PUBLIC VERSION

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON VIRGINIA LLC and VERIZON SOUTH INC., Complainants, v. VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER, Respondent.	))))))))))))))	Docket No. File No.

POLE ATTACHMENT COMPLAINT

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VERIZON SOUTH INC.

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Virginia Electric and Power Company ("Dominion") charges Verizon Virginia and Verizon South (collectively, "Verizon") a rental rate that is [redacted] than the new telecom rate applicable to Verizon's competitors. It does so pursuant to two essentially identical Joint Use Agreements (collectively, the "Joint Use Agreement") that took effect in 2011 and include terms and conditions that are, at best, comparable to those in Dominion's license agreements and are in many ways disadvantageous relative to them. The Joint Use Agreement, like Dominion's license agreements, requires Verizon to pay for the costs [redacted] But the Joint Use Agreement also requires Verizon to [redacted] in order to access Dominion's poles. These unique costs ensure that Verizon is, at best, a party to a pole attachment agreement with "terms and conditions that leave it 'comparably situated' to competitive LEC or cable attachers."[1] As a result, "'competitive neutrality counsels in favor of affording incumbent LECs the ***same rate*** as the comparable provider,' *i.e.*, the New Telecom Rate or the Cable Rate."[2] Verizon instead pays a rental rate that is [redacted][3]

The ramifications of this competitive disparity are extraordinary. Since the effective date of the *Pole Attachment Order*, Verizon has paid up to [redacted] more in gross rent each year than it would have paid at the Commission's new telecom rate.[4] And its overpayments did not begin with the *Pole Attachment Order*. For decades, it has paid far more than its competitors for comparable pole attachment terms and conditions.

The Commission's 2011 *Order*—and the Enforcement Bureau's 2015 decision applying the *Order* in the *Verizon Florida* proceeding—make clear that this competitive disparity must end, as it both distorts competition and discourages broadband deployment. But Dominion has stonewalled and rebuffed Verizon's efforts to negotiate a just and reasonable rental rate for nearly twenty-two months. Since October 2013, Verizon has done everything possible to negotiate the just and reasonable rate from Dominion to which it is entitled under the 2011 *Order*, through exhaustive emails, letters, and conference calls, face-to-face meetings with

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[1] *Verizon Florida LLC v. Florida Power and Light Company*, Memorandum Opinion and Order, 30 FCC Rcd 1140, 1142 (¶ 7) (EB 2015) ("*Verizon Florida*") (quoting *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5336 (¶ 217) (2011), *aff'd Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013) ("*Pole Attachment Order*" or "*Order*")).

[2] *Id.* (emphasis added).

[3] Ex. A ¶ 25 (Affidavit of Mark S. Calnon, Ph.D. (July 31, 2015) ("Calnon Aff.")).

[4] *Id.* ¶ 26.

Dominion executives, and most recently even in a private mediation attended by more than a half dozen Dominion executives and lawyers. All to no avail: for a full year of negotiations, Dominion did not even offer Verizon a different rental rate; when it finally did, Dominion proposed a rate ***increase***.

Dominion has based much of its intransigence on a claim that Verizon enjoys "cost savings, *as compared to its CLEC competitors*, through beneficial provisions of the Joint Use Agreement[]."[5] There are no such "cost savings," however, that justify charging Verizon competitively higher rental rates, let alone rental rates that are [redacted] per pole higher than the Commission's new telecom rate. A review of the benefits asserted by Dominion[6] and those that the Enforcement Bureau asked the parties to analyze in the *Verizon Florida* proceeding[7] shows that Verizon is, at most, advantaged over its competitors by [redacted][8] This trivial amount is far surpassed by the costs that Verizon—but not its competitors—bears in order to access Dominion's poles, which must also be accounted for in setting a just and reasonable rate.[9]

The Commission should promptly reject Dominion's effort to preserve its excessive and increasing rates, find that the rates that Dominion has charged Verizon are unjust and unreasonable, and set Verizon's rate for the comparable (or less advantageous) terms and

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[5] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)) (emphasis in original).

[6] *Id.*

[7] *Verizon Florida*, 30 FCC Rcd at 1148, 1149-50 (¶¶ 21, 24).

[8] Ex. A ¶ 69 (Calnon Aff.).

[9] *Verizon Florida*, 30 FCC Rcd at 1143 (¶ 8).

conditions in the Joint Use Agreement at the new telecom rate that applies to Verizon's competitors. The Commission should also order Dominion to refund the amounts that Verizon has overpaid. Since the *Pole Attachment Order*'s July 12, 2011 effective date, Verizon has paid nearly [redacted] more than it would have paid at the new telecom rate—with over [redacted] associated with the 2014 rental year alone, when Verizon futilely sought a just and reasonable rate.[10] By returning these excess payments to Verizon, and setting Verizon's just and reasonable rate at the new telecom level, the Commission will provide valuable guidance to the industry that all broadband providers, including incumbent telephone companies, are entitled to a just, reasonable, and comparable rate under 47 U.S.C. § 224(b) for their pole attachments, and that refusing to recognize that right during negotiations is not a strategy that will be countenanced by the Commission.[11]

I. JURISDICTION AND PARTIES

1. The Commission has jurisdiction over this pole attachment dispute under the Communications Act of 1934, as amended, including, but not limited to, Section 224 thereof.[12]

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[10] Ex. A ¶ 26 (Calnon Aff.).

[11] Verizon has not had an opportunity to take discovery regarding this Complaint, but the best data available to Verizon make it abundantly clear that Dominion's demanded rates are unjust and unreasonable as any alleged "advantages" that Verizon has been afforded under the Joint Use Agreement have been de minimis. Should Dominion respond to this Complaint with unsupported allegations or monetary claims, however, Verizon reserves the right to seek discovery consistent with the Bureau's Orders in other Pole Attachment Complaint proceedings. *See* Procedural Schedule, *Verizon Florida LLC v. Florida Power and Light Company*, Docket No. 15-73 (Apr. 16, 2015); Letter to Counsel, *Frontier Commc'ns of the Carolinas LLC v. Duke Energy Progress, Inc.*, 2015 WL 629032 (EB Feb. 12, 2015); Letter to Counsel, *Frontier Commc'ns of the Carolinas LLC v. Duke Energy Carolinas, LLC*, 2015 WL 629033 (EB Feb. 12, 2015); Letter to Counsel, *Commonwealth Tel. Co. LLC v. Metro. Edison Co.*, 2015 WL 629034 (EB Feb. 12, 2015).

[12] *See Pole Attachment Order*, 26 FCC Rcd at 5327-28 (¶¶ 202-03).

Verizon brings this Complaint pursuant to Section 224 and Sections 1.1401-1.1424 of the Commission's Rules.[13]

2. Verizon Virginia is a Virginia limited liability company and Verizon South is a Virginia corporation. Each has its principal place of business at 22001 Loudoun County Parkway, Ashburn, Virginia 20147. Each is an incumbent local exchange carrier ("ILEC") that provides telecommunications and other services in areas of Virginia.[14]

3. Dominion is a Virginia corporation with a principal place of business at 120 Tredegar Street, Richmond, Virginia 23219. Dominion is an electric utility that owns and controls facilities used to distribute electricity and serves approximately 2.5 million customers in Virginia and North Carolina. Dominion is a wholly owned subsidiary of Dominion Resources, Inc., which is one of the nation's largest producers and transporters of energy, serving over five million utility and retail energy customers in ten states.[15] Dominion is a "utility" within the meaning of Section 224(a)(1) of the Pole Attachment Act. Dominion is not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

4. The Commonwealth of Virginia, including its political subdivisions, agencies and instrumentalities, has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments in the manner established by Section 224, which would preempt the jurisdiction of the Commission over pole attachments in Virginia.[16]

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[13] *See* 47 U.S.C. § 224; 47 C.F.R. §§ 1.1401-1.1424.

[14] Ex. B ¶ 3 (Affidavit of Stephen C. Mills (Aug. 3, 2015) ("Mills Aff.")).

[15] *See* 2014 Form 10-K at 8, *available at* http://investors.dom.com (last visited July 31, 2015).

[16] *See Pole Attachment Order*, 26 FCC Rcd at 5371 (App. C).

5. Dominion and Verizon are parties to two essentially identical joint use agreements that took effect on January 1, 2011 (collectively, the "Joint Use Agreement").[17] Verizon "genuinely lacks the ability to terminate" the rental rate provision in the Joint Use Agreement[18] because [redacted][19] Verizon also genuinely lacks the ability to renegotiate the rental rate provision to reflect a just and reasonable rate. For nearly twenty-two months, Verizon has sought rental rate relief from Dominion.[20] Because Dominion has refused to agree to a just and reasonable rate, the unjust and unreasonable Joint Use Agreement rates—which are roughly [redacted] the rates applicable to Verizon's competitors—remain in place.[21]

6. Dominion owns or controls large numbers of poles used or designated, in whole or in part, for wire communication. Verizon has attachments on approximately [redacted] distribution poles that Dominion owns or controls. Dominion has attachments on approximately [redacted]

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[17] Exs. 1 (General Joint-Use Agreement Between Verizon Virginia and Dominion (Jan. 1, 2011)); 2 (General Joint-Use Agreement Between Verizon South and Dominion (Jan. 1, 2011)).

[18] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216).

[19] [redacted]

[20] *See* Section II.A.3, *infra*.

[21] [redacted]

poles owned by Verizon. Dominion, therefore, owns or controls 65 percent of the utility poles that the parties currently share.[22]

7. Verizon has, in good faith, engaged in executive-level discussions with Dominion in an attempt to resolve this pole attachment dispute. In March 2014, Verizon outlined for Dominion the allegations that form the basis of this Complaint, invited a response within a reasonable period of time, and offered to hold executive-level discussions regarding the dispute.[23] Dominion accepted Verizon's invitation.[24] The parties' executives met in July 2014, but were unable to resolve the dispute.[25] Verizon then requested mediation [redacted][26] The mediation took place in Richmond, Virginia on March 26, 2015.[27] Subsequent discussions over the months that followed did not resolve the dispute, so the mediation was closed on May 29, 2015.[28]

II. FACTS AND ARGUMENT

8. The Commission's intervention is needed to enforce Verizon's right to a just and reasonable rate, which, in this case, is the rate properly calculated under the Commission's new telecom formula. The evidence shows that (A) the rates in the Joint Use Agreement resulted from Dominion's superior bargaining power and the insufficiency of "market forces and

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[22] *See* Exs. 11 at 11 (Verizon Virginia ("VzV") Invoices), 12 at 11 (Verizon South ("VzS") Invoices).

[23] Ex. 18 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Mar. 25, 2014)).

[24] Ex. 19 (Letter from A. Hahn, Dominion to S. Mills, Verizon (Apr. 28, 2014)).

[25] Ex. B ¶ 32 (Mills Aff.).

[26] Ex. 22 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Nov. 14, 2014)); [redacted]

[27] Ex. B ¶ 38 (Mills Aff.).

[28] *Id.*; Ex. 23 (Email from J. Douglass to C. Huther and B. Freedson (June 2, 2015)).

independent negotiations . . . to ensure just and reasonable rates, terms and conditions for incumbent LECs pole attachments,"[29] (B) Verizon is comparably situated to its competitors, so it should also receive a properly calculated new telecom rate, (C) Verizon does not receive any unique benefits under the Joint Use Agreement as compared to its competitors that justify a higher rental rate, (D) Verizon did not receive any unique benefits under its prior agreements with Dominion that could justify higher rental rates going forward, and (E) the competitive disparity should finally be eliminated by setting Verizon's rate at the competitively neutral new telecom rate and refunding to Verizon its substantial overpayments.

A. Verizon Is Entitled To Just And Reasonable Pole Attachment Rates.

9. Incumbent telephone companies, including Verizon, are "entitled to pole attachment rates, terms and conditions that are just and reasonable pursuant to section 224(b)(1)" for all attachments as of the July 12, 2011 effective date of the *Pole Attachment Order*.[30] Dominion has denied Verizon a just and reasonable rate, instead collecting up to [redacted] more each year from Verizon than Dominion may lawfully collect from Verizon's competitors.[31] The evidence shows that this extraordinary annual premium is _not_ warranted, is the direct result of Dominion's superior bargaining power, and will continue absent the Commission's intervention.

1. The Rates Dominion Has Billed And Continues To Demand From Verizon Far Exceed The Rates Charged Verizon's Competitors.

10. Since the effective date of the *Pole Attachment Order*, Dominion has invoiced, and Verizon has paid, annual per pole attachment rates that are [redacted]

[29] *Pole Attachment Order*, 26 FCC Rcd at 5327 (¶ 199).

[30] *Id. at* 5331 (¶ 209); *see also Verizon Florida*, 30 FCC Rcd at 1145-47, 1150-51 (¶¶ 17-19, 26).

[31] *See* Ex. A ¶ 26 (Calnon Aff.).

[redacted] than the new telecom rates that Dominion was authorized to charge Verizon's competitors. Verizon has paid per pole rates of [redacted] for the 2011, 2012, 2013, and 2014 rental years, respectively (the "Joint Use Agreement rates").[32] The properly calculated new telecom rates for the same years are $5.87, $7.15, $7.05, and $6.85 per pole, respectively.[33]

11. A comparison of the pole cost allocations reflected in the Joint Use Agreement and in the Commission's new telecom formula illustrate the unreasonableness of the Joint Use Agreement rates. The Joint Use Agreement assigns Verizon about [redacted] of Dominion's pole costs[34]—while the new telecom formula assigns Verizon's competitors about 7.4% of Dominion's pole costs.[35]

12. The Joint Use Agreement rates also far exceed the rates that result from the Commission's pre-existing telecom formula. For the 2011 through 2014 rental years, the Joint Use Agreement rates have been [redacted] higher than the pre-existing telecom rates. The properly calculated pre-existing telecom rates for the 2011, 2012, 2013, and 2014 rental years are $8.89, $10.83, $10.68, and $10.38,

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[32] Exs. 11 (VzV Invoices), 12 (VzS Invoices).

[33] Ex. A ¶¶ 6, 16 (Calnon Aff.). Dominion may have overcharged Verizon's competitors in 2014 by using 2.6 attaching entities in its calculation without supporting data (instead of the 5 attaching entities reflected in the Commission's presumption) and by using an inflated rate of return. Exs. 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)), A ¶¶ 18-21, 23-24 (Calnon Aff.); *infra*, Section II.E.1.

[34] [redacted]

[35] *See Pole Attachment Order*, 26 FCC Rcd at 5305 (¶ 150 n.453); *see also* Exs. A ¶ 27 (Calnon Aff.), D ¶¶ 7, 19 (Affidavit of Timothy J. Tardiff, Ph.D. (Aug. 3, 2015) ("Tardiff Aff.")).

respectively.[36] The pre-existing telecom formula recovers "approximately 11.2% of the relevant 'cost' of a pole in urbanized service areas" like the overlapping service areas at issue here.[37] Dominion has instead charged Verizon rental rates that cover about [redacted] of its pole costs.[38]

13. The Joint Use Agreement rates are paired with [redacted] rental rates for Dominion's use of Verizon's poles even though Dominion uses far more space on a joint use pole. Dominion is allocated [redacted] of space on a joint use pole,[39] which does not include the 40 inches of safety space (3.33 feet) that should be allocated to Dominion in setting rates.[40] Verizon is allocated [redacted] of space under the Joint Use Agreement[41]—and uses less.[42] Dominion, however, pays rental rates that are [redacted] than the rates that Verizon is charged. For 91% of the shared poles belonging to Verizon, Dominion's per pole rates for the 2011 through 2014 period were [redacted]

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[36] Ex. A ¶¶ 7, 16 (Calnon Aff.).

[37] *Pole Attachment Order*, 26 FCC Rcd at 5305 (¶ 150 n.453); *see also* Exs. A ¶ 28 (Calnon Aff.), D ¶ 7 (Tardiff Aff.).

[38] *Id.*

[39] [redacted]

[40] *See In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12130 (¶ 51) (2001) ("the 40-inch safety space . . . is usable and used by the electric utility"); *see also In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, 6467-68 (¶¶ 21-22) (2000).

[41] [redacted]

[42] *See* Ex. B ¶ 19 (Mills Aff.).

respectively.[43] For the remaining 9%, Dominion's per pole rates were [redacted][44]

14. The Joint Use Agreement rates also dwarf the rates that Verizon charges its competitors to attach to its own poles.[45] For the 2011 through 2014 rental years, Verizon's rates for cable companies ranged from [redacted] and its rates for competitive telephone companies ranged from [redacted][46]

2. The Joint Use Agreement Rates Are The Result Of Dominion's Superior Bargaining Power.

15. "[I]n evaluating incumbent LEC pole attachment complaints, the Commission will consider the incumbent LEC's evidence that it is in an inferior bargaining position to the utility against which it has filed the complaint."[47] Here, Verizon has had inferior bargaining power during all pertinent time periods.[48]

16. Dominion has owned 65 percent of the joint use poles at all relevant time periods—in 2006 when negotiations for the Joint Use Agreement began, in January 2011 when the Joint Use Agreement took effect, and when Dominion sent its invoice for 2014 rent.[49]

17. This pole ownership disparity—which is significantly in Dominion's favor—matches the disparity noted in the *Pole Attachment Order*, when the Commission found that

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[43] Ex. 11 (VzV Invoices).

[44] Ex. 12 (VzS Invoices).

[45] *See Verizon Florida*, 30 FCC Rcd at 1150 (¶ 25 n.84) (requesting "evidence as to the rate Verizon charges cable companies and competitive LECs to attach to its poles").

[46] Ex. B ¶ 9 (Mills Aff.).

[47] *Pole Attachment Order*, 26 FCC Rcd at 5334 (¶ 215).

[48] *See* Ex. A ¶¶ 36-48 (Calnon Aff.).

[49] Exs. B ¶ 13 (Mills Aff.), 11 (VzV Invoices), 12 (VzS Invoices).

incumbent telephone companies "may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations" because "electric utilities appear to own approximately 65-70 percent of poles."[50]

18. Verizon tried to improve its bargaining position and reduce its pole rental expense during the negotiations for the Joint Use Agreement by offering to purchase poles from Dominion. Dominion rejected Verizon's offer, claiming that it does not sell its assets.[51]

19. Dominion thus retained and exercised its superior bargaining power during the negotiations that resulted in the Joint Use Agreement rates.[52] The negotiations themselves took over four years, as Dominion resisted Verizon's efforts to reduce its rental rate obligations.[53] In the end, Dominion agreed to enter a Joint Use Agreement that contains terms and conditions comparable to those in its license agreements—but far higher rates.[54]

20. The Joint Use Agreement rates provided the appearance of rate relief for Verizon—but they did not provide actual financial relief.[55] During negotiations, Dominion agreed to reduce Verizon's rental rate *only* if its own rate was lowered far more.[56] Because Verizon pays the net amount due to Dominion each year (Verizon's rentals less Dominion's rentals), Verizon's net payment obligation was essentially unchanged by the Joint Use

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[50] *Pole Attachment Order*, 26 FCC Rcd at 5329 (¶ 206).

[51] Ex. B ¶ 17 (Mills Aff.).

[52] Ex. A ¶¶ 36-48 (Calnon Aff.).

[53] Ex. B ¶ 18 (Mills Aff.).

[54] *Id.* ¶¶ 18-22; *infra*, Section II.B-C.

[55] Ex. A ¶ 45 (Calnon Aff.).

[56] [redacted]

Agreement. Between 2010 (the year before the Joint Use Agreement took effect) and 2014, Verizon's net rental rate [redacted][57]

3. Dominion Refused To Agree To A Just And Reasonable Rate In Negotiations.

21. On October 8, 2013—the day after the Supreme Court denied further review of the *Pole Attachment Order*—Verizon asked Dominion to begin formal negotiations for a just and reasonable, competitively neutral rental rate.[58] Verizon requested a copy of Dominion's standard license agreement, and information about any deviations from the standard license terms among Dominion's licensees, so Verizon could determine whether it attaches to Dominion's poles on terms and conditions that are materially comparable to its competitors.[59]

22. Dominion provided a copy of its draft "Facilities License Agreement for Non-Wireless Overhead Attachments" and informed Verizon that its 2014 telecom rate was [redacted] and its 2014 cable rate was [redacted][60] Dominion did not explain the $5 disparity between the two rates or provide information about the terms and conditions in its executed license agreements.[61]

23. Verizon reviewed the draft license agreement along with a copy of the license agreement that Dominion entered with Verizon's affiliate, MCI Network Services of Virginia,

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[57] *Id.* ¶ 47.

[58] Ex. 13 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Oct. 8, 2013)); *see also Am. Elec. Power Serv. Corp. v. FCC*, 134 S. Ct. 118 (Oct. 7, 2013) (denying petition for certiorari).

[59] Ex. 13 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Oct. 8, 2013)).

[60] *See* Ex. 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)) (attaching Facilities License Agreement for Non-Wireless Overhead Attachments Between _____ and Virginia and Electric Power Company ("Draft License")).

[61] Ex. B ¶ 24 (Mills Aff.).

Inc.[62] Each confirmed that Verizon attaches to Dominion's poles on terms and conditions that are materially comparable to its competitors, but at far higher rates.[63]

24. As a result, in December 2013, Verizon renewed its request to renegotiate its rate.[64] Verizon informed Dominion of its conclusion that the terms and conditions of the Joint Use Agreement are comparable to those in Dominion's license agreements, such that it should receive the same rental rate.[65] It further noted that, at most, Verizon should be charged the pre-existing telecom rate, which serves as a reference point in cases where an incumbent telephone company is not comparably situated.[66] As a compromise, Verizon offered a rental rate between the cable rate that Dominion provided [redacted] and the rate that Verizon then assumed was Dominion's pre-existing telecom rate [redacted] since it was so much higher than the cable rate.[67]

25. Dominion denied that there was any reason to reduce the Joint Use Agreement rates, and made negotiations contingent on Verizon's demonstration that the Joint Use Agreement does "not provide material advantages to Verizon, relative to its cable or CLEC

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[62] *See* Ex. 3 (Facilities License Agreement for Non-Wireless Overhead Attachments Between MCI Network Services of Virginia, Inc. and Dominion (Dec. 1, 2008) ("MCI License")).

[63] Ex. B ¶ 26 (Mills Aff.).

[64] Ex. 14 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Dec. 6, 2013)).

[65] *Id.*

[66] *Id.*

[67] *Id.* In the *Pole Attachment Order*, the Commission added cost allocators to the pre-existing telecom formula in order to produce a lower new telecom rate that will, "in general, approximate the cable rate." 26 FCC Rcd at 5304-05 (¶ 149). Verizon has since learned that Dominion incorrectly applied the new telecom formula to produce a [redacted] rate that is 70% higher than its cited [redacted] cable rate. *See* Exs. A ¶ 24 (Calnon Aff.), D ¶ 21(Tardiff Aff.); *infra*, Section II.E.1.

competitors."[68] Dominion had not, however, provided Verizon access to any of its executed license agreements or information about how they varied from the terms in its draft license agreement. Verizon thus provided an analysis of the comparable treatment of pole placements, pole replacements, and cable rearrangements in the Joint Use Agreement and draft license agreement, which by definition includes the best-case-scenario terms for Dominion.[69]

26. Dominion again refused to negotiate a rate reduction, claiming that "Verizon realizes substantial cost savings, *as compared to its CLEC competitors*, through beneficial provisions of the Joint Use Agreement[]."[70] It listed as purported advantages [redacted][71] Dominion still did not provide any executed license agreements to show that these alleged advantages are, in fact, provided to its licensees.[72] Verizon nonetheless refuted Dominion's claim that these are "advantages" and requested in-person executive-level discussions to try to move the negotiations forward.[73]

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[68] Ex. 15 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Dec. 16, 2013)).

[69] Exs. B ¶ 25 (Mills Aff.), 16 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Jan. 22, 2014)).

[70] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)) (emphasis in original).

[71] *Id.*

[72] Ex. B ¶ 24 (Mills Aff.).

[73] Ex. 18 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Mar. 25, 2014)).

27. The parties' executives met in Richmond, Virginia on July 8, 2014.[74] Throughout the meeting, Verizon detailed its comparability analysis and explained that the Joint Use Agreement provides no material advantage that justifies significantly higher rental rates.[75] Dominion continued to assert that the Joint Use Agreement rates are just and reasonable, but agreed to provide Verizon cost information and other data pertinent to its FCC rate calculations.[76]

28. Dominion's cost information disclosed significant problems with its FCC rate calculations.[77] Properly applied, the Commission's formulas produce a 2014 cable rate of $6.86 and new telecom rate of $6.85.[78] These rates—unlike Dominion's—"reduc[e] the disparity between current telecommunications and cable rates" as the Commission intended.[79]

29. On October 21, 2014—over one year into negotiations—Dominion made its first offer to Verizon.[80] The offer would have amended the rate formula in the Joint Use Agreement to *increase* Verizon's rental rate above the [redacted] invoiced rate.[81]

30. With Dominion's refusal to agree to any reduction from the Joint Use Agreement rates so apparent, Verizon [redacted]

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[74] Ex. B ¶ 32 (Mills Aff.).

