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October 29, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120



RE: *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*
Docket No. L-2018-3002672

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of Velocity.Net Communications, Inc. in the above-referenced matter.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE

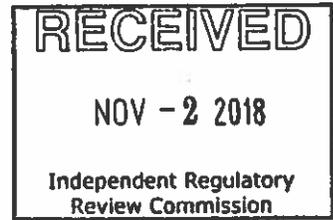
A handwritten signature in cursive script that reads "Michael A. Gruin".

Michael A. Gruin

Enclosure

cc: Shaun Sparks, Law Bureau (via email: shsparks@pa.gov)
Colin W. Scott, Law Bureau (via email: colinscott@pa.gov)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Assumption of Commission Jurisdiction : Docket No. L-2018-3002672
over Pole Attachments from the Federal :
Communications Commission :

COMMENTS OF VELOCITY.NET COMMUNICATIONS, INC.

Velocity.Net Communications, Inc. (“VNCI”) hereby files these Comments in response to the Notice of Proposed Rulemaking issued on July 12, 2018 and published in the Pennsylvania Bulletin on September 29, 2018, which sought comments from interested parties on the proposed assumption of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) jurisdiction over pole attachments from the Federal Communications Commission (“FCC”). As an independent telecommunications utility competing to expand broadband and telecommunications services in northwestern Pennsylvania, VNCI strongly supports the Commission’s assumption of jurisdiction over pole attachments in order to provide a forum for timely and effective enforcement of the pole attachment rules.

Overview of VNCI

VNCI is certificated as a Competitive Access Provider (“CAP”) and Competitive Local Exchange Carrier (“CLEC”) in Pennsylvania.¹ VNCI owns and operates a fiberoptic network in

¹ See, *Application of Velocity.net Communications, Inc. for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania*, Docket No. A-310409, Order entered August 24, 2006); *Amended Application of Velocity.Net, Inc. for approval to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier to the public*

northwestern Pennsylvania which it uses to provide voice and high-speed internet service to residential, small business, and enterprise customers. Founded in 2005, VNCI is one of the few remaining independent CLEC's that provides voice and data services to end users in Pennsylvania. In response to the changing marketplace and growing customer demand, VNCI has invested heavily in broadband deployment in Northwestern Pennsylvania. VNCI's roughly 375 miles of fiberoptic cable connect over 500 commercial and educational locations, along with over 300 residential locations.

Like most landline telecommunications carriers competing in the market today, VNCI needs to attach its facilities to existing utility poles quickly and affordably in order to construct its network and meet customers' needs. VNCI's network is primarily deployed on poles and in conduit that is owned by incumbent local exchange carriers (Verizon Pennsylvania/Verizon North), electric distribution companies (Pennsylvania Electric Company ("Penelec")) and rural electric cooperatives. As described in more detail below, the pole attachment process has become a major barrier to network deployment for companies like VNCI due to lengthy application processes, arbitrary and inconsistent make-ready rules, exorbitant engineering fees, and a general lack of reasonableness and responsiveness from some utility pole owners.

VNCI's Negative Experiences with Pole Attachments in Northwestern Pennsylvania

Even though the FCC has promulgated clear rules to expedite and streamline the pole attachment process, unfortunately, some utility pole owners simply ignore the rules and refuse to deal fairly with pole attachers. In the case of electric distribution companies especially, pole

owners often do not treat attaching broadband providers as customers, but rather as nuisances that they grudgingly deal with, but only on their own timeline and terms.

The pole attachment process begins with the attacher filing an application with the pole owner to request attachment to one or more poles. The application typically contains detailed information about the particular poles for which attachment is sought, the types of communications equipment that will be attached, and the proposed method of attachment. After receiving the application, the pole owner will conduct a survey of the poles to determine if the poles can support the attachments, and whether any “make-ready” work is required on the poles to allow for the new facilities to be attached. If the pole owner determines that make-ready work is needed, it submits a make-ready cost estimate to the attaching entity. The attaching entity can then either pay for the make-ready work, or makes adjustments to its attachment plan until a mutually agreeable amount of make-ready work is determined. Then, the make-ready work is performed by the pole owner or its contractor, and the attacher completes the attachments.

The FCC’s rules establish a four-step timeline for requests to access the communications space on utility poles, for requests up to the lesser of 300 poles or 0.5 percent of the utility’s poles in a state²:

1. Application review and survey, to be completed in 45-60 days
2. Preparation of cost estimate, to be completed within 14 days
3. Attacher review and acceptance of make-ready cost estimate, within 14 days, and
4. Completion of make-ready work, within 60 days

² See 47 C.F.R. § 1.1420

Under the FCC's rules, from start to finish the pole attachment process is supposed to take no more than 148 days for requests involving less than 300 poles. Unfortunately, in VNCI's experience with electric distribution utilities in Northwestern Pennsylvania, the process takes much longer. For example, VNCI recently just received make-ready cost estimates from Penelec for attachment applications that were submitted well over a year ago. In the past, Penelec personnel would perform "ride-outs" to inspect poles in connection with attachment applications, and then process the applications in a timely manner. However, in 2016 Penelec began outsourcing its pole attachment application review and make-ready evaluation to an outside contractor. Since this outsourcing occurred, the pole attachment application process in Penelec territory has nearly ground to a halt. When Penelec's contractor does get around to providing make-ready estimates, they are well beyond the FCC's deadline, and the proposed make-ready costs are exorbitant. Since Penelec has outsourced its application review and make-ready evaluations, its make-ready costs estimates have doubled or tripled. Furthermore, the estimates for the make-ready work are now wildly inconsistent. The make-ready estimates also lack any detail to allow the attacher to understand or question the estimate. There is no standard schedule of costs or unit-pricing to provide predictability. With this level of inconsistency and lack of detail, it makes it difficult, if not impossible, for carriers like VNCI to accurately forecast the costs of network builds and quote customers accurate prices.

