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March 29, 2016

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Petition of Communications Workers of America for a Public,  
On-the-Record Commission Investigation of the Safety, Adequacy, and  
Reasonableness of Service Provided by Verizon Pennsylvania LLC  
Docket No. P-2015-2509336

Dear Secretary Chiavetta:

Enclosed please find Verizon's Petition for Interlocutory Review and Answer to a Material Question, being filed on behalf of Verizon Pennsylvania LLC in the above captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb

**Via E-Mail and Federal Express**  
cc: The Honorable Joel H. Cheskis, ALJ  
Cheryl Walker Davis, Director, OSA

**Via Federal Express**  
cc: Chairman Gladys M. Brown  
Vice Chairman Andrew G. Place  
Commissioner Pamela A. Witmer  
Commissioner John F. Coleman, Jr.  
Commissioner Robert F. Powelson

**Via E-Mail and First Class U.S. Mail**  
cc: Attached Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served a true copy of Verizon's Petition for Interlocutory Review and Answer to a Material Question, upon the parties listed below, in accordance with the requirements of §1.54 (relating to service by a party) and §1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 29<sup>th</sup> day of March, 2016.

**Via E-Mail and First Class Mail**

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Bloomsburg, PA 17815-2036


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Bradley R. Gorter, Esq.  
Stephanie M. Wimer, Esq.  
Michael L. Swindler, Esq.  
PA Public Utility Commission  
Bureau of Investigation & Enforcement  
400 North Street  
Harrisburg, PA 17120

\*\* Federal Express in lieu of First Class

  
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Suzan D. Paiva  
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Philadelphia, PA 19103  
215-466-4755

Attorney for Verizon

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of :  
America for a Public, On-the-Record :  
Commission Investigation of the Safety, : Docket No. P-2015-2509336  
Adequacy, and Reasonableness of Service :  
Provided by Verizon Pennsylvania LLC :

**VERIZON'S PETITION FOR INTERLOCUTORY REVIEW  
AND ANSWER TO A MATERIAL QUESTION**

Verizon Pennsylvania LLC (“Verizon”), pursuant to 52 Pa. Code §5.302, requests interlocutory review and answer to a material question arising from the March 22, 2016 order of Administrative Law Judge (“ALJ”) Joel H. Cheskis, attached as Exhibit A.

**I. Introduction and Background**

The Communications Workers of America (“CWA”) on October 21, 2015, petitioned the Commission to initiate a sweeping “public, on-the-record investigation” of Verizon’s facilities and services. Verizon answered, showing that information already on file with the Commission disproves CWA’s baseless claims and demonstrates that Verizon’s service is good. Verizon explained that no investigation is needed as this Commission is fully capable of continuing to monitor Verizon’s service and customer satisfaction under existing programs, which show no reason for concern. Verizon also noted that this petition is part of CWA’s announced strategy to “build political and regulatory pressure on the company” during labor negotiations. VZ Answer, Ex. 1.

When a prehearing conference notice was issued, CWA seized upon it to proclaim that the Commission had opened CWA’s investigation and would hold hearings “examining Verizon’s maintenance practices and quality of service.”<sup>1</sup> The Commission’s spokesperson clarified that an investigation had not been opened and that the prehearing conference notice “does not initiate a hearing on the actual allegations.”<sup>2</sup> But the ALJ proceeded as if the investigation were open, planning (i) rounds of pre-filed testimony “regarding all relevant issues raised in CWA’s Petition,” (ii) outreach to solicit consumer testimony, (iii) the “standard” hearing and briefing process, (iv) a decision on whether Verizon has violated the law, and (v) the “appropriate

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<sup>1</sup> “PA Public Utility Commission announces hearings into Verizon’s systemic neglect,” posted 2-23-16 at <http://www.speedmatters.org/blog/archive/pa-public-utility-commission-announces-hearings-into-verizons-systemic-negl/>

<sup>2</sup> TR StateNews Wire, February 23, 2016, <http://www.trdailyonline.com/tr-insight>

remedy,” “including, but not limited to, the imposition of civil penalties.” 3/22/16 Order at 3; *see also* Tr. at 18 (ALJ will “impose civil penalties as necessary.”) When questioned, the ALJ refused to rule out that the case constituted an investigation. Tr. at 19 (the case is “both” an investigation and a complaint). The ALJ did so even though Verizon had explained in its prehearing memorandum why he could not conduct a prosecutorial investigation under these circumstances.

