

Suzan DeBusk Paiva
Associate General Counsel



900 Race Street, 6th Floor
Philadelphia, PA 19107

Tel: (267) 768-6184
Suzan.D.Paiva@Verizon.com

January 4, 2021

Via eFile and Email

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

Re: Verizon Pennsylvania LLC and Verizon North LLC v. Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company; Docket No. C-2020-3019347

Dear Secretary Chiavetta:

Enclosed please find Verizon's Petition for Partial Reconsideration of the Commission's December 18, 2020 Opinion and Order in the above captioned matter.

Because Verizon's Petition includes certain Proprietary information, a Public Version is being e-filed, with the Proprietary Version being provided via email.

Very truly yours,

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

Suzan D. Paiva

SDP/sau
Enclosure

Via E-Mail

cc: Office of Special Assistants (ra-OSA@pa.gov)
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a true copy of Verizon's Petition for Partial Reconsideration, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 4th day of January, 2021.

VIA E-MAIL

Tori L. Giesler
tgiesler@firstenergycorp.com

Administrative Law Judge Joel Cheskis
jcheskis@pa.gov

David B. MacGregor
dmacgregor@postschell.com

Anthony D. Kanagy
akanagy@postschell.com

Devin T. Ryan
DRyan@postschell.com

Garrett P. Lent
GLent@postschell.com

Curtis L. Groves
Curtis.groves@verizon.com

Claire J. Evans
Cevans@wileyrein.com

Frank Scaduto
fscaduto@wiley.law

Christopher S. Huther
Cevans@wileyrein.com



Suzan D. Paiva
Pennsylvania Bar ID No. 53853
900 Race Street, 6th Floor
Philadelphia, PA 19107
(267) 768-6184

Attorney for Verizon

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC and	:	
Verizon North LLC	:	
	:	
v.	:	C-2020-3019347
Metropolitan Edison Company, Pennsylvania	:	
Electric Company and Penn Power Company	:	

**VERIZON’S PETITION FOR PARTIAL RECONSIDERATION
(PUBLIC VERSION)**

Pursuant to 52 Pa. Code § 5.572(a), Verizon¹ respectfully requests that the Commission reconsider the effective date for refunds in this pole attachment complaint proceeding and order FirstEnergy to refund all amounts it collected from Verizon in violation of law, in accordance with the applicable statute of limitations. By applying the new telecom rate formula in this case, the Commission made clear that it will enforce its regulations to ensure that telecommunications providers obtain the just, reasonable, and competitively neutral pole attachment rates required by 52 Pa. Code § 77.4(a) and 47 U.S.C. § 224(b), which was the right decision under the law and for Pennsylvania.² The Commission also correctly awarded refunds to Verizon for amounts that FirstEnergy unlawfully charged in excess of that rate. But the Commission erroneously limited those refunds to the date Verizon filed its complaint (November 20, 2019), a date not advocated by the parties or the recommended decision and one that is contrary to law.

The Commission should reconsider the effective date of its refund order because limiting refunds to the date of the complaint is contrary to the Commission’s regulation that provides for

¹ “Verizon” refers to Verizon Pennsylvania LLC (“Verizon PA”) and Verizon North LLC (“Verizon North”). “FirstEnergy” refers to Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Penn Power Company (“Penn Power”).

² See Opinion and Order, *Verizon Pa., et al. v. Metropolitan Edison Co.*, C-2020-3019347 (Dec. 18, 2020) (“*Opinion and Order*”).

a refund “consistent with the applicable statute of limitations.”³ Failing to enforce this regulation permits FirstEnergy to retain amounts collected under rates necessarily found to be unlawful.⁴ The outcome of this first major Commission decision under the new pole attachment regulations will influence industry actions beyond the Verizon/FirstEnergy dispute. Allowing this refund-limiting precedent to stand will create the wrong incentives. It risks generating additional pole attachment litigation, as parties rush to file complaints to preserve their refund claims. And it effectively rewards electric utilities that refuse to negotiate and continue to charge unlawfully high rates, as there is no financial downside to their dragging the matter out and forcing the telecommunications provider to file a complaint. This result would increase costs, unnecessarily consume administrative resources, and undermine the Commission’s efforts to promote broadband options for Pennsylvania consumers.

