

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

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)	
MAW Communications, Inc.,)	
<i>Complainant,</i>)	
)	Proceeding Number 19-29
v.)	Bureau ID Number EB-19-MD-001
)	
PPL Electric Utilities Corporation,)	
<i>Defendant</i>)	
)	

JOINT STATEMENT

Pursuant to the Commission’s February 14, 2019 Notice of Formal Complaint and April 2, 2019 Order on Consent Motion, PPL Electric Utilities Corporation (“PPL”) and MAW Communications, Inc. (“MAW”), through undersigned counsel, submit the following Joint Statement regarding settlement prospects, stipulated facts, disputed facts, key legal issues, discovery matters, issues in dispute, the status of the Lehigh County Court proceeding, and schedules for pleadings.

SETTLEMENT PROSPECTS

The parties do not believe settlement is possible.

STIPULATED FACTS

1. MAW was issued a certificate of public convenience by the Pennsylvania PUC (“PaPUC”) in 1998 to provide competitive local exchange carrier telecommunications services.
2. MAW and PPL entered into a Pole Attachment Agreement in 2002 setting forth the terms of MAW’s access and attachment to PPL poles.
3. The Pole Attachment Agreement became effective January 1, 2003 and is in effect today.

4. MAW and the City of Lancaster (“City”) entered into a Municipal Carrier Agreement (“MCA”) in December 2014.
5. MAW is attached to poles owned and controlled by PPL.
6. MAW’s attachments to PPL poles at issue in the Complaint may be described as new build, attachment rebuild, and service drop attachments.
7. By letter dated March 17, 2015 the Executive Director of Lancaster Community Safety Coalition (“LCSC”) informed PPL that LCSC had 743 attachments on PPL poles, that the majority of the attachments were for fiber optic cable, and that “MAW Communications is now responsible for the fiber optic cable attachments detailed on the enclosed list.”
 - a. The March 17, 2015 letter from LCSC to PPL requested that PPL transfer from LCSC to MAW all of the attachments that were specified on the enclosed list.
 - b. The enclosed list of poles attached to the April 7, 2015 email contains 490 poles.
 - c. According to PPL, 426 of the listed poles are poles owned and controlled by PPL within the City of Lancaster.
 - d. There were two additional PPL poles outside the City that were transferred bringing the total to 428.
8. All of the 428 (426 within the City) attachments that were transferred to MAW were originally built by the City of Lancaster and LCSC.
9. Of the 960 MAW rebuild attachments to PPL’s poles MAW claims were initially installed by the City of Lancaster and LCSC, only 428 (426 within the City) are acknowledged by PPL to be authorized.
10. MAW paid annual rent to PPL for attachments to 428 poles in 2016 and 2017, but not 2018.
11. Article 9 of the Pole Attachment Agreement sets forth the “Attachment Rebuild” process.
12. Section 9.1 of the Pole Attachment Agreement states:

An attachment rebuild project is defined as the transfer of the original cable to a temporary attachment position (normally a j-hook) so that the new cable can be installed on the bolt in the original attachment position. The original cable shall be removed after the new cable is placed in service. Short sections of the original cable can be bolted in the temporary attachment position if safety concerns warrant (angle poles, long spans, railroad or turnpike crossings, etc.).
13. Pursuant to Section 9.2 of the Pole Attachment Agreement, MAW is required to notify PPL of an attachment rebuild project by submitting a completed attachment rebuild application a minimum of 30 days before the start of the attachment rebuild project.
14. MAW did not submit applications in advance of using the J-and-raise method to rebuild the Municipal Network.