As Verizon explained in its prehearing memo, the ALJ’s plan to litigate a prosecutorial investigation would violate *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992), and the Public Utility Code’s prohibition against commingling “prosecutory” and decision-making functions. 66 Pa. C.S. § 308.2. The ALJ cannot both open a prosecutorial investigation that could result in fines and penalties and then decide liability and impose penalties. And by allowing CWA to act as a private prosecutor, the order violates 66 Pa. C.S. § 331(a), which empowers *only* this Commission “on its own motion” to prosecute a formal investigation. The Commission has delegated that power to the Bureau of Investigation and Enforcement (“BIE”), not to the ALJ or CWA. *Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

The limitations on the Commission’s exercise of its prosecutorial authority are clear. To comply with them, the Commission should dismiss CWA’s petition without prejudice to BIE pursuing its normal investigatory (and if necessary prosecutorial) function under 52 Pa. Code § 3.113(b) and/or the CWA or others filing a formal complaint limited to issues within their standing. If any other procedure is adopted, it must be unequivocally non-prosecutorial or it must strictly comply with *Lyness* and §§ 308.2 and 331(a). The ALJ’s proposed procedure would not comply, would be unlawful and must be modified.

## II. Material Questions

**Material Question #1:** Whether the procedure outlined in the ALJ’s March 22, 2016 order violates *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992) and 66 Pa. C.S. § 308.2?

*Suggested Answer: Yes. The order initiates a prosecutorial investigation and unlawfully combines the prosecutorial and decision-making/advisory function in the ALJ.*

**Material Question #2:** Whether the procedure outlined in the ALJ’s March 22, 2016 order violates 66 Pa. C.S. § 331(a)?

*Suggested Answer: Yes. Section 331(a) empowers only this Commission to open a prosecutorial investigation and does not empower a private party such as the CWA to “investigate” Verizon through discovery and hearings and seek fines and penalties without such Commission action.*

**Material Question #3:** Whether the Commission should dismiss the petition because it has sufficient programs already in place to monitor Verizon's service and the data collected shows no reason for concern?

*Suggested Answer: Yes, for the reasons set forth in Verizon's answer to CWA's petition.*

**Material Question #4:** Whether the Commission should dismiss the petition without prejudice to BIE carrying out its normal investigatory function and/or CWA filing a formal complaint within its standing?


*Suggested Answer: Yes. At a minimum, the Commission should dismiss the CWA's faulty petition without prejudice to any party's initiation of procedurally lawful proceedings.*

### **III. Interlocutory Review Will Prevent Substantial Prejudice and Expedite Disposition**

A Commission answer to the material questions is needed to prevent substantial prejudice to Verizon and a waste of Commission and party resources. The path established by the ALJ's order is likely to result in a procedurally tainted recommendation that the Commission cannot adopt, or that will be vulnerable to reversal on appeal. If the Commission waits to review these important legal questions at the end of the proceeding, the damage will already be done. Verizon will already have incurred the burden, cost, and reputational damage of litigating the investigation sought by CWA as a labor negotiation strategy. And the other parties and Commission staff would have devoted considerable resources to a fatally flawed proceeding. The Commission should provide procedural guidance before any party expends more resources on this matter. To this end, all of the parties agreed to a short abeyance to allow this Commission to rule on the merits of Verizon's material questions. A further prehearing conference has been scheduled for May 26.

### **IV. Conclusion**

Verizon respectfully requests that the Commission grant interlocutory review and act expeditiously so that an answer is provided by May 26, 2016, or, if it is not able to act by May 26, that it stay any proceedings before the ALJ until it is able to answer the material questions.

  
Suzan D. Paiva (Atty ID No. 53853)  
Verizon, 1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-466-4755

Dated: March 29, 2016

Counsel for Verizon Pennsylvania LLC

# **EXHIBIT A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of	:	
America for a Public, On-the-Record Commission	:	
Investigation of the Safety, Adequacy, and	:	P-2015-2509336
Reasonableness of Service Provided by Verizon	:	
Pennsylvania, LLC	:	

**SCHEDULING ORDER**

On October 21, 2015, the Communications Workers of America (CWA) filed with the Pennsylvania Public Utility Commission a Petition requesting that the Commission open an investigation into the safety, adequacy and reasonableness of service provided by Verizon Pennsylvania, LLC (Verizon). The Petition was docketed at P-2015-2509336. In its Petition, CWA indicated that it is the authorized bargaining unit for approximately 4,700 employees of Verizon who are directly responsible for operating and maintaining the physical facilities that are used to provide telecommunications service to the public. CWA averred that it conducted an investigation of the conditions at Verizon under which its members work and the investigation showed deferred maintenance or other indications that Verizon should be increasing its budget for certain repair and maintenance. CWA further averred that there are “numerous instances throughout the Commonwealth of physical plant in an appalling state of disrepair that pose a safety hazard to utility employees and the public.” CWA asked that the Commission conduct an in-depth in-person examination and audit of Verizon records and physical plant throughout Verizon’s service areas, adopt detailed findings of fact, order Verizon to take specific, detailed remedial actions and impose substantial civil penalties on Verizon for repeated and willful failure to comply with the Public Utility Code, Commission regulations and standard industry practices for protecting the safety of the public and utility employees. CWA provided specific examples in support of its Petition.