[75] *Id.* ¶ 32.

[76] Exs. B ¶ 32 (Mills Aff.), 20 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[77] Exs. A ¶¶ 17-24 (Calnon Aff.), D ¶¶ 4-22 (Tardiff Aff.); *see also infra*, Section II.E.1.

[78] Ex. A ¶ 24 (Calnon Aff.).

[79] *Pole Attachment Order*, 26 FCC Rcd at 5244 (¶ 8).

[80] Exs. 21 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 21, 2014)), B ¶ 36 (Mills Aff.).

[81] Ex. B ¶ 36 (Mills Aff.).

[redacted] in an effort to avoid the need for this Pole Attachment Complaint proceeding.[82] The mediation took place on March 26, 2015 in Richmond, Virginia.[83] Subsequent discussions aided by the mediator failed to resolve the dispute, which was officially closed on May 29, 2015.[84]

31. Twenty months of negotiations have thus made clear that, absent a decision from the Commission, Dominion will continue to charge Verizon the Joint Use Agreement rates, which are [redacted] per pole higher than the rates that Dominion may charge Verizon's competitors. Verizon "genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement."[85]

B. Verizon Is Comparably Situated To Its Competitors That Occupy Space On Dominion's Poles And Should Receive The Same Rental Rate.

32. Verizon does not receive any benefits under the Joint Use Agreement that justify its payment of a rate higher than the new telecom rate that applies to its competitors, let alone its payment of rates [redacted] higher per pole. For new agreements, the *Pole Attachment Order* establishes a principle of "competitive neutrality [that] counsels in favor of affording incumbent LECs the same rate as the comparable provider (whether the telecommunications carrier or the cable operator)" if the incumbent telephone company is "attaching to other utilities' poles on terms and conditions that are comparable to

[82] Ex. 22 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Nov. 14, 2014)); [redacted]

[83] Ex. B ¶ 38 (Mills Aff.).

[84] Ex. 23 (Email from J. Douglass to C. Huther and B. Freedson (June 2, 2015)). The substance of the mediation is covered by the terms of a Confidentiality Agreement.

[85] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216).

those that apply to a telecommunications carrier or a cable operator."[86] For existing agreements, the same principle of competitive neutrality applies, but accounts for the past "monetary value" of any "benefits under the Agreement that were not available to other attachers."[87]

33. The Joint Use Agreement at issue here took effect on January 1, 2011—about six months before the effective date of the *Pole Attachment Order*.[88] At best, it sets Verizon on par with its competitors on all relevant terms other than rates. In reality, it leaves Verizon at a competitive disadvantage.

34. Like Dominion's license agreements, the Joint Use Agreement follows a so-called [redacted] For example, Verizon—like its competitors—must pay the costs associated with [redacted][89] Verizon—like its competitors—is also responsible for any [redacted] that are necessitated by its attachments.[90] And Verizon—like its competitors—is [redacted]

[86] *Id.* at 5336 (¶ 217); *Verizon Florida*, 30 FCC Rcd at 1142 (¶ 7); *see also* Ex. D ¶ 5 (Tardiff Aff.).

[87] *Verizon Florida*, 30 FCC Rcd at 1149-51 (¶¶ 24, 26); *see also* Ex. D ¶ 5 (Tardiff Aff.).

[88] [redacted]

[89] [redacted]

[90] [redacted]

[91] [redacted]

[92] [redacted]

[redacted][94]

35. Other terms and conditions in the Joint Use Agreement disadvantage Verizon as compared to its competitors. For example, Verizon must, [redacted][95] Dominion has itself recognized that the "cost of maintaining the pole infrastructure is considerable."[96] Other terms and conditions also impose increased costs on Verizon relative to its competitors, as Verizon must provide Dominion [redacted][97] No similar quid pro quo exists in Dominion's license agreements.

36. The terms and conditions in the Joint Use Agreement are, therefore, comparable or less advantageous than those in Dominion's license agreements.[98] It is therefore "appropriate

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93 [redacted]

94 [redacted]

95 [redacted]

96 *See* Reply Comments of Ameren Services Company and Virginia Electric and Power Company at 18, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Apr. 22, 2008) ("Apr. 22, 2008 Reply Comments of Ameren and Dominion").

97 *See infra*, Section II.C.3.

98 Exs. A ¶¶ 49-90 (Calnon Aff.), B ¶ 19 (Mills Aff.), C ¶¶ 6-22 (Affidavit of Jonathan R. Hansen (July 31, 2015) ("Hansen Aff.")), D ¶¶ 4, 28 (Tardiff Aff.).

to use the rate of the comparable attacher as the 'just and reasonable' rate for purposes of section 224(b)."[99] Verizon should receive the new telecom rate.

C. The Joint Use Agreement Does Not Provide Unique Benefits That Justify Charging Verizon A Rate Higher Than The New Telecom Rate.

37. Dominion has tried to overcome the presumption that Verizon should receive "'the *same rate* as the comparable provider,' *i.e.*, the New Telecom Rate," for the materially comparable terms and conditions in the Joint Use Agreement.[100] Dominion claims that Verizon enjoys "cost savings, *as compared to its CLEC competitors*, through beneficial provisions of the Joint Use Agreement[]."[101] A review of (1) the Joint Use Agreement provisions directly asserted by Dominion[102] and (2) the agreement provisions in the *Verizon Florida* proceeding that the Enforcement Bureau asked the parties to analyze,[103] establishes that there are no "cost savings" in this case that justify charging Verizon a rate higher than the new telecom rate—let alone a rate that is [redacted] higher per pole.

1. The Provisions Asserted By Dominion Do Not Provide Verizon A Material Advantage Over Its Competitors.

38. Dominion pointed to seven "beneficial provisions" in the Joint Use Agreement as the basis for its assertion that "Verizon realizes substantial cost savings, *as compared to its CLEC competitors*."[104] They are, according to Dominion, [redacted]

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[99] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

[100] *Verizon Florida*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)) (emphasis added).

[101] Ex. 17 at 2 (Letter from A. Hahn, Dominion to S. Mills, Verizon (Feb. 20, 2014)) (emphasis in original).

[102] *Id.*

[103] *See Verizon Florida*, 30 FCC Rcd at 1148, 1149-50 (¶¶ 21, 24).

[104] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)) (emphasis in original).

[redacted][105] These are not "'provisions that materially advantage [Verizon]' vis-à-vis other attachers."[106] At most, one arguably advantages Verizon [redacted][107] That amount is far offset by Verizon's higher costs under the Joint Use Agreement,[108] such that it remains appropriate to use "'the same rate as the comparable provider,' *i.e.*, the New Telecom Rate," for Verizon's attachments.[109]

(a) Notification Of Subsequent Attachments To A Joint Use Pole

39. Dominion claims that Verizon is advantaged because it is [redacted] For attachments where engineering is required, [redacted]

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[105] *Id.*

[106] *Verizon Florida*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 218)).

[107] Ex. A ¶ 69 (Calnon Aff.).

[108] *See infra*, Section II.C.3.

[109] *Verizon Florida*, 30 FCC Rcd at 1142 (¶ 7) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)) (emphasis added).

[110] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)); [redacted]

[redacted][111] For the remaining "service drop" attachments (cables that extend from the utility pole to a customer's home), Verizon [redacted][112] There is therefore no material difference between Verizon and its competitors with respect to notifying Dominion.[113]

(b) Unauthorized Attachment Fees

40. Dominion points to a distinction without a difference when it asserts that Verizon's competitors [redacted][115] This different treatment of unreported attachments is not an advantage.[116]

41. [redacted] In the *Pole Attachment Order*, the

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[111] Exs. C ¶ 7 (Hansen Aff.), [redacted]

[112] [redacted]

[113] Exs. A ¶ 53 (Calnon Aff.), C ¶ 7 (Hansen Aff.).

[114] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[115] [redacted]

[116] Ex. A ¶¶ 55-60 (Calnon Aff.).

Commission found that an unauthorized attachment fee of five times the annual per pole rental fee would be reasonable *if* (1) the pole owner provides "specific notice of a violation (including pole number and location) before seeking relief against a pole occupant" and (2) the attacher fails to either submit a plan of correction or correct the violation and provide notice of the correction within certain specified time periods.[117] Unauthorized attachment fees are, in other words, entirely avoidable. A proper analysis of competitive neutrality must assume that they are avoided.[118] [redacted][123]

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[117] *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115).

[118] Ex. A ¶ 56 (Calnon Aff.).

[119] *Id.*

[120] *Id.* ¶¶ 57-60.

[121] [redacted]

[122] *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115).

[123] Ex. A ¶¶ 57-60 (Calnon Aff.).

(c) Per-Pole Rental Rate

43. Dominion claims that Verizon is advantaged by [redacted][124] This is not an advantage because Dominion [redacted][126] And Federal law does not permit a per-attachment new telecom rate. Instead, the FCC's formula "determine[s] the maximum just and reasonable rate *per pole*."[127] If a party has two attachments on a pole—and if they together occupy more than one foot of space—the parties may adjust the "space occupied" input for the attacher.[128] They may not calculate a one-foot rate and multiply it by two. Doing so would violate the statutory requirement that the unusable space on the pole be *equally* divided among attaching *entities* (not attachments).[129]

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[124] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[125] Ex. A ¶ 61 (Calnon Aff.).

[126] [redacted]

[127] *See In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12122 (¶ 31) (2001) (emphasis added).

[128] *See* 47 C.F.R. § 1.1418.

[129] 47 U.S.C. § 224(e)(2) ("A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity *under an equal apportionment of such costs among all attaching entities*.") (emphasis added).

45. [redacted]

(d) Engineering And Administrative Labor

46. Dominion argues that Verizon's competitors [redacted][132]

47. Verizon "pays" comparable amounts for this labor, which is part of its overhead. [redacted]

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[130] Ex. A ¶ 62 (Calnon Aff.).

[131] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[132] [redacted]

[133] [redacted]

[redacted][134]

48. There is therefore no material difference between the pre and post attachment engineering and administrative costs incurred by Verizon and its competitors.[135] [redacted]

(e) **Late Payment Surcharges**

49. Dominion claims that Verizon is advantaged because [redacted]

[134] Ex. C ¶ 8 (Hansen Aff.).

[135] Ex. A ¶ 64 (Calnon Aff.); *see also* Ex. C ¶ 8 (Hansen Aff.).

[136] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)). This is a welcome concession given Dominion's prior claim that [redacted]

[137] *See supra*, ¶ 41.

[redacted]

[redacted] [redacted][139]

(f) Surety Bond

52. Dominion asserts that Verizon is advantaged because [redacted]

[redacted] [redacted]

[138] *See* Ex. B ¶ 8 (Mills Aff.). [redacted]

[139] Ex. A ¶¶ 65-66 (Calnon Aff.).

[140] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[141] [redacted]

[142] [redacted]

[redacted][145] That trivial amount does "not provide a material advantage to [Verizon] relative to cable operators or telecommunications carriers."[146]

(g) Escrow Deposit

54. Finally, Dominion points out that Verizon [redacted]

[143] *See Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654)) ("A failure to weigh, and account for, the different rights and responsibilities in joint use agreements could lead to marketplace distortions.").

[144] [redacted]

[145] Ex. A ¶ 69 (Calnon Aff.).

[146] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); *see also* Ex. A ¶ 69 (Calnon Aff.).

[147] Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)); [redacted]

[148] [redacted]

[149] [redacted]

[redacted][150] Verizon thus remains comparably situated with its competitors.[151]

2. Dominion Cannot Justify A Higher Rate Based On The Benefits Alleged By The Power Company In The *Verizon Florida* Proceeding.

56. Dominion also cannot preserve the excessive Joint Use Agreement rates based on the alleged benefits that the Enforcement Bureau asked the parties to address in the *Verizon Florida* proceeding.[152] Several of the benefits alleged there do not exist here, and none has any measurable value.[153]

(a) Permitting New Attachments

57. In *Verizon Florida*, the Enforcement Bureau inquired about whether it is an advantage if the incumbent telephone company is "not required to file a permit application, pay an initial fee, or wait for approval from [the power company] before attaching."[154] Here, any differences regarding the permitting process are differences in name only and do not advantage Verizon.[155]

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150 *See Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654)) ("A failure to weigh, and account for, the different rights and responsibilities in joint use agreements could lead to marketplace distortions.").

151 Ex. A ¶ 71 (Calnon Aff.).

152 *See Verizon Florida*, 30 FCC Rcd at 1148, 1149-50 (¶¶ 21, 24).

153 Ex. A ¶¶ 72-87 (Calnon Aff.).

154 *Id.* at 1148 (¶ 21).

155 Exs. A ¶¶ 72-76 (Calnon Aff.), C ¶¶ 4, 7, 8, 12 (Hansen Aff.).

58. *First*, Verizon and its competitors provide comparable notification of new attachments. Verizon's competitors [redacted][157]

59. *Second*, Verizon and its competitors pay comparable amounts to attach. [redacted][160] Verizon is not advantaged.

60. *Third*, Verizon and its competitors necessarily wait a comparable amount of time to attach because the same tasks must be completed. Verizon's competitors [redacted]

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[156] [redacted]

[157] [redacted]

[158] [redacted]

[159] [redacted]

[160] [redacted]

[redacted] As Dominion has explained, "[t]here can be no shortcuts to proper preparation, installation or maintenance" of pole attachments.[162]

(b) **Post-Installation Inspections**

61. The Enforcement Bureau also inquired about whether it advantages an incumbent telephone company if it is not subject to a post-installation inspection and inspection fees.[163] There is no advantage here.[164]

62. Dominion's license agreements [redacted]

[161] [redacted]

[162] Comments of Ameren Services Company and Virginia Electric and Power Company at 10, *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51 (June 8, 2009).

[163] *Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21).

[164] Ex. A ¶¶ 77-79 (Calnon Aff.).

[165] [redacted]

[166] [redacted]

[redacted]

63. The costs for post-installation inspections should also be comparable. [redacted][168]

(c) Location Of Facilities On Dominion's Poles

64. The Enforcement Bureau asked whether an incumbent telephone company is advantaged because it is granted lower usable space on the pole than its competitors.[169] It is not.[170] On the contrary, Verizon's location on Dominion's poles increases its costs and sets it at a competitive *disadvantage*. Its facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards.[171] Verizon's facilities also suffer more harm from those that work above.[172] It has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole.[173]

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[167] *See supra* ¶¶ 46-48.

[168] [redacted]

[169] *Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21).

[170] Exs. A ¶ 80 (Calnon Aff.), C ¶ 19 (Hansen Aff.).

[171] *Id.*

[172] *Id.*

[173] Ex. C ¶ 19 (Hansen Aff.).

65. Verizon also receives more requests to raise its cables in order to accommodate oversize loads, such as house and equipment moves, which exceed standard vertical clearance requirements.[174] And Verizon incurs increased pole transfer costs because it must be the last company to transfer its facilities to a replacement pole.[175] Verizon often makes more than one trip to the replacement pole because others have not completed their transfers as scheduled.[176]

66. The increased costs associated with Verizon's lowest pole position are not offset by any alleged benefit from "easier . . . access."[177] There is little measurable difference between the time and effort required to work at the lowest location on a pole and at the location just above.[178] The same safety measures and preparation are required.[179]

67. And even if there were any minimal benefit to Verizon from its location, it is offset by the benefit enjoyed by Verizon's competitors because Verizon is lowest on the pole. Verizon's location is the result of standard construction practices that pre-date third-party attachers.[180] Maintaining that pole location eliminates ambiguity about the ownership of particular facilities on the pole and ensures that communications facilities do not crisscross mid-span.[181]

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[174] *Id.* ¶ 20.

[175] *Id.* ¶ 21.

[176] *Id.*

[177] *See Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21).

[178] *See* Ex. C ¶ 17 (Hansen Aff.).

[179] *Id.*

[180] *See id.* ¶ 16.

[181] *Id.*

(d) Pole Height

68. The Enforcement Bureau requested information about an allegation that the power company "install[s] taller poles at increased cost" in order to service Verizon's customers in addition to its own.[182] Dominion has not made a similar allegation for good reason. Competitive neutrality compares the pole height required to accommodate Verizon with the pole height required to accommodate Verizon's competitors—not Dominion, which does not compete with communications providers.[183] That proper analysis shows that Verizon has been no better benefited than its competitors by Dominion's decision to install poles that accommodate communications providers.

69. The pole height required to service Dominion's customers and the customers of Verizon or the customers of Verizon's competitors is the same. In each case, Dominion must install a pole that includes communications space and safety space between the communications and power attachments.[184]

70. Also in each case, Dominion is [redacted][185] It is also fully compensated for any additional pole height

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[182] *Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21).

[183] *See*, *e.g.*, Comments of Ameren Services Company and Virginia Electric and Power Company at 8, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Mar. 7, 2008) ("Mar. 7, 2008 Comments of Ameren and Dominion") ("electric utilities generally do not compete with cable and telephone companies").

[184] Ex. C ¶ 14 (Hansen Aff.).

[185] [redacted]

when it receives rent at the cable or new telecom rate.[186] Verizon has instead been paying a rate that is [redacted] higher. Pole height—equally required by Verizon and its competitors—does not justify this premium.[187]

(e) Pole Replacements

71. The power company in the *Verizon Florida* proceeding argued that "[t]he Agreement requires [the power company] to replace poles in certain circumstances to accommodate Verizon; none of Verizon's competitors receive this benefit."[188] The power company thus relied on its legal right to refuse, in certain circumstances, to replace a pole in order to expand capacity and provide space for an additional attacher. This "legal right" gives Verizon no advantage here.[189]

72. *First*, Dominion has [redacted][191]

73. *Second*, the existence of a "legal right" does not advantage Verizon because there is no reason to believe that Dominion, in fact, exercises that right. According to Dominion, "[s]ave for a few anecdotal stories, no compelling evidence exists that attaching entities are

[186] *See Pole Attachment Order*, 26 FCC Rcd at 5321 (¶ 183) ("the new telecom rate, and the cable rate each are fully compensatory to utilities").

[187] Ex. A ¶¶ 81-82 (Calnon Aff.).

[188] *Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21).

[189] Ex. A ¶¶ 83-84 (Calnon Aff.).

[190] [redacted]

[191] [redacted]

routinely denied access to utility poles."[192] Instead, when "poles [are] at capacity," Dominion "work[s] with the attaching party on a mutual solution that benefits both companies."[193] That solution will necessarily include a pole replacement because Dominion will then obtain an additional rental stream and a new, stronger, taller pole [redacted][194]

74. Moreover, Dominion's ability to exercise its "legal right" is rare in practice. If Dominion can accommodate an attachment through "a range of practices, such as line rearrangement, overlashing, boxing, and bracketing,"[195] then Dominion cannot refuse to replace a pole based on lack of capacity. It is therefore unlikely that Dominion can or does refuse to accommodate Verizon's competitors, which are statutorily entitled to access.

75. *Finally*, there is no measurable monetary difference between Verizon and its competitors with respect to pole replacements. [redacted][197]

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[192] Mar. 7, 2008 Comments of Ameren and Dominion at 13.

[193] *Id.*

[194] [redacted]

[195] *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11872 (¶ 16) (2010); *see also Pole Attachment Order*, 26 FCC Rcd at 5341 (¶ 232) ("capacity is not insufficient where a request can be accommodated using traditional methods of attachment").

[196] [redacted]

[197] [redacted]

(f) Insurance And Indemnification

76. The Enforcement Bureau sought information about alleged differences regarding insurance and indemnification.[198] There are no material differences here.[199]

77. With respect to insurance, the Joint Use Agreement requires [redacted]

78. With respect to indemnification, there is no difference. [redacted][202]

(g) Make-Ready Costs

79. Finally, the Enforcement Bureau inquired about responsibility for "make-ready costs" for Verizon's attachments.[203] [redacted][204] Verizon has no competitive advantage.[205]

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198 *Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21).

199 Ex. A ¶¶ 85-86 (Calnon Aff.).

200 [redacted]

201 [redacted]

202 [redacted]

203 *Verizon Florida*, 30 FCC Rcd at 1150 (¶ 24).

3. Verizon Bears Higher Costs For Pole Access Under The Joint Use Agreement.

80. The only advantage that Verizon arguably has relative to its competitors is the [redacted] At the same time, Verizon bears unique costs for pole access that its competitors do not incur. Because these costs are far higher than any minimal benefit associated with the [redacted] Verizon is "comparably situated to telecommunications carriers" and should receive the same new telecom rate.[206]

81. A just and reasonable rate for Verizon's attachments must take into account the unique burdens that Verizon—but not its competitors—bears in order to access Dominion's poles. "A failure to weigh, and account for, the different . . . *responsibilities* in joint use agreements could lead to marketplace distortions."[207] Among Verizon's unique responsibilities are those associated with "the fact that incumbent LECs still own many poles today."[208]

82. Verizon's pole ownership increases its price of access to Dominion's poles above that of its competitors. Verizon must provide Dominion access to over [redacted]

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[204] [redacted]

[205] Exs. A ¶ 87 (Calnon Aff.), D ¶ 26 (Tardiff Aff.).

[206] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); Ex. A ¶¶ 88-90 (Calnon Aff.).

[207] *Verizon Florida*, 30 FCC Rcd at 1143 (¶ 8) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654)) (emphasis added).

[208] *Id.*

[redacted] poles in order to access Dominion's poles.[209] Verizon's competitors need only attach.[210]

83. Dominion has identified some of the additional costs that are uniquely borne by Verizon because it must be a pole owner in order to access Dominion's poles. Dominion has explained that the "cost of maintaining the pole infrastructure is considerable."[211] Its Lead Joint Use Administrator noted that "[m]aintaining the poles, trucks, and the like necessary to being a pole owner is expensive."[212] He thus counts it a "principal benefit" that Verizon is a pole owner because it means that Verizon is "watchful for pole violations or hazards that arise in each entity's network" and has "the resources and skills necessary to identify problems" and ensure their expedient resolution.[213]

84. Verizon also bears unique costs because—as noted above—Verizon must provide Dominion each and every alleged "advantage" that Dominion claims to provide to Verizon. Verizon's competitors do not provide a similar offsetting benefit in exchange for their access to Dominion's poles. They simply attach.

D. Verizon Significantly Overpaid Dominion For Any Unique Benefits Provided Under The Parties' Prior Agreements.

85. Because the Joint Use Agreement is a "new" agreement that took effect in 2011, the Commission need not consider the parties' prior agreements. Instead, the determinative

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[209] *See* Exs. 11 (VzV Invoices), 12 (VzS Invoices).

[210] *See Verizon Florida*, 30 FCC Rcd at 1148 (¶ 21) (recognizing that CLECs have a "statutory right of access to utility poles").

[211] Apr. 22, 2008 Reply Comments of Ameren and Dominion at 18.

[212] Declaration of Michael Roberts ¶ 7 (Apr. 18, 2008) ("Roberts Decl."), attached to Apr. 22, 2008 Reply Comments of Ameren and Dominion.

[213] *Id.* ¶ 6.

question is whether Verizon receives benefits under the Joint Use Agreement that justify the [redacted] per pole premium that Verizon pays Dominion.[214] As detailed above, Verizon does not. It is instead attaching "on terms and conditions that leave it 'comparably situated' to competitive LEC or cable attachers"—which means that "'competitive neutrality counsels in favor of affording [Verizon] the same rate as the comparable provider,' i.e., the New Telecom Rate."[215] Were the Commission to consider the parties' prior joint use agreements, however, it would only reinforce the reasonableness of a comparable new telecom rate going forward.

86. Where the agreements at issue are "historic" agreements, the same principle of competitive neutrality applies, but it accounts for the past "monetary value" of any "benefits under the Agreement that were not available to other attachers."[216] Here, any possible "monetary value" of unique benefits under the prior agreements was paid for several times over by Verizon.

87. Before the 2011 effective date of the Joint Use Agreement, Verizon Virginia and Verizon South operated under different joint use agreements. Verizon Virginia's prior agreement with Dominion was entered in 1992 and amended in 2002.[217] Verizon South's prior agreement with Dominion was entered in 1978 and modified in 1985, and was the subject of settlement agreements dated 2002 and 2006.[218]

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[214] *See Verizon Florida*, 30 FCC Rcd at 1142 (¶ 7).

[215] *See id*. (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)); *see also* Ex. D ¶¶ 4, 28 (Tardiff Aff.).

[216] *Id.* at 1149-51 (¶¶ 24, 26); *see also* Ex. D ¶ 5 (Tardiff Aff.).

[217] *See* Exs. 5 (General Joint Use Agreement Between Dominion and the Chesapeake and Potomac Telephone Company of Virginia (Jan. 1, 1992) ("C&P JUA")), 6 (Amendment to Joint Use Agreement Between Verizon Virginia and Dominion (Nov. 1, 2002)).

