

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON PENNSYLVANIA LLC and
VERIZON NORTH LLC,

Complainants,

v.

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

Defendants.

Proceeding No. 19-354

Bureau ID No. EB-19-MD-008

JOINT STATEMENT

Pursuant to 47 C.F.R. § 1.733(b)(2), the Commission’s November 26, 2019 Notice of Complaint, and the scheduling request granted on December 9, 2019, Complainants Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) and Defendants Metropolitan Edison Company, Pennsylvania Electric Company, and Penn Power Company (collectively, “FirstEnergy”), through undersigned counsel, submit the following Joint Statement regarding (I) stipulated facts, (II) disputed facts, (III) key legal issues, (IV) discovery matters, (V) scheduling, and (VI) settlement prospects.

I. Stipulated Facts

1. Complainants Verizon Pennsylvania LLC and Verizon North LLC (collectively, “Verizon”) are incumbent local exchange carriers (“ILECs”) that provide telecommunications and other services in areas of Pennsylvania.

2. Defendants Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) (collectively,

“FirstEnergy”) are operating subsidiaries of FirstEnergy Corp. Defendants are utilities within the meaning of 47 U.S.C. § 224(a)(1) because each is an electric utility that owns or controls poles used, in whole or in part, for wire communications. Defendants are not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

3. Verizon and FirstEnergy are party to ten joint use agreements that contain the rates, terms, and conditions for each party’s use of the other party’s utility poles. The joint use agreements were entered into with Verizon’s predecessor companies between 1958 and 1988 and were amended between 1999 and 2009 to include the currently operative pole attachment rate provisions. Five of the ten joint use agreements are with Met-Ed,¹ four are with Penelec,² and one is with Penn Power.³ The joint use agreements are still in effect.

4. The 2018 rental year is the most recent year that all three defendants—Met-Ed, Penelec, and Penn Power—invoiced and collected annual pole attachment rental fees or an “annual Deficiency Rate rental fee” from Verizon. (Penn Power has also invoiced and collected a pole attachment rental fee for the 2019 rental year). The 2018 invoices cover 412,697 poles jointly used by the parties, with FirstEnergy owning 301,854 (73%) and Verizon owning 110,843 (27%). The 2018 invoices associated with Met-Ed’s service area cover 159,448 poles jointly used by the parties, with Met-Ed owning 129,421 (81%) and Verizon owning 30,027 (19%), and with the annual Deficiency Rate rental fee being applied only to so-called “deficiency poles”; the 2018 invoices associated with Penelec’s service area cover 220,259 poles jointly used by the

¹ See Compl. Exs. 1-6 at VZ00165-317.

² See Compl. Exs. 7-11 at VZ00318-466.

³ See Compl. Ex. 12 at VZ00467-485.

parties, with Penelec owning 146,859 (67%) and Verizon owning 73,400 (33%); and the 2018 invoices associated with Penn Power's service area cover 32,990 poles jointly used by the parties, with Penn Power owning 25,574 (78%) and Verizon owning 7,416 (22%).

5. Met-Ed sends Verizon five annual invoices based on four Memoranda of Understanding entered in 2009. *See* Compl. Ex. 6 at VZ00296-317. Penelec sends Verizon five annual invoices based on four Memoranda of Understanding entered in 2009. *See* Compl. Ex. 11 at VZ00451-466. Penn Power and Verizon send each other one annual invoice based on an amendment to the joint use agreement entered in 1999. *See* Compl. Ex. 12 at VZ00484-485.

6. Under the Penelec and Penn Power joint use agreements, each party pays a per-pole rate for use of the other party's poles.⁴ In contrast, under the Met-Ed joint use agreement, Met-Ed charges Verizon an "annual Deficiency Rate rental fee" for so-called "deficiency poles," which is the difference between the number of joint use poles Verizon owns (19%) and the higher number of joint use poles Verizon would own if Verizon owned 45% of the joint use poles.⁵ For comparative purposes, the annual Deficiency Rate rental fee Met-Ed charges can be converted into "reciprocal" per-pole rental rates that can be calculated based on the assumption that both parties charge the same per-pole rental rate for use of the other party's poles.

