

PUBLIC VERSION

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

**VERIZON'S DENIALS OF FIRSTENERGY'S AFFIRMATIVE DEFENSES AND
REPLY TO FIRSTENERGY'S ANSWER**

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Complainants Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) submit this Reply to the Answer filed by Defendants Metropolitan Edison Company, Pennsylvania Electric Company, and Penn Power Company (“FirstEnergy”). Any allegations not specifically addressed are denied for reasons detailed in Verizon’s Pole Attachment Complaint (“Complaint”), Reply Legal Analysis, and their supporting affidavits and exhibits.¹

VERIZON’S DENIALS OF FIRSTENERGY’S “AFFIRMATIVE DEFENSES”

FirstEnergy improperly labels the first 68 pages of its Answer “affirmative defenses.”² An affirmative defense is an “assertion of facts and arguments that, if true, will defeat the plaintiff’s ... claim, even if all the allegations in the complaint are true.”³ FirstEnergy instead argues the merits of its positions.⁴ The Commission’s rules required FirstEnergy to plead affirmative defenses separately⁵ to avoid the confusion that results when it is difficult to “distinguish[] whether an affirmative defense is factually different from a denial.”⁶ Because

¹ Unless otherwise indicated, references to Verizon’s Complaint and Reply Legal Analysis also refer to those documents’ supporting affidavits and exhibits.

² See Answer, pp. 2-68. For ease of reference, Verizon will refer to the first 68 pages of FirstEnergy’s Answer as “FirstEnergy’s Brief” or “FE Brief.” The subsequent 43 pages of FirstEnergy’s Answer are referred to as “Response to the Compl.”

³ See Black’s Law Dictionary (11th ed. 2019).

⁴ See FE Brief ¶¶ 1-146. For example, Verizon alleged the joint use agreement rates are “unjust and unreasonable”; FirstEnergy argues they are not. Compare Compl. ¶¶ 21-26 with FE Brief ¶¶ 29-30. Similarly, Verizon alleged the joint use agreement rates resulted from FirstEnergy’s superior bargaining power; FirstEnergy argues they did not. Compare Compl. ¶¶ 27-28 with FE Brief ¶¶ 29-64.

⁵ 47 C.F.R. § 1.721(d) (“[E]ach affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.”); 47 C.F.R. § 1.726(e) (“Affirmative defenses to allegations in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (b) of this section.”).

⁶ See *In the Matter of Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, 8 FCC Rcd 2614, 2616-17 (¶¶ 14-16) (1993).

FirstEnergy did not separately plead affirmative defenses, the Commission should conclude it has none.

Verizon responded to FirstEnergy's merits arguments in its Reply Legal Analysis, which is incorporated here by reference. In an abundance of caution, Verizon also specifically denies each "affirmative defense" in FirstEnergy's Answer for the following reasons:⁷

A. Failure To Terminate the Existing Joint Use Agreements

Verizon did not have to terminate the parties' joint use agreements before it was entitled to a "just and reasonable" rate under the 2011 *Pole Attachment Order*, and Verizon denies FirstEnergy's contrary allegations and argument.⁸ FirstEnergy's argument is irrelevant because this case is governed by the new telecom rate presumption the Commission adopted in the 2018 *Third Report and Order*, which applies to "existing contracts."⁹ And it is also wrong because there is no agreement termination requirement in the 2011 *Pole Attachment Order*, which establishes a framework for reviewing rates in "existing agreement[s] ... in a complaint proceeding."¹⁰ The Commission must review rates in existing agreements because any other result would "subvert[] the supremacy of federal law over contracts."¹¹

FirstEnergy concedes existing rates in existing agreements are subject to review if Verizon genuinely lacks the ability to terminate the existing rental rates and negotiate new just

⁷ See 47 C.F.R. § 1.728(b).

⁸ FE Brief ¶¶ 1-11; see Reply Legal Analysis Section II.C.1.

⁹ *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7770 (¶ 127) (2018) ("*Third Report and Order*").

¹⁰ *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, 5336 (¶ 216) (2011) ("*Pole Attachment Order*").

¹¹ *Third Report and Order*, 33 FCC Rcd at 7731 (¶ 50).

and reasonable rates.¹² That standard is met here—as it was in earlier pole attachment complaint proceedings—because of “evergreen” clauses that require Verizon to pay the agreement rates even after the joint use agreements are terminated.¹³ FirstEnergy’s refusal to materially change the agreement rates and the net rental payment FirstEnergy charges during more than seven years of negotiations belies FirstEnergy’s contention that Verizon could nonetheless negotiate just and reasonable rates.¹⁴

B. Failure To Negotiate in Good Faith

For more than seven years, Verizon made good faith efforts to resolve this dispute before it sought Commission relief, and Verizon denies FirstEnergy’s contrary allegations and argument.¹⁵ In reality, Verizon sought to resolve this dispute through correspondence, informal negotiations, and executive-level discussions.¹⁶ And after all those efforts, FirstEnergy now confirms a deal was never possible: it feels there “is not enough guidance in the *2011 Pole Attachment Order* for the parties to negotiate a resolution of this issue without a pole attachment complaint proceeding.”¹⁷

Verizon consistently sought to reach a compromise business deal, repeatedly asked FirstEnergy to negotiate within the range of rates “between the new telecom rate and the old [or

¹² FE Brief ¶ 8.

¹³ See Compl. ¶ 29 & n.93; see *FPL Order*, 30 FCC Rcd at 1150 (¶ 25); *Verizon Va. v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3756-57 (¶¶ 13-14) (EB 2017) (“*Dominion Order*”).

¹⁴ See Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Reply Ex. B at VZ00850-851 (Calnon Reply Aff. ¶¶ 43-45); see also Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1-2.

¹⁵ FE Brief ¶¶ 12-20; see also Compl. Section III.A.1.c; Reply Legal Analysis Section II.E.1.

¹⁶ Compl. ¶¶ 30-36; see also Compl. Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27).

¹⁷ FE Brief ¶ 121.

pre-existing] telecom rate,”¹⁸ and “in good faith, discussed or attempted to discuss the possibility of settlement with [FirstEnergy] prior to the filing of [its] complaint.”¹⁹

C. Applicability of the 2018 *Third Report and Order*’s Presumptions

The new telecom rate presumption the Commission adopted in 2018 applies, and Verizon denies FirstEnergy’s contrary allegations and argument.²⁰ The new telecom rate presumption applies to agreements “entered into, renewed, or in evergreen status after the [March 11, 2019] effective date of [the *Third Report and*] *Order*,” including “agreements that are automatically renewed, extended, or placed in evergreen status.”²¹ The joint use agreements “automatically renewed [and] extended” during the past year and so fall within the presumption.²² In FirstEnergy’s words, the joint use agreements “*continue* to govern the parties’ joint use relationship” because they “*shall continue* in force” after their initial terms expire “until terminated by either party at any time” upon advance written notice.²³ Because “continue” and “extend” are synonyms,²⁴ the joint use agreements are operative today *because they extended* after the effective date of the *Third Report and Order* to continue to govern the parties’ joint use relationship. They are, therefore, “agreements that ... [we]re ... automatically renewed [or] extended” after the effective date, and the new telecom rate presumption applies.²⁵

¹⁸ FE Brief ¶ 14.

¹⁹ 47 C.F.R. § 1.722(g); *see also* Compl. Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27).

²⁰ FE Brief ¶¶ 21-28; *see also* Compl. Section III.A.1; Reply Legal Analysis Section II.B.

²¹ *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 & n.475).

²² *See* Compl. ¶¶ 15-16.

²³ Response to Compl. ¶¶ 15, 16 (emphases added).

²⁴ *See* Compl. ¶ 16 (“‘Continue’ is a synonym of ‘extend,’ meaning ‘[t]o carry further in time, space or development: extend.’”) (citation omitted).

²⁵ *See Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 n.475).

D. Verizon’s Bargaining Position Relative to FirstEnergy

FirstEnergy has always had superior bargaining power, and Verizon denies FirstEnergy’s contrary allegations and argument.²⁶ FirstEnergy’s argument is not relevant because the Commission’s regulations guarantee Verizon a new telecom rate regardless of whether the agreement rates were “negotiated at a time of more equal bargaining power between the parties.”²⁷ FirstEnergy’s argument that it lacked superior bargaining power is also wrong under “[s]tandard economic theories.”²⁸

FirstEnergy has owned most of the joint use poles at all relevant times, including 73% of the poles the parties currently share in Pennsylvania.²⁹ The Commission has repeatedly found this pole ownership disparity reflects a lack of ILEC bargaining power to negotiate just and reasonable rates.³⁰ FirstEnergy is no exception to the rule; its unjust and unreasonable rates and negotiations with Verizon confirm FirstEnergy has used its superior bargaining power to preserve unjust and unreasonable rates.³¹

²⁶ FE Brief ¶¶ 29-64; *see also* Compl. Section III.A.2.b; Reply Legal Analysis Section II.C.2.

²⁷ *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127); *see also* 47 C.F.R. § 1.1413(b).

²⁸ *See Pole Attachment Order*, 26 FCC Rcd at 5329 (¶ 206 n.618); *see also* Reply Ex. B at VZ00852-854 (Calnon Reply Aff. ¶¶ 48-52); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20).

²⁹ Response to Compl. ¶ 4 (admitting FirstEnergy owns 301,854 of 412,697 joint use poles); *see also* Response to Compl. ¶¶ 27-28 (failing to rebut alleged pole ownership numbers).

³⁰ *Pole Attachment Order*, 26 FCC Rcd at 5327, 5329 (¶¶ 199, 206) (“electric utilities appear to own approximately 65-70 percent of poles,” meaning “market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates” for ILECs); *see also* *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126) (finding “[I]LEC bargaining power vis-à-vis utilities” declines as “[I]LEC pole ownership” relative to electric utilities “decline[s].”); *Dominion Order*, 32 FCC Rcd at 3756-57 (¶ 13) (finding electric utility’s relatively high rates and “nearly two-to-one pole ownership advantage” were “probative evidence” of the electric utility’s bargaining power).

³¹ Reply Ex. B at VZ00850-854 (Calnon Reply Aff. ¶¶ 43-52); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20).

E. FirstEnergy’s Claim that the Joint Use Agreement Rates are Just and Reasonable Because of the Parties’ Relative Bargaining Power

Because FirstEnergy has always had superior bargaining power, FirstEnergy’s argument that pole attachment rates are “just and reasonable” where they were negotiated by parties with relatively equal bargaining power is both irrelevant to this dispute and legally wrong, and Verizon denies FirstEnergy’s contrary allegations and argument.³² The agreement rates are the result of FirstEnergy’s superior bargaining power.³³ The argument is also wrong as a matter of law. Although the Commission is “unlikely” to “second guess” rates resulting from negotiations of “parties with relatively equivalent bargaining power,”³⁴ it has consistently emphasized “pole attachment rates cannot be held reasonable simply because they have been agreed to.”³⁵ The Commission is required by statute to ensure “just and reasonable” rates; it “would not be fulfilling that duty if it were to substitute the requirements of contract law for the dictates of section 224.”³⁶

F. Alleged Mistakes of Fact and Law in Verizon’s Complaint

Verizon denies its Complaint “mistakes the facts and the law” in arguing Verizon is entitled to new telecom rates effective July 12, 2011 under the standard adopted in the 2011 *Pole Attachment Order*.³⁷

³² FE Brief ¶¶ 65-67; *see also* Compl. Section III.A.2.b; Reply Legal Analysis Section II.C.2.

³³ *See* Denial to Section D; *see also* Reply Ex. B at VZ00850-854 (Calnon Reply Aff. ¶¶ 43-52); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20).

³⁴ *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216).

³⁵ *Selkirk Commc’ns, Inc. v. Fla. Power & Light Co.*, 8 FCC Rcd 387, 389 (¶ 17) (1993).

³⁶ *In the Matter of Implementation of Section 224 of the Act*, 25 FCC Rcd 11864, 11908 (¶ 105) (2010) (“*Pole Attachment Order NPRM*”) (cited with approval at *Pole Attachment Order*, 26 FCC Rcd at 5292 (¶ 119 n.368)).

³⁷ FE Brief ¶¶ 68-117; *see also* Compl. Sections III.A.2.d and III.B; Reply Legal Analysis Sections II.C.3, II.D, and II.E.2.

The *Pole Attachment Order* required FirstEnergy to prove the rate disparity between Verizon and its competitors is justified by the value of any “net material competitive advantages” FirstEnergy provides Verizon under the parties’ joint use agreements as compared to the terms and conditions FirstEnergy provides under its license agreements with Verizon’s competitors.³⁸ FirstEnergy’s efforts to justify its rates under that standard do not survive scrutiny. FirstEnergy first argues its poles are tall and strong enough to accommodate Verizon’s facilities.³⁹ This attempted justification fails because the same poles are also tall and strong enough to accommodate Verizon’s competitors’ facilities.⁴⁰ FirstEnergy alleges a series of advantages followed from Verizon’s ability to deploy on its poles,⁴¹ but they are conclusory, based on incomplete data, and inconsistent with fact.⁴² FirstEnergy next points to a previously unannounced plan to conduct a field audit of its own network and surmises it may be able to defray the cost by imposing about a [REDACTED] per pole charge on Verizon’s competitors.⁴³ But FirstEnergy’s license agreements [REDACTED], and the cost itself is guesswork, based on unsubstantiated costs related to an undocumented field audit in Ohio.⁴⁴ Finally, FirstEnergy argues Verizon occupies about [REDACTED] inches of additional space on a

³⁸ *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶¶ 217-18); *see also Dominion Order*, 32 FCC Rcd at 3759 (¶ 20 & n.70).