[218] *See* Exs. 7 (General Joint Use Agreement between Dominion and Continental Telephone Company of Virginia (Jan. 1, 1978) ("Contel JUA")), 8 (Modification No. 1 to Appendix

88. Under each agreement, Verizon paid rates that are significantly higher than the pre-existing telecom rates then applicable to Verizon's competitors. Between 2002 and 2010, for example, Verizon Virginia's rate ranged from [redacted] per pole.[219] During those same years, Verizon South paid rates that ranged from $30.00 to $47.32 per pole.[220] Using 2010 as an example, Verizon Virginia's rental rate was [redacted] higher per pole, and Verizon South's rental rate was $20.44 higher per pole, than the pre-existing telecom rate.[221]

89. These significantly higher rental rates far overpaid Dominion for any alleged unique "benefits" provided under the prior joint use agreements, as their terms and conditions were comparable to the terms and conditions in Dominion's license agreements. Indeed, many of the terms and conditions in the prior agreements carried forward into the Joint Use Agreement. For example, under the prior agreements, Verizon—like its competitors and like its current Joint Use Agreement—was responsible for [redacted]

Number 1 to General Joint Use Agreement Dated 1-1-78 Between Dominion and Continental Telephone Company of Virginia (Dec. 23, 1985)), 9 (Settlement Agreement and Mutual Release Between Verizon South and Dominion (Dec. 31, 2002)), 10 (Agreement Between Verizon South and Dominion (June 7, 2006)).

[219] Ex. B ¶ 11 (Mills Aff.). [redacted]

[220] *Id.* Verizon South's rental rate applied to the net poles (those owned by Dominion over and above those owned by Verizon South), making Dominion's effective rate the same as Verizon South's. *Id.*

[221] *Id.* (stating that Verizon Virginia's 2010 rental rate was [redacted] per pole and Verizon South's 2010 rental rate was $30.00 per pole); Ex. A ¶ 92 (Calnon Aff.) (calculating the 2010 pre-existing telecom rate as $9.56 per pole).

[222] [redacted]

[redacted][226] At the same time, Verizon then (as now) paid higher costs for pole access. Verizon was then (as now) responsible for [redacted] The terms and conditions of the prior agreements thus left Verizon comparably situated to its competitors for essentially the same reasons detailed above.[227]

90. Verizon nonetheless paid rental rates [redacted] times higher than its competitors' rates during the decades before the *Pole Attachment Order*.[228] Doing so far overcompensated Dominion for the "monetary value" of any "benefits under the [prior agreements] that were not available to other attachers."[229]

E. The Commission Should Set Verizon's Just And Reasonable Rate And Refund Verizon's Overpayments.

91. Verizon is "entitled to pole attachment rates, terms and conditions that are just and reasonable pursuant to Section 224(b)(1)" as of the July 12, 2011 effective date of the *Pole*

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223 [redacted]

224 [redacted]

225 [redacted]

226 [redacted]

227 *See supra*, Section II.B-C; Ex. A ¶¶ 93-94 (Calnon Aff.).

228 *See* Ex. A ¶ 95 (Calnon Aff.).

229 *Verizon Florida*, 30 FCC Rcd at 1149-51 (¶¶ 24, 26); *see also* Ex. A ¶ 95 (Calnon Aff.).

Attachment Order.[230] Here, that just and reasonable rate should be the new telecom rate, which will start to set Verizon on par with its comparable competitors if Dominion is ordered to refund the nearly [redacted] that Verizon has overpaid since the effective date of the *Order*.[231] In no event should the just and reasonable rate exceed the pre-existing telecom rate, which also would require a refund of more than [redacted] to Verizon for the post-*Order* period.[232]

92. When Verizon's just and reasonable rate is set, Verizon will ensure that Dominion's rate to attach to Verizon's poles is proportional for all affected rental years.[233]

1. Verizon Should Be Charged The New Telecommunications Rate Because It Is Comparably Situated To Its Competitors.

93. Because Verizon is "attaching to [Dominion's] poles on terms and conditions that are *comparable* to those that apply to a telecommunications carrier or a cable operator," the just and reasonable rate for Verizon's attachments is "*the same rate as the comparable provider*."[234] In this case, the comparable rates that result from the new telecom formula are per pole rates of $5.87, $7.15, $7.05 and $6.85 for the 2011 through 2014 rental years, respectively.[235]

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[230] *Id.* at 1141 (¶ 5 n.9) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5331 (¶ 209)); *see also id.* at 1145-47, 1150-51 (¶¶ 17-19, 26).

[231] Ex. A ¶ 26 (Calnon Aff.); *see also* Ex. D ¶¶ 4, 28 (Tardiff Aff.).

[232] Ex. A ¶ 32 (Calnon Aff.); *see also* Ex. D ¶ 4, 28 (Tardiff Aff.).

[233] *See Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218) (noting that the Commission "would be skeptical of a complaint by an incumbent LEC seeking a proportionately lower rate to attach to an electric utility's poles than the rate the incumbent LEC is charging the electric utility to attach to its poles").

[234] *Id.* at 5336 (¶ 217) (emphasis added).

[235] Ex. A ¶¶ 6, 16 (Calnon Aff.).

94. Dominion has stated that the new telecom formula results in a far higher rate.[236] Dominion's calculated rates suffer from three principal flaws. *First*, Dominion uses inflated rates of return that are not supported by "the latest decision of the state regulatory body."[237] For the 2011 through 2014 rental years, Dominion applies an 11.25% rate of return, which does not appear to be based on any state decision (and which "is no longer reflective of the cost of capital" in any event).[238] For the 2015 rental year, it uses a 10% rate of return, but 10% is its cost of *equity*, which makes no allowance for the Virginia State Corporation Commission's determination of the proper values for "cost of debt and equity, and the ratio of debt to equity."[239] The appropriate rates of return are 8.77% for the 2011 and 2012 rental years, 8.23% for the 2013 and 2014 rental years, and 7.65% for the 2015 and 2016 rental years.[240]

95. *Second*, Dominion assigns 1.5 feet of space to Verizon, but cites solely the Commission's 1-foot presumption.[241] This is insufficient evidence to rebut the presumptive

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[236] *See* Exs. 20 at Attachment, line 66 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)), 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)).

[237] *See* 47 C.F.R. § 1.1404(g)(1)(x); *see also* Ex. 20 at Attachment, line 36 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[238] *See In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18052 (¶ 1047) (2011).

[239] *In the Matter of Connect America Fund*, Wireline Competition Bureau Staff Report, 28 FCC Rcd 7123, 7130 (¶ 5); *see also* 47 C.F.R. § 65.305.

[240] Exs. A ¶ 21 (Calnon Aff.), D ¶¶ 8-18 (Tardiff Aff.); *see also* Exs. 24 at 13 (Final Order, Case No. PUE-2013-00072 (Va. SCC Apr. 29, 2014)), 25 at 21 (Final Order, Case No. PUE-2013-00020 (Va. SCC Nov. 26, 2013)); 26 at 23 (Final Order, Case No. PUE-2011-00027 (Va. SCC Nov. 30, 2011)); 27 at Addendum ¶ 13 (Order Approving Stipulation and Addendum, Case No. PUE-2009-00019 (Va. SCC Mar. 11, 2010)); 28 at Schedule 3 (Dominion Schedules 1-5, Case No. PUE-2011-00027 (Mar. 31, 2011)).

[241] *See* Ex. 20 at Attachment, line 53 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)); *see also* 47 C.F.R. § 1.1418 ("With respect to the formulas referenced in § 1.1409(e)(1) and § 1.1409(e)(2), the space occupied by an attachment is presumed to be one (1) foot.").

value, particularly because Verizon does not have survey data (and is not aware of any in Dominion's possession) that establishes that Verizon, in fact, occupies 1.5 feet of space on Dominion's poles.[242] The default 1-foot presumption should therefore apply.[243]

96. *Third* and most significantly, Dominion inflates its new telecom rate by claiming—without evidence—that its poles have an average of 2.6 attaching entities instead of the 5 entities that the Commission's rules presume.[244] Dominion cannot rebut the 5-entity presumption absent "a statistically valid survey or actual data."[245] Dominion has provided neither. It has merely asserted that a "company survey" supports its number,[246] apparently based on a consultant's review of some of its facilities fourteen years ago.[247] There is no indication that Dominion's data is current, accurate, or "reflect[s] only those poles in areas where the attacher is actually affixed."[248] The proper input, therefore, is the 5-entity input reflected in the Commission's presumptions.[249]

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[242] *See* Ex. B ¶ 19 (Mills Aff.).

[243] Ex. A ¶ 22 (Calnon Aff.).

[244] *See* Exs. A ¶¶ 23-24 (Calnon Aff.), D ¶¶ 19-22 (Tardiff Aff.); *see also* Exs. 20 at Attachment, line 58 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)); 47 C.F.R. § 1.1417(c).

[245] *Teleport Commc'ns Atlanta, Inc. v. Ga. Power Co.*, Order on Review, 17 FCC Rcd 19859, 19866 (¶ 18) (2002).

[246] *See* Ex. 20 at Attachment, line 58 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[247] *See* Declaration of Michael Roberts ¶ 9 (Mar. 6, 2008), attached to Mar. 7, 2008 Comments of Ameren and Dominion ("The average number of attachments on Dominion's facilities used to calculate the telecommunications attachment rate is 2.6. This average number was determined by a statistical survey performed for us by a consultant in 2001.").

[248] *Teleport Commc'ns Atlanta, Inc.*, 17 FCC Rcd at 19869 (¶ 25).

[249] 47 C.F.R. § 1.1417(c); Exs. A ¶¶ 23-24 (Calnon Aff.), D ¶¶ 19-22 (Tardiff Aff.).

97. The flaws in Dominion's rate calculations are apparent in the way they take Dominion's new telecom rate out of parity with its cable rate, contrary to the Commission's intent.[250] For example, Dominion calculates 2014 rates of [redacted] (new telecom) and [redacted] (cable).[251] Verizon is instead entitled to the properly calculated new telecom rental rate—which at $6.85 per pole in 2014, is in parity with the properly calculated 2014 cable rate of $6.86.

2. Verizon Should Be Refunded The Millions Of Dollars That It Has Paid Over And Above The New Telecom Rate.

98. Where an incumbent telephone company has been charged an unjust and unreasonable rate, the Commission has authority to refund "the difference between the amount paid under the unjust and/or unreasonable rate . . . and the amount that would have been paid under the rate . . . established by the Commission, plus interest, consistent with the applicable statute of limitations."[252] Here, that authority justifies a refund of all amounts overpaid since the July 12, 2011 effective date of the *Pole Attachment Order* because this case involves an action on a contract that is governed by Virginia's 5-year statute of limitations.[253]

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[250] *See Pole Attachment Order*, 26 FCC Rcd at 5244, 5305 (¶¶ 8, 149); *see also* Comments of Verizon in Response to the Commission's Request to Refresh the Record, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 (June 4, 2015).

[251] Ex. 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)); *see also* Exs. A ¶ 24 (Calnon Aff.), D ¶ 21 (Tardiff Aff.).

[252] 47 C.F.R. § 1.1410(a)(3).

[253] *See* Va. Code Ann. § 8.01-246(2) ("actions founded upon a contract, other than actions on a judgment or decree, shall be brought within the following number of years next after the cause of action shall have accrued: . . . In actions on any contract which is not otherwise specified and which is in writing and signed by the party to be charged thereby, or by his agent, within five years whether such writing be under seal or not").

99. Consistent with the Commission's intention, Verizon first sought to resolve this matter during the limitations period "through negotiation rather than litigation before the Commission."[254] As soon as the electric industry's challenge to the *Order*'s rate reforms was resolved, Verizon sought rate relief through written negotiations, in-person executive level discussions, and formal mediation.[255] The need for the Commission's assistance became clear on May 29, 2015, just two months ago.[256]

100. "[M]onetary recovery in [this] pole attachment action" should therefore "extend as far back in time as the applicable statute of limitations allows."[257] Doing so, however, would encompass periods that pre-date the effective date of the *Pole Attachment Order*. Verizon, therefore, limits its refund request to overpayments made for rental periods following the July 12, 2011 effective date of the *Pole Attachment Order*. Since that date, Verizon has paid nearly [redacted] more in gross rentals than it should have paid at the properly calculated new telecom rate.[258] Of that amount, over [redacted] involves the 2014 rental year that was the subject of Verizon's October 2013 letter requesting a just and reasonable rate.[259] Verizon's overpayments should be refunded.

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[254] *Pole Attachment Order*, 26 FCC Rcd at 5290 (¶ 112).

[255] *See supra*, Section II.A.3.

[256] Ex. 23 (Email from J. Douglass to C. Huther and B. Freedson (June 2, 2015)).

[257] *Pole Attachment Order*, 26 FCC Rcd at 5290 (¶ 112).

[258] *See* Ex. A ¶ 26 (Calnon Aff.) (calculating [redacted] overpayment since July 12, 2011).

[259] *See id.* (calculating [redacted] overpayment for the 2014 rental year); *see also* Ex. 13 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Oct. 8, 2013)).

3. At Most, Verizon Should Be Charged The Pre-Existing Telecom Rate And Receive A Refund Of Its Overpayments.

101. Alternatively, even if Verizon were found to be materially advantaged as compared to its competitors, the just and reasonable and competitively neutral rate for Verizon's attachments would account for only one possible "advantage" provided to Verizon, which amounts to [redacted][260] Since the effective date of the *Pole Attachment Order*, Verizon has paid over [redacted] more in gross rentals (with over [redacted] associated with the 2014 rental year) than it would have paid at a per pole rate that is [redacted] higher than the rate calculated using the new telecom formula.[261] Under this alternative theory, Verizon should be refunded its overpayment.

102. In no event should Verizon's rate exceed the rate properly calculated using the Commission's pre-existing telecom formula.[262] The evidence confirms that the pre-existing telecom rate is a valid (indeed, high) "reference point" for determining the just and reasonable rate where a joint use agreement "includes provisions that materially advantage the incumbent LEC *vis a vis* a telecommunications carrier or cable operator."[263] It is "a higher rate than the regulated rate available to telecommunications carriers and cable operators," and it more than

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[260] *See supra* ¶ 53; Ex. A ¶ 34 (Calnon Aff.).

[261] *See* Ex. A ¶ 35 (Calnon Aff.) (calculating [redacted] overpayment since July 12, 2011 and [redacted] overpayment for the 2014 rental year).

[262] Exs. A ¶¶ 30-32 (Calnon Aff.), D ¶ 28 (Tardiff Aff.).

[263] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 218).

"account[s] for particular arrangements that provide net advantages to incumbent LECs relative to cable operators or telecommunications carriers."[264]

103. In this case, the properly calculated pre-existing telecom rates are per pole rates of $8.89, $10.83, $10.68 and $10.38 for the 2011 through 2014 rental years, respectively.[265] These rates are, on average, $3.47 higher than the new telecom rate,[266] a difference that more than covers any possible [redacted][267]

104. Since the effective date of the *Pole Attachment Order*, Verizon has paid over [redacted] more in gross rentals than it would have paid at the rate properly calculated using the pre-existing telecom formula.[268] Of that amount, over [redacted] involves the 2014 rental year that was the subject of Verizon's October 2013 letter requesting a just and reasonable rate.[269] Verizon should, at a minimum, be refunded these amounts.

III. COUNT I – UNJUST AND UNREASONABLE POLE ATTACHMENT RATES

105. Verizon incorporates paragraphs 1 through 104 of this Complaint as if set forth fully herein.

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[264] *Id.* at 5337 (¶ 218).

[265] Ex. A ¶¶ 7, 16 (Calnon Aff.).

[266] *See id.* ¶ 101 (calculating the difference between the average 2011-2014 new telecom rate and the average 2011-2014 pre-existing telecom rate).

[267] *See supra* Section II.C; Ex. A ¶ 7 (Calnon Aff.).

[268] *See* Ex. A ¶ 32 (Calnon Aff.) (calculating [redacted] overpayment since July 12, 2011).

[269] *See id.* (calculating [redacted] overpayment for the 2014 rental year); *see also* Ex. 13 (Letter from S. Mills, Verizon, to A. Hahn, Dominion (Oct. 8, 2013)).

106. The Commission has authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."[270]

107. The rate that Dominion charges its licensees is a just and reasonable rate for Verizon because Verizon attaches to Dominion's poles on terms and conditions that are comparable to those that apply to competing attachers.[271] For the 2011 through 2016 rental years, these comparable rates are $5.87, $7.15, $7.05, $6.85, $6.51, and $6.04 per pole, respectively.[272] Dominion's refusal to offer Verizon a rental rate properly calculated pursuant to the FCC's new telecom formula has denied Verizon a just and reasonable rate in violation of 47 U.S.C. § 224.

108. Alternatively, if Verizon attaches to Dominion's poles on terms and conditions that provide a net material advantage compared to Dominion's other attachers, Verizon is entitled to a just and reasonable rate that is [redacted] higher than the properly calculated new telecom rate, and thus accounts for the only possible "advantage" provided to Verizon under the Joint Use Agreement. For the 2011 through 2016 rental years, these comparable rates are [redacted] respectively.[273] In no event should Verizon be charged a rental rate that is higher than the rate calculated pursuant to the FCC's pre-existing telecom

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[270] 47 U.S.C. § 224(b)(1).

[271] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

[272] Ex. A ¶ 16 (Calnon Aff.).

[273] *Id.* ¶ 97.

formula.[274] For the 2011 through 2016 rental years, these reference point rates are $8.89, $10.83, $10.68, $10.38, $9.87, and $9.15 per pole, respectively.[275] Under these alternative circumstances, Dominion's refusal to offer Verizon a rental rate that is not higher than the rate properly calculated pursuant to the FCC's pre-existing telecom formula has denied Verizon a just and reasonable rate in violation of 47 U.S.C. § 224.

IV. RELIEF REQUESTED

109. Verizon respectfully requests that the Commission order that the unjust and unreasonable rate provision in the parties' Joint Use Agreement, as amended, is terminated effective July 12, 2011, the effective date of the *Pole Attachment Order*.

110. Verizon respectfully requests that the Commission prescribe the rate that is properly calculated in accordance with the Commission's new telecom formula as the just and reasonable rate in a new agreement that applies to Verizon's existing and future attachments.

111. Alternatively, if the Commission concludes that the terms and conditions of the parties' Joint Use Agreement provide Verizon a net material advantage relative to its competitors, then Verizon requests that the Commission prescribe as the just and reasonable rate for Verizon's existing attachments a rate that is [redacted] higher than the rate that is properly calculated in accordance with the Commission's new telecom formula. Under these alternative circumstances, Verizon's just and reasonable rate for existing attachments should not exceed the rate that is properly calculated in accordance with the Commission's prior telecom formula.

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[274] *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

[275] Ex. A ¶ 16 (Calnon Aff.).

112. Verizon respectfully requests that the Commission order Dominion to refund all amounts paid in excess of a just and reasonable rate following the July 12, 2011 effective date of the *Pole Attachment Order* and grant Verizon such other relief as the Commission deems just, reasonable, and proper.

Respectfully submitted,

By:________________________

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Attorneys for Verizon Virginia LLC and Verizon South Inc.

Kathleen M. Grillo
Of Counsel

Dated: August 3, 2015

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2015, I caused a copy of the foregoing Complaint, exhibits and affidavits in support thereof, to be served on the following (service method indicated):

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(confidential version of Complaint, Affidavits, and Exhibits by hand delivery; public version of Complaint, Affidavits, and Exhibits by ECFS)

Horace P. Payne, Esquire
Virginia Electric and Power Company
120 Tredegar Street, Riverside 2
Richmond, VA 23219
(804) 819-2682
horace.p.payne@dom.com
(confidential version of Complaint, Affidavits, and Exhibits by hand delivery to Dominion's registered agent, CT Corporation System, 4701 Cox Road, Suite 285, Glen Allen, VA 23060)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(public version of Complaint, Affidavits, and Exhibits by overnight mail)

Brett Heather Freedson, Esquire
Eckert Seamans Cherin and Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
bfreedson@eckertseamans.com
(courtesy copy of public version of Complaint by email)

Virginia State Corporation Commission
Division of Energy Regulation
P.O. Box 1197
Richmond, VA 23218
(public version of Complaint, Affidavits, and Exhibits by overnight mail)

Claire J. Evans

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON VIRGINIA LLC and VERIZON SOUTH INC., Complainants, v. VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER, Respondent.	)	Docket No. File No.

Affidavits

A. Affidavit of Mark S. Calnon, Ph.D. (July 31, 2015).

B. Affidavit of Stephen C. Mills (Aug. 3, 2015).

C. Affidavit of Jonathan R. Hansen (July 31, 2015).

D. Affidavit of Timothy J. Tardiff, Ph.D. (Aug. 3, 2015).

Exhibits

1. General Joint-Use Agreement Between Verizon Virginia Inc. ("Verizon Virginia") and Virginia Electric and Power Company ("Dominion") (Jan. 1, 2011).

2. General Joint-Use Agreement Between Verizon South Inc. ("Verizon South") and Dominion (Jan. 1, 2011).

3. Facilities License Agreement for Non-Wireless Overhead Attachments Between MCI Network Services of Virginia, Inc. and Dominion (Dec. 1, 2008).

4. "Facilities License Agreement for Non-Wireless Overhead Attachments Between _____ and Virginia and Electric Power Company," attached to Email from A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion, to S. Mills, Section Manager, Verizon Network Engineering (Oct. 30, 2013).

5. General Joint Use Agreement Between Dominion and the Chesapeake and Potomac Telephone Company of Virginia (Jan. 1, 1992).

6. Amendment to Joint Use Agreement Between Verizon Virginia and Dominion (Nov. 1, 2002).

7. General Joint Use Agreement Between Dominion and Continental Telephone Company of Virginia (Jan. 1, 1978).

8. Modification No. 1 to Appendix Number 1 to General Joint Use Agreement Dated 1-1-78 Between Dominion and Continental Telephone Company of Virginia (Dec. 23, 1985).

9. Settlement Agreement and Mutual Release Between Verizon South and Dominion (Dec. 31, 2002).

10. Agreement Between Verizon South and Dominion (June 7, 2006).

11. Invoices from Dominion to Verizon Virginia for 2010 through 2014 pole rentals.

12. Invoices from Dominion to Verizon South for 2010 through 2014 pole rentals.

13. Letter from S. Mills, Section Manager, Verizon Network Engineering, to A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion (Oct. 8, 2013).

14. Letter from S. Mills, Section Manager, Verizon Network Engineering, to A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion (Dec. 6, 2013).

15. Letter from A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion, to S. Mills, Section Manager, Verizon Network Engineering (Dec. 16, 2013).

16. Letter from S. Mills, Section Manager, Verizon Network Engineering, to A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion (Jan. 22, 2014)).

17. Letter from A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion, to S. Mills, Section Manager, Verizon Network Engineering (Feb. 20, 2014).

18. Letter from S. Mills, Section Manager, Verizon Network Engineering, to A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion (Mar. 25, 2014).

19. Letter from A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion, to S. Mills, Section Manager, Verizon Network Engineering (Apr. 28, 2014).

20. Email from M. Roberts, Joint Use Administrator, Dominion, to S. Mills, Section Manager, Verizon Network Engineering (Sept. 24, 2014).

21. Email from A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion, to S. Mills, Section Manager, Verizon Network Engineering (Oct. 21, 2014).

22. Letter from S. Mills, Section Manager, Verizon Network Engineering, to A. Hahn, Dominion Customer Solutions System – Joint Use Business, Dominion (Nov. 14, 2014).

23. Email from J. Douglass, Mediator, to C. Huther, Attorney for Verizon, and B. Freedson, Attorney for Dominion (June 2, 2015).

24. Final Order, *Petition of Virginia Electric and Power Company for Approval to Implement New Demand-Side Management Programs and for Approval of Two Updated Rate Adjustment Clauses Pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2013-00072, 2014 S.C.C. Ann. Rept. 289 (Va. SCC Apr. 29, 2014).

25. Final Order, *Application of Virginia Electric and Power Company for a 2013 Biennial Review of the Rates, Terms and Conditions for the Provision of Generation, Distribution, and Transmission Services Pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2013-00020, 2013 S.C.C. Ann. Rept. 371 (Va. SCC Nov. 26, 2013).

26. Final Order, *Application of Virginia Electric and Power Company for a 2011 Biennial Review of the Rates, Terms, and Conditions for the Provision of Generation, Distribution, and Transmission Services Pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2011-00027, 2011 S.C.C. Ann. Rept. 456 (Va. SCC Nov. 30, 2011).

27. Order Approving Stipulation and Addendum, *Application of Virginia Electric and Power Company for a 2009 Statutory Review of the Rates, Terms and Conditions for the Provision of Generation, Distribution, and Transmission Services Pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00019, 2010 S.C.C. Ann. Rept. 301 (Va. SCC Mar. 11, 2010).

28. Dominion Schedules 1-5, filed in *Application of Virginia Electric and Power Company for a 2011 Biennial Review of the Rates, Terms, and Conditions for the Provision of Generation, Distribution, and Transmission Services Pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2011-00027 (Mar. 31, 2011).

Exhibit A

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON VIRGINIA LLC and VERIZON SOUTH INC., Complainants, v. VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER, Respondent.	)	Docket No. File No.

AFFIDAVIT OF MARK S. CALNON, PH.D.

