

VERIZON PENNSYLVANIA LLC
AND VERIZON NORTH LLC
STATEMENT NO. 2.2

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. 2.2
(SURREJOINDER TESTIMONY)

WITNESS: Mark S. Calnon

DATED: July 2, 2020

PUBLIC VERSION

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1 **I. Introduction**

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

3 A. My name is Mark S. Calnon. I am a senior consultant on economic and regulatory policy
4 supporting Verizon's Network Operations & Engineering Group. My business address is
5 One Verizon Way, Basking Ridge, NJ 07920.

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

19 A. FirstEnergy's rejoinder testimony fails to address central issues in my surrebuttal
20 testimony such as the proper calculation of rates under the Commission's rate formulas,
21 does not provide documentation to support FirstEnergy's many unsubstantiated
22 allegations (including those I pointed out in my surrebuttal testimony), and presents a

1 false narrative that the FCC’s framework—which the Commission adopted last year after
2 a lengthy rulemaking proceeding—is somehow at odds with Commission practices. The
3 testimony is largely a rehash of earlier testimony seeking to perpetuate FirstEnergy’s
4 continued collection of artificially high rates through any conceivable argument, however
5 unreasonable or far-fetched. For example, running throughout the rejoinder testimony is
6 an argument that FirstEnergy should forever collect exceptionally high pole attachment
7 rates from Verizon based on the history of the development of communications networks.
8 Verizon is an incumbent local exchange carrier (“ILEC”) and so by definition deployed
9 facilities before cable companies entered the market in the 1970s and competitive local
10 exchange carriers (“CLECs”) entered the market in 1996. FirstEnergy’s witnesses argue
11 Verizon should pay higher rates than its competitors today and going forward based on
12 claims that Verizon was not comparable to these competitors a half-century ago.¹

13 These arguments are at odds with the Commission’s decision to exercise jurisdiction over
14 pole attachments as part of “a dedicated effort to provide high-speed internet access to
15 every household and business in Pennsylvania.”² The Commission recognized “the close
16 relationship between pole attachments and broadband deployment” and the fact that
17 “rental rates for pole attachments that are as low and close to uniform as possible ...

¹ FE Statement 1-RJ at 20:8-10 (Schafer Rejoinder Testimony) (defending higher rates based on allegations about “the time the Joint Use Agreements were executed until 1996”).

² See *Assumption of Comm’n Jurisdiction over Pole Attachments from the FCC*, Notice of Proposed Rulemaking, No. L-2018-3002672, 2018 WL 3533538, at *5 (Pa. PUC July 12, 2018) (“*NPRM*”).

1 promote broadband deployment.”³ This Commission already determined that reducing
2 broadband infrastructure costs promotes the efficient deployment of broadband, to the
3 benefit of broadband consumers. FirstEnergy’s rejoinder testimony seeks instead to price
4 pole attachment rates based on ancient history and arcane regulatory classifications
5 instead of today’s consumers’ needs and the Commission’s binding regulations.

6 FirstEnergy’s rejoinder testimony is incompatible with the Commission’s regulations. Its
7 witnesses do not discuss the rental rates I calculated under the Commission’s rate
8 formulas except to try to defend field review data they admit is rife with error. They also
9 do not disagree with the reference guide I provided, which details the proper application
10 of the Commission’s rate formulas.⁴ Instead, FirstEnergy’s witnesses ask the
11 Commission to abandon its regulations in favor of a different rate methodology that
12 produces higher rates. The Commission cannot provide FirstEnergy an exception to the
13 regulations it adopted to move broadband forward for the benefit of consumers
14 throughout the Commonwealth.

15 **Q. Please summarize your surrejoinder testimony.**

16 A. My surrejoinder testimony addresses errors and deficiencies in FirstEnergy’s rejoinder
17 testimony that confirm the rental rate reductions and refunds Verizon seeks are necessary
18 and justified under the Commission’s adopted regulations. In particular, I will:

³ See *Assumption of Comm’n Jurisdiction over Pole Attachments from the FCC*, Final Rulemaking Order, No. L-2018-3002672, 2019 WL 4345730, at *2 (Pa. PUC Aug. 29, 2019) (“*Final Rulemaking Order*”).

⁴ See Ex. MSC-3.

