

ATTACHMENT A

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

ZITO CANTON, LLC,

Complainant,

v.

PPL ELECTRIC UTILITIES CORPORATION,

Respondent.

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

DECLARATION OF JAMES RIGAS

I, JAMES RIGAS, declare as follows:

1. I serve as Co-President of Zito Canton, LLC (“Zito”), with a general office address of 102 South Main Street, Coudersport, PA 16915. I make this Declaration in support of Zito’s Amended Pole Attachment Complaint 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 have served as Co-President for 11 years. In this role, I am responsible for managing all aspects of Zito’s business, including sales, marketing, operations, and business planning.

3. I have reviewed the allegations made in the Pole Attachment Complaint filed in this proceeding as well as the exhibit attached hereto and verify that they are true and correct to the best of my knowledge, information and belief.

4. Zito provides affordable cable television, telecommunications services and high speed broadband internet access using its robust fiber network in Pennsylvania.

5. Zito's and its affiliates' fiber-optic network supports the provision of mobile backhaul and other high-speed services to businesses, households, public safety agencies and other critical community organizations and institutions.

6. Zito and its affiliates provide a suite of data, video, and voice services, including advanced E911 service, through an integrated-IP network to 110 communities throughout 17 states.

7. The areas served by Zito and its affiliates generally are unserved or underserved rural communities, many of which are economically depressed..

8. To construct its network in Pennsylvania, Zito requires access to poles owned or controlled by PPL Electric Utilities Corporation ("PPL"). Prior to attaching facilities to PPL's poles, Zito submits a pole attachment application to PPL. The application specifies the nature of the attachments requested and the particular poles to which attachment is sought.

9. Unlike other Pennsylvania pole owners and counter to past practice, PPL engages third party contractors to perform all aspects of an extensive pre-attachment inspection process including a field survey in which the contractor independently collects information about each of the poles on Zito's applications.

10. PPL does not allow Zito to participate in the selection of the contractor or to provide input into the terms and conditions governing the scope or price of the contractor's work. PPL also uses third party contractors decide the scope of and to design any required make-ready work.

11. PPL requires Zito to reimburse it directly for the full cost of its contractors' pre-attachment survey and make-ready design, as well as to pay PPL for any make-ready costs up-front – i.e., when PPL provides its make-ready estimate – before any required make-ready work is begun. However, PPL's invoices do not provide sufficiently detailed information to enable Zito to assess the reasonableness of the survey charges and make-ready estimates.

12. The pre-attachment inspection and make-ready charges invoiced by PPL for its third-party contractors' services are significantly higher than charges imposed for similar work by other Pennsylvania pole-owning utilities and telecommunications providers.

13. In early 2016, Zito began questioning PPL about the pre-attachment inspection process and related charges, as well as the proposed make-ready work solutions proposed by Zito's third party contractors. Specifically, Zito challenged PPL's pre-attachment survey and engineering work as going beyond what was necessary to determine whether and where Zito's attachments were feasible, and as unreasonably high, particularly in comparison to other pole owners. Zito also challenged PPL's refusal to process any of Zito's pole attachment applications until all disputed survey charges were paid. In addition, on numerous occasions, Zito requested additional details to enable us to assess the reasonableness of the high pre-attachment inspection and proposed make-ready work and charges.

14. PPL's requirement that Zito pay unsubstantiated, disputed invoices in full as a condition of processing Zito's applications (including unrelated applications) diverts critical capital which would otherwise be available to Zito for additional network deployment.

15. Zito has, on multiple occasions, attempted to resolve the disputed issues described above with PPL. From June to August, 2016, Zito participated in FCC staff-supervised mediation in an effort to resolve the parties' disputes. The mediation did not resolve the parties'

dispute concerning PPL's unjust and unreasonable pre-attachment inspection process, its lack of essential cost detail related to its pre-inspection process and make-ready proposals, or its refusal to process applications until all disputed charges are paid.

16. On October 5, 2017,¹ I sent a certified letter to Ryan Yanek, PPL Project Manager, in which I summarized Zito's unresolved concerns regarding PPL's unjust and unreasonable pre-construction and make-ready practices and invoice charges that form the basis of the Pole Attachment Complaint in the above-captioned case. *See Exhibit 1.* The letter also detailed all of Zito's previous attempts to resolve the parties' dispute through numerous executive-level discussions and the FCC staff-supervised mediation in 2016. To date, the parties' dispute remains unresolved.

¹ The letter was misdated October 5, 2016. Exhibit 1 includes the certified mail receipt and email enclosing a courtesy copy of the letter, which indicate that the letter was sent on October 5, 2017.

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: 
James Rigas

Dated: November 13, 2017

EXHIBIT 1

Zito Canton, LLC
102 South Main Street
Coudersport, PA 16915

October 5, 2016

Ryan J. Yanek
Project Manager
Distribution Asset Management
PPL Electric Utilities
2 N. 9th Street
GENN 3
Allentown, PA 18101

Dear Ryan:

As you know, Zito Canton, LLC (“Zito”) and Pennsylvania Power & Light Company (“PPL”) have engaged in numerous discussions, including mediation supervised by the Federal Communications Commission (“FCC”), in an attempt to resolve their dispute concerning the excessive third-party contractor and make-ready costs PPL has imposed in the pole attachment process that have inhibited Zito’s deployment of broadband infrastructure.