³⁹ FE Brief ¶¶ 70-87.

⁴⁰ Reply Legal Analysis Section II.C.3.b.1; *see also* Reply Ex. A at VZ00813-814 (Mills Reply Aff. ¶ 5); Reply Ex. B at VZ00842 (Calnon Reply Aff. ¶ 31).

⁴¹ FE Brief ¶¶ 70-87.

⁴² Reply Legal Analysis Section II.C.3.b.1; *see also* Reply Ex. A at VZ00813-816 (Mills Reply Aff. ¶¶ 5-10); Reply Ex. B at VZ00842-844 (Calnon Reply Aff. ¶¶ 30-32); Reply Ex. C at VZ00867-870, VZ00877-878 (Tardiff Reply Aff. ¶¶ 21-29, 42-44).

⁴³ FE Brief ¶ 88.

⁴⁴ Reply Legal Analysis Section II.C.3.b.2; *see also* Reply Ex. A at VZ00816 (Mills Reply Aff. ¶ 11); Reply Ex. B at VZ00844 (Calnon Reply Aff. ¶ 33).

pole than Verizon’s competitors occupy,⁴⁵ but FirstEnergy does not substantiate its claim and, regardless, FirstEnergy illustrates how rates calculated using its data in the “space occupied” input of the new telecom formula still results in rates less than ■■■ the rates FirstEnergy demands.⁴⁶ FirstEnergy fails to distinguish Verizon from its competitors—let alone prove a competitive advantage justifying an annual rental rate more than ■■■ per pole higher.

FirstEnergy also failed to account for any unique *disadvantages* that apply to Verizon under the joint use agreements as compared to license agreements, such as Verizon’s unique pole ownership costs.⁴⁷ And although FirstEnergy argues it does not have to, the Commission has recognized “[a] failure to weigh, and account for, the[se] different ... responsibilities in joint use agreement[s] could lead to marketplace distortions.”⁴⁸

Further, although FirstEnergy argues it can impose rates higher than the new telecom rate under the 2011 standard,⁴⁹ “competitive neutrality counsels in favor of affording [I]LECs ... *the New Telecom Rate*” in these circumstances.⁵⁰ FirstEnergy also incorrectly calculates rates under

⁴⁵ FE Brief ¶¶ 89-91.

⁴⁶ Reply Legal Analysis Section II.C.3.b.3; *see also* Reply Ex. A at VZ00817-818 (Mills Reply Aff. ¶¶ 12-14); Reply Ex. B at VZ00844-845 (Calnon Reply Aff. ¶ 34); Reply Ex. C at VZ00874-877 (Tardiff Reply Aff. ¶¶ 37-41); Answer Attachment G at FE00092, FE00097, FE00102.

⁴⁷ FE Brief ¶¶ 94-98.

⁴⁸ *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654); *see also Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (“The utility can rebut the presumption with clear and convincing evidence that the [I]LEC receives *net benefits* under its pole attachment agreement with the utility that materially advantage the [I]LEC over other telecommunications attachers.”) (emphasis added); *see also* Reply Ex. A at VZ00815 (Mills Reply Aff. ¶ 8); Reply Ex. B at VZ00842 (Calnon Reply Aff. ¶ 30).

⁴⁹ FE Brief ¶¶ 99-103; *see also* Reply Legal Analysis Section II.D.

⁵⁰ *FPL Order*, 30 FCC Rcd at 1142 (¶ 7) (emphasis added); *see also* 47 C.F.R. § 1.1413(b) (“[T]here is a presumption that [ILECs] may be charged no higher than the rate determined in accordance with [47 C.F.R.] § 1.1406(e)(2).”).

the Commission’s new and pre-existing telecom rate formulas⁵¹ because it uses outdated rates of return and relies on data from an unreliable and hurried field review of █████ of its poles performed in response to this litigation, but not produced for review and verification.⁵²

FirstEnergy also incorrectly seeks to limit the Commission’s remedial authority to a two-year period set by 47 U.S.C. § 415, which does not apply here.⁵³ Section 415 applies only to actions by a carrier to recover *lawful* charges and actions *against* a carrier to recover damages and overcharges.⁵⁴ This dispute is neither. Section 415, therefore, cannot be the “applicable statute of limitations” for purposes of 47 C.F.R. § 1.1407(a)(3). Instead, consistent with a long line of precedent under which State contract law determines the applicable statute of limitations “when there is no statute of limitations expressly applicable to a federal statute,” the applicable statute of limitations is “the general contract law statute of limitations” from Pennsylvania,⁵⁵ which provides relief back to the July 12, 2011 effective date of the *Pole Attachment Order*.⁵⁶

⁵¹ FE Brief ¶¶ 104-112; *see also* Reply Legal Analysis Section II.D.

⁵² Reply Legal Analysis Section II.D; *see also* Reply Ex. B at VZ00834-839 (Calnon Reply Aff. ¶¶ 15-25); Reply Ex. C at VZ00871-877 (Tardiff Reply Aff. ¶¶ 30-41).

⁵³ FE Brief ¶¶ 113-117; *see also* Reply Legal Analysis Section II.E.2.

⁵⁴ 47 U.S.C. § 415.

⁵⁵ *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018) (citing cases); *see also* *Spiegler v. District of Columbia*, 866 F.2d 461, 463-64 (D.C. Cir. 1989) (“When Congress has not established a statute of limitations for a federal cause of action, it is well-settled that federal courts may ‘borrow’ one from an analogous state cause of action, provided that the state limitations period is not inconsistent with underlying federal policies.”).

⁵⁶ *See* Reply Legal Analysis Section II.E; Compl. ¶ 57.

G. FirstEnergy’s Request for a Prospective-Only Rate Determination

Verizon denies the “just and reasonable” rates set in this proceeding should only be applied prospectively.⁵⁷ The Commission previously rejected requests for prospective-only relief and should reject them again here.⁵⁸

H. The Commission’s Authority To Ensure Just and Reasonable Rates

Verizon denies FirstEnergy’s argument that the Commission lacks jurisdiction under 47 U.S.C. §224 to regulate the rates charged ILECs.⁵⁹ The Commission’s jurisdiction was settled in 2011 and was affirmed on appeal by the U.S. Court of Appeals for the D.C. Circuit, which expressed “very much doubt” that any other statutory interpretation would be reasonable.⁶⁰

VERIZON’S REPLY TO FIRSTENERGY’S RESPONSE TO VERIZON’S COMPLAINT

Verizon submits the following replies to FirstEnergy’s responses to the paragraphs of Verizon’s Complaint, which appear at pages 69 through 111 of FirstEnergy’s Answer.

I. PARTIES AND JURISDICTION

1. Verizon admits Verizon Pennsylvania LLC and Verizon North LLC are subsidiaries of Verizon Communications Inc. Verizon states the Form 10-K of Verizon Communications Inc. speaks for itself and that FirstEnergy failed to document its time-bound allegation about market capitalization as required.⁶¹ Verizon denies the rest of FirstEnergy’s

⁵⁷ FE Brief ¶¶ 118-143; *see also* Reply Legal Analysis Sections II.E.3, II.E.4.

⁵⁸ *See FPL Order*, 30 FCC Rcd at 1145-47 (¶¶ 17-19); *see also Dominion Order*, 32 FCC Rcd at 3750 (¶ 1) (finding “Verizon is entitled to a refund of overpayments”).

⁵⁹ FE Brief ¶¶ 144-46; *see also* Reply Legal Analysis Section II.E.4.

⁶⁰ *See Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183, 188 (D.C. Cir. 2013).

⁶¹ *See* Notice of Formal Complaint at 2 n.3 (“[I]f a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material.”).

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response to paragraph 1 because the allegations about Verizon Communications Inc., which is not a party to this action, are not relevant.

2. Verizon admits that FirstEnergy Corp. is one of the nation's largest investor-owned electric systems and that Verizon's parent corporation, Verizon Communications Inc., is one of the nation's largest communications companies. Verizon further states FirstEnergy Corp.'s Form 10-K speaks for itself and that FirstEnergy failed to document its time-bound allegations about market capitalization as required.⁶² FirstEnergy's response to paragraph 2 otherwise includes irrelevant allegations about Verizon's parent corporation, which is not a party to this action, and so is denied.

3. Verizon admits FirstEnergy and Verizon are party to ten joint use agreements in Pennsylvania, that they were entered into with Verizon's predecessor companies between 1958 and 1988, and that they were amended between 1999 and 2009 to include the currently operative rates.⁶³ Verizon also admits five of the ten joint use agreements are with Met-Ed,⁶⁴ four are with Penelec,⁶⁵ and one is with Penn Power.⁶⁶ Verizon denies the last sentence of FirstEnergy's response to paragraph 3 because the joint use agreements are substantially similar⁶⁷ and because FirstEnergy did not identify any material difference among the joint use agreements.⁶⁸

⁶² *See id.*

⁶³ Compl. Exs. 1-12 at VZ00165-485 (Joint Use Agreements).

⁶⁴ Compl. Exs. 1-6 at VZ00165-317 (Met-Ed Agreements and Memoranda of Understanding ("MOUs")).

⁶⁵ Compl. Exs. 7-11 at VZ00318-00466 (Penelec Agreements and MOUs).

⁶⁶ Compl. Ex. 12 at VZ00467-485 (Penn Power Agreement and Amendment).

⁶⁷ Compl. Ex. A at VZ00004 (Mills Aff. ¶ 6).

⁶⁸ *See* 47 C.F.R. § 1.726(b) ("General denials are prohibited.").

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4. Verizon admits the joint use agreements cover 412,697 poles jointly used by the parties, with FirstEnergy owning 301,854 and Verizon owning 110,843. Verizon denies the second sentence of FirstEnergy's response to paragraph 4 because FirstEnergy has superior bargaining power due to its three-to-one pole ownership advantage in Pennsylvania as detailed in Section III.A.2.b of Verizon's Complaint and Section II.C.2 of Verizon's Reply Legal Analysis.⁶⁹ Verizon denies the last sentence of FirstEnergy's response to paragraph 4 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

5. Verizon denies the first sentence of FirstEnergy's response to paragraph 5 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second sentence of FirstEnergy's response to paragraph 5 because the Commission's jurisdiction to regulate the rates, terms, and conditions of ILEC pole attachments was settled in the 2011 *Pole Attachment Order* and affirmed on appeal.⁷⁰

6. FirstEnergy admits the allegations of paragraph 6, so no response is required.

7. Verizon admits the Pennsylvania Public Utility Commission ("PaPUC") published an Order stating it will reverse pre-empt the Commission's jurisdiction over pole

⁶⁹ See also Reply Ex. B at VZ00850-854 (Calnon Reply Aff. ¶¶ 43-52); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20); *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126) (finding "[I]LEC bargaining power vis-à-vis utilities" declines as "[I]LEC pole ownership" relative to electric utilities "decline[s]."); *Dominion Order*, 32 FCC Rcd at 3756-57 (¶ 13) (finding electric utility's relatively high rates and "nearly two-to-one pole ownership advantage" were "probative evidence" of the electric utility's bargaining power); *Pole Attachment Order*, 26 FCC Rcd at 5327, 5329 (¶¶ 199, 206) ("electric utilities appear to own approximately 65-70 percent of poles," meaning "market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates" for ILECs).

⁷⁰ See *Pole Attachment Order*, 26 FCC Rcd at 5328 (¶ 202), *aff'd*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), cert. denied, 571 U.S. 940 (2013); see also Reply Legal Analysis Section II.E.4.

attachments and regulate the rates, terms, and conditions for pole attachments in Pennsylvania.⁷¹ Verizon also admits the PaPUC has not yet sent a letter to the Commission certifying it regulates pole attachments pursuant to 47 C.F.R. § 224(c)(2).

8. FirstEnergy admits the allegations in the first two sentences of paragraph 8 and in footnote 18, so no response is required. Verizon denies FirstEnergy lacks knowledge or information sufficient to form a belief as to the truth of Verizon's allegation that a "separate action between the parties has not been filed with any court or other government agency based on the same claims or same set of facts, in whole or in part," and that "Verizon does not seek prospective relief that is identical to the relief proposed or at issue in a notice-and-comment rulemaking proceeding that is currently before the Commission."⁷² Verizon denies the last sentence of FirstEnergy's response to paragraph 8 because the Commission's new telecom rate presumption applies to the joint use agreements at issue in this proceeding because they "automatically renewed" and "extended" following the March 11, 2019 effective date of the presumption for reasons detailed in Section III.A.1 of Verizon's Complaint and Section II.B of Verizon's Reply Legal Analysis.

9. Verizon denies the "parents of Verizon and FirstEnergy" held negotiations about a just and reasonable rate for Verizon's use of Met-Ed's and Penelec's poles because Verizon participated in the negotiations on its own behalf.⁷³ Verizon denies the negotiations did not "cover Penn Power or Potomac Edison" until December 2017 because Verizon paid Penn Power's and Potomac Edison's 2013 rental invoices as required by FirstEnergy to begin

⁷¹ See *Assumption of Comm'n Jurisdiction over Pole Attachments from the Fed. Commc'ns Comm'n*, No. L-2018-3002672, 2019 WL 4345730 (Aug. 29, 2019).