In support of this petition, Verizon states:

A. Background

1. Verizon is an incumbent local exchange carrier (“ILEC”) that provides broadband and other telecommunications services in Pennsylvania using facilities affixed to FirstEnergy’s utility poles. Although Verizon competes with cable companies and competitive local exchange carriers (“CLECs”) that also affix their facilities to FirstEnergy’s poles, Verizon has long paid FirstEnergy far higher pole attachment rates for use of comparable space on FirstEnergy’s poles.
2. Effective July 12, 2011, the Federal Communications Commission (“FCC”) held that ILECs, like their cable company and CLEC competitors, “are entitled to rates, terms and

³ 52 Pa. Code § 77.4(a) (incorporating 47 C.F.R. § 1.1407).

⁴ See Recommended Decision, *Verizon Pa., et al. v. Metropolitan Edison Co.*, C-2020-3019347, at 8–9 (Findings of Fact 10, 11) (Sep. 15, 2020) (“RD”).

conditions that are ‘just and reasonable’ in accordance with [47 U.S.C.] section 224(b)(1).”⁵ To comply with Section 224, “the FCC ordered electric utilities to charge competitively neutral [pole attachment] rates” to ILECs, including Verizon, as of July 12, 2011.⁶

3. “The new telecom rate is the just and reasonable competitively neutral rate” required by law, but FirstEnergy failed and refused to conform its rental rates as required by law and continued to charge Verizon “on average more than [REDACTED] the new telecom rate set by the Commission’s regulations.”⁷

4. Beginning in early 2012, Verizon tried unsuccessfully to negotiate just and reasonable rates with FirstEnergy through face-to-face meetings, telephone conferences, executive-level discussions, and correspondence.⁸ Also in 2012, Verizon placed FirstEnergy on express notice that it would seek refunds of the unlawful amounts FirstEnergy continued to demand if a complaint proceeding was required.⁹

5. FirstEnergy stated a willingness to negotiate, but stalled the parties’ rate discussions and ultimately made rate offers that would not have changed Verizon’s annual net rental payment in any material respect.¹⁰ Throughout the parties’ negotiations, FirstEnergy

⁵ *Opinion and Order* at 4.

⁶ RD at 8 (Finding of Fact 9).

⁷ *Id.* at 8–9 (Findings of Fact 10, 15).

⁸ *See* VZ St. 1.0, Ex. SCM-1 at VZ00014–21 (Mills Aff. ¶¶ 30–47).

⁹ *See* VZ St 1.0 at 2:13–16 (Mills Direct), Ex. SCM-1 at VZ00014–15 (Mills Aff. ¶ 31), Ex. SCM-5 at VZ00549–555 (FCC Exs. 17 & 18).

¹⁰ *See, e.g.*, VZ St. 1.0, Ex. SCM-1 at VZ00014, VZ00018 (Mills Aff. ¶¶ 33, 39); VZ St. 1.1 at 41:12–15, 43:14–44:17 (Mills Surrebuttal).

continued to demand that Verizon pay pole attachment rates that “average more than [REDACTED] the new telecom rate set by the Commission’s regulations.”¹¹

6. In 2018, the FCC was motivated by reports that electric utilities, like FirstEnergy, refused to comply with its order requiring competitively neutral rates as of July 12, 2011 and that the unlawfully high pole attachment rates continued to “inhibit broadband deployment.”¹² The FCC thus took an additional step to streamline enforcement of federal law by adopting a presumption, effective March 11, 2019, that the competitively neutral just and reasonable pole attachment rate for ILECs under most joint use agreements, including the parties’ agreements, is the new telecom rate guaranteed cable companies and CLECs.¹³ The FCC emphasized that the law continues to require competitively neutral just and reasonable pole attachment rates for ILECs as of July 12, 2011,¹⁴ and retained its authority to award refunds for pre-2018 time periods, consistent with the applicable statute of limitations.¹⁵

7. FirstEnergy still refused to comply with the law and so, on November 20, 2019, Verizon filed a pole attachment complaint against FirstEnergy at the FCC.

