



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 2, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Verizon Pennsylvania LLC
Docket No. M-2020-3003591
Joint Petition for Approval of Settlement and Statements in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement and Statements in Support** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/ac
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-3003591
	:	
Verizon Pennsylvania LLC	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Verizon Pennsylvania LLC (“Verizon PA” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based upon information provided by the Commission’s Bureau of Consumer Services (“BCS”), which had received complaints regarding telephone service outages caused by the failure of a portion of copper cable near Gorby Road in the Washington Wire Center.

As part of this Settlement Agreement, I&E and Verizon PA (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Statements in Support

of the Settlement expressing the individual views of I&E and Verizon PA are attached hereto as Appendix A and Appendix B, respectfully.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA, 17120, and Verizon Pennsylvania, LLC with a business address of 900 Race Street, 6th floor, Philadelphia, PA 19107.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa. C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa. C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011)(delegating authority to initiate proceedings that are prosecutor in nature to I&E).

4. Section 501(a) of the Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, regulation, or order that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations and orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s). 66 Pa. C.S. § 3301.

7. Verizon PA is an Incumbent Local Exchange Telecommunications Company ("ILEC") as defined by Section 3012, 66 Pa. C.S. § 3012 with a public utility code number of 310200.

8. Verizon PA, as a certificated ILEC, is subject to the power and authority of the Commission pursuant to Sections 501 and Chapter 30 of the Code, 66 Pa. C.S. §§ 501, 3011 *et seq.*

9. The Commission has jurisdiction over the subject matter and the actions of Verizon PA in its capacity as an ILEC serving customers in Pennsylvania pursuant to applicable Commonwealth statutes and regulations.

10. This matter involves allegations related to the failure of a portion of a copper cable designated by Verizon PA as "Cable No. 13" located at or near Gorby Road in the Washington Wire Center in January 2018.

11. As a result of successful negotiations between I&E and Verizon PA, the Parties have reached an agreement on an appropriate outcome to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission

regulations, 52 Pa. Code Section 69.1201. The Parties agree to the settlement terms set forth herein and urge the Commission to approve the Settlement as submitted as being in the public interest.

II. STIPULATED FACTS

12. The Commission has jurisdiction over the subject matter of and the Parties to this proceeding. 66 Pa.C.S. §§ 102, 501.

13. “It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a).

14. Verizon PA operates in certain areas of Pennsylvania including the portion of Washington County in southwestern Pennsylvania designated by Verizon PA as the “Washington Wire Center.”

15. On January 12, 2018, Cable No. 13 near Gorby Road in the Washington Wire Center failed, resulting in approximately one hundred (100) Verizon customers losing service.

16. By February 1, 2018, service was restored to the last affected customers.

17. BCS received approximately thirty-five (35) complaints from the Washington Wire Center, at least ten (10) of those complaints alleged a service outage due to the January 2018 Cable No. 13 failure.

18. Based upon information averred in the informal complaints, BCS referred the January 2018 service outage to I&E on or about July 20, 2018.

19. By letter dated October 8, 2019, I&E issued a Data Request Letter (“Letter”) informing Verizon PA of the scope of its investigation and requesting a response to I&E’s fourteen (14) data requests.

20. On November 8, 2019, Verizon PA provided its response to the Letter. Verizon PA explained the circumstances surrounding the failure of a portion of Cable No. 13 near Gorby Road in the Washington Wire Center (hereinafter referred to as “Gorby Road”) which resulted in the January 12, 2018 service outage. Verizon PA averred that the failure of a portion of Cable No. 13 at Gorby Road was the result of flooding due to rising groundwater after a period of heavy snow and rain.

21. After viewing all the possible options to restore service to the affected customers, Verizon PA determined that the best option was to bypass the failed cable section and place service on other existing cables. This course of action required splicing the facilities to reroute the service and placing new pair gain systems to accommodate the additional customers on the existing cables. Verizon PA stated that service was restored to customers on a rolling basis as the splicing was completed and that the last customer’s service was restored by February 1, 2018. To prevent future service outages or service issues, the portion of the cable that had flooded and failed was bypassed and removed from service. All of the customers served on the relevant portion of Cable No. 13 were moved to other serving cables.

22. Verizon PA received approximately forty-one (41) service-related complaints in the entire Washington Wire Center from the time period of January 1, 2017 to October 8, 2019. The Washington Wire Center is a fairly large center serving

approximately 4,000 Verizon telephone customers. The Gorby Road cable failure affected approximately 100 of those customers. Of those complaints, approximately 10 were from customers affected by the January 2018 Gorby Road cable failure. Verizon PA avers that the remaining complaints appear to be isolated events in the wire center that were repaired and resolved by Verizon PA.

23. On November 15, 2019, Verizon PA provided an update to its November 8, 2019 response. In response to I&E's request to identify any other service issues in this general location, Verizon PA informed I&E that Cable No. 13 had suffered different failures in two different cable sections. Verizon PA averred that the failures were the result of flooding.

24. The first Cable No. 13 failure occurred on July 29, 2017 in the section on Old National Pike, just east of Route 40. In this instance, Verizon PA was able to cut out and replace the damaged section of Cable No. 13 with new cable to restore service.

25. The second Cable No. 13 failure was the Gorby Road failure, which occurred in the section at Jefferson Avenue on January 12, 2018.

26. Verizon PA averred that the two cable failures occurred 6 months and 2.2 miles apart and were not related. Verizon PA also explained that it has a monitoring system that triggers analysis and action whenever three (3) or more trouble reports are received on the same cable.

27. The results of I&E's investigation, which included review of the customer complaints, Verizon PA's responses to data requests, and the additional information provided by Verizon PA, formed the basis for the instant Settlement Agreement.