⁷² 47 C.F.R. § 1.726(b).

⁷³ Compl. Ex. A at VZ00014 (Mills Aff. ¶ 30).

negotiations.⁷⁴ Verizon denies the last sentence of FirstEnergy’s response to paragraph 9 because Verizon negotiated exhaustively and in good faith with FirstEnergy for years, as detailed in Section III.A.2.c of Verizon’s Complaint and Section II.E.1 of Verizon’s Reply Legal Analysis.⁷⁵

II. FACTS AND ARGUMENT

10. Verizon denies the first sentence of FirstEnergy’s response to paragraph 10 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies subsection (i), which contains allegations that are substantially similar or identical to allegations in the FirstEnergy’s response to paragraph 5, and Verizon hereby incorporates its response to those allegations. Verizon denies subsection (ii) because there is no “threshold contract condition for Commission modification of [the parties’] pre-2011 joint use agreements.” Section 224(b) guarantees just and reasonable rates for Verizon’s use of FirstEnergy’s poles, the Commission’s new telecom rate presumption applies to “existing contracts,” and the 2011 *Pole Attachment Order* clarifies the Commission will review rates under “existing agreement[s].”⁷⁶

Verizon denies subsection (iii), which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s response to paragraph 5, and Verizon hereby incorporates its response to those allegations. Verizon also denies “the just and reasonable rates” are the agreement rates “under the facts of this case [because] FirstEnergy lacks bargaining leverage over Verizon.” The new telecom rate presumption applies regardless of whether or not

⁷⁴ Compl. Ex. A at VZ00015 (Mills Aff. ¶ 32).

⁷⁵ See also Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27).

⁷⁶ *Pole Attachment Order*, 26 FCC Rcd at 5328, 5336 (¶¶ 202, 216); *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127); see also Compl. Section III.A; Reply Legal Analysis Section II.C.1.

the agreement rates were “negotiated at a time of more equal bargaining power between the parties.”⁷⁷ And regardless, FirstEnergy has superior bargaining leverage over Verizon by virtue of its three-to-one pole ownership advantage, which it used to impose and continue charging the unjust and unreasonable agreement rates.⁷⁸ Verizon also denies pole attachment rates are automatically “just and reasonable” when they result from negotiations of parties with relatively equal bargaining power. The Commission stated it is “unlikely” to “second guess” such rates,⁷⁹ but such rates “cannot be held reasonable simply because they have been agreed to.”⁸⁰

Verizon denies subsection (iv) because Verizon did *not* “acknowledge[] after negotiations were completed in 2009 that the new rates were ‘fair and equitable’ and that the joint use rates issue had been ‘amiably resolved.’”⁸¹ Verizon’s employee described a “common *rate structure*” as “fair and equitable” as compared to the prior billing arrangement, which included seven different rate structures meaning that Verizon paid different rental amounts to the same FirstEnergy operating company depending on where poles were located in relation to

⁷⁷ *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127).

⁷⁸ *See also* Reply Ex. B at VZ00850-854 (Calnon Reply Aff. ¶¶ 43-52); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20); *see also* Compl. Section III.A; Reply Legal Analysis Section II.C.1.

⁷⁹ *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216).

⁸⁰ *Selkirk Commc’ns, Inc. v. Fla. Power & Light Co.*, 8 FCC Rcd 387, 389 (¶ 17) (1993).

⁸¹ Reply Ex. A at VZ00818-820 (Mills Reply Aff. ¶¶ 15-19); *see also* Reply Legal Analysis Section II.C.2.

outdated legacy service area boundaries.⁸² The 2009 amendments reached an “amiable resol[ution]” of that issue, which had complicated Verizon’s recordkeeping each year.⁸³

Verizon denies subsection (v), which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 43, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies subsection (vi) because the “applicable statute of limitations” is provided by Pennsylvania contract law and not by the two-year statute of limitations of 47 U.S.C. § 415. Section 415 applies only to actions by a carrier to recover lawful charges and actions against a carrier to recover damages and overcharges and this dispute is neither.⁸⁴ Verizon denies subsection (vii) because refunds are appropriate when a pole owner, like FirstEnergy, charges “unjust and unreasonable” rates in violation of federal law⁸⁵ and are particularly appropriate here, where FirstEnergy delayed rental rate reductions for years through protracted negotiations.⁸⁶

Verizon denies subsection (viii), which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 9, 30, 31, 32, 33, 34, 35, 36, 41, 42, and 58, and Verizon hereby incorporates its response to those allegations.

⁸² See Answer Attachment H at FE00109 (Letter from N. Parrish, Verizon, to Joint Use Team, FirstEnergy (Aug. 12, 2009)) (“With the execution of this MOU Verizon Pa and FirstEnergy can finally have a common rate structure that is fair and equitable for all the Joint Use Agreements between both companies in Pennsylvania.”); Reply Ex. A at VZ00818-820 (Mills Reply Aff. ¶¶ 15-19); Reply Legal Analysis Section II.C.2.

⁸³ Reply Ex. A at VZ00818-820 (Mills Reply Aff. ¶¶ 15-19).

⁸⁴ See also Compl. Section III.B; Reply Legal Analysis Section II.E.2.

⁸⁵ See, e.g., *Dominion Order*, 32 FCC Rcd at 3750 (¶ 1).

⁸⁶ See also Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Compl. Section III.B; Reply Legal Analysis Section II.E.

PUBLIC VERSION

Verizon denies subsection (ix) because the properly calculated new telecom rates for the 2011 to 2019 rental years for Verizon's use of (a) Met-Ed's poles are \$8.29, \$9.87, \$10.07, \$5.02, \$9.35, \$8.79, \$9.55, \$12.20 and \$13.83 per pole, (b) Penelec's poles are \$6.43, \$6.79, \$7.18, \$5.21, \$6.96, \$7.18, \$7.49, \$10.49, and \$9.07 per pole, and (c) Penn Power's poles are \$7.30, \$8.47, \$8.51, \$8.21, \$8.94, \$9.40, \$9.08, \$11.18, and \$11.80 per pole.⁸⁷

Verizon further denies subsection (ix) because the properly calculated pre-existing telecom rates for the 2011 to 2019 rental years or Verizon's use of (a) Met-Ed's poles are \$12.57, \$14.96, \$15.26, \$7.61, \$14.16, \$13.32, \$14.47, \$18.49, and \$20.96 per pole; (b) Penelec's poles are \$9.74, \$10.29, \$10.89, \$7.89, \$10.54, \$10.88, \$11.35, \$15.90 and \$13.75 per pole; and (c) Penn Power's poles are \$11.06, \$12.83, \$12.90, \$12.44, \$13.54, \$14.24, \$13.75, \$16.94 and \$17.88 per pole.⁸⁸

Verizon denies the second paragraph of FirstEnergy's response to paragraph 10 because FirstEnergy has unlawfully "over-collected" ██████████ in pole attachment rent to date for reasons detailed in Verizon's Complaint and Verizon's Reply Legal Analysis.⁸⁹ Verizon denies that FirstEnergy never "refused to negotiate just and reasonable rates" because the parties'

⁸⁷ See Compl. Ex. B at VZ00041-42, VZ00059-87 (Calnon Aff. ¶ 13 & Ex. C-1); Compl. Ex. C at VZ00110-114 (Tardiff Aff. ¶¶ 10-14); Reply Ex. B at VZ00827-840 (Calnon Reply Aff. ¶¶ 4-27); Reply Ex. C at VZ00871-877 (Tardiff Reply Aff. ¶¶ 30-41); *see also* Compl. Section III.B; Reply Legal Analysis Section II.D.

⁸⁸ See Compl. Ex. B at VZ00055, VZ00059-87 (Calnon Aff. ¶ 36 & Ex. C-1); Compl. Ex. C at VZ00110-114 (Tardiff Aff. ¶¶ 10-14); Reply Ex. B at VZ00845-846 (Calnon Reply Aff. ¶¶ 35-37); Reply Ex. C at VZ00871-877 (Tardiff Reply Aff. ¶¶ 30-41); *see also* Compl. Section III.B; Reply Legal Analysis Section II.D.

⁸⁹ See Compl. Ex. B at VZ00037-38 (Calnon Aff. ¶ 8) (calculating overpayment of ██████████ to date within the applicable Pennsylvania statute of limitations period as compared to proportional new telecom rates); Reply Ex. B at VZ00847-850 (Calnon Reply Aff. ¶¶ 38-42).

negotiations show FirstEnergy never made an offer that would have materially changed the joint use agreement rates and the net rental payment FirstEnergy collects.⁹⁰

Verizon denies subsections (1) and (2) of the third paragraph of FirstEnergy’s response to paragraph 10 because presumptions adopted in the 2018 *Third Report and Order* apply to the entirety of a pole attachment complaint proceeding (and not just to the post-March 11, 2019 time period) if it involves a “pole attachment contract [that was] entered into or renewed after the effective date,”⁹¹ including agreements that “automatically renewed [or] extended.”⁹²

Verizon denies subsection (3) of the third paragraph of FirstEnergy’s response to paragraph 10 because FirstEnergy’s settlement offers, even though they included marginal and incremental rental rate reductions for Verizon, were nonetheless designed to preserve FirstEnergy’s overall rental income.⁹³ The record also shows Verizon *did* offer to negotiate a “rate incrementally higher than the new telecom rate” in its effort to reach a business deal and avoid litigation.⁹⁴ As FirstEnergy concedes, Verizon asked to negotiate within the range of rates “between the new telecom rate and the old [or pre-existing] telecom rate.”⁹⁵

⁹⁰ See Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Reply Ex. B at VZ00850-851 (Calnon Reply Aff. ¶¶ 43-45); *see also* Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1-2.

⁹¹ 47 C.F.R. § 1.1413(b).

⁹² *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 n.475); *see also* Reply Legal Analysis Section II.B.

⁹³ See Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Reply Ex. B at VZ00850-851 (Calnon Reply Aff. ¶¶ 43-45); *see also* Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1-2.

⁹⁴ Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00821-822 (Mills Reply Aff. ¶¶ 22-23); *see also* Complaint Section III.A.2.c; Reply Legal Analysis Section II.E.1.

⁹⁵ FE Brief ¶ 14.

A. Verizon Is Entitled to a Just and Reasonable Pole Attachment Rate.

11. Verizon admits the Commission’s rulings speak for themselves and the 2011 *Pole Attachment Order* provides that, if ILECs attach on terms and conditions that are materially comparable to those provided existing cable and CLEC attachers, the ILEC should be charged the same rate to which the comparable attacher is entitled. Verizon denies the “same rate” may be higher than the cable or new telecom rate because the Commission found “competitive neutrality counsels in favor of affording [I]LECs the same rate as the comparable provider, *i.e.* the New Telecom Rate or the Cable Rate.”⁹⁶ Verizon denies ILECs have the sole burden under the 2011 *Pole Attachment Order* because the burden shifts to the electric utility to justify its rates once an ILEC makes a *prima facie* case of their unreasonableness.⁹⁷ Verizon admits it was “reasonable for the Enforcement Bureau to decide” the “same rate” under the standard adopted in 2011 is the new telecom rate “based on the facts in the *Verizon v. FPL* case,” but denies the properly calculated new telecom rate is not also the “same rate” on the facts of this case, where FirstEnergy unlawfully charges some attachers rates higher than the “maximum rate” set by the Commission’s rate formulas.⁹⁸ Verizon denies FirstEnergy’s conclusory allegation that “some of FirstEnergy’s rates are different from the cable rate and new telecom rate, and for good reasons” because the Commission’s rate formulas determine the “maximum rate” FirstEnergy may charge

⁹⁶ *FPL Order*, 30 FCC Rcd at 1142 (¶ 7) (emphasis added); *see also* 47 C.F.R. § 1.1413(b) (“[T]here is a presumption that [ILECs] may be charged no higher than the rate determined in accordance with [47 C.F.R.] § 1.1406(e)(2).”); *see also* Reply Legal Analysis Section II.D.

⁹⁷ *See* FE Brief ¶ 86 (If Verizon made “a *prima facie* case, ... the burden shifts to FirstEnergy”); *see also* *Dominion Order*, 32 FCC Rcd at 3759-61 (¶¶ 20-22) (requiring electric utility to justify its rates under the standard adopted in 2011); *Multimedia Cablevision, Inc. v. Sw. Bell Tel. Co.*, 11 FCC Rcd 11202, 11207 (¶ 11) (1996) (“A *prima facie* case is established by “a statement of the specific unreasonable pole attachment rate, term or condition and all arguments used to support its claim of unreasonableness.”).

