

VERIZON PENNSYLVANIA LLC
AND VERIZON NORTH LLC
STATEMENT NO. 1.2

VERIZON PENNSYLVANIA LLC AND
VERIZON NORTH LLC

V.

METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
AND PENN POWER COMPANY

DOCKET NO. C-2020-3019347

VERIZON PENNSYLVANIA LLC
AND VERIZON NORTH LLC

STATEMENT NO. 1.2
(SURREJOINDER TESTIMONY)

WITNESS: Stephen C. Mills

DATED: July 2, 2020

PUBLIC VERSION

Table of Contents

- I. Introduction.....1
- II. Response to Mr. Schafer’s Rejoinder Testimony (Statement 1-RJ).....5
- III. Response to Mr. Zarakas’s and Ms. Savage’s Rejoinder Testimony
(Statements 2-RJ and 3-RJ)28
- IV. Response to Mr. Coleman’s Rejoinder Testimony (Statement 4-RJ).....28
- V. Response to Mr. Carlin’s Rejoinder Testimony (Statement 6-RJ)34
- VI. Response to Mr. Guo’s Rejoinder Testimony (Statement 7-RJ)41

1 **I. Introduction**

2 **Q. Please state your name, title and business address.**

3 A. My name is Stephen C. Mills. I am a Consultant – Contract Management in the Wireline
4 Network Operations Division of Verizon Services Corporation. My business address is
5 502 E. Piedmont Street, Culpeper, VA 22701.

6 **Q. Have you previously submitted testimony in this case?**

7 A. Yes. I submitted direct testimony on April 21, 2020 and surrebuttal testimony on June
8 18, 2020.

9 **Q. On whose behalf are you submitting this surrejoinder testimony?**

10 A. I am submitting this surrejoinder testimony on behalf of Verizon Pennsylvania LLC and
11 Verizon North LLC (collectively, “Verizon”).

12 **Q. What is the purpose of your surrejoinder testimony?**

13 A. The purpose of my surrejoinder testimony is to respond to allegations in the rejoinder
14 testimony submitted by witnesses for the Pennsylvania operating subsidiaries of
15 FirstEnergy Corp. known as Metropolitan Edison Company (“Met-Ed”), Pennsylvania
16 Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”)
17 (collectively, “FirstEnergy”).

18 **Q. Are you sponsoring exhibits with your surrejoinder testimony?**

19 A. Yes. I am sponsoring Verizon Exhibits SCM-45 to SCM-49.

1 **Q. What is your overall reaction to the rejoinder testimony of FirstEnergy’s witnesses?**

2 A. FirstEnergy acknowledges many errors in its rebuttal testimony and continues to ignore
3 the requirements of the regulations the Commission adopted last year, rules that are
4 binding on the parties and the Commission in this complaint case.

5 FirstEnergy’s witnesses advance two sets of arguments in their faulty attempt to continue
6 to collect exceptionally high rental rates from Verizon.

7 First, they concoct a new rate methodology that is directly contrary to the Commission’s
8 regulations—including the FCC’s “new telecom” rate methodology. FirstEnergy cannot
9 justify its excessive rental rates under the new telecom rate methodology, so its witnesses
10 attack the methodology and improperly advance a novel methodology that was not
11 adopted by Congress, the FCC, or this Commission. The Commission adopted the FCC’s
12 methodology to “avoid regulatory uncertainty and ... promote broadband investment
13 across Pennsylvania,”¹ a policy objective FirstEnergy is not free to second guess.

14 Second, FirstEnergy’s witnesses attempt to justify higher pole attachment rates under the
15 regulations the Commission adopted, although these faulty arguments are not sufficient to
16 support FirstEnergy’s attempt to charge Verizon higher rates than it charges Verizon’s
17 competitors. These regulations include a principle of “competitive neutrality.”

18 Competitive neutrality means FirstEnergy must charge Verizon, an incumbent local
19 exchange carrier (“ILEC”), the same “new telecom rate” it must charge competing cable
20 companies and competitive local exchange carriers (“CLECs”) for space on FirstEnergy’s

¹ *Assumption of Comm’n Jurisdiction over Pole Attachments from the FCC*, Final Rulemaking Order, No. L-2018-3002672, 2019 WL 4345730, at *7 (Pa. PUC Aug. 29, 2019) (“*Final Rulemaking Order*”).

1 poles, unless FirstEnergy can demonstrate that it provides Verizon a net material
2 advantage under the parties' joint use agreements as compared to FirstEnergy's license
3 agreements with cable companies and CLECs.

4 FirstEnergy does not provide Verizon a net material advantage, as I discuss below, and
5 therefore the Commission's regulations limit FirstEnergy to charging no more than the
6 "new telecom rate." But even if it had demonstrated a net material advantage – which it
7 did not – its rates still far exceed the upper bound of the allowable rates that may be
8 charged an ILEC under the Commission's rules.

9 FirstEnergy also fails to present reliable evidence to rebut any of the rate formula
10 presumptions required by the Commission's rules, such as the space Verizon occupies on
11 a pole. FirstEnergy's arguments about these inputs are designed to inflate the rate it
12 charges Verizon and do not survive scrutiny.

13 This case is before the Commission because it agreed with the FCC that "rental rates for
14 pole attachments that are as low and close to uniform as possible ... promote broadband
15 deployment."² This is more important than ever. The Commission's website explains:

16 It is indisputable that a successful telecommunications infrastructure is
17 vital in the 21st century. With an expansive and established broadband
18 service, Pennsylvania will be even more attractive to businesses; and, a
19 wide-reaching broadband network will help schools to provide a more
20 interactive learning environment in order to bridge the digital divide.
21 Increased telecommunication through broadband has many implications -
22 some of which haven't even been discovered yet.³

² See *id.* at *2 (citing National Broadband Plan).

³ See Broadband & High-Speed Internet Service, available at http://www.puc.pa.gov/consumer_info/telecommunications/broadband_high_speed_internet_service.aspx.

1 The Commission accepted jurisdiction to “assist policymakers in their efforts to expand
2 access to both wireline and wireless broadband services for all Commonwealth residents,
3 businesses, schools, hospitals” through prompt enforcement of the FCC’s regulations.⁴
4 Enforcing the regulations to prevent FirstEnergy from continuing to collect exceptionally
5 high rental rates from Verizon and to require a refund of Verizon’s prior overpayments
6 would be a substantial first step in achieving those goals.

7 And the rates FirstEnergy charges Verizon are excessive. A comparison of the rates
8 FirstEnergy charges Verizon to the rates FirstEnergy’s witness calculated using the
9 FCC’s new telecom rate formula shows FirstEnergy has been charging Verizon rates
10 averaging about *three times* the new telecom rates FirstEnergy calculated:

Comparison of per-pole rates using straight average of 2011-2018 rates	New Telecom Rate	Rate charged Verizon	Comparison
Verizon’s Use of Met-Ed’s Poles	\$8.90		
Verizon’s Use of Penelec’s Poles	\$7.03		
Verizon’s Use of Penn Power’s Poles	\$9.77		

11 In other words, if Verizon were a CLEC or a cable company, it would enjoy statutorily
12 guaranteed access to FirstEnergy’s poles and pay about a third of the rate it has been
13 paying to use comparable space. But Verizon is an ILEC, so Verizon’s access is not
14 guaranteed by statute and Verizon has been paying FirstEnergy about [REDACTED] times the
15 new telecom rates FirstEnergy’s witness calculates. There is no way to square

⁴ *Assumption of Comm’n Jurisdiction over Pole Attachments from the FCC*, No. L-2018-3002672, Notice of Proposed Rulemaking, 2018 WL 3533538, at *5 (Pa. PUC July 12, 2018) (“NPRM”).

1 FirstEnergy’s defense of its exceptionally high rates with the plain letter of the
2 Commission’s regulations or with the Commission’s broadband deployment priorities.

3 **II. Response to Mr. Schafer’s Rejoinder Testimony (Statement 1-RJ)**

4 **Q. Do you have a reaction to Mr. Schafer’s summary of FirstEnergy’s rejoinder**
5 **testimony?**

6 A. Yes. It reads like a legal brief. I disagree with Mr. Schafer’s legal analysis, but will
7 leave the legal arguments to the briefs. Mr. Schafer includes many fundamental factual
8 errors in his legal brief disguised as testimony. For example, he refers to “two relevant
9 agreements,”⁵ but Verizon and FirstEnergy are party to ten joint use agreements⁶ and
10 FirstEnergy has 185 license agreements with CLECs and cable companies.⁷ He says
11 Verizon “wants to change one term in the joint use agreements, *i.e.*, the price it pays to
12 FirstEnergy to attach to poles,”⁸ even though I reinforced in my surrebuttal testimony the
13 point Verizon has made consistently throughout the parties’ near-decade of negotiations
14 and in its filings at the FCC and here: when Verizon’s rates are lowered to just and
15 reasonable levels, Verizon will *also* change the rate FirstEnergy pays to attach to
16 Verizon’s poles so it is proportional to the rate set in this case.⁹ He also says I
17 “incorrectly identif[ied] several alleged errors” in FirstEnergy’s field audit.¹⁰ As

⁵ See FE Statement 1-RJ at 4:1-2 (Schafer Rejoinder Testimony).

⁶ See Ex. SCM-2; *see also* Ex. SCM-8 ¶ 3 (Joint Statement).

⁷ See Ex. SCM-13 (Response to Verizon Interrogatory Set II, No. 20).

⁸ FE Statement 1-RJ at 4:5-7 (Schafer Rejoinder Testimony).

⁹ See VZ Statement 1.1 at 25:4-10, 31:13-15 (Mills Surrebuttal Testimony).

¹⁰ FE Statement 1-RJ at 5:10 (Schafer Rejoinder Testimony).

1 FirstEnergy’s other witnesses admit, the field audit was replete with errors and my
2 concerns were warranted.

3 **Q. Mr. Schafer takes issue with two statements you made about the parties’**
4 **negotiations. Do you have a response?**

5 A. Yes. Mr. Schafer did not add anything new. He disagrees that FirstEnergy refused to
6 offer material rate reductions and points to “a conceptual proposal to use the new telecom
7 rate and CLEC agreement.”¹¹ I explained the many flaws with this “concept” previously,
8 including that it did not guarantee Verizon materially lower rental rates.¹² The “concept”
9 also required Verizon to “transition[] away from pole ownership”¹³ and the FCC recently
10 confirmed an ILEC “should not be required to sell its poles in order to receive a just and
11 reasonable [pole attachment] rate.”¹⁴ For these and other reasons previously explained,
12 Mr. Schafer’s proposal was a nonstarter.

13 Mr. Schafer also says he disagrees with my characterization of FirstEnergy’s refusal to
14 sell Verizon poles, which would have reduced Verizon’s annual net rent to FirstEnergy.¹⁵
15 But Mr. Schafer does not deny what I said: that FirstEnergy refused to sell poles. He
16 instead repeats his prior testimony by stating FirstEnergy had a reason for its refusal. I
17 disagree the purported reason was valid, for reasons I previously explained.¹⁶

¹¹ FE Statement 1-RJ at 3:14-16, 7:1-8:5 (Schafer Rejoinder Testimony).

¹² VZ Statement 1.1 at 45:16-48:2 (Mills Surrebuttal Testimony).

¹³ FE Statement 1-RJ at 3:14-16, 7:1-8:5 (Schafer Rejoinder Testimony).

¹⁴ *AT&T Fla. v. Fla. Power and Light Co.*, 2020 WL 2568977, at *5 (¶ 12) (FCC 2020) (“*AT&T v. FPL Order*”).

¹⁵ FE Statement 1-RJ at 8:7-14 (Schafer Rejoinder Testimony).

¹⁶ *See, e.g.*, VZ Statement 1.1 at 28:3-10, 62:5-8 (Mills Surrebuttal Testimony).