15. In an email dated April 7, 2015, from MAW's president, Frank Wiczowski, to William Klokis, PP&L Project Manager Reliability Programs and Pole Attachments:
 - a. MAW mentioned MAW's intent to rebuild the Municipal Network using the J-and-raise method prescribed by the parties' Pole Attachment Agreement.
 - b. MAW mentioned MAW's plans for certain new build attachments.
 - c. MAW sought PPL's assistance in transferring from LCSC to MAW hundreds of LCSC attachments which were identified by pole number on an attached list, and which transfer was approved by LCSC in an attached letter from LCSC.
16. Mr. Klokis replied to the April 7, 2015 email from MAW that he would "work with his team to accomplish this in a timely manner."
17. On April 8, 2015, Mr. Klokis forwarded MAW's April 7, 2015 email to his colleagues at PPL Jose Silverio and Diana Canady, and stated, "I think it's important that MAW enters this information on at least five applications, depending on the segments of the rebuild." He also copied Quay Hoffman and Andrew Bryden, two employees of PPL's contractor Katapult Engineering.
18. Mr. Klokis retired full time and permanently from PPL in June 2015.
19. Mr. Ryan Yanek took over Mr. Klokis' position in June 2015.
20. The Pole Attachment Agreement at Section 9.4 specifies that the rebuild process must be completed within 12 months by removing the old facilities that had been temporarily raised per the J-and-raise process.
21. By the time of the January 15, 2016 letter, the old facilities that had been temporarily raised per the J-and-raise process had not been removed.
22. Most of the old facilities that had been temporarily raised per the J-and-raise process have not been removed as of today.
23. The old multi-mode fiber system originally installed by the City and LCSC is still in place because that older multi-mode fiber is necessary to operate the camera system that the City of Lancaster did not have funding to replace prior to the Court's April 2018 Order.
24. Some portion of the fiber in MAW's Lancaster network is supported by steel strand.
25. In general, fiber is lighter in weight than copper and older coaxial facilities.
26. ADSS fiber cable is non-conductive.
27. Non-ADSS fiber constructed by MAW utilizes the support of a steel messenger wire, and steel messenger wires conduct electricity.
28. ADSS fiber that is non-conductive may be installed closer to electric facilities than can fiber lashed to a steel messenger wire, consistent with the National Electrical Safety Code ("NESC").
29. Article 6 of the Pole Attachment Agreement sets forth the application process for "attachment installation."
30. For service drop attachments, Section 6.4 of the Pole Attachment Agreement specifies no attachment application is required.
31. MAW submitted several applications for "new build" attachments in 2016.

- a. MAW submitted its first new build attachment application in January 2016 and the remaining three applications in September 2016.
 - b. PPL invoiced MAW for the costs of the pre-construction surveys and engineering associated with the applications.
 - c. MAW disputed the amount of the such charges.
- 32. PPL's policy requires new communications attachers to attach one foot above the highest existing cable in the communications space.
- 33. The four applications that MAW submitted in 2016 requested attachments to locations on PPL's poles that were below existing ILEC facilities and at varying heights between, above, and below existing communications attachers.
- 34. In response to MAW's applications, PPL offered to rearrange the communications facilities, raise the power facilities, or replace the pole.
- 35. Rearranging communications facilities can be a relatively inexpensive way to create space on a pole.
- 36. The Pole Attachment Agreement requires that all work be performed in accordance with the NESC.
- 37. MAW offered to cover the cost of revising the programming in PPL's online portal system and related systems to allow MAW to attach facilities in the manner that MAW proposed in the communications space on the pole.
- 38. PPL declined to revise the programming in its online portal and related systems in the way that MAW proposed.
- 39. PPL's 2016 make-ready quotes totaled \$56,624 in "Make Ready – Engineering" and \$141,926 in "Make Ready – Construction" charges.
 - a. MAW did not proceed with the work on these applications as it found the charges to be prohibitively costly.
 - b. MAW has requested executive level discussions concerning the amount of the Engineering charges.
 - c. MAW's Complaint does not ask the FCC to determine whether the amount of those charges are just and reasonable.
 - d. MAW's Complaint asks the FCC to order PPL to process MAW's pending applications while the parties resolve their pending dispute concerning the \$56,624 in charges for Make-Ready Engineering.
- 40. On August 24, 2017, the City of Lancaster, through counsel, formally requested a meeting with all necessary PPL Representatives to resolve the make-ready issue by September 8, 2017.
 - a. The August 24, 2017 letter was from the Cohen Law Group, which represents the City of Lancaster.
 - b. There was no resolution in September 2017 and PPL did not formally consent to FCC mediation.
- 41. Zito Canton filed a pole attachment complaint against PPL in October 2017.
 - a. PPL responded to that Complaint in November 2017.
 - b. Zito Canton and PPL are engaged in mediation and there has been no Commission ruling on the allegations made in Zito Canton's complaint.
 - c. Zito Canton's pole attachment complaint against PPL raises concerns about PPL's transition to its online application portal.

