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April 8, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd 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 Brief in Support of 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 Brief in Support of 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 8th day of April, 2016.

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**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 BRIEF IN SUPPORT OF
PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO A MATERIAL QUESTION**

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Dated: April 8, 2016

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I. INTRODUCTION AND SUMMARY

The Communications Workers of America (“CWA”) should not be permitted to commandeer the Commission’s enforcement authority to pursue its announced plan to put “regulatory pressure”¹ on Verizon Pennsylvania LLC (“Verizon”) as a labor negotiation strategy. This case cries out for interlocutory review *now*, before it proceeds down a path that will violate Verizon’s due process rights and wastefully expend Commission and party resources. Without this Commission’s intervention, the Administrative Law Judge (“ALJ”) plans a full-blown investigation that improperly commingles prosecutorial and advisory functions and delegates prosecutorial authority to a private party, in violation of applicable law and this Commission’s own rules.

Because of the serious procedural questions raised by this proposed schedule, all of the parties to this case have agreed to a short abeyance until May 26, 2016 to ask the Commission to provide needed guidance by answering the material questions before significant resources are spent.

II. BACKGROUND

On October 21, 2015, CWA petitioned the Commission to “initiate a public, on-the-record investigation into the safety, adequacy, and reasonableness” of Verizon’s facilities and services. The timing of this request, in the midst of protracted labor negotiations, casts serious doubt on the CWA’s motives, particularly given its announced strategy to attack Verizon on the regulatory front. Verizon filed a detailed response demonstrating that CWA’s allegations did not justify its requested investigation, which would be a wasteful fishing expedition in search of headlines and publicity to be exploited in labor contract discussions.

¹ <http://standuptoverizon.com/> (Exhibit A to Verizon’s Answer to Petition).

On February 17, 2016, with no official assignment or explanation, a prehearing conference notice was issued. CWA seized upon the notice to proclaim that the Commission had opened CWA's investigation and would hold hearings "examining Verizon's maintenance practices and quality of service."² 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."³

At the March 18, 2016 prehearing conference Verizon, as well as the Bureau of Investigation and Enforcement ("I&E") and the Office of Consumer Advocate ("OCA"), cautioned that an investigation must comply with the prosecutorial separation requirements of *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992) and 66 Pa. C.S. § 308.2. I&E's counsel noted that "I&E does have some procedural concerns with how this is to go forward," because CWA's request for civil penalties amounts to "an investigation that's prosecutory in nature" and "we have to be mindful going forward of the prohibition on commingling prosecutory and advisory functions." Tr. at 10-11.⁴ OCA's counsel viewed the ALJ's assignment as limited to "recommend[ing] whether the Commission should open an investigation" based on a review of the pleadings. Tr. at 11. Even CWA's counsel agreed that "if we got into the question of civil penalties or something that looks more punitive, then *Lyness* would be an issue and we would need to be very careful about the procedure." Tr. at 12-13. Verizon argued that the Commission has delegated its prosecutorial authority to I&E, which is the only bureau that can initiate a prosecutorial investigation. The petition should thus be

² "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/>

³ TR StateNews Wire, February 23, 2016, <http://www.trdailyonline.com/tr-insight>

⁴ Transcript of March 18, 2016 Prehearing Conference ("Tr.").

dismissed without prejudice to I&E carrying out its duties under normal procedures. Verizon pointed out that it would be unlawful to “have [CWA] file this petition, have you [the ALJ] both make the decision to have the investigation and then conduct the investigation, and then decide the merits of the investigation.” Tr. at 9-10. Yet this is exactly what the ALJ decided to do.

Without addressing the substance of these serious procedural concerns raised by the parties, the ALJ proceeded as if he could both open and adjudicate a prosecutorial investigation and impose civil penalties. He planned to require the parties to file rounds of pre-filed testimony “regarding all relevant issues raised in CWA’s Petition.” 3/22/16 Order at 3. He even suggested soliciting issues that were not raised by the parties by traveling to different parts of the state to invite consumer testimony. Tr. at 14. Following what he described as the “standard” hearing and briefing process, the ALJ then would make a decision. And he made very clear that the case was prosecutorial from the outset, explaining 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 . . . 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 would proceed as an investigation. Tr. at 19 (noting that the case is “both” an investigation and a complaint).