1 **Q. Mr. Schafer says FirstEnergy demonstrated that Verizon receives net material**
2 **advantages under the joint use agreements. Do you agree?**

3 A. No. This section of Mr. Schafer's rejoinder testimony simply summarizes Mr. Schafer's
4 rebuttal testimony.¹⁷ It is no more valid the second time around, and I already responded
5 to it.¹⁸

6 **Q. Mr. Schafer says FirstEnergy cannot quantify the value of net material competitive**
7 **advantages to Verizon because it is not Verizon. Do you agree?**

8 A. No. Mr. Schafer cannot quantify the value of net material competitive advantages to
9 Verizon *because there are none*. If FirstEnergy provides Verizon net material benefits
10 under the terms and conditions of FirstEnergy's joint use agreements as compared to the
11 terms and conditions of FirstEnergy's license agreements with Verizon's competitors,
12 Mr. Schafer would have access to that information. Mr. Schafer would rather set the pole
13 attachment rates FirstEnergy may charge based on speculation that there may be a
14 difference somewhere between Verizon and Verizon's competitors that does not impact
15 FirstEnergy's bottom line. That would be a windfall to FirstEnergy.

16 **Q. Mr. Schafer also says FirstEnergy cannot quantify the value of alleged advantages**
17 **in this case because Verizon denied FirstEnergy relevant discovery. Do you agree?**

18 No. I addressed this unfounded claim in my surrebuttal testimony.¹⁹ Also, FirstEnergy's
19 affiliate, Potomac Edison, sought the same discovery at the FCC and (unlike here) moved
20 to compel responses to all its requested discovery. The FCC found "Potomac Edison has
21 failed to demonstrate that the requested information is relevant to a determination of

¹⁷ Compare FE Statement 1-RJ at 8:18-10:9 (Schafer Rejoinder Testimony) with FE Statement 1-R at 31:11-37:9 (Schafer Rebuttal Testimony).

¹⁸ VZ Statement 1.1 at 7:3-34:4 (Mills Surrebuttal Testimony).

¹⁹ *Id.* at 11:11-12:2.

1 whether Potomac Edison’s rates are just and reasonable or whether the terms and
2 conditions in the parties’ joint use agreement give Verizon a material advantage over
3 other telecommunications attachers.”²⁰

4 Mr. Schafer’s suggestion that Verizon does not track certain information FirstEnergy
5 would like to have with the “motive” of denying FirstEnergy information it could use to
6 charge higher rates is absurd.²¹ Verizon does not track this information because there is
7 no business reason to do so, and did not track this information before its rate dispute with
8 FirstEnergy began. FirstEnergy also does not have “specific labor code[s] available to
9 accurately determine the effort and labor costs” involved when it completes work “with
10 internal company labor.”²² FirstEnergy sought highly specific information about a
11 segment of Verizon’s network that cannot be separately tracked without significantly
12 increasing Verizon’s costs.

13 **Q. Mr. Schafer criticizes your comparison of the rates FirstEnergy charged Verizon to**
14 **old telecom rates calculated using the rate methodology that pre-dated the 2011 new**
15 **telecom rate formula. Please respond.**

16 Mr. Schafer’s sole criticism is that the old telecom rates in the comparison were not
17 calculated using three feet as the “space occupied” input instead of the presumptive one-
18 foot space occupied input contained in the Commission’s adopted regulations.²³ This is
19 an entirely new argument in this case, although Mr. Schafer pressed it during the parties’
20 negotiations. It is an invalid argument. Mr. Schafer relies on space *designations* in the

²⁰ Ex. SCM-45 (May 22, 2020 Letter Ruling).

²¹ See FE Statement 1-RJ at 11:15-12:3 (Schafer Rejoinder Testimony).

²² Ex. SCM-12 (Response to Verizon Interrogatory Set II, No. 13).

²³ See 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1410.

1 Penelec and Penn Power joint use agreements (there are no space designations in the
2 Met-Ed joint use agreements), but the Commission’s adopted regulations calculate rates
3 based on “space *occupied*”—not space designated.²⁴ Verizon does not “occupy” three
4 feet of space on FirstEnergy’s poles, and Mr. Schafer cannot show otherwise.
5 FirstEnergy’s quick field audit was designed to artificially increase the measurement of
6 space occupied by Verizon by “deem[ing] [Verizon] to occupy six (6) inches of clearance
7 above its highest usable space attachment and six (6) inches below its lowest usable space
8 attachment.”²⁵ It nonetheless resulted in measurements showing Verizon occupies about
9 one foot of space on FirstEnergy’s poles.²⁶

10 Mr. Schafer says his unfounded criticism is “significan[t]” because “a CLEC or cable
11 attacher pays a per-attachment rate.”²⁷ Mr. Schafer is wrong about this also. The
12 Commission’s adopted rate formulas “determine the maximum just and reasonable rate
13 *per pole*”²⁸ and Mr. Schafer calculated and included *per pole* rates in his rebuttal
14 testimony.²⁹ If FirstEnergy is charging CLEC and cable companies per-attachment rates,

²⁴ See 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1406(d).

²⁵ FE Statement 6-R, Ex. SC-1 (Carlin Rebuttal Testimony).

²⁶ FE Statement 7-R, Ex. CG-1 at Table 3 (Guo Rebuttal Testimony) (alleging Verizon occupies [REDACTED] feet on Met-Ed’s poles, [REDACTED] feet on Penelec’s poles, and [REDACTED] feet on Penn Power’s poles).

²⁷ FE Statement 1-RJ at 13:4-6 (Schafer Rejoinder Testimony).

²⁸ *In Re Amendment of Commission’s Rules & Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12122 (¶ 31) (2001) (“*Consolidated Partial Order*”) (emphasis added).

²⁹ See FE Statement 1-R at 16:1-17:2 (Schafer Rebuttal Testimony).

1 it is overcharging them, further distorting competition and increasing the cost of
2 broadband for Pennsylvania consumers.

3 **Q. Mr. Schafer disagrees with your statement that “Verizon and its competitors should**
4 **require the same make-ready work to attach their facilities to the same poles.” Do**
5 **you stand by your prior testimony?**

6 A. Yes. The facilities Verizon and its competitors deploy to FirstEnergy’s poles are of
7 comparable size and so require comparable space on poles with the same existing
8 attachments. Mr. Schafer figures that there could be a pole where Verizon has existing
9 facilities and its competitor does not. With respect to that pole, Mr. Schafer says,
10 Verizon could overlash its existing facility, but Verizon’s competitor could not, and so
11 they would require different make-ready.³⁰ Mr. Schafer does not support his hypothesis
12 with evidence, and the photographs of poles in the record show that FirstEnergy’s poles
13 already hold the facilities of Verizon *and* Verizon’s competitors. The fact is Verizon’s
14 principal competitors have also been deploying extensive networks for decades and have
15 been overlashing their existing facilities for decades.³¹ But assuming Mr. Schafer’s
16 hypothetical scenario exists, the opposite scenario must also exist, such that Verizon
17 would require make-ready for a new attachment, but its competitor could overlash an
18 existing facility. In the end, the make-ready Verizon and its competitors require to attach
19 to FirstEnergy’s poles should be comparable.

³⁰ See FE Statement 1-RJ at 13:12-20 (Schafer Rejoinder Testimony).

³¹ In 2001, the FCC explained that cable companies had been overlashing “for decades.” See *Consolidated Partial Order*, 16 FCC Rcd at 12140 (¶ 73). FirstEnergy does not know the extent to which Verizon’s competitors have overlash, so cannot show they have done so to a lesser extent than Verizon. See Ex. SCM-14 (Response to Verizon Interrogatory Set III, No. 5).

1 **Q. Mr. Schafer says it is “pure speculation” that Verizon incurs make-ready costs that**
2 **are comparable to the costs incurred by its competitors. What is your response?**

3 A. It is not “pure speculation.” First, Verizon does not need to track the make-ready costs it
4 incurs to know that labor and material costs to complete the same tasks should be
5 comparable in the same general area. Second, Verizon does not need to track the make-
6 ready costs it incurs to know that Verizon performs significant make-ready to
7 accommodate FirstEnergy’s facilities on Verizon’s poles, which FirstEnergy does not
8 require of Verizon’s competitors because they do not own poles.³²

9 **Q. Mr. Schafer says the fact that Verizon’s network is older—meaning Verizon**
10 **attached to some of FirstEnergy’s poles earlier in history—could increase the**
11 **amount of work required for Verizon’s competitors to attach to FirstEnergy’s poles.**
12 **Do you agree?**

13 A. No. Mr. Schafer limits his speculation to a scenario in which Verizon is reserved three
14 feet of space on FirstEnergy’s poles which, he says, “diminishes the amount of space that
15 may be presently allocated to other communications companies.”³³ But Verizon does not
16 and cannot reserve of any more space on FirstEnergy’s poles than it uses.³⁴ And Verizon
17 uses about a foot of space on average, as FirstEnergy confirmed during its quick field
18 audit.³⁵ The photographs in the record show there is plenty of room for Verizon and its

³² See, e.g., Ex. SCM-1 at VZ00025-28 (Mills Aff.); VZ Statement 1.1 at 17:5-18:9 (Mills Surrebuttal Testimony).

³³ See FE Statement 1-RJ at 14:8-12 (Schafer Rejoinder Testimony).

³⁴ See 52 Pa. Code § 77.4(a) (incorporating 47 U.S.C. § 224(f)); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (¶ 1170) (1996) (“Permitting an [I]LEC, for example, to reserve space for local exchange service ... would favor the future needs of the [I]LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.”).


³⁵ FE Statement 7-R, Ex. CG-1 at Table 3 (alleging Verizon occupies [REDACTED] feet on Met-Ed’s poles, [REDACTED] feet on Penelec’s poles, and [REDACTED] feet on Penn Power’s poles).

1 competitors on FirstEnergy’s poles without the need for much (if any) make-ready to
2 accommodate another communications attacher.

3 **Q. Mr. Schafer says Verizon “is rarely if ever billed for make-ready work” while**
4 **Verizon’s competitors are. What is your response?**

5 A. The reason FirstEnergy may not bill Verizon as often for make-ready work is included in
6 the question that Mr. Schafer answered: it is because “Verizon completes much of its
7 own make-ready work when attaching to FirstEnergy’s poles” and “incurs the cost of this
8 make-ready work directly by performing the work itself.”³⁶ FirstEnergy does not need to
9 bill Verizon for make-ready work that FirstEnergy does not perform.

10 **Q. Please respond to Mr. Schafer’s discussion of your pole replacement cost analysis.**

11 A. I showed in my direct testimony that over about a five-year period, FirstEnergy required
12 Verizon to incur the cost to replace 569 more poles and to transfer its facilities to 3,687
13 more replacement poles than Verizon required of FirstEnergy.³⁷ FirstEnergy’s license
14 agreements 

15 

16 .³⁸

17 In Mr. Schafer’s rebuttal testimony, he challenged 28 of the pole replacements I included
18 in my analysis, so I noted in my surrebuttal testimony that he left undisputed hundreds of
19 pole replacements and thousands of transfers FirstEnergy required of Verizon, but not

³⁶ FE Statement 1-RJ at 15:1-3 (Schafer Rejoinder Testimony).

³⁷ Ex. SCM-1 at VZ00026-28 (Mills Aff.).

³⁸ See, e.g., Ex. SCM-3 at VZ00507 (Bell License, Art. IV(1a)).

1 Verizon’s competitors.³⁹ Mr. Schafer now says it is appropriate to ignore these costs
2 when setting Verizon’s rates because “[r]eplacing poles at the request of the joint use
3 partner is a cost of doing business as a pole owner.”⁴⁰

4 Mr. Schafer thus admits FirstEnergy imposes *higher costs* on Verizon than FirstEnergy
5 imposes on Verizon’s competitors by virtue of the joint use agreements. He also admits
6 he has *not* accounted for this disadvantage in his analysis when this is certainly a net
7 detriment to Verizon. These admissions are fatal to Mr. Schafer’s argument Verizon
8 should pay a *higher* rate than its competitors based on alleged advantages. The
9 Commission’s regulations require that competitively neutral pole attachment rates be set
10 based on an analysis of competitive advantages *and* disadvantages.⁴¹

11 The rest of Mr. Schafer’s response to my pole replacement analysis is puzzling. He first
12 says pole owners recover some pole replacement costs through rates charged third-parties
13 to attach to their poles,⁴² suggesting that FirstEnergy may be double-collecting pole
14 replacement costs from its attaching entities.⁴³ He then says the “benefit to Verizon for
15 pole replacement is that FirstEnergy charges Verizon lower costs than those actual costs

³⁹ I also explained why Mr. Schafer’s number was overstated in my surrebuttal testimony. *See* VZ Statement 1.1 at 17:1-9 (Mills Surrebuttal Testimony).

