



Norman J. Kennard
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November 1, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17101

Re: PPL Electric Utilities Corporation v. Buffalo Valley Telephone Company, et al.,
Docket No. C-2009-2124528, *et seq.*

Dear Secretary Chiavetta:

Attached for filing, please, please find the Answer of the Pennsylvania Telephone Association to the Petition of PPL Electric Utilities Corporation to Withdraw or Terminate Complaint Proceedings.

If you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

Attachment

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PPL ELECTRIC UTILITIES CORPORATION	:	
	:	
	:	
v.	:	Docket No. C-2009-2124528, <i>et seq.</i>
	:	
BUFFALO VALLEY TELEPHONE COMPANY, <i>et seq.</i>	:	
	:	

ANSWER OF THE PTA RESPONDENTS TO THE
PETITION OF PPL ELECTRIC UTILITIES CORPORATION
TO WITHDRAW OR TERMINATE COMPLAINT PROCEEDINGS

The Pennsylvania Telephone Association (“PTA”), on behalf of its member companies, and Buffalo Valley Telephone Company; Windstream Pennsylvania, LLC; Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company; Conestoga Telephone & Telegraph Company; Denver and Ephrata Telephone and Telegraph Company; Frontier Communications of Pennsylvania, LLC; Ironton Telephone Company; Lackawaxen Telecommunications Services; Frontier Communications - Lakewood, LLC.; TDS Telecom/Mahanoy & Mahantango Telephone Company; Pennsylvania Telephone Company; The North-Eastern Pennsylvania Telephone Company; Palmerton Telephone Company; South Canaan Telephone Company; TDS Telecom/Sugar Valley Telephone Company; and The United Telephone Company of Pennsylvania LLC d/b/a Embarq PA, all incumbent local exchange carriers (collectively, “Respondents” or “PTA Respondents”), by its attorneys in this proceeding, Thomas, Long, Niesen & Kennard, hereby submit their Answer to the Petition of PPL Electric Utilities Corporation (“PPL”) to Withdraw or Terminate Complaint Proceedings, and, in support thereof, respond and aver as follows:

1. Admitted. It is admitted that, on July 31, 2009, PPL filed Complaints against each of the Respondents. In filing the Complaints, PPL sought a Commission ruling regarding a pricing structure for pole attachments different from that contained in the Joint Use Agreement currently in effect between the parties, which would have had the effect of increasing attachment revenues to PPL and decreasing attachment revenues to Respondents.

2. It is admitted that, prior to the filing of the Complaint, PPL and Respondents had engaged in negotiations to resolve the dispute over pricing. Specifically, in October 2007, PPL unilaterally submitted a notice to each of the Respondents stating that it was terminating the current Joint Use Agreement. Thereafter, PPL and the Respondents met numerous times in an attempt to devise a new agreement and, specifically, resolve PPL's demand for a different pricing structure. Respondents continually throughout the negotiations attempted to present alternative solutions, each of which PPL rejected. It is denied that such negotiations were unproductive and, indeed, Respondents sought to continue those negotiations. PPL unilaterally terminated the prior negotiations and, without notice or discussion with the Respondents, filed the Complaints.

3. Admitted.

4. It is admitted that, in its Complaint filed on July 31, 2009, PPL requested the Commission force Respondents to revise the existing Joint Use Agreements by modifying the attachment fees in the manner sought by PPL, which would shift as much as \$12 million in annual revenue to PPL and from Respondents.

5. It is admitted that Respondents filed Answers to the Complaints. The Respondents' Answer denied that the current attachment pricing structure, which was originally advocated for use by PPL, is inequitable to the parties. It was denied that it is equitable for PPL to take advantage of Respondents' lower cost structures for PPL attachments, and then force

Respondents to pay PPL's higher pole cost structure in rendering attachments. Moreover, it was denied that the so-called FCC methodology advocated by PPL had any legal or policy relevance to Respondents.

6. Admitted.

7. It is admitted that, after the Complaints were filed, Respondents and PPL agreed to participate in the Commission's mediation process. During the numerous mediation meetings held, Respondents proposed various alternatives to PPL's litigation position.

8. It is denied that mediation was not or could not have been productive. Respondents continue to be willing to participate in the mediation process.

9. It is admitted that PPL avers that it "has determined that its most appropriate course of action" is to terminate the current Joint Use Agreement. Nevertheless, at the same time, PPL has sent separate correspondence to Respondents seeking to renegotiate those same Joint Use Agreements or, in the alternative, execute new agreements for prospective attachments. *See*, correspondence attached.