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF BUCKS)

I, MARK S. CALNON, being sworn, depose and say:

1. I am a senior consultant in the Telecom Finance Group of Verizon Services Corporation. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Virginia LLC ("Verizon Virginia") and Verizon South Inc. ("Verizon South") (collectively, "Verizon") against Virginia Electric and Power Company ("Dominion"). 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 a Bachelor of Arts degree in Economics from St. Michaels College and a Ph.D., also in Economics, from the University of Colorado. My professional experience began

over 30 years ago and spans economic and regulatory policy issues in telecommunications and energy markets domestically and internationally. My specific areas of expertise include demand analysis, strategic planning, pricing and policy analysis focused primarily on the regulated product and service offerings of incumbent telecom and electric distribution companies. My responsibilities have included estimating the demand for wireline telephone service, the demand for the various jurisdictional usage classifications of the wireline network (local, intralata toll, interlata toll and switched access) as well as the demand for various new / advanced service offerings. My work in the area of pricing and costing has included the design of methodologies to determine the proper price levels and rate relationships between the wholesale provision of access services (switched and special) and retail toll and private line offerings. I have also developed pricing methodologies consistent with the market-opening requirements of the Telecommunications Act of 1996 ("TA96"). Following passage of TA96, I have also been responsible for developing studies documenting the level of competition in various market areas and advocating market-appropriate levels of regulatory relief. I have also provided economic analysis supporting litigation in the areas of damage claims regarding alleged delays in provisioning new services and claims of unreasonable discrimination relating to the pricing and costing practices associated with third party make-ready costs and pole rental rates.

3. Over the course of my career I have participated in over 30 regulatory proceedings before 20 state commissions. My responsibilities in these proceedings have included the development and filing of written testimony, participation in industry workshops, settlement conferences and ex parte presentations for Commissioners and their staff. I have also filed two Affidavits with the Federal Communications Commission to support the Pole Attachment Complaints filed by Verizon Florida LLC against Florida Power and Light

Company. *See* Pole Attachment Complaint Ex. A, Docket No. 15-73, File No. EB-15-MD-002 (Mar. 13, 2015); Pole Attachment Complaint Ex. B, Docket No. 14-216, File No. EB-14-MD-003 (Jan. 31, 2014).

A. Introduction

4. The purpose of this Affidavit is to explain the basis for my conclusion that Verizon has paid, and continues to pay, unjust and unreasonable rental rates to attach to Dominion's utility poles and to describe the calculations that yield the just and reasonable pole attachment rates that Verizon should pay to attach to Dominion's poles as of the July 12, 2011 effective date of the *Pole Attachment Order*.[1]

5. In this Affidavit, I conclude that the rate that results from the proper application of the Commission's new telecom formula is the just, reasonable, and fully compensatory rental rate for Verizon's attachments to Dominion's poles. Verizon's Joint Use Agreements with Dominion (collectively, the "Joint Use Agreement") should be treated as "new" agreements under the analysis set forth in the *Pole Attachment Order* because they took effect in January 2011, about six months prior to the *Pole Attachment Order*'s effective date.[2] Because they contain terms and conditions that are materially comparable to the terms and conditions provided by Dominion to Verizon's competitors, Verizon should receive the new telecom rate that applies to its competitors. I further conclude that Verizon has paid Dominion far more than a just and reasonable rate before and after the effective date of the *Pole Attachment Order*. I also calculate

[1] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff'd, Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183, (D.C. Cir. 2013), cert. denied, 134 S. Ct. 118 (2013) ("*Pole Attachment Order*" or "*Order*").

[2] *See* Complaint Exs. 1 (General Joint-Use Agreement Between Verizon Virginia and Dominion (Jan. 1, 2011)); 2 (General Joint Use Agreement Between Verizon South and Dominion (Jan. 1, 2011)) (collectively, the "Joint Use Agreement").

the amount of Verizon's overpayment to Dominion since the *Order*'s July 12, 2011 effective date.

6. For the 2011 to 2014 rental years, Verizon paid Dominion annual per pole rental rates of [redacted] respectively (the "Joint Use Agreement rates").[3] As detailed below, the per pole rates that result from a proper application of the new telecom formula for the same years are $5.87, $7.15, $7.05, and $6.85, respectively (the "new telecom rates"). Since July 12, 2011, because Verizon was invoiced for attachments on [redacted] Dominion poles, Verizon paid Dominion gross rent totaling nearly [redacted] more than it should have paid at the new telecom rate.[4]

7. Although I conclude that Verizon should be charged the new telecom rate because it attaches to Dominion's poles on comparable terms and conditions to Verizon's competitors, I have also calculated the rate that results from the Commission's pre-existing telecom formula, which serves as a reference point for an incumbent telephone company that enjoys a net material advantage over its competitors. I conclude that the per pole rates that result from a proper application of the pre-existing telecom formula for the 2011 to 2014 rental years are $8.89, $10.83, $10.68, and $10.38, respectively (the "pre-existing telecom rates"). These rates are a reasonable upper bound on any rental rate charged Verizon because, under a proper analysis of competitive neutrality, the only conceivable advantage that Dominion has identified has a per

[3] *See* Complaint Exs. B ¶ 8 (Affidavit of Stephen C. Mills (Aug. 3, 2015) ("Mills Aff.")), 11 (Verizon Virginia ("VzV") Invoices), 12 (Verizon South ("VzS") Invoices).

[4] Verizon pays Dominion the net rent due after Dominion's gross rent for using [redacted] Verizon poles is subtracted from Verizon's gross rent for using [redacted] Dominion poles. Should the Commission order Dominion to refund to Verizon the amounts that it has overpaid, Verizon will adjust the corresponding rate paid by Dominion to reflect a rate that is proportionate to Verizon's rate. *See* Complaint ¶ 92.

pole value of approximately [redacted] This value is far less than the roughly $3.50 difference between the new and pre-existing telecom rates that I have calculated. Verizon has paid far more than the pre-existing telecom rates since the effective date of the *Pole Attachment Order*. Had Verizon been invoiced for its attachments on [redacted] Dominion poles at the pre-existing telecom rate, Verizon would have paid Dominion over [redacted] less in gross rent since July 12, 2011.

8. I have relied on the best data available to Verizon in reaching the opinions expressed in this Affidavit. I reserve the right to supplement or revise this Affidavit upon review of additional data and information, including data and information provided by Dominion in the course of this proceeding.

B. Dominion Charges Verizon Rental Rates That Are Much Higher Than The Properly Calculated New Telecom And Pre-Existing Telecom Rates.

9. The FCC's new and pre-existing telecom formulas have two basic components: (1) the annual cost of pole ownership and (2) the percentage of that annual cost that is assigned to the telecommunications provider, which reflects the direct space occupied by the telecommunications provider and a share of the unusable space on the pole:[5]

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \begin{bmatrix} \text{Carrying} \\ \text{Charge} \\ \text{Rate} \end{bmatrix}$$

$$\text{Where Space Factor} = \left[\frac{\begin{pmatrix} \text{Space} \\ \text{Occupied} \end{pmatrix} + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

[5] 47 C.F.R. § 1.1409(e).

10. The new telecom formula differs from the pre-existing telecom formula because it includes an additional cost allocator that is applied to the annual cost of pole ownership. This case involves urbanized areas under the Commission's regulations.[6] Dominion and Verizon Virginia's overlapping service areas include Alexandria, Arlington, and Richmond, each of which has a population greater than 50,000.[7] Dominion and Verizon South's overlapping service areas include Dale City and Stafford County, which also have populations greater than 50,000.[8] The appropriate cost allocator, therefore, is 0.66.[9] When the annual pole costs used in the pre-existing formula are multiplied by 0.66, the resulting new telecom rate should be approximately equal to the rate produced by the Commission's rate methodology for cable television providers.[10]

11. The net cost of a bare pole is determined by using the following calculation:

$$\text{Annual Pole Cost} = \frac{\text{(Net Pole Investment x Appurtenances Factor)}}{\text{Number of Poles}} \times \text{Carrying Charge Rate}$$

[6] 47 C.F.R. § 1.1417(c); *Pole Attachment Order*, 26 FCC Rcd at 5304 (¶ 149 n. 449) ("An urbanized service area has 50,000 or higher population, while a non-urbanized service area has under 50,000 population.").

[7] Complaint Ex. B ¶ 3 (Mills Aff.); U.S. Census Bureau, State and County QuickFacts: Alexandria (city), *available at* http://quickfacts.census.gov/qfd/states/51/5101000.html (2010 population of 139,966); U.S. Census Bureau, State and County QuickFacts: Arlington CDP, *available at* http://quickfacts.census.gov/qfd/states/51/5103000.html (2010 population of 207,627); U.S. Census Bureau, State and County QuickFacts: Richmond (city), *available at* http://quickfacts.census.gov/qfd/states/51/5167000.html (2010 population of 204,214).

[8] Complaint Ex. B ¶ 3 (Mills Aff.); U.S. Census Bureau, State and County QuickFacts: Dale City CDP, Virginia, *available at* http://quickfacts.census.gov/qfd/states/51/5121088.html (2010 population of 65,969); U.S. Census Bureau, State and County QuickFacts: Stafford County, Virginia, *available at* http://quickfacts.census.gov/qfd/states/51/51179.html (2010 population of 128,961).

[9] *Pole Attachment Order*, 26 FCC Rcd at 5304 (¶ 149).

[10] *Id.* at 5304-05 (¶¶ 149, 151).

where net pole investment is the result of reducing gross investment assigned to the poles account by the amount of the depreciation and deferred tax reserves assigned (or allocated) to these accounts as well as a 15 percent reduction to eliminate investment in non-pole appurtenances.[11]

1. Proper Application Of The New And Pre-Existing Telecom Formulas.

12. I have calculated the new and pre-existing telecom rates for the 2011 through 2016 rental years using cost data for 2009 through 2014 that Dominion provided to Verizon[12] and data contained in Dominion's 2014 FERC Form 1, which was filed on March 6, 2015. Although I would generally calculate rental rates based on cost data from the immediately preceding year (in other words, 2011 rates would be based on 2010 cost data), I have [redacted]

13. Dominion's cost data produce the following annual pole costs under the new telecom formula, as explained in more detail in Exhibits C-1 to C-6:

[11] *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12122-23, 12161 (¶¶ 32, 121) (2001).

[12] Complaint Ex. 20 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[13] [redacted]

Rental Year Using data from	**2011** 2009	**2012** 2010	**2013** 2011	**2014** 2012	**2015** 2013	**2016** 2014
Net Distribution Pole Investment ($000's)	$270,523	$268,608	$277,251	$294,335	$303,826	$316,073
divided by						
Number of Distribution Poles	977,512	978,774	980,181	981,604	982,605	982,605
equals						
Net Investment per Distribution Pole	$276.75	$274.43	$282.86	$299.85	$309.20	$321.67
multiplied by						
Capital Carrying Charge Rate	28.67%	35.24%	33.72%	30.90%	28.49%	25.39%
multiplied by						
Urbanized Service Area Cost Allocator	0.66	0.66	0.66	0.66	0.66	0.66
equals						
Net Cost of Bare Pole	**$52.37**	**$63.82**	**$62.95**	**$61.15**	**$58.13**	**$53.91**

14. Dominion's cost data produce the following annual pole costs under the pre-existing telecom formula, as also explained in more detail in Exhibits C-1 to C-6:

Rental Year Using data from	**2011** 2009	**2012** 2010	**2013** 2011	**2014** 2012	**2015** 2013	**2016** 2014
Net Investment per Distribution Pole	$276.75	$274.43	$282.86	$299.85	$309.20	$321.67
multiplied by						
Capital Carrying Charge Rate	28.67%	35.24%	33.72%	30.90%	28.49%	25.39%
equals						
Net Cost of Bare Pole	**$79.36**	**$96.70**	**$95.37**	**$92.64**	**$88.08**	**$81.68**

15. The space allocated to the telecommunications provider is the same under the new and pre-existing telecom formulas:

Space Factor (2011 – 2016 Rental Years):			
Space Occupied by Attachment:		1 ft	
Total Usable Space (2/3)		0.667 ft	
Total Usable Space	13.5 ft		
Total Pole Height	37.5 ft		
Unusable Space		24 ft	
Number of Attaching Entities		5	
SPACE FACTOR			**0.1120**

16. Multiplying the annual pole cost by the space factor produces the rate.

Application of the new telecom formula results in the following per pole rental rates:

Rental Year	Calculation	New Telecom Rate
2011	$52.37 x 0.1120	**$5.87**
2012	$63.82 x 0.1120	**$7.15**
2013	$62.95 x 0.1120	**$7.05**
2014	$61.15 x 0.1120	**$6.85**
2015	$58.13 x 0.1120	**$6.51**
2016	$53.91 x 0.1120	**$6.04**

Application of the pre-existing telecom formula results in the following per pole rental rates:

Rental Year	Calculation	Pre-Existing Telecom Rate
2011	$79.36 x 0.1120	**$8.89**
2012	$96.70 x 0.1120	**$10.83**
2013	$95.37 x 0.1120	**$10.68**
2014	$92.64 x 0.1120	**$10.38**
2015	$88.08 x 0.1120	**$9.87**
2016	$81.68 x 0.1120	**$9.15**

2. Dominion's Misapplication Of The New And Pre-Existing Telecom Formulas.

17. The information provided by Dominion indicates that it may have overcharged Verizon's competitors following the effective date of the *Pole Attachment Order*.[14] For

[14] Complaint Ex. 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)).

example, Dominion informed Verizon that its 2014 rental rate is [redacted][15] The difference between the $6.85 new telecom rate that I calculated above for 2014 and the [redacted] rate that Dominion may have charged Verizon's competitors appears to result from Dominion's incorrect use of three inputs to the new telecom formula.

18. *First*, when calculating the capital carrying charge rate, Dominion asserts that it uses its authorized rates of return from the Virginia State Corporation Commission ("SCC").[16] A review of the SCC's Orders, however, shows that this is not the case.

19. For the 2011 through 2014 rental years, Dominion appears to use a rate of return of 11.25%, and for the 2015 rental year, Dominion appears to use a rate of return of 10%.[17] These rates of return (also referred to as costs of capital) do not appear in the relevant SCC Orders. Instead, for the 2011 and 2012 rental years, the SCC approved a cost of equity of 11.9% for the 2009 and 2010 cost years applicable to the rental rate calculations.[18] The 11.9% cost of equity, when combined with the cost of the other components of Dominion's capital structure and weighed according to their share of the capital structure, yields a rate of return of 8.77%.[19]

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[15] *Id.*

[16] Complaint Ex. 20 at Attachment line 36 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[17] *Id.*

[18] *See* Complaint Ex. 27 ¶ 13 (Order Approving Stipulation and Addendum, Case No. PUE-2009-00019 (Va. SCC Mar. 11, 2010)).

[19] Because of the close proximity in time to the rental years at issue, it is reasonable to use the information provided about Dominion's capital structure in the SCC's 2011 Final Order, even though it post-dates the 2009 and 2010 cost years. *See* Complaint Ex. 26 at 17 nn. 52, 53 (Final Order, Case No. PUE-2011-00027 (Va. SCC Nov. 30, 2011)). The information in the 2011 Final Order is further supplemented and confirmed by Dominion's testimony in the 2011 SCC rate proceeding, which includes the calculation for the 8.77% rate of return. *See* Complaint Ex. 28 at Schedule 3, p. 1 (Dominion Schedules 1-5, Case No. PUE-2011-00027 (Mar. 31, 2011)).

For the 2013 and 2014 rental years, the SCC adopted an 8.23% rate of return.[20] In doing so, the SCC reduced Dominion's approved cost of equity to 10.9% for the 2011 and 2012 cost years applicable to the rental rate calculations, adopted a 5.14% cost of debt, and weighed the cost of the components of Dominion's capital structure to reflect their share of Dominion's capital structure.[21] For the 2015 and 2016 rental years, the SCC further reduced Dominion's approved cost of equity to 10% for the 2013 and 2014 cost years applicable to the rental rate calculations,[22] set a 50/50 ratio of equity to debt,[23] and established a rate of return of 7.65%.[24]

20. Dominion's apparent use of its 10% cost of equity for the 2015 rental year as its cost of capital appears to be based on a sentence in the SCC's 2013 Order that the 10% cost of equity "will, among other things, serve as the fair combined rate of return against which Dominion's earned return will be compared in its next biennial review proceeding."[25] This sentence does not support Dominion's use of a 10% cost of capital for two principal reasons. First, according to the same Order, Dominion's cost of capital must be "comprised of its weighted (1) cost of debt, and (2) cost of equity, which incorporate the percentages of debt and equity in its capital structure."[26] The 10% figure represents solely Dominion's cost of equity.[27]

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[20] *See* Complaint Ex. 26 at 23 (Final Order, Case No. PUE-2011-00027 (Va. SCC Nov. 30, 2011)).

[21] *Id.* at 17, 23.

[22] *See* Complaint Exs. 25 at 21 (Final Order, Case No. PUE-2013-00020 (Va. SCC Nov. 26, 2013)), 24 at 13 (Final Order, Docket PUE-2013-00072 (Va. SCC Apr. 29, 2014)).

[23] *See* Complaint Ex. 25 at 21 (Final Order, Case No. PUE-2013-00020 (Va. SCC Nov. 26, 2013)).

[24] *See* Complaint Ex. 24 at 13 (Final Order, Case No. PUE-2013-00072 (Va. SCC Apr. 29, 2014)).

[25] *See* Complaint Ex. 25 at 15 (Final Order, Case No. PUE-2013-00020 (Va. SCC Nov. 26, 2013)).

[26] *Id.* at 21-22.

Second, a more recent SCC Order clarifies that the 10% cost of equity must be adjusted to reflect Dominion's cost of debt and ratio of equity to debt, stating that Dominion has "an overall cost of capital of 7.653%."[28]

21. Dominion therefore should have used the rates of return that I use in my calculations—8.77% for the 2011 and 2012 rental years, 8.23% for the 2013 and 2014 rental years, and 7.65% for the 2015 and 2016 rental years. These are based on "the cost of debt and equity, and the ratio of debt to equity"[29] as well as on "the latest decision of the state regulatory body."[30]

22. *Second*, when calculating the space factor, Dominion appears to allocate 1.5 feet of occupied space to Verizon,[31] although its sole "data source" for this number is the Commission's 1-foot rebuttable presumption.[32] It is my understanding that neither Dominion nor Verizon has survey data establishing the amount of space that Verizon's facilities occupy on average on Dominion's utility poles.[33] Therefore, because Dominion has failed to rebut the presumption, the space factor should be calculated with the 1-foot presumptive value that I use in my calculations.

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[27] *Id.* at 21.

[28] *See* Complaint Ex. 24 at 13 (Final Order, Case No. PUE-2013-00072 (Va. SCC Apr. 29, 2014)).

[29] *In the Matter of Connect America Fund*, Wireline Competition Bureau Staff Report, 28 FCC Rcd 7123, 7130 (¶ 5) (2013); *see also* 47 C.F.R. § 65.305.

[30] 47 C.F.R. § 1.1404(g)(1)(x).

[31] Complaint Ex. 20 at Attachment line 53 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[32] *Id.*; *see also* 47 C.F.R. § 1.1418.

[33] *See* Complaint Ex. B ¶ 19 (Mills Aff.).

23. *Third*, when calculating the space factor, Dominion uses 2.6 as the average number of attaching entities.[34] Dominion claims that this number is supported by a "company survey,"[35] but it did not provide the "survey," or any information about it, to Verizon during their negotiations. Dominion has thus failed to rebut the Commission's presumptive average number of 5 attaching entities in urban service areas.[36] Additionally, the public record suggests that Dominion's "survey" is based on a limited sample of poles and is outdated, as its Lead Joint Use Administrator stated in a 2008 Affidavit that the 2.6 "average number was determined by a statistical survey performed for us by a consultant in 2001."[37] The proper input is the presumptive average of 5 attaching entities that I use in my calculations.

24. Dominion's use of 2.6 attaching entities without proper support is particularly problematic here because it takes Dominion's new telecom rate far out of parity with a properly calculated cable rate. For the 2014 rental year, for example, Dominion pairs an improperly calculated [redacted] new telecom rate with an improperly calculated [redacted] cable rate – meaning that its new telecom rate is 70% higher than its cable rate.[38] The proper application of the Commission's

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[34] Complaint Ex. 20 at Attachment line 58 (Email from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014)).

[35] *Id.*

[36] 47 C.F.R. § 1.1417(c); *see also Teleport Commc'ns Atlanta, Inc. v. Ga. Power Co.*, Order on Review, 17 FCC Rcd 19859, 19866 (¶ 18) (2002).

[37] Declaration of Michael Roberts ¶ 9 (Mar. 6, 2008), attached to Comments of Ameren Services Company and Virginia Electric and Power Company, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Mar. 7, 2008).

[38] Complaint Ex. 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)).

formulas for 2014 results in a $6.85 new telecom rate, which approximates a properly calculated $6.86 cable rate as the Commission intended.[39]

3. The Joint Use Agreement Rates Impose An Annual Unjust And Unreasonable Financial Burden On Verizon As Compared To The New Telecom Rates.

25. The following table includes a comparison of the properly calculated new telecom rates to the Joint Use Agreement rates that Verizon paid Dominion for the 2011 through 2014 rental years. This table shows that Verizon has paid rates since the effective date of the *Pole Attachment Order* that are almost [redacted] the corresponding new telecom rates. [redacted]

[redacted]

[redacted]

26. These [redacted] per pole overpayments, when applied to the [redacted] poles reflected in Dominion's invoices, have imposed annual [redacted] unreasonable financial burdens on Verizon. Since the effective date of the *Pole Attachment Order*, Verizon's overpayments have totaled on a cumulative basis nearly [redacted]

[39] *Pole Attachment Order*, 26 FCC Rcd at 5305 (¶ 149).

[redacted]

27. Straightforward comparisons highlight the unreasonableness of the rates that Dominion has charged Verizon. Using the 2014 rental year as an example, I have compared the percentage of Dominion's pole costs (as calculated using the FCC formula) that Dominion collected from Verizon to the percentage that Dominion collected from each of Verizon's competitors. As shown above, Dominion's pole costs for 2012, which apply to the 2014 rate calculation, were $92.64. *See* ¶ 14, *supra*. The properly calculated 2014 new telecom rate was $6.85, which provides Dominion 7.4% of its costs as contemplated by the Commission ($6.85 / $92.64 = 0.074).[41] The properly calculated 2014 cable rate was $6.86, which provides Dominion 7.4% of its costs as also contemplated by the Commission ($6.86 / $92.64 = 0.074).[42] Dominion, in contrast, collected [redacted]

[40] [redacted]

[41] *See Pole Attachment Order*, 26 FCC Rcd at 5305 (¶ 150 n.453) (new telecom formula should recover approximately 7.4% of fully allocated pole costs).

[42] *See id.* at 5297 (¶ 131 n.399) ("Under the cable formula, each attacher, other than the pole owner, pays about 7.4% of the annual cost of a pole.").

28. If Dominion collected—in addition to Verizon's [redacted] rate—a properly calculated $6.85 new telecom rate from three of Verizon's competitors (because it is in an urbanized area), Dominion would have collected [redacted] This means—assuming that Dominion's pole height reflects the Commission's presumptive 37.5 foot height[43]—that Dominion collected [redacted] from attaching parties that occupy 30% of the usable space on its pole (4 ft / 13.5 ft = 0.30). If Dominion had instead collected the just and reasonable new telecom rate from Verizon and its competitors, Dominion would have collected $27.40 per pole ($6.85 * 4 = $27.40). Dominion would then have collected a reasonable 30% of its net pole costs ($27.40 / $92.64 = 0.296) from attaching parties that occupy 30% of the usable space on its pole.

29. It appears that Dominion instead collected far more by misapplying the Commission's new telecom formula. Dominion informed Verizon that its 2014 new telecom rate was [redacted] and its cable rate was [redacted][44] It is reasonable to conclude that Dominion charged Verizon's competitors at the [redacted] new telecom rate because its Lead Joint Use Administrator stated that "there are virtually no remaining attachments used to provide solely cable service" on its utility poles and that it only charges its cable rate where an entity "provide[s] solely cable service."[45] If, therefore, Dominion collected [redacted]

[43] 47 C.F.R. § 1.1418.

[44] Complaint Ex. 4 (Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013)).

[45] Declaration of Michael Roberts ¶¶ 3, 8 (Mar. 6, 2008), attached to Comments of Ameren Services Company and Virginia Electric and Power Company, *In the Matter of Implementation*

[redacted] per pole from Verizon for the 2014 rental year, and collected rent from three additional attachers in its urbanized area at its inflated [redacted] new telecom rate, Dominion collected [redacted] This means that Dominion would have recovered [redacted] from attaching parties that occupy 30% of the usable space on its pole.

4. A Comparison Of The Joint Use Agreement Rates To The Pre-Existing Telecom Rates Further Confirms Their Unreasonableness.

30. The Joint Use Agreement rates are also significantly higher than the properly calculated pre-existing telecom rates that serve as a reference point where a Joint Use Agreement provides a net material advantage to an incumbent telephone company. As detailed in Section D below, I conclude that the Joint Use Agreement does not materially advantage Verizon over its competitors, particularly on a net basis, making the new telecom rate the appropriate just and reasonable rate in this case. But even if Verizon were materially advantaged over its competitors, this comparison shows that the Joint Use Agreement rates are unjust and unreasonably high.