8. Meanwhile, this Commission opened a docket in 2018 and issued a rulemaking order in 2019 to speed enforcement of lawful pole attachment rates, terms, and conditions in

¹¹ See RD at 9 (Findings of Fact 15).

¹² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7768–69 (¶ 125) (2018) (“*Third Report and Order*”).

¹³ *Id.*

¹⁴ See, e.g., *id.* at 7770 (¶ 127 n.478) (stating that the requirement for just and reasonable rates issued in 2011 “continue[s] to apply”).

¹⁵ See 47 C.F.R. § 1.1407(a)(3); see also *Verizon Va. and Verizon S. v. Va. Elec. and Power Co.*, 32 FCC Rcd 3750, 3763 (¶ 28) (2017) (“*Dominion Order*”) (“[T]he Commission ... determined to allow monetary recovery dating back as far as the July 12, 2011 effective date of the order, ‘consistent with the applicable statute of limitations.’”).

Pennsylvania by reverse preempting the FCC’s jurisdiction while “adopt[ing], in whole, the FCC’s regulatory regime for pole attachment complaint procedures.”¹⁶ The Commission explained that it was exercising jurisdiction to more quickly realize the benefits of pole attachment rate reform in Pennsylvania, including the FCC’s requirement that, as of July 12, 2011, “rental rates for pole attachments [be] as low and close to uniform as possible, consistent with Section 224 of the Communications Act of 1934, as amended, to promote broadband deployment.”¹⁷

9. The Commission’s jurisdiction over pole attachments took effect on March 18, 2020. The Commission’s pole attachment regulations are in 52 Pa. Code, Chapter 77.

10. The Commission’s regulations require enforcement of just and reasonable pole attachment rates “to the full extent provided for in 47 U.S.C. § 224,”¹⁸ which requires just and reasonable, competitively neutral pole attachment rates for ILECs effective July 12, 2011.¹⁹

11. The Commission’s regulations also require enforcement of the FCC’s regulations at “47 CFR Chapter I, Subchapter A, Part 1, Subpart J,” which includes the July 12, 2011 requirement for just and reasonable rates for ILECs and the 2018 presumption that the just and reasonable rate for ILECs is the same new telecom rate guaranteed other communications providers in Pennsylvania.²⁰ The regulations also provide for refunds of amounts collected in violation of law as a remedy in a pole attachment complaint proceeding.²¹ With respect to

¹⁶ *Assumption of Comm’n Jurisdiction over Pole Attachments from the FCC*, No. L-2018-3002672, 2019 WL 4345730, at *7 (Aug. 29, 2019) (“*Final Rulemaking Order*”).

¹⁷ *Id.* at *2 (citation omitted).

¹⁸ 52 Pa. Code § 77.4(a).

¹⁹ *See, e.g.*, RD at 8 (Finding of Fact 9).

²⁰ 52 Pa. Code § 77.4(a) (incorporating 47 C.F.R. § 1.1413).

