

ATTACHMENT A

REPLY DECLARATION OF FRANK WICKOWSKI

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

MAW Communications, Inc.,

Complainant,

v.

PPL Electric Utilities Corporation,

Defendant.

Proceeding Number 19-29
Bureau ID Number EB-19-MD-001

REPLY DECLARATION OF FRANK T. WICZKOWSKI

I, FRANK T. WICZKOWSKI, declare as follows:

1. I am President and CEO of MAW Communications, Inc. (“MAW”), with a general office address of 419 Washington Street, Reading, Pennsylvania. I make this Declaration in support of MAW’s Reply in the above-captioned case. I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.
2. I founded MAW Communications in 1997 and have served as President and CEO for 22 years. In this role, I am responsible for managing all aspects of MAW’s business, including sales, marketing, operations, and business planning.
3. I have reviewed the allegations in the Reply filed in in the above-captioned proceeding as well as the exhibits attached hereto and verify that they are true and correct to the best of my knowledge, information and belief.

4. MAW's rebuilt single mode network promises to deliver high quality services to Lancaster residents. The attached schematics show the extent of MAW's network.¹

5. Many of the safety issues that PPL alleges relate to the manner in which the facilities were installed, which was taken into account by the Lehigh County judge in the issuance of his Order, but are not continuing safety violations.

6. Importantly, many of the alleged safety-related violations that PPL alleges have been in existence for nearly a decade, predating MAW's involvement in Lancaster, and were in fact caused by either the City or LCSC, and in the case of the City, when it attached without permission. In 2009, PPL conducted a partial audit of the City's attachments to PPL poles, finding 447 unauthorized attachments, including 276 attachments with NESC clearance violations or damaged/missing equipment ("2009 Audit").² PPL's own Answer states that the City attached to over 534 poles without PPL's permission.

7. A comparison of PPL's 2009 Audit of the City's attached facilities to the 2018 Katapult survey reveals that the City and PPL have been aware of numerous violations for almost ten years, yet the violations still exist today.

8. MAW offered to PPL all of the data from its own 2015 survey of PPL's poles in Lancaster, which take the form of pole profile sheets long accepted by PPL, on numerous occasions because MAW uncovered many of these unauthorized attachments and preexisting noncompliance during its own pre-construction surveys related to upgrading the municipal network, yet PPL repeatedly refused to accept this information from MAW.³

¹ See GIS maps depicting MAW's network in Lancaster, attached hereto as Exh. 1

² 2009 Audit, attached hereto as Exh. 2.

³ See MAW pole profile sheets, attached hereto as Exh. 3.

9. The noncompliance documented in MAW's 2015 survey lines up with many of the violations recorded in PPL's 2009 Audit of the City's poles—meaning PPL knew or should have known about these alleged “exigent” safety issues, did nothing to correct them, and now seeks to blame MAW for creating all of the problems.

10. Based on circumstantial evidence produced by PPL, it appears that PPL entered into an agreement with the City and LCSC concerning the significant number of pre-existing unauthorized attachments while simultaneously punishing MAW for using those same attachments around the same time it began removing MAW's attachments. In discovery, PPL produced document titles that indicate PPL may have entered into a private agreement with the City and LCSC at some point in 2018.⁴ Notably, negotiations appear to have transpired in March 2018, just prior to the City's entry as intervenor in the Lehigh County litigation (April 2018).

11. PPL was supposed to transfer ownership of the streetlights to the City but refuses to do so until they are grounded.

12. MAW has offered to pay to ground all of the streetlights.

13. PPL's Attachment D, Exhibit 4 lists a total of 539 poles with alleged safety violations. Of those, 356 poles are part of the J-and-raise project of the existing City and LCSC plant. On those poles, MAW attached its facilities using the same through bolts originally installed by the City and LCSC. 144 of those poles were also listed on PPL's 2009 Audit of the City's poles. MAW identified only 23 poles, approximately 2% of the 1,095 poles listed on Exhibit 4 where it may have created the initial violation.

⁴ See PPL Discovery Response: “Ryan J. Yanek Documents 2,” line 218 (“Lancaster County – City of Lancaster Agreement.pdf,” Mar. 19, 2018), line 231 (“Private Agreement – Lancaster City-Lancaster Community Safety Coalition (3316).pdf,” Mar. 19, 2018), an excerpt of which is attached hereto as Exh. 4.

