FirstEnergy Statement No. 1-RJ

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Verizon Pennsylvania LLC and Verizon North LLC

v.

Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company
Docket No. C-2020-3019347

Rejoinder Testimony
of
Stephen F. Schafer

List of Topics Addressed

Verizon's Failure To Consider and Pursue a CLEC Agreement
Net Material Competitive Advantages
Differences Between Joint Use And Third-Party Attacher Agreements
Scope of FirstEnergy Field Audit

PUBLIC VERSION

TABLE OF CONTENTS

REJOINDER TESTIMONY
OF
STEPHEN F. SCHAFER

I. INTRODUCTION AND PURPOSE

Q. Please state your name and business address.

A. My name is Stephen F. Schafer. My business address is 76 S. Main Street, Akron, Ohio 44308.

Q. Have you previously provided testimony in this proceeding?

A. Yes. I previously submitted written rebuttal testimony on behalf of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, "FirstEnergy" or the "Companies"), FirstEnergy Statement No. 1-R.

Q. What is the purpose your rejoinder testimony?

A. I will respond to certain allegations in the surrebuttal testimony and exhibits submitted by Stephen C. Mills, Dr. Mark S. Calnon, and Dr. Timothy J. Tardiff on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon"). Specifically, I will address: (1) Verizon's failure to consider and pursue FirstEnergy's proposal to transition Verizon to a standard third-party (competitive local exchange carrier ("CLEC")) agreement during negotiations; (2) Verizon's misrepresentative and inaccurate allegations regarding the material competitive advantages it receives under the Joint Use Agreements; (3) the fundamental differences between the Joint Use Agreements and FirstEnergy's standard third-party attacher agreements; and (4) criticisms of the scope of FirstEnergy's field audit.

Q. Are you sponsoring any exhibits with your rejoinder testimony?

A. Yes, I am sponsoring FirstEnergy Exhibit SFS-15 (CONFIDENTIAL).

Q. Please summarize FirstEnergy's rejoinder testimony as a whole and how it responds to Verizon's Formal Complaint and surrebuttal testimony.

A. Verizon's Formal Complaint should be dismissed, and the relief requested should be denied. Despite presenting over 200 pages of surrebuttal testimony and lengthy exhibits, Verizon does little more than restate its previous arguments, although in a more strident tone. FirstEnergy's rejoinder testimony focuses upon Verizon's new (or pivoted) factual arguments and their lack of merit, in order to provide a complete record for the Administrative Law Judge and the Pennsylvania Public Utility Commission ("Commission"). In summary, I note the following points, which are explained in more detail in FirstEnergy's testimony.

Standard of Review. Although I am not a lawyer and will not engage in legal arguments in my testimony, I am, however, advised by counsel that this matter must be decided under Pennsylvania law and not federal law. While the Commission may have "initially" adopted the Federal Communications Commission's ("FCC") regulations on a "turn key" basis, the Commission also noted that FCC precedent is "persuasive," but not controlling. In addition, as noted in the rebuttal testimony of William Zarakas (FirstEnergy St. 2-R), the Commission has afforded itself and its ALJs the latitude to use their particular "knowledge and expertise regarding telecommunications and electric distribution systems, which will allow it to balance statewide broadband goals against

[electric distribution companies'] EDCs' concerns for safety and reliability of electric service and infrastructure."

Bargaining Power. With respect to the issue of bargaining power, to qualify for regulatory review, Verizon must demonstrate, among other things, that FirstEnergy has bargaining power over Verizon. Verizon continues to rely primarily on the fact that FirstEnergy owns more poles than Verizon and repeats its prior meritless claims that FirstEnergy did not bargain in good faith during the extended negotiations that occurred between the parties from 2009 until Verizon filed its complaint. FirstEnergy witness Mr. Zarakas demonstrated in his rebuttal testimony (FirstEnergy St. 2-R) that pole ownership provides no basis to conclude that FirstEnergy actually has bargaining power over Verizon, and further responds to the new theories presented by Verizon's witnesses in his rejoinder (FirstEnergy St. 2-RJ). Regarding the parties' negotiations, Verizon specifically asserts that FirstEnergy never presented a "formal" offer to transition Verizon to the new telecom rate and CLEC agreement. This claim misses the point. As I explain in further detail below, what FirstEnergy did offer was a conceptual proposal to use the new telecom rate and CLEC agreement. Verizon failed to respond to this offer after being prompted numerous times by FirstEnergy, and instead filed the instant complaint.

Material Advantages. In order to qualify for the new telecom rate, Verizon must also prove it is not materially advantaged under the Joint Use Agreement relative to its competitors. While Verizon devotes many pages of its surrebuttal testimony to this issue, those pages largely rehash its prior arguments. However, four points require a brief response. First, and perhaps most importantly, as I explain below and I explained in my

rebuttal testimony, a cursory examination of the two relevant agreements demonstrates that Verizon has many competitive advantages over CLEC and cable company attachers, and these advantages have been explicitly recognized by the FCC to constitute material competitive advantages demonstrating an incumbent local exchange carrier ("ILEC") should not be provided the new telecom rate. Verizon, in summary, wants to change one term in the current joint use agreements, *i.e.*, the price it pays to FirstEnergy to attach to poles, without altering changing any other of the carefully negotiated terms or conditions that were mutually negotiated by the parties in contemplation of that price. Such a piecemeal revision is obviously inappropriate, completely unprecedented and should be rejected. In an apparent effort to deflect attention from these plain differences between these two types of agreements, Verizon alleges that FirstEnergy failed to compare the provisions of each type of agreement. Despite the fact that these agreements are fundamentally different on their face, I provide a comparison of specific terms and conditions below.

Verizon next attempts to criticize FirstEnergy's inability to quantify the competitive advantages that Verizon receives.[1] However, as I noted in my rebuttal testimony and further explain below, many of these advantages simply cannot be quantified, nor is such quantification required under FCC precedent. More importantly, the documents and analysis necessary to quantify Verizon's advantages are (or would only be) within Verizon's possession, not FirstEnergy. For this reason, FirstEnergy asked specific discovery questions, which for example sought information regarding

[1] For instance, Verizon witness Mr. Mills asserts that "net benefits must have some quantifiable value and material impact on FirstEnergy's bottom line to justify FirstEnergy's collection of a higher rate" and criticizes FirstEnergy because I rely "on alleged advantages [I]…and FirstEnergy's other witness cannot quantify." Verizon St. 1.1, p. 9.

certain costs Verizon incurs or avoids, and Verizon either objected to these requests as irrelevant or stated that it did not track this information. Having so responded, it is inappropriate for Verizon to claim FirstEnergy failed to quantify how Verizon benefits from the Joint Use Agreements. The only reasonable conclusion is that Verizon's assertions that it is not advantaged are not borne out by its own information and data (which Verizon claims are either irrelevant or do not exist).

Number of Attachments. In its rebuttal testimony, FirstEnergy also presented the results of a field audit conducted by an outside consultant (*see* FirstEnergy St. 6-R and FirstEnergy Exhibit SC-1) to obtain actual data regarding attachments to FirstEnergy's poles. In response, Verizon incorrectly identifies several alleged errors, which does nothing to undermine the study's statistically significant actual data regarding attachments in FirstEnergy's service territory. Importantly, as FirstEnergy witness Mr. Guo (FirstEnergy St. 7-RJ) explains in his rejoinder testimony, the study shows to a 95% confidence interval that its audit accurately reflects the number of attachments on its poles.