On November 3, 2015, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement.

On November 10, 2015, Verizon and Full Service Network (FSN) filed separate Answers to CWA's Petition.

Also on November 10, 2015, the Small Business Advocate (OSBA) filed a Notice of Appearance, a Notice of Intervention and a Public Statement.

Additional pleadings and filings in the form of letters have been filed at this docket.

On February 16, 2016, the Commission issued a Hearing Notice establishing an Initial Prehearing Conference for this case for Friday, March 18, 2016 10:00 a.m. in Hearing Room 5 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Conference Order was issued dated February 18, 2016.

The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention on February 24, 2016.

The Initial Prehearing Conference convened on March 18, 2016 as scheduled. The following counsel was present: Scott Rubin, Esquire, on behalf of CWA; Lauren Burge, Esquire, Darryl Lawrence, Esquire and Barrett Sheridan, Esquire, on behalf of the OCA; Elizabeth Triscari, Esquire, on behalf of OSBA; Stephanie Wimer, Esquire, and Bradley Gorter, Esquire, on behalf of I&E; Suzan Paiva, Esquire, on behalf of Verizon; and Sarah Stoner, Esquire on behalf of FSN. Each of these parties previously submitted prehearing memoranda as requested in the Prehearing Conference Order. As per the directive in the Prehearing Conference Order regarding participation in this proceeding, the service list for this proceeding will be limited to these six parties.

During the Initial Prehearing Conference, various procedural matters were discussed. Most notably, extensive discussion was held regarding a procedural schedule for this case. After the parties stated their position regarding scheduling matters and the scope of the



proceeding, I determined that CWA and intervenors in support of CWA would first be given the opportunity to present evidence regarding all relevant issues raised in CWA's Petition. This could be done by either 1) holding public input hearings throughout Verizon's service territory, 2) accepting pre-served written consumer testimony that is subject to discovery and timely motions and that would be admitted into the record with consumers testifying in person or telephonically and being subject to cross-examination, and/or 3) accepting pre-served expert testimony. Subsequently, Verizon and intervenors in support of Verizon would have the opportunity to file rebuttal testimony in response to the evidence presented, which would be followed by the standard surrebuttal, hearing and briefing process.

I further explained that, to the extent that there was substantial record evidence demonstrating a violation of the Public Utility Code or a Commission regulation or Order, the appropriate remedy would be imposed consistent with the authority of the Office of Administrative Law Judge, including, but not limited to, the imposition of civil penalties consistent with the Commission's Statement of Policy regarding civil penalties. 52 Pa.Code § 69.1201. An Initial Decision would be issued that would be subject to Exceptions and Commission disposition. To the extent that the Commission, or I&E, determined that there was any need for further action based on the record of this proceeding, or any other reason, such a determination would be made independently and consistent with appropriate authority and jurisdiction as set forth in Commission precedent as is the case for all proceedings before the Commission.

In response to this discussion, Verizon indicated that it would file a Petition for Interlocutory Review regarding the scope and procedure proposed for this proceeding. As a result, this Scheduling Order is being issued to memorialize the discussion and determinations made during the Initial Prehearing Conference in anticipation of the Petition for Interlocutory Review to be filed by Verizon. Furthermore, the parties agreed that a Further Prehearing Conference would be held on Thursday, May 26, 2016 for the purpose of establishing the litigation schedule for this matter based on the Commission's disposition of Verizon's Petition, if any. In anticipation of that Further Prehearing Conference, the parties are directed to submit

updated Prehearing Memorandum no later than Friday, May 20, 2016 setting forth a proposed procedural schedule.

ORDER

THEREFORE,

IT IS ORDERED:

1. That a Further Prehearing Conference will be held on **Thursday, May 26, 2016** at 10:00 a.m. in an available hearing room in the Commonwealth Keystone building in Harrisburg.
2. That, in anticipation of the Further Prehearing Conference, the parties are directed to submit updated Prehearing Memorandum no later than **Friday, May 20, 2016**.
3. That the service list shall be limited to the following parties:

<u>Party</u>	<u>Counsel</u>
CWA	Scott Rubin, Esq.
Verizon	Suzan Paiva, Esq.
OCA	Lauren Burge, Esq. Darryl Lawrence, Esq. Barrett Sheridan, Esq.
OSBA	Elizabeth Triscari, Esq.
I&E	Stephanie Wimer, Esq. Bradley Gorter, Esq.
FSN	Sarah Stoner, Esq.

Date: March 22, 2016

  
Joel H. Cheskis  
Administrative Law Judge