- 1 • explain why the Commission was correct to adopt the FCC’s rate formulas and
2 show how FirstEnergy’s request for a different formula would frustrate broadband
3 competition by over-allocating pole costs to attaching entities;
- 4 • rebut the conclusory allegations of FirstEnergy’s witnesses that Verizon should
5 pay FirstEnergy anti-competitive rates based on “advantages” under the joint use
6 agreements;
- 7 • show why FirstEnergy’s quick litigation-motivated field review does not provide
8 accurate inputs for use in calculating rates.

9 I disagree with other allegations in the rejoinder testimony of FirstEnergy’s witnesses—
10 many of which duplicate the rebuttal testimony they provided and were already addressed
11 in my surrebuttal—so I will focus this surrejoinder on these three issues.

12 **II. The Commission Adopted Well-Established and Economically Sound Rate**
13 **Methodologies that Fully and Appropriately Allocate Pole Costs.**

14 **Q. Please summarize the arguments you will address in this section.**

15 A. Mr. Zarakas and Ms. Savage suggest that the Commission could abandon the well-
16 established rate formulas it adopted in regulations last year in favor of a different
17 approach that would produce higher pole attachment rates. In this section, I explain that
18 their approach is incompatible with the Commission’s regulations and would over-
19 compensate FirstEnergy, which would harm Pennsylvania’s competitive broadband
20 marketplace. I also rebut the claim that competitively neutral rates would require
21 significant increases to electric consumer rates or result in a subsidy from electric
22 consumers to communications consumers (which are likely to be the same group of
23 consumers) and show why *FirstEnergy’s* position would harm broadband options and
24 costs in Pennsylvania.

1 The FCC considered the interests of electric utility pole owners and their customers when
2 it adopted the new telecom rate formula now in the Commission’s regulations.⁵ The
3 resulting new telecom rate is “just, reasonable, and fully compensatory, and ... grounded
4 in sound economic policies.”⁶ Mr. Zarakas and Ms. Savage want special rules and higher
5 rates for FirstEnergy. But their approach would reallocate to communications companies
6 costs that have been properly allocated to FirstEnergy. This would preserve and increase
7 FirstEnergy’s excessive pole rental revenues, when lower and competitively neutral
8 rental rates for use of infrastructure incentivize broadband investment, promote
9 competition, and expand opportunities for consumers, as this Commission already
10 determined.

11 **Q. Please describe the similarities and differences between the Commission’s allocation**
12 **of unusable pole costs and FirstEnergy’s.**

13 A. Both approaches fully allocate all pole costs to attaching entities, including the pole
14 owner. FirstEnergy’s witnesses take issue with how the Commission allocates the cost of
15 unusable space on the pole. The Commission adopted the FCC’s rate formulas, including
16 the new telecom rate formula that sets the competitively neutral rate in this case.⁷ The
17 new telecom formula includes a “space factor” that allocates all costs for unusable space
18 to attaching entities in two steps. First, it allocates one-third of the unusable space to the

⁵ 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, 5243 (¶ 6) (2011) (“*Pole Attachment Order*”) (“[W]e seek to eliminate unnecessary costs or burdens associated with pole attachments, while taking into account legitimate concerns of pole owners”).

⁶ *Id.* at 5299 (¶ 137).

⁷ See, e.g., 52 Pa. Code § 77.4(a); 47 C.F.R. §§ 1.1406(d), 1.1413(b)).

1 pole owner (which is an attaching entity). Second, it evenly divides the remaining two-
2 thirds of the unusable space among all attaching entities, including the pole owner.⁸

3 Congress adopted this allocation in 1996, and it has been required ever since.⁹

4 Ms. Savage and Mr. Zarakas propose a different approach, which the Commission did not
5 adopt in its recent rulemaking and cannot be applied consistent with the Commission's
6 adopted regulations or applicable law. They argue all unusable space costs should be
7 equally allocated among attaching entities, including the pole owner, on a "per capita"
8 basis.¹⁰ Under the Commission's regulations (which presume there are five attaching
9 entities on FirstEnergy's poles), this would cap FirstEnergy's contribution to the unusable
10 pole space at 20 percent.