²¹ *Id.* (incorporating 47 C.F.R. § 1.1407).

refunds, “the Commission adopted Section 1.1407 of the FCC’s rules, which authorizes the termination of unjust and unreasonable rates and permits the ordering of refunds for such rates.”²²

12. On December 18, 2020, the Commission issued the *Opinion and Order* resolving Verizon’s pole attachment complaint. Consistent with its regulations, the Commission determined that Verizon is entitled to the new telecom rate and to refunds for the amounts FirstEnergy demanded and collected in excess of that rate.²³ However, the Commission erroneously limited the refund period to the date Verizon filed its complaint (November 20, 2019) instead of ordering the refunds back to the applicable statute of limitations date as provided by regulation.²⁴

B. ARGUMENT

13. The *Opinion and Order* incorrectly selected a November 20, 2019 effective date for refunds based on the date the complaint was filed. This is legal error because refunds must be awarded “consistent with the applicable statute of limitations.”²⁵ Here, the applicable statute of limitations extends back to July 12, 2011, the date when “the FCC ordered electric utilities,” including FirstEnergy, “to charge competitively neutral [pole attachment] rates” to ILECs, including Verizon, in order to comply with Section 224, which is now part of the Commission’s

²² *Opinion and Order* at 65.

²³ *Id.* at 67, 73.

²⁴ *Id.*; 52 Pa. Code § 77.4(a) (incorporating 47 C.F.R. § 1.1407(a)(3)).

²⁵ 52 Pa. Code § 77.4(a) (incorporating 47 C.F.R. § 1.1407(a)(3)).

regulations.²⁶ Alternatively, and at a minimum, the applicable statute of limitations is four years, consistent with the limitations period for a traditional contract claim under Pennsylvania law.²⁷

1. Reconsideration is Warranted Under Subsections 703(f) and (g) of the Public Utility Code.

14. This petition satisfies the *Duick* standard for granting reconsideration because it presents new and novel arguments not previously heard, and considerations that appear to have been overlooked or not addressed by the Commission.²⁸ Neither the parties nor the ALJ advocated the date of Verizon’s complaint as the cutoff date for refunds. As a result, the Commission did not have the opportunity to hear arguments specific to that date.

15. The refund portion of the *Opinion and Order* is likely to have broader, unintended consequences for future litigants, so correcting the incorrect effective date for refunds is also in the public interest.²⁹ The outcome of this first major Commission decision under the new pole attachment regulations will influence industry actions beyond the Verizon/FirstEnergy dispute. By limiting the availability of relief to the date a complaint is filed, the *Opinion and Order* incentivizes aggrieved parties to race to file a formal complaint to maximize their relief at the

²⁶ RD at 8 (Finding of Fact 9); *see also Verizon Maryland, LLC v. The Potomac Edison Co.*, No. 19-355, 2020 WL 6955432, at *15 (¶ 46) (FCC Nov. 23, 2020) (“*Potomac Edison Order*”); *Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569, 578–80 (W.D. Pa. 2017), *aff’d*, 733 F. App’x 595 (3d Cir. 2018).

²⁷ *See* 42 Pa. Cons. Stat. § 5525.

²⁸ *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553 (1982).

²⁹ *See Sunchick v. People’s Nat. Gas Co.*, No. C-00015128, 2002 WL 34560336, at *1 (Pa. PUC Mar. 14, 2002) (holding that whereas “a petition for rehearing under Subsection 703(f) of the Public Utility Code must allege newly discovered evidence . . . [a] petition for reconsideration under Subsection 703(g) [] may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part”); *see also AT&T Comm’ns of Pa. v. Pa. Pub. Util. Comm’n*, 568 A.2d 1362, 1364–65 (Pa. Cmwlth. 1990) (“While rehearing petitions must allege newly discovered evidence, it is clear that under Section 703(g) of the Code, there is no such requirement for petitions to amend or rescind.” (citation omitted)).

expense of a negotiated resolution, and likewise encourages electric utilities to impede pre-litigation negotiations without risk of financial penalty.