Refunds. Finally, Verizon notes that FirstEnergy did not challenge its proposed refund calculations. On advice of counsel, Verizon has presented no basis for refunds even if there is some change in prospective rates. Even if any refund were required, the amount presented by Verizon is very substantially overstated as will be explained in the Company's brief.

For all of these reasons, and the reasons more fully explained in FirstEnergy's testimony and pleadings, Verizon's complaint should be denied.

II. REJOINDER TO VERIZON'S FAILURE TO CONSIDER AND PURSUE AN ALTERNATIVE ATTACHMENT AGREEMENT WHEN PRESENTED WITH ONE

Q. Does Verizon dispute the description of the parties' negotiations of pole attachment rates since 2009 provided in Section V of your rebuttal testimony (FirstEnergy St. 1-R)?

A. Yes, and Mr. Mills further presents his own characterizations of the parties' negotiations in his surrebuttal testimony. FirstEnergy continues to disagree with Mr. Mills's description of the rate negotiations that occurred between the parties from 2009 until Verizon filed the complaint at issue, for the reasons more fully explained in my rebuttal testimony and FirstEnergy's pleadings. However, Mr. Mills makes a particular claim regarding these negotiations that bears further response.

Q. Please describe this claim.

A. On page 42 of Verizon St. 1.1, Mr. Mills claims that, despite the parties' efforts to negotiate a new, mutually agreeable rate, "FirstEnergy never made an offer to materially change the agreement rates and the annual net rental payment Verizon would have to pay." He reiterates this claim on pages 45-46 of Verizon St. 1.1, and claims that FirstEnergy never offered to "to transition Verizon from the current Joint Use Agreements to the Companies' standard CLEC agreement and CLEC rate," as I testified in rebuttal.

Q. Is Mr. Mills's claim accurate?

A. No. Mr. Mills continues to provide the same unavailing explanation as to why Verizon never pursued this option; it was not a "formal offer." Regardless of whether this was a formal offer, Verizon gave no indication in email exchanges that it was willing even to discuss the idea. And, as I previously explained, when FirstEnergy reiterated the offer during a conference call with Verizon in July 2019, Verizon said it would think about it and get back to the Companies. After four months of not getting back to FirstEnergy, Verizon filed its Formal Complaint against FirstEnergy at the FCC. It remains FirstEnergy's position that the Joint Use Agreements are not comparable to CLEC license agreements, and that the CLEC rate is applicable only to CLEC agreements. Moreover, I note that I explained in my rebuttal testimony that FirstEnergy made several prior offers to Verizon that materially changed the annual rates it would pay.[2]

Q. What has Verizon's reaction been to these repeated offers by FirstEnergy?

A. Verizon continues to either ignore the fact that these offers were made,[3] or it has raised new arguments as to why its failure to consider or even pursue these offers should not demonstrate its bad-faith negotiation tactics.[4] The fact remains that FirstEnergy made a proposal that would have provided Verizon with the very same rate that it is demanding in this proceeding through an agreement that was truly comparable to other third-party pole attachment license agreements. Yet, Verizon never pursued, or even attempted to

[2] *See* FirstEnergy St. 1-R, Section V.
[3] More specifically, claiming again in testimony that "FirstEnergy never made an offer to materially change the agreement rates and the annual net rental payment Verizon would have to pay." Verizon St. 3.1, p. 42.
[4] *See* Verizon St. 3.1, pp. 46-47.

discuss, this option with FirstEnergy after FirstEnergy first made the offer or at any time after FirstEnergy repeated the offer in subsequent correspondence and telephone conversations. Verizon has made it abundantly clear that it has no interest in terminating the Joint Use Agreements or in transitioning away from pole ownership, and FirstEnergy accepts that position.

Q. Mr. Mills relatedly claims on page 39 of Verizon St. 1.1 that FirstEnergy "refused to sell poles despite Verizon's years-long effort to purchase them." Please respond to this claim.

A. I disagree with Mr. Mills' characterization of FirstEnergy's actions, for the reasons identified on page 11 of my rebuttal testimony (FirstEnergy St. 1-R). FirstEnergy did not sell Verizon poles because Verizon failed to provide reasonable assurance that the poles would be maintained in a condition necessary for FirstEnergy to meet its obligations to continue providing safe and reliable electric service to its customers.

III. REJOINDER TO ALLEGATIONS REGARDING NET MATERIAL BENEFITS PROVIDED UNDER THE JOINT-USE AGREEMENTS TO VERIZON

Q. Has FirstEnergy demonstrated that Verizon enjoys significant, net material advantages over its competitors under the existing Joint Use Agreements?

A. Yes. As explained in my rebuttal testimony, the Joint Use Agreements provide several advantages to Verizon over its cable company and CLEC competitors that have third-party pole attachment license agreements, including that FirstEnergy pays a large proportion of Verizon's costs to own and maintain its pole infrastructure. FirstEnergy St. 1, pp. 31-37; *see also* Verizon Exhibit SCM-5, VZ00689 (David J. Karafa's June 7, 2018

email to Brian H. Trosper). More specifically, the Joint Use Agreements: (1) have allowed Verizon to construct its communications systems unfettered by significant make-ready expense, while its competitors pay a substantial amount in make-ready to gain access to FirstEnergy's poles (FirstEnergy St. 1-R, pp. 32-33; FirstEnergy Exhibit SFS-5); (2) have provided Verizon time- and cost-saving advantages over its competitors to reach new customers and to provide additional services to existing customers, because all Verizon needs to do (having attached to the majority of FirstEnergy's poles under the Joint Use Agreements) is overlash its existing facilities or light existing dark fiber capacity to reach those new customers and to provide the additional services that its existing customers might require (FirstEnergy St. 1-R, pp. 33-34); (3) have allowed Verizon to avoid up-front work and simply "notify and attach" to FirstEnergy pole, while its competitors must submit attachment application for attachment approval (FirstEnergy St. 1-R, p. 34); (4) have permitted Verizon to avoid costs associated with attachment application fees (FirstEnergy St. 1-R, pp. 34-35); (5) subject Verizon to more lenient overlashing rules than its competitors, i.e., Verizon need not provide advance notice of its intent to overlash (FirstEnergy St. 1-R, p. 35); (6) have allowed Verizon to avoid field audit costs that FirstEnergy's CLEC and cable company attachers pay (FirstEnergy St. 1-R, p. 35); and (7) allow Verizon to charge FirstEnergy rates to attach to Verizon's poles that are based on fully allocated costs (FirstEnergy St. 1-R, pp. 35-36). In addition, certain of these benefits provide Verizon with a significant "speed-to-market" advantage over its competitors, which allow Verizon to attract and serve new customers more quickly than its competitors. FirstEnergy St. 1-R, p. 36.

Furthermore, Verizon benefits from FirstEnergy's comprehensive vegetation management program, because its competitors do not have pole lines associated with which they would otherwise incur vegetation management expenses of the kind that Verizon is able to avoid due to FirstEnergy's greater diligence. FirstEnergy St. 1-R, pp. 36-37.

As such, while it may be difficult to quantify the dollar value of these benefits, it is indisputable that Verizon, at the very least, enjoys the benefits of: guaranteed access; reserved space; no permitting; no inspection; lowest space on the pole; and charging FirstEnergy a fully allocated cost rate for attachments to its poles.

Q. Please provide an overview of Verizon's surrebuttal testimony regarding whether Verizon enjoys net material advantages over its competitors under the existing Joint Use Agreements.