⁴⁰ FE Statement 1-RJ at 16:13-14 (Schafer Rejoinder Testimony).

⁴¹ *See, e.g., 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, 5335 (¶ 216 n.654) (2011) (“*Pole Attachment Order*”) (“A failure to weigh, and account for, the different rights *and responsibilities* in joint use agreement could lead to marketplace distortions.”) (emphasis added).

⁴² FE Statement 1-RJ at 16:14-15 (Schafer Rejoinder Testimony).

⁴³ *See In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 32 FCC Rcd 11128, 11132 (¶ 8) (2017) (“[U]tilities are not allowed to ‘use an increase in rates to recover capital costs already addressed in make-ready fees.’”).

1 paid by other third-party attachers paid to FirstEnergy for a pole replacement.”⁴⁴ He does
2 not provide comparative cost figures or supporting documentation, and does not identify
3 what pole replacements he’s referring to. He also does not question the fact that
4 FirstEnergy required Verizon—but not Verizon’s competitors—to incur the cost to
5 replace hundreds of poles and complete thousands of transfers during the five-year period
6 I considered.

7 Finally, Mr. Schafer says it makes sense that FirstEnergy requires Verizon to incur high
8 pole replacement and transfer costs (and not vice versa) because FirstEnergy cannot
9 overlash its electric facilities and Verizon can.⁴⁵ Mr. Schafer thus admits FirstEnergy has
10 and will continue to impose higher pole replacement and transfer costs on Verizon, and
11 that it has not and cannot impose the same costs on Verizon’s competitors under its
12 license agreements.⁴⁶ This is a reason to reduce the rates FirstEnergy charges Verizon—
13 not to perpetuate the artificially high rates FirstEnergy prefers.

14 **Q. Please respond to Mr. Schafer’s discussion of one-touch make-ready option**
15 **available to Verizon’s competitors.**

16 A. Mr. Schafer admits “the [one-touch make-ready] option *does advantage* cable company
17 or CLEC attachers relative to Verizon.”⁴⁷ He just says it is not yet widely in use. But

⁴⁴ FE Statement 1-RJ at 16:16-18 (Schafer Rejoinder Testimony).

⁴⁵ *Id.* at 17:6-10.

⁴⁶ *See, e.g.,* Ex. SCM-3 at VZ00507 (Bell License, Art. IV(1a)) (“Licensee shall perform such work at its own expense *except* in cases where the cause is due solely to changes, improvements or renewal of Owner’s facilities (*e.g.,* including but not limited to installation of a transformer, installation of a recloser or a rephasing of conductors)... Licensee’s expenses for such work shall be paid by Owner...” (emphasis added).

⁴⁷ FE Statement 1-RJ at 18:19-20 (Schafer Rejoinder Testimony) (emphasis added).

1 that is beside the point. Verizon’s competitors are and will continue to take advantage of
2 this option in the future.⁴⁸ Verizon should not pay higher rental rates.

3 **Q. Please respond to Mr. Schafer’s discussion about pole photographs and pole profile**
4 **sheets.**

5 A. Mr. Schafer admits “Verizon may collect th[e] data” recorded in pole photographs and
6 pole profile sheets before attaching to FirstEnergy’s poles, but says Verizon may not
7 collect the data at the exact same time as its competitors because they are required to
8 submit the information to FirstEnergy.⁴⁹ Mr. Schafer’s speculation about possible time
9 differences does not demonstrate a net material benefit and should not justify charging
10 Verizon a higher rate. It is undisputed that Verizon and its competitors have to collect
11 the same data before they attach to FirstEnergy’s poles. They must collect the data at
12 approximately the same time.

13 **Q. Mr. Schafer says FirstEnergy performs vegetation management near FirstEnergy’s**
14 **facilities on Verizon’s poles. Please respond.**

15 A. Mr. Schafer says I “casually ignore[d] that FirstEnergy’s vegetation management
16 program extends to Verizon-owned poles that house FirstEnergy facilities.”⁵⁰ I did not. I
17 explained that FirstEnergy’s vegetation management program is work FirstEnergy
18 performs to clear FirstEnergy’s facilities and it presumably recovers its costs through its

⁴⁸ It appears use of one-touch make-ready has increased during the pendency of this case. In February 2020, Mr. Schafer said “no attacher” was using the option. See Answer Attachment B ¶ 18 (Schafer Affidavit). In rebuttal testimony submitted in May 2020, Mr. Schafer said there were up to 15 requests for its use. See FE Statement 1-R at 34:3-5 (Schafer Rebuttal Testimony).

⁴⁹ FE Statement 1-RJ at 18:6-9 (Schafer Rejoinder Testimony).

⁵⁰ *Id.* at 19:16-18.

1 electric rates.⁵¹ If the program has some secondary or tertiary benefit for the
2 communications facilities on a pole, it would apply equally to Verizon and its
3 competitors regardless of whether FirstEnergy clears vegetation around FirstEnergy's
4 facilities on a FirstEnergy pole or a Verizon pole.⁵²

5 Mr. Schafer does not challenge that FirstEnergy's vegetation management program has
6 an equivalent impact on all communications facilities on a pole. Instead, he argues that
7 Verizon is advantaged because it is possible for Verizon to incur vegetation management
8 costs as a pole owner, while it is impossible for Verizon's competitors to incur similar
9 costs because "Verizon's competitors are not pole owners."⁵³ He later explains, "if [a]
10 fallen tree were to take down its poles, Verizon would be solely responsible for the cost
11 of the pole replacement," and "[n]either the CLEC nor cable company would incur the
12 cost of pole replacements."⁵⁴ Here again, Mr. Schafer has confirmed that the joint use
13 agreement's pole ownership and maintenance obligations *disadvantage* Verizon as
14 compared to Verizon's competitors. Verizon should not pay a higher rate.

15 **Q. Please respond to Mr. Schafer's discussion of "reserved space" on a pole.**

16 A. Mr. Schafer agrees that, since at least 1996, Verizon could *not* "reserve space" on a utility
17 pole.⁵⁵ But he says Verizon should pay higher rates in the future because Verizon could

⁵¹ VZ Statement 1.1 at 27:6-9 (Mills Rebuttal Testimony).

⁵² *Id.* at 27:9-15.

⁵³ FE Statement 1-RJ at 19:19-25 (Schafer Rejoinder Testimony).

⁵⁴ *Id.* at 32:2-5.

⁵⁵ See 52 Pa. Code § 77.4(a) (incorporating 47 U.S.C. § 224(f)); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (¶ 1170) (1996) ("Permitting an [I]LEC, for example, to reserve space for local exchange

1 have reserved space before 1996.⁵⁶ In other words, Mr. Schafer wants the Commission to
2 set rates today based on his unsubstantiated allegation about space reservations *more than*
3 *24 years ago*.

4 Mr. Schafer has no proof that FirstEnergy reserved any particular amount of space on its
5 poles for Verizon a quarter-century ago. Instead, he points to space designated as
6 “telephone space” or “communications space” in some—not all—of the joint use
7 agreements.⁵⁷ In my experience, FirstEnergy has regularly let Verizon’s competitors *also*
8 install their facilities in the space designated as “telephone space” or “communications
9 space.”

10 **Q. Please respond to Mr. Schafer’s discussion about Verizon’s use of FirstEnergy’s**
11 **electronic notification program SPANS.**

12 A. Mr. Schafer speculates that Verizon does not always use SPANS to notify FirstEnergy of
13 new attachments and reasons it must benefit Verizon if Verizon does not always use
14 SPANS.⁵⁸ I have not seen evidence supporting Mr. Schafer’s allegation that Verizon
15 does not use SPANS, and it is inconsistent with my experience.

16 **Q. Please respond to Mr. Schafer’s discussion of inspection costs.**

17 A. Mr. Schafer has a double standard. When Verizon incurs pole inspection costs, he thinks
18 the costs are Verizon’s “responsibility” as a pole owner. But when FirstEnergy incurs

service ... would favor the future needs of the [I]LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.”).

⁵⁶ FE Statement 1-RJ at 20:8-10 (Schafer Rejoinder Testimony).

⁵⁷ *Id.* at 20:10 n.17. Mr. Schafer admits Met-Ed’s joint use agreements do not include space allocations. *Id.* at 12:20-13:1.

⁵⁸ *Id.* at 20:20-21:4.

1 pole inspection costs, he thinks FirstEnergy should recover some costs through its new
2 telecom rates and more costs by charging Verizon rates about [REDACTED] times a new telecom
3 rate.⁵⁹ Mr. Schafer admits Verizon incurs pole inspection costs that are *not* imposed on
4 Verizon's competitors.⁶⁰ He thinks Verizon's unique costs should be ignored because
5 "[i]nspecting a given pole is the responsibility of the pole owner."⁶¹ But competitively
6 neutral pole attachment rates under a joint use agreement must be set based on an
7 analysis of competitive advantages *and* disadvantages.⁶²

8 **Q. Please respond to Mr. Schafer's discussion about the location of Verizon's facilities**
9 **on the pole.**

10 A. This is a rehash of what Mr. Schafer already said. He still does not think it "makes
11 sense" that Verizon would suffer more damage because of the location of its facilities on
12 a pole despite my testimony and the damage reports Verizon provided.⁶³ He also
13 apparently misunderstands Verizon's response to one of FirstEnergy's discovery
14 requests.⁶⁴ FirstEnergy asked what costs Verizon *saves* because of its lowest location on
15 a pole and Verizon answered that it is not "aware of any costs *it avoids*" because of that

⁵⁹ See, e.g., Ex. SCM-12 (Response to Verizon Interrogatory Set II, No. 13); FE Statement 1-RJ at 21:9-16 (Schafer Rejoinder Testimony).

⁶⁰ FE Statement 1-RJ at 21:9-16 (Schafer Rejoinder Testimony).

⁶¹ *Id.* at 21:9.

⁶² See, e.g., *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) ("A failure to weigh, and account for, the different rights *and responsibilities* in joint use agreement could lead to marketplace distortions.") (emphasis added).

⁶³ See Ex. SCM-1 at VZ00030-31 (Mills Aff.); Statement 1.1 at 30:8-3:10 (Mills Surrebuttal Testimony); see also Exs. SFS-8, SFS-9.

⁶⁴ Statement 1-RJ at 21:23-22:2 (Schafer Rejoinder Testimony).

1 location.⁶⁵ Verizon is aware it *incurs* costs because of that location. It just does not
2 separately track them.⁶⁶

3 Mr. Schafer also makes an unsupported allegation that “[i]f Verizon’s mid-span sag were
4 in a higher position on the pole, then Verizon would be taking up more than twelve
5 inches of space on the pole.”⁶⁷ Mr. Schafer must be confused about mid-span sag. All
6 aerial facilities sag to some extent, but they do so mid-span (*i.e.*, in between poles) and
7 not “on the pole” as Mr. Schafer contends. It is indisputable the space occupied “on the
8 pole” remains the same regardless of sag mid-span.

9 **Q. Mr. Schafer says it is “convenient for Verizon to assert that FirstEnergy would pay**
10 **a reciprocal rate” to the new telecom rates Verizon seeks in this proceeding. What**
11 **is your response?**

12 A. It is not “convenient”—Verizon offered to *lower* the rates it charges FirstEnergy if
13 needed to create proportional rates. Also, Verizon did not assert FirstEnergy would pay a
14 “reciprocal” rate. In my experience, a “reciprocal rate” means the ILEC and the electric
15 utility pay the same dollar amount. This arrangement does not account for the electric
16 utility’s use of far more space on a pole than the ILEC uses. The FCC, therefore,
17 expected that ILECs and electric utilities would charge each other “the same
18 proportionate rate” considering their “relative usage of the pole.”⁶⁸ Dr. Calnon calculated
19 the proportionate new telecom rates Verizon would charge FirstEnergy if the

⁶⁵ Ex. SFS-8 (emphasis added).