III. ALLEGED VIOLATIONS

28. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Verizon PA committed the following violations:

- a. Verizon PA did not repair the out-of-service trouble in a timely manner, resulting in customers not having service for up to twenty (20) days. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 63.57 (multiple counts).¹
- b. Verizon PA failed to provide continuous service and to restore an interruption of service with minimum delay. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 63.24 (multiple counts).²
- c. Verizon PA failed to furnish and maintain “adequate, efficient, safe, and reasonable service.” If proven, I&E alleges that such conduct would have violated 66 Pa. C.S. § 1501.³

¹ Section 63.57 of the Commission’s regulations provides:

(A) A public utility shall respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within 3 hours of the reported outage consistent with the needs of customers and personal safety of utility personnel.

(B) A public utility shall respond to and take substantial action to clear other out-of-service trouble, not requiring unusual repair, within 24 hours of the report, except for isolated weekend outages affecting fewer than 15 customers in an exchange or where the customer agrees to another arrangement.

52 Pa. Code § 63.57.

² Section 63.24 of the Commission’s regulations provides, among other things, that “each public utility shall endeavor to maintain its entire system in such condition as to make it possible to furnish continuous service, and shall take reasonable measures to prevent interruptions of service and to restore service with a minimum delay if interruptions occur.” 52 Pa. Code § 63.24(a).

³ Section 1501 of the Public Utility Code provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501.

29. Had this matter been fully litigated, Verizon PA would have denied each of the alleged violations of the Commission's regulations, the Code, or Commission's Orders, raised defenses to each of these allegations, and defended against the same at hearing. Verizon PA would have argued, for example, that the outage was caused by flooding due to a severe weather event and that it required "unusual repair" under 52 Pa. Code § 63.57(b).

IV. SETTLEMENT TERMS

30. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. I&E and Verizon PA desire to (1) terminate I&E's informal investigation; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed matter, and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

31. Verizon PA shall pay a civil penalty of seven thousand five hundred dollars (\$7,500.00) for the alleged violations related to the January 2018 Gorby Road cable failure.

32. The civil penalty shall not be tax deductible or passed through as an additional charge to Verizon PA's customers in Pennsylvania.

33. Verizon PA shall provide a fifty-dollar (\$50.00) bill credit to each customer account affected by the January 2018 Gorby Road failure, to the extent that the account is still active and that the affected person/household is still a customer of Verizon PA.

34. Within sixteen (16) weeks of a Final Order approving settlement, Verizon PA shall perform a 100% inspection of the copper facilities that now serve the customers in the Gorby Road area that were impacted by the Cable No. 13 failure in January 2018. Verizon PA will budget \$8,000.00 to implement improvements, replace sections of aerial cable that have multiple splices, or remedy other potential failure points to ensure continued optimal operation of the copper facilities until they are replaced with fiber. While Verizon PA may budget \$8,000.00 to complete any work or improvements which are deemed necessary to ensure safe, reliable, and continuous service, the budget is merely an estimate and Verizon PA is not excused from completing any essential service-affecting work identified in the inspection that may exceed the \$8,000.00 budget. Verizon PA will file a letter with the Commission from Verizon PA's attorney stating its compliance with this settlement term within thirty (30) days of completion. Verizon PA will continue to maintain its copper facilities in this location to ensure safe, reliable, and continuous service until the copper facilities are replaced with fiber optic facilities as discussed in paragraph 35 below.

35. In accordance with its September 16, 2019 filing with the Federal Communications Commission and as part of this settlement, Verizon PA will commit to completing the deployment of fiber to the portion of the wire center that was affected by the January 2018 cable failure within twenty-four (24) months of a Final Order approving settlement. Verizon PA will file a letter with the Commission from Verizon PA's attorney stating compliance within thirty (30) days of completion. *See Exhibit 1 (map detailing the area subject to the fiber deployment commitments of this paragraph).*

V. CONDITIONS OF SETTLEMENT

36. The benefits and obligations of this Settlement Agreement shall be binding upon the successors and assigns of the Parties to this Agreement.

37. This Agreement may be signed in counterparts and all signatures attached hereto will be considered as originals.

38. In order to effectuate the Parties' Settlement Agreement, the undersigned Parties request that the Commission issue a Secretarial Letter or Order approving the Petition without modification.

39. The Parties agree that any party may petition the Commission for rehearing or take other recourse allowed under the Commission's rules if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition for Approval of Settlement. In that event, any party may give notice to the other party that it is withdrawing from this Joint Petition for Approval of Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Approval of Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for Approval of Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the Parties and all obligations of the Parties to each other are terminated and of no force and effect. In the event that a Party withdraws from this Joint Petition for Approval of Settlement as set forth in this paragraph, I&E and Verizon PA jointly agree that nothing in this Agreement shall

be construed as an admission against or as prejudice to any position which any Party might adopt during litigation of this case.

40. I&E and Verizon PA jointly acknowledge that approval of this Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Commission will serve the public interest by adopting this Joint Petition for Approval of Settlement.

41. The Joint Petition for Approval of Settlement avoids the time and expense of litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of briefs, reply briefs, exceptions, reply exceptions. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the disputed issues through settlement. Attached as Appendices A and B are Statements in Support submitted by I&E and Verizon PA, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

42. Adopting this Agreement will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

43. This Settlement consists of the entire agreement between I&E and Verizon PA regarding the matters addressed herein. Moreover, this Settlement represents a complete settlement of I&E's investigation of Verizon PA's alleged violations related to

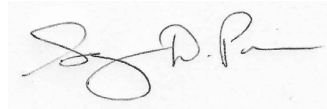
the Gorby Road copper cable failure in the Washington Wire Center in January 2018, and fully satisfies I&E's investigation of the matters discussed herein. The Parties expressly acknowledge that this Agreement represents a compromise of positions and does not in any way constitute as a finding or as an admission concerning the alleged violations of the Public Utility Code and the Commission's regulations.

