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March 30, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Cynthia Mosco v. Verizon Pennsylvania LLC;
Docket No. **C-2018-3006579; EXCEPTIONS OF VERIZON PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find the Exceptions of Verizon Pennsylvania LLC's in connection with the above-referenced case, which was electronically filed today.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva/san".

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/sau
Enclosures

Via U.S First Class Mail
cc: Honorable Mary D. Long
Cynthia Mosco

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CYNTHIA MOSCO,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3006579
	:	
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

EXCEPTIONS OF VERIZON PENNSYLVANIA LLC

Pursuant to 52 Pa. Code § 5.533, Verizon Pennsylvania LLC (“Verizon”) excepts, in part, to the March 9, 2020, Initial Decision (“ID”) of Administrative Law Mary D. Long.

The ID is correct on some points. Based on decisions of this Commission and the Federal Communications Commission (“FCC”), the ID finds that “the Commission cannot order Verizon to provide the Complainant with telephone service by copper cable” and “the customer’s request for relief cannot be granted.” (ID at 1, 24). “She must either migrate to Verizon’s fiber optic network or choose another telephone service provider.” (ID at 25).

The ID correctly acknowledges that fiber optic lines are more reliable, resilient and easier to maintain than copper telephone lines and that “[t]here is no difference in either the price or the function of POTS [Plain Old Telephone Service] offered via copper cable or fiber optic cable.” (ID at 6, 10). The ID recognizes that Verizon has repeatedly urged Ms. Mosco to allow it to migrate her telephone service to fiber to resolve the service issues with the copper facilities, at no cost to her and at the same rates and conditions of service, but she has consistently refused access to perform a fiber

migration. (ID at 10, 14). The ID notes that the copper cable serving Ms. Mosco is past its useful life and has been replaced with fiber; it recognizes that the vast majority of Verizon telephone customers in this area are served by fiber so that the copper cable capable of serving 600 customers only has five customers left as of the hearing date; and it finds that the necessary FCC copper retirement filings have been made and copper service to the entire wire center can be fully retired on or after April 10, 2020. (ID at 5-6, 9).

It is baffling that the ID then goes on to recommend an unprecedented \$25,900 fine against Verizon on the premise that Verizon failed to maintain its network to provide continuous service. The record shows the exact opposite. Verizon has upgraded its network with the very best state-of-the-art fiber facilities and repeatedly offered to serve Ms. Mosco over fiber, but she has refused to use it. Verizon made it clear that the only way to fix her service problems permanently was to use the upgraded fiber lines instead of copper, consistent with FCC guidance that fiber migration should be used to repair chronically troubled copper service and need not wait for copper retirement.

It is unreasonable for the ID to punish Verizon for its efforts to keep the copper telephone service operating during the pendency of this complaint due to the Complainant's refusal of fiber migration. The notion that Verizon failed to maintain its network is contrary to the evidence and based on legal errors. The Commission should reject the portion of the ID that recommends a fine and should take the opportunity to provide clear and firm guidance so that the uncertainty and delay of its formal complaint process will not be an incentive to customers like Ms. Mosco to resist fiber migration when it is needed to ensure reliable telephone service.

EXCEPTIONS

Verizon Exception 1: Verizon Expects To The ID's Erroneous Legal Conclusions Regarding Repairing Faulty Copper Service With Fiber.

The ID's flawed conclusion that Verizon failed to maintain its network, even though it deployed state-of-the-art fiber optics to serve this customer, is based on a clear error of law. The ID acknowledged that "fiber network service was available to the Complainant which may have remediated some of her service problems." (ID at 19). But the ID wrongly held that the customer could insist on continuing to receive service over copper until the date of full copper retirement and that "Verizon is obligated to maintain and repair its copper network" in perfect working condition until that time. According to the ID, "there is nothing in the statute or regulations which mandates that [the customer] accept migration before Verizon files to retire its copper network with the FCC." (ID at 19). The ID therefore recommends that Verizon should be penalized because the customer refused fiber migration and the service over copper, which the ID acknowledged was past its useful life and very difficult to repair,¹ continued to experience outages and required multiple dispatches.

