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July 20, 2021

VIA ELECTRONIC FILING

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

RE: Proposed Rulemaking for Diversity Reporting of Major Jurisdictional Utilities
Docket No. L-2020-3017284

Dear Secretary Chiavetta:

Enclosed please find Verizon's Comments Regarding the December 17, 2020 Notice of Proposed Rulemaking, in the above captioned matter.

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva/sau".

Suzan D. Paiva

SDP/sau
Enclosure

Via Email

cc: Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau
Rhonda L. Daviston, Assistant Counsel, Law Bureau

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking for Diversity Reporting of Major
Jurisdictional Utilities

L-2020-3017284

VERIZON COMMENTS

On December 17, 2021 the Commission issued a Notice of Proposed Rulemaking (“NPRM”) proposing to mandate diversity reporting in a regulation to be codified at 52 Pa. Code Chapter 51. Currently, reporting is encouraged as a voluntary practice through a policy statement. In response to the June 5, 2021 publication of this NPRM in the Pennsylvania Bulletin, Verizon submits the following comments.¹

The proposed regulations would establish a mandatory annual report required to be filed on March 1 each year by “major jurisdictional utilities” (defined as an “electric, natural gas, water or wastewater utility whose net plant in service is valued at \$10 million or more” or “major telecommunications utilities with 50,000 or more access lines”). The report would require workforce demographics, in terms of gender, race, ethnicity, disability, or veteran status, as well as procurement information and dollars spent with diverse-owned businesses. According to the NPRM, “diversity reporting would be a mandatory requirement,” the “use of the Commission form for reporting diversity in a major jurisdictional utility’s workforce would be required,” “there would be consequences for the failure to file the report,” and “[t]he Commission will use all available remedies to ensure reporting compliance including fines.” (NPRM at 5-6; Proposed Section 51.15(c)).

¹ These comments are submitted by Verizon Pennsylvania LLC and Verizon North LLC. Based on the proposed regulation’s application to “telecommunications utilities with 50,000 or more access lines,” (Proposed Section 51.12), these are the only regulated Verizon entities that appear to be affected.

There is no question that promoting a diverse and inclusive workforce and supply chain is the right thing to do. That does not mean it is appropriate or lawful to mandate reporting on this issue in Commission regulations.

To be clear, Verizon is committed to fostering an inclusive environment and being open and transparent with information about its own diversity and inclusion efforts. Verizon cares about diversity in both our employees and our suppliers, as our actions demonstrate. By celebrating diversity across all spectrums, including but not limited to race, color, religion, age, sex, national origin, sexual orientation, gender identity, disability and veteran/military service status, we are a stronger company and culture. We take pride in our talented and diverse team of people who focus on our customers, every day. “At Verizon, embracing and promoting diversity and inclusion is not an option,” states our Senior Vice President and Chief Diversity Officer Magda Yrizarry. “It’s a business priority and essential for us to win in today’s competitive marketplace. We have a shared accountability model that says we are all responsible for making diversity a priority from the top of our organization (our board of directors) to our frontline employees.”²

To make it easier for the public to obtain information about diversity and inclusion at Verizon, we include a detailed diversity and inclusion page on our website. Highlighted there are the facts that over 59% of our U.S. workforce and six of our ten board members are women or people of color.³ With respect to diversity of our work force, we publish a Diversity Representation Report which provides detailed statistics on race, ethnicity, and gender of the workforce by business unit, similar to the type of information reportable to the federal Equal

² <https://www.diversityinc.com/magda-yrizarry-2/>

³ These are total company figures, not limited to Pennsylvania or to regulated businesses.
<https://www.verizon.com/about/our-company/diversity-and-inclusion>

Employment Opportunity Commission.⁴ This report includes a pledge from Verizon's Chief Executive Officer to continue to build and improve:

[C]hampioning diversity is not enough. We need to be a force for equality so that women and people of color have a clear path for advancement, so they never have to scale down their ambitions or anchor their dreams. Sharing our data is only part of our path to progress. We know we have more work to do to make our workforce more diverse and inclusive at all levels, and you have my word that we will keep you informed as we go #ForwardTogether. (Hans Vestberg)

As part of that report, Verizon includes a link that makes public its EEO-1 report filed with the federal Equal Employment Opportunity Commission.⁵ In April of 2020 Verizon released its first-ever Human Capital Report, outlining the company's commitment to attract the best talent, develop its employees to their full potential and inspire employees to build their careers at Verizon.⁶ This report includes updated statistics on race, ethnicity, and gender of the workforce by business unit and much more information.