2. The Commission’s Regulations Require Refunds To Be Awarded Consistent with the Applicable Statute of Limitations.

16. In awarding Verizon a refund for the amounts it paid to FirstEnergy in excess of the new telecom rate, the Commission appropriately observed that Section 1.1407(a)(3) of the FCC’s rules, which is incorporated into the Commission’s regulations, controls.³⁰

17. Section 1.1407(a)(3) provides that a “refund ... will normally be the difference between the amount paid under the unjust and/or unreasonable rate ... and the amount that would have been paid under the rate ... established by the Commission, plus interest, **consistent with the applicable statute of limitations.**”³¹

18. The “‘applicable statute of limitations’ under section 1.1407(a)(3) of the [FCC]’s rules is the ... statute of limitations for contract actions under [State] law.”³²

19. The Commission’s decision to limit Verizon’s refunds to the date of the complaint, rather than “the applicable statute of limitations,” was thus inconsistent with the Commission’s regulations and legal error.³³

³⁰ *Opinion and Order* at 67 n.42.

³¹ 52 Pa. Code § 77.4(a) (incorporating 47 C.F.R. § 1.1407(a)(3)) (emphasis added).

³² *Potomac Edison Order*, 2020 WL 6955432, at *15 (¶ 46); *see also Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018) (quoting *Cty. of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985)). *See also Spiegler v. District of Columbia*, 866 F.2d 461, 463–64 (D.C. Cir. 1989) (“When Congress has not established a statute of limitations for a federal cause of action, it is well-settled that federal courts may ‘borrow’ one from an analogous state cause of action, provided that the state limitations period is not inconsistent with underlying federal policies.”).

³³ *See, e.g., Herdelin v. Greenberg*, 328 A.2d 552, 554 (Pa. Commw. 1974) (“Authorized regulations of an administrative agency have the force and effect of law and bind the agency equally with others.”).

3. The Applicable Statute of Limitations Extends Back to July 12, 2011, or at Least to November 20, 2015, Four Years Preceding the Complaint.

20. The traditional statute of limitations for contract actions under Pennsylvania law is four years.³⁴ Accordingly, at a minimum, the Commission was required to apply the traditional four-year “statute of limitations for contract actions under [Pennsylvania] law” and award Verizon a refund for overpayments as of November 20, 2015.³⁵

21. However, for contracts like the joint use agreements that do not have a fixed termination date, Pennsylvania adheres to the continuing contract doctrine.³⁶

22. Under the continuing contract doctrine, “the statute of limitations does not begin to run until the termination of the contractual relationship between the parties.”³⁷ Accordingly, damages are available for the time period covered by the continuing contract, plus a four-year period following termination of the contract.³⁸ The continuing contract doctrine thus extends the period covered by the traditional contract statute of limitations, which would provide four years of damages prior to Verizon’s complaint.³⁹

³⁴ See 42 Pa. Cons. Stat. § 5525.

³⁵ *Potomac Edison Order*, 2020 WL 6955432, at *15 (¶ 46); 42 Pa. Cons. Stat. § 5525. Indeed, “[p]roviding a refund in this case is consistent with Section 1312 of the Public Utility Code,” which also provides for a four-year statute of limitations. See RD at 65 (citing 66 Pa.C.S. § 1312(a)); see also *id.* at 74 (Conclusion of Law 25).

³⁶ See *Beltz*, 279 F. Supp. 3d at 578–80 (applying Pennsylvania contract law).

³⁷ *Thorpe v. Schoenbrun*, 195 A.2d 870 (Pa. Super. Ct. 1963) (“If services are rendered under an agreement which does not fix any certain time for payment or for the termination of the services, the contract will be treated as continuous, and the statute of limitations does not begin to run until the termination of the contractual relationship between the parties.”) (internal quotation omitted).

³⁸ See *Beltz*, 279 F. Supp. 3d at 578–80.

³⁹ See *id.* at 578.

23. Because the joint use agreements are continuing contracts, all time periods since the July 12, 2011 effective date of the *Pole Attachment Order* are covered by the applicable statute of limitations in this case.

24. The Commission's failure to award refunds of amounts FirstEnergy unlawfully charged since July 12, 2011 violates its regulations and was an error of law.⁴⁰

4. As Written, the *Opinion and Order* Would Undermine the Commission's Stated Policies and Create Perverse Incentives for Future Litigants.