11 **Q. Would FirstEnergy's "per-capita" allocation approach be fairer than the approach**
12 **the Commission adopted?**

13 A. No. Quite the opposite. Their approach ignores the significant differences in the amount
14 of usable space occupied by entities attached to a pole. Under the space presumptions in
15 the Commission's regulations, electric utilities occupy 10.5 feet of usable space and
16 communications providers, including ILECs, CLECs, and cable companies, each occupy
17 one foot.¹¹ The "per capita" approach Ms. Savage and Mr. Zarakas prefer would assign

⁸ See VZ Statement 2.1 at 49:12-15 (Calnon Surrebuttal Testimony).

⁹ See 52 Pa. Code § 77.4(a); 47 U.S.C. § 224(e)(2); 47 C.F.R. § 1.1409(a).

¹⁰ E.g., FE Statement 2-RJ at 6:2-17 (Zarakas Rejoinder Testimony); see also FE Statement 3-RJ at 4:4-6 (Savage Rejoinder Testimony).

¹¹ 52 Pa. Code § 77.4(a); 47 C.F.R. §§ 1.1409, 1.1410; see also VZ Statement 1.1 at 63:16-18 (Mills Surrebuttal Testimony). The Commission's default space assumptions were borne out by FirstEnergy's flawed field audit, which concluded that on average FirstEnergy occupied [REDACTED] feet of space on a pole and Verizon occupied about [REDACTED] inches of space. Mr. Mills has

1 each communications provider the same unusable space as is assigned to FirstEnergy,
2 even though each communications provider uses less than one-tenth the usable space as
3 FirstEnergy. The Commission adopted regulations that appropriately and fairly give
4 FirstEnergy responsibility for more unusable space than communications providers as
5 FirstEnergy uses significantly more usable space than communications providers.

6 **Q. Does Verizon follow the Commission’s regulations when calculating rental rates for**
7 **use of Verizon’s poles?**

8 A. Yes. And this will serve to lower the rates FirstEnergy pays Verizon if the Commission
9 grants Verizon the relief it seeks in this case. As I explained in my direct testimony, if
10 the Commission sets Verizon rate as the competitively neutral new telecom rate it seeks,
11 Verizon will charge FirstEnergy the lower proportional new telecom rates I calculated in
12 my direct testimony. Verizon is the pole owner for purposes of those calculations, which
13 means Verizon will be allocated responsibility for more unusable space than FirstEnergy
14 under the Commission’s regulations.

15 **Q. Ms. Savage states unusable space costs should be allocated in the same manner as**
16 **other common costs and that the failure to do so “results in electric utility customers**
17 **providing a subsidy to pole attachers.” Do you agree?**

18 A. No, I do not. First, she provides no support or documentation for her conclusory claim
19 about how common costs are allocated. Second, Ms. Savage contends that “it is
20 inappropriate to directly assign any portion of unusable space to the electric utility”

discussed how the method of calculating the space occupied by Verizon over-counted space to produce upwardly biased results. See VZ Statement 1.1 at 54:2-57:6 (Mills Surrebuttal Testimony).

1 because it would result in a subsidy.¹² But in economics, the presence or absence of a
2 subsidy depends on a comparison of rates to incremental or marginal costs, and is not
3 determined by how the costs are allocated.¹³ Under the correct view of subsidy, the
4 Commission's regulations do not result in a subsidy from electric customers to
5 communications attachers.

6 As a matter of cost causation, the presence of a communications attachment or
7 attachments does not add to the amount of unusable space already required by the pole
8 owner. But the Commission's rate methodology assigns costs for unusable space to the
9 communications attachers. My surrebuttal testimony presents a comparison of how the
10 costs for unusable space are allocated under the space factor in the Commission's
11 regulations and under FirstEnergy's new methodology.¹⁴ My comparison showed that,
12 under the Commission's regulations (including its default value of five attaching entities),
13 the space factor allocates 46.4% of unusable space to FirstEnergy as pole owner, while
14 FirstEnergy's proposal allocates 20% of the unusable space to FirstEnergy as pole owner.

15 The Commission's regulations include additional default values, which permit a
16 comparison of the percent of usable space occupied by an attacher to the percent of

¹² FE Statement 3-RJ at 4:4-8 (Savage Rejoinder Testimony).