We also maintain a detailed supplier diversity program and our website contains information and instructions for diverse suppliers to join the team.⁷ In 2020 alone, we spent directly and indirectly, nearly \$5.7 billion in goods and services with diverse suppliers, including minority, women, veteran, service-disabled veteran, LGBT, and disability owned businesses. We spent \$50 billion with diverse suppliers in the last ten years.

As a result of these efforts, Verizon is proud to rank 7th out of the Fortune 500 on a list of the most progressive companies in diversity and inclusion,⁸ and to be one of Black Enterprise's

⁴ A copy of the June 2020 Verizon Diversity Representation Report is available here.
https://www.verizon.com/about/sites/default/files/June_2020_Diversity_Representation_Report.pdf

⁵ <https://www.verizon.com/about/sites/default/files/2018-EEO1Consolidated.pdf>

⁶ https://www.verizon.com/about/sites/default/files/2021-04/Verizon_Human_Capital_Report_2020.pdf

⁷ <https://www.verizon.com/about/our-company/supplier-diversity>

⁸ <https://fortune.com/2021/06/02/fortune-500-companies-diversity-inclusion-numbers-refinitiv-measure-up/>

50 best companies for diversity based on a study of “corporations that have created measurable pathways to ensure African American representation among their workforce, senior management team, board of directors, and pool of suppliers.”⁹ Additional awards for diversity and inclusion are listed in the Human Capital Report, page 22.

While Verizon is a leader in supporting diversity and inclusion, it does not support the Commission’s proposed new regulations. Not everything that is good and important is also suitable to be included in Commission regulations. Rather, this Commission “is a creature of statute” and “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.”¹⁰ Notably missing from the NPRM is citation of any specific provision in the Public Utility Code or other law that empowers this Commission to impose or enforce workforce and supplier diversity requirements.¹¹

The Commission states that its reporting form is “modeled . . . in large measure on the federal EEO-1 form used by the Equal Employment Opportunity Commission,” but the significant difference is that, unlike this Commission, the federal Equal Employment Opportunity Commission has statutory authority to require certain employers to submit (on a confidential basis) demographic workforce data, including race/ethnicity and gender, by job category.¹² This federal statute does not empower this Commission to require reporting of that same information and there is no explicit provision in the Public Utility Code conferring that authority. The Regulatory Review Act requires an executive agency to demonstrate that a

⁹ <https://www.blackenterprise.com/companiesdiversity2018/>

¹⁰ *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 8 (Pa. 1977).

¹¹ The Commission cites 66 Pa.C.S. § 504, which empowers it to request “special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce” but it does not explain how it is otherwise authorized or empowered to inquire into these issues.

¹² *See* 42 U.S.C. § 2000e-8(c).

proposed regulation “is consistent with the statutory authority of the agency and with the intention of the General Assembly in the enactment of the statute upon which the regulation is based.”¹³ The Commission has not made that demonstration.

But even if the Commission could require reporting from other types of utilities, to mandate these new reports by “major telecommunications utilities with 50,000 or more access lines” is directly contrary to the Public Utility Code, which is the source of the Commission’s authority to regulate telephone services. The statutory provision at 66 Pa. C.S. § 3015(e) specifically limits the reports the Commission is authorized to require from a local exchange telecommunications company.¹⁴ A diversity and inclusion report is not one of the reports that the legislature enumerated.¹⁵ The Commission’s authority to require *any* additional reporting from telephone carriers beyond the specifically enumerated reports is strictly limited. Section 3015(f)(1) makes clear that “no report, statement, filing or other document or information, except as specified in subsection (e), shall be required” unless the Commission first makes specific written findings that the report is necessary to ensure that the company “is charging rates that are in compliance with this chapter and its effective alternative form of regulation” and that “the benefits of the report substantially outweigh the attendant expense and administrative time and effort required . . . to prepare it.” 66 Pa. C.S. § 3015(f)(1). The Commission has not made the required “specific written findings” and the facts do not support finding that both of these

¹³ 71 P.S. § 745.5b(a).

¹⁴ Verizon Pennsylvania LLC and Verizon North LLC are “local exchange telecommunications companies” operating under alternative regulation as defined in Chapter 30.