14. MAW stands ready to remedy these and all of the other safety issues, as many can be easily fixed, but PPL is preventing MAW from doing so under the shield of the April 2018 Order while it continues to remove all of MAW's plant, deeming it "unsafe."

15. Of the 1,095 poles alleged to include unauthorized attachments listed in Attachment D, Exhibit 4, more than half, 637, are stated as creating no safety violations. Only 539 poles are stated to have exigent safety violations requiring immediate correction.

16. Of the 1,095 poles alleged to include unauthorized attachments listed in Attachment D, Exhibit 4, 268 are located on poles identified in PPL's 2009 audit of the City's attachments, with many having similar if not identical violations. Where MAW performed the J-and-raise, it used the City's or LCSC's existing through bolts. Thus, at least 365 of the alleged violations (67%) were caused by through bolts installed by the City or LCSC, of which PPL has been or should have been aware since 2009 when it audited the City's attachments.

17. Of the 1,095 poles alleged to include unauthorized attachments listed in Attachment D, Exhibit 4, PPL only provides detailed information concerning the nature of the alleged violations for the first 574. For attachments beginning after line 575 of Exhibit 4, the comments in Column N only state that the attachment is located within 40 inches of power, but provides no additional detail about the location of the attachment or the type of power facility (*e.g.*, ungrounded streetlight, streetlight drip loop, secondary drip loop, riser, or other), effectively preventing MAW and the Commission from understanding the true nature of the alleged violations. Moreover, MAW reimbursed PPL a total of \$44,930.18 for a survey of its attachments purporting to address these very issues, yet PPL still fails to provide the necessary detail to assess the alleged violations.

18. Of the 574 poles alleged to include unauthorized attachments for which detailed information is available, using a percentage extrapolated from the more detailed data that is available, 77% of the alleged the 40-inch separation violations involve non-grounded streetlights. Nearly half of those are at least 20 inches from the streetlight brackets and, as PPL's witness agrees, attachments made prior to the effective date of the 2017 NESC (all of MAW's attachments) were grandfathered and are not violations.

19. In addition, of all the alleged violations of the 20" separation requirements from streetlight brackets (roughly 163 in total using the extrapolation), many involve ADSS cable which can be located closer to power facilities.

20. Of the 574 poles alleged to include unauthorized attachments for which detailed information is available, approximately 15 percent are listed as being too close to drip loops. However, these can be easily remedied by covering the loop with a suitable nonmetallic covering that extends at least 50 mm (2") beyond the loop, or bonding MAW's facilities.

21. Of the 539 poles alleged to have violations, very few would require make-ready work to resolve, and all of remedial work could be performed without drawing the escrow down below \$0.

22. To comply with the court's April 2018 Order, MAW resubmitted its rebuild application information on April 25, 2018 using PPL's Form 4834, along with supporting drawings for the J-and-raise rebuild project ("rebuild paperwork"). Form 4834 did not specify that pole numbers were required. PPL denied the application because it was submitted after the project was already begun—a fact that, three years after the project had begun, was known to all involved, including the Lehigh County judge, at the time the court issued the April 2018 Order.

23. By August 2, 2018, MAW resubmitted its rebuild applications using PPL's portal, but Mr. Yanek denied the applications on August 16, 2018 alleging they lacked requisite detail.

24. There is no commonly understood definition of what constitutes a "service drop" other than that it is a telecommunications line used to provide service to customers that begins at a point on the backbone network and ends at a customer location.

25. PPL never afforded MAW the opportunity specified under an unpublished policy to submit a corrective application when PPL determined that MAW's service drops not meet PPL's definition.

26. MAW was operating under the belief that other network operators were using an expansive definition of service drop in PPL's service territory. Despite taking my testimony out of context—I was explaining how open-ended PPL's Pole Attachment definition was—MAW's longest service drop was approximately 3,000 feet long and extended from our backbone network to a health care facility. PPL removed this service drop in 2018.

27. Attaching directly above or below the lowest attacher on the pole—typically the ILEC—will often present the easiest, least costly, most achievable deployment solution. Even assuming, *arguendo*, the ILEC must maintain the lowest position on the pole, cost savings can still be realized wherein a new prospective attacher could simply move the ILEC into lowest position. This is permissible under the FCC's OTMR regime and reduces necessary make ready as compared to moving all other attachers on the pole. MAW offered such an attachment strategy but was denied by PPL.