¹³ See, for example, the articles and bibliography in 1 Alexander A. Larson & Mark E. Meitzan, *COST AND PRICING PRINCIPLES FOR TELECOMMUNICATIONS: AN ANTHOLOGY* (1990), including G. Faulhaber, *Cross Subsidization: Pricing in Public Enterprises*, 65 *AM. ECON. REV.* 966 (1975), William J. Baumol, *Minimum and Maximum Pricing Principles for Residual Regulation*, 5 *E. ECON. J.* 235 (1979), and Edward E. Zajac, "Cross-Subsidization," *FAIRNESS OR EFFICIENCY: AN INTRODUCTION TO PUBLIC UTILITY PRICING* (1978). See also VZ Statement 3.2 at 4:17-19 (Tardiff Surrejoinder Testimony).

¹⁴ VZ Statement 2.1 at 50:1-11 (Calnon Surrebuttal Testimony).

1 unusable space it is allocated. Under the default values, FirstEnergy occupies roughly
2 78% of the usable space (10.5 feet of 13.5 feet of usable space) and four communications
3 attachers collectively occupy the remaining 22%. This means the space factor in the
4 Commission's regulations allocate 46.6% of the unusable space to FirstEnergy, which
5 occupies roughly 78% of the usable space. The communications attachers are allocated
6 the other 53.6% of unusable space and occupy 22% of usable space.

7 FirstEnergy benefits from this cost allocation. Allocating the costs of unusable space
8 based on relative use would allocate 78% of the unusable space to FirstEnergy and divide
9 the remaining 22% amount the four communications attachers.

10 FirstEnergy's novel rate approach would skew the allocation further in FirstEnergy's
11 favor. FirstEnergy would still occupy roughly 78% of the usable space, but would be
12 allocated only 20% of the unusable space. The communications attachers would still
13 occupy the remaining 22% of usable space, but would cover the cost of 80% of the
14 unusable space. It is no wonder no regulator has adopted this approach. The allocations
15 are nearly flipped as compared to usable space occupied.

16 **Q. Mr. Zarakas says you consider the Commission's new and cable telecom rate**
17 **formulas to fully allocate pole costs because "the resulting rates include a**
18 **contribution to the costs of unusable pole space, no matter how modest." Does this**
19 **properly characterize your testimony?**

20 **A.** No. I did not say the Commission's rate formulas provide a "modest" contribution to the
21 cost of unusable pole space. As just shown, the Commission's rate formulas—and the
22 new telecom rate formula in particular—reasonably allocate all costs associated with the
23 usable and unusable space on a pole in a manner that fully compensates FirstEnergy.

1 Mr. Zarakas is also wrong when he says “only 2/3 of the unusable space is allocated
2 amongst attachers” under the FCC’s old telecom formula.¹⁵ Pole owners also are
3 attachers. The direct assignment of “1/3 of the pole’s common costs” (*i.e.*, the unusable
4 space) “to the electric distribution utility” *is* an allocation to an attacher.¹⁶

5 Mr. Zarakas says that the fact that “1/3 of the pole’s common costs are directly assigned
6 to the electric distribution utility” under the old telecom formula “creates a subsidy to
7 attachers at the expense of electric utility ratepayers” from “a fully allocated cost
8 standpoint.”¹⁷ This argument is flawed for several reasons. First, his conclusion is based
9 solely on his proposal to change the Commission’s rate methodology and adopt one that
10 allocates unusable space costs on a per-capita basis. As I explained above, this novel per-
11 capita approach ignores the significant differences in the space occupied FirstEnergy as
12 compared to communications attachers. Second, allocating common costs based on
13 relative use of space on the pole would result in a *lower* allocation of common costs to
14 the communications attachers than is allocated under the Commission’s rules. There
15 cannot be a subsidy when communications attachers are allocated more common costs
16 than their space occupancy requires.

¹⁵ FE Statement 2-RJ at 4:13-14 (Zarakas Rejoinder Testimony).

¹⁶ *Id.* at 4:14-17.