In addition to skyrocketing make-ready costs, in Penelec territory attachers are now being charged extra for "administrative and engineering" fees for Penelec's outside contractor, sometimes as high as \$300 per pole. By comparison, Verizon charges an engineering fee of approximately \$25 per pole. Penelec will not move forward with a pole attachment request until

these administrative and engineering fees are paid. VNCI and other attachers have no choice but to pay the engineering and make-ready costs to allow their buildouts to move forward. Carriers like VNCI are in a very competitive market, and often are on strict deadlines to complete network buildouts in order to meet its customer's contractual requirements for network completion and service initiation. Currently, if a carrier wants to get its buildout completed in time to meet its customers' demands, there is no other recourse but to accept the estimate and hope Penelec and its contractor complete the make-ready work in a timely manner. It should be noted that VNCI's experiences with Penelec are not unique. Another carrier, Zito Media, L.P. ("Zito"), filed a lengthy complaint against Penelec at the FCC in December of 2017, in which Zito recounts in great detail the similar the delays and exorbitant costs associated with pole attachment requests in Penelec territory in recent years. See, *Zito Media, L.P. v. Pennsylvania Electric Company*, FCC Proceeding No. 17-316.

Penelec's communication on pole attachment surveys and make-ready costs is also severely lacking. Penelec's contractor does not confer with VNCI on surveying and make-ready estimates, and typically just sends estimates of costs with no opportunity for discussion. In some cases, VNCI has paid Penelec's make-ready estimates, and has never received any confirmation that the make-ready work was actually completed. Penelec does not provide any reconciliation of make-ready estimates, or provide a process for refunds in the event that the costs are less than estimated.

In short, the skyrocketing costs, lengthy delays, and lack of detail or accountability have made it very difficult for VNCI to undertake new fiber buildouts. It has simply become too difficult to accurately predict the make-ready and engineering costs that will be demanded by the

pole owner, and the make-ready timelines have become too long and uncertain. Without any predictability in costs or construction time, a carrier cannot submit bids to interested customers, or enter into fixed price contracts with customers.

PUC Jurisdiction Over Pole Attachments Would Provide Effective Recourse to Attachers

Currently, the only recourse that Pennsylvania telecommunications carriers have in response to violations of the FCC's pole attachment rules is to file a Complaint with the FCC against the pole owner. For smaller, independent carriers like VNCI, filing an FCC complaint is a costly and cumbersome process, that does little to obtain practical resolution of pole attachment disputes in a timely fashion. For this reason, VNCI strongly supports the Commission's proposal to exercise jurisdiction over pole attachments.

If the Commission exercises jurisdiction over pole attachments, carriers like VNCI who experience unreasonable delays and costs during the pole attachment process will have the ability to file formal complaints to the Commission to seek a resolution of the dispute. Commission jurisdiction over pole attachment disputes is sensible and practical. In VNCI's case, the facilities at issue are located in Pennsylvania, the parties to the dispute are both certificated by the Commission in Pennsylvania, and the customers impacted by pole attachment delays are located in Pennsylvania. Filing a formal complaint with the Commission is much more feasible for a carrier like VNCI than filing a complaint to the FCC. Certificated carriers in Pennsylvania are already subject to the Commission's jurisdiction and are therefore very familiar with the Commission's formal complaint rules and procedures. Whereas FCC formal complaint proceedings can last years and are conducted in Washington, D.C., Commission complaint

proceedings can be heard in one of the Commission's locations in Pittsburgh or Harrisburg, and hearings can be held in a matter of months. For smaller carriers like VNCI, it is much more cost effective to pursue a complaint when a hearing is held in Pittsburgh, with its local counsel appearing on its behalf, as compared to a hearing in Washington D.C. that requires counsel with expertise of the FCC's rules and procedures. In addition, in VNCI's case, all of the relevant personnel and witnesses are located in Northwestern Pennsylvania, which makes a hearing in Pittsburgh much more cost-effective and efficient than a hearing in Washington. The Commission's Mediation Program could also be very beneficial for pole attachment disputes, and would provide another forum to resolve disputes relatively quickly and inexpensively.

Having the ability to file complaints to the Commission would greatly level the playing field between attachers and pole owners, which will force pole owners to act more reasonably in dealing with attachers. With a more level playing field, pole owners will be less likely to be non-responsive and/or unreasonable on pole attachment issues, which should streamline the entire pole attachment process. The end result of this leveled playing field would be a smoother pole attachment process and faster and more affordable communications network build-outs.

Conclusion

VNCI applauds the Commission for recognizing the importance of pole attachments to the expansion of broadband in Pennsylvania. As explained above, the assertion of the Commission's jurisdiction over pole attachment issues will result in more fairness to

telecommunications providers who seek to attach to utility poles, and ultimately will result in better, faster, and more efficient broadband buildouts in the Commonwealth. VNCI appreciates the opportunity to submit these Comments and looks forward to continued engagement with the Commission and other stakeholders on these important matters.

Respectfully submitted,

October 29, 2018

Joel Deuterman

Joel Deuterman
President and Chief Executive Officer
Velocity.Net Communications, Inc.