42. In November 2017, PPL contacted the PaPUC alleging MAW had created exigent safety violations by making unauthorized attachments to PPL poles.
43. On December 6, 2017, the PaPUC's Bureau of Investigation and Enforcement ("I&E") conducted a field conference with PPL, MAW, and I&E representatives.
44. Via December 15, 2017 letter, I&E stated that it had initiated an investigation into MAW's attachments.
 - a. The email transmitting the letter included "confidential and proprietary" language.
 - b. PPL released this letter to the press on December 19, 2017.
45. PPL filed a breach of contract claim against MAW in Lehigh County Court on December 5, 2017.
46. On December 19, 2017, MAW and PPL entered into a Stipulation ("December 2017 Stipulation") in the Lehigh County Court proceeding.
 - a. The Lehigh County Court adopted the December 2017 Stipulation as an Order of Court.
 - b. The December 2017 Stipulation is an Order adopting the agreement of the parties as described in the transcript attached to the Order. (The transcript is incorrectly dated December 12, 2017 on the first page but correctly dated December 19, 2017 on the second page.)
 - c. In response to the December 2017 Stipulation in the Lehigh County Court proceeding, MAW produced a list of street names indicating where MAW claimed the poles were located.
47. A January 17, 2018 letter from the Deputy Chief Prosecutor of the PaPUC ended the PaPUC's investigation.
48. In late December 2018, Katapult Engineering, engaged by PPL, conducted a survey of MAW's attachments.
 - a. PPL shared certain of the results of the December 2018 Katapult survey with MAW by correspondence dated January 30 and February 22, 2018.
 - b. PPL's Answer, Attachment D, Exhibit 4, is a hard copy print out of certain findings in the Katapult survey.
49. PPL is demanding that MAW pay \$56,624 in charges for Make Ready – Engineering.
50. PPL is demanding costs related to the removal of MAW's attachments.
51. PPL is demanding unauthorized attachment penalties for three years (beginning in 2017 when PPL first observed the unauthorized attachments, through 2019 because the unauthorized attachments remain to this day).
52. PPL's counsel Michael Shafer's July 18, 2018 email to MAW, which was included in MAW's Complaint at Attachment A, Exhibit 7, states: "[I]t is PPL's policy to not consider any additional attachment applications until past due make ready invoices are paid. If MAW wants PPL to consider its new attachment applications it must first satisfy its past due invoices from 2016. Otherwise MAW's new applications to remediate the unauthorized attachments will not be considered by PPL."
53. PPL is demanding MAW compensate PPL for "'PPL time spent managing progress under Court Order September_November' for a total of \$246,867.62."