31. The following table includes a comparison of the properly calculated pre-existing telecom rates to the Joint Use Agreement rates that Verizon paid Dominion for the 2011 through 2014 rental years. This table shows that Verizon has paid rates since the effective date of the *Pole Attachment Order* that are roughly [redacted] the pre-existing telecom rate. [redacted]

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of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245 (Mar. 7, 2008)

[redacted]

32. These [redacted] per pole overpayments have imposed annual [redacted] unreasonable financial burdens on Verizon. Since the effective date of the *Pole Attachment Order,* Verizon's payments over and above the pre-existing telecom rate have totaled on a cumulative basis over [redacted]

33. As discussed in greater detail below, Verizon has received minimal, if any, benefit in exchange for this considerable premium. This calculation thus exposes the unreasonable burden that Dominion seeks to continue imposing on Verizon and the excessiveness of the payments that Verizon has made to Dominion historically.

46 [redacted]

34. In fact, as detailed below, the sole conceivable "benefit" provided to Verizon amounts to [redacted] *See infra*, ¶ 69. The following table includes a comparison of the properly calculated new telecom rates increased by this [redacted] value to the Joint Use Agreement rates that Verizon paid Dominion for the 2011 through 2014 rental years. [redacted]

[redacted]

35. Had Verizon paid these adjusted new telecom rentals, its gross rental payment to Dominion would have been more than [redacted] lower than the gross rentals that it has paid Dominion since the effective date of the *Pole Attachment Order*: [redacted]

[redacted]

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47 [redacted]

[redacted]

C. The Joint Use Agreement Rates Reflect Dominion's Superior Bargaining Power.

36. It is my opinion that the unreasonably high Joint Use Agreement rates are the result of Verizon's insufficient bargaining power, which provided Dominion an opportunity to leverage a financially superior result from the negotiations that led up to the 2011 Joint Use Agreement.

37. A reasonable benchmark for determining the negotiating power of each party is the number of poles each party occupies in the parties' overlapping serving area. Dominion has consistently owned 65 percent of the poles, which is a significant ownership disparity. In 2006 (when negotiations for the Joint Use Agreement began), Dominion owned [redacted] of the joint use poles and Verizon owned [redacted][48] Invoices for the 2011 rental year (when the Joint Use Agreement took effect) and the 2014 rental year show that Dominion owned [redacted] joint use poles and Verizon owned [redacted][49]

38. It is my opinion that this pole ownership disparity gave Dominion superior bargaining power and that it exercised that bargaining power in order to secure a result in the 2011 Joint Use Agreement that forestalled Verizon's efforts to make even incremental progress toward a just and reasonable rate. I further conclude that the facts of this case confirm the FCC's finding that "[d]ue to the local monopoly in ownership or control of poles, the legislative record indicated that some utilities had abused their superior bargaining position by demanding

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[48] Complaint Ex. B ¶ 13 (Mills Aff.).

[49] Complaint Exs. 11 at 5, 11 (VzV Invoices), 12 at 3, 11 (VzS Invoices).

exorbitant rental fees."[50] The FCC's statement applies fully here that "at least in some circumstances, market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates, terms and conditions for incumbent LECs pole attachments."[51]

39. Five key findings support my conclusion. *First*, as presented above, Dominion owns 65% of the joint use poles. This is the same percentage the Commission cited when it concluded that "incumbent LECs often may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations in some cases."[52]

40. *Second*, as discussed in the Affidavit of Mr. Mills, during the negotiations for the Joint Use Agreement, Verizon offered to purchase some of Dominion's poles in order to increase its ownership ratio and reduce its net rental payments. Dominion rejected the offer, claiming that it does not sell its assets.[53] The negotiations also were characterized by prolonged and unnecessary delays by Dominion and the repeated introduction of proposals that Verizon had previously identified as non-starters.[54] In the end, the negotiations stretched on for over four years, as Dominion resisted Verizon's efforts to reduce its rental rate obligations.

41. *Third*, the Joint Use Agreement evidences Dominion's superior bargaining power because it includes non-price terms and conditions that mirror the terms and conditions contained in license agreements between Dominion and third party attachers, but imposes far higher rental rates. The full measure of the bargaining power demonstrated by Dominion is not simply the

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[50] *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12116 (¶ 21) (2001).

[51] *Pole Attachment* Order, 26 FCC Rcd at 5327 (¶ 199).

[52] *Id.* at 5329 (¶ 206) (noting that "electric utilities appear to own approximately 65-70 percent of poles" today).

[53] Complaint Ex. B ¶ 17 (Mills Aff.).

[54] *Id.* ¶ 16.

comparable terms and conditions in the Joint Use Agreement, but the fact that Dominion was able to pair licensee-type terms and conditions with rent levels comparable to the parties' prior joint use agreements. This is confirmed by a review of the Joint Use Agreement[55] and Dominion's license agreement with Verizon's affiliate.[56]

42. For example, the Joint Use Agreement and license agreement contain the same or materially comparable terms and conditions regarding [redacted] This mirroring of comparable terms and conditions without a comparable rental rate reflects an arrangement that would not reasonably exist but for the exercise of superior bargaining power.

43. *Fourth*, the combination of rates for Dominion and Verizon in the Joint Use Agreement show Dominion's superior bargaining power, as Dominion reduced its rental rate so that it would pay [redacted] even

[55] Complaint Exs. 1, 2 (Joint Use Agreement).

[56] Complaint Ex. 3 (MCI License).

[57] [redacted]

[58] [redacted]

[59] [redacted]

[60] [redacted]

[61] [redacted]

[62] [redacted]

[63] [redacted]

though Dominion uses far more space on the joint use poles. Dominion is allocated [redacted] of space,[64] which, when added to the 40 inches of safety space,[65] provides Dominion [redacted] of space. Verizon is allocated [redacted] on the joint use pole,[66] and uses less space than allocated.[67] Dominion, however, pays [redacted]

44. *Fifth*, the combination of rates in the Joint Use Agreement confirms that market forces and independent negotiations were not alone sufficient to ensure just and reasonable rental rates for Verizon. After over four years of negotiations, Dominion insisted on rental rates that denied Verizon a net financial benefit from the new Joint Use Agreement.

45. [redacted]

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64 [redacted]

65 *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12130 (¶ 51) (2001) ("the 40-inch safety space . . . is usable and used by the electric utility"); *see also In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, 6467-68 (¶¶ 21-22) (2000).

66 [redacted]

67 Complaint Ex. B ¶ 19 (Mills Aff.).

[redacted] Dominion agreed to reduce Verizon's rental rate only if its own rental rate was reduced far more. The following table shows the rates applicable to Verizon Virginia and Dominion before and after the January 1, 2011 effective date of the Joint Use Agreement:

[redacted]

46. The following table shows the rates applicable to Verizon South and Dominion before and after the January 1, 2011 effective date of the Joint Use Agreement. Under the prior agreement, Verizon paid Dominion $30 for each pole representing the difference between the number of poles owned by Verizon and the number of poles owned by Dominion.[68] This rental arrangement gave Dominion an effective rate of $30 per pole, which I use in this table: [redacted]

[68] *Id.* ¶¶ 11, 21.

47. By reducing the rental rate paid to Verizon, Dominion was able to deny Verizon a net material financial benefit. One way to measure the impact on Verizon is by considering Verizon's net rental rate per net pole before and after the Joint Use Agreement took effect. Verizon's net rental rate per net pole is the ratio of 1) Verizon's net payment, meaning the difference between Verizon's gross rent due to Dominion and Dominion's gross rent due to Verizon and 2) the number of net poles, meaning the difference between the number of Dominion poles with Verizon attachments and the number of Verizon poles with Dominion attachments. The following table shows the calculation of Verizon's net payment to Dominion for the 2010 through 2014 rental years:[69] [redacted]

[redacted] The following table shows the calculation of the net poles for the 2010 through 2014 rental years:[70] [redacted]

[69] The numbers in this table were drawn from Dominion's invoices to Verizon Virginia and Verizon South. *See* Complaint Exhibits 11 (VzV Invoices), 12 (VzS Invoices).

[70] The numbers in this table were drawn from Dominion's invoices to Verizon Virginia and Verizon South and from company records. *See* Complaint Exhibits 11 (VzV Invoices), 12 (VzS Invoices).

[redacted]

[redacted] The following table shows the calculation of Verizon's net payment per net pole for the 2010 through 2014 rental years: [redacted]

[redacted]

[redacted]

48. This table shows that from 2010 to 2014, Verizon's net rental rate per net pole paid by Verizon [redacted]

D. The Joint Use Agreement Does Not Provide Verizon Any Substantive Value Relative To Dominion's Licensees That Justifies A Rental Rate Disparity.

49. It is my conclusion that Dominion does not provide Verizon any unique competitive advantage under the Joint Use Agreement that warrants the rate disparity between

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71 [redacted]

72 [redacted]

the Joint Use Agreement rates and the new telecom rates, or justifies continuing that disparity going forward. As noted above, *see* paragraphs 41-42, the Joint Use Agreement includes non-price terms and conditions that mirror the non-price terms and conditions contained in Dominion's license agreements. And, as noted below, *see* paragraphs 88-90, the Joint Use Agreement imposes costs on Verizon for pole access that are not shared by its competitors.

50. Dominion has claimed that a rate disparity is nonetheless warranted. I do not agree. I will first review the value, if any, associated with the seven alleged benefits that Dominion has claimed are sufficient to justify a rate disparity.[73] I will then review the benefits alleged by the power company in the *Verizon Florida* proceeding that the Enforcement Bureau asked for analysis about, because they were referenced in letters sent by the Enforcement Bureau in other Pole Attachment Complaint proceedings.[74] My conclusion is that Verizon is not provided a net material advantage over its competitors.

51. My review is based on the best information available to Verizon, including the draft license agreement provided by Dominion, *see* Complaint Ex. 4, the license agreement that Dominion entered with Verizon's competitive local exchange carrier ("CLEC") affiliate, *see* Complaint Ex. 3, and the Affidavits and other evidence attached to this Pole Attachment Complaint.

52. The terms of the draft license agreement are to a limited degree relevant to an analysis of competitive neutrality. A draft agreement, by definition, contains a party's starting

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[73] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[74] *See Verizon Florida LLC v. Florida Power and Light Company*, Memorandum Opinion and Order, 30 FCC Rcd 1140 (EB 2015) ("*Verizon Florida*"); *see also* Letter to Counsel, *Frontier Commc'ns of the Carolinas LLC v. Duke Energy Progress, Inc.*, 2015 WL 629032 (EB Feb. 12, 2015); Letter to Counsel, *Frontier Commc'ns of the Carolinas LLC v. Duke Energy Carolinas, LLC*, 2015 WL 629033 (EB Feb. 12, 2015); Letter to Counsel, *Commonwealth Tel. Co. LLC v. Metro. Edison Co.*, 2015 WL 629034 (EB Feb. 12, 2015).

point in negotiations, and is therefore not evidence of the actual negotiated terms adopted by the contracting parties. The draft license agreement remains relevant to the analysis, however, because the terms of the agreement provide an upper bound on any analysis by evidencing the terms and conditions that Dominion considers most favorable.

1. Dominion Has Not Identified A Net Material Advantage.

(a) Notification of Subsequent Attachments to a Joint Use Pole

53. Dominion claims that Verizon is advantaged because [redacted][77]

54. Dominion has therefore identified a difference in process or procedure, but simply that—a difference. The difference does not confer any differential cost or benefit on Verizon relative to its competitors. I therefore have assigned a zero financial value to this alleged benefit.

(b) Unauthorized Attachment Fees

55. Dominion claims that Verizon is advantaged because [redacted]

[75] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[76] Complaint Ex. C ¶ 7 (Affidavit of Jonathan R. Hansen (July 31, 2015) ("Hansen Aff.")).

[77] [redacted]

[78] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[redacted] Dominion has thus identified a difference in how it treats unreported attachments, but that difference does not provide value to Verizon.

56. [redacted]

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79 [redacted]

80 *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115).

81 Complaint Ex. B ¶ 14 (Mills Aff.).

[redacted]

[redacted]

[redacted]

[82] [redacted]

[83] Complaint Ex. B ¶ 14 (Mills Aff.).

[redacted]

[redacted]

[redacted] I assign a zero financial value to this alleged benefit.

(c) Per-Pole Rental Rates

61. Dominion's argument that Verizon [redacted]

[84] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[85] [redacted]

[redacted]

[redacted] [redacted] I assign a zero financial value to this alleged benefit.

(d) Pre And Post Attachment Engineering And Administrative Labor

63. Dominion argues that Verizon's competitors [redacted][88]

64. As detailed in the Affidavit of Mr. Hansen, Verizon [redacted] [redacted][90] Verizon is

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[86] 47 U.S.C. § 224(e)(2).

[87] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[88] [redacted]

[89] Complaint Ex. C ¶ 8 (Hansen Aff.).

[90] *Id.*

therefore comparably situated with its competitors. [redacted] For this reason, I assign a zero financial value to this alleged benefit.

(e) Late Payment Surcharges

65. Dominion claims that Verizon [redacted]

[redacted] [redacted] I assign a zero financial value to this alleged benefit.

(f) Surety Bond

67. Dominion claims that Verizon is advantaged [redacted]

[redacted] [redacted]

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[91] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[92] Complaint Ex. B ¶ 8 (Mills Aff.).

[93] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[94] [redacted]

[redacted]

[redacted] This trivial amount does not rise to the level of a “material” advantage.

[95] Complaint Ex. B ¶ 13 (Mills Aff.).

[96] [redacted]

[97] [redacted]

(g) Escrow Deposit

70. Finally, Dominion argues that Verizon [redacted]

[redacted] I therefore assign a zero financial value to this alleged benefit.

2. The Advantages Alleged In The *Verizon Florida* Complaint Proceeding Have No Value That Could Justify A Rate Disparity.

(a) Permitting New Attachments

72. The power company in *Verizon Florida* alleged that the incumbent telephone company is "not required to file a permit application, pay an initial fee, or wait for approval from [the power company] before attaching."[100] These topics do not advantage Verizon here.

73. [redacted]

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[98] Complaint Ex. 17 at 2 (Letter from A. Hahn, Dominion, to S. Mills, Verizon (Feb. 20, 2014)).

[99] [redacted]

[100] 30 FCC Rcd at 1148 (¶ 21).

[redacted]

[redacted] [redacted][103]

75. Additionally, these activities are operational differences that occur, if ever, when an attaching party is making attachments to new poles. This occurs far more frequently when a party is building its network than when it is making marginal additions to an established network. As discussed in the Affidavits of Mr. Mills and Mr. Hansen, Verizon's presence on Dominion's poles has remained relatively constant in recent years as Verizon's network is mature and requires few attachments to new joint use poles.[104]

76. For all these reasons, I assign a zero financial value to this topic.

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[101] [redacted]

[102] Complaint Ex. C ¶ 8 (Hansen Aff.).

[103] *Id.* ¶¶ 4, 7, 8.

[104] Complaint Exs. B ¶ 14 (Mills Aff.), C ¶ 12 (Hansen Aff.).

(b) Post-Installation Inspections

77. Verizon is not advantaged with respect to post-installation inspections and inspection fees. These alleged benefits involve non-recurring activities that may apply when an attachment to a new pole is made, something that Verizon does rarely in its overlapping service area with Dominion.

78. [redacted]

79. The costs for post-installation inspections should also be comparable between Verizon and its competitors. [redacted] I assign a zero financial value to this topic.

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105 [redacted]

106 [redacted]

107 [redacted]

(c) Location Of Facilities On Dominion's Poles

80. The Affidavit of Mr. Hansen details the increased risks and costs associated with Verizon's position as the lowest attacher on Dominion's poles. These costs relate to Verizon's increased exposure to damage from oversized vehicles, vandalism, and others working on the pole and increased pole transfer costs.[108] I have not made an effort to quantify these increased costs, because it is apparent that they far exceed any measurable savings associated with access to the lowest position on the pole. Moreover, the maintenance of standard construction practices, which locate Verizon at the bottom of the pole, operates to the benefit of all attaching entities by facilitating identification of facilities and eliminating the crossing of cables mid-span.[109] As a result, I assign a zero financial value to this topic.

(d) Pole Height

81. When judging competitive neutrality, the inquiry must compare the height of poles required to service Dominion's and Verizon's competitors' customers to the height of poles required to service Dominion's and Verizon's customers. Because the same additional space for communications equipment and safety is required irrespective of whether Dominion shares a pole with Verizon or with one of Verizon's competitors,[110] pole height is not a competitive difference between Verizon and its competitors.

82. Moreover, Verizon has already paid Dominion for any additional costs associated with the height and strength of Dominion's poles. The rates that result from the Commission's

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[108] Complaint Ex. C ¶ 19 (Hansen Aff.).

[109] *Id.* ¶ 16.

[110] *Id.* ¶¶ 14-15.

new telecom and cable formulas are fully compensatory rates.[111] Verizon has paid a rate far higher. *See supra* ¶¶ 25, 27. [redacted] I assign a zero financial value to this topic.

(e) Pole Replacements

83. The mere existence of a legal right to refuse to replace poles in order to accommodate Verizon's competitors is not relevant because [redacted][113]

84. Moreover, the mere existence of a right that is not exercised does not create a competitive advantage. It does not make economic sense for Dominion to refuse to install replacement poles that have more capacity. [redacted][115] This means that if Dominion agrees to increase capacity, it obtains ownership of a taller, stronger, and newer pole [redacted] Verizon is not provided a benefit relative to a licensee.

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[111] *See Pole Attachment Order*, 26 FCC Rcd at 5321 (¶ 183) ("the new telecom rate, and the cable rate each are fully compensatory to utilities").

[112] [redacted]

[113] [redacted]

[114] [redacted]

[115] [redacted]

(f) Insurance And Indemnification

85. The Joint Use Agreement [redacted]

[redacted] [redacted][118] There is therefore no competitive difference between Verizon and its competitors.

(g) Make-Ready Costs

87. The Joint Use Agreement and license agreements [redacted][119] There is therefore no competitive difference between Verizon and its competitors.

3. The Joint Use Agreement Imposes Costs On Verizon For Pole Access That Its Competitors Do Not Share.

88. The preceding discussion focused on the potential for Verizon to receive some incremental benefit through the terms and conditions of the Joint Use Agreement. However, any

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116 [redacted]

117 [redacted]

118 [redacted]

119 [redacted]

analysis of competitive neutrality must consider both burdens and benefits associated with the use of Dominion's poles. As the Commission explained, "[a] failure to weigh, and account for, the different rights <u>and responsibilities</u> in joint use agreements could lead to marketplace distortions."[120]

89. The FCC has recognized that "incumbent LECs still own many poles today."[121] This is a significant difference between Verizon and its competitors. Verizon's competitors attach to Dominion's poles without shouldering the costs of pole ownership. Verizon thus bears unique and considerable costs to build and maintain a pole network in order to share utility poles with Dominion. Some of these costs—required for Verizon to obtain access to Dominion's poles—are detailed in the Affidavit of Mr. Hansen. Others have been acknowledged in Dominion's filings.[122]

90. Also, unlike licensees, Verizon must provide Dominion every alleged "advantage" that Dominion provides Verizon. Where that alleged "advantage" is not tied to the number of poles to which a party is attached, the cost of any "advantage" to Verizon of providing the alleged benefit is directly offset by the cost of the "disadvantage" to Verizon for not receiving the reciprocal benefit from Dominion. The offset eliminates any net advantage to Verizon as compared to its competitors. Where the "advantage" is tied to the number of poles to which a party is attached, the cost of the "advantage" associated with Verizon's use of Dominion's poles (65% of the joint use poles) must still be reduced to account for the cost of the

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[120] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654), quoted at *Verizon Florida*, 30 FCC Rcd at 1143 (¶ 8) (emphasis added).

[121] *Id.*

[122] *See, e.g.*, Declaration of Michael Roberts ¶ 7 (Apr. 18, 2008), attached to Reply Comments of Ameren Services Company and Virginia Electric and Power Company, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Apr. 22, 2008).

"disadvantage" to Verizon for not receiving the reciprocal benefit for Dominion's use of Verizon's poles (35% of the joint use poles).

E. Verizon's Rates Under The Parties' Prior Agreements Far Overcompensated Dominion For Any Alleged Unique Benefits.

91. Because this dispute involves a "new agreement" that took effect a few months prior to the effective date of the *Pole Attachment Order*, the rate analysis should depend on the comparability of the terms and conditions in the Joint Use Agreement, rather than on any past value associated with the terms and conditions of the parties' prior agreements. I have nonetheless considered whether the rates that Verizon paid under the prior agreements compensated Dominion for the "monetary value" of any "benefits under [those agreements] that were not available to other attachers."[123] It is my opinion that Verizon significantly overcompensated Dominion for the terms and conditions in the prior agreements.

92. Dominion's prior agreement with Verizon South was entered in 1978 and modified in 1985,[124] and Dominion's prior agreement with Verizon Virginia was entered in 1992, amended in 2002, and was the subject of settlement agreements entered in 2002 and 2006.[125] Verizon's rates under these prior agreements were far higher than the pre-existing telecom rates that then applied to CLECs. For the 2010 rental year, for example, the properly calculated pre-existing telecom rate was $9.56 per pole. For that same rental year, Verizon

[123] *Verizon Florida*, 30 FCC Rcd at 1149-51 (¶¶ 24, 26).

[124] *See* Complaint Exs. 7 (General Joint Use Agreement between Dominion and Continental Telephone Company of Virginia (Jan. 1, 1978) ("Contel JUA")), 8 (Modification No. 1 to Appendix Number 1 to General Joint Use Agreement Dated 1-1-78 Between Dominion and Continental Telephone Company of Virginia (Dec. 23, 1985)), 9 (Settlement Agreement and Mutual Release Between Verizon South and Dominion (Dec. 31, 2002)), 10 (Agreement Between Verizon South and Dominion (June 7, 2006)).

[125] *See* Complaint Exs. 5 (General Joint Use Agreement Between Dominion and the Chesapeake and Potomac Telephone Company of Virginia (Jan. 1, 1992) ("C&P JUA")), 6 (Amendment to Joint Use Agreement Between Verizon Virginia and Dominion (Nov. 1, 2002)).

Virginia paid a [redacted] per pole rate and Verizon South paid a $30.00 per pole rate.[126] For 2010 rent, therefore, Verizon Virginia paid [redacted] and Verizon South paid $20.44 more per pole ($30.00 - $9.56 = $20.44), than the rate applicable to their competitors.

93. Verizon's unreasonably high rental rates under the prior agreements paid several times over for any unique "benefits" that Dominion could reasonably claim to have provided under the prior agreements. For essentially the same reasons detailed above in Sections D(1) and D(2), any alleged "benefits" either do not exist or have minimal value under the prior agreements. For example, Verizon was then also responsible for [redacted]

[126] Complaint Ex. B ¶¶ 11, 21 (Mills Aff.).

[127] [redacted]

[128] [redacted]

[129] [redacted]

[130] [redacted]

[131] [redacted]

94. In other words, the prior agreements—just like the Joint Use Agreement—combined terms and conditions that are comparable to a license agreement with far higher rental rates. The prior agreements also required Verizon to pay far more for pole access. Verizon was then just as responsible for the costs of pole ownership and the provision of reciprocal "benefits" as it is under the Joint Use Agreement. *See* Section D(3).

95. It is therefore my conclusion that Verizon was comparable to its competitors under the prior agreements, but paid far higher rental rates for decades before the *Pole Attachment Order* took effect. Verizon's vast overpayments more than compensated Dominion for the "monetary value" of any "alleged" benefits Verizon could have received under those agreements.[132]

F. The New Telecom Rate Is A Just And Reasonable Rate For Verizon's Attachments To Dominion's Poles.

96. The just and reasonable rate for an incumbent telephone company under a joint use agreement should be the rate that may be charged Verizon's competitors if it attaches on comparable terms and conditions. As detailed above, the only identified "advantage" that has any conceivable value is [redacted] This trivial charge does not amount to a "material" difference that justifies charging Verizon a higher rental rate. This is particularly so because the proper analysis must consider several potential and actual unique burdens that Verizon bears in the joint use relationship that I did not value in my analysis.

97. The following table shows that even conservative estimates of the alleged advantages provided to Verizon do not rationalize or justify more than a fraction of the differential in the rate Dominion seeks to continue imposing on Verizon compared to the just and

[132] *See Verizon Florida*, 30 FCC Rcd at 1149-51 (¶¶ 24, 26).

reasonable rate paid by Verizon's competitors. The value of the alleged benefits is so low that Verizon is, in my opinion, comparably situated to its competitors and should receive the same rental rate. [redacted]

98. This quantification demonstrates that any alleged benefit that Verizon derives from the different terms and conditions of joint use relative to a license agreement account for about [redacted] of the burden imposed on Verizon by Dominion.[134]

99. My analysis also shows that Dominion has required Verizon to pay an annual premium of roughly [redacted] per pole per year above the new telecom rates applicable to Verizon's CLEC competitors. Since the effective date of the

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133 [redacted]

134 [redacted]

Pole Attachment Order, Verizon's overpayments have totaled roughly [redacted] (see the analysis presented in paragraphs 25-26 above).