⁶⁶ *Id.*

⁶⁷ FE Statement 1-RJ at 22:14-15 (Schafer Rejoinder Testimony).

⁶⁸ *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662).

1 Commission sets Verizon’s just and reasonable rate at the new telecom rates requested in
2 the Verizon’s Complaint.⁶⁹

3 **Q. Do you have additional comments about Mr. Schafer’s rejoinder testimony?**

4 A. Yes. The rest of Mr. Schafer’s rejoinder testimony is largely redundant and directed
5 toward Dr. Calnon’s and Dr. Tardiff’s surrebuttal testimony, but I would like to correct a
6 few points.

7 *First*, Mr. Schafer includes an entirely new allegation in his rejoinder testimony when he
8 says “Verizon is charged a set cost for make-ready, while third-party cable
9 company/CLEC attachers [REDACTED].”⁷⁰ Mr. Schafer
10 did not provide these “set costs” or any other comparative analysis, and apparently for
11 good reason. Mr. Schafer bases his argument on an agreement to agree to set costs in the
12 Penn Power joint use agreement (“[c]osts associated with pole replacements shall be
13 determined according to a schedule of reciprocal costs *to be developed...*”),⁷¹ and a letter
14 from Verizon asking FirstEnergy to commence negotiations “[t]o develop a cost
15 reimbursement plan that fairly and equitably compensates each party for work performed
16 for each other under the Joint Use Agreement.”⁷² But I’ve seen no evidence this occurred
17 and I know Verizon has paid make-ready invoices that appear to be based on actual costs.
18 The fact that Mr. Schafer raised this claim for the first time in rejoinder testimony and did
19 not provide proof of any agreed-upon “set costs” for make-ready confirms this is not an

⁶⁹ Ex. MSC-1 at VZ00091-100 (Calnon Aff., Ex. C-5).

⁷⁰ Statement 1-RJ at 24:5-7 (Schafer Rejoinder Testimony).

⁷¹ Ex. SCM-2 at VZ00478 (cited at FE Statement 1-RJ at 24:7 n.19).

⁷² Ex. SFS-1 (cited at FE Statement 1-RJ at 24:7 n.19).

1 actual or material difference between Verizon and its competitors. It also does not
2 eliminate the undisputed difference that *does* exist and disadvantages Verizon as
3 compared to its competitors. As I detailed above, the joint use agreements require
4 Verizon to shoulder far more make-ready costs (pole replacement and transfer costs) than
5 Verizon would incur if it were only responsible for the make-ready Verizon requires,
6 which is the standard in FirstEnergy’s license agreements with Verizon’s competitors.

7 *Second*, Mr. Schafer says Verizon may be able to attach to FirstEnergy’s poles faster than
8 its competitors despite make-ready deadlines in the Commission’s regulations that
9 accelerate deployment for Verizon’s competitors, but do not apply to Verizon, because
10 “the timelines do not start for the CLEC or cable company until after FirstEnergy
11 receives a complete application from such entity.”⁷³ This is grasping at straws. Mr.
12 Schafer admitted Verizon and its competitors must collect the same information before
13 attaching to FirstEnergy’s poles.⁷⁴ Verizon’s competitors can very quickly submit the
14 information electronically through SPANS.⁷⁵

15 *Third*, Mr. Schafer repeats allegations about make-ready and overlashing, but again
16 clarifies that the difference he relies on is a historic difference in the development of the
17 network.⁷⁶ He wants the Commission to compare Verizon to companies that had little or
18 no network at all before 2018, and so incurred significant start-up expenses to deploy a

⁷³ FE Statement 1-RJ at 24:18-25:1 (Schafer Rejoinder Testimony); *see* 47 C.F.R. § 1.1411(a)(2).

⁷⁴ FE Statement 1-RJ at 18:8-9 (Schafer Rejoinder Testimony).

⁷⁵ *See* Ex. SCM-17 (Field Reference Guide Joint Use dated Sept. 19, 2019).

⁷⁶ FE Statement 1-RJ at 26:1-27:17, 35:2-6 (Schafer Rejoinder Testimony).

1 network in 2018 and 2019.⁷⁷ But Verizon incurred its deployment costs over the last
2 many decades, and did so while paying exceptionally high rental rates to FirstEnergy.
3 Mr. Schafer now wants to effectively charge Verizon for those deployment costs over and
4 over again by including the cost of make-ready required in the early years of a company's
5 deployment in Verizon's rates. He does this by arguing that Verizon's rates should
6 include the average cost of make-ready incurred by companies actively deploying new
7 networks.⁷⁸ This would forever set Verizon at a competitive disadvantage in the
8 Pennsylvania broadband market, requiring Verizon to pay for costs it does not require or
9 impose on FirstEnergy.

10 *Fourth*, Mr. Schafer says FirstEnergy does not need to quantify or substantiate alleged
11 net material advantages to justify charging rates higher than the new telecom rate. I
12 disagree. I supported a case involving Verizon's then-affiliate in Florida when the FCC
13 required a quantification of alleged advantages⁷⁹ and instructed other electric utilities
14 with pending cases—including FirstEnergy—to establish “the estimated monetary value”
15 of each alleged advantage in their case.⁸⁰ I also supported a case involving Verizon's
16 Virginia affiliates, where the FCC rejected the electric utility's effort to charge Verizon's
17 Virginia affiliates higher rates because “with only a few exceptions, [the electric utility
18 did] not quantify the purported material advantages that Verizon receives under the Joint

⁷⁷ *Id.* at 27:8-17; *see also* Ex. SFS-5.

⁷⁸ Mr. Schafer's make-ready average is incorrectly calculated. *See* Statement 2.1 at 36:19-38:14 (Calnon Surrebuttal Testimony); Statement 3.1 at 25:12-28:7 (Tardiff Rebuttal Testimony).

⁷⁹ *Verizon Fla. v. Fla. Power and Light Co.*, 30 FCC Rcd 1140 (2015).

⁸⁰ Ex. SCM-46 (Letter to Counsel, *Commonwealth Tel. Co. v. Metropolitan Edison Co.*, File No. EB-14-MD-008 (Feb. 12, 2015)).

1 Use Agreements.”⁸¹ Mr. Schafer is well aware of these decisions, but argues a more
2 recent decision “contains no statement that a quantification of an associated dollar
3 amount with each benefit is necessary.”⁸² But Mr. Schafer relies on a decision that
4 rejected an electric utility’s “calculation of the monetary value” of alleged benefits as
5 “inflated” and “overstate[d],” and found its rates “unjust and unreasonable.”⁸³ Also, the
6 decision was an interim decision, so the FCC has not yet set the just and reasonable rate
7 in that case.

8 *Fifth*, while Mr. Schafer agrees Verizon does not have a statutory right of access to
9 FirstEnergy’s poles like Verizon’s competitors, he says FirstEnergy can still deny pole
10 access to cable and CLEC attachers “in certain circumstances, such as situations where a
11 pole is not being replaced due to capacity.”⁸⁴ Whether or not FirstEnergy *can* reject a
12 pole replacement request is irrelevant. In October 2019, FirstEnergy informed the FCC
13 that “ever since regulation of communications company attachments began, electric
14 utility pole owners have voluntarily replaced poles to expand pole capacity with taller or
15 stronger poles to accommodate new attachers, despite having no legal requirement to do
16 so.”⁸⁵ And FirstEnergy has every incentive to do so. By charging the new attacher for

⁸¹ *Verizon Va. v. Dominion Virginia Power*, 32 FCC Rcd 3750, 3759 (¶ 20) (2017).

⁸² FE Statement 1-RJ at 31:19-22 (Schafer Rejoinder Testimony) (citing *AT&T v. FPL Order*).

⁸³ *AT&T v. FPL Order*, 2020 WL 2568977, at *1, 7 (¶¶ 1, 15).

⁸⁴ FE Statement 1-RJ at 34:9-12 (Schafer Rejoinder Testimony).

⁸⁵ Comments of FirstEnergy et al., FCC Docket No. 17-84 (Oct. 29, 2019).

1 the pole replacement,⁸⁶ FirstEnergy receives a cost-free taller and stronger pole and
2 additional rental income from the new attacher.

3 *Finally*, Mr. Schafer thinks differences between joint use agreements and license
4 agreements are “self-evident.”⁸⁷ One difference he identifies is self-evident. He explains
5 “[t]he method of calculating compensation under each agreement is completely different”
6 and points to a rental rate provision assigning Verizon 43% of annual pole costs, which
7 he compares to a license agreement provision [REDACTED]

8 [REDACTED].⁸⁸ Eliminating this type of disparity and creating a
9 competitively neutral environment to spur broadband deployment was a key objective for
10 the Commission in assuming jurisdiction over these issues and adopting the FCC’s
11 regulations.

12 The other differences he identifies are not competitive advantages. Mr. Schafer does not
13 even base his analysis on an *executed* license agreement. He uses a draft license
14 agreement FirstEnergy “present[s] to requesting CLEC / CATV entities with the
15 understanding that modifications are negotiated.”⁸⁹ He then picks just one of ten joint
16 use agreements, reviews “just the table of contents” and says no further review is
17 required because “on their face, the agreements are simply different.”⁹⁰ In other words,
18 Mr. Schafer wants a joint use agreement to be considered competitively advantageous

⁸⁶ FE Statement 1-RJ at 16:17-18 (Schafer Rejoinder Testimony).

⁸⁷ *Id.* at 25:8-13.

⁸⁸ Ex. SFS-15 at 6.

⁸⁹ Ex. SCM-5 at VZ00577 (FCC Ex. 23).

⁹⁰ FE Statement 1-RJ at 36:2-7 (Schafer Rejoinder Testimony).

1 just because it is a joint use agreement. The Commission instead adopted regulations that
2 presume ILECs with joint use agreements *are* materially comparable to CLECs and cable
3 companies with license agreements.⁹¹ Mr. Schafer did not rebut this presumption.

4 Mr. Schafer reluctantly “prepared an illustrative comparison” of one joint use agreement
5 and FirstEnergy’s draft license agreement that “identif[ies] and quote[s] the materially
6 different provisions in each of these agreements.”⁹² His chart points to nine non-rental
7 rate provisions—many of which he never identified as “advantages” in the many prior
8 stages of briefing and testimony. The list still does not identify a net material advantage
9 Verizon has over its competitors. Instead, the following table shows the joint use
10 agreements are comparable to—or *less* advantageous than—the license agreements on
11 these new allegations:

	Joint Use Agreements	License Agreements
Whereas Clause	“Met-Ed hereby grants [Verizon] permission to make attachments to Met-Ed poles, and [Verizon] hereby grants to Met-Ed permission to make attachments to [Verizon] poles...” ⁹³	“Owner is willing to permit Licensee to attach its facilities to Owner’s poles...” ⁹⁴
Scope/ Applicability	“This Agreement shall be in effect in ...the Commonwealth of Pennsylvania...” ⁹⁵	[REDACTED] [REDACTED] [REDACTED] ⁹⁶

⁹¹ 47 C.F.R. § 1.1413(b).

⁹² FE Statement 1-RJ at 36:12-20 (Schafer Rejoinder Testimony).

⁹³ Ex. SCM-2 at VZ00167.

⁹⁴ Ex. SCM-3 at VZ00505.

⁹⁵ Ex. SCM 2 at VZ00322.

⁹⁶ Ex. SCM-11 at FE00267.