54. MAW paid PPL \$14,394.38 and \$30,535.80 for a survey of its attachments by Katapult.
55. MAW submitted an application after-the-fact for its rebuild attachments on April 25, 2018, using PPL's Form 4834, along with maps.
 - a. The April 25, 2018 application provided maps that identified stretches of streets along which MAW indicated it had attachments.
 - b. Pushpins were used to indicate pole locations.
 - c. Form 4834 does not list pole numbers as a requirement for the application.
 - d. The online portal system for rebuild applications was not operational in April 2018.
 - e. PPL rejected MAW's April 25, 2018 application.
56. The online portal requires attachers to choose a type of attachment—e.g., "Typical Attachment/Removal Application," "NJUNS Ticket," "Relocation Project."
57. Until late July/early August 2018, the online application portal did not include a "Rebuild" type of attachment.
58. PPL revised the way rebuild applications must be submitted. Around August 1, 2018, PPL began requiring rebuild applications to be submitted through its online portal (as opposed to via email). PPL now requires MAW to submit applications in this manner.
59. PPL's online portal process for rebuilds was developed in August of 2018.
60. On August 1 and 2, 2018, MAW resubmitted all rebuild applications via the portal using the newly created attachment type.
61. PPL hosted a WebEx for MAW on July 30, 2018.
62. The online portal process, which was not available for rebuilds until August 2018, requires the submission of pole numbers, which were missing from MAW's earlier April 25, 2018 paper form submission.
63. Mr. Yanek's August 16, 2018 email denying MAW's paperwork stated: "the request does not include sufficient detail for PPL to evaluate the locations where re-build is proposed and validate that they coincide with permitted attachments."
64. MAW submitted 38 applications for "relocation" builds and then resubmitted those applications as "rebuild" applications.
65. MAW has 76 applications listed as "Pending Admin Review," 48 applications listed as "In Review," and 18 applications listed as "Incomplete" in PPL's online portal.
 - a. MAW resubmitted the latest such batch of applications on or about August 2, 2018.
66. Only one of MAW's August 2018 resubmitted applications has been marked "Incomplete."
67. PPL and MAW have engaged in business-level discussions, and executive-level discussions.
68. PPL is currently engaged in litigation against MAW in state court.
69. PPL and MAW have discussed settlement terms in the Lehigh County lawsuit, but have not reached an agreement.
70. The letter from MAW's counsel dated January 28, 2019 letter requested executive level discussions.

71. The letter from PPL's counsel dated February 4, 2019 stated that "once MAW has restored the \$75,000 necessary to comply with the Lehigh County Court Order, PPL can discuss meeting with MAW."
 - a. In the February 4, 2019 letter, PPL identified MAW's restoration of the \$75,000 as a precondition to discuss another meeting with MAW.
72. PPL is currently not granting any of MAW's new attachment applications because to date, MAW has not restored the \$75,000 escrow fund as mandated by the Lehigh County Court Order.
73. Mr. Eron Lloyd is not an electrical engineer or Professional Engineer.
74. Grounding the streetlights is also a pre-requisite for PPL transferring the streetlights to the City.
75. The NESC defines "Service Drop" as "the overhead conductors between the electric supply or communication line and the building or structure being served."
76. The Pole Attachment Agreement defines a "Service Drop Attachment" as "a separate point of attachment on PPL's poles used to support one or more service cables that extend from Licensee's attachments on PPL's poles to a point of service on a customer's premises."
77. Some of MAW's attachments qualify as "Service Drop Attachments" under the Pole Attachment Agreement.
78. Section 6.4 of the Pole Attachment Agreement states: "With the exception of service drop attachments and lashing attachments to Licensee's own cable, no initial or additional attachment is allowed on a PPL pole without the prior submission of an attachment installation application and PPL's subsequent written authorization."
79. PPL produced an informal, unpublished policy defining "service drop attachments" to include low-tension attachments to PPL poles that do not exceed more than four poles, three spans in length.
 - a. A copy of this informal, unpublished policy is attached to PPL's Answer at Attachment D, Exhibit 18.
 - b. PPL did not inform MAW of this informal, unpublished four-pole policy until the summer of 2018.
80. MAW did not initially submit applications for what it defined as "service drops."
81. PPL has removed over 100 alleged unauthorized MAW attachments.
82. PPL informed MAW that an additional 50 such attachments would be removed.
83. MAW has made six requests to repair service outage issues since the original Stipulation was put in place in December 2017.
 - a. Two have been approved as requested. One was approved in part and denied in part. One was fully denied.
 - b. There are currently two requests from MAW under review which have been pending since January 2019.
 - c. On June 12, 2018, a rental truck accidentally removed some of MAW's lines in the City (in addition to another provider's cable lines), disconnecting service to two of MAW's customers. MAW promptly applied to PPL to replace those damaged lines and restore service to its customers. On June 14, PPL denied MAW's request to repair its severed service drop "because it originates from Unauthorized Attachments."