A. Verizon goes to great lengths in its surrebuttal testimony to attempt to argue that FirstEnergy has failed to quantify the benefits Verizon enjoys under the Joint Use Agreements. Mr. Mills, Dr. Calnon, and Dr. Tardiff each raise specific arguments and assertions in response to the material benefits Verizon receives under the Joint Use Agreements, which I respond to in the sections that follow.

Q. Do you have any initial observations regarding Verizon's surrebuttal testimony regarding the benefits it receives under the Joint Use Agreements?

A. Yes. Verizon's acknowledgment that it generally does not track or did not produce information regarding the costs it incurs or benefits it receives under the Joint Use

Agreements demonstrates that its claims regarding the net material benefits it receives should be rejected.

At several points in Verizon's surrebuttal testimony, its witnesses take issue with FirstEnergy not substantiating the costs that Verizon incurs[5] and/or the value of benefits Verizon receives.[6] The problem with this argument is that FirstEnergy can only conduct this analysis based upon information that is in Verizon's possession and which Verizon either refused or was unable to provide in discovery. FirstEnergy is neither positioned (nor required) to track the value of specific benefits that Verizon receives, the value of specific costs Verizon incurs, or the value of specific costs that Verizon avoids under the Joint Use Agreements. While Verizon admits that it did not provide this information to FirstEnergy,[7] or it does not track this information,[8] it goes on to assert that its failure to provide the data supporting its claims should be held against FirstEnergy.[9]

I highlighted the problem with Verizon's refusal to provide supporting data and information in response to FirstEnergy's discovery requests in this proceeding in my rebuttal testimony.[10] Now, Verizon's motive is made clear; Verizon asserts that, because

[5] *See, e.g.*, Verizon St. 1.1, p. 10 (asserting Mr. Mills "also did not attach documentation to substantiate the costs" that Verizon avoids under the Joint Use Agreements); Verizon St. 1.1, p. 30 ("Verizon does not separately track the damage or costs incurred because of its location on the pole and often repairs such damage without recording it. Verizon nonetheless provided FirstEnergy the best information it has available. Mr. Schafer criticizes the information we produced, but he does not provide contradictory evidence of his own.").

[6] *See, e.g.*, Verizon St. 1.1, p. 9 ("Mr. Schafer relies on alleged advantages he and FirstEnergy's other witness cannot quantify, and makes no effort to explain why they are "material.""); Verizon St. 1.1, p. 11 ("If *FirstEnergy* provides Verizon net material benefits under the terms and conditions of *FirstEnergy's* joint use agreements as compared to the terms and conditions of *FirstEnergy*'s license agreements with Verizon's competitors, Mr. Schafer would have access to that information.").

[7] *See, e.g.*, FirstEnergy Exhibit SFS-9 (CONFIDENTIAL) (Verizon's Answer to FE to Verizon Set I, No. 15.)

[8] *See, e.g.*, FirstEnergy Exhibit SFS-8 (CONFIDENTIAL) (Verizon's Answer to FE to Verizon Set I, No. 14); FirstEnergy Exhibit SFS-11 (Verizon's Answer to FE to Verizon Set I, No. 17); FirstEnergy Exhibit SFS-12 (Verizon's Answers to FE to Verizon Set I, Nos. 18 and 19); FirstEnergy Exhibit SFS-13 (Verizon's Answer to FE to Verizon Set I, No. 11); FirstEnergy Exhibit SFS-14 (Verizon's Answer to FE to Verizon Set I, No. 12).

[9] *See* Verizon St. 1,1, pp. 11-12.

[10] FirstEnergy St. 1-R, pp. 40-41.

it does not track or did not provide FirstEnergy with the information necessary to rebut its claims, FirstEnergy cannot rebut Verizon's assertions regarding the numerous material benefits it receives under the Joint Use Agreements.[11] Verizon's efforts to avoid reasonable discovery seeking to quantify benefits, and then blame FirstEnergy for not quantifying the benefits should be rejected.

Q. Do you have any further initial observations?

A. Irrespective of any quantification, the existence of the significant benefits identified in my rebuttal testimony makes Verizon not comparably situated vis-a-vis its competitors. Because Verizon is not comparably situated to its competitors, it is not entitled to any presumption that the new telecom rate should apply to the Joint Use Agreements.

A. REJOINDER TO MR. MILLS'S ASSERTIONS REGARDING THE NET MATERIAL BENEFITS VERIZON RECEIVES UNDER THE JOINT USE AGREEMENTS.

Q. On page 12 of Verizon St. 1.1, Mr. Mills conducts a comparison of the rates charged to Verizon under the Joint Use Agreements and the old telecom rates. Are there any problems with the comparison conducted by Mr. Mills?

A. Yes. The amount of space designated for Verizon under the rates charged to Verizon under the Penelec and Penn Power joint use agreements is three feet, and the agreement

[11] *See* Verizon St. 1.1, pp. 11-12 ("More fundamentally, Mr. Schafer is wrong that discovery from Verizon is needed. If *FirstEnergy* provides Verizon net material benefits under the terms and conditions of *FirstEnergy's* joint use agreements as compared to the terms and conditions of *FirstEnergy*'s license agreements with Verizon's competitors, Mr. Schafer would have access to that information. Mr. Schafer cannot show FirstEnergy provides Verizon a net material competitive benefit under the joint use agreements because FirstEnergy does not provide Verizon a net material competitive benefit under the joint use agreements." (emphasis in original)).

between Met-Ed and Verizon is silent as to the amount of space reserved for Verizon. However, the old telecom rate (and the new telecom rate) contemplates the use of one foot of space for an attacher. As such, Mr. Mills is making an apples-to-oranges comparison. The significance of this is that a CLEC or cable company attacher pays a per-attachment rate while Verizon pays a per-pole rate even if it has multiple attachments and, therefore, more than 12" of occupied space on any given pole.

Q. On page 14 of Verizon St. 1.1, Mr. Mills indicates his disagreement with your claims regarding make-ready costs that Verizon avoids under the Joint Use Agreements and asserts that "Verizon and its competitors should require the same make-ready work to attach their facilities to the same poles." Do you agree with this statement?

A. No. Mr. Mills ignores the fact that one of the ways in which Verizon can avoid incurring make-ready costs, which its competitors cannot, is by overlashing its existing attachments. Importantly, the lack of significant numbers of attachment notices in SPANS — FirstEnergy's electronic application processing system indicates that Verizon is overlashing its own existing attachments and thereby avoiding make-ready expenses and costs. Because Verizon can overlash its own facilities, and the lack of SPANS data indicates that they are doing so, it is able to avoid make-ready expenses and costs under the Joint Use Agreements in a materially beneficial manner in comparison to its competitors. Importantly, Verizon admitted in discovery that it does not separately track

make-ready costs,[12] which begs the question of how it could know whether these costs are comparable to other attaching entities other than by pure speculation.

Q. Mr. Mills further asserts on pages 14-15 of Verizon St. 1.1 that Verizon's ability to attach to FirstEnergy's poles first "[t]ypically should not" increase the amount of work required for Verizon's competitors to attach to FirstEnergy's poles. Is Mr. Mills correct?

A. No. Importantly, Mr. Mills bases this assertion upon his assumption that a communications company occupies only one foot of space on a utility pole. However, at least with respect to the Penelec and Penn Power agreements, Verizon has historically been allotted three feet of space on each FirstEnergy pole, which diminishes the amount of space that may be presently allocated to other communications companies. As such, the amount of work required for Verizon's competitors to attach to FirstEnergy's poles is dependent upon the actual amount of space historically allotted to and/or occupied by Verizon under the Joint Use Agreements.