100. Looking forward, absent substantive relief from the demanded rate and the establishment of a just and reasonable rate, Verizon will continue to pay roughly [redacted] per pole per year more than any value associated with the joint use terms and conditions. The Commission should consider this value estimate as conservative, as my analysis focuses primarily on quantifying the potential benefits conferred to Verizon even though Verizon also has offsetting burdens and obligations that licensees do not incur.

101. My analysis also demonstrates the validity of the Commission's assertion that the rate resulting from its prior telecom formula provides an upper bound on the rate that is just and reasonable for an incumbent telephone company that attaches on materially advantageous terms to its competitors. Since the effective date of the *Pole Attachment Order*, the new telecom rates have averaged \$6.73,[135] and the pre-existing telecom rates have averaged \$10.20.[136] The value of any alleged advantages in this case is far smaller than the \$3.47 difference between these two average rates.[137] Verizon has nonetheless been required to pay far more. Its rental rates have averaged [redacted] since the effective date of the *Pole Attachment Order*.[138] There is no legitimate economic reason to continue this competitive disparity.

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135 (\$5.87 + \$7.15 + \$7.05 + \$6.85) / 4 = \$6.73.

136 (\$8.89 + \$10.83 + \$10.68 + \$10.38) / 4 = \$10.20.

137 \$10.20 - \$6.73 = \$3.47.

138 [redacted]

Mark S. Calnon, Ph.D.

Sworn to before me on
this 31st day of July, 2015

Notary Public

Commonwealth of Pennsylvania
NOTARIAL SEAL
Jonathan W Wood, Notary Public
Chalfont Borough, Bucks County
My Commission Expires March 15, 2016

Exhibit C-1 (page 1 of 2)

Rate Development for 2011 Using 2009 Cost Data

I. Net Investment per Distribution Pole					
Line #	**Description**			**2009 Value**	**Source**
1	Total Distribution Plant		$	7,531,601,443	FERC Form 1 - Line 75, Col (g), p.207
2	Accumulated Depreciation - Distribution		$	2,935,401,937	FERC Form 1 - Line 26, Col. (c), p. 219
3	Accumulated Depr / Total Plant - Dist Plant			38.97%	[2] / [1]
4	Gross Pole Investment		$	631,005,419	FERC Form 1 - Line 64, Col (g), p. 207
5	Depreciation Reserve		$	245,931,034	[3] * [4]
6	Net Pole Plant		$	385,074,385	[4] - [5]
7	Net Deferred Taxes allocated to distribution		$	66,811,830	[A5] * [6] / [B3]
8	Net Plant less Deferred taxes		$	318,262,555	[6] - [7]
9	Crossarm Allowance			15%	FCC default
10	Net Plant less Crossarm Allowance		$	270,523,171	[6] * [1 - [7]]
11	Number of Distribution Poles			977,512	Dominion
12	Net Investment per Distribution Pole		$	276.75	[10] / [11]
II. Capital Carrying Charge Rate					
Line #	**Description**			**Value**	**Source**
13	Depreciation Rate for Poles			3.45%	provided by Company
14	Depreciation Expense Rate			6.84%	[13] * [4] / [8]
15	Total General and Administrative		$	472,318,629	FERC Form 1 - Line 197, Col (b) p. 323
16	Administrative and General Rate			4.53%	[16] / {[B3] - [A5]}
17	Maintenance of Overhead Lines		$	76,817,467	FERC Form 1 - Line 149, Col (b), p. 322
18	Gross Pole Investment		$	631,005,419	[4]
19	Overhead Conductor Investment		$	942,825,318	FERC Form 1 - Line 65, Col (g), p. 207
20	Services Investment		$	1,126,203,984	FERC Form 1 - Line 69, Col (g), p. 207
21	Total Overhead Accounts		$	2,700,034,721	[18] + [19] + [20]
22	Accumulated Depreciation - Overhhead Accounts		$	1,052,324,291	[21] * [3]
23	Operation and Maintenance Rate			5.57%	[17]/{{[21]-[22]}-[A5]*[20])/[B1]}
24	Operating Taxes		$	307,957,913	[C7]
25	Tax Rate			2.96%	[C7] / {[B3] - [A5]}
26	Cost of Capital			8.77%	Va. SCC Orders
27	Total Capital Carrying Charge Rate			28.67%	[14] + [16] + [23] +[25] + [26]
III. Net Cost of a Bare Pole, Space Factor and Rate Calculations					
Line #	**Description**			**Value**	**Source**
28	Net Cost of Bare Pole		$	79.36	[12] * [27]
29	Urban Service Area Allocation			0.66	FCC Default
30	Net Cost of Bare Pole - Urban		$	52.37	[28] * [29]
31	Space Occupied by Attachment (ft.)			1	FCC default
32	Usable Share Factor			0.667	FCC default
33	Total Unusable Space (ft.)			24	FCC default
34	Average pole Height			37.5	FCC default
35	Total Usable Space			13.5	[48] - [43]
36	Number of Attaching Entities			5	FCC urban default
37	Space Factor			0.1120	{[31] + [32] * [33] / [36]} / [34]}
38	New Telecommunications Formula		$	5.87	[30] * [37]
39	Prior Telecommunications Formula		$	8.89	[40] * [37]

Exhibit C-1 (page 2 of 2)

Rate Development for 2011 Using 2009 Cost Data

Line #	Description	Value - 2009		Source
A1	Deferred Operating Income Taxes - Debit	$	1,387,488,786	FERC Form 1 - Line 82, Col (c), P. 111
A2				FERC Form 1 - Line 62, col (c), p. 113
A3				FERC Form 1 - Line 63, col (c), p. 113
A4	Deferred Op Income taxes (281-283)	$	3,573,890,770	FERC Form 1 - Line 64, col (c), p. 113
A5	Net Deferred Operating Taxes	$	2,186,401,984	A2+A3+A4-A1
B1	Total Plant in Service	$	21,929,076,225	FERC Form 1 - Line 8, Col (b) p. 200
B2	Accumulated Depreciation	$	9,327,604,398	FERC Form 1 - Line 22, Col (b) p. 200
B3	Net Plant in Service	$	12,601,471,827	B1 - B2
C1	Taxes - Acct 408.1	$	187,980,794	FERC Form 1 - Line 14, Col (c), p. 114
C2	Taxes - Acct 409.1 Fed	$	466,267,004	FERC Form 1 - Line 15, Col (c), p. 114
C3	Taxes - Acct 409.1 Other	$	84,840,277	FERC Form 1 - Line 16, Col (c), p. 114
C4	Taxes - Acct 410.1	$	1,011,762,080	FERC Form 1 - Line 17, Col (c), p. 114
C5	Taxes - Acct 411.1	$	1,441,726,836	FERC Form 1 - Line 18, Col (c), p. 114
C6	Taxes - Acct 411.4	$	(1,165,406)	FERC Form 1 - Line 19, Col (c), p. 114
C7	Total Taxes	$	307,957,913	C1+C2+C3+C4-C5-C6

Exhibit C-2 (page 1 of 2)

Rate Development for 2012 Using 2010 Cost Data

I. Net Investment per Distribution Pole				
Line #	Description		2010 Value	Source
1	Total Distribution Plant	$	7,853,882,422	FERC Form 1 - Line 75, Col (g), p.207
2	Accumulated Depreciation - Distribution	$	3,110,239,350	FERC Form 1 - Line 26, Col. (c), p. 219
3	Accumulated Depr / Total Plant - Dist Plant		39.60%	[2] / [1]
4	Gross Pole Investment	$	663,249,221	FERC Form 1 - Line 64, Col (g), p. 207
5	Depreciation Reserve	$	262,655,298	[3] * [4]
6	Net Pole Plant	$	400,593,923	[4] - [5]
7	Net Deferred Taxes allocated to distribution	$	84,584,720	[A5] * [6] / [B3]
8	Net Plant less Deferred taxes	$	316,009,204	[6] - [7]
9	Crossarm Allowance		15%	FCC default
10	Net Plant less Crossarm Allowance	$	268,607,823	[6] * [1 - [7]]
11	Number of Distribution Poles		978,774	Dominion
12	Net Investment per Distribution Pole	$	274.43	[10] / [11]
II. Capital Carrying Charge Rate				
Line #	**Description**		**Value**	**Source**
13	Depreciation Rate for Poles		3.45%	provided by Company
14	Depreciation Expense Rate		7.24%	[13] * [4] / [8]
15	Total General and Administrative	$	653,388,600	FERC Form 1 - Line 197, Col (b) p. 323
16	Administrative and General Rate		6.17%	[16] / {[B3] - [A5]}
17	Maintenance of Overhead Lines	$	83,955,367	FERC Form 1 - Line 149, Col (b), p. 322
18	Gross Pole Investment	$	663,249,221	[4]
19	Overhead Conductor Investment	$	1,005,745,733	FERC Form 1 - Line 65, Col (g), p. 207
20	Services Investment	$	1,168,856,575	FERC Form 1 - Line 69, Col (g), p. 207
21	Total Overhead Accounts	$	2,837,851,529	[18] + [19] + [20]
22	Accumulated Depreciation - Overhhead Accounts	$	1,123,826,029	[21] * [3]
23	Operation and Maintenance Rate		6.14%	[17]/{{[21]-[22]}-[A5]*[20])/[B1]}
24	Operating Taxes	$	731,498,174	[C7]
25	Tax Rate		6.91%	[C7] / {[B3] - [A5]}
26	Cost of Capital		8.77%	Va. SCC Orders
27	Total Capital Carrying Charge Rate		35.24%	[14] + [16] + [23] +[25] + [26]
III. Net Cost of a Bare Pole, Space Factor and Rate Calculations				
Line #	**Description**		**Value**	**Source**
28	Net Cost of Bare Pole	$	96.70	[12] * [27]
29	Urban Service Area Allocation		0.66	FCC Default
30	Net Cost of Bare Pole - Urban	$	63.82	[28] * [29]
31	Space Occupied by Attachment (ft.)		1	FCC default
32	Usable Share Factor		0.667	FCC default
33	Total Unusable Space (ft.)		24	FCC default
34	Average pole Height		37.5	FCC default
35	Total Usable Space		13.5	[48] - [43]
36	Number of Attaching Entities		5	FCC urban default
37	Space Factor		0.1120	{[31] + [32] * [33] / [36]} / [34]}
38	New Telecommunications Formula	$	7.15	[30] * [37]
39	Prior Telecommunications Formula	$	10.83	[40] * [37]

Exhibit C-2 (page 2 of 2)

Rate Development for 2012 Using 2010 Cost Data

Line #	Description		Value - 2010	Source
A1	Deferred Operating Income Taxes - Debit	$	1,430,373,015	FERC Form 1 - Line 82, Col (c), P. 111
A2				FERC Form 1 - Line 62, col (c), p. 113
A3				FERC Form 1 - Line 63, col (c), p. 113
A4	Deferred Op Income taxes (281-283)	$	4,263,732,065	FERC Form 1 - Line 64, col (c), p. 113
A5	Net Deferred Operating Taxes	$	2,833,359,050	A2+A3+A4-A1
B1	Total Plant in Service	$	23,140,772,213	FERC Form 1 - Line 8, Col (b) p. 200
B2	Accumulated Depreciation	$	9,721,960,597	FERC Form 1 - Line 22, Col (b) p. 200
B3	Net Plant in Service	$	13,418,811,616	B1 - B2
C1	Taxes - Acct 408.1	$	219,061,246	FERC Form 1 - Line 14, Col (c), p. 114
C2	Taxes - Acct 409.1 Fed	$	(117,363,727)	FERC Form 1 - Line 15, Col (c), p. 114
C3	Taxes - Acct 409.1 Other	$	1,787,453	FERC Form 1 - Line 16, Col (c), p. 114
C4	Taxes - Acct 410.1	$	2,446,790,798	FERC Form 1 - Line 17, Col (c), p. 114
C5	Taxes - Acct 411.1	$	1,817,729,353	FERC Form 1 - Line 18, Col (c), p. 114
C6	Taxes - Acct 411.4	$	(1,048,243)	FERC Form 1 - Line 19, Col (c), p. 114
C7	Total Taxes	$	731,498,174	C1+C2+C3+C4-C5-C6

Exhibit C-3 (page 1 of 2)

Rate Development for 2013 Using 2011 Cost Data

Line #	Description		2011 Value	Source
	I. Net Investment per Distribution Pole			
1	Total Distribution Plant	$	8,201,744,181	FERC Form 1 - Line 75, Col (g), p.207
2	Accumulated Depreciation - Distribution	$	3,281,893,484	FERC Form 1 - Line 26, Col. (c), p. 219
3	Accumulated Depr / Total Plant - Dist Plant		40.01%	[2] / [1]
4	Gross Pole Investment	$	698,579,580	FERC Form 1 - Line 64, Col (g), p. 207
5	Depreciation Reserve	$	279,533,685	[3] * [4]
6	Net Pole Plant	$	419,045,895	[4] - [5]
7	Net Deferred Taxes allocated to distribution	$	92,868,363	[A5] * [6] / [B3]
8	Net Plant less Deferred taxes	$	326,177,533	[6] - [7]
9	Crossarm Allowance		15%	FCC default
10	Net Plant less Crossarm Allowance	$	277,250,903	[6] * [1 - [7]]
11	Number of Distribution Poles		980,181	Dominion
12	Net Investment per Distribution Pole	$	282.86	[10] / [11]
	II. Capital Carrying Charge Rate			
Line #	**Description**		**Value**	**Source**
13	Depreciation Rate for Poles		3.33%	provided by Company
14	Depreciation Expense Rate		7.13%	[13] * [4] / [8]
15	Total General and Administrative	$	416,085,673	FERC Form 1 - Line 197, Col (b) p. 323
16	Administrative and General Rate		3.55%	[16] / {[B3] - [A5]}
17	Maintenance of Overhead Lines	$	118,678,941	FERC Form 1 - Line 149, Col (b), p. 322
18	Gross Pole Investment	$	698,579,580	[4]
19	Overhead Conductor Investment	$	1,080,745,092	FERC Form 1 - Line 65, Col (g), p. 207
20	Services Investment	$	1,210,237,868	FERC Form 1 - Line 69, Col (g), p. 207
21	Total Overhead Accounts	$	2,989,562,540	[18] + [19] + [20]
22	Accumulated Depreciation - Overhhead Accounts	$	1,196,260,893	[21] * [3]
23	Operation and Maintenance Rate		8.48%	[17]/{{[21]-[22]}-[A5]*[20])/[B1]}
24	Operating Taxes	$	740,759,018	[C7]
25	Tax Rate		6.33%	[C7] / {[B3] - [A5]}
26	Cost of Capital		8.23%	Va. SCC Orders
27	Total Capital Carrying Charge Rate		33.72%	[14] + [16] + [23] +[25] + [26]
	III. Net Cost of a Bare Pole, Space Factor and Rate Calculations			
Line #	**Description**		**Value**	**Source**
28	Net Cost of Bare Pole	$	95.37	[12] * [27]
29	Urban Service Area Allocation		0.66	FCC Default
30	Net Cost of Bare Pole - Urban	$	62.95	[28] * [29]
31	Space Occupied by Attachment (ft.)		1	FCC default
32	Usable Share Factor		0.667	FCC default
33	Total Unusable Space (ft.)		24	FCC default
34	Average pole Height		37.5	FCC default
35	Total Usable Space		13.5	[48] - [43]
36	Number of Attaching Entities		5	FCC Urban default
37	Space Factor		0.1120	{[31] + [32] * [33] / [36]} / [34]}
38	New Telecommunications Formula	$	7.05	[30] * [37]
39	Prior Telecommunications Formula	$	10.68	[40] * [37]

Exhibit C-3 (page 2 of 2)

Rate Development for 2013 Using 2011 Cost Data

Line #	Description	Value - 2011		Source
A1	Deferred Operating Income Taxes - Debit	$	1,542,243,124	FERC Form 1 - Line 82, Col (c), P. 111
A2				FERC Form 1 - Line 62, col (c), p. 113
A3				FERC Form 1 - Line 63, col (c), p. 113
A4	Deferred Op Income taxes (281-283)	$	4,876,106,844	FERC Form 1 - Line 64, col (c), p. 113
A5	Net Deferred Operating Taxes	$	3,333,863,720	A2+A3+A4-A1
B1	Total Plant in Service	$	25,351,760,603	FERC Form 1 - Line 8, Col (b) p. 200
B2	Accumulated Depreciation	$	10,308,511,555	FERC Form 1 - Line 22, Col (b) p. 200
B3	Net Plant in Service	$	15,043,249,048	B1 - B2
C1	Taxes - Acct 408.1	$	218,863,031	FERC Form 1 - Line 14, Col (c), p. 114
C2	Taxes - Acct 409.1 Fed	$	(28,011,801)	FERC Form 1 - Line 15, Col (c), p. 114
C3	Taxes - Acct 409.1 Other	$	78,320,916	FERC Form 1 - Line 16, Col (c), p. 114
C4	Taxes - Acct 410.1	$	1,674,332,709	FERC Form 1 - Line 17, Col (c), p. 114
C5	Taxes - Acct 411.1	$	1,201,512,270	FERC Form 1 - Line 18, Col (c), p. 114
C6	Taxes - Acct 411.4	$	(1,233,567)	FERC Form 1 - Line 19, Col (c), p. 114
C7	Total Taxes	$	740,759,018	C1+C2+C3+C4-C5-C6

Exhibit C-4 (page 1 of 2)

Rate Development for 2014 Using 2012 Cost Data

I. Net Investment per Distribution Pole				
Line #	Description		2012 Value	Source
1	Total Distribution Plant	$	8,650,089,494	FERC Form 1 - Line 75, Col (g), p.207
2	Accumulated Depreciation - Distribution	$	3,454,648,084	FERC Form 1 - Line 26, Col. (c), p. 219
3	Accumulated Depr / Total Plant - Dist Plant		39.94%	[2] / [1]
4	Gross Pole Investment	$	736,896,451	FERC Form 1 - Line 64, Col (g), p. 207
5	Depreciation Reserve	$	294,299,604	[3] * [4]
6	Net Pole Plant	$	442,596,847	[4] - [5]
7	Net Deferred Taxes allocated to distribution	$	96,320,140	[A5] * [6] / [B3]
8	Net Plant less Deferred taxes	$	346,276,707	[6] - [7]
9	Crossarm Allowance		15%	FCC default
10	Net Plant less Crossarm Allowance	$	294,335,201	[6] * [1 - [7]]
11	Number of Distribution Poles		981,604	Dominion
12	Net Investment per Distribution Pole	$	299.85	[10] / [11]
II. Capital Carrying Charge Rate				
Line #	Description		Value	Source
13	Depreciation Rate for Poles		3.33%	provided by Company
14	Depreciation Expense Rate		7.09%	[13] * [4] / [8]
15	Total General and Administrative	$	341,153,911	FERC Form 1 - Line 197, Col (b) p. 323
16	Administrative and General Rate		2.50%	[16] / {[B3] - [A5]}
17	Maintenance of Overhead Lines	$	99,274,650	FERC Form 1 - Line 149, Col (b), p. 322
18	Gross Pole Investment	$	736,896,451	[4]
19	Overhead Conductor Investment	$	1,154,738,411	FERC Form 1 - Line 65, Col (g), p. 207
20	Services Investment	$	1,258,368,500	FERC Form 1 - Line 69, Col (g), p. 207
21	Total Overhead Accounts	$	3,150,003,362	[18] + [19] + [20]
22	Accumulated Depreciation - Overhhead Accounts	$	1,258,039,363	[21] * [3]
23	Operation and Maintenance Rate		6.76%	[17]/{{[21]-[22]}-[A5]*[20])/[B1]}
24	Operating Taxes	$	862,989,711	[C7]
25	Tax Rate		6.32%	[C7] / {[B3] - [A5]}
26	Cost of Capital		8.23%	Va. SCC Orders
27	Total Capital Carrying Charge Rate		30.90%	[14] + [16] + [23] +[25] + [26]
III. Net Cost of a Bare Pole, Space Factor and Rate Calculations				
Line #	Description		Value	Source
28	Net Cost of Bare Pole	$	92.64	[12] * [27]
29	Urban Service Area Allocation		0.66	FCC Default
30	Net Cost of Bare Pole - Urban	$	61.15	[28] * [29]
31	Space Occupied by Attachment (ft.)		1	FCC default
32	Usable Share Factor		0.667	FCC default
33	Total Unusable Space (ft.)		24	FCC default
34	Average pole Height		37.5	FCC default
35	Total Usable Space		13.5	[48] - [43]
36	Number of Attaching Entities		5	FCC Urban default
37	Space Factor		0.1120	{[31] + [32] * [33] / [36]} / [34]}
38	New Telecommunications Formula	$	6.85	[30] * [37]
39	Prior Telecommunications Formula	$	10.38	[40] * [37]

Exhibit C-4 (page 2 of 2)

Rate Development for 2014 Using 2012 Cost Data

Line #	Description	Value - 2012	Source
A1	Deferred Op Income Taxes - Debit	$ 1,475,934,054	FERC Form 1 - Line 82, Col (c), P. 111
A2			FERC Form 1 - Line 62, col (c), p. 113
A3			FERC Form 1 - Line 63, col (c), p. 113
A4	Deferred Op Income taxes (281-283)	$ 5,275,291,206	FERC Form 1 - Line 64, col (c), p. 113
A5	Net Deferred Operating Taxes	$ 3,799,357,152	A2+A3+A4-A1
B1	Total Plant in Service	$ 28,202,094,898	FERC Form 1 - Line 8, Col (b) p. 200
B2	Accumulated Depreciation	$ 10,743,819,815	FERC Form 1 - Line 22, Col (b) p. 200
B3	Net Plant in Service	$ 17,458,275,083	B1 - B2
C1	Taxes - Acct 408.1	$ 228,291,978	FERC Form 1 - Line 14, Col (c), p. 114
C2	Taxes - Acct 409.1 Fed	$ 97,008,483	FERC Form 1 - Line 15, Col (c), p. 114
C3	Taxes - Acct 409.1 Other	$ 87,009,974	FERC Form 1 - Line 16, Col (c), p. 114
C4	Taxes - Acct 410.1	$ 1,496,374,549	FERC Form 1 - Line 17, Col (c), p. 114
C5	Taxes - Acct 411.1	$ 1,044,550,047	FERC Form 1 - Line 18, Col (c), p. 114
C6	Taxes - Acct 411.4	$ (1,145,226)	FERC Form 1 - Line 19, Col (c), p. 114
C7	Total Taxes	$ 862,989,711	C1+C2+C3+C4-C5-C6

Exhibit C-5 (page 1 of 2)

Rate Development for 2015 Using 2013 Cost Data

Line #	Description		2013 Value	Source
	I. Net Investment per Distribution Pole			
1	Total Distribution Plant	$	9,055,403,411	FERC Form 1 - Line 75, Col (g), p.207
2	Accumulated Depreciation - Distribution	$	3,616,698,764	FERC Form 1 - Line 26, Col. (c), p. 219
3	Accumulated Depr / Total Plant - Dist Plant		39.94%	[2] / [1]
4	Gross Pole Investment	$	764,910,219	FERC Form 1 - Line 64, Col (g), p. 207
5	Depreciation Reserve	$	305,502,662	[3] * [4]
6	Net Pole Plant	$	459,407,557	[4] - [5]
7	Net Deferred Taxes allocated to distribution	$	101,965,331	[A5] * [6] / [B3]
8	Net Plant less Deferred taxes	$	357,442,227	[6] - [7]
9	Crossarm Allowance		15%	FCC default
10	Net Plant less Crossarm Allowance	$	303,825,893	[6] * [1 - [7]]
11	Number of Distribution Poles		982,605	Dominion
12	Net Investment per Distribution Pole	$	309.20	[10] / [11]
	II. Capital Carrying Charge Rate			
Line #	**Description**		**Value**	**Source**
13	Depreciation Rate for Poles		3.33%	provided by Company
14	Depreciation Expense Rate		7.13%	[13] * [4] / [8]
15	Total General and Administrative	$	388,641,347	FERC Form 1 - Line 197, Col (b) p. 323
16	Administrative and General Rate		2.72%	[16] / {[B3] - [A5]}
17	Maintenance of Overhead Lines	$	73,629,425	FERC Form 1 - Line 149, Col (b), p. 322
18	Gross Pole Investment	$	764,910,219	[4]
19	Overhead Conductor Investment	$	1,228,814,537	FERC Form 1 - Line 65, Col (g), p. 207
20	Services Investment	$	1,306,817,610	FERC Form 1 - Line 69, Col (g), p. 207
21	Total Overhead Accounts	$	3,300,542,366	[18] + [19] + [20]
22	Accumulated Depreciation - Overhhead Accounts	$	1,318,225,920	[21] * [3]
23	Operation and Maintenance Rate		4.82%	[17]/{{[21]-[22]}-[A5]*[20])/[B1]}
24	Operating Taxes	$	880,161,694	[C7]
25	Tax Rate		6.17%	[C7] / {[B3] - [A5]}
26	Cost of Capital		7.65%	Va. SCC Orders
27	Total Capital Carrying Charge Rate		28.49%	[14] + [16] + [23] +[25] + [26]
	III. Net Cost of a Bare Pole, Space Factor and Rate Calculations			
Line #	**Description**		**Value**	**Source**
28	Net Cost of Bare Pole	$	88.08	[12] * [27]
29	Urban Service Area Allocation		0.66	FCC Default
30	Net Cost of Bare Pole - Urban	$	58.13	[28] * [29]
31	Space Occupied by Attachment (ft.)		1	FCC default
32	Usable Share Factor		0.667	FCC default
33	Total Unusable Space (ft.)		24	FCC default
34	Average pole Height		37.5	FCC default
35	Total Usable Space		13.5	[48] - [43]
36	Number of Attaching Entities		5	FCC Urban default
37	Space Factor		0.1120	{[31] + [32] * [33] / [36]} / [34]}
38	New Telecommunications Formula	$	6.51	[30] * [37]
39	Prior Telecommunications Formula	$	9.87	[40] * [37]