⁹⁸ *See* Reply Legal Analysis Section II.D.

and FirstEnergy's license agreements include substantially similar terms and conditions.⁹⁹

Verizon denies FirstEnergy's conclusory allegation that "Verizon is not comparably situated to other telecommunications or cable company attachers" because Verizon attaches to FirstEnergy's poles under terms and conditions that are materially comparable to the terms and conditions in FirstEnergy's license agreements.¹⁰⁰ Verizon admits the Commission set the pre-existing telecom rate as a "reference point" in the 2011 *Pole Attachment Order*, but states that the Commission has since set the pre-existing telecom rate as a "hard cap" on the rate that may be charged.¹⁰¹ Verizon denies the last sentence of FirstEnergy's response to paragraph 11 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

12. Verizon admits the Commission's rulings speak for themselves. Verizon denies the remainder of paragraph 12, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 43, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

13. Verizon denies the first sentence of FirstEnergy's response to paragraph 13 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the last sentence of FirstEnergy's response to paragraph 13 because "greater rate parity between [I]LECs and their telecommunications competitors can energize and further accelerate broadband

⁹⁹ 47 C.F.R. § 1.1406(d); FE Brief ¶ 103 n.117; Reply Ex. B at VZ00851-852 (Calnon Reply Aff. ¶¶ 46-47); Reply Ex. C at VZ00877-878 (Tardiff Reply Aff. ¶¶ 42-44); *see also* Reply Legal Analysis Section II.D.

¹⁰⁰ Reply Ex. A at VZ00812-818 (Mills Reply Aff. ¶¶ 2-14); Reply Ex. B at VZ00841-845 (Calnon Reply Aff. ¶¶ 28-34); Reply Ex. C at VZ00877-878 (Tardiff Reply Aff. ¶¶ 42-44); *see also* Compl. Section III.A.2.d; Reply Legal Analysis Section II.C.3.

¹⁰¹ *Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129).

deployment” and is good policy.¹⁰² Verizon denies the remainder of paragraph 13, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 43, 54, 55, 56, 57, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

1. The New Telecom Rate Is the Just and Reasonable Rate Under the Presumption the 2018 *Third Report and Order* Established.

14. Verizon denies the first paragraph of FirstEnergy’s response to paragraph 14, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 43, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon admits the “deficiency” rates Met-Ed charges can be converted for comparative purposes into “reciprocal” per-pole rates that would charge both parties the same per-pole rate for use of the other party’s poles.¹⁰³ Verizon also admits FirstEnergy raised the idea of converting the deficiency rates into reciprocal “pole rental rates each party would charge the other” in April 2017.¹⁰⁴ Verizon is without knowledge or information sufficient to form a belief as to the subjective “purpose of FirstEnergy’s conversion of Met-Ed’s rates into ‘reciprocal’ per pole rates” and admits FirstEnergy later denied its idea was a settlement proposal.¹⁰⁵ Verizon

¹⁰² See *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126) (citation omitted).

¹⁰³ Compl. Ex. B at VZ00045 (Calnon Aff. ¶ 19).

¹⁰⁴ Compl. Ex. 21 at VZ00568-571 (Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (Apr. 12, 2017)).

¹⁰⁵ Compl. Ex. 26 at VZ00590 (Letter from D. DeWitt, FirstEnergy to S. Mills, Verizon (Dec. 20, 2017)).

denies that FirstEnergy did not “suggest” its idea was a settlement proposal, because FirstEnergy gave the impression it was discussing a settlement proposal.¹⁰⁶ Verizon denies the last sentence of the second paragraph of FirstEnergy’s response to paragraph 14 because Verizon denies a “deficiency rate” and a “deficiency payment” are distinguishable from a “rental rate” and a “rental payment” for use of poles.¹⁰⁷ Verizon further denies it is “inaccurate” to state Verizon has paid rent to use Met-Ed’s poles because Verizon has paid [REDACTED] in pole attachment rent to Met-Ed each year since the effective date of the 2011 *Pole Attachment Order*.¹⁰⁸

FirstEnergy admits it charged the contract rates specified in footnotes 40 and 41 of paragraph 14, so no response is required. Verizon denies the last sentence of FirstEnergy’s response to paragraph 14 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

15. Verizon denies the first sentence of FirstEnergy’s response to paragraph 15 because the Commission “appl[ie]d the presumption to new and newly-renewed agreements” even if the Commission has not yet enforced the presumption in a pole attachment complaint proceeding.¹⁰⁹ Verizon denies the second sentence of FirstEnergy’s response to paragraph 15, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 8, 10, 12, 13, 14, 16, 17, 18, 19, 20, 43, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon admits the joint use agreements continue to govern the parties’ joint use relationship. Verizon denies the last

¹⁰⁶ Compl. Ex. A at VZ00016 (Mills Aff. ¶ 34); Reply Ex. A at VZ00821-822 (Mills Reply Aff. ¶ 21).

¹⁰⁷ Compl. Ex. A at VZ00006-10 (Mills Aff. ¶¶ 13-21).

¹⁰⁸ Compl. Ex. A at VZ00010 (Mills Aff. ¶ 21).

¹⁰⁹ *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127) *see also* Compl. Section III.A.1; Reply Legal Analysis Section II.B.

sentence of FirstEnergy’s response to paragraph 15 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

16. Verizon admits the joint use agreements provide that, after their initial terms, the agreements “shall continue in force thereafter until terminated by either party at any time” upon advance written notice.¹¹⁰ Verizon denies the second sentence of FirstEnergy’s response to paragraph 16, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 8, 10, 12, 13, 14, 15, 17, 18, 19, 20, 43, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon further denies it “misconstrued the caselaw it cited” and states that Pennsylvania caselaw confirms the joint use agreements automatically renewed during the past year for reasons detailed in Section III.B of Verizon’s Complaint and Section II.B of Verizon’s Reply Legal Analysis. Verizon denies the last sentence of FirstEnergy’s response to paragraph 16 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

17. Verizon denies subsections (i) and (ii) of FirstEnergy’s response to paragraph 17, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 8, 10, 12, 13, 14, 15, 16, 18, 19, 20, 43, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies subsections (iii) and (iv) of FirstEnergy’s response because the burden is on FirstEnergy “to demonstrate the value of the [alleged] benefits Verizon receives compared to its competitors” under the standard adopted in 2011 because Verizon presented a *prima facie* case that the agreement rates are unreasonable.¹¹¹ Verizon further denies it “did not even attempt to meet that burden until it filed

¹¹⁰ See Compl. ¶ 16 n.47 (citing joint use agreement provisions).

¹¹¹ See FE Brief ¶ 86 (If Verizon made “a *prima facie* case, ... the burden shifts to FirstEnergy”); see also *Dominion Order*, 32 FCC Rcd at 3759-61 (¶¶ 20-22) (requiring electric utility to justify

its Complaint” because Verizon explained to FirstEnergy the basis for its conclusion that the joint use agreements do not provide Verizon a net material advantage over its competitors and asked FirstEnergy to provide copies of its license agreements to confirm, but FirstEnergy did not provide its license agreements until after it filed its Answer in this proceeding.¹¹² Verizon denies subsections (v) and (vi) of the first sentence of FirstEnergy’s response to paragraph 17, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 9, 11, 13, 14, 20, 21, 30, 32, 33, 34, 36, 37, 38, 39, 40, 41, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy’s response to paragraph 17 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

18. Verizon denies the first sentence of FirstEnergy’s response to paragraph 18, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 8, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 43, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy’s response to paragraph 18 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

its rates under the standard adopted in 2011); *Multimedia Cablevision, Inc. v. Sw. Bell Tel. Co.*, 11 FCC Rcd 11202, 11207 (¶ 11) (1996) (“A *prima facie* case is established by “a statement of the specific unreasonable pole attachment rate, term or condition and all arguments used to support its claim of unreasonableness.”).

¹¹² See, e.g., Compl. Ex. A at VZ00816-818 (Mills Aff. ¶¶ 36-39); Reply Ex. A at VZ00821 (Mills Reply Aff. ¶ 22); see also, e.g., Compl. Ex. 17 at VZ00551 (Letter from W. Balcerski, Verizon to M. Wolfe, FirstEnergy (Apr. 30, 2012)); Compl. Ex. 19 at VZ00557 (Email from N. Parrish, Verizon, to L. Chapman, FirstEnergy (Sept. 10, 2012)); Compl. Ex. 25 at VZ00587 (Letter from S. Mills, Verizon to D. DeWitt, FirstEnergy (Nov. 2, 2017)); Compl. Ex. 28 at VZ00649 (Email from J. Slavin, Verizon, to S. Schafer, FirstEnergy (May 4, 2018)).

19. Verizon denies the first paragraph of FirstEnergy’s response to paragraph 19, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 43, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the second paragraph of FirstEnergy’s response to paragraph 19, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 10, 11, 13, 14, 17, 20, 21, 30, 33, 34, 36, 37, 38, 39, 40, 41, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies that charging Verizon a lawful and competitively neutral rental rate would somehow “subsidize” or “further subsidize” Verizon “at the expense of its competitors.”¹¹³ Verizon denies the last sentence of FirstEnergy’s response to paragraph 19 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

2. The New Telecom Rate Is Also the Just and Reasonable Rate Under the Standard the 2011 *Pole Attachment Order* Established.

20. Verizon denies the first sentence of FirstEnergy’s response to paragraph 20 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies subsections (i) through (iv) of FirstEnergy’s response to paragraph 20, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 43, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

¹¹³ See *Pole Attachment Order*, 26 FCC Rcd at 5299 (¶ 137) (“The [new telecom] rate is just, reasonable, and fully compensatory...”).

Verizon denies subsection (v) of FirstEnergy’s response to paragraph 20 because under the facts of this case, FirstEnergy’s three-to-one pole ownership advantage is a bargaining advantage that it used to impose and continue charging the unjust and unreasonable agreement rates.¹¹⁴ Verizon denies subsections (vi) through (vii) of FirstEnergy’s response to paragraph 20, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 10, 11, 12, 13, 14, 17, 18, 19, 21, 23, 24, 27, 28, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies subsection (viii) of FirstEnergy’s response to paragraph 20 because Verizon genuinely lacks the ability to terminate the agreements on account of “evergreen” clauses that require payment of the agreement rates after the joint use agreements are terminated.¹¹⁵ Verizon denies subsections (ix) through (x) of FirstEnergy’s response to paragraph 20, which contain allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 10, 13, 30, 55, 56, 57, 62, and 63, and Verizon hereby incorporates its response to those allegations.

a) FirstEnergy Charges Unjust and Unreasonable Rates.

21. Verizon denies the first sentence of FirstEnergy’s response to paragraph 21 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies that the “rates FirstEnergy charges Verizon do not violate the principle of ‘competitive neutrality’” because

¹¹⁴ See also Reply Ex. B at VZ00850-854 (Calnon Reply Aff. ¶¶ 43-52); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20); see also Compl. Section III.A; Reply Legal Analysis Section II.C.1.

¹¹⁵ See Compl. ¶ 29 n.93 (citing evergreen clauses); see also *Dominion Order*, 32 FCC Rcd at 3756-57 (¶¶ 13-14); *FPL Order*, 30 FCC Rcd at 1150 (¶ 25); *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216); Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1.

they have averaged more than █████ times the properly calculated new telecom rates that are guaranteed Verizon's competitors and are not justified by any net material competitive advantage provided Verizon under the joint use agreements.¹¹⁶

Verizon denies subsections (i) through (iii) of FirstEnergy's response to paragraph 21, which contain allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies subsection (iv) because the *Verizon v. Florida Power and Light* Order referred to the pre-existing telecom rate as a "reference point" under the standard adopted in the 2011 *Pole Attachment Order*, and the Commission has since set the pre-existing telecom rate as an upper bound on the rate that may be charged under the joint use agreements.¹¹⁷ Verizon denies subsection (v) of FirstEnergy's response to paragraph 21, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 10, 13, 14, 18, 19, 30, 32, 33, 36, 37, 41, 55, 62, and 63, and Verizon hereby incorporates its response to those allegations.

22. Verizon admits the Commission's rulings speak for themselves and denies the discussion in the 2011 *Pole Attachment Order* "regarding what rate ILECs may charge electric utilities to attach to ILEC poles" is "limited" or "confusing." The Commission "anticipat[ed]

¹¹⁶ See Compl. Ex. A at VZ00021-32 (Mills Aff. ¶¶ 48-73); Compl. Ex. B at VZ00046 (Calnon Aff. ¶ 21); Reply Ex. A at VZ00812-818 (Mills Reply Aff. ¶¶ 2-14); Reply Ex. B at VZ00841-845 (Calnon Reply Aff. ¶¶ 28-34); see also Compl. Section III.A.2; Reply Legal Analysis Section II.C.3.

¹¹⁷ *FPL Order*, 30 FCC Rcd at 1140 (applying 2011 *Pole Attachment Order*); *Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129) (setting pre-existing telecom rate as "an upper bound" on the rate that may be charged if an electric utility rebuts the Commission's presumption).

that [I]LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole,"¹¹⁸ and that proportionate rate can be readily determined by adjusting the "space occupied" input to the FCC's rate formula with the space occupied by the electric utility or the 10.5 foot value that results from the Commission's presumptions.¹¹⁹ Verizon denies the "discussion in the 2011 *Pole Attachment Order* regarding what rate ILECs may charge electric utilities is subject to multiple interpretations."¹²⁰

Verizon admits FirstEnergy, as a member of the Coalition of Concerned Utilities, filed petitions for reconsideration of the 2011 *Pole Attachment Order* and the 2018 *Third Report and Order* and states that they speak for themselves.¹²¹ Verizon admits FirstEnergy has "specifically request[ed] a ruling from the Commission in this proceeding regarding the just and reasonable rates that Verizon may charge FirstEnergy to attach to Verizon's poles," but denies FirstEnergy is a "cable television system or provider of telecommunications service" within the meaning of Section 224(b) authority and denies Verizon would "have an unfair advantage" if the Commission did not determine the rates that Verizon may charge FirstEnergy.¹²² Verizon calculated the rates it would charge FirstEnergy if awarded the rental rates it seeks, and did so

¹¹⁸ See *Dominion Order*, 32 FCC Rcd at 3760 (¶ 78) (citing *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662)); see also Compl. Ex. B at VZ00047-51, VZ00056-57, VZ000102-103 (Calnon Aff. ¶¶ 23-29, 38-41 & Ex. C-6) (detailing proportional rate calculations and calculating "net" overpayment amount accounting for Verizon's rent for use of FirstEnergy's poles and FirstEnergy's rent for use of Verizon's poles); Reply Ex. B at VZ00848-850 (Calnon Reply Aff. ¶¶ 39-42).