The ID's assumption that the customer can control the type of network facilities Verizon uses to serve her and has the right to insist on keeping copper until the copper retirement date is contrary to longstanding Commission precedent. This Commission does not interfere with or micromanage utility management decisions such as the type of material to use in its service lines.² Therefore the Commission recently held, in the case

¹ ID at 6.

² *Pa. PUC v. Philadelphia Elec. Co.*, 522 Pa. 338, 561 A.2d 1224 (1989); *Pa. PUC v. Philadelphia Elec. Co.*, 501 Pa. 153, 460 A.2d 734 (1983) ("The Public Utility Code does not expressly grant the PUC general authority over the siting and construction of all utility plants. Nor does it require PUC

of *Fox v. Verizon*, that Verizon has the discretion to choose whether to serve a customer over fiber or copper so long as “whatever technology is used by Verizon PA to provide landline telephone service” is able to “support the provision of adequate, reliable, safe, efficient, reasonable, and reasonably continuous service in accordance with Section 1501 of the Public Utility Code.”³ Verizon’s fiber is clearly able to meet that standard and was repeatedly offered to the customer, who was informed that this was the only way to repair her service permanently. Verizon should not be penalized because the customer refused to allow access to her home to upgrade the service with the best available facilities.

In the *Fox* case the Commission adopted the Initial Decision of Administrative Law Judge Conrad A. Johnson, which explained that “Verizon PA made a business decision to transition to fiber in order to provide better quality and reliable service to its customers,” and therefore “an unreasonable service finding in this case would be unwarranted since the Commission lacks the power to intervene with Verizon PA’s business decision to transition from copper to fiber.”⁴ The *Fox* case further holds that “if a customer refuses to allow Verizon access to migrate its network serving lines from copper to fiber, then pursuant to Section 64.61(3) of the Commission’s Regulations, a telephone company may suspend telephone service for ‘[u]reasonable refusal to permit access to service connections, equipment and other property of the LEC for maintenance or of the LEC for maintenance or repair’” and then terminate service.⁵

approval for expansion of all facilities, the discretion of the company’s management over such matters being generally beyond the PUC’s power to supersede.”)

³ *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094 (Opinion and Order entered July 12, 2018) at 9 (“*Fox Order*”).

⁴ *Fox Order* at 6.

⁵ *Fox Order* at 6-7. The ID recognized this suspension and termination process for customers who refuse fiber migration. “If a customer fails to respond, eventually the customer’s telephone service is

In this case, Verizon refrained from suspending and terminating service while the formal complaint was pending and attempted to keep the copper working until closer to the April 2020 final copper retirement date. Despite the serious deterioration of the copper, Verizon’s technicians were able to make repairs that held for approximately 6 months, from February 2 to October 8, 2019, which allowed the first scheduled hearing in March of 2019 to be postponed to allow Verizon and Ms. Mosco to monitor the service and attempt to settle the case, but it was made clear that the service would need to be migrated to fiber if service issues recurred or ultimately as part of the ongoing copper retirement in this area. On October 8, 2019, when the service trouble recurred, the Complainant requested a hearing. (ID at 2). Verizon should not be penalized for its efforts to keep the copper working while it attempted to resolve the case and then awaited a hearing and decision, particularly given the lack of clarity on how the Commission would react if Verizon attempted to terminate the service for failure to provide access while the complaint was still pending.

The ID’s holding on the need for fiber migration to repair copper is also directly contrary to federal law. As this Commission recognizes, “the retirement of copper telephone lines is regulated primarily by the FCC.”⁶ In its 2015 and 2017 *Technology Transition Orders* the FCC made clear that a provider is authorized to migrate an individual customer’s service to fiber to repair faulty copper service, even if it has not yet filed to retire copper in the customer’s location. In its first *Technology Transition Order I* in 2015, the FCC rejected the proposition that a company must continue to repair failing

suspended except for calls to Verizon and 9-1-1. . . . If the customer does not contact Verizon within two weeks of the suspension of telephone service, the customer’s service is terminated.” (ID at 9).