28. PPL relies heavily on the testimony of a supposed "whistleblower," Mr. Joseph Staboleski, who PPL claims left MAW because he was "hounded" by his conscience. If Mr. Staboleski had regrets, it is possible those regrets were over his own serious malfeasance while

on MAW's payroll that ultimately led to his resignation. Mr. Staboleski is in fact a disgruntled former employee who resigned in disgrace after we became aware of several repeated incidents of misconduct. In testimony before the Lehigh County Court, Mr. Staboleski admitted that he misused the company credit card on at least two separate occasions; repeating his misconduct after receiving a warning.⁵ Mr. Staboleski also admitted that he placed a tracker on a vehicle belonging to one of his female co-workers at MAW for no legitimate purpose.⁶ After we uncovered this significant misconduct, Mr. Staboleski submitted his resignation and I accepted. Two weeks prior to his resignation, Mr. Staboleski contacted PPL regarding what he saw as safety violations.⁷ Afterward, he threatened to blackmail MAW by contacting PPL—despite having done so already—if we did not reinstate his job, but we refused to do so.

29. In or around January, 2016, after MAW was unable to reach Mr. Klokis despite multiple attempts, I instructed Mr. Staboleski to draft and send a letter informing PPL that it had J-and-raised the municipal network and noting that its engineering documents were available to be submitted to PPL. While the letter was not fraudulent, MAW cannot confirm whether Mr. Staboleski ever actually transmitted it to PPL. At my instruction, the January 2016 letter was created by Mr. Staboleski, a fact that is confirmed by the metadata on the original Word file as well as Mr. Staboleski's corresponding time entry.⁸ I also instructed Mr. Staboleski to send the letter to PPL and he may well have done so using PPL's pole attachment webpage instructions,⁹ but MAW cannot confirm whether it was sent or uploaded. At the time Mr. Staboleski authored

⁵ See Excerpt of testimony of Joseph Staboleski, (Mar. 23, 2018) at 31:21-34:15, attached hereto as Exh. 5.

⁶ *Id.*

⁷ *Id.*

⁸ See Word files and metadata, attached hereto as Exh. 6; Staboleski January 2016 timesheet, attached hereto as Exh. 7.

⁹ Around January 2016, MAW believes that the relevant section of the PPL website on pole attachments contained a generic email address to which the letter was to be sent.

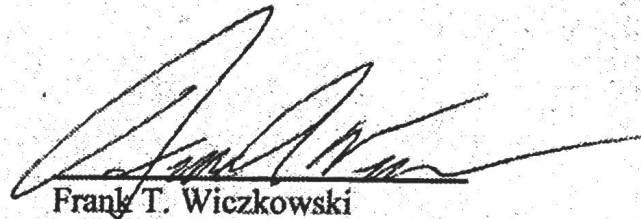
the letter, I had no reason to believe he would not carry out his normal duties. PPL is well aware of Mr. Staboleski's credibility issues based on his testimony in the Lehigh County Court. PPL does not deny that it failed to notify attaching entities of its change in pole attachment management personnel, or that employees other than Mr. Klokis knew of MAW's proposed J-and-raise rebuild. Yet it offers no excuse for why no one at PPL got back to MAW if in fact applications were so clearly required.

30. PPL hired MAW in 2003 to design its over 20-route-mile Reading, PA Metro Fiber Ring Network. In addition to the parties' Pole Attachment Agreement, PPL also entered into a 20-year infeasible right of use ("IRU") agreement with MAW in 2003 that is still in existence today. PPL also neglects to mention that, should MAW go bankrupt, PPL stands to benefit, as MAW owns nine miles constituting approximately one third of the Reading Metro Ring and several additional lateral extensions that are key to the Reading Metro Ring Network's profitability. In addition, PPL and MAW have a second IRU agreement that grants MAW no cost access to the other two thirds of PPL's Reading Metro Ring that MAW did not construct.

31. MAW has made numerous settlement offers to PPL that have been rejected. As recently as February 2019, PPL flat-out refused to engage with MAW until MAW replenished the escrow fund related to the Lehigh County order, which MAW has every reason to believe PPL will then use to further dismantle MAW's network under the guise of its holistic approach. MAW has shown its willingness to come to the table and make concessions to negotiate in the spirit of good faith negotiations, but PPL steadfastly refuses. PPL continues to wield its outsized influence over MAW, failing to satisfy its obligations under the April 2018 Order to take action on MAW applications while simultaneously using the Order to remove more and more MAW plant.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By:

A handwritten signature in black ink, appearing to read 'Frank T. Wiczowski', written over a horizontal line.

Frank T. Wiczowski

Dated: March 29, 2019