¹⁵ The only reports the Commission is authorized by law to require are: a network modernization plan report under section 3014(f); an annual financial report; an annual deaf, speech-impaired and hearing-impaired relay information report; an annual service report; universal service reports; an annual access line report; an annual statement of gross intrastate operating revenues; an annual state tax adjustment computation; and a bona fide retail request report under section 3014(c)(9). 66 Pa. C.S. § 3015(e).

requirements are satisfied.¹⁶ Chapter 30 also directs the Commission to reduce regulation of telecommunications providers to “take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand,”¹⁷ consistent with the stated legislative intent to “[r]ecognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.”¹⁸ Increasing anti-competitive regulatory reporting burdens on the small segment of the market that is still subject to Commission oversight, when their competitors are not and cannot be required to submit these reports to the Commission, is directly contrary to this statutory directive.

Just because Verizon reports similar information to the federal Equal Employment Opportunity Commission and makes diversity details public on its website does not mean that a regulation from this Commission imposing new mandatory reporting requirements, subject to fines and penalties, is harmless and without costs and burdens. To the contrary, imposition of new reporting requirements, regardless of the subject of the report, imposes new costs and burdens, as the legislature recognized when it enacted 66 Pa. C.S. § 3015(e) and (f). These costs and burdens include administrative time and effort such as diverting employee time to track and compile the information in the specific format required by the Commission, to prepare and review the reports, to interact with Commission staff, and to respond to questions. The proposed

¹⁶ In a previous Commission proceeding various parties, including two of the state legislators instrumental in the drafting of these provisions of Chapter 30, explained that both conditions must be satisfied in order for the Commission to require additional reporting, and that the test is not “either, or.” The Commission did not decide the issue. *Section 3015(F) Review Regarding The Lifeline Tracking Report, Accident Report And Service Outage Report*, Docket No. M-00051900, 2005 Pa. PUC LEXIS 39 (Opinion and Order entered December 30, 2005).

¹⁷ 66 Pa. C.S § 3019(b)(2).

¹⁸ 66 Pa. C.S § 3011(13).

regulation subjects the company to the risk of “all available remedies to ensure reporting compliance including fines” that is promised in the text of the proposed regulations, a risk that is not borne by unregulated competitors. It diverts resources away from substantive activities supporting workplace and supplier diversity because the same employees would be required to spend time instead preparing and tracking reports. And having different state-specific reports is more burdensome than the uniform federal level reporting that is already required. The imposition of these expenses and burdens on regulated telecommunications providers is anti-competitive since the Commission clearly lacks the authority to require reporting from, or to threaten sanctions to, the large array of unregulated cable, wireless and VoIP providers that compete directly with the regulated local exchange telecommunications companies that would be subject to the proposed regulation.

The Commission has not articulated any benefit from its proposed reporting that would outweigh these burdens. Given that this information is already reported at the federal level and that Verizon, and likely other companies as well, voluntarily makes public substantial diversity and inclusion information, it is duplicative and unnecessary for the Commission to require similar information to be reported on a specific form and subject to penalties. It is difficult to see how the Commission could show that “the benefits of” the proposed new duplicative and burdensome state-specific reporting “substantially outweigh the attendant expense and administrative time and effort required . . . to prepare it.” 66 Pa. C.S. § 3015(f)(1). The NPRM does not attempt to make such a showing. Not only is this proof required by 66 Pa. C.S. § 3015(f)(1) before a new reporting requirement could be imposed on Verizon, but it is also required by the Regulatory Review Act generally. The purpose of the regulatory review process is to avoid “regulations being promulgated without undergoing effective review concerning cost

benefits, duplication, inflationary impact and conformity to legislative intent,” and therefore the Regulatory Review Act requires an executive agency “to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania.”¹⁹ The Regulatory Review Act requires a showing that the proposed regulations are in the public interest. This proof requires evidence of the “[e]conomic or fiscal impacts of the regulation,” such as “[d]irect and indirect costs to . . . the private sector,” “[a]dverse effects on productivity or competition,” the costs of preparing “required reports, forms or other paperwork,” the “[n]eed for the regulation,” and the “[r]easonableness of requirements.”²⁰ The NPRM does not provide any evidence or analysis as to these factors.

For the foregoing reasons, Verizon respectfully submits that the Commission does not have the statutory authority to promulgate these proposed regulations, particularly as applied to local exchange telecommunications carriers due to Chapter 30’s prohibition of new reporting requirements. It should not attempt to codify in regulations what has up to now been a voluntary reporting policy. At a minimum, to comply with 66 Pa. C.S. § 3015(e), the Commission should remove “telecommunications utilities” from the list of entities required to submit these reports.

¹⁹ 71 P.S. § 745.2.

²⁰ 71 P.S. § 745.5b(b).

Respectfully submitted,



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