¹¹⁹ See, e.g., Compl. Ex. A at VZ00030 (Mills Aff. ¶ 65); Compl. Ex. B at VZ00047-48, VZ00056 (Calnon Aff. ¶¶ 25-26, 39).

¹²⁰ See Reply Legal Analysis Section II.E.3.

¹²¹ See Petition for Reconsideration, WC Docket No. 17-84 (Oct. 15, 2018); Petition for Reconsideration WC Docket No. 07-245 (June 8, 2011).

¹²² See Reply Legal Analysis Section II.E.3.

consistently with the Commission’s “anticipation that [I]LECs and electric utilities would charge each other roughly the same proportionate rate given the parties’ relative usage of the pole.”¹²³

Verizon admits that FirstEnergy uses more space on Verizon’s poles than Verizon uses on FirstEnergy’s poles. Verizon denies subsection (i) of the second paragraph of FirstEnergy’s response to paragraph 22, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies subsection (ii) of the second paragraph of FirstEnergy’s response to paragraph 22 because the fact that FirstEnergy pays rental rates under the joint use agreements that do not reflect FirstEnergy’s greater space requirements is not “largely attributable” to differences in the parties’ pole costs, as evident from the rental rates that result when each parties’ pole costs are used to calculate proportional rates under the FCC’s rate methodologies.¹²⁴

Verizon denies FirstEnergy’s rental rate calculations attached to its Answer at Attachment G are properly calculated.¹²⁵ Verizon denies the pre-existing telecom rate is relevant because this case is governed by the new telecom rate presumption that FirstEnergy did not

¹²³ See *Dominion Order*, 32 FCC Rcd at 3760 (¶ 78) (citing *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662)); see also Compl. Ex. B at VZ00047-51, VZ00056-57, VZ000102-103 (Calnon Aff. ¶¶ 23-29, 38-41 & Ex. C-6) (detailing proportional rate calculations and calculating “net” overpayment amount accounting for Verizon’s rent for use of FirstEnergy’s poles and FirstEnergy’s rent for use of Verizon’s poles); Reply Ex. B at VZ00848-850 (Calnon Reply Aff. ¶¶ 39-42); Reply Legal Analysis Section II.E.3.

¹²⁴ See Compl. Ex. B at VZ000102-103 (Calnon Aff., Ex. C-6).

¹²⁵ Reply Ex. B at VZ00827-840, VZ00846-847, VZ00848-850 (Calnon Reply Aff. ¶¶ 4-27, 35-37, 39-42); Reply Ex. C at VZ00871-877 (Tardiff Reply Aff. ¶¶ 30-41); see also Reply Legal Analysis Section II.D.

rebut.¹²⁶ Verizon denies FirstEnergy attached a complete set of “pre-existing telecom rate calculations for FirstEnergy attachments to Verizon’s poles” in Attachment G as FirstEnergy excluded costs for two relevant areas of Pennsylvania.¹²⁷ Verizon denies the remainder of the third paragraph of FirstEnergy’s response to paragraph 22 because properly calculated and proportional pre-existing telecom rates are not “in line” with the joint use agreement rental rates, which have required Verizon to pay FirstEnergy [REDACTED], on average, above pre-existing telecom rates every year since the effective date of the 2011 *Pole Attachment Order*.¹²⁸ Verizon denies the last sentence of FirstEnergy’s response to paragraph 22 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

23. Verizon denies the first sentence of FirstEnergy’s response to paragraph 23 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second and third paragraphs of FirstEnergy’s response to paragraph 23, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 14, 24, and 32, and Verizon hereby incorporates its response to those allegations. Verizon denies the fourth paragraph of FirstEnergy’s response to paragraph 23 because it is complex and would be unusual to require Verizon to pay rent under a rate provision that does not charge Met-Ed *anything* for use of Verizon’s poles and requires Verizon to pay rent based on the difference between the poles Verizon owns and the poles Verizon would own if it owned 45% of the joint

¹²⁶ See Compl. Section III.A.1; Reply Legal Analysis Section II.B.

¹²⁷ See FE Brief ¶¶ 107-108 (stating calculations are provided using costs Verizon reported for the PAPA and GTPA areas but that Verizon has four study areas); Answer Attachment G at FE00105 ([REDACTED]).

¹²⁸ Compl. Ex. B at VZ00057, VZ00103 (Calnon Aff. ¶ 41 & Ex. C-6); see also Compl. Section III.B; Reply Legal Analysis Section II.D.

use poles,¹²⁹ particularly where Met-Ed refused to allow Verizon to reduce or eliminate the disparity.¹³⁰

Verizon denies the fifth paragraph of FirstEnergy's response to paragraph 23, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies the sixth paragraph of FirstEnergy's response to paragraph 23, including FirstEnergy's conclusory allegation that Verizon did not try "in good faith" to purchase poles from Met-Ed. Verizon tried for more than two years to purchase poles, identified the quantity it sought, and offered to facilitate the transfer using a standard pole purchase process.¹³¹ Verizon admits FirstEnergy's counsel sent a letter dated January 25, 2013 regarding Verizon's effort, but denies the unfounded allegations about Verizon's maintenance of its pole plant contained in that letter.¹³² Verizon denies footnote 170 of FirstEnergy's response to paragraph 23 because Verizon has a robust wood pole inspection and maintenance program and prioritizes the safety and reliability of its pole network.¹³³

¹²⁹ See Compl. Ex. 6 at VZ00296-317 (Met-Ed MOUs).

¹³⁰ See Compl. Ex. A at VZ00014-15 (Mills Aff. ¶ 31); Reply Ex. A at VZ00820 (Mills Reply Aff. ¶ 19).

¹³¹ See Compl. Ex. 17 at VZ00550-551 (Letter from W. Balcerski, Verizon to M. Wolfe, FirstEnergy (Apr. 30, 2012)); see also Compl. Ex. A at VZ00014-15 (Mills Aff. ¶ 31); Reply Ex. A at VZ00820 (Mills Reply Aff. ¶ 19).

¹³² Reply Ex. D at VZ00881-884 (Austin Reply Aff. ¶¶ 3-9); see also Compl. Ex. 20 at VZ00560-62 (Letter from T. Magee, Counsel for FirstEnergy, to W. Balcerski, Verizon (Jan. 25, 2013)).

¹³³ Reply Ex. D at VZ00881-884 (Austin Reply Aff. ¶¶ 3-9).

24. Verizon denies the first sentence of FirstEnergy's response to paragraph 24 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second and third paragraphs of FirstEnergy's response to paragraph 24, which contain allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 14, 23, and 32, and Verizon hereby incorporates its response to those allegations.

Verizon denies that it "contorts" the agreement rates Met-Ed charges Verizon to state for comparative purposes that Met-Ed demands Verizon pay rent as though Verizon paid █████ per pole for each Met-Ed pole to which it was attached and Met-Ed paid nothing for each Verizon pole to which it was attached.¹³⁴ The calculation is accurate and evidences the unreasonableness of the agreement rates, particularly because "FirstEnergy admits that FirstEnergy uses more space on Verizon's poles than Verizon uses on FirstEnergy's poles."¹³⁵

Verizon denies the last paragraph of FirstEnergy's response to paragraph 24, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

25. Verizon denies subsection (i) of the first paragraph of FirstEnergy's response to paragraph 25, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 23, 24, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies subsection (ii) of the first paragraph of because the

¹³⁴ Compl. Ex. B at VZ00043 (Calnon Aff. ¶ 17).

¹³⁵ Response to Compl. ¶ 22.

Commission's default presumptions are that a 37.5-foot pole has 24 feet of unusable space and can accommodate 5 attaching entities, which is consistent with the fact that, with 6 feet of unusable space below ground and 18 feet of unusable space above ground, 4 communications attachers can attach 1 foot apart in the communications space (which is typically located 18 to 21 feet above ground) and there will still be 10.5 feet on the pole for the electric company, including the 40 inches of safety space.¹³⁶ Verizon denies subsection (iii) and (iv) of the first paragraph of FirstEnergy's response to paragraph 25, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 22, 24, and 26, and Verizon hereby incorporates its response to those allegations.

Verizon admits Penelec uses more space on Verizon's poles than Verizon uses on Penelec's poles. Verizon denies the remainder of the second paragraph of FirstEnergy's response to paragraph 25, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy's response to paragraph 25, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 22, 26, and 33, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 25 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

26. Verizon denies the first paragraph of FirstEnergy's response to paragraph 26, which contains allegations that are substantially similar or identical to allegations in

¹³⁶ See 47 C.F.R. §§ 1.1409(c), 1.1410; Compl. Ex. A at VZ00030 (Mills Aff. ¶ 65).

FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon admits Penn Power uses more space on Verizon's poles than Verizon uses on Penn Power's poles. Verizon denies the remainder of the second paragraph of FirstEnergy's response to paragraph 26, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy's response to paragraph 26, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 22, 25, and 33, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 26 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

b) FirstEnergy Has Long Had a Three-to-One Pole Ownership Advantage.

27. Verizon denies the first paragraph of FirstEnergy's response to paragraph 27, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon admits the Commission's rulings speak for themselves. Verizon denies the last sentence of FirstEnergy's response to paragraph 27 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

c) Verizon Genuinely Lacks the Ability To Terminate FirstEnergy's Rates and Obtain Just and Reasonable Rates Through Negotiations.

28. Verizon denies the first paragraph of FirstEnergy's response to paragraph 28, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 28 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

29. Verizon denies the first sentence of FirstEnergy's response to paragraph 29 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second paragraph of FirstEnergy's response to paragraph 29, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 27, 28, 30, 31, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy's response to paragraph 29 because Verizon genuinely lacks the ability to terminate the agreements on account of "evergreen" clauses that require payment of the agreement rates after the joint use agreements are terminated.¹³⁷ Verizon admits FirstEnergy made rate offers that would have "covered all existing attachments, including those that would be covered by an evergreen provision." Verizon denies FirstEnergy's "offers to include all existing poles that would be covered by an evergreen provision shows the evergreen provisions are not an obstacle to Verizon obtaining new

¹³⁷ See Compl. ¶ 29 n.93 (citing evergreen clauses); see also *Dominion Order*, 32 FCC Rcd at 3756-57 (¶¶ 13-14); *FPL Order*, 30 FCC Rcd at 1150 (¶ 25); *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216); Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1.

rates or a new agreement” because FirstEnergy never made an offer that would have materially changed the joint use agreement rates and the net rental payment FirstEnergy collects.¹³⁸

Verizon denies that there is a relevant difference between FirstEnergy’s conduct and the utility’s refusal to negotiate new rates for existing attachments in the *Verizon v. Florida Power and Light* proceeding. As the Commission explained in the *Verizon v. Dominion* proceeding, Verizon genuinely lacked the ability to terminate the existing rates because of an evergreen provision when the electric utility—though willing to negotiate new rates for existing attachments—was *not* willing to negotiate the rate reductions required by law.¹³⁹

30. Verizon denies the first sentence of FirstEnergy’s response to paragraph 30 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second paragraph of FirstEnergy’s response to paragraph 30, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 9, 10, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy’s response to paragraph 30, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 54, 55, 56, 57, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

¹³⁸ See Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); see also Reply Ex. B at VZ00850-851 (Calnon Reply Aff. ¶¶ 43-45); see also Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1-2.

¹³⁹ *Dominion Order*, 32 FCC Rcd at 3756-57 (¶¶ 13-14) (finding an “inability to terminate an agreement” where “Dominion fails to mention that, after four years of intensive rate negotiations, the rate reductions to which it refers were offset by significantly greater rate reductions achieved by Dominion.”).

31. Verizon denies the first sentence of FirstEnergy's response to paragraph 31 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second paragraph of FirstEnergy's response to paragraph 31, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraph 23, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy's response to paragraph 31, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 36, 37, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

32. Verizon denies the first sentence of FirstEnergy's response to paragraph 32 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the first sentence and subsections (i) through (iii) and subsection (v) of the second paragraph of FirstEnergy's response to paragraph 32, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 9, 10, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 40, 41, 42, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies subsection (iv) of the second paragraph of FirstEnergy's response to paragraph 32 because FirstEnergy did "claim that Verizon is not eligible for rate relief for joint use agreements which predate the 2011 *Pole Attachment Order*" during the parties negotiations

and did not argue “that such pre-2011 Order agreements needed to be terminated before relief can be requested in a complaint proceeding” until it filed its Answer in this proceeding.¹⁴⁰

Verizon denies the second and third paragraphs of FirstEnergy’s response to paragraph 32, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 14, 23, and 24, and Verizon hereby incorporates its response to those allegations.