44. The Settlement contains a summary of alleged violations of the Public Utility Code and the Commission's regulations. *See*, Section III, Alleged Violations. In addition, the Settlement Terms contains Proposed Settlement Terms. *See*, Section IV, Settlement Terms. With the exception of the approval of this Settlement without modification, none of the provisions in this Settlement shall be considered or shall constitute an admission, a finding of any fact, or a finding of culpability on the part of Verizon PA in this or any other proceeding.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Verizon Pennsylvania LLC respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.


[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, I&E and Verizon PA by their authorized representative have hereunto set our hands and seals on this 2nd day of October 2020.



Date: October 2, 2020

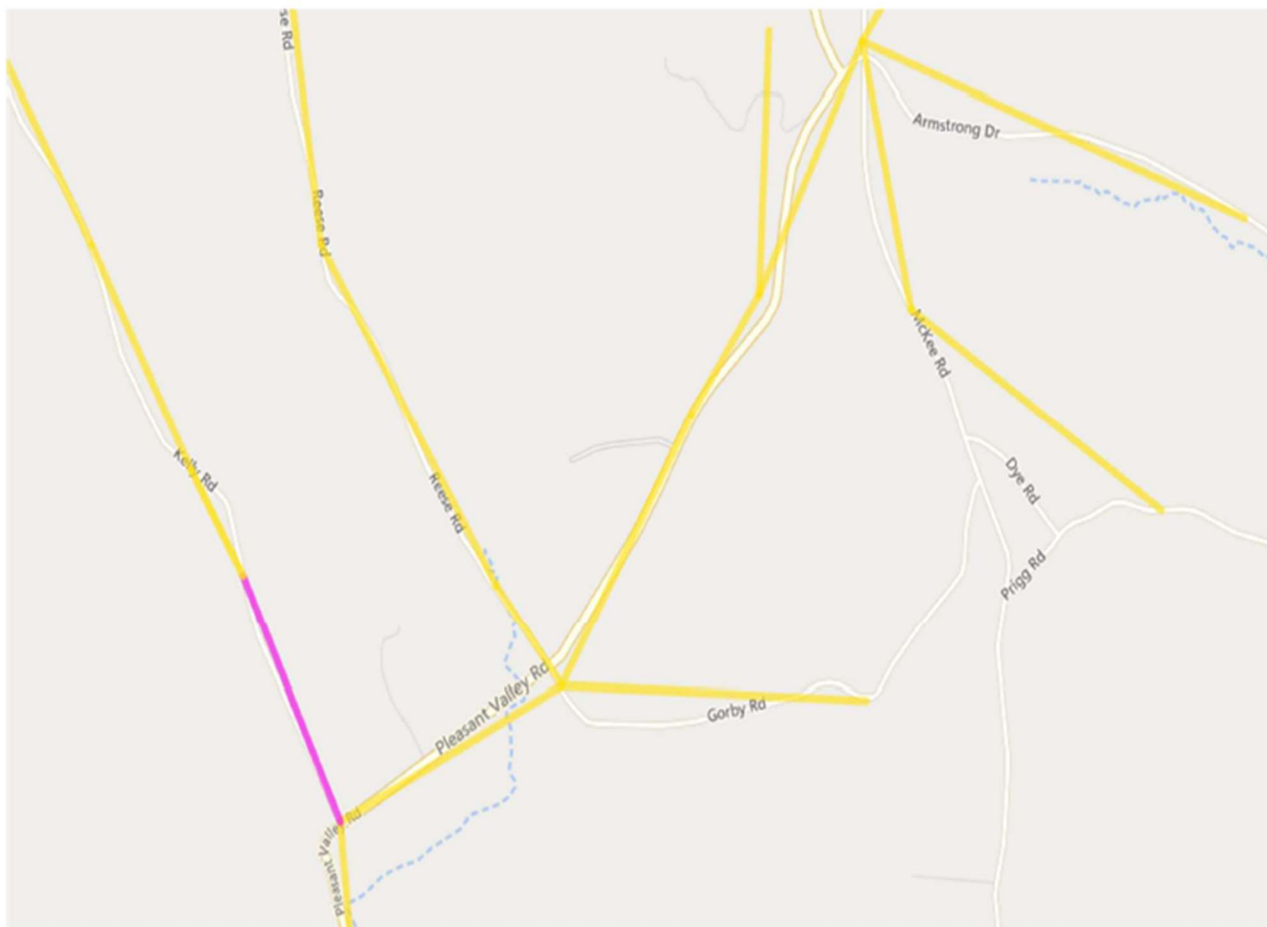
Suzan D. Paiva
*Associate General Counsel for
Verizon Pennsylvania LLC*



Date: October 2, 2020

Kayla L. Rost
*Prosecutor for the Commission's
Bureau of Investigation and Enforcement*

- ✓ ● FTTN Fiber Aerial
- ✓ ● FTTN Fiber Buried



The yellow (aerial) and purple (buried) areas on this map depict the larger fiber routes known as “feeder” that will be placed on Gorby Road and surrounding streets. In addition to this feeder placement, there will be smaller fiber lines known as “distribution” that will be placed to reach the individual homes and businesses located beyond the yellow feeder lines. This fiber network will be capable of serving all of the areas currently served by copper on this map.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-3003591
	:	
Verizon Pennsylvania LLC	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on September 30, 2020 between the Commission’s Bureau of Investigation and Enforcement and Verizon Pennsylvania LLC (“Verizon PA”) is approved in its entirety without modifications.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date this Order becomes final, Verizon PA shall pay seven thousand five hundred dollars (\$7,500.00), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That the civil penalty shall not be tax deductible or passed through as an additional charge to Verizon PA’s customers in Pennsylvania.