Allocated Space	Verizon cannot be allocated more space than it uses, and Verizon uses about 1 foot of space on a pole ⁹⁷	Assumed to occupy 1 foot of space on FirstEnergy’s poles. ⁹⁸
Pole Replacement Costs	Verizon pays for pole replacements required to accommodate <i>FirstEnergy’s</i> facilities, which required Verizon to replace 569 more poles than it would have under the license agreement ⁹⁹	[REDACTED] [REDACTED] [REDACTED] ¹⁰⁰
Make-Ready Costs	Verizon pays for make-ready required to accommodate <i>FirstEnergy’s</i> facilities, which required Verizon to incur the cost to transfer facilities to 3,687 more replacement poles than it would have under the license agreement ¹⁰¹	[REDACTED] [REDACTED] [REDACTED] ¹⁰²
Inspection	“[Verizon] will be responsible for making its own Attachments,” including pre- and post-installation inspections. ¹⁰³ “Inspecting a given pole is the responsibility of [Verizon as] the pole owner.” ¹⁰⁴	[REDACTED] [REDACTED] [REDACTED] [REDACTED] ¹⁰⁵
Unauthorized Attachments	FirstEnergy does not pay unauthorized attachment fees for use of Verizon’s poles and vice versa.	“[N]ot all, FirstEnergy contracts with cable companies and CLECs, permit FirstEnergy to impose unauthorized attachment ... fees.” ¹⁰⁶ “Unauthorized attachment fees have not been charged

⁹⁷ See 47 U.S.C. § 224(f)(1); see also FE Statement 7-R, Ex. CG-1 at Table 3 (alleging Verizon occupies [REDACTED] feet on Met-Ed’s poles, [REDACTED] feet on Penelec’s poles, and [REDACTED] feet on Penn Power’s poles).

⁹⁸ 47 C.F.R. § 1.1410.

⁹⁹ Ex. SCM-1 at VZ00026-28 (Mills Aff.).

¹⁰⁰ Ex. SCM-11 at FE00240.

¹⁰¹ Ex. SCM-1 at VZ00026-28 (Mills Aff.).

¹⁰² Ex. SCM-11 at FE00240.

¹⁰³ Ex. SCM-2 at VZ00169.

¹⁰⁴ FE Statement 1-RJ at 21:9-10 (Schafer Rejoinder Testimony).

¹⁰⁵ Ex. SCM-11 at FE00242.

¹⁰⁶ Answer ¶ 51.

1 a net material competitive advantage under the joint use agreements. For good reason:
2 FirstEnergy does *not* provide Verizon a net material competitive advantage under the
3 joint use agreements. Therefore, as required by the Commission’s rules, Verizon should
4 pay the new telecom rate.

5 **III. Response to Mr. Zarakas’s and Ms. Savage’s Rejoinder Testimony (Statements 2-**
6 **RJ and 3-RJ)**

7 **Q. Please respond to Mr. Zarakas’s and Ms. Savage’s rejoinder testimony.**

8 A. The rejoinder testimony provided by Mr. Zarakas and Ms. Savage adds little, if anything,
9 to the discussion of proper pole attachment rates in this case. They argue that the
10 Commission should reject the rate formulas it adopted last year in favor of higher rates
11 produced by a “fully allocated” rate methodology. But the Commission adopted the
12 FCC’s longstanding and fully vetted rate formulas to “establish rental rates for pole
13 attachments that are as low and close to uniform as possible ... to promote broadband
14 deployment.”¹¹² The Commission cannot reconsider that decision in this proceeding, and
15 there is no basis for it to do so.

16 **IV. Response to Mr. Coleman’s Rejoinder Testimony (Statement 4-RJ)**

17 **Q. Mr. Coleman states that you provided “misleading and inaccurate” testimony about**
18 **compliance with FirstEnergy’s construction standards. Was your testimony**
19 **misleading or inaccurate?**

20 A. No. Mr. Coleman admits he criticized Verizon’s installations based on construction
21 standards that were updated in 2018 and 2019.¹¹³ He also admits “existing installations

¹¹² *NPRM*, 2018 WL 3533538, at *2 (citation omitted); *Final Rulemaking Order*, 2019 WL 4345730, at *7.

¹¹³ FE Statement 4-RJ at 3:6-8 (Coleman Rejoinder Testimony).

1 may be grandfathered into changes under the National Electric Safety Code,” meaning
2 that communications companies (and electric companies) do not need to incur the cost to
3 visit every pole every time a change is made to a construction standard.¹¹⁴ He now says
4 that his criticisms were not based on the updates to the construction standards.¹¹⁵

5 But it remains unclear what his criticisms *were* based on. Mr. Coleman made broad
6 generalizations about Verizon’s compliance with FirstEnergy’s construction standards
7 based on three photographs, two in Penn Power’s service area and one in an unidentified
8 location.¹¹⁶ He still has not explained what is wrong with Verizon’s facilities in the
9 photos, except to say he thinks there should be “a change in alignment and ... new power
10 space.”¹¹⁷ And he now concedes two of the standards he relied on previously do not
11 apply to Verizon.¹¹⁸ Mr. Coleman’s criticism of Verizon’s construction remains
12 unfounded and inaccurate.

13 **Q. Mr. Coleman says if Verizon was required to deploy a duplicative pole network, it**
14 **may not cost as much as if FirstEnergy was required to deploy a duplicative pole**
15 **network. Do you agree?**

16 A. No. Verizon would have to deploy three times the number of poles as FirstEnergy in that
17 scenario. Mr. Coleman criticizes me for not providing an “estimate of the cost to remove
18 [Verizon]’s attachments from FirstEnergy’s poles and construct duplicative facilities to

¹¹⁴ *Id.* at 2:23-3:1.

¹¹⁵ *Id.* at 3:2-5.

¹¹⁶ FE Statement 4-R, Ex. RC-1 (Coleman Rebuttal Testimony).

¹¹⁷ *Id.* at 3:9-10.

¹¹⁸ FE Statement 4-RJ at 3:13-20 (Coleman Rejoinder Testimony) (“This does not apply to joint
attachers such as Verizon ...”).

1 house those attachments.”¹¹⁹ I do not need a cost estimate to know the burden would be
2 far greater for Verizon than for FirstEnergy when Verizon would need to identify and
3 obtain permission to use alternate infrastructure for three times the number of poles in
4 communities resistant to unnecessary duplicative pole lines.

5 And to be clear, Mr. Coleman did not provide an estimate of the cost to remove
6 FirstEnergy’s attachments from Verizon’s poles either. Instead, he repurposed a 2014
7 estimate of the cost to remove “electric from *Frontier* poles.”¹²⁰ That estimate was based
8 entirely on “assumptions” and not a “specific pole or line.”¹²¹ Mr. Coleman also says he
9 “explained that it would cost approximately [REDACTED] per mile to construct duplicative
10 pole facilities to house FirstEnergy’s attachments” in his rebuttal testimony,¹²² but a
11 [REDACTED] per mile estimate is not one of the [REDACTED] estimates in his attached exhibit or the
12 [REDACTED] estimates listed in his rebuttal testimony.¹²³

13 Mr. Coleman now claims he can estimate Verizon’s cost to redeploy a duplicative
14 network, and that it would be about [REDACTED] percent of his 2014 estimate to remove facilities
15 from Frontier’s poles (\$83,850 per mile versus [REDACTED] per mile).¹²⁴ I disagree with his
16 cost estimate, which is unexplained and understated. But his cost estimate also does not

¹¹⁹ *Id.* at 4:14-15.

¹²⁰ FE Statement 4-R, Ex. RC-3 (Coleman Rebuttal Testimony).

¹²¹ Ex. SCM-32 (Response to Verizon Interrogatory Set III, No. 1).

¹²² FE Statement 4-RJ at 5:5-7 (Coleman Rejoinder Testimony).

¹²³ FE Statement 4-R at 7:5-8:23, Ex. RC-3 (Coleman Rebuttal Testimony)

¹²⁴ FE Statement 4-RJ at 5:1-7 (Coleman Rejoinder Testimony).

1 support his overarching claim that it would be less expensive for Verizon to redeploy.
2 FirstEnergy’s Answer states that FirstEnergy would “incur an initial cost of [REDACTED]
3 per mile ... to create duplicative facilities.”¹²⁵ Mr. Coleman’s rebuttal testimony includes
4 this [REDACTED] estimate.¹²⁶ Even using Mr. Coleman’s unsupported \$83,850 per mile
5 estimate for Verizon to redeploy its facilities, he has not proven a material difference in
6 the per-mile cost for Verizon and FirstEnergy to deploy a duplicative network. Yet
7 Verizon would need to redeploy facilities on three times the number of poles.

8 Mr. Coleman’s one-size-fits-all estimate for Verizon to redeploy facilities is also
9 inappropriate because costs vary considerably based on topography, engineering, the
10 facilities involved, and other local considerations. His cost estimate for FirstEnergy
11 included [REDACTED].¹²⁷ There would be at least as many for Verizon.

12 The one scenario Mr. Coleman selected for Verizon appears to be a perfect world
13 scenario with [REDACTED].¹²⁸ This is the
14 bare minimum needed. He does not account for service terminals, splices, service wires,
15 additional guys, or other material. Mr. Coleman also uses [REDACTED]

¹²⁵ Compare Answer ¶ 52 (“From an economic perspective, it makes no sense whatsoever for FirstEnergy to incur an initial cost of [REDACTED] per mile ... to create duplicate pole facilities...”) with FE Statement 4-R at 7:5-9:12, Ex. RC-3 (Coleman Rebuttal Testimony) (“From an economic perspective, it makes no sense whatsoever for FirstEnergy to incur a minimum initial cost of [REDACTED] per mile ... to create duplicate pole facilities...”).

¹²⁶ See FE Statement 4-R at 7:5-6, Ex. RC-3 (Coleman Rebuttal Testimony).

¹²⁷ *Id.*, Ex. RC-3.

¹²⁸ FE Statement 4-RJ, Ex. RC-4 (Coleman Rejoinder Testimony).

1 [REDACTED]. He assumes [REDACTED]

2 [REDACTED]. He [REDACTED]

3 [REDACTED]

4 [REDACTED]. Mr. Coleman's estimate of the cost for Verizon to redeploy facilities is
5 grossly understated.

6 **Q. Mr. Coleman says it was reasonable for the field audit to assume Verizon occupies**
7 **six inches of space above and below its attachment. Do you agree?**

8 A. No. Mr. Coleman effectively admits Verizon would be charged for space Verizon does
9 *not* occupy on the pole if Verizon is charged based on these assumptions. He does not
10 provide a reason to assume Verizon requires six inches of space *above* its attachment,
11 except that he thinks it "is fair."¹²⁹ But it is *not* "fair" when FirstEnergy's field audit data
12 shows Verizon does not always have six inches of clearance above its facilities¹³⁰ and the
13 National Electrical Safety Code ("NESC") allows Verizon's competitors to reduce the
14 clearance above Verizon's facility in appropriate circumstances.

15 Mr. Coleman says Verizon should be assigned six inches of space below its attachment to
16 account for mid-span sag (*i.e.*, sag between two poles). But mid-span sag is *not* space on
17 a pole. The amount of space occupied on the pole remains the same. Indeed, Mr.
18 Coleman admits that "no conductor remains perfectly straight when spanning from pole

¹²⁹ *Id.* at 6:14.

¹³⁰ *See* VZ Statement 1.1 at 55:11-56:1 (Mills Surrebuttal Testimony); *see also* Ex. SCM-41.

1 to pole.”¹³¹ Yet FirstEnergy does not calculate rates for any other entity—including
2 FirstEnergy itself—based on the amount of mid-span sag many feet away from a pole.