[12] FirstEnergy Exhibit SFS-13 (Verizon's Answer to FE to Verizon Set I, No. 11).

Q. Mr. Mills further claims on page 15 of Verizon St. 1.1 that "Verizon completes much of its own make-ready work when attaching to FirstEnergy's poles" and "incurs the cost of this make-ready work directly by performing the work itself." Does this assertion demonstrate that Verizon is comparably situated to its competitors?

A. No, it actually does the opposite. FirstEnergy's data clearly shows that new or enhanced broadband deployment incurs significant make-ready costs billed by FirstEnergy to third-party attachers. Verizon, on the other hand, is rarely if ever billed for make-ready work by FirstEnergy.

Although I am not able to quantify this benefit, this is due to Verizon's refusal to provide this information in discovery. As noted in my rebuttal testimony, when asked to quantify the make-ready costs it incurs in discovery, Verizon responded that it "does not separately track the time required or cost incurred to complete the specific tasks."[13] Similarly, when FirstEnergy requested information from Verizon to estimate the value of the advantage provided by its ability to overlash, Verizon responded that it does not keep records that could have provided the information sought.[14]

[13] FirstEnergy Exhibit SFS-13 (Verizon's Answer to FE to Verizon Set I, No. 11).

[14] *See* FirstEnergy Exhibit SFS-7 (Verizon's Answer to FE to Verizon Set I, No. 2) (stating that "Verizon does not track which Verizon distribution cables have been overlashed generally or which Verizon distribution cables attached to FirstEnergy's poles have been overlashed specifically . . . .").

Q. Mr. Mills next asserts that "Verizon and its competitors should incur comparable make-ready costs" when Verizon completes make-ready work when it installs its attachments and Verizon's competitors pay FirstEnergy to complete make-ready work on pages 15-16 of Verizon St. 1.1. Do you agree?

A. No, for the reasons previously stated. I also note that Verizon has provided no information or data to corroboration its assertion that these costs are comparable and cannot do so; Verizon admitted in discovery that it does not track these costs.[15]

Q. On page 17 of Verizon St. 1.1, Mr. Mills argues that FirstEnergy's make-ready analysis is incomplete "because it does not account for the pole replacement costs and transfer costs FirstEnergy imposed on Verizon but not on Verizon's competitors." Is Mr. Mills correct?

A. Replacing poles at the request of the joint use partner is a cost of doing business as a pole owner. And the pole owner is recovering some of those costs through rates that it charges third-parties to attach to its poles. In this case, FirstEnergy's business is growing while Verizon's might be declining. The benefit to Verizon for pole replacement is that FirstEnergy charges Verizon lower costs than those actual costs paid by other third-party attachers paid to FirstEnergy for a pole replacement.

[15] FirstEnergy Exhibit SFS-13 (Verizon's Answer to FE to Verizon Set I, No. 11).

Q. Mr. Mills also claims on pages 17-18 of Verizon St. 1.1 that "over about a five-year period, FirstEnergy required Verizon to incur the cost to replace 569 more poles and to complete 3,687 more transfers than Verizon required of FirstEnergy." Do you have any observations about the apparent discrepancy in the number of pole replacements and transfers identified by Mr. Mills?

A. Yes. I note that Verizon would not be required to ask for FirstEnergy to set new poles for to attach to, as Verizon is able to overlash its existing attachment. FirstEnergy, however, cannot overlash new facilities on its existing electric distribution facilities. So, this pattern is irrelevant to the analysis of make-ready costs; in fact, it is logical that FirstEnergy would ask Verizon to replace more poles than the other way around.

Q. Moving forward to page 21 of Verizon St. 1.1, Mr. Mills asserts that Verizon is not comparably situated to its competitors because its competitors can "use a one-touch-make-ready option" to shorten the time it takes to attach to FirstEnergy's poles. In your experience, is this assertion reflective of reality?

A. No. In my experience, there have been very few (if any) applications by Verizon's competitors that qualified for the one-touch-make-ready ("OTMR") option. The fact that this option is rarely used, and Verizon's competitors can rarely qualify to use it, shows that Verizon cannot rely upon the OTMR option to undercut the material benefits it receives in speed to attach in comparison to its competitors.

Q. Mr. Mills further asserts on pages 21-23 of Verizon St. 1.1 that Verizon is not advantaged by the fact that it need not complete the same amount of upfront work as its competitors before attaching to a pole. Is he correct?

A. No. In fact, Mr. Mills misses the point about the obligations of Verizon under the Joint Use Agreements and its competitors under an applicable cable company or CLEC attacher agreement. The point is that third-party cable providers or CLECs are required to submit photographs and the information set forth in pole profile sheets before they can obtain approval to attach to a FirstEnergy pole. In contrast, Verizon may collect this data, but it need not submit it and wait on FirstEnergy approval before attaching. Rather, Verizon regularly attaches to FirstEnergy poles and does not even notify FirstEnergy until after it has done so.[16]

Q. Verizon witness Mr. Mills also claims that "there should be no material difference in the time it takes for Verizon and its competitors to deploy facilities on the same poles, particularly because Verizon's competitors are eligible for one-touch-make-ready and Verizon is not" on page 26 of Verizon St. 1.1. Is this an accurate statement?

A. No. More importantly, even though the OTMR option does advantage cable company or CLEC attachers relative to Verizon, this advantage is limited by the fact that there are virtually no applications that have qualified for OTMR, as I discussed earlier.

[16] *See* FirstEnergy's response to Verizon-II-29, Attachment AU.

Q. Mr. Mills also argues that FirstEnergy's comprehensive vegetation management plan does not provide a competitive advantage to Verizon, because any benefit "would extend equally to Verizon and its competitors" on page 27 of Verizon St. 1.1. Do you have any observations regarding this claim?

A. Yes. Mr. Mills misses the point I made on pages 36-37 of my rebuttal testimony:

> Another significant benefit is that FirstEnergy performs comprehensive vegetation management near all of its facilities, including facilities on Verizon's poles and pole lines, in accordance with the Companies' Commission-approved vegetation management plans. FirstEnergy clears overhanging branches and off right-of-way "danger" trees, such as ash trees diseased with emerald ash borer infestations. Verizon's competitors do not have pole lines that they would otherwise incur vegetation management expenses of the kind that Verizon is able to avoid due to FirstEnergy's greater diligence.

FirstEnergy St. 1-R, pp. 36-37 (emphasis added). Mr. Mills casually ignores that FirstEnergy's vegetation management program extends to Verizon-owned poles that house FirstEnergy facilities, i.e., FirstEnergy implements its vegetation management program around Verizon poles. Verizon's competitors are not pole owners and, therefore, do not receive the benefit of FirstEnergy's vegetation management program.

Mr. Mills repeats this error arguing Verizon "does not "avoid" expenses *FirstEnergy* incurs to maintain *FirstEnergy*'s facilities." Verizon St. 1.1, p. 27 (emphasis in original). The fact remains that FirstEnergy implements vegetation management with respect to Verizon-owned poles because they house FirstEnergy facilities. Verizon's facilities (the poles) receive a significant attendant benefit.

Q. On page 29 of Verizon St. 1.1, Mr. Mills asserts that Verizon is not "reserved space" on FirstEnergy's poles under the joint use agreements[ ] and cannot "reserve space" on FirstEnergy's poles under the statutory standard the Commission adopted.[ ]" Do you agree?