4. That, within thirty (30) days of the date this Order becomes final, Verizon PA shall provide a fifty dollar (\$50.00) bill credit to each customer account affected by the

January 2018 Gorby Road failure, to the extent that the account is still active and that the affected person/household is still a customer of Verizon PA. Verizon PA will file a letter with the Commission from Verizon PA's attorney stating its compliance with this settlement term within thirty (30) days of completion.

5. That, within sixteen (16) weeks of the date this Order becomes final, Verizon PA shall perform a 100% inspection of the copper facilities that now serve the customers in the Gorby Road area that were impacted by the Cable No. 13 failure in January 2018. Verizon PA will budget \$8,000.00 to implement improvements, replace sections of aerial cable that have multiple splices, or remedy other potential failure points to ensure continued optimal operation of the copper facilities until they are replaced with fiber. Verizon PA will file a letter with the Commission from Verizon PA's attorney stating its compliance with this settlement term within thirty (30) days of completion. Verizon PA will continue to maintain its copper facilities in this location to ensure safe, reliable, and continuous service until the copper facilities are replaced with fiber optic facilities as discussed in paragraph 6 below.

6. That, within twenty-four (24) months of the date this Order becomes final, Verizon PA shall complete the deployment of fiber optic facilities to the portion of the Washington Wire Center that was affected by the January 2018 cable failure. Verizon PA will file a letter with the Commission from Verizon PA's attorney stating compliance within thirty (30) days of completion.

7. The above-captioned matter shall be marked closed upon receipt of Verizon PA's compliance with the deployment of fiber pursuant to paragraph 6.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
v. : Docket No. M-2020-3003591
Verizon Pennsylvania LLC :

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Verizon Pennsylvania LLC (“Verizon PA” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and Verizon PA are collectively referred to herein as the “Parties.”

I. Background

On or about July 20, 2018, the Commission's Bureau of Consumer Services ("BCS") sent I&E a memo outlining its request for I&E to investigate Verizon PA's alleged failure to meet its Section 1501 obligation to provide "adequate, efficient, safe, and reasonable service." Specifically, BCS requested that I&E investigate Verizon PA's alleged failure to identify the copper line issue at the Washington Wire Center, handle the customer complaints in a timely manner, and repair the copper line within the timeframe established in the Commission's regulations and the Public Utility Code.

By letter dated October 8, 2019, I&E issued a Data Request Letter ("Letter") informing Verizon PA of the scope of its investigation and requesting a response to I&E's fourteen (14) data requests. Verizon PA's responses were due on November 8, 2019.

On November 8, 2019, Verizon PA provided its response to the Letter. Of importance, Verizon PA explained the circumstances surrounding the failure of a portion of Cable No. 13 near Gorby Road in the Washington Wire Center (hereinafter referred to as "Gorby Road") which resulted in the January 12, 2018 service outage. Verizon PA averred that the failure at Gorby Road was the result of flooding after a period of heavy snow and rain. After viewing all the possible options to repair the wire, Verizon PA determined that the best option was to bypass the failed cable section and place service on other existing cables. This course of action resulted in splicing the facilities to reroute the service and placing new pair gain systems to accommodate the additional customers on the existing cables. Verizon PA stated that the work was completed and that the last

customer's service was restored by February 1, 2018. Verizon PA also averred that the incident at Gorby Road was isolated and that the complaints prior to January 12, 2018 do not show a systemic problem.

On November 15, 2019, Verizon PA provided an update to its November 8, 2019 response. Verizon PA explained that the Gorby Road cable underwent two different failures in two different cable sections. The first Cable No. 13 failure occurred on July 29, 2017 in the section on Old National Pike, just east of Route 40. The second Cable No. 13 failure was the Gorby Road failure, which occurred in the section at Jefferson Avenue. Verizon PA clarified that the two cable failures occurred 6 months and 2.2 miles apart and were not related. Verizon PA also explained that it has a monitoring system that triggers analysis and action whenever three (3) or more trouble reports are received on the same cable.

As a result of Verizon PA's responses and further explanations, I&E identified three (3) types of potential violations based upon the allegations brought forth by the informal complaints received by BCS and Verizon PA. Specifically, I&E alleged that Verizon PA failed to repair the out-of-service trouble in a timely manner, failed to provide continuous service and restore interruptions with minimum delay, and failed to maintain adequate and efficient services and provide reasonably continuous service. *See generally*, 52 Pa. Code § 63.57; 52 Pa. Code § 63.24; and 66 Pa. C.S. § 1501.

As provided above, Verizon PA advised I&E that service was restored to the last affected customer(s) by February 1, 2018, resulting in a 20-day interruption of service.

Accordingly, I&E and Verizon PA began discussing settlement to amicably resolve the instant matter.

On October 2, 2020, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Verizon PA in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. The Public Interest

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation involving allegations that Verizon PA failed to timely restore services to the customers affected by the Gorby Road failure in January 2018.

