

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

ZITO CANTON, LLC,

Complainant,

v.

**PENNSYLVANIA POWER & LIGHT
COMPANY,**

Respondent.

**Proceeding No. 17-284
File No. EB-17-MD-005**

MOTION TO DISMISS POLE ATTACHMENT COMPLAINT

PPL Electric Utilities Corporation (“PPL”), by its attorneys and pursuant to Sections 1.41 and 1.1404(d) of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ respectfully moves to dismiss the pole attachment complaint filed October 12, 2017 by Zito Canton, LLC (“Zito”) in the above-captioned proceeding.

Section 1.1404(d) of the rules specifies that pole attachment complaints “shall be accompanied by a copy of the pole attachment agreement, if any, between the cable system

¹ 47 C.F.R. §§ 1.41, 1.1404(d).

operator or telecommunications carrier and the utility.”² Zito’s complaint does not contain a copy of that agreement.

The currently-effective agreement between PPL and Zito is dated January 14, 1991, between PPL’s predecessor Pennsylvania Power & Light Company and Zito’s predecessor Retel TV Cable Company, Inc.³ Retel TV Cable Co., Inc. requested that PPL approve the transfer of that agreement by letter dated March 30, 2009.⁴ PPL approved transfer of that agreement by letter dated May 20, 2009.⁵

Rather than attach the currently-effective agreement, Zito’s complaint attached a copy of a portion of an earlier agreement between Pennsylvania Power & Light Company and Zito’s predecessor Retel TV Cable Co., dated December 22, 1977.⁶

The currently-effective 1991 agreement has significant and different provisions that are relevant to this dispute. For example, the currently-effective agreement envisions that PPL will conduct a pre-attachment inspection of Zito’s attachment requests. The 1991 agreement defines the term “Pre-Attachment Inspection by Licensor,” and Section 4.7 of the Agreement requires PPL to perform that inspection: “Licensor shall make a pre-attachment inspection of each pole to which Licensee desires to make attachments as indicated on an application for permit. Such pre-attachment inspection shall not relieve Licensee of any responsibility, obligation or liability assumed by Licensee under this Agreement.”⁷

² 47 C.F.R. §§ 1.41, 1.1404(d).

³ See Declaration of Ryan Yanek, attached hereto at Exhibit A.

⁴ See Exhibit B, attached hereto, which is a letter from Terry W. Hughes, President of Retel TV Cable Co., Inc., to Paulette Knisely, Contracts and Billing Coordinator of PPL, dated March 30, 2009.

⁵ See Exhibit C, attached hereto, which is a letter from Paulette Knisely, Contracts and Billing Coordinator of PPL, to Colin Higgin, Vice President of Zito, dated May 20, 2009.

⁶ See Zito’s pole attachment complaint at Attachment B, Exhibit 1.

⁷ Ex. A, Declaration of Ryan Yanek.

The 1977 contract Zito attached is outdated, misleading and not the subject of this dispute. By not attaching the currently-effective agreement, Zito raises the question whether Zito understood its rights and obligations under the currently-effective agreement before filing its complaint.

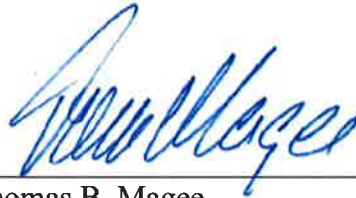
It also appears Zito does not have a complete copy of the outdated and superseded 1977 agreement. The version Zito attached to its complaint stops halfway through Article 14, and does not contain Exhibit I (schedule of Licensor poles with approved Licensee attachments); Exhibit II (application), Exhibit III (notice of attachment removal), or Exhibit IV (Licensor practices and specification).

PPL respectfully requests that the Commission require Zito to read the currently-effective agreement and analyze its rights and obligations under the currently-effective agreement before considering whether to re-file any pole attachment complaint against PPL. After analyzing the currently-effective agreement, if Zito believes it still has a dispute with PPL, PPL requests the Commission to require that Zito re-articulate that dispute with reference to the currently-effective agreement before re-filing its complaint.

If Zito does not have a copy of the currently-effective agreement, PPL proposes that Zito submit a request in writing to PPL, to which PPL will respond.

WHEREFORE, PPL moves for the dismissal of Zito's complaint.