¹⁷ *Id.*

1 **Q. What conclusions do you draw from Ms. Savage’s statement that “[i]f all the**
2 **Companies’ joint use attachers were to employ Verizon’s thinking, FirstEnergy’s**
3 **customers would be unfairly impacted through higher rates”?**

4 A. She is wrong. If by “all the Companies’ joint use attachers,” she means other ILECs in
5 Pennsylvania,¹⁸ Ms. Savage previously stated that Verizon’s current rental accounts for
6 more than 75% of FirstEnergy’s joint use revenues from ILECs.¹⁹ I compared Verizon’s
7 overpayments to FirstEnergy’s revenues in my surrebuttal testimony and showed the
8 reductions at issue in this case amount to about [REDACTED] of FirstEnergy’s operating
9 revenues.²⁰ Assuming FirstEnergy is also overcharging the other ILECs in Pennsylvania,
10 and that they collectively pay one-third the rent Verizon pays, just and reasonable rates
11 for all ILECs in Pennsylvania would have a *de minimus* impact on FirstEnergy’s
12 operating revenues. Consumer rates should not need to increase.

13 If by “all the Companies’ joint use attachers,” Ms. Savage was referring to all companies
14 attached to FirstEnergy’s poles, Ms. Savage implies that FirstEnergy may seek to
15 leverage a decision in this case to increase rates for CLECs and cable companies already
16 entitled to the new telecom rates she challenges, which would increase infrastructure
17 costs and discourage investment in Pennsylvania’s competitive broadband market. This
18 is the exact opposite of the Commission’s objective. Moreover, the Commission’s
19 regulations establish the maximum rate that FirstEnergy is allowed to charge to CLECs
20 and cable companies, and it is about [REDACTED] the rate FirstEnergy charges Verizon.

¹⁸ FE Statement 3-RJ at 2:20-22 (Savage Rejoinder Testimony).

¹⁹ FE Statement 3-R at 4:5-8 (Savage Rebuttal Testimony).

²⁰ VZ Statement 2.1 at 56:13-57:3 (Calnon Surrebuttal Testimony).

1 **Q. Does Ms. Savage properly describe changes to the FCC rate formula in 2011?**

2 A. No. Ms. Savage provides a misleadingly incomplete description. In 2011, the FCC
3 “establish[ed] an upper-bound and lower-bound” for the new telecom rate and let pole
4 owners charge the higher of the two.²¹ One of the two options produces the lower rate in
5 almost all cases and so is not charged.²² It is based on “principles of cost causation,” so
6 is based on “operating expenses—namely maintenance and administrative expenses”—
7 but not capital costs.²³ Ms. Savage describes this rarely-used formula when she
8 complains that “the FCC modified the rate formulas in 2011” and removed “depreciation,
9 tax, and rate of return expenses associated with poles ... from the carrying charge
10 calculation.”²⁴

11 But the FCC *also* adopted the formula that so regularly produces the higher of the two
12 options that it is typically the only formula referred to as the “new telecom” formula.²⁵
13 Verizon sought rates calculated using this version of the formula, so the formula Ms.
14 Savage describes is not at issue in this case. And FirstEnergy’s own rate calculations
15 show it regularly produces rates materially higher than the formula Ms. Savage criticizes.

²¹ *Pole Attachment Order*, 26 FCC Rcd at 5300 (¶ 140); *see also* 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1406(d)(2) (“With respect to attachments to poles by any telecommunications carrier or cable operator providing telecommunications services, the maximum just and reasonable rate shall be the higher of the rate yielded by paragraphs (d)(2)(i) or (d)(2)(ii) of this section.”).

²² 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1406(d)(2)(ii).

²³ *See Pole Attachment Order*, 26 FCC Rcd at 5301-5302 (¶¶ 143-45) (“[U]nder a cost causation theory, where there is space available on a pole, an attacher would be required to pay for none of the capital costs of that pole.”).

²⁴ FE Statement 3-RJ at 3:10-11 (Savage Rejoinder Testimony).

²⁵ 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1406(d)(2)(i).