I&E intended to prove the factual allegations set forth in its investigation at hearing to which Verizon PA would have disputed. This Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, I&E and Verizon PA have agreed to the following:

- A. Verizon PA shall pay a total civil penalty of \$7,500.00.
- B. Verizon PA shall provide a fifty-dollar (\$50.00) bill credit to each customer account affected by the January 2018 Gorby Road failure, to the extent that the account is still active and that the affected person/household is still a customer of Verizon PA.
- C. Verizon PA shall perform a 100% inspection of the copper facilities that now serve the customers in the Gorby Road area that were impacted by the Cable No. 13 failure in January 2018. Verizon PA will budget \$8,000.00 to implement improvements, replace sections of aerial cable that have multiple splices, or remedy other potential failure points to ensure continued optimal operation of the copper facilities until they are replaced with fiber. While Verizon PA may budget \$8,000.00 to complete any work or improvements which are deemed necessary to ensure safe, reliable, and continuous service, the budget is merely an estimate and Verizon PA is not excused from completing any essential service-affecting work identified in the inspection that may exceed the \$8,000.00 budget.
- D. Verizon PA will commit to completing the deployment of fiber to the portion of the wire center that was affected by the Gorby Road cable failure within twenty-four (24) months of a Final Order approving settlement.

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f). Furthermore, the civil penalty shall not be passed through as an additional charge to Verizon PA's customers in Pennsylvania.

In consideration of Verizon PA's payment of a monetary civil penalty, credit to the affected customers, 100% inspection, and deployment of fiber, I&E agrees that its informal investigation relating to Verizon PA's conduct as described in the Settlement Agreement referenced herein shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification and completion of the numerated settlement terms.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against Verizon PA at the Commission with respect to the Gorby Road cable failure that was the subject of I&E's instant investigation.

IV. Legal Standard for Settlement Agreements

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the

acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa.

Code § 69.1201(c)(1). I&E acknowledges that the conduct did not constitute willful fraud or misrepresentation, nor was the conduct the result of an administrative or technical error. However, if Verizon PA's assertions are accepted, the conduct appeared to be the result of flooding. This alleged fact was considered in arriving at the civil penalty amount in the Settlement Agreement.

The second factor considers whether the resulting consequences of Verizon PA's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E has no knowledge of whether the alleged conduct resulted in personal injury or property damage.² Nonetheless, the consequences of the Gory Road cable failure resulted in customers being without access to telephone service for up to 20 days. The lack of telephone service clearly impacted the customers' access to education, medical or emergency services, work, and/or personal communications and interactions. I&E asserts that access to telephone service is critical to everyday life and lack of access could have a serious impact, thus the consequences of Verizon PA's alleged conduct should be deemed serious.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether Verizon PA's alleged

² I&E acknowledges that some of the informal complaints averred that the customer or someone in the residence wore lifeline necklaces/uses life alert and/or were elderly with medical conditions. One informal complaint alleged that the customer's neighbor's husband passed away due to no telephone service and inability to use the landline. However, due to hearsay issues and an inability to confirm the allegations, I&E has no knowledge of whether the alleged conduct actually resulted in personal injury.

conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Verizon PA has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). To prevent future service outages or service issues, Verizon PA bypassed the failed cable section and placed the service on other existing cables. Verizon PA also noted that it has a monitoring system that triggers analysis and action whenever three (3) or more trouble reports are received on the same cable. In addition to the repair, Verizon PA has agreed to completed a 100% inspection of the copper facilities and to make any such repairs required to ensure continued optimal operation of the facilities. Furthermore, Verizon PA has agreed to replace the copper facilities with fiber optic facilities within twenty-four (24) months of a Final Order. Thus, Verizon PA, through its response to the cable failure and the terms of this Settlement Agreement, has and will make efforts to ensure that this issue does not reoccur in the future.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Verizon PA acknowledged that approximately 100 customers were affected by the Gorby Road cable failure and were without telephone service for up to 20 days. These facts were considered when calculating the civil penalty.

The sixth factor to be considered relates to the compliance history of Verizon PA. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may

result in a higher penalty. *Id.* To date, I&E is not aware of any formal complaint being filed against Verizon PA regarding this matter. However, I&E notes that the informal complaints received by BCS may suggest a systematic problem leading up to the January 2018 failure, which Verizon PA denies. Additionally, I&E acknowledges that formal complaints are periodically filed by Verizon PA customers related to service reliability throughout Pennsylvania.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that Verizon PA fully cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that all the settlement terms (the civil penalty, the credit to the customers, the 100% inspection, and the deployment of fiber) are substantial and sufficient to deter Verizon PA from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement Agreement is consistent with prior Commission decisions in similar situations. *Ken Eernisse v. Verizon Pennsylvania LLC*, C-2012-2287023 (December 5, 2013 Opinion and Order) (Commission assessed a civil penalty of \$20,050 for failure to provide reasonable and adequate service to one customer for an extended period of time, resulting in multiple violations and service outages.); *Curt Eckroth v. Verizon Pennsylvania Inc.* Docket No.

C-2011-2279168 (April 18, 2013, Opinion and Order) (Commission assessed a civil penalty of \$1,000.00 for various service outages.); *Larry L. Wolfe v. Verizon North LLP*, Docket No. C-2011-2266224 (Order entered December 20, 2012) (Commission assessed a civil penalty of \$1,250 for various violations involving service interruptions of one customer.).

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In addition, the settlement terms are undoubtedly in the public interest because each term benefits the public. First, the credit to be provided to the affected customers clearly benefits those individuals who were affected by the Gorby Road failure and were without service for a period of time. Second, the 100% inspection ensures that the copper line currently servicing those customers is properly evaluated and repaired, if necessary, so that adequate, reliable, and continuous service is provided until the switch to fiber can

be completed. Third, and most important, the commitment to install and deploy fiber to the affected customers will vastly benefit the public.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768

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Dated: October 2, 2020

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-3003591
	:	
Verizon Pennsylvania LLC	:	

**VERIZON PENNSYLVANIA LLC'S
STATEMENT IN SUPPORT OF SETTLEMENT**

Verizon Pennsylvania LLC (“Verizon PA”), a signatory to the Joint Petition for Approval of Settlement Agreement (“Settlement”), submits this Statement in Support of the Settlement in the above-captioned matter between Verizon PA and the Commission’s Bureau of Investigation and Enforcement (“I&E”). The Settlement fully resolves all issues relating to I&E’s investigation of a copper cable failure that occurred on January 12, 2018 in Verizon PA’s Washington wire center after the cable was flooded by rising groundwater following a period of heavy rain and snow, resulting in telephone service outages.