Verizon denies the first sentence of the last paragraph of FirstEnergy’s response to paragraph 32 because FirstEnergy never made an offer that would have materially changed the joint use agreement rates and the net rental payment FirstEnergy collects¹⁴¹ and prolonged negotiations for more than seven years even though it now states there “is not enough guidance in the *2011 Pole Attachment Order* for the parties to negotiate a resolution of this issue without a pole attachment complaint proceeding.”¹⁴² Verizon denies the last sentence of the last paragraph of FirstEnergy’s response to paragraph 32, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 10, 13, 14, 18, 19, 21, 30, 33, 36, 37, 41, 55, 62, and 63, and Verizon hereby incorporates its response to those allegations.

33. Verizon denies the first sentence of FirstEnergy’s response to paragraph 33 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second

¹⁴⁰ Compl. Ex. A at VZ00015 (Mills Aff. ¶ 32); Reply Ex. A at VZ00822-823 (Mills Reply Aff. ¶ 24); *see also* Reply Legal Analysis Section II.C.1.

¹⁴¹ *See* Compl. Ex. A at VZ00014-47 (Mills Aff. ¶¶ 30-47); Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Reply Ex. B at VZ00850-851 (Calnon Reply Aff. ¶¶ 43-45); *see also* Compl. Section III.A.2.c; Reply Legal Analysis Section II.C.1-2.

¹⁴² FE Brief ¶ 121; *see also* Compl. Ex. 26 at VZ00591 (Letter from D. DeWitt, FirstEnergy, to S. Mills, Verizon (Dec. 20, 2017)) (“I’m hoping that you will agree to further negotiation efforts between us before simply sending it up the ladder to our respective executives.”).

paragraph of FirstEnergy’s response to paragraph 33, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon admits FirstEnergy uses more space on Verizon’s poles than Verizon uses on FirstEnergy’s poles. Verizon denies the rest of the third paragraph and the fourth paragraph of FirstEnergy’s response to paragraph 33, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 22, 25, and 26, and Verizon hereby incorporates its response to those allegations.

d) FirstEnergy Has Not and Cannot Identify Any Agreement Provision that Provides Verizon a Net Material Advantage Over Its Competitors.

34. Verizon admits FirstEnergy provided Verizon a list of alleged benefits in June 2018,¹⁴³ but denies that the list included any net material competitive benefits for reasons detailed in Section III.A.2.d of Verizon’s Complaint.¹⁴⁴ Verizon denies it had the sole burden under the 2011 *Pole Attachment Order* “to show that none of these advantages provided Verizon with material benefits over its competitors in an amount greater than the rate differential” because the burden shifts to the electric utility to justify its rates once an ILEC makes a *prima facie* case of their unreasonableness.¹⁴⁵ Verizon is without knowledge or information sufficient

¹⁴³ Compl. Ex. 29 at VZ00789-690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)).

¹⁴⁴ See also Compl. Ex. A at VZ00021-32 (Mills Aff. ¶¶ 48-73).

¹⁴⁵ See FE Brief ¶ 86 (If Verizon made “a prima facie case, ... the burden shifts to FirstEnergy”); see also *Dominion Order*, 32 FCC Rcd at 3759-61 (¶¶ 20-22) (requiring electric utility to justify its rates under the standard adopted in 2011); *Multimedia Cablevision, Inc. v. Sw. Bell Tel. Co.*, 11 FCC Rcd 11202, 11207 (¶ 11) (1996) (“A *prima facie* case is established by “a statement of

to form a belief as to the subjective reason why FirstEnergy provided Verizon the list, but states that Verizon had been trying to “meaningfully negotiat[e] with FirstEnergy” for years before FirstEnergy provided the list of alleged benefits.¹⁴⁶ Verizon further denies that the list of alleged benefits *could* “help Verizon recognize these advantages” because FirstEnergy’s list did not include any net material advantages and FirstEnergy has itself abandoned the list of alleged advantages for lack of proof.¹⁴⁷ Verizon denies the rest of the first paragraph of FirstEnergy’s response to paragraph 34, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 9, 10, 30, 31, 32, 33, 35, 36, 41, 42, and 58, and Verizon hereby incorporates its response to those allegations.

Verizon denies that a draft license agreement, which has not been signed by any competitor, but is used “to negotiate new agreements with Verizon’s competitors,” could provide Verizon “advantages over its competitors.”¹⁴⁸ Verizon denies the rest of the second paragraph of FirstEnergy’s response to paragraph 34, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 11, 13, 14, 17, 20, 21, 30, 33, 36, 37, 38, 39, 40, 41, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon admits FirstEnergy produced partially redacted copies of FirstEnergy’s license agreements with CLEC and cable company attachers after the parties entered into a Protective

the specific unreasonable pole attachment rate, term or condition and all arguments used to support its claim of unreasonableness.”).

¹⁴⁶ See, e.g., Compl. Ex. A at VZ 00014-21 (Mills Aff. ¶¶ 30-46).

¹⁴⁷ Compl. Ex. A at VZ00021-32 (Mills Aff. ¶¶ 48-73); Compl. Section III.A.2.d; see also Reply Ex. A at VZ00812-813 (Mills Reply Aff. ¶ 3); Reply Ex. B at VZ00841 (Calnon Reply Aff. ¶ 28).

¹⁴⁸ Compl. Ex. B at VZ00052 (Calnon Aff. ¶ 31).

Agreement,¹⁴⁹ but denies the license agreements contain “competitively sensitive information” or that “Verizon has no right to see” the license agreements under the standard of competitive neutrality that requires a review of their terms and conditions. Verizon denies it requested FirstEnergy’s template license agreement in lieu of fully executed agreements and denies FirstEnergy “timely” provided its template license agreement in 2017 when Verizon requested a copy in 2012.¹⁵⁰ Verizon denies the last sentence of FirstEnergy’s response to paragraph 34 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

35. Verizon denies the first sentence of FirstEnergy’s response to paragraph 35 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon states the FirstEnergy letter referenced in the second paragraph of FirstEnergy’s response to paragraph 35 speaks for itself and expressly asked Verizon if it “insist[s] on proceeding to executive level discussions.”¹⁵¹ Verizon denies the rest of the second paragraph of FirstEnergy’s response to paragraph 35 because Verizon did not “flatly reject[]” a request for additional negotiations when it instead asked for executive-level negotiations.¹⁵² Verizon further states that Verizon’s December 20, 2017 letter could not have “flatly rejected” any request in FirstEnergy’s December 20, 2017 letter because it had not yet been received.¹⁵³

¹⁴⁹ Reply Ex. A at VZ00812 (Mills Reply Aff. ¶ 2); Reply Ex. B at VZ00827 (Calnon Reply Aff. ¶ 3).

¹⁵⁰ *See, e.g.*, Compl. Ex. 17 at VZ00551 (Letter from W. Balcerski, Verizon, to M. Wolfe, FirstEnergy (Apr. 30, 2012)) (requesting copies of license agreements); Compl. Ex. 23 at VZ00577 (Email from D. DeWitt, FirstEnergy, to S. Mills, Verizon (July 21, 2017)) (providing copy of template license agreement).

¹⁵¹ Compl. Ex. 26 at VZ00591 (Letter from D. DeWitt, FirstEnergy, to S. Mills, Verizon (Dec. 20, 2017)).

¹⁵² Compl. Ex. 27 at VZ00593-594 (Letter from B. Trospen, Verizon, to S. Strah, FirstEnergy (Dec. 20, 2017)).

¹⁵³ Compl. Ex. A at VZ00019 (Mills Aff. ¶ 42).

36. Verizon admits that executives of Verizon and FirstEnergy met on April 11, 2018, and continued discussions thereafter.¹⁵⁴ Verizon denies the second paragraph of FirstEnergy’s response to paragraph 36, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy’s response to paragraph 36 because there is no difference between “a new telecom rate” and “the new telecom rate” under the Commission’s new telecom rate formula.¹⁵⁵ Verizon also denies the third paragraph of FirstEnergy’s response to paragraph 36, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 9, 10, 30, 31, 32, 33, 34, 35, 41, 42, and 58, and Verizon hereby incorporates its response to those allegations.

Verizon states the FirstEnergy letter referenced in the fourth and fifth paragraphs of FirstEnergy’s response to paragraph 36 speaks for itself, but denies that it offered to negotiate properly calculated pre-existing telecom rates.¹⁵⁶ Verizon also denies its suggestion to “giv[e] Verizon the CLEC agreement and CLEC rates and ... transition[] Verizon out of the pole owning business” would “place Verizon on an equal footing with its CLEC competitors.” To the

¹⁵⁴ Compl. Ex. A at VZ00019 (Mills Aff. ¶ 43).

¹⁵⁵ 47 C.F.R. § 1.1406(d); *see also* Compl. Section III.B; Reply Legal Analysis Section II.D.

¹⁵⁶ *Compare* Compl. Ex. 28 at VZ00648 (Email from S. Schafer, FirstEnergy, to J. Slavin, Verizon (May 11, 2018) *with* Compl. Ex. B at VZ00103 (Calnon Aff., Ex. C-6) (showing properly calculated proportional pre-existing telecom rates).

contrary, it would place Verizon at a competitive *disadvantage* relative to its competitors who, unlike Verizon, have a statutory right of access to FirstEnergy's poles.¹⁵⁷

Verizon denies the sixth paragraph of FirstEnergy's response to paragraph 36, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 9, 10, 13, 14, 18, 19, 20, 21, 29, 30, 31, 32, 33, 34, 35, 37, 41, 42, 54, 55, 58, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 36 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

37. Verizon denies the first sentence of FirstEnergy's response to paragraph 37 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies subsections (i) through (iv) and subsection (vi) of FirstEnergy's response to paragraph 37, which contain allegations that are substantially similar or identical to allegations in FirstEnergy's responses to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 39, 40, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations. Verizon denies subsection (v) of FirstEnergy's response to paragraph 37 because Verizon does not receive "net benefits under the joint use agreement that justif[y] a higher rate" than the new telecom rate for reasons detailed in Section III.A.2.d of Verizon's Complaint and Section II.C.3 of Verizon's Reply Legal Analysis.

38. Verizon denies the first two sentences of FirstEnergy's response to paragraph 38 because the joint use agreements are in some ways comparable to FirstEnergy's license

¹⁵⁷ 47 U.S.C. § 224(f); *see also* Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Reply Ex. B at VZ00853 (Calnon Reply Aff. ¶ 49); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20); *see also* Reply Legal Analysis Section II.C.2.

agreements and in other ways less advantageous.¹⁵⁸ Verizon denies the third sentence of FirstEnergy’s response to paragraph 38 because FirstEnergy did not make a formal “offer” to enter a license agreement and “ease [Verizon] out of the pole owning business,” and regardless, such an offer would have placed Verizon at a competitive *disadvantage* relative to its competitors who, unlike Verizon, have a statutory right of access to FirstEnergy’s poles.¹⁵⁹

Verizon denies the second paragraph of FirstEnergy’s response to paragraph 38 for reasons detailed in Section II.C.3 of Verizon’s Reply Legal Analysis. Verizon denies FirstEnergy’s allegation that its so-called “built to order” system of poles competitively advantages Verizon because the poles are also tall enough to accommodate Verizon’s competitors.¹⁶⁰ Verizon denies it is competitively advantaged with respect to make-ready or that Verizon can “reach potential customers much faster and at far less cost than it takes Verizon’s competitor.” To the contrary, where make-ready is required, it should affect Verizon and its competitors comparably as they seek to attach comparable facilities to the same poles with the same existing attachments.¹⁶¹ Verizon denies its competitors require make-ready of approximately ██████ per pole for Met-Ed, ██████ per pole for Penelec, and ██████ per pole for Penn Power, as compared to “either ██████ or ██████ per attached pole per year,” because

¹⁵⁸ Compl. Ex. A at VZ00004 (Mills Aff. ¶ 6).

¹⁵⁹ 47 U.S.C. § 224(f); *see also* Reply Ex. A at VZ00820-824 (Mills Reply Aff. ¶¶ 20-27); Reply Ex. B at VZ00853 (Calnon Reply Aff. ¶ 49); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20).

¹⁶⁰ *See, e.g.*, Compl. Ex. 30 at VZ00695 (FirstEnergy Field Reference Guide); Answer Attachment F at FE00058, FE00059 (Coleman Decl., Attachment RC-1); Answer Attachment K at FE00143, FE00145 (Carlin Decl, Ex. SC-1); *see also* Reply Ex. A at VZ00813-814 (Mills Reply Aff. ¶ 5); Reply Ex. B at VZ00842 (Calnon Reply Aff. ¶ 31); Reply Legal Analysis Section II.C.3.b.1.