3 Mr. Coleman is also wrong when he says Verizon must maintain an “18-foot minimum
4 clearance” above ground so must make its attachment higher than 18 feet on the pole.¹³²

5 First, an 18-foot minimum clearance is not always required. Mr. Coleman points to an
6 above-ground clearance requirement for PENNDOT roads,¹³³ but NESC Table 232-1
7 includes lower above-ground clearance requirements for various scenarios. For example,
8 the minimum clearance in the NESC is 15.5 feet for “roads, streets, and other areas
9 subject to truck traffic” and “driveways, parking lots, and alleys,” and 9.5 feet for “spaces
10 and ways subject to pedestrians or restricted traffic only.” Second, the world is not flat,
11 so an 18-foot minimum above-ground clearance requirement does not always require an
12 attachment at 18 feet or higher on a pole. Where the pole is on a hill by a road, for
13 example, an attachment could be placed lower on the pole and still maintain 18 feet of
14 clearance above ground. The photographs in the record include several poles where
15 Verizon’s facilities are placed lower than 18 feet, but still maintain appropriate above-
16 ground clearance for the location.¹³⁴

17 Mr. Coleman is also wrong when he suggests Verizon asked for rates that assign Verizon
18 responsibility for less space than other communications attachers, which are presumed to

¹³¹ FE Statement 4-RJ at 6:9-10 (Coleman Rejoinder Testimony).

¹³² *Id.* at 6:7-9.

¹³³ *Id.* at 6:5-7.

¹³⁴ *See* Exs. SCM-41, SCM-42, SCM-47.

1 occupy one foot of space on a pole.¹³⁵ Verizon instead asked that rates be calculated
2 using the exact same one-foot space occupied presumption that applies to Verizon’s
3 competitors.¹³⁶ Mr. Coleman seeks to charge Verizon for *more* than one-foot of space
4 based on a results-oriented field review that stacked the deck by assuming—against
5 fact—that Verizon “occupies” one foot or more space on every pole. Assumed
6 measurements are not actual measurements. The Commission must use the one-foot
7 space occupied input in its adopted regulations.¹³⁷

8 **V. Response to Mr. Carlin’s Rejoinder Testimony (Statement 6-RJ)**

9 **Q. What is your overall reaction to Mr. Carlin’s rejoinder testimony?**

10 A. Mr. Carlin admits my spot check of the field audit data identified numerous errors. He
11 asks the Commission to rely on the data anyway because:

- 12 • his company, DRG, purportedly followed quality control and quality assurance
13 processes,
- 14 • DRG collected data as specified by FirstEnergy’s lawyers for “the intended use of
15 FirstEnergy” in this litigation,¹³⁸ and
- 16 • the number of errors I identified during a spot check is “not material” as
17 compared to the 1,519 FirstEnergy poles in his data set.

18 These are not valid reasons to rely on the data:

- 19 • the quality control and quality assurance processes did not ferret out the many
20 errors I identified during a spot check, which would be readily observable by
21 competent field technicians and quality control personnel,

¹³⁵ FE Statement 4-RJ at 6:11-13 (Coleman Rejoinder Testimony); *see also* 47 C.F.R. § 1.1410.

¹³⁶ *See* Ex. MSC-1 at VZ00037 (Calnon Aff.) (“I used the presumptive inputs from the Commission’s regulations, which provide that the space occupied by a telecommunications attacher is 1 foot”).

¹³⁷ *See* 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1410.

¹³⁸ *See* Ex. SCM-29 (Response to Verizon Interrogatory Set II, No. 19).

- 1 • compliance with FirstEnergy’s flawed and litigation-motivated specifications only
2 confirms the resulting data is unreliable, and
- 3 • the fact that I was able to identify so many errors during a spot check of 1,519
4 records is significant and suggests there are many more in the data set.

5 This is not a situation where the Commission has to settle for unreliable data. The
6 Commission adopted regulations that include presumptive values to use when calculating
7 rental rates.¹³⁹ The presumptions were adopted to provide “predictability and efficiency
8 in calculating the appropriate rate” and eliminate the need for “a pole-by-pole
9 inventory.”¹⁴⁰ FirstEnergy did not present sufficient or reliable evidence to rebut these
10 regulatory presumptions. And FirstEnergy did not even conduct a “pole-by-pole
11 inventory” here—it relies on admittedly flawed data about, at most, [REDACTED] percent of
12 FirstEnergy’s joint use poles in Pennsylvania and Maryland,¹⁴¹ including poles that
13 Verizon is not attached to.¹⁴² Mr. Carlin now confirms the data about the few poles in the
14 field audit is error riddled.

15 The Commission does not need to determine the correct actual values in this case because
16 the Commission adopted regulations that have presumptive values and FirstEnergy’s data
17 does not rebut the presumptions. It is unreliable, incomplete, relates to poles that are not
18 the subject of this rate dispute, and FirstEnergy chose not to provide it to the Commission
19 for review and analysis. The reported results, however, show the presumptions the

¹³⁹ 52 Pa. Code § 77.4(a); 47 C.F.R. §§ 1.1409, 1.1410.

¹⁴⁰ *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777 (¶ 74) (1998).

¹⁴¹ VZ Statement 2.1 at 25:6-12 (Calnon Surrebuttal Testimony).

¹⁴² FE Statement 1-RJ at 37:13-20 (Schafer Rejoinder Testimony).

1 Commission adopted are reasonable. The regulations, for example, assume Verizon
2 occupies one foot of space and FirstEnergy’s inflated results (which automatically assign
3 Verizon six extra inches of space) show Verizon occupies just over 1 foot of space on
4 average.¹⁴³

5 **Q. Mr. Carlin describes quality control and quality assurance processes he says were**
6 **performed in connection with the field review. Did they ensure the results are**
7 **reliable?**

8 A. Clearly no. I identified many errors during just a spot check of the data, suggesting there
9 are many more. This makes sense. The field review was very quickly performed in
10 response to this litigation between December 2019 and January 2020.¹⁴⁴ Mr. Carlin
11 admits this timeline was not “ideal,” but says it “was dictated solely by the timing of
12 Verizon filing its Complaint against FirstEnergy.”¹⁴⁵ This confirms quick litigation-
13 motivated field audits should not be used to increase rental rates in Pennsylvania.

14 Mr. Carlin’s description of DRG’s “robust” quality review process suggests it was not
15 followed or is not “robust” in the first place.¹⁴⁶ The quality control portion of the process
16 essentially involved the collection and recording of data, and the quality assurance
17 portion of the process checked just twelve of 1,519 FirstEnergy poles reviewed.¹⁴⁷ This

¹⁴³ See 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1410; FE Statement 7-R, Ex. CG-1 at Table 3 (alleging Verizon occupies [REDACTED] feet on Met-Ed’s poles, [REDACTED] feet on Penelec’s poles, and [REDACTED] feet on Penn Power’s poles).

¹⁴⁴ See Ex. SCM-29 (Response to Verizon Interrogatory Set II, No. 19) (“Data collection began on December 19, 2019, and concluded with delivery of the report on January 28, 2020”).

¹⁴⁵ FE Statement 6-RJ at 13:10-12 (Carlin Rejoinder Testimony).

¹⁴⁶ *Id.* at 2:1-20.

¹⁴⁷ *Id.* at 3:1-4:10.

1 approach is unacceptable, but perhaps unsurprising given the purpose of the audit and
2 haste with which it was performed.

3 **Q. Mr. Carlin disagrees with your statement that seven poles misidentified a cable**
4 **attachment as a Verizon attachment. Please respond.**

5 A. Mr. Carlin agrees there are errors with five of the seven poles. Two do not have a
6 Verizon attachment because a cable attachment was misidentified as Verizon's
7 attachment (Scid numbers 116 and 313).¹⁴⁸ One "pointed to the incorrect attachment"
8 (Scid number 14).¹⁴⁹ That pole and another incorrectly identified the number of
9 attachments in the spreadsheet (Scid numbers 14 and 1486), and another pole was
10 "labeled incorrectly (Scid number 367).¹⁵⁰ Mr. Carlin claims the two other poles (Scid
11 numbers 137 and 786) have no errors based on what appear to be higher-resolution
12 images than were provided Verizon.¹⁵¹ From what I can see in the new magnified images
13 he provided, Verizon does have attachments on those two poles.

14 **Q. Mr. Carlin says your concern about the number of attaching entities is "grossly**
15 **overstated." Do you agree?**

16 A. No. Mr. Carlin's attempt to minimize this error raises additional concerns. I identified
17 six poles during a spot check of the data showing DRG recorded an incorrect number of
18 attaching entities. Mr. Carlin admits there are six times when FirstEnergy's data says
19 FirstEnergy is attached to a pole, and FirstEnergy is not.¹⁵² He says this is because DRG

¹⁴⁸ *Id.* at 5:11-12.

¹⁴⁹ *Id.* at 5:12.

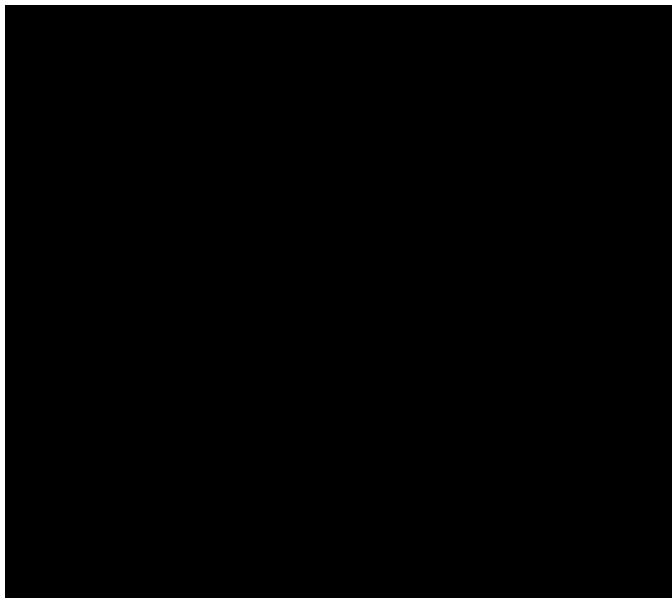
¹⁵⁰ *Id.* at 5:15 n.6.

¹⁵¹ *Id.* at 6:2-5, 7:6-10.

¹⁵² *Id.* at 9:10-11.

1 *assumed* FirstEnergy is attached to every pole in FirstEnergy’s database, regardless of
2 whether it is,¹⁵³ and *assumed* FirstEnergy owns poles based on “pole records, not by a
3 pole tag in the field.”¹⁵⁴ But assumptions are not actual data for use in rebutting the
4 Commission’s presumptions.

5 Mr. Carlin also says I “grossly overstated” this error because it affects “only” six poles.¹⁵⁵
6 But it must impact more than six poles. Mr. Carlin admits DRG recorded the incorrect
7 number of attaching entities six times because FirstEnergy was not attached to the
8 pole.¹⁵⁶ I identified six poles during my spot check where the incorrect number of
9 attaching entities was recorded—and FirstEnergy *was* attached to the pole. For example,
10 I included the following in my surrebuttal testimony (Scid number 1487). It shows
11 FirstEnergy, “Company 1,” and “Verizon” attached, but DRG’s data states the pole has
12 two attaching entities:



13

¹⁵³ *Id.* at 9:4-10.

¹⁵⁴ *Id.* at 9:15-16.

¹⁵⁵ *Id.* at 9:11.

¹⁵⁶ *Id.* at 9:10-11.

1 **Q. Mr. Carlin says it was not an error for DRG to assume Verizon occupies at least**
2 **twelve inches of space on every pole. Please respond.**

3 A. Mr. Carlin says DRG was correct to make this assumption because FirstEnergy asked it
4 to.¹⁵⁷ But that does not make it correct to ignore the actual data in favor of FirstEnergy's
5 litigation-motivated assumption. The Commission already has a space occupied
6 presumption in its regulations.¹⁵⁸ Mr. Carlin's rejoinder testimony confirms FirstEnergy
7 seeks to replace the Commission's space occupied presumption with an assumption of its
8 own in order to increase rental rates.

9 But for FirstEnergy to rebut the Commission's presumption, FirstEnergy needs actual,
10 reliable data about the poles for which rent is being set. FirstEnergy does not have actual
11 data. It has an assumption that Verizon requires or uses six inches of space above and
12 below its facilities on every pole—and that assumption is not factually true. I pointed to
13 many poles in my surrebuttal testimony where DRG's measurements show Verizon does
14 not have six inches of clearance above its facilities, below its facilities, or both.¹⁵⁹ I have
15 attached additional examples of poles where Verizon does not have six inches of
16 clearance above its facilities¹⁶⁰ and/or below its facilities¹⁶¹ to this surrejoinder testimony.