A. Mr. Mills attempts to rely upon language from *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (1996) to argue that Verizon is not reserved space on FirstEnergy's poles. However, he ignores the fact that from the time the Joint Use Agreements were executed until 1996, Verizon was historically reserved space on FirstEnergy poles under the agreements.[17] Therefore, Verizon has received substantial, material benefits relative to its competitors — which were required to wait for available space above Verizon's allotted space as per the terms of the agreements.

Q. Verizon witness Mr. Mills also claims that "Verizon uses the same electronic notification program Verizon's competitors use when it notifies FirstEnergy of new attachments requiring make-ready and manages the make-ready process" and, therefore, does not receive any benefits from the different permitting requirements applicable in the cable company or CLEC attacher agreements or the Joint Use Agreements. Verizon St. 1.1, p. 30. Do you agree with this claim?

A. No. As I noted above with, there are a minimal number of SPANS applications by Verizon. This demonstrates that Verizon is not using SPANS prior to attaching (like its

[17] *See, e.g.*, Verizon Exhibit SCM-2 (VZ00401) (Article II, defining "Normal Space" to be allocated on the basis of 3 feet for the telephone entity); Verizon Exhibit SCM02 (VZ00474) (Article IX, designating 3 feet of space as "communication space").

competitors) or for required post-attachment notification and is not unilaterally using SPANS to notify FirstEnergy after it attaches. Therefore, it is reasonable to conclude that Verizon is benefitted by the difference in permitting requirements and takes full advantage of this benefit on a regular basis.

Q. Mr. Mills also claims that Verizon is not benefitted by FirstEnergy's pole inspection program, because Verizon incurs its own pole inspection costs on page 30 of Verizon St. 1.1. Is this claim accurate?

A. No. Inspecting a given pole is the responsibility of the pole owner and attendant to the benefits that Verizon obtains from owning poles. However, FirstEnergy does perform visual pole inspections of all poles to which its distribution electric system is attached, including poles owned by Verizon. The pole owner (here, Verizon) collects rent from third-party attachers to defray the costs of said program. Therefore, while Verizon's CLEC and cable company competitors may not incur pole inspection costs, those competitors do not receive pole attachment revenues like Verizon that would cover those costs either.

Q. On pages 30-31 of Verizon St. 1.1, Mr. Mills asserts that Verizon's position on the pole is a competitive disadvantage due to several reasons, including his claim that Verizon facilities experience damage "unique" to its location on a pole, such as gunshot damage. Please respond to his assertions.

A. I generally find it curious that Mr. Mills can assert that the location of Verizon's facilities on FirstEnergy's poles is a disadvantage when Verizon admitted in discovery it "does not

separately track the costs it incurs and is not aware of any costs it avoids because of the location of its facilities on a utility pole."[18] More specifically, Verizon's assertion that it experiences increased gunshot damage due to its lower location on the pole is non-sensical. Verizon provides no data to support its assertion that its facilities experience more instances of gunshot damage than other attachers' facilities. In addition, it makes no sense to me that attachments separated by a mere twelve inches of space would have significantly varying rates of damage from an event that can arguably reach any location on any pole.

Q. Mr. Mills also asserts on page 31 of Verizon St. 1.1 that its location on the pole is not an advantage because "Verizon's location on the pole prevents facilities from crisscrossing midspan, which 'benefits Verizon and its competitors equally." Please respond to this assertion.

A. If Verizon's mid-span sag were in a higher position on the pole, then Verizon would be taking up more than twelve inches of space on the pole. By being located lower on the pole relative to its competitors, Verizon effectively occupies more space upon each pole due to its mid-span sag than its competitors who are located higher on the pole are permitted to.

[18] FirstEnergy Exhibit SFS-8 (CONFIDENTIAL) (Verizon's Answer to FE to Verizon Set I, No. 14).

Q. Mr. Mills finally asserts on page 31 of Verizon St. 1.1 that, in this proceeding, "it seeks a rate methodology under which Verizon *and* FirstEnergy would pay proportional new telecom rates." Please respond to this claim.

A. None of the FCC authority that Verizon has cited mentions what rates an electric distribution utility should pay an ILEC, nor is there a formula to calculate a rate under a joint use agreement. It is convenient for Verizon to assert that FirstEnergy would pay a reciprocal rate, because this assertion ignores the fact that the joint use rates are the result of a completely different bargain and agreement than the new telecom rates. Verizon essentially seeks to have its cake and eat it too by retaining the competitive advantage provided by the Joint Use Agreements, while paying a substantially lower rate than the rate negotiated in contemplation of these advantages. To further demonstrate the unreasonableness of this request, I have prepared a comparison of material terms in one of the Joint Use Agreements to the materials terms of FirstEnergy's standard cable company/CLEC attacher agreement, which is described in further detail below.

B. REJOINDER TO MR. CALNON'S ASSERTIONS REGARDING THE NET MATERIAL BENEFITS VERIZON RECEIVES UNDER THE JOINT USE AGREEMENTS.

Q. On page 33 of Verizon St. 2.1, the surrebuttal testimony of Dr. Mark S. Calnon, Dr. Calnon claims that Verizon is disadvantaged relative to its competitors because it incurs pole ownership costs (such as pole replacement or transfer costs) that its competitors do not incur. Please respond.

A. I note that I previously responded to similar assertions by Mr. Mills above, and those same reasons apply here. In addition, Dr. Calnon ignores the fact that the material

advantage Verizon receives, relative to its competitors, exists on both FirstEnergy-owned and Verizon-owned poles. Irrespective of whether FirstEnergy or Verizon owns a given pole, Verizon pays only a portion of what its competitors pay for make-ready when the pole is replaced, or facilities are transferred to a new pole, because under the Joint Use Agreements Verizon is charged a set cost for make-ready, while third-party cable company/CLEC attachers **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Clearly, Verizon is benefitted by this arrangement and is able to avoid certain costs that its competitors incur.

Q. On page 34 of Verizon St. 2.1, Dr. Calnon asserts that requirements applicable to Verizon's competitors (i.e., taking a photograph of a utility pole) do not provide "material" advantages to Verizon. Do these requirements materially advantage Verizon relative to its competitors?

A. Yes. This benefit relates to speed to market. Verizon can attach and is required to notify FirstEnergy after the fact (*i.e.*, when it has already begun serving its customers), while the CLEC or cable company has to provide a significant amount of information including pole profile sheets and photographs to FirstEnergy before it can attach. In addition, the timelines do not start for the CLEC or cable company until after FirstEnergy receives a

[19] *See, e.g.*, Verizon Exhibit SCM-2 (VZ00478) (establishing a reciprocal schedule of costs for costs associated with pole replacements); *see also* FirstEnergy Exhibit SFS-1 (recognizing that the MOU was meant to, in part, "develop a cost reimbursement plan that fairly and equitably compensates each party for work performed for each other under the Joint Use Agreement.").

complete application from such entity in SPANS. This would also benefit Verizon as it doesn't have to expend any resources or lose any time due to these requirements.

Q. Dr. Calnon also claims on page 34 of Verizon St. 2.1 that FirstEnergy does not cite a single term or condition of the Joint Use Agreements or FirstEnergy's cable company/CLEC attacher agreement that demonstrates Verizon is materially advantaged relative to its competitors. Please respond to this claim.

A. Dr. Calnon simply ignores the obvious differences between the Joint Use Agreements and the cable company/CLEC attacher agreement. As I detail in Section III, below, there are significant, beneficial differences between the Terms and Conditions of the Joint Use Agreements and the standard FirstEnergy cable company/CLEC attacher agreement. Any reasonable reading of these agreements makes clear that these differences are self-evident.

