being that overlashing is not limited to one kind of cable. Specifically, Maine's administrative rules state that "overlash" means the "tying or lashing of additional communications **wires, cables, and facilities** to existing communications

The Commission, in considering the comments on overlashing in this proceeding, highlighted its desire to avoid two different sets of rules – federal and state. Finding and Order at ¶ 48. In addition, the Commission stated that alleviating administrative burdens and reducing the adverse impact on business were also considerations that convinced the Commission to incorporate the FCC overlashing requirements, among other FCC requirements. *Id.*

Those same considerations warrant a state definition of “overlashing” that is consistent with the federal approach. Indeed not correcting the error would undercut the Commission’s stated (and wise) desire to avoid a set of overlashing rules that differ from the federal rules. Likewise, an Ohio definition of overlashing that is consistent with the less-limiting federal approach to overlashing will alleviate administrative burdens of two different sets of rules, as well as reduce the adverse impact the current definition would have on Ohioans and the communications providers like OCTA members that serve them.

A clarification and modification to the definition of “overlashing” is needed to be consistent with federal precedent and ensure that the Ohio definition implements the Commission’s stated desires for its overlashing rules.

### **III. Conclusion**

The OCTA supports the Commission’s new rules and decision to recognize overlashing as a standard and necessary industry practice in its rules and to incorporate by reference the overlashing rules in 47 C.F.R. § 1.1415. To define overlashing as the tying or lashing of only

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wires, cables, or supporting strand already attached to poles.” *See* Code of Maine Rules, 65-407, Chapter 880, Section 1.R, emphasis added. Also, in the State of Washington, “overlashing” means the tying of additional communications **wires or cables** to existing communications wires or cables attached to poles.” *See* Washington Annotated Code 480-54-020, emphasis added. In addition, multiple pole owners in Ohio either support or do not oppose an Ohio definition of overlashing as tying or lashing of additional cables including coaxial, fiber optic, or other cables. *See* Joint Reply Comments of Duke Energy Ohio Inc. and Ohio Power Company at 1-2 (filed Sep. 9, 2019) and Reply Comments of The Ohio Bell Telephone Company d/b/a AT&T Ohio at 2 (filed Sep. 9, 2019).

fiber optic cables, however, will adversely affect attachers in multiple ways, will be inconsistent with the FCC's approach to overlashing, and will undercut the basis for the Commission's incorporation by reference of the federal overlashing rules. The Commission's pole rules should spur the innovation and deployment of advanced communications services in Ohio, including the next generation of advanced broadband services to Ohioans. Specifically, the OCTA urges the Commission to modify the definition of "overlashing" in Rule 4901:1-3-01 as proposed herein by the OCTA to be "the tying or lashing of additional cables (including coaxial, fiber optic, or other cables) to existing communications wires, cables, or supporting strands already attached to poles."

Respectfully submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608)  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street, P.O. Box 1008  
Columbus, OH 43216-1008  
614-464-5407  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

/s/ J. Davidson Thomas

J. Davidson Thomas (by *pro hac vice* authorization)  
Sheppard Mullin Richter & Hampton LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington DC 20006-6801  
(202) 747-1900  
[dthomas@sheppardmullin.com](mailto:dthomas@sheppardmullin.com)

*Attorneys for the Ohio Cable  
Telecommunications Association*

## **CERTIFICATE OF SERVICE**

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[kfling@firstenergycorp.com](mailto:kfling@firstenergycorp.com)

[randall.griffin@aes.com](mailto:randall.griffin@aes.com)

[rocco.dascenzo@duke-energy.com](mailto:rocco.dascenzo@duke-energy.com)

[diane.c.browning@sprint.com](mailto:diane.c.browning@sprint.com)

[jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)

[fdarr2019@gmail.com](mailto:fdarr2019@gmail.com)

[stnourse@aep.com](mailto:stnourse@aep.com)

[rebecca.hussey@crowncastle.com](mailto:rebecca.hussey@crowncastle.com)

[cblend@aep.com](mailto:cblend@aep.com)

[dthomas@sheppardmullin.com](mailto:dthomas@sheppardmullin.com)

[tswolffram@aep.com](mailto:tswolffram@aep.com)

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci



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