The ALJ’s proposed procedure would improperly commingle prosecutorial and decision-making functions in violation of Verizon’s due process rights as set forth in *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992) and 66 Pa. C.S. § 308.2 and would appoint the CWA as a private prosecutor in violation of 66 Pa. C.S. § 331(a) and the Commission’s orders and procedures regarding prosecutorial investigations.

III. MATERIAL QUESTIONS PRESENTED

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 (a power it has delegated to I&E) 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 I&E 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.

IV. ARGUMENT

A. The Public Utility Code and Constitutional Requirements of Due Process Limit the Commission's Prosecutorial Authority.

CWA makes clear that it wants a full prosecutorial investigation with a threat of civil penalties; it even goes so far as to say that it does not “want to go to the expense” of anything less.⁵ And the ALJ made no secret of the fact that the case he intends to litigate is an investigation and he views civil penalties and other sanctions as a possible outcome. 3/22/16 Order at 3; Tr. at 18. At the prehearing conference, I&E noted that the CWA's request for civil penalties amounts to “an investigation that's prosecutory in nature.” Tr. at 10-11. This conclusion is consistent with the Commission's holding that any investigation that could result in a “sanction, fine or other type of penalty” is prosecutorial in nature and thus subject to the separation requirements.⁶

Yet CWA and the ALJ are trying to ignore those requirements. A private party such as CWA does not have the power to open a prosecutorial investigation itself merely by filing a petition. Opening any investigation requires action by the Commission “on its own motion” based on a finding that the investigation is “necessary.” 66 Pa. C.S. § 331(a). And where the investigation is prosecutorial in nature, the Commission must also separate its prosecutorial and adjudicatory functions by following its own carefully designed internal safeguards to ensure that these functions are not improperly commingled.⁷

⁵ Tr. at 7 (CWA seeks “a formal, on-the-record investigation.”); Tr. at 8.

⁶ *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593, 1994 Pa. PUC LEXIS 148 (Opinion and Order entered September 2, 1994) (“1994 PUC Lyness Order”) (recognizing that certain ongoing generic investigations “do not constitute ‘prosecutions’ since no sanction, fine or other type of penalty is being sought at the time the proceeding is initiated.”)

⁷ For this reason, when the Commission opens an investigation on its own motion, it is careful to specify that the investigation is *non-prosecutorial* and will not result in any type of fine, penalty or sanction. *See, e.g., Gas Beyond the Mains Investigation*, Docket No. M-2008-2072850 (Opinion and Order entered January 8, 2009) (“we are instituting, at a separate docket, a non-prosecutory staff investigation of all the issues related to our

A long line of cases culminating in the Pennsylvania Supreme Court’s decision in *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992), prohibits the same agency officials from both determining that a prosecution should be initiated and then acting as the ultimate trier of fact, because this commingling of prosecutorial and adjudicatory functions creates an appearance of bias in the decision-making process and violates the due process rights of the party being investigated. The prosecutorial and adjudicatory functions must thus be strictly separated within the agency. This requirement has since been codified at 66 Pa. C.S. § 308.2(b), which states that “[a] commission employee engaged in a prosecutory function may not, in that matter or a factually related matter, provide advice or assistance to a commission employee performing an advisory function as to that matter.”

In 1994, this Commission adopted procedures to implement the separation requirements of *Lyness*. It recognized that the Commission itself could not both make a decision to open an investigation and then also decide the ultimate question of liability because “a decision at the Commissioner level” to “initiate a proceeding which is prosecutory in nature may be viewed as ‘a fundamental prosecutory decision’ that would preclude this agency’s members from adjudicating the matter.”⁸ It thus delegated the Commission’s authority to initiate prosecutorial proceedings to various bureaus, depending on the subject matter. The Commission explained that “the bureaus with delegated authority to initiate proceedings which are prosecutory in nature

jurisdiction over GBM programs and other propane distribution systems.”); *In re: Non-prosecutory Investigation into Clarendon Water Company’s System*, Docket No. M-2008-2065551, 2008 Pa. PUC LEXIS 586 (Opinion and Order entered September 30, 2008) (“In a non-prosecutory investigation, the Commission may direct remedial action if warranted by the findings, but does not, at the conclusion of the investigation, impose civil fines or other penalties.”) Similarly, the Commission may also open investigations of railroad crossings, but those cases are limited to considering non-prosecutorial matters such as whether alterations are needed and relocation of utility facilities. *See, e.g., Investigation upon the Commission’s own motion to determine the condition and disposition of the existing structure carrying West Road (T-649) above the grade of the track of CSX Transportation, Inc., operated thereon by Buffalo & Pittsburgh Railroad, Inc. in Marion Township, Beaver County (DOT 145 802 C)*, Docket No. I-2011-2242471 (Opinion and Order entered June 10, 2011).