⁶ *Fox Order* at 9.

copper in locations where it has fiber available. According to the FCC, even if a company has not yet made a copper retirement filing, it is free to “respond to an individual customer’s service quality concerns by migrating a customer from its copper facilities in areas where a carrier has already deployed fiber-to-the-premises.”⁷ The FCC rejected the proposition that providers must continue to incur the duplicative cost of repairing parallel copper facilities where the copper is experiencing service issues and fiber is available, finding that companies should have “sufficient flexibility to manage service calls by moving customers from a copper to a fiber network,” for example to address complaints like “a frequent ‘crackling’ sound on the copper voice line or frequent outages in wet conditions,”⁸ where the company has determined that “the movement of a customer from a copper to a fiber network is the most effective and efficient means of addressing the customer’s service issues.”⁹ The FCC confirmed this proposition in its 2017 *Technology Transition Order II*, where it stated that “[i]f copper deterioration is causing service quality issues . . . incumbent LECs are free to resolve those issues by migrating the customer to fiber, as long as the nature of the service being provided to the customer remains the same,” and even if a copper retirement filing had not yet been made.¹⁰ As the FCC explained, carriers have “the authority to design their networks and

⁷ *In the Matter of Technologies Transitions, et. al*, GN Docket No. 13-5, et. al, 30 FCC Rcd 9372; 2015 FCC LEXIS 2000, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. Aug. 7, 2015) (“*Technology Transitions Order I*”) ¶ 93.

⁸ *Id.*

⁹ *Id.*

¹⁰ *In re Deployment*, 32 FCC Rcd 11128, 11144, 2017 FCC LEXIS 3763 (rel. November 29, 2017) (“*Technology Transitions Order II*”) ¶ 38.

choose their own architecture,” which is consistent with this Commission’s own holdings on management discretion.¹¹

The ID’s conclusion that “[e]ven if only one customer is served on a particular [copper] line, a utility is mandated to maintain its facilities and render reasonable service,” and cannot move the customer to fiber, is not only impermissible micromanaging and contrary to FCC holdings, but it is also bad policy. Where Verizon has made the investment to install fiber, and particularly here where the ID recognizes that hundreds of Ms. Mosco’s neighbors are already served over fiber (ID at 6), there is no benefit to be gained by forcing Verizon to spend money trying to revive the failing copper for one lone customer while it runs out the clock on the FCC’s copper retirement proceeding. Such a policy is not in the public interest because it would unnecessarily divert resources and technician time away from serving other customers. The record shows that numerous dispatches were made to repair the copper in this case, which could have been avoided if the service was migrated to fiber when the problems started. Further, the ID recognizes that equipment and parts to repair legacy copper facilities can be in short supply. (ID at 6). Commission policies should not prevent these resources from being prioritized to areas where fiber is not available and should not require them to be used needlessly in an area where fiber is available to keep outdated copper facilities working for one customer.

The Commission therefore should reject the ID’s holdings regarding fiber repair.

¹¹ *Id.* ¶ 39.

Verizon Exception 2: Verizon Excepts To The ID's Recommended \$25,900 Civil Penalty.

The Commission should reject the recommendation for any penalties. The faulty premise behind the ID's penalty recommendation is that Verizon "failed to maintain its entire system in such condition as to make it possible to furnish continuous service, failed to take reasonable measures to prevent interruptions of service and failed to restore service within a minimum delay if interruptions occur. 66 Pa. C.S. § 1501; 52 Pa. Code § 63.24(a)," or "failed to furnish, operate and maintain facilities adequate to provide acceptable transmission of communications, by maintaining transmission at adequate volume levels and free of excessive distortion, noise and cross talk. 52 Pa. Code § 63.63." (ID Ordering Paragraphs 4 and 5). As depicted on the chart at page 25 of the ID, all but \$1,000 of the \$25,900 penalty amount was calculated based on alleged violations of 52 Pa. Code § 63.24(a), 52 Pa. Code § 63.63 and 66 Pa. C.S. § 1501 for failing to maintain and/or provide continuous service over the copper facilities and failure to take reasonable measures to prevent interruptions of service.¹²

The ID's own factual findings refute this premise. Verizon did take reasonable measures to maintain its network and provide continuous, uninterrupted service. It did so by upgrading its facilities to fiber optics, which the ID found to be more reliable and resilient than copper and the FCC recognizes should be used to repair copper service problems. (ID at 6). Verizon repeatedly attempted to move Ms. Mosco's service to the upgraded fiber facilities but she refused to grant the access necessary to do so.