Q. On page 36 of Verizon St. 2.1, Dr. Calnon asserts that the historical development of the pole network and deployment of Verizon's facilities before CLECs and cable companies existed does not create a speed to market advantage for Verizon. Is Dr. Calnon correct?

A. No. Dr. Calnon attempts to avoid the fundamental point of my rebuttal testimony regarding Verizon's speed to market advantage by focusing on the size of the poles installed and arguing that the height of FirstEnergy's pole is not a competitive advantage that is unique to Verizon.

The size of the pole is irrelevant. Regardless of the size of a pole, Verizon has the option to overlash its own, existing facilities on an already developed network, and retains this option under the Joint Use Agreements. Verizon's competitors, however, do not have this option. They must either obtain advance approval to attach to FirstEnergy's facilities or, if they already are attached to FirstEnergy poles, they must provide advanced notice to FirstEnergy that they intend to overlash their existing facilities. As Verizon need not do either of these things, Verizon can reach the market quicker than its competitors, which is a material advantage provided under the Joint Use Agreements.

Q. On pages 36-37 of Verizon St. 2.1, Dr. Calnon takes issue with your comparison of the make-ready costs Verizon incurs and the make-ready costs its competitors incur with respect to FirstEnergy's poles. Please respond.

A. Simply put, Dr. Calnon ignores how make-ready costs are incurred by Verizon under the Joint Use Agreements versus how make-ready costs are incurred by Verizon's competitors under cable company/CLEC attacher agreements. How these costs are incurred results in higher make-ready costs for Verizon's competitors. As I explained above, Verizon can either perform this work itself or overlash its own existing attachments. Therefore, Dr. Calnon's claim that the "difference in how [Verizon's competitors] incur costs . . . should not be a difference in the amount of cost incurred" is completely unsupported. Moreover, although Dr. Calnon points to the *Dominion Order*, where Verizon was found to "incur costs comparable to its competitors in performing that service," the higher make-ready costs incurred by Verizon's competitors clearly are not comparable to the lower make-ready costs incurred by Verizon. As such, Dr. Calnon

fails to rebut my conclusion that Verizon received a competitive advantage over its competition due to lower make-ready costs.

Q. On pages 37-38 of Verizon St. 2.1, Dr. Calnon continues to criticize your analysis of make-ready costs and asserts that it is incorrect because it "considers only attachers that paid FirstEnergy the *highest* make-ready costs during the last two years." Please respond to this assertion.

A. The analysis (*i.e.*, the supporting the chart) showed the companies that had the most poles to which they applied to attach over a two-year period and was not based on which attachers experienced highest make-ready costs. Mr. Calnon fails to recognize that the top attachers to FirstEnergy's pole are Verizon's competition in the marketplace. These individuals currently pay higher make-ready costs than Verizon, which demonstrates that Verizon is materially advantaged relative to them. In addition, although there may be other CLEC or cable company attachers that paid higher make-ready costs over the same period, this fact does not undermine FirstEnergy's analysis because the more frequent attachers in this period are most reflective of Verizon's current competition. Mr. Calnon is ignoring this fact.

Q. Dr. Calnon also claims on page 39 of Verizon St. 2.1 that "[t]here is no good reason for FirstEnergy to collect additional sums from Verizon based on the potential for a future audit that would be cost-free to FirstEnergy and optional for Verizon's competitors." Please respond to this claim.

A. Dr. Calnon seems to be confused. Due to the terms and conditions in the Joint Use Agreements between FirstEnergy and Verizon, Verizon will not incur the audit costs that are incurred by its competitors. Regardless of whether their competitors elect to participate in the field audit, Verizon does not even have bear the risk of incurring these costs. More importantly, however, if one of Verizon's competitors does not participate in the field audit, FirstEnergy can and will impose penalty fees under the standard cable company/CLEC attacher agreement for any unauthorized attachments discovered during the audit. Verizon, unlike its competitors, is not subject to similar penalty fees under the Joint Use Agreements.

Q. On page 41 of Verizon St. 2.1, Dr. Calnon claims that Verizon has not "reserved space" on FirstEnergy's poles under the Joint Use Agreements. Please respond.

A. I disagree with Dr. Calnon's claim for the same reasons I disagree with the same claim made by Mr. Mills, as explained above.

Q. On page 41 of Verizon St. 2.1, Dr. Calnon also asserts that Verizon is disadvantaged relative to its competitors because its competitors "have an ongoing and statutorily-protected right of access to FirstEnergy's poles" and that "Verizon is dependent on the joint use agreements, which FirstEnergy may terminate at any time." Do you agree?

A. No, and Verizon's assertion that FirstEnergy may terminate the Joint Use Agreements at any time is irrational and completely disconnected from reality. As explained in the rebuttal testimony of Mr. Zarakas (FirstEnergy St. 2-R) and Mr. Pryatel (FirstEnergy St. 5-R), FirstEnergy would face substantial, immediate harms if it terminated the Joint Use Agreements, including: (1) having to accept the risk of being unable to meet its service obligations to its customers; (2) incurring substantial costs to immediately replace the poles it would lose access to; and (3) having to accept the risk that the Commission or local governments would not permit FirstEnergy to construct replacement dual pole lines. These risks make it abundantly clear that FirstEnergy cannot use the threat of termination as "leverage" in negotiations with Verizon, and Dr. Calnon conveniently tries to sidestep them.

C. REJOINDER TO DR. TARDIFF'S ASSERTIONS REGARDING THE NET MATERIAL BENEFITS VERIZON RECEIVES UNDER THE JOINT USE AGREEMENTS.

Q. On page 1 of Verizon St. 3.1, the surrebuttal testimony of Dr. Timothy J. Tardiff, Dr. Tardiff claims that FirstEnergy has not provided "clear and convincing evidence that the terms and conditions in the joint use agreements provide Verizon a net material advantage relative to FirstEnergy's third-party license agreements." Do you agree?

A. No. FirstEnergy has repeatedly identified and quantified (or attempted to quantify despite Verizon's lack of cooperation in the discovery process) numerous material competitive advantages that Verizon has obtained under the Joint Use Agreements relative to its competitors, including: (1) guaranteed access to FirstEnergy's poles; (2) reserved space on FirstEnergy's poles; (3) no permitting costs or process to attach to FirstEnergy's poles; (4) no inspection costs post-attachment; and (5) access to the lowest space on the pole. Importantly, the FCC has recently agreed that each of these items provides an ILEC with material competitive advantages over its attachers.[20] The *AT&T v. FPL Order* was issued before Verizon served its surrebuttal testimony, and Verizon's continued attempts to contest the identified benefits it receives under the Joint Use Agreements in the wake of this decision flies in its face and demonstrates that Verizon's position in this case is untenable.

[20] *See AT&T v. FPL Order* ¶ 14.

Q. On page 4 of Verizon St. 3.1, Dr. Tardiff reiterates the standard established in the *2018 Order* by the FCC and appears to insinuate that FirstEnergy has denied Verizon the rate to which it is entitled under the *2018 Order*. Please respond.

A. Throughout its rebuttal testimony and its rejoinder testimony, FirstEnergy has demonstrated that Verizon receives material net competitive benefits under the Joint Use Agreements and is not similarly situated to its competitors. Further, the standard Dr. Tardiff references did not apply to any time period before it became effective in March 2019. Even then, the FCC has never identified the proper rate components to use in a formulaic approach in a joint use context. Thus, there is no clear definition of "the rate" entitlement that might be applied to the Joint Use Agreements.