Respectfully submitted,



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magee@khlaw.com
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Attorneys for PPL Electric Utilities Corporation

EXHIBIT A

Before the
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Declaration of Ryan J. Yanek

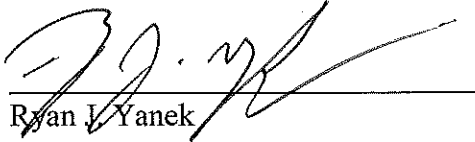
I, RYAN J. YANEK, declare as follows:

1. My name is Ryan J. Yanek. I am Project Manager ATBS at PPL Electric Utilities Corporation ("PPL"). I make this Declaration in support of PPL's Motion to Dismiss Pole Attachment Complaint. 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. The currently-effective agreement between PPL and Zito Canton, LLC is dated January 14, 1991, between PPL's predecessor Pennsylvania Power & Light Company and Zito Canton LLC's predecessor Retel TV Cable Company, Inc.
3. The currently-effective 1991 agreement has significant and different provisions that are relevant to the above captioned dispute. For example, the currently-effective agreement envisions that PPL will conduct a pre-attachment inspection of Zito Canton LLC's attachment requests.
4. The 1991 agreement defines the term "Pre-Attachment Inspection by Licensor." Section 4.7 of the 1991 Agreement requires PPL to perform that inspection. Section 4.7 states:

“Licensor shall make a pre-attachment inspection of each pole to which Licensee desires to make attachments as indicated on an application for permit. Such pre-attachment inspection shall not relieve Licensee of any responsibility, obligation or liability assumed by Licensee under this Agreement.”

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:


Ryan J. Yanek

Dated: November 2, 2017

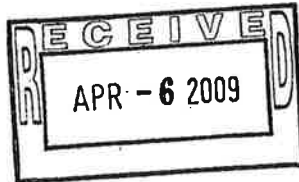
EXHIBIT B

**Retel TV Cable Co.
1842 Hayes Avenue
Williamsport, PA 17701**

March 30, 2009

Transfer of "License Agreement"

**Paulette Knisely
Contracts and Billing Coordinator
PPL
Two North Ninth Street GENN4
Allentown, PA 18108-1179**



Dear Paulette,

This letter provides written notice to PPL that Retel TV Cable Co, Inc. has entered into a purchase agreement with Zito Canton, LLC for the sale of the cable television assets of Retel TV Cable Co, Inc.

Retel TV Cable Co, Inc. request approval for the transfer of the pole attachment agreement to ZITO CANTON, LLC.

Retel TV Cable Co. and Zito Canton appreciate your immediate attention to this matter. Although the approval would be effective on the date of closing, we request the approval documentation on or before April 15, 2009 if possible.

With respect to our request, I provide the following contact information.

Terry W. Hughes
President
Retel TV Cable Co., Inc.
1842 Hayes Avenue
Williamsport, PA 17701
570-971-3812

Colin Higgin
Corporate Attorney for
Zito Canto, LLC
106 Steerbrook Road
Coudersport, PA 16915
814-260-9588

Again, thank you for your assistance, and please let me know if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hughes". The signature is fluid and cursive.

Terry W. Hughes
President

EXHIBIT C

Paulette Knisely
Attachment and Telecom Business Services

PPL Electric Utilities
Two North Ninth Street - GENN3
Allentown, PA 18101-1179
Tel. 610.774.7145 Fax 610.774.6875



May 20, 2009

Mr. Colin Higgin
Vice President
Zito Canton, LLC
106 Steerbrook Road
Coudersport, PA 16915

Dear Colin:

PPL Electric Utilities approves the transfer of the assignment of rights of Retel TV Cable Company, Inc's Pole Attachment License Agreement, dated January 14, 1991, to Zito Canton, LLC. Please provide a copy of an executed assignment when you have it.

Please contact me if you have any questions.

Yours truly,

A handwritten signature in cursive script that reads "Paulette Knisely".

Paulette Knisely
Attachment and Telecom Business Services

Copy to: Terry W. Hughes
President
Retel TV Cable Co., Inc.
1842 Hayes Avenue
Williamsport, PA 17701

Roxanne Y. Criswell
Milestone Communications, Inc.
513 Jordan Avenue
Montoursville, PA 17754

CERTIFICATE OF SERVICE

I, Kathleen Slattery, hereby certify that on this 2nd day of November, 2017, a true and authorized copy of this Motion to Dismiss Pole Attachment Complaint was served on the parties listed below via First Class U. S. Mail and via electronic mail, and was filed with the Commission via ECFS.

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ecfs@fcc.gov

Michael Engel
Federal Communications Commission
Enforcement Bureau
445 12th Street SW
Washington, DC 20554
Michael.Engel@fcc.gov

(By Electronic Mail Only)

Lisa Saks
Federal Communications Commission
Enforcement Bureau
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LeslieMoylan@dwt.com

Secretary's Bureau
Pennsylvania Public Utilities Commission
Commonwealth Keystone Building
400 North Street
Harrisburg , PA 17120

(By First Class U.S. Mail Only)

/s/
Kathleen M. Slattery