⁸ 1994 PUC *Lyness Order*.

will, in fact and in law, be acting in the place of the Commission and, as such, the result of the bureau's initiation of a proceeding is no different that if the Commission itself had acted by motion at public meeting or otherwise."⁹ In 2011, following a restructuring of its bureaus, the Commission created I&E and delegated all prosecutorial functions solely to I&E.¹⁰

Under the Commission's procedure, designed to comply with *Lyness* and Section 308.2(b), *only* I&E has the authority to open a prosecutorial proceeding because it is the bureau to which that power has been delegated and it is the bureau that observes the mandatory separation requirements of Section 308.2(b). The Commission itself cannot initiate a prosecutorial proceeding, because it would not then be able to decide the merits of the case. Likewise, the Commission has not delegated this authority to the Office of ALJ or any other bureau or employee, much less to a private party such as CWA. Yet the CWA and the ALJ attempt to proceed as though the Commission's procedures do not exist.

B. The ALJ's Procedural Plan Violates *Lyness* and Sections 331(a) and 308.2(b).

The ALJ's plan to take evidence on all of CWA's assertions, to investigate and seek out customer complaints, to make a decision on whether Verizon has violated any law, regulation or order, and then potentially to impose civil penalties, commingles prosecutorial and adjudicatory functions. As the Supreme Court explained in *Lyness*, any "overlap of prosecutorial and adjudicatory functions, even where not complete, [is] anathema to the notion of due process in

⁹ 1994 PUC *Lyness Order*.

¹⁰ *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Opinion and Order entered August 11, 2011) ("2011 PUC *Lyness Order*") ("the Commission is moving all prosecutory functions into one bureau."). See also *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410, 2015 Pa. PUC LEXIS 364 (Initial Decision of ALJs Barnes and Cheskis, August 21, 2015) ("The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Investigation and Enforcement (I&E) and other bureaus with enforcement responsibilities."); *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332, 2012 Pa. PUC LEXIS 1877; 300 P.U.R.4th 353 (Rulemaking Order Entered October 24, 2012) ("The Commission's independent prosecutory arm, the Bureau of Investigation and Enforcement (I&E), can initiate informal or formal investigations as needed and can seek penalties for non-compliance, including the suspension and revocation of supplier licenses.")

Pennsylvania, where citizens rightly presume that the same individual does not wear the mantle of zealous prosecutor and impartial judge.” *Lyness*, 529 Pa. at 543; 605 A.2d at 1208. And the lens with which potential commingling is to be considered focuses on appearance and possibility of bias: “[i]n determining what process is due Pennsylvania citizens, this Court has established a clear path when it comes to commingling prosecutorial and adjudicatory functions. There is a strong notion under Pennsylvania law that even an *appearance* of bias and partiality must be viewed with deep skepticism, in a system which guarantees due process to each citizen.” *Lyness*, 529 Pa. at 542; 605 A.2d at 1207 “Thus, a mere possibility of bias under Pennsylvania law is sufficient to raise the red flag of protection offered by the procedural guaranty of due process.” *Lyness*, 529 Pa. at 544; 605 A.2d at 1208.

For an agency like the Commission in which “more than one function is reposed in a single administrative entity, walls of division [must] be constructed which eliminate the threat or appearance of bias.” *Lyness*, 529 Pa. at 546; 605 A.2d at 1209. If this separation is not maintained, and “the very entity or individuals involved in the decision to prosecute are ‘significantly involved’ in the adjudicatory phase of the proceedings, a violation of due process occurs.” *Lyness*, 529 Pa. at 546; 605 A.2d at 1209.