Q. On pages 23-24 of Verizon St. 3.1, Dr. Tariff either attacks FirstEnergy's quantifications of the material net benefits that Verizon receives under the Joint Use Agreements, or he asserts that Verizon has not quantified these benefits. Is it necessary for FirstEnergy to quantify these benefits?

A. On advice of counsel, the *AT&T v. FPL Order*, which recognized the vast majority of the benefits identified by FirstEnergy in this proceeding as material net competitive advantages to the ILEC in that case, does not require the electric distribution utility to quantify the benefits received by an ILEC under a joint use agreement. The *AT&T v. FPL Order* contains no discussion or analysis of any dollar amount associated with each of the recognized benefits and contains no statement that a quantification of an associated dollar amount with each benefit is necessary.

Although all attaching parties benefit from tree removals, Verizon receives a more significant benefit because, if the fallen tree were to take down its poles, Verizon would be solely responsible for the cost of pole replacement. Although all attaching parties (including FirstEnergy) would potentially suffer outages, neither the CLEC nor cable company would incur the cost of pole replacements. So, eliminating danger trees in or near the right-of-way is of significant benefit to Verizon (over its competitors) because it decreases the likelihood that Verizon would be solely responsible for the replacement of a pole damaged by vegetation.

Moreover, practically speaking, it would be impossible for an electric distribution utility, on its own, to conduct such a quantitative analysis where the information necessary to do so is within the exclusive control of the ILEC. As I explained above, any dollar amount associated with these benefits would be reflected (at least in part) in the financial records and statements of Verizon. However, throughout this proceeding, when asked to provide such relevant information so that FirstEnergy could quantify the benefits Verizon receives, Verizon either refused to provide the information or claimed that it did not track the information necessary to conduct this analysis. As such, and consistent with the FCC guidance in the *AT&T v. FPL Order*, I believe that it is not necessary for FirstEnergy to quantify the benefits Verizon receives under the Joint Use Agreements to demonstrate Verizon is not entitled to the new telecom rate.

Q. On page 25 of Verizon St. 3.1, Dr. Tardiff claims that certain gross advantages provided to Verizon "can be offset by Verizon performing some of the activities itself and/or by Verizon reciprocally performing comparable activities that benefit FirstEnergy." Do you agree that a reciprocal term under the Joint Use Agreements does not provide Verizon with a material advantage over its competitors?

A. No, I disagree with this claim by Dr. Tardiff. Importantly, he is attempting to compare the benefits the Verizon receives under the Joint Use Agreements to the benefits FirstEnergy receives under the Joint Use Agreements by arguing that certain of these benefits are due to reciprocal terms and are enjoyed by both FirstEnergy and Verizon rather than the benefits Verizon receives under the Joint Use Agreements as compared to its competitors under the standard cable company/CLEC attacher agreements. In this regard, his comparison is simply a non-sequitur; regardless of whether the benefit is conferred upon Verizon due to a reciprocal term in the Joint Use Agreement, its competitors do not enjoy such terms under the standard cable company/CLEC attacher agreement. As such, the Commission should reject his claims.

Q. Dr. Tardiff further argues on page 28 of Verizon St. 3.1, FirstEnergy "should have provided information" on a variety of categories of information "to show third-party SPANS payments are a *relative or material difference*." Is it necessary for FirstEnergy to provide this information?

A. No. FirstEnergy provided sufficient invoices and documentation demonstrating that third-party attachers are charged for SPANS at a rate of **[BEGIN CONFIDENTIAL]**

[redacted] **[END CONFIDENTIAL]** for each new attachment request plus **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** for each pole in the request.

Q. On page 29 of Verizon St. 3.1, Dr. Tardiff claims that "evaluation of the *net* effect of what FirstEnergy labels as guaranteed access—a *voluntary* contract term—must be balanced with the *statutory* access third-parties have enjoyed since the passage of the 1996 Telecommunications Act." Please respond to this claim.

A. Above, I previously explained why the same assertion made by Mr. Mills was without merit. In addition, I note that cable company and CLEC attachers can be denied in certain circumstances, such as situations where a pole is not being replaced due to capacity. The Joint Use Agreements, however, do not permit FirstEnergy to deny access to Verizon under similar circumstances.

Q. Dr. Tardiff further asserts that Verizon does not enjoy a significant speed to market advantage under the Joint Use Agreements because "43.4 percent of Pennsylvania's households do not even have a wired phone and another 17.7 percent are mostly wireless" on page 30 of Verizon St. 3.1. Is this statistic helpful in the Commission's consideration of this case?

A. Yes, but not for the reason Dr. Tardiff asserts. I fundamentally disagree with Dr. Tardiff's assertion that Verizon has not previously, and does not currently, enjoy a speed to market advantage over cable company and CLEC providers for the reasons I explained above. However, where Dr. Tardiff describes decreasing percentages of households with a wired phone, he conveniently fails to recognize that Verizon already has the space and

infrastructure necessary to connect to any houses built while its competitors do not. Moreover, Dr. Tardiff does not recognize that Verizon can replace its copper telephone lines with broadband if it has no use for them or that it can overlash its own existing facilities, rather than installing new attachments. As such, the already available space and infrastructure that Verizon enjoys under the Joint Use Agreements provides it with substantial competitive benefits over its competitors.

IV. REJOINDER TO VERIZON'S ASSERTIONS THAT THE JOINT USE AGREEMENTS AND CABLE COMPANY OR CLEC ATTACHER AGREEMENTS ARE NOT FUNDAMENTALLY DIFFERENT

Q. Verizon's witnesses have claimed that FirstEnergy has not cited to or compared any specific terms of the Joint Use Agreements to the terms of its cable company/CLEC attacher agreements during the course of this proceeding.[21] Do you agree with this statement?

A. No. I find it curious that Verizon's witnesses assert that FirstEnergy has not cited to the terms and conditions of these various agreed and/or explicitly compared their terms and conditions, when FirstEnergy provided Verizon access to the agreements and Verizon has attached copies of these agreements as exhibits to its pleadings and testimony. The terms of these agreements speak for themselves and, on their face, they are substantively different.

[21] *See, e.g.*, Verizon St. 3.1, p. 2 (asserting that FirstEnergy's did not "identify terms and conditions that would justify rental rates for Verizon higher than what it may lawfully charge cable companies and competing telecommunications providers.").

Q. Please explain.

A. As an example, if you compare just the table of contents for the 1986 agreement between Pennsylvania Electric Company and The Bell Telephone Company of Pennsylvania[22] to the index for the form pole attachment agreement between FirstEnergy and a third-party attacher,[23] the various labeled provisions in the agreements are simply not the same. No specific comparison is necessary where, on their face, the agreements are simply different.

Q. Have you prepared an exhibit comparing specific the terms and conditions of an illustrative Joint Use Agreement between Verizon and Met-Ed and the form pole attachment agreement between FirstEnergy and a third-party attacher?

A. Yes. Despite the obvious differences between these agreements, I have prepared an illustrative comparison of certain of the terms and conditions of the 1986 agreement between Pennsylvania Electric Company and The Bell Telephone Company of Pennsylvania[24] and the form pole attachment agreement between FirstEnergy and a third-party attacher.[25] It is labeled as FirstEnergy Exhibit SFS-15 (CONFIDENTIAL).