10. It is denied that reformation of attachment pricing has "diminished significance." To the contrary, Respondents aver that, despite almost two years of negotiation and one year of mediation, PPL has not yielded on its pricing demands. Instead, PPL is now positioning itself to deny future attachments to the Respondents unless they capitulate to PPL's pricing theories that are the subject of the Complaint it now seeks to withdraw. *See*, correspondence attached. This latest tactic by PPL could jeopardize the Respondents' ability to meet their carrier of last resort obligations as applied to both voice and broadband services.

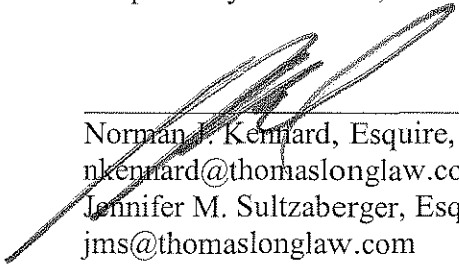
11. It is denied that it would not be worthwhile to continue the above-captioned Complaint proceedings. Withdrawing the Complaint does not resolve the issue of attachment

pricing. Instead, as PPL's letter of October 18, 2010 makes clear, PPL intends to force the PTA Respondents to accede to its rate structure or deny them the ability to attach.

12. It is admitted that PPL Electric requests permission to withdraw its Complaints. The PTA Respondents do not oppose that request, although they are highly concerned over PPL's strong-armed tactics and the unrestrained use of its market power to force pricing concessions. The PTA Respondents fully reserve the right to bring the matters at issue before the Commission at a later date should PPL pursue a course of action that is adverse to the Respondents' ability to meet their carrier of last resort obligations. In the meantime, the Respondents will work with PPL in an attempt to resolve these matters between the parties. For example, the Respondents have replied to PPL's October 18, 2010 letter by conditionally agreeing to PPL's rate structure, provided that it is not used to supplant the grandfather provisions of the existing Joint Use Agreement and recognizes the likelihood of an FCC ruling that will substantially revise the FCC pricing methods in the near future.

WHEREFORE, the Respondents do not oppose PPL's withdrawal of the Complaints, but reserve the right to bring these same matters before the Commission in the future.

Respectfully submitted,



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(717) 255-7600

Dated: November 1, 2010

David Glenwright, Manager
Attachments & Telecom Business Services
PPL Electric Utilities
Two North Ninth Street – GENN4
Allentown, PA 18101
Phone: 610-774-6758
Fax: 610-774-6875



September 30, 2010

By Certified Mail

TO: TELEPHONE COMPANIES LISTED ON PAGE THREE

Re: Notice of Termination of Joint Use Agreement

Dear Telephone Company Representative:

We are writing to you as the representative of a Telephone Company that has entered into an Agreement with PPL Electric Utilities Corporation ("PPL") authorizing the joint use of pole plant (the "Joint Use Agreement").¹ As you know, PPL provided notice of intent to terminate the Joint Use Agreement on October 16, 2007 and has been working with your company since then to try and agree to a new agreement. It is evident by our lack of progress that those negotiations are at an impasse. PPL has filed with the PAPUC a Petition to withdraw its complaint and terminate the complaint proceedings and associated mediation. This letter provides notice of PPL's intention to reinstate the termination of the subject Joint Use Agreement effective December 31, 2010.

PPL has provided notification in advance of the one year notice period required by the Joint Use Agreement. We are providing an additional ninety (90) days notice with the hope that the parties can come to terms on one of the proposed options presented in our joint use mediation on July 30, 2010. In summary those options are as follows:

1. PPL and Telephone Company will enter into a new joint use agreement for all utility poles including those owned by the communications companies and those owned by PPL including present poles and those poles that will be installed in the future. The present agreements will be canceled in total. The new agreement will contain a two-tiered rate structure. The existing rate structure will be applied to existing poles, and the new rate structure will be applied to poles installed in the future. The new rate structure will be as proposed by PPL previously in this mediation in which rates are based on actual costs of the party owning the pole, but utilization percentages will not be changed. The new agreement will contain the provisions for improved operating procedures that were substantially agreed to during negotiations prior to the mediation.
2. PPL and Telephone Company will enter into a Third Party Attachment Agreement similar to those that PPL currently has with its CLEC attachments.

PPL will not negotiate as part of a team representing telephone company interests. We will only negotiate directly with your company, as we found the previous process to be ineffective.