25. The Commission exercised jurisdiction over pole attachments to quickly and comprehensively achieve pole attachment rate reform for Pennsylvania consumers, and it correctly did so with its well-reasoned decision to adopt the new telecom rate for ILEC pole attachments under the facts of this case.⁴¹ But the refund portion of the *Opinion and Order* is also important to achieving the Commission's objectives. A decision to provide refunds only as of the filing date of a complaint will have industry-wide implications that will undermine the Commission's deployment goals and needlessly increase pole attachment litigation in Pennsylvania.

26. A refund period that runs from the filing of a complaint "discourages pre-complaint negotiations between the parties," "fails to make injured attachers whole, and is inconsistent with the way that claims for monetary recovery are generally treated under the law."⁴² A precedent limiting refunds to the date of the complaint creates an industry-wide

⁴⁰ See *Herdelin*, 328 A.2d at 554; see also *Borough of Bedford v. Commonwealth*, 972 A.2d 53, 61 (Pa. Commw. 2009).

⁴¹ See, e.g., *Final Rulemaking Order*, 2019 WL 4345730, at *23 (noting "matters of pole attachments are critical to deploying broadband in Pennsylvania").

⁴² *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5289 (¶ 110) (2011) ("*Pole Attachment Order*").

disincentive to negotiate and encourages intransigence by electric utilities and a rush to litigation by telecommunications providers. The refund risk for failing to charge just and reasonable rates should fall on the electric utility that is demanding and collecting unlawful rates, not the communications provider that has been forced to pay them.

27. Thus, the Commission’s concern that awarding relief before November 20, 2019 “would mean applying the new rates during a period when the Parties were still” negotiating is misplaced.⁴³ If refunds for overpayments made prior to or during pre-complaint negotiations were off-limits to an aggrieved party, no plaintiff would ever continue negotiating at the expense of potential recovery. That the parties were still negotiating does not lessen the injury to Verizon during that time. Having correctly found that FirstEnergy charged Verizon unjust and unreasonable rates, the Commission’s regulations and good policy require Verizon to be made whole with refunds consistent with the applicable statute of limitations.

28. Beginning refunds on the complaint’s filing date improperly excuses FirstEnergy’s unlawful conduct. The Commission’s regulations incorporate the requirements of federal law “to the full extent provided for in 47 U.S.C. § 224,”⁴⁴ and 47 U.S.C. § 224(b) required FirstEnergy to charge just and reasonable, competitively neutral pole attachment rates as of July 12, 2011.⁴⁵ The Commission has determined the competitively neutral rates that FirstEnergy was required by law to charge since July 12, 2011⁴⁶ and found that FirstEnergy charged Verizon rates that were, “on average more than [REDACTED]” the rates required by law.⁴⁷

⁴³ See *Opinion and Order* at 67.

⁴⁴ 52 Pa. Code § 77.4(a).

⁴⁵ RD at 8 (Finding of Fact 9).

⁴⁶ See *Opinion and Order* at 42, 51–55; RD at 8–9 (Findings of Fact 11, 15).

⁴⁷ See RD at 8 (Finding of Fact 10) (emphasis added).

The Commission’s date-of-filing refund rule effectively absolves FirstEnergy of a near-decade of illegal conduct that undermined the Commission’s broadband goals for Pennsylvanians.