DISPUTED FACTS

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

LEGAL ISSUES

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

DISCOVERY ISSUES

MAW's discovery issues remaining are as follows: PPL has not followed MAW's instructions set forth in its interrogatories. MAW takes issue with the number of documents identified as they are not limited to exclude materials already exchanged or available to the public, as MAW requested, and thus appear to be intended to obfuscate documents that are relevant and material to this dispute. To date, PPL has produced over 1,000 pages of spreadsheets that represent thousands of documents. Moreover, PPL has not identified which documents or sets of documents are responsive to which interrogatory request, but has simply referred MAW to its list. Furthermore, MAW believes that certain of these documents identified by PPL that are material to this dispute and would aid in resolution; the Commission has the authority to allow document production on these relevant issues under 47 C.F.R. § 1.730(f).

PPL's discovery issues remaining are as follows: MAW has objected generally to PPL's First Set of Interrogatories to the extent the information they seek is irrelevant or available from another source, and states generally that MAW's response is "subject to a reasonable inquiry into the relevant facts within the time allowed for responding to interrogatories." MAW also makes specific objections to each of PPL's interrogatories for several other reasons, such as they are "overly broad," "vague and ambiguous," "not relevant to the material facts in dispute," and the information sought is "publicly available and readily ascertainable." All of MAW's responses to PPL's First Set of Interrogatories employ one or more of these objections. PPL will attempt to confer with MAW to address these objections in advance of the Initial Status Conference scheduled for April 26.

ADDITIONAL BRIEFING & CASE SCHEDULE

To the extent the FCC believes additional briefing on a particular issue or issues would be helpful to its understanding of the instant case under 47 C.F.R. § 1.732, the parties would be amenable to submitting additional briefing.

PPL filed a "Motion for Leave to Respond to New Allegations in Reply," to which MAW filed an Objection. PPL's Motion is still pending and the parties await the FCC's ruling.

PPL respectfully requests five minutes for each party at the outset of the Initial Status Conference for opening statements.

PPL respectfully requests the opportunity to take the depositions of MAW's witnesses Frank Wiczowski, Mindy Wiczowski, and Eron Lloyd, and of former MAW employee Joseph Staboleski.

MAW objects to PPL's request for depositions as PPL has already had an opportunity to directly examine Frank Wiczowski and Joseph Staboleski under oath in two days' worth of testimony before the Lehigh County Court. Consequently, MAW states that PPL's request for four additional depositions will impose unnecessary costs on MAW and is not proportional to the needs of this case.

STATE COURT PROCEEDING

MAW and PPL's state court dispute is in the Court of Common Pleas of Lehigh County, Pennsylvania, before Judge Edward D. Reibman (File No. 2017-C-3755). The next scheduled proceeding is a pretrial conference scheduled for August 19, 2019. The Court has ordered as follows:

1. Dec. 7, 2017 Order ruling on Plaintiff's Petition for a Preliminary Injunction
2. Dec. 22, 2017 Order adopting Dec. 19, 2017 Transcript as an Order of the Court
3. Jan. 30, 2018 Order ruling on Defendant's Preliminary Objections and Plaintiff's Response thereto
4. Mar. 15, 2018 Notice of Hearing
5. Apr. 13, 2018 Order ruling on Plaintiff's Motion to Vacate Stipulation and Order; Defendant's Response thereto; Plaintiff's Petition for Civil Contempt; Defendant's Response thereto; the City of Lancaster's Petition to Intervene; Plaintiff's Response thereto
6. Apr. 18, 2018 Order ruling on Plaintiff's Preliminary Objections to the Counterclaim asserted by Defendant
7. Apr. 25, 2018 Order for Transcription, Transcript Deposit and Transcript Copies
8. May 3, 2018 Order for Defendant to provide notice to all customers regarding potential disruption of internet service
9. July 3, 2018 Order for Balance Due for Transcript
10. Sept. 11, 2018 Discovery Order
11. Feb. 27, 2019 Order ruling on Defendant's Motion for Continuance
12. Mar. 15, 2019 Order ruling on Plaintiff's Motion for Extension of Time to Respond to Defendant's Motion to Dismiss or Stay Action
13. Mar. 28, 2019 Order granting Application for Continuance

Respectfully submitted,

PPL Electric Utilities Corporation

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