Verizon PA respectfully submits that the Settlement is in the public interest and requests that the Commission approve it without modification. Commission policy promotes settlements, which decrease the time, expense and risks of litigation and conserve administrative resources. 52 Pa. Code § 5.231. Verizon PA and I&E engaged in an exchange of information and negotiations, and Verizon PA continues to cooperate with I&E’s investigation and has resolved it amicably. While some allegations underlying this investigation remain disputed, and the proposed Settlement represents a compromise of the parties’ respective litigation positions, the benefits of amicably resolving the allegations through settlement significantly outweigh the time, expense and risks of litigation. The proposed settlement is reasonable and its approval is in the

public interest under the standards of the Commission's policy statement at 52 Pa. Code § 69.1201.

I. Background

By letter dated October 8, 2019, I&E informed Verizon PA that it was initiating an investigation into a service outage that occurred in Verizon PA's Washington wire center on January 12, 2018. The investigation was initiated based on information provided to I&E by the Bureau of Consumer Services ("BCS"). Verizon PA responded to I&E's requests for information and cooperated in the investigation. The parties ultimately reached the amicable Settlement that is presented to the Commission for approval.

The underlying facts are as follows. On January 12, 2018, a portion of an underground Verizon PA copper cable designated as Cable No. 13 failed at a location near Gorby Road in the Washington wire center.¹ Immediately prior to the failure there was a period of heavy snow and rain resulting in rising groundwater that flooded this section of the cable and caused it to fail. Verizon PA was made aware of the cable failure by internal systems, which trigger alerts when 3 trouble reports in the same cable are received. This trigger occurred on January 12, 2018.

Verizon PA personnel were dispatched to the scene of the alarms and immediately began efforts to identify the location of the cable failure. This process, when it involves subterranean water from a saturated water table (which was the case here) can take many hours to isolate. Once the location was identified, Verizon PA determined that the cable section needed to be replaced. The cable section could not be repaired by drying it out, and, although Verizon PA initially explored placing a new section of copper cable in the same location, that plan also proved to be impossible because Verizon PA could not find a clear path within the existing duct.

¹ The Washington wire center is located in Washington County, in southwest Pennsylvania.

It was then determined that the best solution was to bypass the cable section entirely and place the customers' service on other existing cables. This process not only required splicing cable facilities to reroute them at the appropriate points, but also required the placement of new electronics, known as a pair gain system, to accommodate the circuits of the additional customers.

While the repair effort was complex, Verizon PA's actions were reasonable under the circumstances and ensured that the customers would have good service going forward. The failure was caused by flooding that occurred following a period of heavy snow and rain. While Verizon PA responded immediately, it took some time to locate the affected section, determine best options to restore service and implement the job to restore service. It took just less than three weeks to complete all the steps to order and install the new equipment and cut over all the customers to the new cables. Customers were restored on a rolling basis as soon as their service was spliced to the new cable. Some customers were restored earlier, but the last restoration occurred on or about February 1, 2018. Verizon PA was actively working to restore the service throughout this period. As a result of this work, the section of Cable No. 13 that failed is no longer in service. All of these customers are served by different cables. Verizon PA believes that this was a good solution under the circumstances and left these customers with improved service and less risk of future outages.²

² Cable No. 13 is a long feeder facility that runs for many miles through the wire center. This January 12, incident only affected a small section of the cable. During the investigation Verizon PA informed I&E that there had been a failure of another section of this cable, approximately 2.2 miles away, on July 29, 2017 but that in Verizon PA's assessment they were not related, other than the fact that they were on the same cable. Verizon PA was alerted to the failure by the same alert system and responded immediately, discovering that the section on Old National Pike, just east of Route 40 (West Chestnut Street) had failed due to a crack in the cable covering that allowed ground water to enter. Verizon PA began work to restore service immediately and was able to cut out the damaged section, replace it with new cable and splice it back into service, which was a reasonable and typical response to this type of cable failure and resolved the issue with this section of the cable.

While the investigation was originally initiated due to BCS's receipt of customer complaints, information provided during the investigation indicates that the complaint rate in the Washington wire center is generally low. Washington is a fairly large wire center serving about 4,000 Verizon PA telephone customers. The January 12, 2018 Gorby Road cable failure affected less than 100 customers. BCS and Verizon PA's records show approximately 10 customer complaints from customers affected by the January 12 outage. In response to I&E's request to identify all service-related complaints in the entire Washington wire center for the almost three year time period from January 1, 2017 to October 8, 2019, Verizon PA identified 42 complaints. Removing the 10 related to this incident, 32 complaints over a period of almost 3 years (an average of about 12 a year) for 4,000 customers is a small rate of complaints and does not show a systemic problem in this wire center.

Verizon PA respectfully suggests that there are several mitigating factors the Commission should consider in reviewing the settlement.

First, the outage was caused by an act of nature. A period of heavy snow and rain resulted in rising groundwater that flooded the cable and caused it to fail. Copper telephone facilities by their nature are susceptible to service-affecting issues due to corrosion, short circuits, damage by weather and water, and when that occurs they need to be repaired. The Public Utility Code requires Verizon PA to provide reasonable service, but it does not require perfect or flawless service.³

³ Neither the Public Utility Code nor the Commission's regulations require that public utilities provide flawless service. Section 1501 of the Code requires public utilities "to provide reasonable and adequate, not perfect, service." *A-Rize-N Management Co., LLC v. Pennsylvania American Water Co.*, Docket No. C-2009-2119162 (Order entered August 5, 2010, adopting decision of ALJ Salapa dated June 15, 2010). See also *Manuel A. Biason v. Metropolitan Edison Company*, PUC Docket No. C-00004450 (Opinion and Order entered December 19, 2001).