¹² Based on the discussion in the ID, the \$1,000 penalty for 6/1/18 on the second to last row of the chart is imposed under Section 63.57 for failing to take substantial action within 3 hours with a medical condition. However, the underlying Exhibit shows that a technician had repaired the copper on the previous day, 5/31/18, and that the customer was informed that fiber is the only fix but refused to allow fiber migration. Therefore, this penalty also is not warranted.

The ID's penalty recommendation is also faulty as a matter of law to the extent it is based on the incorrect assumption that Verizon must always maintain parallel copper facilities when fiber facilities are available. If the copper is experiencing chronic service issues Verizon has the discretion to move the service to fiber to repair it as explained in the FCC's *Technology Transition* Orders discussed above. Verizon should not be penalized for the customer's refusal to grant access for fiber migration.

Accordingly the Commission should reject the entire \$25,900 recommended penalty described on the chart at page 25 of the ID.

Verizon Exception 3: Verizon Excepts To The ID's Unsubstantiated Conclusion That Verizon Failed To Explain Fiber Migration To The Complainant.

Although the ID did not recommend a civil penalty on this issue, Verizon excepts to its unfounded conclusion that Verizon violated Section 1501 and provided inadequate customer service because the customer's questions about fiber migration "were not answered to her satisfaction." (ID at 10). The ID itself found that "numerous Verizon representatives" spoke the customer about fiber migration and that "at various times representatives of Verizon visited her home" to explain the issues and answer her questions in person. (ID at 22). The ID found that "Verizon managers visited the Complainant in her home who attempted to explain the ONT device to the Complainant." (ID at 10). There was no specific evidence of the content of the conversations and therefore no basis for the ID to conclude that they were not fully informative just because the customer, who was adamantly opposed to fiber migration, stated that she was "not satisfied."

Verizon Exception 4: Verizon Expects To The ID's Failure To Set Clear Guidance For Similarly Situated Customers In The Future.

The delay and uncertainty of the Commission's formal complaint process should not continue to serve as a disincentive for customers like Ms. Mosco to accept facility upgrades that will benefit them. The Commission can remedy this problem by making clear that filing a formal complaint does not stay Verizon's ability to suspend and terminate service to a customer who refuses access for a fiber migration that is permitted under FCC rules for repair or copper retirement, following appropriate notices as discussed in the *Fox* case. While the customer might choose to go to another provider or to stay with Verizon on fiber, this clarification would prevent the customer from having the false hope that the Commission would keep them on copper in perpetuity, which provides a disincentive to cooperation. To be clear, Verizon does not want to disconnect customers. It wants to serve them over the best facilities available, which in some locations is fiber. But what should not happen is what occurred here. The customer should not be incented by the pendency of a formal complaint to remain on faulty copper indefinitely and to endure multiple service calls and outages because she expects the Commission to deliver the unrealistic result of copper service forever. And Verizon should not be left uncertain of the Commission's reaction if it initiates termination for a customer who refuses migration while a complaint is pending. Ms. Mosco, Verizon and the public interest would have been better served if she had been given an incentive to agree to the fiber migration or find another provider from the outset. The Commission should take this opportunity to provide the clarification needed to avoid a similar set of facts in the future.

CONCLUSION

For the foregoing reasons the Commission should reject the recommended \$25,900 civil penalty and the portions of the ID founded on legal and factual errors about fiber migration, but should adopt the conclusion that Verizon is not required to continue to serve the Complainant on copper and she must either migrate to Verizon's fiber optic network or choose another telephone service provider. The Commission should also provide the clarifications necessary to prevent its formal complaint process from serving as an incentive for customers like Ms. Mosco unreasonably to resist fiber migration in the future.

Respectfully submitted,



Date: March 30, 2020

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Verizon Pennsylvania LLC

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Exceptions of Verizon Pennsylvania LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 30th day of March, 2020.

VIA USPS FIRST CLASS MAIL

Honorable Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
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Pittsburgh, PA 15222

Cynthia Mosco
951 Brintell Street
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