1 FirstEnergy’s rate calculations includes rates referred to as “1.1409(e)(2)(i)” (typically
2 produces the higher rate) and “1.1409(e)(2)(ii)” (typically produces the lower rate).²⁶ In
3 all but one calculation, the formula that typically produces the higher rate does so.²⁷ For
4 example, for use of Met-Ed’s poles during the 2014 rental year, FirstEnergy calculated a
5 [REDACTED] per pole “1.1409(e)(2)(ii)” rate and a [REDACTED] per pole “1.1409(e)(2)(i)” rate.²⁸
6 FirstEnergy’s spreadsheet then describes the higher of the two rates—*i.e.*, the [REDACTED] per
7 pole rate—as the new telecom rate.²⁹ Because the lower of the two rates (the [REDACTED] per
8 pole rate) was calculated using a cost-causation formula that more closely approximates
9 the incremental cost of an attachment, FirstEnergy’s right to charge a higher rate further
10 confirms the reasonableness of the Commission’s new telecom rate formula. By
11 definition, when the formula that typically applies produces a rate that is higher than the
12 rate calculated using cost-causation principles, FirstEnergy is compensated for more than
13 the incremental costs caused by an attacher’s attachment. The Commission’s new
14 telecom rate formula fully compensates FirstEnergy and should be enforced in this case.

²⁶ See Exs. MSC-12, MSC-13, MSC-14. These names refer to the prior location of the formulas in the FCC’s regulations. In other words, the formulas that now appear at 47 C.F.R. § 1.1406(d)(2)(i) and (ii) previously appeared at 47 C.F.R. § 1.1409(e)(2)(i) and (ii).

²⁷ The exception is the 2019 rate for use of MetEd’s poles.

²⁸ Ex. MSC-12 (Corrected Response to Verizon Interrogatory Set II, No. 15, Attachment A1). The correct application of the formula results in a \$5.02 per pole rate that year. Statement 2.0 at 4:10-11 (Calnon Direct Testimony).

²⁹ Ex. MSC-12 (Corrected Response to Verizon Interrogatory Set II, No. 15, Attachment A1).

1 **III. The Joint Use Agreements Do Not Provide Net Material Benefits to Verizon**

2 **Q. What are your general conclusions regarding Mr. Schafer's claim that the joint use**
3 **agreements provide Verizon benefits that justify higher rates?**

4 A. In place of data analysis and quantification, Mr. Schafer relies on a series of unsupported
5 assertions and unquantified claims, which he concedes as follows:

- 6 • “However, as I noted in my rebuttal testimony and further explain, below many of
7 these advantages simply cannot be quantified ...”³⁰
- 8 • “Irrespective of any quantification...”³¹
- 9 • “Any reasonable reading of these agreements makes clear that these differences
10 are self-evident.”³²
- 11 • “The terms of these agreements speak for themselves and, on their face, they are
12 substantively different.”³³

13 Missing from Mr. Schafer's analysis are the basic building blocks of a quantitative
14 analysis. These building blocks require that for each difference between the terms and
15 conditions of CLEC or cable license agreements and joint use agreements, FirstEnergy
16 must identify the volume of activity performed in a given time period, whether the
17 activity is a recurring or one-time event, and establish costs or benefits associated with
18 the activity. Once this initial data is provided, additional analysis is required to exclude
19 activities that FirstEnergy performs for cable and CLEC attachers, but not for Verizon
20 (because, for example, Verizon performs the work for itself) and to account for reciprocal
21 benefits Verizon provides FirstEnergy as an attacher on Verizon's poles. The final step

³⁰ FE Statement 1-RJ at 4:16-18 (Schafer Rejoinder Testimony).

³¹ *Id.* at 12:8.

³² *Id.* at 25:12-13.

³³ *Id.* at 35:18-20.

1 involves summing up individual sources of a net material benefit (if any) and expressing
2 the total amount on a per pole basis consistent with the invoiced pole quantities.

3 These principles are well-established, have been enforced in several decisions, and were
4 emphasized when FirstEnergy was party to a different complaint proceeding at the FCC
5 filed by Frontier Communications in 2014.³⁴ An electric utility must back up its alleged
6 benefits with quantitative proof. Any other standard would remove an analysis of costs
7 from the rate-setting analysis, which is fundamentally inconsistent with rate-setting and
8 competitive neutrality. FirstEnergy's attempts to eliminate the quantification requirement
9 in this case confirm it cannot satisfy it.