Please respond by October 18, 2010 if you would like to pursue the first option. If not, going forward, all attachments will be governed by a Third Party Attachment Agreement that will be provided. Should you have any questions, please feel free to contact me at 610-774-6758.

Sincerely,

A handwritten signature in black ink that reads "David Glenwright". The signature is written in a cursive, flowing style.

David Glenwright
Manager-Attachments & Telecom
Business Services

¹ This information is based on our current records. Please let us know immediately if you are not the person authorized by your company to receive this notice.

cc: Ronald J. Reybitz, Esq.
Jack Isom, Esq.
John Rider
Paulette Knisely

Verizon PA
Verizon North Companies
Mr. Norm Parrish
180 Sheree Blvd., Suite 2100
Exton, PA 19341

Windstream Companies
Mr. Thomas A. Hudock, Jr.
Joint Use Department
50 Executive Parkway
Hudson, OH 44236

Frontier Companies
Mr. Dave Morris
100 CTE Drive
Dallas, PA 18612

Ironton Telephone
Mr. William D. George
4242 Mauch Chunk Road
Coplay, PA 18037

Lackawaxen Telephone
Mr. Mark Zarambo
P.O. Box 8, Hotel Road
Rowland, PA 18457

TDS Telecom Companies
Ms. Deb Martone
Manager, State Government Affairs
11 Kearsarge Avenue
Contoocook, NH 03229

Pennsylvania Telephone
Ms. Mary Davis
191 Middle Road
Jersey Shore, PA 17740

The North Eastern PA Telephone
Mr. Steve Tourje
720 Main Street
Forest City, PA 18421

Palmerton Telephone
Mr. Jeffrey Lutz
465 Delaware Avenue
PO Box 215
Palmerton, PA 18071

CenturyLink
Mr. Ole N. Hagen
665 Lexington Avenue
Mansfield, OH 44907

South Canaan Telephone
Mr. Don Reeder
P.O. Box 160, Route 296
South Canaan, PA 18459



THOMAS, LONG,
NIESEN & KENNARD

Attorneys and Counsellors at Law

Norman J. Kennard
Direct Dial: 717-255-7627
nkennard@thomaslonglaw.com

October 12, 2010

*Via Certified Mail
Return Receipt Requested*

David Glenwright
Manager-Attachments & Telecom
PPL Electric Utilities Corporation
Two North Ninth Street - GENN4
Allentown, PA 18101

Re: PPL's Notice of Termination of Joint Use Agreement

Dear Mr. Glenwright:

We represent the following communications companies ("CommCos" or "we") in negotiations with PPL Electric Utilities Corporation ("PPL") regarding the matters addressed in your letter dated September 30, 2010:

Buffalo Valley Telephone Company
Windstream Pennsylvania LLC
Conestoga Telephone & Telegraph Company
Denver & Ephrata Telephone and Telegraph Company
Frontier Communications Commonwealth Telephone
Frontier Communications of Pennsylvania, Inc.
Frontier Communications - Lakewood, Inc.
TDS Telecom/Mahanoy & Mahantango Telephone Company
TDS Telecom/Sugar Valley Telephone Company
Ironton Telephone Company
Lackawaxen Telecommunications Services, Inc.
Pennsylvania Telephone Company
The North-Eastern Pennsylvania Telephone Company
Palmerton Telephone Company
South Canaan Telephone Company
The United Telephone Company of Pennsylvania, LLC d/b/a CenturyLink

Without waiving any of the CommCos' rights or compromising any positions that we may have taken or may take in the future, we initially respond to your letter of September 30, 2010.

We request that PPL provide copies of the agreements that it proposes under options 1 and 2 as described in your letter. We are sure you appreciate the difficulty of choosing between

October 12, 2010

Page 2

options in the abstract. Before we can select an option as requested by PPL, we need to first review the actual agreements proposed by PPL.

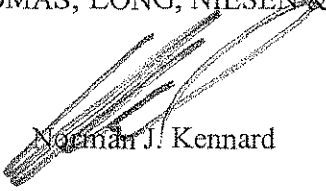
For their part, the CommCos agree to identify their preferred course of action within thirty (30) days of PPL providing the requested draft agreements. We will not be able to respond by the deadline set forth in your letter of October 18, 2010, however, and, therefore, request an extension.