Exhibit C-5 (page 2 of 2)

Rate Development for 2015 Using 2013 Cost Data

Line #	Description	Value - 2013		Source
A1	Deferred Operating Income Taxes - Debit	$	1,724,401,780	FERC Form 1 - Line 82, Col (c), P. 111
A2	Deferred Operating Income taxes (281)	$	195,180,840	FERC Form 1 - Line 62, col (c), p. 113
A3	Deferred Operating Income taxes (282)	$	4,542,528,417	FERC Form 1 - Line 63, col (c), p. 113
A4	Deferred Operating Income taxes (283)	$	1,057,029,131	FERC Form 1 - Line 64, col (c), p. 113
A5	Net Deferred Operating Taxes	$	4,070,336,608	A2+A3+A4-A1
B1	Total Plant in Service	$	29,570,482,058	FERC Form 1 - Line 8, Col (b) p. 200
B2	Accumulated Depreciation	$	11,231,470,285	FERC Form 1 - Line 22, Col (b) p. 200
B3	Net Plant in Service	$	18,339,011,773	B1 - B2
C1	Taxes - Acct 408.1	$	244,844,647	FERC Form 1 - Line 14, Col (c), p. 114
C2	Taxes - Acct 409.1 Fed	$	341,953,536	FERC Form 1 - Line 15, Col (c), p. 114
C3	Taxes - Acct 409.1 Other	$	51,143,148	FERC Form 1 - Line 16, Col (c), p. 114
C4	Taxes - Acct 410.1	$	1,027,819,762	FERC Form 1 - Line 17, Col (c), p. 114
C5	Taxes - Acct 411.1	$	784,582,180	FERC Form 1 - Line 18, Col (c), p. 114
C6	Taxes - Acct 411.4	$	(1,017,219)	FERC Form 1 - Line 19, Col (c), p. 114
C7	Total Taxes	$	880,161,694	C1+C2+C3+C4-C5-C6

Exhibit C-6 (page 1 of 2)

Rate Development for 2016 Using 2014 Cost Data

I. Net Investment per Distribution Pole				
Line #	**Description**		**2014 Value**	**Source**
1	Total Distribution Plant	$	9,479,384,360	FERC Form 1 - Line 75, Col (g), p.207
2	Accumulated Depreciation - Distribution	$	3,798,148,817	FERC Form 1 - Line 26, Col. (c), p. 219
3	Accumulated Depr / Total Plant - Dist Plant		40.07%	[2] / [1]
4	Gross Pole Investment	$	792,960,894	FERC Form 1 - Line 64, Col (g), p. 207
5	Depreciation Reserve	$	317,719,312	[3] * [4]
6	Net Pole Plant	$	475,241,582	[4] - [5]
7	Net Deferred Taxes allocated to distribution	$	103,391,486	[A5] * [6] / [B3]
8	Net Plant less Deferred taxes	$	371,850,096	[6] - [7]
9	Crossarm Allowance		15%	FCC default
10	Net Plant less Crossarm Allowance	$	316,072,581	[6] * [1 - [7]]
11	Number of Distribution Poles		982,605	Dominion
12	Net Investment per Distribution Pole	$	321.67	[10] / [11]
II. Capital Carrying Charge Rate				
Line #	**Description**			**Source**
13	Depreciation Rate for Poles		3.33%	provided by Company
14	Depreciation Expense Rate		7.10%	[13] * [4] / [8]
15	Total General and Administrative	$	330,798,378	FERC Form 1 - Line 197, Col (b) p. 323
16	Administrative and General Rate		2.07%	[16] / {[B3] - [A5]}
17	Maintenance of Overhead Lines	$	59,625,135	FERC Form 1 - Line 149, Col (b), p. 322
18	Gross Pole Investment	$	792,960,894	[4]
19	Overhead Conductor Investment	$	1,305,788,403	FERC Form 1 - Line 65, Col (g), p. 207
20	Services Investment	$	1,359,343,829	FERC Form 1 - Line 69, Col (g), p. 207
21	Total Overhead Accounts	$	3,458,093,126	[18] + [19] + [20]
22	Accumulated Depreciation - Overhhead Accounts	$	1,385,570,182	[21] * [3]
23	Operation and Maintenance Rate		3.76%	[17]/{{[21]-[22]}-[A5]*[20])/[B1]}
24	Operating Taxes	$	769,437,514	[C7]
25	Tax Rate		4.82%	[C7] / {[B3] - [A5]}
26	Cost of Capital		7.65%	Va. SCC Orders
27	Total Capital Carrying Charge Rate		25.39%	[14] + [16] + [23] +[25] + [26]
III. Net Cost of a Bare Pole, Space Factor and Rate Calculations				
Line #	**Description**			**Source**
28	Net Cost of Bare Pole	$	81.68	[12] * [27]
29	Urban Service Area Allocation		0.66	FCC Default
30	Net Cost of Bare Pole - Urban	$	53.91	[28] * [29]
31	Space Occupied by Attachment (ft.)		1	FCC default
32	Usable Share Factor		0.667	FCC default
33	Total Unusable Space (ft.)		24	FCC default
34	Average pole Height		37.5	FCC default
35	Total Usable Space		13.5	[48] - [43]
36	Number of Attaching Entities		5	Company Survey
37	Space Factor		0.1120	{[31] + [32] * [33] / [36]} / [34]}
38	New Telecommunications Formula	$	6.04	[30] * [37]
39	Prior Telecommunications Formula	$	9.15	[40] * [37]

Exhibit C-6 (page 2 of 2)

Rate Development for 2016 Using 2014 Cost Data

Line #	Description	Value - 2014		Source
A1	Deferred Operating Income Taxes - Debit	$	2,021,580,263	FERC Form 1 - Line 82, Col (c), P. 111
A2	Deferred Operating Income taxes (281)	$	188,278,516	FERC Form 1 - Line 62, col (c), p. 113
A3	Deferred Operating Income taxes (282)	$	5,063,705,614	FERC Form 1 - Line 63, col (c), p. 113
A4	Deferred Operating Income taxes (283)	$	1,212,239,575	FERC Form 1 - Line 64, col (c), p. 113
A5	Net Deferred Operating Taxes	$	4,442,643,442	A2+A3+A4-A1
B1	Total Plant in Service	$	31,677,331,322	FERC Form 1 - Line 8, Col (b) p. 200
B2	Accumulated Depreciation	$	11,256,608,300	FERC Form 1 - Line 22, Col (b) p. 200
B3	Net Plant in Service	$	20,420,723,022	B1 - B2
C1	Taxes - Acct 408.1	$	251,281,586	FERC Form 1 - Line 14, Col (c), p. 114
C2	Taxes - Acct 409.1 Fed	$	62,267,080	FERC Form 1 - Line 15, Col (c), p. 114
C3	Taxes - Acct 409.1 Other	$	60,758,358	FERC Form 1 - Line 16, Col (c), p. 114
C4	Taxes - Acct 410.1	$	1,632,667,132	FERC Form 1 - Line 17, Col (c), p. 114
C5	Taxes - Acct 411.1	$	1,236,600,199	FERC Form 1 - Line 18, Col (c), p. 114
C6	Taxes - Acct 411.4	$	(936,443)	FERC Form 1 - Line 19, Col (c), p. 114
C7	Total Taxes	$	769,437,514	C1+C2+C3+C4-C5-C6

Exhibit B

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON VIRGINIA LLC and VERIZON SOUTH INC., Complainants,	)	
v.	)	Docket No. File No.
VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER, Respondent.	)	

AFFIDAVIT OF STEPHEN C. MILLS

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF CULPEPER)

I, STEPHEN C. MILLS, being sworn, depose and say:

1. I am a Consultant – Contract Management in the Wireline Network Operations Division of Verizon Services Corporation. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Virginia LLC ("Verizon Virginia") and Verizon South Inc. ("Verizon South") (collectively, "Verizon") against Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion"). 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 a Bachelor of Science in Professional Technology Studies with a concentration in Telecommunications from Pace University. I have worked for Verizon in

Virginia for over 18 years. I began my career working with telecommunications facilities and utility pole infrastructure as an installer and repairman. I then became a cable splicing technician where I worked on the physical placement and connection of telecommunication facilities in both the aerial and buried environment. From there, I was promoted to an engineering assistant where I designed the placement of telecommunication facilities in both the aerial and buried environment. In 2005, I was promoted to my current position. As a Consultant – Contract Management, I am responsible for the negotiation and implementation of joint use agreements and pole attachment agreements in Verizon's service areas in Virginia, Maryland, Washington, DC, Pennsylvania and Delaware. These include Verizon's joint use agreements with Dominion. I also have access to information maintained by Verizon's competitive local exchange carrier ("CLEC") affiliate in Virginia, MCImetro Access Transmission Services LLC.

3. Verizon Virginia is a Virginia limited liability company and Verizon South is a Virginia corporation. Each has its principal place of business at 22001 Loudoun County Parkway, Ashburn, Virginia 20147. Each is an incumbent local exchange carrier ("ILEC") that provides telecommunications and other services to areas of Virginia. Verizon Virginia's overlapping service territory with Dominion includes (but is not limited to) Alexandria, Arlington, and Richmond. Verizon South's overlapping service territory with Dominion includes (but is not limited to) Dale City and Stafford County.

4. Verizon Virginia and Verizon South are parties to two essentially identical Joint Use Agreements entered with Dominion that took effect on January 1, 2011. A true and correct copy of Verizon Virginia's Joint Use Agreement with Dominion is attached to Verizon's Pole Attachment Complaint as Exhibit 1. A true and correct copy of Verizon South's Joint Use

Agreement with Dominion is attached to Verizon's Pole Attachment Complaint as Exhibit 2. I will refer to these agreements collectively as the "Joint Use Agreement."

5. I have personal knowledge of Verizon's negotiations with Dominion for the Joint Use Agreement, which took effect in 2011, and for a just and reasonable pole attachment rental rate based on the guidance provided in the Commission's *Pole Attachment Order*.[1]

6. I have reviewed the allegations made in the Pole Attachment Complaint and the Exhibits submitted with the Pole Attachment Complaint. I verify that they are true and correct to the best of my knowledge, information and belief.

A. Dominion's Unjust And Unreasonable Rates

7. Dominion charges Verizon much higher pole attachment rates than it may lawfully charge Verizon's competitors. True and correct copies of Dominion's invoices to Verizon Virginia for the 2010 through 2014 rental years are attached to Verizon's Pole Attachment Complaint as Exhibit 11. True and correct copies of Dominion's invoices to Verizon South for the 2010 through 2014 rental years are attached to Verizon's Pole Attachment Complaint as Exhibit 12.

8. The invoices show that, since the effective date of the *Pole Attachment Order*, Dominion charged Verizon per pole rental rates of [redacted] for the 2011 through 2014 rental years, respectively. It is my understanding that the new telecom rates for the 2011 through 2014 rental years were $5.87,

[1] *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff'd Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013) ("*Pole Attachment Order*" or "*Order*").

$7.15, $7.05 and $6.85, respectively.[2] [redacted]

9. The rates that Verizon invoiced in Virginia for 2011 through 2014 attachments by cable companies ranged from [redacted] and by competitive telephone companies ranged from [redacted]

B. Dominion's Exercise Of Its Bargaining Power During Negotiations For The Joint Use Agreement

10. In 2006, Verizon South and Dominion agreed to negotiate a new joint use agreement to replace their then-existing agreement, which took effect in 1978. True and correct copies of the 1978 joint use agreement, its 1985 modification, and two related settlement agreements entered in 2002 and 2006 are attached to Verizon's Pole Attachment Complaint as Exhibits 7 through 10. The parties later agreed to negotiate a new joint use agreement to replace the then-existing agreement between Dominion and Verizon Virginia, which took effect in 1992. True and correct copies of the 1992 joint use agreement and its 2002 amendment are attached to Verizon's Pole Attachment Complaint as Exhibits 5 and 6.

11. The rates that Verizon paid under the prior joint use agreements were unjust and unreasonably high. Between 2002 and 2010, for example, Verizon Virginia paid Dominion rates that ranged from [redacted] per pole (and Dominion paid Verizon Virginia rates that ranged from [redacted]

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[2] *See* Complaint Ex. A ¶¶ 6, 16 (Affidavit of Mark S. Calnon, Ph.D. (July 31, 2015) ("Calnon Aff.")).

[redacted] per pole). During those same years, Verizon South paid Dominion rates that ranged from $30.00 to $47.32 per pole for each net pole (meaning that Dominion's effective rate also ranged from $30.00 to $47.32). The pre-existing telecom rate then applicable to Verizon's competitors was far lower. In 2010, for example, Verizon Virginia paid Dominion a [redacted] per pole rate and Verizon South paid Dominion a $30.00 per pole rate. I understand that the pre-existing telecom rate for 2010 was $9.56 per pole.[3]

12. Verizon did not obtain any net material benefit in exchange for the significantly higher rates that applied under the prior agreements, as their terms and conditions were comparable to the terms and conditions in a license agreement. I tried in vain to eliminate this mismatching of high rates with license-like terms and conditions during the negotiations for the currently effective Joint Use Agreement.

13. When negotiations for the Joint Use Agreement began in 2006, Dominion owned 42,213 of the 55,656 poles that it shared with Verizon South and [redacted] poles that it shared with Verizon Virginia. In total, therefore, Dominion owned [redacted] joint use poles, or 65%, and Verizon owned [redacted] of the joint use poles, or 35%. When negotiations concluded, Dominion still owned 65% of the joint use poles [redacted] Dominion's invoices for 2014 rentals retain these pole numbers, thus showing that Dominion continues to enjoy an ownership disparity of 65% to 35% [redacted]

[3] *See* Complaint Ex. A ¶ 92 (Calnon Aff.).

14. This pole ownership disparity has remained relatively constant in recent years because Verizon has a mature network that requires few attachments to new joint use poles. The parties update their pole ownership numbers in joint surveys of their overlapping service areas that occur, in general, no more frequently than every ten years. The last survey of Dominion's overlapping service area with Verizon Virginia, which holds 85% of the joint use poles at issue in this case [redacted] was completed in 2001. That survey showed that the number of Dominion poles with Verizon's attachments decreased from [redacted]

15. Throughout the negotiations for the Joint Use Agreement, it was apparent that Dominion had, and was exercising, the superior bargaining power that is associated with a 65% pole ownership ratio. Dominion consistently resisted Verizon's effort to reduce its net rental payment obligations.

16. The negotiations with Dominion were stymied by extended and unnecessary delays and offers from Dominion that were patently unacceptable. Dominion offered only modest reductions in the rate to be paid by Verizon, yet consistently sought substantial reductions in the rate that it would pay to attach to Verizon's poles.

17. In an effort to change the dynamic of the negotiations, reduce Verizon's pole rent expense, and increase Verizon's bargaining power, I offered Dominion a significant lump sum payment to purchase poles in October 2009. Dominion refused Verizon's offer, claiming that it does not sell its assets. I found this curious because Dominion agreed in 2002 to sell a significant number of poles to Verizon South.

18. By late 2010—after over four years of negotiations—it was abundantly clear that Verizon did not have the bargaining power to negotiate a just and reasonable rental rate from

Dominion. Verizon nonetheless agreed to enter the Joint Use Agreement, effective January 1, 2011, to create operational consistency across the Verizon Virginia and Verizon South overlapping service footprints with Dominion.

19. Dominion's bargaining power is evident in the rates, terms, and conditions of the Joint Use Agreement. The Agreement includes terms and conditions that are the same (or materially comparable) to the terms and conditions contained in a license agreement, but far higher rental rates. At the same time, the Joint Use Agreement includes far lower rental rates for Dominion than for Verizon, even though Dominion uses far more space on a joint use pole. Dominion is allocated [redacted] of space by the Joint Use Agreement, and requires an additional 40 inches of safety space, for a total of [redacted] Verizon is allocated [redacted] on the joint use pole, but requires less space on average. Verified audits of Verizon's facilities in other service areas show that Verizon's facilities occupy on average not more than 1.25 feet of space on a joint use pole, and that is consistent with my experience in Verizon's overlapping service territory with Dominion. [redacted] I am not aware of any audit in Verizon's or Dominion's possession—verified or unverified—that establishes the amount of space that Verizon's facilities occupy on average on Dominion's poles, so it is my opinion that the FCC's default presumption of one foot of space should be followed for Verizon's attachments to Dominion's poles.

20. Dominion's reason for insisting on significantly lower rates for its own attachments is apparent. Each year, Verizon pays Dominion the net rent that is due after Dominion's rental obligations are subtracted from Verizon's rental obligations. By pairing a slight reduction in Verizon's rate with a significantly greater reduction in Dominion's rental rate, Dominion could claim to provide rate relief without actually reducing the amount that Verizon would pay Dominion each year.

21. In Dominion's overlapping service territory with Verizon Virginia, Dominion reduced its own rate 75% from the prior agreement rate of [redacted] to the Joint Use Agreement's 2011 rate of [redacted] but would only agree to reduce Verizon's rate 45% from the prior rate of [redacted] to the Joint Use Agreement's 2011 rate of [redacted] In Dominion's overlapping service territory with Verizon South, the prior agreement required Verizon to pay $30 for each pole that Dominion owned in addition to the poles Verizon owned. This arrangement set each party's effective per-pole rate at $30. With the Joint Use Agreement, Dominion reduced its own rate [redacted] from this $30 effective rate to a 2011 rate of [redacted] but would only agree to reduce Verizon's rate [redacted] to a 2011 rate of [redacted]

22. After more than four years of trying to obtain rate relief, Verizon obtained essentially no net rental relief at all. As detailed in Dr. Calnon's Affidavit, Verizon's net rental rate decreased [redacted]

[redacted] between 2010 (the year before the Joint Use Agreement took effect) and 2014.

C. Dominion's Refusal To Negotiate A Just and Reasonable Rate

23. On October 7, 2013, the United States Supreme Court confirmed that incumbent local exchange carriers ("ILECs"), like Verizon, have the right to just and reasonable rental rates when it denied further review of the Commission's *Pole Attachment Order*. The following day, I sent a letter on Verizon's behalf to Dominion to request formal negotiations for a just and reasonable rental rate governed by the principles set forth in the *Pole Attachment Order*. A true and correct copy of my October 8, 2013 letter is attached to Verizon's Pole Attachment Complaint as Exhibit 13. In the letter, I asked Dominion for a copy of its standard license agreement for competitive local exchange carriers ("CLECs") and cable companies, along with information detailing any deviations from the standard license terms in licenses that Dominion had entered with CLECs and cable companies.

24. In an October 30, 2013 email, Arlie A. Hahn, Jr., Dominion Customer Solutions System – Joint Use, informed me that Dominion's 2014 rates would be [redacted] (telecom) and [redacted] (cable). He also provided me a document titled "Facilities License Agreement for Non-Wireless Overhead Attachments Between _______ and Virginia Electric and Power Company" ("draft license agreement"). Mr. Hahn did not provide supporting calculations for the rates or information about the terms and conditions in Dominion's executed license agreements. A true and correct copy of Mr. Hahn's email, with the draft license agreement attached, is attached to Verizon's Pole Attachment Complaint as Exhibit 4.

25. The draft license agreement represents terms most favorable to Dominion because it represents the starting point in its negotiations with licensees. My review of the proposed

license terms nonetheless confirmed my understanding that Verizon should receive the same rental rate as its competitors. That understanding was further confirmed upon my review of the license agreement that Dominion entered with Verizon's CLEC affiliate ("MCI license agreement"). A true and correct copy of the MCI license agreement is attached to Verizon's Pole Attachment Complaint as Exhibit 3.

26. I have also reviewed over a hundred additional pole attachment agreements throughout my 19-year career. It remains my opinion that the terms and conditions in Dominion's draft license agreement and the MCI license agreement (collectively, "license agreements") are comparable to the terms and conditions in the Joint Use Agreement and do not justify the extraordinary rate difference charged under the comparable agreements.

27. On December 6, 2013, I again asked Dominion to negotiate a just and reasonable rental rate. A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 14. I explained that, under the *Pole Attachment Order*, an ILEC should receive the same rate as a comparable competitor or, if it is materially advantaged, a rate as high as the pre-existing telecom rate. At that time, I thought that the 2014 rates that Mr. Hahn provided in his October 30, 2013 email were calculated pursuant to the pre-existing telecom formula [redacted] and the cable formula [redacted] because they were so different. A new telecom rate should be about the same as a cable rate. I explained Verizon's position that it should receive the same rate as its competitors because it attaches to Dominion's poles pursuant to terms and conditions that are comparable to its competitors. But, as a compromise, I offered to agree to set Verizon's rate between the telecom and cable rates that Dominion provided.

28. Mr. Hahn rejected my offer on Dominion's behalf in a letter dated December 16, 2013. A true and correct copy of Mr. Hahn's letter is attached to Verizon's Pole Attachment Complaint as Exhibit 15. Dominion took the position that it would not commence negotiations absent additional information from Verizon showing that the Joint Use Agreement does "not provide material advantages to Verizon, relative to its cable or CLEC competitors."

29. I found Dominion's position curious since Dominion refused to produce a single license agreement signed by one of Verizon's competitors against which the Joint Use Agreement could be evaluated. Nevertheless, in a letter dated January 22, 2014, I provided an analysis based on a comparison of the terms and conditions in Dominion's draft license agreement, the MCI license agreement, and the Joint Use Agreement. A true and correct copy of that letter is attached to Verizon's Pole Attachment Complaint as Exhibit 16. Mr. Hahn rejected my analysis in a letter dated February 20, 2014, and claimed that the Joint Use Agreement includes "beneficial provisions" that advantage Verizon "as compared to its CLEC competitors." Mr. Hahn, however, still did not provide a license agreement executed by one of Verizon's competitors for Verizon to review. A true and correct copy of Mr. Hahn's letter is attached to Verizon's Pole Attachment Complaint as Exhibit 17.

30. In a March 25, 2014 letter, I again refuted Dominion's claim that Verizon is provided any advantage under the Joint Use Agreement over its competitors that could justify a higher rate. As five months had elapsed since Verizon asked to begin negotiations without even an offer from Dominion, I also outlined the allegations that form the basis of this Complaint, invited a response within a reasonable period of time, and offered to arrange executive-level discussions regarding the dispute. A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 18.

31. On April 28, 2014, Mr. Hahn responded to my letter on Dominion's behalf and accepted the invitation to hold executive-level discussions regarding this dispute. A true and correct copy of Mr. Hahn's letter is attached to Verizon's Pole Attachment Complaint as Exhibit 19.

32. Executive-level discussions were held on July 8, 2014 at Dominion's offices in Richmond, Virginia. Dominion was represented by four executives – Arlie A. Hahn, Jr., Michael C. Roberts, Michael A. Graff, and Anthony M. Barni. At the meeting, we discussed Dominion's claim that Verizon has been afforded unique advantages under the Joint Use Agreement. I explained then, as I had before, that Verizon is not advantaged relative to Dominion's CLEC and cable attachers and that there is no basis for continuing to charge Verizon significantly higher rental rates. The discussions failed to resolve the dispute, but Dominion agreed to provide Verizon cost information and other data underlying its FCC rate calculations.

33. On September 24, 2014, Michael C. Roberts, Dominion Joint Use Administrator, emailed me the cost information and other data discussed during the executive-level discussions. A true and correct copy of Mr. Roberts's email is attached to Verizon's Pole Attachment Complaint as Exhibit 20.

34. When I reviewed the information provided by Dominion, I discovered significant problems with Dominion's application of the Commission's rate formulas. For example, Dominion calculated its new telecom rate using an average of 2.6 attaching entities instead of using the Commission's presumption that there are 5 attaching entities in urbanized service areas. Dominion provided no survey or other evidence to support this departure from the Commission's presumptions. This error in part explained the prior confusion over Dominion's 2014 telecom rate. By pairing 2.6 attaching entities with a 66% urban cost multiplier, Dominion

had improperly increased its 2014 new telecom rate [redacted] far above its cable rate [redacted]

35. A review of the records of the Virginia State Corporation Commission showed that Dominion also applied an inappropriately high rate of return in its rate calculations. Attached to Verizon's Pole Attachment Complaint as Exhibits 24-28 are true and correct copies of orders and testimony that were downloaded from the website of the Virginia State Corporation Commission, at http://www.scc.virginia.gov/docketsearch, that reflect the appropriate rate of return for just and reasonable rental rates.