10 **Q. Are Mr. Schafer's allegations sufficient to establish net material competitive**
11 **advantages?**

12 A. No. The Commission's regulations require FirstEnergy to provide "clear and convincing
13 evidence" that it provides Verizon net benefits under the joint use agreements that
14 materially advantage Verizon over "other telecommunications carriers or cable television
15 systems providing telecommunications services on the same poles."³⁵ "Clear and
16 convincing evidence" of net material competitive advantages requires much more than a
17 collection of Mr. Schafer's unsupported opinions, a comparison of tables of contents,³⁶

³⁴ See Ex. SCM-46 (Letter to Counsel, *Commonwealth Tel. Co. v. Metropolitan Edison Co.*, File No. EB-14-MD-008 (Feb. 12, 2015)); see also *AT&T Fla. v. Fla. Power & Light Co.*, 2020 WL 2568977, at *7 (¶ 15) (FCC 2020); *Verizon Va. v. Dominion Va. Power*, 32 FCC Rcd 3750, 3759 (¶ 20) (2017); *Verizon Fla. v. Fla. Power & Light Co.*, 30 FCC Rcd 1140, 1149 (FCC 2015).

³⁵ 52 Pa. Code § 77.4(a); 47 C.F.R. § 1.1413(b); see also *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123).

³⁶ See, e.g., Statement 1-RJ at 36:2-5 (Schafer Rejoinder Testimony) ("[I]f you compare just the table of contents for the 1986 agreement between Pennsylvania Electric Company and The Bell Telephone Company of Pennsylvania to the index for the form pole attachment agreement

1 and a misleading and inaccurate comparison of a few select provisions in one joint use
2 agreement with a draft license agreement signed by no party.³⁷ It is telling that this is the
3 best Mr. Schafer can do after almost a decade of negotiations and numerous rounds of
4 briefing and testimony in this proceeding and at the FCC.

5 **Q. Do you have specific comments on Mr. Schafer’s alleged benefits arguments?**

6 A. Yes. In addition to the lack of quantifications, I would like to point out a few factual and
7 logical errors in Mr. Schafer’s rejoinder testimony.

8 *First*, Mr. Schafer groups a variety of allegations together and calls them a “speed-to-
9 market” advantage.³⁸ The underlying allegations are pure speculation; grouping them
10 together does not create value where none exists. For example, Mr. Schafer suggests
11 Verizon “has already begun serving its customers” when Verizon’s competitors are
12 submitting pole profile sheets and photographs to FirstEnergy.³⁹ He has no evidence to
13 support this allegation. He provides no data about the time required to electronically
14 submit routine paperwork containing information Verizon also collects prior to
15 attaching.⁴⁰ He also does not account for the reciprocal nature of the arrangement, under

between FirstEnergy and a third-party attacher, the various labeled provisions in the agreements are simply not the same.”).

³⁷ See Ex. SFS-15; see also Ex. SCM-5 at VZ00577 (FCC Ex. 23) (stating draft license agreement is a “template presented to requesting CLEC / CATV entities with the understanding that modifications are negotiated”); VZ Statement 1.2 at 24:3-28:4 (Mills Surrejoinder Testimony).

³⁸ FE Statement 1-RJ at 9:20-22 (Schafer Rejoinder Testimony).

³⁹ *Id.* at 24:15-18.

⁴⁰ VZ Statement 1.1 at 21:20-22:12 (Mills Surrebuttal Testimony).

1 which Verizon lets FirstEnergy attach to its poles without submitting pole profile sheets
2 and photographs.⁴¹

3 But the “speed to market” allegation is even more fundamentally flawed. It is grounded
4 in immutable facts about the historic development of the communications market. Mr.
5 Schafer wants FirstEnergy to profit because Verizon entered the market for basic local
6 phone service *before* other communications companies entered the market for phone,
7 video and broadband service. Recent entrants are necessarily engaged in more active
8 deployment of their networks today because Verizon has been deploying its network for
9 decades (as have many of its primary competitors). Verizon still has incurred network
10 deployment costs; it just has incurred them over several decades while also paying
11 FirstEnergy exceptionally high rental rates. Mr. Schafer now claims Verizon’s past
12 investment is a benefit today (*i.e.*, money spent before is money that does not need to be
13 spent now) and argues FirstEnergy should collect those “savings” through higher rates.
14 This would divorce rate-setting from FirstEnergy’s costs, and let FirstEnergy forever
15 collect a rental rate premium from Verizon simply because its regulatory status means it
16 entered the market earlier than cable companies and CLECs.