¹⁵⁷ *Id.* at 10:1-14.

¹⁵⁸ *See* 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1410.

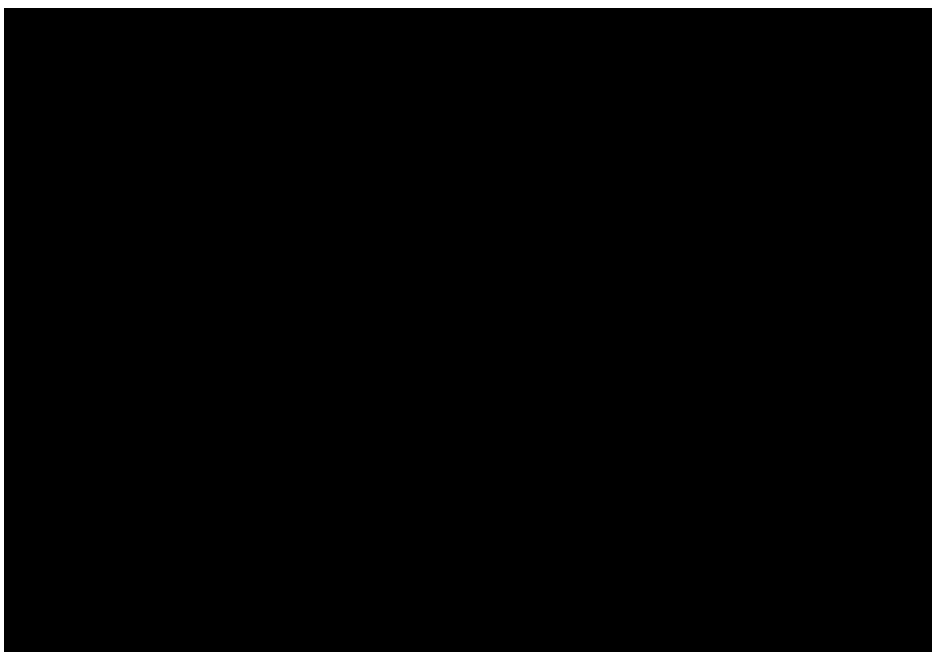
¹⁵⁹ *See* Exs. SCM-41, SCM-42.

¹⁶⁰ *See* Ex. SCM-48.

¹⁶¹ *See* Ex. SCM-47.

1 **Q. Mr. Carlin disagrees with the errors you identified in DRG’s review of Verizon’s**
2 **poles. Please respond.**

3 A. Mr. Carlin confirms FirstEnergy designed its field audit to assign FirstEnergy less than an
4 inch of “FirstEnergy Space” on the following pole even though the bracket is
5 FirstEnergy’s:¹⁶²



6
7 Mr. Carlin also confirms DRG collected data about decorative street lamps,¹⁶³ which
8 reduce average pole height measurements and, if used to calculate rental rates, would
9 reduce the rate FirstEnergy would pay Verizon. He says it is not a problem because the
10 street lamps “were ultimately excluded for analysis purposes.”¹⁶⁴ But the street lamps
11 were not excluded for analysis purposes. Verizon asked FirstEnergy to identify each pole

¹⁶² FE Statement 6-RJ at 10:22-11:20 (Carlin Rejoinder Testimony).

¹⁶³ *Id.* at 11:27-12:2.

¹⁶⁴ *Id.* at 11:29-12:1.

1 removed from the dataset. FirstEnergy responded that it did not remove the decorative
2 street lamp poles from the field review results it reported.¹⁶⁵

3 **VI. Response to Mr. Guo's Rejoinder Testimony (Statement 7-RJ)**

4 **Q. What is your overall reaction to Mr. Guo's rejoinder testimony?**

5 A. Mr. Guo admits that if the errors I identified are true (and they are) he did not produce a
6 field audit with a 95% confidence level as requested. He asks the Commission to ignore
7 his failure to produce data with the requested confidence level and rely on the data
8 anyway because it "produce[d] at least a 90% confidence level for analysis."¹⁶⁶ If my
9 spot check of FirstEnergy's field data means the field review did not satisfy FirstEnergy's
10 standards, the Commission certainly should not rely on it as a substitute for the
11 presumptive values in the Commission's regulations.

12 **Q. Like Mr. Carlin, Mr. Guo states he removed the decorative street lamps from his**
13 **data set. Please respond.**

14 A. As noted above, FirstEnergy provided a different response in discovery.¹⁶⁷ Mr. Guo's
15 data also suggests FirstEnergy's first response—that the street lamps *were* included to
16 skew the results in FirstEnergy's favor—is the correct response. He states the minimum
17 height of a Verizon pole in his review was a 20-foot pole.¹⁶⁸ This is consistent with the

¹⁶⁵ Ex. SCM-49 pairs the Scid numbers of the street lamp poles with the database site numbers and latitude and longitude information from Attachment E to FirstEnergy's Response to Verizon's Interrogatory No. 34. Ex. TJT-8 includes the database site numbers and latitude and longitude information for the poles FirstEnergy says were removed from the data prior to analysis. The street lamp poles are not on FirstEnergy's list.

¹⁶⁶ FE Statement 7-RJ at 2:16-19, 3:21-23 (Guo Rejoinder Testimony).

¹⁶⁷ Ex. SCM-49 (street lamp pole information); Ex. TJT-8 (Response to Verizon Interrogatory Set III, No. 18).

¹⁶⁸ FE Statement 7-R, Ex. CG-1, Table 4 (Guo Rebuttal Testimony).

1 inclusion of the street lamp poles I identified, which were measured in the field at about
2 13 to 15 feet in height.¹⁶⁹ FirstEnergy recorded pole height based on a calculation¹⁷⁰ that
3 would convert a 13 to 15-foot street lamp pole into the 20-foot pole recorded in Mr.
4 Guo's table.¹⁷¹

5 **Q. Do you have any other comments about Mr. Guo's rejoinder testimony?**

6 A. Yes. Mr. Guo admits FirstEnergy is trying to inflate Verizon's rental rates based on a
7 field review of poles to which Verizon is not attached.¹⁷² He says this is not a concern
8 unless "there is some fundamental difference between these types of poles."¹⁷³ But there
9 is a fundamental difference in these poles: Verizon is *not* attached to poles FirstEnergy
10 considered and wants to use to charge Verizon higher rates.

11 FirstEnergy uses the presumptive inputs in the Commission's regulations when
12 calculating rates for other broadband providers in Pennsylvania.¹⁷⁴ The Commission
13 should use the same presumptive inputs in its regulations when setting the just and
14 reasonable rate for Verizon.

¹⁶⁹ Ex. SCM-44.

¹⁷⁰ FE Statement 6-R, Ex. SC-1 at FE00136 (Carlin Rebuttal Testimony) ("The formula to calculate the pole length is Pole Top Height (inches) * 1.10 (10%) + 2 feet, rounded up to the nearest 5-foot increment.").

¹⁷¹ For example, the 13.5-foot street lamp pole becomes a 20-foot pole as follows: 162 inches * 1.10 + 24 inches = 202.2 inches / 12 = 16.9 feet, which rounds to 20 feet.

¹⁷² FE Statement 7-RJ at 5:15-6:6 (Guo Rejoinder Testimony).

¹⁷³ *Id.* at 6:3.

¹⁷⁴ Exs. MSC-12 to MSC-14 (FirstEnergy rate calculations).

1 **Q. Does this conclude your surrejoinder testimony?**

2 A. Yes, although I reserve the right to supplement my surrejoinder testimony should it

3 become necessary to do so.

Exhibit SCM-45

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

Via Email

Verizon Maryland LLC,)	Proceeding Number 19-355
)	Bureau ID Number EB-19-MD-009
Complainant,)	
)	
v.)	
)	
The Potomac Edison Company,)	
)	
Defendant.)	

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By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

Released May 22, 2020

I. Introduction

This Order memorializes Commission staff rulings regarding a variety of matters relevant to the conduct of this proceeding.

II. Requests for Discovery

A. Potomac Edison's First Set of Interrogatories

Potomac Edison filed its First Set of Interrogatories for Verizon on February 5, 2020.¹ Verizon filed Objections to those interrogatories on February 12, 2020,² and Responses to them on March 13, 2020.³ Potomac Edison filed a Motion to Compel Answers to Defendant's First Set of Interrogatories on March 23, 2020.⁴ Verizon filed an Opposition to Potomac Edison's Motion to Compel on March 30, 2020.⁵ In a letter ruling dated April 13, 2020, the Commission deferred ruling on Potomac Edison's discovery motions until the parties complied with their obligations under the Commission's rules regarding the filing of their joint statement.⁶ The parties filed their Revised Joint Statement on April 27, 2020.⁷ The Revised Joint Statement reflected that the parties were unable to resolve all of the discovery issues that were the subject of Potomac Edison's Motion to Compel.⁸

Section 1.730(a) of the Commission's rules permits interrogatories to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding.⁹ Section 1.730(b) of the Commission's rules requires that the proponent of the interrogatories provide an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.¹⁰

As an initial matter, Potomac Edison has not complied with rule 1.730(b) and explained how the information in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.¹¹ In support of its First Set of Interrogatories, Potomac Edison summarily stated that "all of the information requested herein pertains to Potomac Edison's Answer" and that "Potomac Edison is not seeking information that is available from any source other than Verizon."¹² This general summary

¹ Potomac Edison Company's First Set of Interrogatories to Verizon Maryland LLC, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Feb. 5, 2020) (Potomac Edison's Interrogatories).

² Verizon's Objections to Potomac Edison's First Set of Interrogatories, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Feb. 12, 2020).

³ Verizon's Responses to Potomac Edison's First Set of Interrogatories, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Mar. 13, 2020).

⁴ Motion to Compel Answers to Defendant's First Set of Interrogatories, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Mar. 23, 2020) (Motion to Compel).

⁵ Verizon's Opposition to Potomac Edison's Motion to Compel Answers to Defendant's First Set of Interrogatories, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Mar. 30, 2020).

⁶ Letter from Rosemary McEnery, Chief, MDRD, FCC Enforcement Bureau, to Curtis L. Groves and Christopher S. Huther, Counsel for Verizon, and Thomas B. Magee, Counsel for Potomac Edison, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (dated Apr. 13, 2020) (April 13th Letter Ruling).

⁷ Revised Joint Statement, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Apr. 27, 2020) (Revised Joint Statement).

⁸ Revised Joint Statement at 74-81.

⁹ 47 CFR § 1.730(a).

¹⁰ 47 CFR § 1.730(b).

¹¹ *Id.*

¹² Potomac Edison's Interrogatories at 1.

explanation fails to comply with the requirements of the rule 1.730(b) which requires an explanation for *each* specific interrogatory. This may provide a sufficient basis for denial of the interrogatories. Here, however, Potomac Edison later set forth its specific explanation for each interrogatory in its Motion to Compel.¹³

After considering the Commission's rules, Potomac Edison's interrogatories, Verizon's objections and responses, and the parties' additional pleadings relating to the unresolved interrogatories, we rule as follows:

Potomac Edison's Interrogatory No. 1 is denied. Potomac Edison has not adequately demonstrated how the pole attachment rates that Verizon pays to other electric utilities is relevant to determining whether the rates Potomac Edison charges Verizon are just and reasonable under the Commission's orders and rules.

Potomac Edison's Interrogatory Nos. 2, 3, 4, 5, 6, 9, and 10 are denied. Potomac Edison has not adequately demonstrated that the alleged "speed to market" and cost advantages associated with Verizon's historical status as an incumbent LEC are relevant to determine whether Potomac Edison's rates are just and reasonable under the Commission's orders and rules. Potomac Edison also has not demonstrated that the requested information is relevant to whether the terms and conditions in the parties' joint use agreement give Verizon a material advantage over other telecommunications attachers providing telecommunications services on the same poles under their license agreements with Potomac Edison. Potomac Edison has not pointed to any provision in either its joint use agreement with Verizon or its license agreements with other telecommunications attachers to demonstrate the relevance of the requested discovery. To the extent that Potomac Edison claims that it needs to know the number of Verizon's attachments on Potomac Edison poles, Potomac Edison appears to have that information already because Verizon uses the same notification system used by others attaching to Potomac Edison's poles. It is also unclear how Potomac Edison could use the requested information for comparative purposes as Potomac Edison does not purport to have, nor has it requested, the same information from Verizon's competitors about their costs, the number of customers they serve, or the revenue they generate from their attachments.