¹⁶¹ Compl. Ex. A at VZ00024 (Mills Aff. ¶ 54); Reply Ex. A at VZ00814-816 (Mills Reply Aff. ¶¶ 6-10).

reimbursed” and denies they are “far less than FirstEnergy’s costs,” except that FirstEnergy owns three times the number of joint use poles that Verizon owns.¹⁶⁷

Verizon admits it submit applications to attach to FirstEnergy’s poles. Verizon denies it has a unique “ability to quickly overlash or light available fiber capacity” as compared to its competitors, which have also been able to overlash and light available fiber capacity for decades.¹⁶⁸ Verizon denies that it has a materially “faster and easier application process than its CLEC and cable company competitors because unlike its competitors, Verizon does not need to submit pole profile sheets or pole photographs with its applications.” Verizon obtains and documents the same information before it makes a new attachment to FirstEnergy’s poles.¹⁶⁹ Verizon denies it “complained about the different application process” as something that “inherently intensifies” obligations and could be “prejudicially detrimental.” Verizon instead challenged FirstEnergy’s attempt to impose unlawful pre-approval and engineering study requirements before “overlapping to an existing cable.”¹⁷⁰

materially advantage the [I]LEC over other telecommunications attachers.”) (emphasis added); *see also* Reply Legal Analysis Section II.C.3.c.

¹⁶⁷ Response to Compl. ¶ 4; *see also* Reply Legal Analysis Section II.C.3.c.

¹⁶⁸ Reply Ex. A at VZ00817-818 (Mills Reply Aff. ¶ 13); Reply Legal Analysis Section II.C.3.b.1; *see also In Re Amendment of Commission’s Rules & Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12140 (¶ 73) (2001) (“Cable companies have, through overlapping, been able for decades to ... expand capacity of existing communications facilities, by tying communications conductors to existing, supportive strands of cable on poles.”); *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777 (¶ 73) (1998) (recognizing consensus of “[c]able operators, telecommunications carriers, and utility pole owners ... that the use of dark fiber is a pro-competitive, environmentally sound and economical use of existing facilities.”).

¹⁶⁹ Reply Ex. A at VZ00815-816 (Mills Reply Aff. ¶ 10).

¹⁷⁰ *See* Answer Attachment I at FE00113-115 (Email from S. Culbreath, Verizon, to D. DeWitt, FirstEnergy (Apr. 17, 2018)); *see also* Reply Ex. A at VZ00815-816 (Mills Reply Aff. ¶ 10).

Verizon admits FirstEnergy requires Verizon to comply with FirstEnergy’s construction standards. Verizon denies the last sentence of the fourth paragraph of FirstEnergy’s response to paragraph 38 because the joint use agreements contain similar provisions regarding third parties¹⁷¹ and because FirstEnergy did not identify any material difference among the provisions.¹⁷² Verizon denies the last sentence of FirstEnergy’s response to paragraph 38 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

39. Verizon denies the first two paragraphs of FirstEnergy’s response to paragraph 39, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraph 38, and Verizon hereby incorporates its response to those allegations.

Verizon admits its 2018 ARMIS Report 43-01 states Verizon owns 1,130,262 poles,¹⁷³ admits that FirstEnergy is attached to 110,842 Verizon-owned joint use poles, and states that FirstEnergy owns 301,854 of the poles jointly used by the parties in Pennsylvania.¹⁷⁴ Verizon further states that the joint use agreements require Verizon to own poles, [REDACTED] [REDACTED].¹⁷⁵ Verizon states the pre-2011 *ex parte* letter referenced in the second paragraph of FirstEnergy’s response to paragraph 39 speaks for itself, and notes that the only telecom rate formula at that time *was* the pre-existing telecom rate formula and that Verizon advocated that all broadband “providers should pay the same pole attachment rate for all

¹⁷¹ See Compl. ¶ 38 n.128 (citing joint use agreement provisions).

¹⁷² See 47 C.F.R. § 1.726(b) (“General denials are prohibited.”).

¹⁷³ See Compl. Ex. B at VZ00100 (Calnon Aff., Ex. C-5).

¹⁷⁴ See Response to Compl. ¶ 4.

¹⁷⁵ Compare Compl. Exs. 1-12 at VZ00165-485 with Answer Attachment P at FE00206-312.

attachments used for broadband service.”¹⁷⁶ Verizon denies the last sentence of FirstEnergy’s response to paragraph 39 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

40. Verizon denies the first sentence of FirstEnergy’s response to paragraph 40 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy’s response to paragraph 40, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s responses to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 41, 54, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

41. Verizon denies the first and second paragraphs of FirstEnergy’s response to paragraph 41, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s response to paragraphs 4, 10, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 40, 42, 54, 55, 58, 59, 62, 63, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy’s response to paragraph 41 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

42. Verizon denies the first paragraph of FirstEnergy’s response to paragraph 42, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s response to paragraphs 9, 10, 17, 30, 31, 32, 33, 34, 35, 36, 41, and 58, and Verizon hereby incorporates its response to those allegations. Verizon denies the second paragraph of FirstEnergy’s response to paragraph 42 because FirstEnergy’s list of 24 alleged benefits was repetitive and often listed the same alleged “advantage” multiple times as though to increase its value¹⁷⁷ and because FirstEnergy abandoned the list and did not prove otherwise in

¹⁷⁶ See Letter from S. Guyer, Verizon, and R. Quinn, AT&T, to M. Dortch, WC Docket No. 07-245 (Oct. 21, 2008) (citation omitted).

¹⁷⁷ See Compl. Ex. A at VZ00021 (Mills Aff. ¶ 49).

this case.¹⁷⁸ Verizon denies the last sentence of FirstEnergy’s response to paragraph 42 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

43. Verizon admits the “agreement preparation fee” exists in FirstEnergy’s 1998 license agreement with Verizon’s affiliate,¹⁷⁹ denies it “does not exist” in the version of FirstEnergy’s template CLEC agreement it provided Verizon,¹⁸⁰ but admits it does not exist in all of FirstEnergy’s license agreements.¹⁸¹ Verizon admits this previously alleged “one-time \$1,000 fee is insignificant when compared” to the FirstEnergy poles to which Verizon is attached, but states that Verizon is attached to approximately 301,000 FirstEnergy poles and not the 79,000 FirstEnergy references in its response to paragraph 43.¹⁸² Verizon denies a \$1,000 fee “establishes that Verizon is not similarly-situated to *new* competitors” because it may subjectively feel “significant” to them. Verizon admits “this one-time \$1,000 payment is fee (sic) is small” and that FirstEnergy has made “no attempt to associate it with a per pole rental rate.”¹⁸³

Verizon denies it has “misstate[d] the ‘net’ benefit analysis required by the Commission” because it considered the value of reciprocal terms in the joint use agreements that impose unique costs on Verizon as compared to its competitors.¹⁸⁴ Verizon denies the rest of FirstEnergy’s response to paragraph 43, which contains allegations that are substantially similar

¹⁷⁸ See 47 C.F.R. § 1.726(b) (“General denials are prohibited.”).

¹⁷⁹ Compl. Ex. 14 at VZ00512 (Bell License, Art. XII(1)).

¹⁸⁰ Compl. Ex. 13 at VZ00498 (Draft License ¶ 24).

¹⁸¹ See Compl. Ex. 15 (MCI License).

¹⁸² See Resp. to Compl. ¶ 4.

¹⁸³ See also Compl. Section III.A.2.d.

¹⁸⁴ *Dominion Order*, 32 FCC Rcd at 3760 (¶ 21); see also Compl. Section III.A.2.d; Reply Legal Analysis Section II.C.3.c.

or identical to allegations in FirstEnergy's response to paragraphs 38, 46, 47, and 52, and Verizon hereby incorporates its response to those allegations.

44. Verizon denies the first sentence of FirstEnergy's response to paragraph 44 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies that "Verizon is not using SPANS" because FirstEnergy's witness confirms Verizon is.¹⁸⁵ Verizon denies its competitors pay "fees [that] amount to [REDACTED] per application and [REDACTED] per pole" to use SPANS because FirstEnergy did not substantiate those fees, the license agreements attached to its Answer [REDACTED], and FirstEnergy described a "complete application" without mention of fees.¹⁸⁶ Verizon denies any fees or make-ready costs are not recovered through FirstEnergy's annual rental rates because FirstEnergy has provided no support for that allegation. Verizon denies it is "subject to far more lenient overlashing rules as its CLEC and cable company competitors" because FirstEnergy relies on what appear to be unenforceable quasi pre-approval requirements.¹⁸⁷ Verizon denies the rest of FirstEnergy's response to paragraph 44, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 38, 45 and 48, and Verizon hereby incorporates its response to those allegations.

45. Verizon admits it incurs make-ready engineering and construction costs by performing work itself.¹⁸⁸ Verizon otherwise denies the first, second, and third paragraphs of

¹⁸⁵ See Answer Attachment B at FE00009, FE00013 (Schafer Decl. ¶ 25 & Ex. SFS-2) (analyzing Verizon's "SPANS data for January 1, 2014 through September 30, 2019); see also Compl. Ex. A at VZ00024-28 (Mills Aff. ¶¶ 54, 57-61) (detailing Verizon's use of SPANS).

¹⁸⁶ See Compl. Ex. 30 at VZ00694 (FirstEnergy Field Reference Guide); Answer Attachment P at FE00206-312 (License Agreements); see also Reply Legal Analysis Section II.C.3.b.1.

¹⁸⁷ *Third Report and Order*, 33 FCC Rcd at 7765 (¶ 119 & n.444); see also Reply Ex. A at VZ00815-816 (Mills Reply Aff. ¶ 10); Reply Legal Analysis Section II.C.3.b.1.

¹⁸⁸ Compl. Ex. A at VZ00024-25 (Mills Aff. ¶¶ 55-61).

FirstEnergy's response to paragraph 45, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 38 and 44, and Verizon hereby incorporates its response to those allegations. Verizon denies the fourth paragraph of FirstEnergy's response to paragraph 45 because a one-touch-make-ready option is available for Verizon's competitors,¹⁸⁹ even if FirstEnergy alleges it has not been used. Verizon denies the fifth paragraph of FirstEnergy's response to paragraph 45 because Verizon regularly inspects its poles.¹⁹⁰ Verizon otherwise denies the fifth paragraph of FirstEnergy's response to paragraph 45, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 38, 44, and 48, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 45 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

46. Verizon denies the first sentence of FirstEnergy's response to paragraph 46 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the second paragraph of FirstEnergy's response to paragraph 46 because FirstEnergy does "know where Verizon got its statistics from," as FirstEnergy performed its own analysis of the same data.¹⁹¹ Verizon denies that it did not "provide an accurate picture of 'cost-causing.'" Except for 28 pole replacements, FirstEnergy does not challenge Verizon's data, which shows FirstEnergy required Verizon to incur the cost to replace 569 more poles and to complete 3,687 more transfers than Verizon required of FirstEnergy over about a five-year period.¹⁹²

¹⁸⁹ 47 C.F.R. § 1.1411.

¹⁹⁰ Reply Ex. D at VZ00881-884 (Austin Reply Aff. ¶¶ 3-9).

¹⁹¹ See Answer Attachment B at FE00013 (Schafer Decl., Ex. SFS-2).

¹⁹² See Compl. Ex. A at VZ00025-28 (Mills Aff. ¶¶ 57-61); Compl. Ex. B at VZ00053-54 (Calnon Aff. ¶¶ 33); Reply Ex. A at VZ00815 (Mills Reply Aff. ¶ 8); Reply Ex. B at VZ00842

Verizon denies the third paragraph of FirstEnergy's response to paragraph 46, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 38, 43, 47, and 52, and Verizon hereby incorporates its response to those allegations.

47. Verizon admits that affixing a tag, attaching to FirstEnergy's multi-ground neutrals, and attaching to FirstEnergy's guys are not differences that give Verizon a material net advantage over its competitors.¹⁹³ Verizon denies the second paragraph of FirstEnergy's response to paragraph 47, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 38, 43, 46, and 52, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 47 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

48. Verizon denies the first paragraph of FirstEnergy's response to paragraph 48, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 38, 44, and 45, and Verizon hereby incorporates its response to those allegations.

Verizon denies that FirstEnergy's facilities do not impose unique space requirements due to the nature of electric facilities.¹⁹⁴ Verizon admits that FirstEnergy does not "reserve any space allocated" for Verizon "under the joint use agreements if such space is required to accommodate a new cable company or CLEC attacher." Verizon denies that it is allocated a specific amount of

(Calnon Reply Aff. ¶ 30); *see also* Response to Compl. ¶ 46; Answer Attachment B at FE00009, FE00013 (Schafer Decl. ¶ 25 & Ex. SFS-2).

¹⁹³ Compl. Ex. A at VZ00028 (Calnon Aff. ¶ 62); *see also* Compl. Section III.A.2.d.

¹⁹⁴ Compl. Ex. A at VZ00029-30 (Mills Aff. ¶ 65).

space under all of the joint use agreements,¹⁹⁵ but admits that Verizon does not want, require, or occupy the three feet of space allocated to Verizon under some of the joint use agreements.¹⁹⁶ Verizon denies that FirstEnergy does not require all of the space to which it is allocated under the joint use agreement because FirstEnergy's data show it requires more space than allocated.¹⁹⁷

Verizon denies the third paragraph of FirstEnergy's response to paragraph 48 because "Verizon and its competitors now deploy similarly-sized lightweight copper and fiber optic cables that occupy comparable space on FirstEnergy's poles."¹⁹⁸ Verizon admits it overlashes some of its facilities and admits some of its facilities are copper, but denies that this distinguishes Verizon from its competitors who have also overlashed their facilities for decades.¹⁹⁹ Verizon denies FirstEnergy's unsupported allegations that Verizon's facilities "sag considerably more than its competitors' attachments" and denies that Verizon "uses up considerably more space on the pole that Verizon's competitors" for reasons detailed in Section II.C.3.b.3 of Verizon's Reply Legal Analysis.²⁰⁰ Verizon denies the last sentence of FirstEnergy's response to paragraph 48 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

¹⁹⁵ See, e.g., Compl. Exs. 1-4 (Met-Ed Agreements).