29. And the *Opinion and Order* is mistaken in suggesting that the FCC ordered “just and reasonable” rates for ILECs as of July 12, 2011 “as a policy matter to reduce pole attachment rates for CLECs.”⁴⁸ The FCC instead recognized that “the rates charged for pole access are likely to affect deployment decisions for all telecommunications carriers, *including [I]LECs*.”⁴⁹ Verizon, like other ILECs, is a provider of broadband and other telecommunications services, and the FCC expected that its proper interpretation of 47 U.S.C. § 224 would reduce ILECs’ aggregate pole attachment payments by \$320 to \$350 million per year beginning July 12, 2011—amounts that could be redeployed to further the Commission’s goals.⁵⁰

30. The Commission’s date-of-filing refund rule will also set Pennsylvania behind other states that have not reverse-preempted the FCC’s jurisdiction. In those states, the FCC has confirmed it will provide refunds for the entirety of “the applicable statute of limitations,” including time periods before the complaint was filed.⁵¹ The FCC recently enforced this requirement in related litigation between the parties’ affiliates in Maryland, where the FCC awarded refunds for “years prior to the filing of the Complaint” consistent with the relevant state contract law statute of limitations.⁵² Electric utilities like FirstEnergy should not be excused

⁴⁸ See *Opinion and Order* at 4.

⁴⁹ *Pole Attachment Order*, 26 FCC Rcd at 5330–31 (¶ 208) (emphasis added).

⁵⁰ *Id.*

⁵¹ 47 C.F.R. § 1.1407(a)(3); see also *Potomac Edison Order*, 2020 WL 6955432, at *17 (¶ 52); *Dominion Order*, 32 FCC Rcd at 3763–64 (¶ 28).

⁵² See *Potomac Edison Order*, 2020 WL 6955432, at *17 (¶ 52).

from violating the law during the pre-complaint period in Pennsylvania where the Commission instead exercised jurisdiction with the express intent to “uphold the status quo.”⁵³

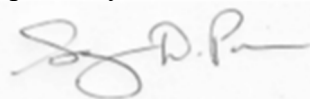
31. The Commission should revise its *Opinion and Order* to require refunds as of July 12, 2011. FirstEnergy was required by law to charge Verizon just and reasonable, competitively neutral rates as of July 12, 2011 and was on express notice in 2012 that Verizon would seek refunds of the unlawful amounts FirstEnergy demanded if a complaint proceeding was required.⁵⁴ It would set a counterproductive precedent to allow FirstEnergy to profit from its near decade-long violation of law to the detriment of Pennsylvania consumers.

32. By reconsidering and revising this one aspect of its *Opinion and Order* to conform with its regulations, the Commission will remove the incentive for similarly protracted and costly disputes and encourage the electric industry to quickly comply with the Commission’s regulations voluntarily and without unnecessary litigation—all to the benefit of the Commission’s deployment goals and Pennsylvania consumers.

C. CONCLUSION

33. For the foregoing reasons, Verizon respectfully requests that the Commission reconsider the effective date of its refund award and require FirstEnergy to refund all amounts it unlawfully collected from Verizon since July 12, 2011 or, in the alternative, since November 20, 2015 (four years before Verizon filed the pole attachment complaint) as required by regulation.

Respectfully submitted,



Suzan D. Paiva (Atty ID No. 53853)

⁵³ *Final Rulemaking Order*, 2019 WL 4345730, at *7.

⁵⁴ 52 Pa. Code § 77.4(a) (incorporating 47 U.S.C. § 224(b)); *see also* VZ St 1.0 at 2:13–16 (Mills Direct Testimony), Ex. SCM-1 at VZ00014–15 (Mills Aff. ¶ 31), Ex. SCM-5 at VZ00549–555 (FCC Exs. 17 & 18).

Verizon
900 Race St., 6th Floor
Philadelphia, PA 19107
Telephone: 267-768-6184
Suzan.D.Paiva@verizon.com

Christopher S. Huther (*pro hac vice* pending)
Claire J. Evans (Atty ID No. 90091)
Frank Scaduto (*pro hac vice* pending)
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
chuther@wiley.law
cevens@wiley.law
fscaduto@wiley.law

Curtis L. Groves (*pro hac vice* pending)
Verizon
1300 I Street NW
Suite 500 East
Washington, DC 20005
(202) 515-2179
curtis.groves@verizon.com

Counsel for Verizon Pennsylvania LLC and Verizon North LLC

Dated: January 4, 2021