Second, while it took some time to complete a very complex job to reroute the service of all of these customers to bypass the failed cable, Verizon PA took “substantial action” to respond to the outage immediately. 52 Pa. Code §63.57(b). Verizon PA was made aware of the cable failure quickly due to internal systems that trigger alerts whenever there are 3 trouble reports in the same cable. This trigger occurred on January 12, 2018. Verizon PA personnel were dispatched to the scene of the alarms and began efforts to identify the location of the cable failure, which constitutes “substantial action.”⁴ Moreover, this regulation does not apply to an outage “requiring unusual repair,” which this outage certainly required.

Third, the time it took to restore the last customer to service was not due to unreasonable delays on Verizon PA’s part in performing the work, but rather to the complexity of the job. Under the standards of 52 Pa. Code § 63.24(a). Verizon PA took “reasonable measures” to restore service and minimize delay, but the repair was not a quick or easy job to accomplish.

Fourth, Verizon PA repaired the issue in a manner that will ensure that future flooding at this location will not take these customers out of service again. To prevent future service outages or service issues, that portion of cable was bypassed and removed from service. All of the customers served on the portion of Cable No. 13 that failed were moved to other serving cables.

Fifth, Verizon PA has plans to upgrade the entire Washington wire center to fiber optics and to retire the copper, which will provide the customers in that wire center with more resilient and weather/water resistant serving facilities and also will make robust fiber broadband services available to them. In particular, fiber optic feeder cables are not susceptible to outages from

⁴ The Commission’s regulation at 52 Pa. Code §63.57(b) requires a utility to take “substantial action” within 24 hours to address an out-of-service trouble, but it does not require the repair to be completed within 24 hours. *See, e.g., Russel Lerch v. Verizon Pennsylvania Inc.*, Docket No. C-20077297 (ALJ Weismandel’s Initial Decision at p. 12, adopted by Commission Final Order entered September 11, 2008).

getting wet. As part of this Settlement, Verizon PA is committing to having the fiber network in place by a date certain in the area affected by this outage.

II. Settlement Terms

The following are the terms of the Settlement for which the Parties seek Commission approval. Notably, Verizon PA did not want all of its expenditures in settlement of this matter to be in the form of a civil penalty, but rather wished to direct some of the money in a manner that would directly benefit the affected customers. Therefore Verizon PA and I&E agreed upon a combination of settlement terms, as follows:

1. Within thirty (30) days of a final order approving the settlement, Verizon PA will pay a civil penalty of seven thousand five hundred dollars (\$7,500.00).
2. Within thirty (30) days of a final order approving the settlement, Verizon PA will provide a fifty-dollar (\$50.00) bill credit to each customer account affected by the January 12, 2018 cable failure, to the extent that the account is still active and that the affected person/household is still a customer of Verizon PA.⁵
3. Within sixteen (16) weeks of a Final Order approving settlement, Verizon PA will perform a 100% inspection of the copper facilities that now serve the customers in the Gorby Road area that were impacted by the Cable No. 13 failure in January 2018. Verizon PA will budget \$8,000.00 to implement improvements, replace sections of aerial cable that have multiple splices, or remedy other potential failure points to ensure continued optimal operation of the copper facilities until they are replaced with fiber. While Verizon PA may budget \$8,000.00 to complete any work or improvements which are deemed necessary to ensure safe, reliable, and continuous service, the budget is merely an estimate and Verizon PA is not excused from completing any essential service-affecting work identified in the inspection that may exceed the \$8,000.00 budget. Verizon PA will continue to maintain its copper facilities in this location to ensure safe, reliable, and continuous service until the copper facilities are replaced with fiber optic facilities under the terms of the settlement.
4. In accordance with its September 16, 2019 filing with the Federal Communications Commission and as part of this settlement, Verizon PA will commit to completing the deployment of fiber to the portion of the wire center that was affected by the January 2018 cable failure within twenty-four (24) months of a final order approving settlement.

⁵ Verizon already applied out of service credits at the time of the incident. This \$50 credit is an additional courtesy credit.

5. Verizon PA will file letters confirming its compliance with the non-penalty terms above at the appropriate time.

III. The Settlement is in the Public Interest and Supported by the Commission's Policy Statement for Evaluating Settled Proceedings

The Commission has issued a policy statement at 52 Pa. Code § 69.1201 setting forth the factors and standards that may be considered in the evaluation of both litigated and settled cases. The policy statement provides that “[w]hen applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” Verizon PA respectfully submits that this Settlement comports with the standards and factors in the Commission’s policy statement and is in the public interest, and therefore should be approved without modification.

Generally, this settlement is in the public interest because the affected customers will benefit from the \$50 courtesy bill credit, the copper facilities inspection and the commitment to fiber deployment. The parties and the Commission will benefit because the settlement avoids the costs, risks, delay and administrative burdens of litigation. The individual factors are discussed below.

A. Seriousness of Conduct

The first factor is “[w]hether the conduct at issue was of a serious nature,” such as “willful fraud or misrepresentation” or is “less egregious, such as administrative filing or technical errors.” 52 Pa. Code § 69.1201(c)(1). In this case there was no willful or egregious conduct. The initial outage was caused by an act of nature and Verizon PA responded quickly and worked diligently to repair the outage.