17 *Second*, Mr. Schafer’s discussion of make-ready costs falls for this same reason. Mr.
18 Schafer argues it is reasonable to compare Verizon only to entities whose network
19 expansion plans required substantial amounts of make ready during the last two years that
20 Verizon did not also require. But if a benefit exists, it must be associated with work

⁴¹ *Id.* at 9:7-10.

1 Verizon (not Verizon’s competitors) required. Otherwise, costs are unnecessarily
2 diverted from the communications market to cover costs FirstEnergy does not incur.

3 *Third*, with respect to the possibility of a future field audit, Mr. Schafer acknowledges he
4 relied on a potential difference that may never come to pass. I had noted Verizon’s
5 competitors may decide not to participate in a field audit, which means they (like
6 Verizon) would not bear field audit costs. Mr. Schafer agrees, but says this *still* benefits
7 Verizon because “Verizon does not even have to bear the risk of incurring these costs.”⁴²
8 This is not a material difference between Verizon and its competitors. Neither has to
9 incur the costs. FirstEnergy should not profit based on costs that no one may incur.

10 **IV. FirstEnergy’s Quick Field Review Did Not Produce Accurate Ratemaking Inputs**

11 **Q. Did FirstEnergy’s witnesses validate the field review inputs Mr. Schafer used to**
12 **calculate rental rates for Verizon’s use of FirstEnergy’s poles?**

13 A. No. The rejoinder testimonies underscore the leap of faith that would be required to
14 accept the field review as valid for ratemaking purposes. Mr. Carlin and Mr. Guo admit
15 there are errors in the data, and Mr. Guo says they reduce the “confidence level” for the
16 results.⁴³ Mr. Carlin defends some errors by stating he accurately followed FirstEnergy’s
17 instructions,⁴⁴ but that is no defense when—as here—the instructions are flawed.⁴⁵ And
18 with respect to the differences I identified between the pole counts reviewed in the field

⁴² FE Statement 1-RJ at 28:8-9 (Schafer Rejoinder Testimony).

⁴³ See e.g., FE Statement 6-RJ at 5:11-12 (Carlin Rejoinder Testimony); FE Statement 7-RJ at 2:16-19, 3:21-23 (Guo Rejoinder Testimony).

⁴⁴ FE Statement 6-RJ at 10:1-14 (Carlin Rejoinder Testimony).

⁴⁵ VZ Statement 1.1 at 55:10-57:6 (Mills Surrebuttal Testimony).

1 and reported in the results,⁴⁶ Mr. Guo states only that “so long as the removals were
2 without bias, there would be no reliability or validity problems.”⁴⁷ He thinks there was
3 no bias in removing poles “with certain pieces of missing or non-numerical data,” but
4 does not explain why data was “missing” or “non-numerical” or how he knows that
5 data—had it been properly collected and recorded—would have impacted the results.⁴⁸

6 **Q. Did the field review use only poles for which rates are being set?**

7 A. No. Mr. Guo did not challenge my determination that data was collected regarding poles
8 to which Verizon is not attached.⁴⁹ He says “[t]his is a concern only if there is some
9 fundamental difference between these types of poles.”⁵⁰ There is. Verizon is not
10 attached to them. This is particularly a problem when FirstEnergy seeks to use data about
11 the number of attaching entities on those poles to increase the rates it charges Verizon.

12 Mr. Schafer tried to justify the review of poles additional to those for which rates are
13 being set by saying “it is [his] understanding that field audits based only on joint use
14 poles are *unreliable due to the dynamic nature* of the attachments being present (or not)
15 on the poles.”⁵¹ This is a reason to use the Commission’s presumptive inputs, which
16 provide regularity and predictability to rates. It is not a reason to set rates for Verizon
17 based on poles to which Verizon is not attached.

⁴⁶ VZ Statement 2.1 at 27:4-28:1 (Calnon Surrebuttal Testimony).

⁴⁷ FE Statement 7-RJ at 4:12-13 (Guo Rejoinder Testimony).

⁴⁸ *Id.* at 4:13-15.

⁴⁹ VZ Statement 2.1 at 28:8-4 (Calnon Surrebuttal Testimony).

⁵⁰ FE Statement 7-RJ at 6:3-4 (Guo Rejoinder Testimony).

⁵¹ FE Statement 1-RJ at 37:17-19 (Schafer Rejoinder Testimony) (emphasis added).

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.