In an attempt to resolve the parties’ dispute, Zito has on numerous occasions engaged in executive-levels discussions with PPL. Zito has made several good faith offers to settle the dispute between the parties. Furthermore, Zito even attempted to settle the disputed issues with PPL by engaging in a mediation supervised by the FCC in 2016. While Zito and PPL reached a resolution of sorts on certain applications, memorialized by an August 2, 2016 email, as PPL is well aware, several issues remain unresolved.

Specifically, PPL continues to require Zito to utilize a third-party contractors to perform pre-construction surveys that cost approximately \$180 per pole on average,¹ which exceeds the average amount charged by other Pennsylvania

¹ In fact, the pre-construction survey costs have continued to rise. The most recent invoice received by Zito has an average per pole cost of \$285.

electric utilities for –pre-attachment survey work by more than 400%,and is many more times the amount charged by Pennsylvania telecommunications providers. This issue is compounded by the fact that the pole attachment agreement entered into between Zito and PPL specifically provides for Zito – not a third-party contractor – to conduct the pre-construction inspection. It has been Zito’s experience that PPL’s third-party contractors employ inefficient pre-construction survey processes such as: refusing to agree to a “joint ride-out” with all entities attached to the pole, collecting photographs and information being used to populate PPL’s interactive mapping system, and performing a full loading analysis on every pole, all while requiring Zito to directly reimburse PPL for the unlimited and unpredictable costs of these activities. Moreover, Zito has no input into the selection of, or costs charged by, PPL’s chosen third-party contractors. Given the *extensive* benefits of the pre-construction survey processes to PPL, and some benefit to other entities attached to the pole, the cost of such work should be recovered by PPL from Zito, if at all, through pole attachment rent, which more equitably proportionally distributes pole maintenance and administrative costs.

PPL also continues to require Zito to pay all make-ready cost invoices upfront, yet PPL’s make-ready estimates far exceed those of comparable utilities on a per-pole basis. Zito is also seriously concerned that PPL’s contractors may be recommending pole replacements where other less costly yet safe solutions may be available and also where pre-existing non-compliant conditions exist and thus such work would be required regardless of whether Zito attaches to the pole. Such issues could be remedied by permitting Zito to participate in a “joint ride-out” and provide its own input into construction necessary to allow Zito to attach to a pole. The lack of a “joint ride-out” also delays deployment decisions that could be made on the basis of a field survey without the need to undertake additional extensive costly analysis (i.e., a “joint ride-out” would allow Zito to quickly determine that a pole needs to be replaced without the need to take pictures, measurements, loading analysis, etc., and Zito would know sooner to reroute its network away from that pole).

Furthermore, the make-ready estimates provided by the third-party contractor to Zito lack the detail necessary to assess whether such make-ready charges are reasonable. The make-ready estimates that Zito has received include only a general description of the work required on each pole without breaking down the costs per task.² Even though Zito is provided with inadequate make-ready estimates, PPL unlawfully requires full payment from Zito or it will cease

² These types of activities are not only unacceptable, they are against FCC precedent, and are also the subject of the FCC’s ongoing broadband infrastructure deployment proceeding.

processing applications, even unrelated applications – something the FCC has found to be in direct violation of its rules and the Communications Act.

It is unjust and unreasonable for PPL to exclude Zito from the pre-attachment survey process, charge Zito for the entire process, and then seek to impose charges for make-ready work that may be unnecessary, excessive and/or unreasonably costly. PPL has created a prolonged, unpredictable, and costly pole attachment process. Even more concerning is that Zito has continually voiced concern over these problems, yet PPL has failed to remedy the issues, and in many cases the issues have grown more severe. Given Zito's efforts to remedy the issues addressed in this letter, both through FCC-supervised mediation and executive-level discussions, it has become clear that continued discussions would be of little benefit to PPL or Zito. Consequently, Zito is left with no recourse other than to file a formal complaint with the FCC.

Accordingly, absent specific written communications to Zito and PPL's contractor that PPL will change its pre-construction and make-ready practices, Zito understands that the attempts to remedy the disputes between the parties have been unsuccessful. Zito will move forward and initiate a formal complaint proceeding to protect its rights before the FCC.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Rigas", is positioned above the printed name.

James Rigas

Co-President

Colin Higgin

From: Colin Higgin <colin.higgin@zitomedia.com>
Sent: Thursday, October 05, 2017 5:31 PM
To: 'Yanek, Ryan J'
Cc: 'Silverio, Jose E'; 'Shafer, Michael J'
Subject: RE: Zito Canton, LLC Letter to PPL Electric Utilities
Attachments: ppl10517letter.pdf

Ryan

Attached is the letter we are sending to PPL by certified mail today.

Thanks

Colin Higgin

Vice President and General Counsel

Zito Canton, LLC

814-260-9588

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

ALL INFORMATION IS OFFICIAL USE

Certified Mail Fee	\$3.35
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.19
Total Postage and Fees	\$4.54
Sent To	
Street and Apt. No., or PO Box No.	Ryan Yards
City, State, ZIP+4®	18101