Q. What does this FirstEnergy Exhibit SFS-15 (CONFIDENTIAL) show?

A. In order to best guide the Commission's review of these documents, I have identified and quoted the materially different provisions in each of these agreements, and in particular highlighted those that are related to each of the material competitive benefits that an

[22] Verizon Exhibit SCM-2 (VZ00320).
[23] Verizon Exhibit SCM-13 (VZ00488).
[24] Verizon Exhibit SCM-2 (VZ00318-VZ00334).
[25] Verizon Exhibit SCM-13 (VZ00487-VZ00503).

ILEC receives under a joint use agreement, which were recently recognized to be benefits by the FCC in the *AT&T v. FPL Order*.

Ultimately, this detailed comparison demonstrates that there are not only significant differences between the two agreements, but that there are specific provisions that address the material competitive advantages that have been previously recognized in the *AT&T v. FPL Order*. Based upon this detailed comparison, the Commission should reject Verizon's assertions that it is similarly situated to its competitors and conclude that Verizon receives several material net competitive advantages in comparison to its competitors from the Joint Use Agreements.

V. REJOINDER TO VERIZON'S ASSERTIONS ABOUT THE SCOPE OF THE FIELD AUDIT

Q. On pages 24-25 of Verizon St. 2.1, Dr. Calnon criticizes the scope of the field audit conducted by FirstEnergy and asserts that the field audit should have reflected "only poles for which rates are being set" in order to be accurate. Do you agree with this statement?

A. No. Based upon my years of experience, it is my understanding that field audits based only on joint use poles are unreliable due to the dynamic nature of the attachments being present (or not) on the poles. FirstEnergy's decision to include both joint use and non-joint use poles in the study is reasonable, and more reflective of reality.

VI. CONCLUSION

Q. Does this conclude your rejoinder testimony?

A. Yes, it does.

FirstEnergy Exhibit SFS-15
(PUBLIC VERSION)

Provision Type	**1986 Penelec / Bell Telephone Agreement[1]**	**FirstEnergy Third-Party Pole Attachment Agreement[2]**
"WHEREAS" clause	"WHEREAS, Penelec and Bell desire to cooperate in keeping pole plant at a minimum in the territory covered by this Agreement and to provide for the joint use of their respective poles when and where joint use shall be of mutual advantage in meeting their service requirements." ***See* Verizon Exhibit SCM-2 (VZ000320))**	[redacted]
	Commentary – The fundamental purpose for the parties to enter into these agreements differs. The 1986 Penelec / Bell Telephone Agreement evidences a desire to cooperate to minimize duplicative plant (and costs) and the FirstEnergy Third-Party Pole Attachment Agreement is the sale of a service from the pole owner to an attacher.	
Scope / Applicability	"A. This Agreement shall be in effect of the territory of the Commonwealth of Pennsylvania in which both parties to this agreement now or may hereafter operate in common, and shall cover all poles of each party in the territory, when said poles are brought hereunder in accordance with the procedures hereinafter provided." ***See* Verizon Exhibit SCM-2 (VZ000321))**	[redacted]

[1] Provided in Verizon Exhibit SCM-2 (VZ000318-VZ00334).
[2] Provided in PROPRIETARY Verizon Exhibit SCM-3 (VZ000486-503).

		[redacted]
	Commentary – The 1986 Penelec / Bell Telephone Agreement is broader in scope and not limited to the poles that an attacher must apply for, and obtain, consent to attach to under the FirstEnergy Third-Party Pole Attachment Agreement. Third party attachers are not guaranteed access to any poles that are not the subject of an approved application.	
Allocated Space	"NORMAL SPACE is the following described space on a joint use pole for the use of each party, respectively, except that attachments of one party may be located in the space normally set aside for the other party so long as such attachments are made in accordance with Article III – Specifications: 1. A space of nineteen (19) feet above the ground line shall be for the common use of both parties. The next three (3) feet shall be designated telephone space…" ***See* Verizon Exhibit SCM-2 (VZ000322))**	[redacted]
	Commentary - The 1986 Penelec / Bell Telephone Agreement historically conferred a material advantage to Verizon by reserving 3 feet of space for its attachments. A third-party attacher is not provided a similar benefit under the FirstEnergy Third-Party Pole Attachment Agreement.	
Pole Replacement Costs	"If any joint use pole requires relocation or replacement for reasons for which neither party is solely responsible…Owner shall at its own cost make such relocation or replacement…"	[redacted]

	***See* Verizon Exhibit SCM-2 (VZ000325))**	[redacted]
	<u>Commentary</u> – The FirstEnergy Third-Party Pole Attachment Agreement requires an attacher to pay for the cost of replacing a pole; the 1986 Penelec / Bell Telephone Agreement does not, permitting Verizon to avoid costs that other attachers must pay with respect to FirstEnergy owned poles.	
Make Ready Costs	N/A	[redacted]

	<u>Commentary</u> – The FirstEnergy Third-Party Pole Attachment Agreement requires an attacher to pay for the costs of new or additional guying or structures and the costs to move, remove, rearrange or alter facilities, which are necessary to accommodate the attacher's facilities (i.e., make-ready costs). Verizon is not required to pay these costs under its joint use agreements.	
Inspection	N/A	[redacted]
	<u>Commentary</u> - The FirstEnergy Third-Party Pole Attachment Agreement requires an attacher to be subject to inspection and pay for the costs of such inspection. Verizon is not subject to these inspection fees under the Joint Use Agreements.	
Unauthorized Attachment	N/A	[redacted]

		[redacted]
	Commentary - The FirstEnergy Third-Party Pole Attachment Agreement subjects an attacher to an unauthorized attachment fee. Verizon is not subject to such fees under the Joint Use Agreements.	
Abandonment of poles	"Owner may, at any time, abandon the use of any license joint use pole. If Owner is not obligated to remove such pole, Owner shall give Licensee thirty (30) days notice in writing to remove its attachments or purchase such pole for an equitable sum as may be agreed upon by the parties." ***See* Verizon Exhibit SCM-2 (VZ000329))**	[redacted]
	Commentary – Under the 1986 Penelec / Bell Telephone Agreement, Verizon may purchase an abandoned pole from FirstEnergy. CLEC and cable company attachers are not provided a similar contractual right by the FirstEnergy Third-Party Pole Attachment Agreement.	
License Preparation and Administration Fee	N/A	[redacted]
	Commentary – Under the FirstEnergy Third-Party Pole Attachment Agreement, a licensee is required to pay a license preparation and administration fee. Verizon pays no such fee under the Joint Use Agreements.	

Compensation	"The amount of compensation will be based upon the annual carrying cost applicable to distribution poles of both parties and the relative usage by each party of an average join use pole expressed as a percentage. For purposes of calculating compensation, an average joint use pole is established as being a forty- foot (40') wood pole with 43% of such pole being utilized by Bell and 57% of such pole being utilized by Penelec. Thus, Bell will annually pay Penelec an amount equal to 43% of the Penelec annual carrying cost for each pole owned by Penelec to which it is attached. Penelec will annually pay to Bell an amount equal to 57% of the Bell annual carrying cost for each pole owned by Bell to which it is attached… 1. Each Company will calculate its Average Carrying Cost (ACC) for distribution poles. 2. Calculating of the compensation fees: C_T = ACC x .57 C_P = ACC x.43 Where: C_T = Compensation for Bell owned poles to which Penelec is attached. C_P = Compensation for Penelec owned poles to which Bell is attached.	[redacted]
	<u>Commentary</u> – The method of calculating compensation under each agreement is completely different.	