The CommCos look forward to continuing to work with PPL on this important project. Should you have any questions or comments, please do not hesitate to contact me at your convenience. We request you agree in writing to the requested extension.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

cc: John H. Isom, Esquire

David Glenwright, Manager
Attachments & Telecom Business Services
PPL Electric Utilities
Two North Ninth Street – GENN4
Allentown, PA 18101
Phone: 610-774-6758
Fax: 610-774-6875



October 18, 2010

Norman J. Kennard
Email: nkennard@thomaslonglaw.com
Thomas, Long, Niesen & Kennard
212 Locust St., Suite 500
PO Box 9500
Harrisburg, PA 17108-9500

Re: **Follow-up to Notice of Termination of Joint Use Agreement**

Dear Mr. Kennard:

I am in receipt of your letter dated October 12, 2010 requesting that PPL provide copies of the agreements that it proposes under Option 1 and Option 2. However, before providing a proposed joint use agreement, please confirm that your clients are in agreement with a two-tiered rate structure. The existing rate structure will be applied to existing joint use poles, and the new rate structure will be applied to future joint use poles. The new rate structure will be as proposed by PPL previously in mediation in which rates are based on actual costs of the party owning the pole, but utilization percentages will not be changed.

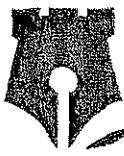
It is not worthwhile for PPL to pursue any joint use agreements without your client's agreement to the rate structure. With regards to the third party agreement (Option 2), I should have a copy for your review later this week.

Sincerely,

A handwritten signature in black ink that reads "David Glenwright". The signature is written in a cursive, flowing style.

David Glenwright
Manager-Attachments & Telecom
Business Services

cc: Ronald J. Reybitz, Esq.
Jack Isom, Esq.



THOMAS, LONG,
NIESEN & KENNARD

Attorneys and Counsellors at Law

October 25, 2010

Norman J. Kennard
Direct Dial: 717-255-7627
nkennard@thomaslonglaw.com

*Via Certified Mail
Return Receipt Requested*

David Glenwright
Manager-Attachments & Telecom
PPL Electric Utilities Corporation
Two North Ninth Street - GENN4
Allentown, PA 18101

Re: PPL's Notice of Termination of Joint Use Agreement

Dear Mr. Glenwright:

The Communications Companies ("CommCos" or "we") represented by this office and participating in the Joint Use Agreement negotiations are in receipt of your letter dated October 18, 2010, wherein PPL refuses to provide an updated proposed replacement Joint Use Agreement without the CommCos conceding to PPL's demand for a "two-tiered rate structure" under which new attachments would pay a higher rate than would be the case under the current Joint Use Agreement.

After careful consideration, the CommCos are willing to accept a two-tiered rate structure, subject to mutual agreement on all of the various other details. In exchange, we would ask that PPL acknowledge that any joint use poles that are relocated or replaced will remain under the current Joint Use Agreement, which we perceive is already required under the agreement. Our concession to adopt a two-tiered rate structure is also subject to agreement on the utilization percentages. Any new agreement we enter into should also be subject to revision once the FCC concludes its rulemaking changes on attachment rates. Our agreement to adopt a two-tiered rate structure is conditioned upon the parties reaching mutually satisfactory terms on all operational issues and any other material provisions of a new agreement.

With respect to whether the structure of agreement should be a revised Joint Use Agreement or a grandfathered Joint Use Agreement combined with a new Third-Party Licensing Agreement, the CommCos remain open to either arrangement. Ultimately, that choice will be an individual company decision.

We hope this resolves the impasse set forth in your letter of October 18, 2010. We look forward to your response and, again, request that PPL circulate a draft revised Joint Use Agreement.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

cc: John H. Isom, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PPL ELECTRIC UTILITIES
CORPORATION

v.

BUFFALO VALLEY TELEPHONE
COMPANY, *et seq.*,

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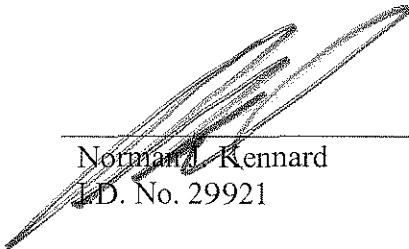
Docket No. C-2009-2124528, *et al.*

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of November, 2010, served a true and correct copy of the foregoing document upon the persons listed below by electronic mail, and first class mail, postage prepaid:

John Isom, Esquire
Post & Schell
17 North Second Street, 12th Floor
Harrisburg, PA 17101
jisom@postschell.com

Suzan D. Paiva, Esquire
Verizon
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Philadelphia, PA 19103
suzan.d.paiva@verizon.com



Norman L. Kennard
L.D. No. 29921