B. Consequences of Conduct

The second factor looks at “[w]hether the resulting consequences of the conduct at issue were of a serious nature,” such as “personal injury or property damage.” 52 Pa. Code § 69.1201(c)(2). In this case there was no personal injury or property damage. There were telephone service outages, but Verizon PA worked diligently to restore service and has taken steps to reduce the likelihood of a future outage due to flooding at this location by rerouting all of the customers onto other cables. Further, the fiber deployment agreed to in the settlement will provide service over fiber optic facilities that are inherently more resilient and resistant to outages caused by water.

C. Intentional or Negligent Conduct

The third factor looks to “[w]hether the conduct at issue was deemed intentional,” which is more serious, or whether it is simply negligent. “This factor may only be considered in evaluating litigated cases” and thus does not apply here. 52 Pa. Code § 69.1201(c)(3). However, there is no allegation of intentional conduct.

D. Modification of Practices and Procedures

The fourth factor looks to “[w]hether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.” 52 Pa. Code § 69.1201(c)(4).

There are several facts relevant to this factor. First, Verizon PA has already established a system that notifies the company when 3 trouble reports in the same cable are received. This trigger occurred on January 12, 2018 so that Verizon PA was able to respond to the outage

immediately. Second, Verizon PA took the section of Cable No. 13 that failed out of service and placed all of the affected customers on different cables, which in the near term while the copper network remains in place will provide improved service and less risk of future outages from flooding in this location. Third, Verizon PA plans to deploy the more resilient and water-resistant fiber optic facilities in the Washington wire center and to retire the copper to modernize the network. Deploying a fiber network and retiring copper is a complex multi-year project but copper retirement will ultimately remove these large copper feeder cables from service. As part of this Settlement Verizon PA has committed to deploy fiber to the affected area by a date certain.

E. Number of Customers and Duration

The fifth factor looks to “[t]he number of customers affected and the duration of the violation.” 52 Pa. Code § 69.1201(c)(5). The outage affected approximately 100 lines (some residential and some business). Approximately 10 of those customers filed informal complaints. Service was restored on a rolling basis as the customers were spliced over to their new serving cables. The last customer was restored on or about February 1, 2018. However, Verizon PA was working to restore service and the duration of the outage was due to the complexity of the job.

F. Compliance History

The sixth factor looks to “[t]he compliance history of the regulated entity” and whether this was an “isolated incident from an otherwise compliant utility.” 52 Pa. Code § 69.1201(c)(6). Verizon PA respectfully submits that it has a good compliance history.

G. Cooperation

The seventh factor looks to “[w]hether the regulated entity cooperated with the Commission’s investigation.” 52 Pa. Code § 69.1201(c)(7). In this case Verizon PA cooperated with I&E’s investigation.

H. Deterrence

The eighth factor looks to “[t]he amount of the civil penalty or fine necessary to deter future violations.” 52 Pa. Code § 69.1201(c)(8). Verizon PA respectfully submits that a civil penalty is not necessary to “deter” future outages of this nature because Verizon PA already shares the Commission’s desire to avoid unexpected service outages, such as the one in this case that was caused by flooding of a copper cable. Verizon PA has taken specific steps to reduce the likelihood of a similar outage at this location, as discussed above. Moreover, in considering the amount of the civil penalty the Commission should also consider the value of the non-penalty terms of the settlement such as the \$50 per customer credit (up to \$5,000, depending on customer counts at the time of implementation) and the inspection of copper facilities (at least \$8,000). Verizon PA is also making a significant investment to upgrade its serving facilities to fiber optics in this wire center. Verizon PA specifically wanted settlement terms that provided value directly to the affected customers, and not only a civil penalty.

I. Precedent

The ninth factor looks to “[p]ast Commission decisions in similar situations.” 52 Pa. Code § 69.1201(c)(9). Verizon PA is not aware of any recent substantially similar situations that have come before the Commission.

J. Other Relevant Factors

The final consideration is “[o]ther relevant factors.” 52 Pa. Code § 69.1201(c)(10). In this regard Verizon PA requests that the Commission consider that the outage was caused by an

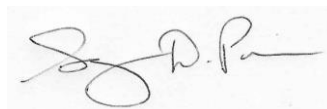
act of nature from heavy snow and rain that resulted in rising groundwater and flooded the cable. In terms of the Commissions service regulations, Verizon PA has systems in place to alert it of a possible cable failure when three outages from the same cable are reported and took “substantial action” to respond to the outage immediately. Moreover this regulation does not apply to an outage “requiring unusual repair,” which this outage certainly required. 52 Pa. Code §63.57(b).⁶ Under the standards of 52 Pa. Code § 63.24(a), Verizon PA took “reasonable measures” to restore service and minimize delay, but the repair was not a quick or easy job to accomplish. Verizon PA rerouted the customers and took this section of Cable No. 13 out of service to ensure that future flooding at this location will not cause a cable failure again, and ultimately Verizon PA plans to upgrade the entire Washington wire center to fiber optics and to retire the copper, which will provide the customers in that wire center with more resilient and weather/water resistant serving facilities. As part of this settlement Verizon PA is committing to having the fiber network in place by a date certain in the area affected by this outage.

⁶ See, e.g., *Russel Lerch v. Verizon Pennsylvania Inc.*, Docket No. C-20077297 (ALJ Weismandel’s Initial Decision at p. 12, adopted by Commission Final Order entered September 11, 2008) (“substantial action” does not require the repair to be completed within 24 hours.)

IV. Conclusion

For the foregoing reasons, Verizon PA respectfully requests that the Commission approve without modification the Joint Petition for Approval of Settlement Agreement of Verizon PA and I&E in the above captioned matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva", is centered on a light gray rectangular background.

Date: October 2, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-3003591
	:	
Verizon Pennsylvania LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statements in Support** dated October 2, 2020, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Email:

Suzan D. Paiva, Esq.
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Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
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