7. For the 2011 to 2018 rental years, Penelec charged Verizon pole attachment rental rates of [REDACTED] per pole; Penn Power charged Verizon pole attachment rental rates of [REDACTED] per pole; and Met-Ed charged Verizon "annual Deficiency Rate rental fees" for so-called "deficiency poles" of [REDACTED] [REDACTED] per "deficiency" pole. For comparative

⁴ *See, e.g.,* Compl. Ex. 16 at VZ00542-547.

⁵ *See, e.g., id.* at VZ00532-541; Compl. Ex. 6 at VZ00298, VZ00301, VZ00304, VZ00306, VZ00309, VZ00311, VZ00314, VZ00316 (MOUs).

purposes, these Met-Ed rental fees are the same as “reciprocal” pole attachment rental rates of [REDACTED] per pole, respectively,

assuming both parties charge the same per-pole rental rate for use of the other party’s poles.

8. The following table shows the total net rental amounts FirstEnergy charged and Verizon paid to date for the 2011 through 2019 rental years:

Rental Year	Met-Ed	Penelec	Penn Power	Total
2011	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2012	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

9. Executives of Verizon and FirstEnergy met on April 11, 2018, and continued discussions thereafter. Verizon and one or more of the defendant FirstEnergy utilities also exchanged correspondence about their rate negotiations before and after the April 11, 2018 meeting, including without limitation correspondence attached to Verizon’s Complaint as Exhibits 17 through 29 at VZ00549-692, and attached to FirstEnergy’s Answer as Attachments A, J, and N at FE0002-3, FE00117-120, and FE00200-201.

II. Disputed Facts

The parties could not reach agreement on disputed facts to include in this filing. All facts from the parties’ pleadings that are not stipulated above are disputed.

III. Key Legal Issues

The parties could not reach agreement on key legal issues to include in this filing. Please refer to the parties' pleadings for legal issues.

IV. Discovery

FirstEnergy believes that Verizon has failed adequately to respond to FirstEnergy's Interrogatory requests, and that these responses and significant additional discovery are necessary to enable FirstEnergy to address certain FirstEnergy claims that Verizon has comparative advantages over its competitors.

Verizon does not believe that additional discovery is necessary, appropriate, or permitted by the Commission's rules. FirstEnergy has not identified any interrogatory or other discovery that is within "the scope of permissible inquiry related to the material facts in dispute in the proceeding" and is "both necessary to the resolution of the dispute and not available from any other source."⁶

V. Schedule for Pleadings

To the extent the Commission believes additional briefing on a particular issue or issues would be helpful to its understanding of this case under 47 C.F.R. § 1.732(a), the November 26, 2019 Notice of Complaint, as amended on December 9, 2019, sets Friday, April 17, 2020 as the deadline for all briefing. FirstEnergy is willing to agree to extend this deadline to enable additional discovery, further briefing, and the additional submissions requested by FirstEnergy. Verizon does not believe additional discovery or the briefing and submissions requested by FirstEnergy in its Motion for Leave to File Response to Reply and Motion for Leave to Supplement and Correct Answer are necessary, appropriate, or permitted by the Commission's

⁶ 47 C.F.R. § 1.730(a), (b).

rules. Verizon opposes an extension of the current deadlines, which would delay resolution of this matter, unnecessarily increase the cost and expense to the parties, and impose an undue burden on the Commission.

VI. Settlement

At this time, the parties do not believe that settlement is possible given the irreconcilable merits positions taken by the parties.

Respectfully and jointly submitted,

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Dated: March 18, 2020

PUBLIC VERSION

CERTIFICATE OF SERVICE

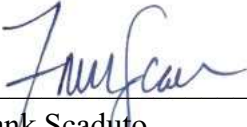
I hereby certify that on March 18, 2020, I caused a copy of the foregoing Joint Statement to be served on the following (service method indicated):

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