¹⁹⁶ Compl. Ex. A at VZ00029 (Mills Aff. ¶ 64).

¹⁹⁷ See Reply Ex. B at VZ00844-845 (Calnon Reply Aff. ¶ 34); Answer Attachment L at FE0166-167 (Guo Decl., Ex. CG-1).

¹⁹⁸ Compl. Ex. A at VZ00029 (Mills Aff. ¶ 64).

¹⁹⁹ Reply Ex. A at VZ00817-818 (Mills Reply Aff. ¶ 13); see also *In Re Amendment of Commission's Rules & Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12140 (¶ 73) (2001) ("Cable companies have, through overlashing, been able for decades to ... expand capacity of existing communications facilities, by tying communications conductors to existing, supportive strands of cable on poles.").

²⁰⁰ See also Reply Ex. A at VZ00817-818 (Mills Reply Aff. ¶¶ 13-14); see also Compl. Section III.A.2.d.

49. Verizon denies it “is advantaged by having the lowest attachment on the pole” and denies that “such attachments are easier to access” than Verizon’s competitors’ facilities that are generally located about one foot higher.²⁰¹ Verizon admits FirstEnergy did not attempt to quantify its allegation. Verizon denies that it did not provide evidence about how its location at the lowest position on the pole sets it at a competitive disadvantage.²⁰² Verizon denies the second paragraph of FirstEnergy’s response to paragraph 49, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s response to paragraphs 48 and 50, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy’s response to paragraph 49 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

50. Verizon denies the first paragraph of FirstEnergy’s response to paragraph 50, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s response to paragraphs 48 and 49, and Verizon hereby incorporates its response to those allegations. Verizon states that FirstEnergy’s Field Reference Guide speaks for itself.²⁰³ Verizon admits its location on a pole “eliminat[es] crisscrossing mid-span,” which “benefits Verizon and its competitors equally.”²⁰⁴ Verizon denies the last sentence of FirstEnergy’s response to paragraph 50 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

51. Verizon denies FirstEnergy has shown “many” of its license agreements “permit FirstEnergy to impose unauthorized attachment and safety violation fees” because FirstEnergy

²⁰¹ Compl. Ex. A at VZ00030-31 (Mills Aff. ¶¶ 66-69); Reply Ex. A at VZ00817-818 (Mills Reply Aff. ¶¶ 13-14).

²⁰² Compl. Ex. A at VZ00030-31 (Mills Aff. ¶¶ 66-69).

²⁰³ Compl. Ex. 30 at VZ00693-695 (FirstEnergy Field Reference Guide).

²⁰⁴ Compl. Ex. A at VZ00031 (Mills Aff. ¶ 69).

has only pointed to its draft license agreement. Verizon admits “not all” of FirstEnergy’s license agreements permit these fees²⁰⁵ and states FirstEnergy did not provide any evidence that it has charged or collected any such fees which may be avoided by promptly fixing any problem after notice is given.²⁰⁶ Verizon is without knowledge or information sufficient to form a belief as whether FirstEnergy “designed” the fees it has not documented “to act as a deterrent to cable and CLEC companies who might otherwise be inclined to attach their facilities without permission, in an unsafe manner, or in an attempt to avoid paying make-ready costs.” Verizon denies the absence of fees gives “Verizon less incentive to comply with the permitting process and to install its facilities in an unsafe manner” and states that FirstEnergy’s allegations about Verizon’s maintenance of its pole plant are unfounded.²⁰⁷ Verizon denies it is “difficult if not impossible to quantify this benefit without significant discovery of both Verizon and its competitors” or “without a thorough inspection of all of their facilities” as such information is irrelevant particularly in light of FirstEnergy’s admission that it treats Verizon comparably to Verizon’s competitors.²⁰⁸

52. Verizon denies “differences exist between the insurance and indemnification provisions that apply to Verizon and those that apply to Verizon’s competitors” because FirstEnergy has not identified any.²⁰⁹ Verizon denies “it is difficult if not impossible to quantify these [alleged] benefits without significant discovery of both Verizon and its competitors” and

²⁰⁵ *See, e.g.*, Compl. Ex. 14 (Bell License) & Ex. 15 (MCI License).

²⁰⁶ *See* Compl. Ex. A at VZ00031 (Mills Aff. ¶ 70).

²⁰⁷ *See* Reply Ex. D at VZ00881-884 (Austin Reply Aff. ¶¶ 3-9).

²⁰⁸ *See also* Reply Ex. A at VZ00812-813 (Mills Reply Aff. ¶ 3); Reply Ex. B at VZ00841 (Calnon Reply Aff. ¶ 28).

²⁰⁹ *See also* Compl. Section III.A.2.d.

“without divulging confidential and highly sensitive claims settlement information” as such information is irrelevant particularly in light of FirstEnergy’s admission that it treats Verizon comparably to Verizon’s competitors.²¹⁰

Verizon denies the second paragraph of FirstEnergy’s response to paragraph 52, which contains allegations that are substantially similar or identical to allegations in FirstEnergy’s response to paragraphs 38, 43, 46, and 47, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy’s response to paragraph 52 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

53. Verizon admits some, but not all, of FirstEnergy’s license agreements with cable companies and CLECs require them to post a security bond. Verizon denies it alleged the joint use agreements contain such a provision, as Verizon instead alleged that the absence of a surety bond provision is a reciprocal term.²¹¹ Verizon denies the absence of a security bond requirement is an “example of how Verizon is not similarly situated to some” of its competitors; because “Verizon is likewise required to extend to [FirstEnergy] under the Joint Use Agreements” the same treatment of security bonds that FirstEnergy extends to Verizon, the “alleged benefit[]” does not provide Verizon a net material advantage over its competitors.²¹² Verizon admits FirstEnergy made no attempt to quantify this alleged benefit.

54. Verizon denies the evergreen provisions in the joint use agreements are an advantage to Verizon, and states that Verizon’s competitors, unlike Verizon, have a statutory

²¹⁰ See also Reply Ex. A at VZ00812-813 (Mills Reply Aff. ¶ 3); Reply Ex. B at VZ00841 (Calnon Reply Aff. ¶ 28).

²¹¹ See Compl. ¶ 53.

²¹² See *Dominion Order*, 32 FCC Rcd at 3760 (¶ 21).

right of access to FirstEnergy's poles.²¹³ Verizon denies FirstEnergy's unsupported speculation about "egregious" behavior by Verizon, but admits FirstEnergy cannot remove Verizon's existing attachments from FirstEnergy's poles and Verizon cannot remove FirstEnergy's existing attachments from Verizon's poles if either party terminates the joint use agreements. Verizon states that any filings and orders in the *Salsgiver v. Penelec* proceeding, while irrelevant, speak for themselves.

Verizon admits FirstEnergy cannot amend the joint use agreements without Verizon's consent, but denies that FirstEnergy can amend the terms of license agreements without the consent of Verizon's competitors. Verizon denies it has "assert[ed] that it need not agree to any provision that Verizon itself does not consider to be just and reasonable, no matter what the Commission might say" as Verizon has instead consistently sought a just and reasonable rate consistent with the Commission's regulations and orders.²¹⁴ Verizon denies the rest of the second paragraph of FirstEnergy's response to paragraph 54, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 4, 10, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 40, 41, 55, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

Verizon denies the third paragraph of FirstEnergy's response to paragraph 54 because the evergreen provisions in Verizon's joint use agreements are a competitive disadvantage as

²¹³ 47 U.S.C. § 224(f); *see also* Compl. Ex. A at VZ00032 (Mills Aff. ¶ 73); Reply Ex. A at VZ00822-823 (Mills Aff. ¶ 24); Reply Ex. C at VZ00863-864 (Tardiff Reply Aff. ¶ 14); *see also* Compl. Section III.A.2.d.

²¹⁴ *See, e.g.*, Reply Ex. A at VZ00822-823 (Mills Reply Aff. ¶ 23).

compared to the statutory right of access provided Verizon's competitors.²¹⁵ Verizon denies any additional discovery would permit FirstEnergy to show this alleged benefit has value.²¹⁶

Verizon denies the fourth paragraph of FirstEnergy's response to paragraph 54 because FirstEnergy has relied on the evergreen provision to perpetuate the joint use agreement rates.²¹⁷ Verizon denies the rest of the fourth paragraph of FirstEnergy's response to paragraph 54, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 20, 29, and 36, and Verizon hereby incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 54 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

B. The Commission Should Set Verizon's Just and Reasonable Rate at the New Telecom Level and Refund Verizon's Overpayments.

55. Verizon denies the first sentence of FirstEnergy's response to paragraph 55 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy's response to paragraph 55, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 54, 56, 57, 58, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

56. Verizon denies the first sentence of FirstEnergy's response to paragraph 56, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 10, 13, 20, 30, 55, 57, 62, and 63, and Verizon hereby

²¹⁵ Compl. Ex. A at VZ00032 (Mills Aff. ¶ 73); *see also* Compl. Section III.A.2.d.

²¹⁶ *See also* Reply Ex. A at VZ00812 (Mills Reply Aff. ¶ 3); Reply Ex. B at VZ00841 (Calnon Reply Aff. ¶ 28).

²¹⁷ *See, e.g.*, Reply Ex. B at VZ00850-851 (Calnon Reply Aff. ¶¶ 44-45); Reply Ex. C at VZ00861-867 (Tardiff Reply Aff. ¶¶ 11-20).

incorporates its response to those allegations. Verizon denies the last sentence of FirstEnergy's response to paragraph 56 because it is a general denial prohibited by 47 C.F.R. § 1.726(b).

57. Verizon denies the first sentence of FirstEnergy's response to paragraph 57 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy's response to paragraph 57, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 10, 13, 20, 30, 55, 56, 62, and 63, and Verizon hereby incorporates its response to those allegations.

58. Verizon denies the first sentence of FirstEnergy's response to paragraph 58 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy's response to paragraph 58, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 4, 9, 11, 10, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 54, 55, 59, 62, and 63, and Verizon hereby incorporates its response to those allegations.

59. Verizon denies the first sentence of FirstEnergy's response to paragraph 59 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy's response to paragraph 59, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 4, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 54, 55, 58, 62, and 63, and Verizon hereby incorporates its response to those allegations.

III. COUNT I – UNJUST AND UNREASONABLE RATES

60. FirstEnergy's response to paragraph 60 contains no allegations, so no response is required.

61. Verizon admits the Commission's regulations speak for themselves.

62. Verizon denies the first sentence of FirstEnergy's response to paragraph 62 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy's response to paragraph 62, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 43, 54, 55, 56, 57, 58, 59, and 63, and Verizon hereby incorporates its response to those allegations.

63. Verizon denies the first sentence of FirstEnergy's response to paragraph 63 because it is a general denial prohibited by 47 C.F.R. § 1.726(b). Verizon denies the rest of FirstEnergy's response to paragraph 62, which contains allegations that are substantially similar or identical to allegations in FirstEnergy's response to paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 43, 54, 55, 57, 58, 59, and 62, and Verizon hereby incorporates its response to those allegations.

IV. RELIEF REQUESTED

64. FirstEnergy's response to paragraph 64 contains no allegations, so no response is required.

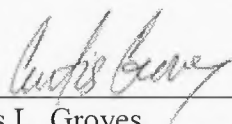
65. FirstEnergy's response to paragraph 65 contains no allegations, so no response is required.

66. FirstEnergy's response to paragraph 66 contains no allegations, so no response is required.

67. FirstEnergy's response to paragraph 67 contains no allegations, so no response is required.

PUBLIC VERSION

Respectfully submitted,

By: _____

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*Attorneys for Verizon Pennsylvania LLC and
Verizon North LLC*

Dated: March 3, 2020

INFORMATION DESIGNATION

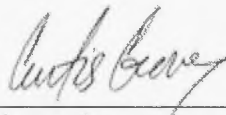
1. The Verizon employees and former employees with relevant information about this rental rate dispute are identified in Verizon's Pole Attachment Complaint, Pole Attachment Complaint Reply and Legal Analysis, and their supporting Affidavits and Exhibits.

2. Attached to Verizon's Pole Attachment Complaint Reply and Legal Analysis are Affidavits from individuals who were involved in or supported Verizon's rate negotiations and an Affidavit from outside expert Timothy J. Tardiff, Ph.D.

3. Verizon reserves the right to rely on information that is not appended to its Pole Attachment Complaint Reply and Legal Analysis as additional information becomes available.

RULE 1.721(M) VERIFICATION

I, Curtis L. Groves, as signatory to this submission, hereby verify that I have read Verizon's Denials of FirstEnergy's Affirmative Defenses and Reply to FirstEnergy's Answer and, to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.



Curtis L. Groves

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2020, I caused a copy of the foregoing Reply to FirstEnergy's Answer to be served on the following (service method indicated):

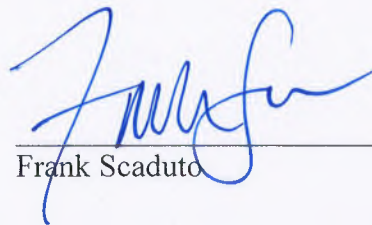
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Frank Scaduto