So the scope of the ALJ’s involvement in reviewing the CWA’s petition to open a prosecutorial investigation is quite limited. The ALJ cannot make a recommendation to open a prosecutorial investigation because that authority has been delegated solely to I&E. Prosecutorial authority is not delegated to the Office of ALJ for good reason: ALJ decisions are subject to de novo review by the Commission, which would be no different than the Commission

opening the investigation itself.¹¹ Because the Commission recognizes that it cannot open an investigation, it cannot receive a recommendation from an ALJ to open an investigation.

Now that the matter is before this Commission, it should dispose of the petition without sending it back to the ALJ, in a way that would not run afoul of the restrictions in *Lyness*. It should determine that the allegations in the pleadings do not warrant an investigation given that current programs are sufficient to monitor Verizon's service and show no reason for concern. It could also dismiss the petition without prejudice to I&E carrying out its normal duties, which it must do independently to maintain the separation required by *Lyness*, and/or CWA filing a formal complaint if there is any issue that it has standing to raise.

C. The Commission Should Deny the Petition Because Current Programs Show No Cause for Concern and Provide Sufficient Monitoring of Service and Investment.

For the reasons discussed above, neither the Commission nor the ALJ can grant CWA's petition and open a prosecutorial investigation. The only bureau that could consider that step is I&E, but it must be permitted to act independently in compliance with the separation required by *Lyness*. But there is no due process restriction that precludes the Commission from denying or dismissing the petition on the pleadings at this point. The Commission should do just that, and conclude that the pleadings show no reasonable basis for concern over the quality of Verizon's service and current programs are sufficient for the Commission to monitor investment and service. Verizon refers the Commission to its answer to the petition in which it demonstrates that:

- Financial reporting to this Commission disproves CWA's unsupported claims about Verizon's spending and shows substantial investment in copper facilities.

¹¹ See 66 Pa. C.S. § 332(a) (right to file exceptions to an ALJ decision); § 335 (Commission power to review recommended, initial or tentative ALJ decisions).

- The Commission’s service quality monitoring establishes that Verizon has consistently met or exceeded the Commission’s customer trouble report standard.
- Customer complaints are at an all-time low, underscoring that Verizon provides good service and meets its customer expectations.
- These data, along with new reports that Verizon has provided under the reclassification order, are more than sufficient for the Commission to continue to monitor Verizon’s service, particularly when existing data shows no cause for concern or reason for an investigation.

There is no need to expend further party or Commission resources on CWA’s petition.

The Commission should deny it now on the pleadings, and continue to monitor Verizon’s expenditures and service under current programs.

D. The Commission Could also Dismiss the Petition Without Prejudice.

If the Commission does not deny CWA’s petition on its merits, it should still dismiss the petition because neither the Commission nor the ALJ can open a prosecutorial investigation. Dismissal would be without prejudice to I&E, CWA or any other party filing to start a proceeding that complies with the Commission’s rules and does not run afoul of due process.

1. I&E Can Still Investigate Under Applicable Rules.

Dismissal of the petition would be without prejudice to I&E independently carrying out its normal functions. The Commission’s regulations at 52 Pa. Code § 3.113(b) govern how I&E is to carry out its delegated prosecutorial authority. Under that process, I&E may “gather data” informally and do one of three things:

- If I&E “determines that no violation or potential violation of the act has occurred,” it must terminate its informal investigation “by letter.” 52 Pa. Code § 3.113(b)(1). I&E’s determination *not* to file a complaint cannot be challenged.
- If I&E “determines that a violation or potential violation of the act has occurred” and “formal action is deemed to be warranted,” then I&E will carry out its prosecutorial function by filing a formal complaint to initiate an “on-the-record proceeding to resolve the issues.” The Commission as decision-maker will make the ultimate decision of whether a violation has occurred, because the prosecutor and decision-maker cannot be one and the same. 52 Pa. Code § 3.1139b)(2).

- If I&E and the utility reach a settlement at the informal stage, it must be submitted for the Commission’s approval with an opportunity for interested parties to comment. 52 Pa. Code § 3.1139b(3).