Potomac Edison's Interrogatory No. 8 is denied. Potomac Edison has not adequately demonstrated how information identifying poles on which Verizon has copper facilities and has announced it has or will abandon service is relevant to a determination of the justness and reasonableness of the rates Potomac Edison charges Verizon. In addition, Potomac Edison has not demonstrated that it is unable to determine the amount of space Verizon's attachments occupy on its poles through its own field study of Verizon's attachments or other records.

B. Potomac Edison's Motion to Allow Additional Discovery

Potomac Edison filed a Motion to Allow Additional Discovery on March 30, 2020.¹⁴ In a letter ruling dated April 13, 2020, the Commission deferred ruling on Potomac Edison's Motion until the parties complied with the Commission's rules regarding the filing of their joint statement.¹⁵ The Revised

¹³ Motion to Compel at 2-7.

¹⁴ Motion to Allow Additional Discovery, Proceeding No 19-355, Bureau ID No. EB-19-MD-009 (filed Mar. 30, 2020) (Motion to Allow Additional Discovery).

¹⁵ April 13th Letter Ruling at 2-3. The April 13th Letter Ruling instructed Verizon not to file a response to Potomac Edison's Motion to Allow Additional Discovery.

Joint Statement reflects that the parties were unable to resolve the discovery issues that were the subject of Potomac Edison's Motion to Allow Additional Discovery.¹⁶

Potomac Edison's Motion for Additional Discovery is premised on Verizon's alleged "speed to market" and cost advantages associated with its status as an incumbent LEC. The motion has several procedural and substantive deficiencies. First, the motion is untimely. The Notice of Formal Complaint¹⁷ advised the parties that this proceeding is subject to a 270-day review period, tight deadlines would apply to any discovery and briefing, and the Commission would be disinclined to grant deadline extensions.¹⁸ The Notice set February 17, 2020, as the deadline to complete discovery and briefing and advised the parties to plan their schedules accordingly.¹⁹ The February 17th deadline was extended to April 17th in response to Potomac Edison's unopposed request.²⁰ Potomac Edison nevertheless waited almost two months after filing its answer to file its Motion for Additional Discovery. This was just 18 days before the April 17th discovery and briefing deadline to which it agreed. In addition, the record indicates that although Potomac Edison knew well before the complaint was filed—back in June 2018—that it would need additional discovery,²¹ it failed to request additional discovery at the time it filed its Answer or soon thereafter.²²

Second, Potomac Edison's Motion largely fails to identify the specific additional discovery it seeks.²³ The Motion does not attach the interrogatories or document requests it seeks permission to serve on Verizon. Rather in almost every instance, it generally states that the need for additional discovery is relevant to determine the "speed to market" and cost advantages Verizon has over its competitors.²⁴ Once again, Potomac Edison has failed to demonstrate that the requested information is relevant to a determination of whether Potomac Edison's rates are just and reasonable or whether the terms and conditions in the parties' joint use agreement give Verizon a material advantage over other telecommunications attachers. To the extent that Potomac Edison claims that the requested information is relevant to determine "speed to market" and cost benefits that Verizon allegedly experiences, Potomac Edison has failed to explain how those benefits derive from the terms and conditions of the joint use agreement rather than Verizon's historical status as an incumbent LEC.

¹⁶ Revised Joint Statement at 74-81.

¹⁷ Notice of Formal Complaint, Proceeding No 19-355, Bureau ID No. EB-19-MD-009 (dated Nov. 26, 2019) (Notice).

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ See Letter from Rosemary McEnery, Chief, MDRD, FCC Enforcement Bureau, to Curtis L. Groves and Christopher S. Huther, Counsel for Verizon, and Thomas B. Magee, Counsel for Potomac Edison, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (dated Dec. 9, 2019); see also Unopposed Motion for Adjustment of Deadlines, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (filed Dec. 4, 2019).

²¹ See Answer Exh. J at PE00106.

²² Instead, Potomac Edison complained repeatedly in its Answer about the "limited discovery" available in Commission proceedings without requesting the expanded discovery it now asserts that it needs. See Answer at 39-41, paras. 86-87; 95-97, paras. 46, 47, 49.

²³ Potomac Edison has had ample opportunity to do so in its interrogatories, its Motion to Allow Additional Discovery, and in the parties' two Joint Statements.

²⁴ See Motion to Allow Additional Discovery at 3.

Finally, although Potomac Edison's request appears to encompass both direct discovery from Verizon as well as third-party discovery of its other licensees, Potomac Edison does not specifically identify any third-party discovery that it needs nor does it attach any third-party discovery requests. Even if we were to find that the additional discovery requests were timely or relevant, we do not find it appropriate to extend the schedule to permit unspecified third-party discovery, or permit Potomac Edison to supplement its Answer with this information, at this late point in the schedule. We therefore deny Potomac Edison's Motion to Allow Additional Discovery.

C. Revised Joint Statement Discovery

Potomac Edison also identified additional discovery in the Revised Joint Statement that it had not previously requested in any filing in this proceeding.²⁵ Specifically, Potomac Edison seeks to take some of the same discovery that it has requested in Verizon's complaint proceeding against Potomac Edison's affiliates which is currently pending at the Pennsylvania Public Utility Commission (PA PUC).²⁶ That proceeding was initially filed at the FCC on November 20, 2019, but was subsequently transferred to the PA PUC on or about March 23, 2020, after Pennsylvania certified that it regulates pole attachments.²⁷

Potomac Edison claims that some of the discovery requested in the PA PUC proceeding seeks information to substantiate several contentions that Verizon made both in its complaint against Potomac Edison's Pennsylvania affiliates and in its complaint in this proceeding.²⁸ Potomac Edison does not explain why it waited until months after filing its answer in this proceeding to submit discovery requests seeking substantiation of statements made by Verizon in its complaint. Potomac Edison also does not explain the need for the additional discovery requests that are unrelated to substantiating the specified Verizon complaint contentions. We therefore deny the request as untimely.

III. Schedule and Additional Briefing

The Revised Joint Statement does not identify any specific issues that either party believes should be the subject of additional briefing.²⁹ We defer any decision regarding scheduling or additional briefing pending further consideration of the parties' pleadings.

IV. Potomac Edison's Request to Correct the Answer

Potomac Edison filed a Motion for Leave to Supplement and Correct Answer on March 13, 2020.³⁰ Verizon filed an opposition on March 17, 2020.³¹ In its Opposition, Verizon asserted that Potomac Edison's request was premature because Potomac Edison did not seek to resolve this request

²⁵ Revised Joint Statement at 75-76.

²⁶ *Id.*

²⁷ *See* Order, Proceeding Number 19-355, Bureau ID Number EB-19-MD-009 (EB MDRD Mar. 23, 2020).

²⁸ Revised Joint Statement at 75.

²⁹ *Id.* at 81-82.

³⁰ The Potomac Edison Company's Motion for Leave to Supplement and Correct Answer, Proceeding No. 19-355, Bureau ID No. 19-EB-MD-009 (filed Mar. 13, 2020).

³¹ Verizon's Opposition to Potomac Edison's Motion for Leave to Supplement and Correct Answer, Proceeding No. 19-355, Bureau ID No. 19-EB-MD-009 (filed Mar. 17, 2020).

with Verizon prior to filing its motion.³² Verizon also stated that the parties should be able to agree to the submission of an errata after conferring.³³ The April 13th Letter Ruling stated that staff denied Potomac Edison's Motion for Leave to Supplement and Correct Answer and its Motion for Leave to File Response to Reply and instructed the parties to address correcting the answer in their revised joint statement.³⁴

The Revised Joint Statement identifies the specific statements in the Answer that Potomac Edison seeks to correct and indicates that Verizon has agreed to only one requested correction.³⁵ Verizon argues that Potomac Edison should file a motion with respect to the other requested corrections, and that Verizon should have the opportunity to respond formally to that motion.³⁶ We disagree. We instructed the parties to address this matter in their Revised Joint Statement, and any Verizon response to these requests should have been included there.

We grant Potomac Edison's request to make the specific corrections to the Answer that are identified in the Revised Joint Statement. By no later than May 27, 2020, Potomac Edison should submit a letter to staff enclosing a Corrected Answer that makes these requested changes in redline form. Staff will then review the redline changes to verify that they conform to the ruling in this Order before granting Potomac Edison leave to file a final version of the Corrected Answer.

V. Settlement

The parties reported that they are open to settlement but are unable to agree on staff-supervised mediation.³⁷ We encourage the parties to continue to pursue resolving their dispute through negotiation. Commission staff are prepared to assist in any settlement effort, and the parties should notify Commission staff if they change their mind regarding staff-supervised mediation.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 0.459, 1.3, 1.720-1.740, and 1.1401-1415 of the Commission's Rules, 47 CFR §§ 0.459, 1.3, 1.720-1.740, 1.1401-1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's Rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION



Rosemary McEnery
Division Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission

³² *Id.* at 3.

³³ *Id.*

³⁴ April 13th Letter Ruling at 1.

³⁵ Revised Joint Statement at 83-86.

³⁶ *Id.* at 83.

³⁷ *Id.* at 82.

Exhibit SCM-46

FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU
MARKET DISPUTES RESOLUTION DIVISION
445 12TH, S.W.
WASHINGTON, DC 20554

February 12, 2015

By U.S. Mail and Email

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Re: *Commonwealth Telephone Company LLC v. Metropolitan Edison Company*,
File No. EB-14-MD-008, Docket no. 218

Dear Counsel:

To assist the Bureau in resolving this matter, pursuant to Rule 1.1411,¹ we direct the parties to brief the following issues:

- 1) What benefits or advantages, if any, did Frontier receive under the joint use agreements that are not available to competitive LECs (e.g., avoided make-ready costs)?
- 2) What is the estimated monetary value of each of such benefits?
- 3) After accounting for the value of those benefits, what is a just and reasonable pole attachment rate?

The parties should be guided in their briefing by the Bureau's decision in *Verizon Florida v. Florida Power and Light*.² If a party believes it needs discovery to address these issues, it may submit discovery requests.

The schedule for discovery and briefing is as follows:

Each party shall send an email by February 20 stating whether it will be seeking discovery.

If neither party requests discovery, opening briefs from both parties are due March 27, and responses are due April 17.

¹ 47 C.F.R. 1.1411.

² *Verizon Florida LLC v. Florida Power and Light Company*, Memorandum Opinion and Order, ECFS No. 14-216, File No. EB-14-MD-003, ECFS No. 14-216 (Enf. Bur. Feb. 11, 2015).

If either party requests discovery, its requests should be filed and served by March 6, and discovery should be completed by April 3. Opening briefs from both parties are due May 8; and responses are due May 29.

Finally, we encourage the parties to attempt to settle this dispute rather than expending further time and expense. If the parties are interested in mediation with Commission staff, please contact me and we will schedule a mediation session as quickly as schedules permit.

This letter is issued pursuant to sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), sections 1.1404-1-1424 of the Commission's rules, 47 C.F.R. §§ 1.1401-1.1424, and the authority delegated by sections 0.111, and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

If you have any questions, please contact me at (202) 418-1711, christopher.killion@fcc.gov, Rosemary McEnery at (202) 418-7336, rosemary.mcenery@fcc.gov, or Lia Royle at (202) 418-7336, lia.royle@fcc.gov.

Sincerely,



Christopher Killion

cc: Rosemary McEnery
Lia Royle

Exhibit SCM-47

Proprietary Exhibit Omitted

Exhibit SCM-48

Proprietary Exhibit Omitted

Exhibit SCM-49

Proprietary Exhibit Omitted