If I&E were to conduct an informal investigation, the Commission’s regulations do not provide for CWA participation at that stage. Only if I&E determines to initiate a formal on-the-record proceeding by filing a complaint or filing a settlement at a later stage may other parties such as CWA participate. To encourage full candor by utilities and witnesses, the Pennsylvania Right-to-Know law treats as confidential the informal investigatory process and I&E’s decision whether to investigate or prosecute. *See* 65 P.S. § 67.708(b)(17).¹² This Commission recently emphasized to the Pennsylvania Supreme Court the crucial importance of allowing I&E to conduct its investigations and decision-making without interference by parties with their own parochial interests such as the CWA:

If individuals are less likely to cooperate in the inspections/investigations process, then the inspections/investigations will no longer be an effective means of monitoring the utilities compliance with statutory and regulatory requirements. In addition, if I&E’s internal documents are available, I&E will have to operate in a “fishbowl” environment regarding its internal decision-making. This would have a chilling effect on I&E’s activities, and harm the public policy of allowing for free deliberations for prosecutors.¹³

2. Any Party With Proper Standing Can File a Formal Complaint.

The interests of CWA and any of the other parties involved in this matter are protected not only by their right to participate in any I&E complaint or settlement at the appropriate stage

¹² *See, e.g., Pa. Public Utility Commission v. Gilbert and The Wall Street Journal*, 40 A.3d 755, 761 (Pa. Cmwlth. 2012) (public release of investigatory notes, statements and other materials could lead to parties “being less likely to cooperate and provide relevant information out of fear of retaliation or public embarrassment,” following which “the inspections/investigations will no longer be an effective means of monitoring the utilities compliance with statutory and regulatory requirements.”); *Pa. Public Utility Commission v Seder and The Times Leader*, 106 A.3d 193, 199 (Pa. Cmwlth. 2014) (disclosing investigatory documents “could lead to public utilities and employees being less likely to cooperate and provide relevant information out of fear of retaliation or public embarrassment, frustrating the purpose of PUC’s investigations and lessening the effectiveness of the PUC in monitoring the utilities’ compliance with statutory and regulatory requirements.”)

¹³ Brief of the Pennsylvania Public Utility Commission, *PUC v. Seder*, 2015 PA S. Ct. Briefs 525948 (Pa. Sept. 2, 2015).

of the proceedings, but also by their right to file a formal complaint. While a private party cannot prosecute an “investigation” of Verizon, it is free to file a formal complaint regarding “any act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701. CWA’s petition does not demonstrate any specific issue for which the CWA has a “substantial interest” that “surpasses the common interest of all citizens in procuring obedience to the law,” which is required to have standing to bring a formal complaint¹⁴ This Commission has previously dismissed a labor union’s complaint against its members’ employer for lack of standing.¹⁵ However, there is no need to address this issue unless and until CWA attempts to file a formal complaint.

E. If The Material Questions Are Not Answered by May 26, 2016, The Commission Should Stay Proceedings.

Interlocutory review is crucial due to the fundamental importance of the issues raised here, and the prospect of a tremendous waste of resources as well as unjustified reputational damage to Verizon just by virtue of conducting an unsanctioned investigation. To allow time for the Commission to act, all of the parties have agreed to a short abeyance halting all activity before the ALJ at least until the next scheduled prehearing conference on May 26, 2016.

If the Commission is not able to answer the material questions by May 26, 2016, it should issue a stay of proceedings to protect substantial rights as neither Verizon nor the other parties should be required to participate in the evidentiary investigation without Commission review of this important legal and due process challenge to the ALJ’s planned procedure.

¹⁴ *George v. Pennsylvania Public Utility Commission*, 735 A.2d 1282 (Pa. Cmwlth. 1999), *appeal denied* 758 A.2d 1202 (2000).

¹⁵ *See also Utility Workers Union of America System Local 537 v. Pennsylvania-American Water Company*, Docket No. C-2012-2287204 (Opinion and Order entered June 21, 2012) (labor union lacked standing to bring a formal complaint against its employer challenging compliance with a regulation that did not directly affect the union or its members).

V. CONCLUSION

For the foregoing reasons, the Commission should grant interlocutory review and vacate the ALJ's March 22, 2016 Order. It should deny CWA's petition because current programs are sufficient to allow the Commission to monitor Verizon's service and expenditures. Alternatively it should dismiss CWA's petition without prejudice to the parties pursuing procedurally allowable proceedings as described above. The Commission need not return the case to the ALJ, but if it does so, it should instruct him that the only permissible options are to deny the petition on the pleadings or dismiss it without prejudice, and that he cannot open or adjudicate a prosecutorial investigation.

Respectfully submitted,



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Dated: April 8, 2016

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