36. On October 21, 2014—over one year after I sent my October 8, 2013 letter asking for a just and reasonable rate—Dominion made its first offer to Verizon. A true and correct copy of Mr. Hahn's email is attached to Verizon's Pole Attachment Complaint as Exhibit 21. Dominion's offer was to amend the Joint Use Agreement's rental rate provision in a way that would have increased Verizon's 2014 rental rate above the [redacted] rate that was invoiced to a rate of [redacted]

37. Dominion's proposal was patently unreasonable as it sought to further increase Verizon's rate above that of its competitors. By letter dated November 14, 2014, [redacted] A true and correct copy of my letter is attached to Verizon's Pole Attachment Complaint as Exhibit 22.

38. Mediation took place on March 26, 2015 in Richmond, Virginia. Dominion was represented by five executives – Arlie A. Hahn, Jr., Horace P. Payne, Jr., Esquire, Anthony M. Barni, Michael A. Graff, and Michael C. Roberts – and two outside counsel – Brett Heather Freedson, Esquire and Charlie A. Zdebski, Esquire. Subsequent telephone conversations failed

to resolve the dispute and the mediation was officially closed on May 29, 2015. A true and correct copy of the mediator's email closing the mediation is attached to Verizon's Pole Attachment Complaint as Exhibit 23. The substance of the mediation is protected by the terms of a confidentiality agreement.

Stephen C. Mills

Sworn to before me on
this 3rd day of August, 2015

Notary Public

MICHAEL DUSTIN RHODES
NOTARY PUBLIC
REG. # 7595785
MY COMMISSION EXPIRES
4/30/2018
COMMONWEALTH OF VIRGINIA

Exhibit C

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON VIRGINIA LLC and VERIZON SOUTH INC., Complainants, v. VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER, Respondent.	)	Docket No. File No.

AFFIDAVIT OF JONATHAN R. HANSEN

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF HENRICO)

I, JONATHAN R. HANSEN, being sworn, depose and say:

1. I am a Supervisor of Network Engineering for Verizon Communications. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Virginia LLC ("Verizon Virginia") and Verizon South Inc. ("Verizon South") (collectively, "Verizon") against Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion"). 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 16 years of experience in the telecommunications industry working for Verizon Virginia (previously known as Bell Atlantic). I began my career in telecommunications by working part time in the central or serving offices. I was then hired full-time as a Network

Engineering Planner, where my job responsibilities included building plans for Outside Plant Network architecture. I then oversaw an Outside Plant Network design team handling delayed orders. I have for the last 11 years held management positions over Engineering Design in Richmond, Virginia, where Verizon Virginia and Dominion jointly use utility poles.

3. I have personal knowledge of the practices and procedures surrounding the use of utility poles in Verizon's overlapping service area with Dominion in Virginia. My knowledge includes the operational practices that are generally accepted and followed by Verizon, cable companies, competitive local exchange companies ("CLECs"), and Dominion. It is my opinion that Verizon does not have any advantage over its competitors—cable companies and CLECs—with respect to the attachment and maintenance of its facilities on Dominion's utility poles.

A. Safety And Reliability Of The Joint Use Network

4. As a pole owner, Verizon shares in the responsibility for ensuring the safety and reliability of its joint use network with Dominion. Verizon's construction, operations, and engineering employees are well-versed in the wind loading and safety standards of Dominion and the National Electrical Safety Code ("NESC"), which apply to the installation, operation, and maintenance of communications lines and equipment. Verizon also has its own safety, reliability, and quality standards, which its engineers and line crews are directed to follow. Verizon's line crew supervisors conduct random quality-of-work inspections in order to ensure compliance with Verizon's, Dominion's, and NESC standards.

5. As a pole owner, Verizon has responsibility for replacing its poles when they pose a safety hazard because of damage from car accidents, routine storms, and the like. Verizon also must replace its poles if they are found to be unreasonably interfering with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor. In some cases, Verizon pays for the new pole and does not ask any

other attaching entity (which includes cable companies, competitive telephone companies, and Dominion) to contribute to the cost of the pole.

B. Comparability Of Verizon's Attachment Process

6. Verizon has followed a process similar to the process that I understand is followed by Verizon's competitors in order to attach to Dominion's poles. However, Verizon's engineers have a greater role in the process than its competitors, as Verizon's engineers often coordinate with Dominion's engineers regarding proper pole design and engineering.

7. Verizon and its competitors provide comparable notice of new attachments to Dominion. [redacted] service drop, which is a thin cable that connects a utility pole to a customer's house. [redacted] and Verizon itself ensures compliance with the applicable design standards.

8. The same tasks must be completed before Verizon, or one of its competitors, attaches facilities to a Dominion-owned pole. For example, Verizon must survey the pole, complete a pole sounding test, look for base rot, measure the new attachment's effect on the storm and ice loading for all facilities on the pole, ensure that there will be the required vertical clearance between the ground and Verizon's cable, determine whether any make-ready is required, coordinate with other attachers if needed, and comply with any other minimum design and structural stability requirements for the pole. I understand that Verizon's competitors [redacted]

[redacted]

9. The amount of time required to plan and install facilities depends on several factors, including the type of attachment being made. The attachment of a main cable will generally require more time than the attachment of a service drop. The amount of time required for a particular type of attachment should be comparable among communications companies. In practice, it often takes Verizon more time to attach because it manages its work in the NJUNS database, but its competitors do not. Much of the delay associated with a company's first installation of facilities on a pole results from (1) the need for make-ready so that facilities can fit on the existing pole, or (2) the need for a pole change-out to increase capacity. In each case, Verizon's ability to attach to the pole requires that the existing cable and CLEC attachers first rearrange or transfer their existing facilities. Because Verizon's competitors do not record their work in NJUNS, Verizon must travel to the pole location to determine whether it can attach its facilities. Verizon regularly arrives at a pole location and learns that all facilities have not been transferred or re-arranged as scheduled. Its ability to attach is then delayed as it is forced to make repeat trips to the pole location to determine whether it can attach its facilities.

10. Make-ready work is required if rearrangement of the existing attachments would accommodate a company's attachments. The time required for make-ready, which is generally required only in the communications space, depends on the response time of the entities that already have facilities on the pole. As a result, the time required for make-ready should not differ based on whether it is Verizon, or one of Verizon's competitors, that seeks to make the attachment.

11. Pole change-outs require more time than make-ready work because of the logistics involved in replacing the pole and waiting for each entity to transfer its facilities to the new pole. Pole change-outs are more often required when Verizon seeks to make its first attachment to a pole (than when its competitors seek to make their first attachment) because Verizon's facilities are at the lowest location on the utility pole, meaning that they are more often impacted by state and local vertical clearance requirements. If Verizon cannot attach to the pole and maintain the required vertical clearance, Verizon must request, [redacted] a taller replacement pole so that it can attach its facilities and maintain the appropriate clearance between the ground and Verizon's cable.

12. In the past five years, Verizon's need for make-ready and pole change-outs has been minimal, even though pole change-outs are required more often when Verizon (rather than its competitors) seeks to attach. I do not anticipate that Verizon's need for make-ready and pole change-outs will increase. The Verizon Virginia and Verizon South networks are mature networks that require few attachments to new joint use poles.

C. Pole Design And Facility Location

13. In appropriate circumstances, a 30- and 35-foot pole can accommodate the facilities of Dominion, Verizon, and other communications companies. I am aware that Verizon is attached to many 30- and 35-foot poles owned by Dominion, many of which also contain attachments of Verizon's competitors. Many newer Dominion poles are taller 40- and 45-foot poles, which have more room to accommodate the facilities of Dominion, Verizon, and other communications companies.

14. Any pole that contains the facilities of a power company and a communications company must include communications space and 40 inches of space separating the

communications and power facilities. This space is therefore required for Dominion to share a pole with one of Verizon's competitors even if Verizon is not also attached to the pole.

15. Verizon generally requires the same amount of space on a utility pole as its competitors. For over a decade, Verizon has only installed the same light-weight copper and fiber optic cables that its competitors use.

16. Verizon's facilities have the lowest location on Dominion's poles, consistent with standard construction practices that pre-date third-party attachers. The consistency of Verizon's position is important for all communications companies because it ensures that all companies can quickly identify the ownership of facilities on the pole. It also prevents the crossover of facilities that could occur mid-span if facilities were located in different locations on different poles.

17. In my experience, there is not any material difference between the time and effort required to work on Verizon's facilities and on its competitor's facilities. The same safety measures and preparation are required to work on the pole. Verizon's facilities may be slightly easier to access, but that ease of access does not provide any real measurable benefit.

18. At the same time, Verizon's location on the pole increases Verizon's costs.

19. *First*, Verizon's facilities are harmed more frequently because they are the lowest on Dominion's poles. They are exposed to more damage from oversized vehicles, vandalism, and similar hazards. They also are damaged by contractors who work in the space above Verizon's facilities. Verizon's facilities have been damaged from above by gaffs, ladders, and bucket trucks. Typical damage includes punctured cables and broken support wires.

20. *Second*, Verizon receives more requests to raise its cables to accommodate oversize loads, such as house and equipment moves, because of its position on the pole. Standard vertical clearance requirements range from 15.5 feet to 18 feet. In many cases, an

oversize load is taller and requires Verizon, as the lowest attacher, to temporarily move its facilities.

21. *Third*, as noted above, Verizon often makes more trips to a pole location to attach or complete a pole transfer. It is standard practice that facilities are transferred from top to bottom, which means that Verizon must wait for all other facilities to be moved before it can transfer its facilities. Verizon regularly arrives at a pole transfer location and learns that all facilities have not been transferred as scheduled. When that happens, Verizon cannot transfer its facilities. It must return at a later time to determine whether the pole is ready for it to complete the transfer.

22. For all of these reasons, it is my opinion that Verizon does not have any advantage over its competitors—cable companies and CLECs—with respect to the attachment and maintenance of its facilities on Dominion's utility poles.

Jonathan R. Hansen

Sworn to before me on
this 31st day of July, 2015

Notary Public

PAUL M GESTWICK
NOTARY PUBLIC
MY COMMISSION NUMBER 368771
COMMONWEALTH OF VIRGINIA

Exhibit D

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON VIRGINIA LLC and VERIZON SOUTH INC., Complainants, v. VIRGINIA ELECTRIC AND POWER COMPANY d/b/a DOMINION VIRGINIA POWER, Respondent.	)	Docket No. File No.

AFFIDAVIT OF TIMOTHY J. TARDIFF, PH.D.

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF SUFFOLK)

I, TIMOTHY J. TARDIFF, being sworn, depose and say:

I. Introduction

1. My name is Timothy J. Tardiff. My business address is 211 Congress Street, Boston, MA 02110. I am a Principal at Advanced Analytical Consulting Group, Inc. I have specialized in telecommunications policy issues for over 30 years. I received a B.S. degree from the California Institute of Technology in mathematics (with honors) in 1971 and a Ph.D. in Social Science from the University of California, Irvine in 1974. My research has included the theoretical and applied aspects of methodologies used to establish regulated rates for, among other things, pole attachments and services identified in the Telecommunications Act of 1996; studies of the demand for telephone services, such as local measured service and toll; analysis of the market potential for new telecommunications products and services; assessment of the growing competition for telecommunications services; and evaluation of regulatory frameworks consistent with the growing competitive trends. I have published

articles in the regulatory economics literature, which in recent years have focused on policies for the increasingly competitive telecommunications industry.

2. I have participated in numerous legal and regulatory proceedings on issues of telecommunications economics and regulation. Since the passage of the Telecommunications Act of 1996, I have performed analyses, filed declarations and testimony, and/or appeared as a witness in pole attachment disputes, interconnection arbitrations, unbundled network element proceedings, universal service investigations, applications by incumbent local exchange carriers for authorization to provide interLATA long-distance, and implementation of the Triennial Review Order rules for unbundling network elements in over 25 states and before the Federal Communications Commission ("FCC"). Most recently, I have participated in regulatory and legal proceedings related to the FCC's National Broadband Plan. In particular, I have advised telecommunications clients, filed economic analyses, and written articles on topics such as (1) rates for the use of network infrastructure such as utility poles to facilitate the efficient provision of broadband services, (2) rates for the exchange of traffic between landline carriers that avoid uneconomic arbitrage opportunities and encourage efficient investment in telecommunications networks, and (3) development of an analytical framework for determining whether incumbents' high capacity (special access) services face enough competition to justify relaxed regulation or effective deregulation. Earlier this year, I submitted an affidavit in support of Verizon Florida LLC's pole attachment complaint in the matter involving Florida Power and Light Company (File No. EB-15-MD-002, Docket No. 15-73). During 2013 and 2014, I filed opening and reply affidavits in support of pole attachment complaints by subsidiaries of Frontier Communications Corporation in matters involving subsidiaries of Duke Energy Corporation (File Nos. EB-13-MD-007, EB-14-MD-001, and EB-14-MD-002, Docket Nos. 14-213, 14-214, 14-215); UGI Utilities, Inc.—Electric Division (File No. EB-14-MD-007, Docket No. 14-217); and subsidiaries of FirstEnergy Corporation (File No. EB-14-MD-008, Docket No. 14-218). My international research and consulting experience includes studies and expert reports on telecommunication competition and interconnection issues in Canada, Japan, New Zealand, Peru, Thailand, Australia, the Commonwealth of the Northern Mariana Islands, and Trinidad and Tobago. I attach a copy of my full resume as Exhibit T-1.

3. The purpose of this affidavit is to discuss from an economic perspective aspects of the rental rate methodology in the Joint Use Agreements between Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion") and Verizon Virginia LLC and Virginia South Inc. (collectively, "Verizon") that make the resulting rental rates calculated by Dominion unjust and unreasonable. I also explain certain proper inputs necessary to calculate just and reasonable rates for Verizon's attachments to Dominion's joint use poles consistent with the FCC's guidance in the 2011 Report and Order[1] that recognized incumbent local exchange carriers' ("ILECs") statutory right to just and reasonable rates, and the Enforcement Bureau's recent order in the *Verizon Florida v. Florida Power and Light Company* ("FPL") matter.[2]

4. Applying the appropriate economic framework to the rates charged and demanded by Dominion leads to the following conclusions:

   (1) the rates Dominion has charged under the parties' Joint Use Agreements are unreasonably high because (a) the rate of return used to calculate annual pole costs is excessive and (b) Dominion's calculations assign a disproportionately large amount of annual pole costs to the rates demanded from Verizon;

   (2) the rates Dominion purports to calculate under the FCC's telecom formulas also use excessive rates of return and assign a disproportionately large amount of annual pole costs to Verizon. The latter error—the result of pairing an inadequately-supported input for the number of attaching entities with the FCC's urban cost allocator—undermines the objective of parity between the new telecom and cable rates; and

   (3) the Joint Use Agreements are materially comparable to third-party license agreements, so the just and reasonable rate for Verizon's attachments to Dominion's poles should be the rate that results from a proper application of the new telecom formula. At most, a proper

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[1] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245; GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 ("2011 Report and Order").

[2] *Verizon Florida LLC, Complainant v. Florida Power and Light Company, Respondent*, Docket No. 14-216, File No. EB-14-MD-003, Memorandum Opinion and Order, 30 FCC Rcd 1140, ¶ 23 ("Memorandum Opinion and Order"). In this Memorandum Opinion and Order, the Enforcement Bureau requested that the monetary value of alleged advantages to an ILEC, relative to third party attachers, arising from certain terms and conditions in the parties' existing joint use agreement be quantified in order to determine whether the rates that the power company calculated under that existing joint use agreement are unjust and unreasonable.

calculation of the monetary value of any possible net material advantages spread over the entire base of joint use poles could only increase the per pole rental rate charged to Verizon by a minimal amount above the new telecom rate. In this case, the just and reasonable rate should not be set at or above the pre-existing telecom rate, which serves as an upper bound reference point for pole attachment rates charged ILECs.

II. Economic Framework

5. The 2011 Report and Order established two reference points for evaluating rates in the case of new joint use agreements. In the event that the terms and conditions in a new joint use agreement are materially comparable to corresponding terms and conditions in a third-party license agreement, the just and reasonable rate would be the cable rate or the new telecom rate presented in that Order.[3] Alternatively, if the terms and conditions in the new joint use agreement materially advantage the ILEC (*relative to third party attachers*), the pre-existing telecom rate becomes an upper bound reference point.[4] In contrast, when (1) the reasonableness of rates under an *existing* joint use agreement is challenged and (2) the terms of that agreement are claimed to be advantageous to the ILEC, the Enforcement Bureau has requested a quantification of the net monetary value of those terms.[5]
6. The Joint Use Agreements at issue in this case were new agreements in 2011, as they took effect on January 1, 2011. Regardless of whether the Agreements are considered new or existing for purposes of the analysis required by the 2011 Report and Order, the pre-existing and new telecom rates play a crucial role in determining whether the rates are just and reasonable.
7. In this case, the rates that Dominion has charged Verizon since the effective date of the 2011 Report and Order are based on a formula that partially overlaps with the FCC's formulas for

[3] 2011 Report and Order, ¶ 217.

[4] For urbanized areas, which I understand applies to the common territories of Verizon and Dominion, the FCC intended pre-existing telecom rate to be approximately 50 percent higher than the new telecom rate. In particular, for urbanized areas, the pre-existing telecom rate is multiplied by 0.66. 47 C.F.R. § 1.1409(e)(2). Therefore, the pre-existing telecom rate is (1/0.66) x the new telecom rate.

[5] Memorandum Opinion and Order, ¶¶ 24 and 26.

the pre-existing and new telecom rates.[6] As a result, only two inputs need to be considered in evaluating rates under the Joint Use Agreements and under the FCC's formulas. In particular, each rate formula includes a rate of return input and a space factor that assigns a percentage of the annual cost of owning and maintaining utility poles to an attacher. The rates under the Joint Use Agreements are unreasonably high because (1) they are based on a rate of return higher than the rate of return determined by the Virginia State Corporation Commission ("SCC") and (2) they assign [redacted] percent of annual pole costs to Verizon, in contrast to the 7.4 percent that are assigned by the new telecom rate and the 11.2 percent that are assigned by the pre-existing telecom rate. The rates Dominion has claimed to calculate under the FCC new telecom formula are unreasonably high for the same reasons: (1) they are based on a rate of return higher than that established by the SCC's orders and (2) they assign a higher percentage of annual pole costs to Verizon than the 7.4 percent that should be assigned under the formula.

III. Specific Issues

A. Rate of Return

8. The rate formula in the Joint Use Agreements and the FCC's rate formulas include a rate of return as a component of the carrying charge rate, which is used to produce the annual pole cost according to the following formula:

$$\text{Annual Pole Cost} = \frac{\text{Net Pole Investment}}{\text{Number of Poles}} \times \text{Appurtenance Factor x Carrying Charge Rate}$$

9. A proper rate of return includes three major components that regulators, such as the Virginia SCC, establish: (1) the return on common equity ("ROE"), which is the annual return that owners of common stock expect to receive (but which is by no means guaranteed), (2) the return on debt ("ROD"), which is typically the current interest rate on the company's long-term and short-term debt, and (3) the percentage of the company's capital structure that is

[6] *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-98; CS Docket No. 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, Appendix E-2 ("Reconsideration Order").

accounted for by common equity.[7] The overall cost of capital, or rate of return, is approximately equal to:

Rate of return = % common equity x ROE + (1 - % common equity) x ROD

10. Because common equity investors assume more risk than debt (bond) holders, the cost of common equity (ROE) is higher than the cost of debt (ROD). Accordingly, increasing the percentage of common equity in the capital structure increases the rate of return (everything else being equal). For example, the Virginia SCC's 2013 Order regarding Dominion's rate of return, which is described in more detail below, established an ROE of 10 percent, an ROD of 5.23 percent, and a common equity percentage of 50 percent,[8] resulting in a rate of return of 7.62 percent.[9] Had the SCC instead (hypothetically) approved a capital structure with 100 percent common equity, the rate of return would have been 10 percent.

11. The rate formula in the Joint Use Agreements is [redacted]

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[7] The capital structure consists of common equity, debt, and in some cases other minor components, such as preferred stock and investment tax credits, which account for small percentages of the total capital. In Dominion's case for 2011-2012, preferred stock accounted for 1.528 percent of the capital structure and investment tax credits accounted for 0.11 percent of the capital structure. *See* Virginia State Corporation Commission, Application of Virginia Electric and Power Company for a 2011biennial review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.I A of the Code of Virginia, Case No. PUE-2011-00027, Final Order, November 30, 2011 ("SCC's 2011 Order"), p. 17, note 52, attached to Verizon's Pole Attachment Complaint as Exhibit 26.

[8] *See* Virginia State Corporation Commission, Application of Virginia Electric and Power Company for a 2013 biennial review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.I A of the Code of Virginia, Case No. PUE-2013-00020, Final Order, November 26, 2013 ("SCC's 2013 Order"), p. 21, attached to Verizon's Pole Attachment Complaint as Exhibit 25.

[9] 7.62 percent = (0.5 x 10 percent + (1 – 0.5) x 5.23 percent. This calculation does not account for minor components of Dominion's capital structure, such as preferred stock and investment tax credits, which account for small percentages of the total capital. For that reason, I recommend use of a 7.65 percent cost of capital for the time periods covered by the SCC's 2013 Order, as it is the value provided by the SCC as the "overall cost of capital of 7.653%" in a subsequent order. *See* Virginia State Corporation Commission, Petition of Virginia Electric and Power Company for approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.I A of the Code of Virginia, Case No. PUE-2013-00072, Final Order, April 29, 2014 ("SCC's 2014 Order"), p. 13, attached to Verizon's Pole Attachment Complaint as Exhibit 24.

[10] [redacted]

[redacted][11] [redacted]

12. The rates that Dominion has purported to calculate under the FCC formulas are also inflated because of rates of return that are higher than those provided by the SCC's orders. Dominion has contended that the rate of return for the 2011 through 2014 rental years is 11.25 percent and that the rate of return for the 2015 through 2016 rental years is 10 percent.[12] I understand that parties have used cost data from two years prior to the rental year in question when comparing FCC rate calculations, which requires inputs (including rates of return) for the years 2009 through 2014 to calculate rates for rental years 2011 through 2016.[13] The rates of return that should be used for these rental years are those that comport with the SCC's orders establishing the cost of equity and other components of Dominion's rates of return for three two-year periods: 2009 and 2010, 2011 and 2012, and 2013 and 2014. For the reasons next detailed, the rates of return that should be used are 8.77 percent (2011 and 2012 rental years), 8.23 percent (2013 and 2014 rental years), and 7.65 percent (2015 and 2016 rental years).

13. For the 2013 and 2014 rental years (using 2011 and 2012 cost data), the SCC's 2011 Order sets an overall cost of capital (rate of return) of "approximately 8.234 percent."[14] The SCC's 2011 Order also provides a comprehensive description of the various components of the rate

[11] [redacted]

[12] Email Attachment from M. Roberts, Dominion, to S. Mills, Verizon (Sept. 24, 2014), attached to Verizon's Pole Attachment Complaint as Exhibit 20.

[13] *See ibid.*

[14] SCC's 2011 Order, p. 23.

of return. In particular, that Order describes, in addition to the overall cost of capital (rate of return) of "approximately 8.234 percent:" (1) a return on common equity of 10.9 percent,[15] (2) a capital structure in which common equity accounted for 53.25 percent, and (3) costs 5.418 percent for long-term debt and 0.404 percent for short-term debt.[16] The SCC's 2011 Order also states that the cost of equity for the previous two years (2009 and 2010) was 11.9 percent, which is relevant to the rate of return calculation for the associated 2011 and 2012 rental years.[17]

14. For the 2015 and 2016 rental years (using 2013 and 2014 cost data), the SCC's 2013 Order provides the three principal components of the rate of return: (1) a return on common equity of 10.0 percent,[18] (2) a capital structure in which common equity accounted for 50 percent,[19] and (3) an acceptance of the cost of debt reported by Dominion and Staff witnesses.[20] This cost of debt information appears in a schedule available in Dominion's filing, with the cost of long-term debt at 5.235 percent.[21] These three components produce a rate of return of 7.62 percent (0.5 x 0.1 + 0.5 x 0.05235), which closely approximates the "overall cost of capital of 7.653%" described in a subsequent order that Dominion should use for its calculations.[22]

[15] *Ibid.*, p. 23.

[16] *Ibid.*, p.17, notes 52 and 53. The SCC's 2011 Order did not report costs for the remaining two components of the capital structure: preferred stock (1.528 percent of the capital structure) and investment tax credits (0.11 percent of the capital structure). However, Dominion's filing included a schedule that (1) virtually matched the debt costs and capital structure shares listed in notes 52 and 53 of the SCC's 2011 Order and (2) included costs of 6.605 percent and 8.982 percent for the missing components. Indeed, the rate of return (weighted cost of capital) in Dominion's schedule of 8.767 percent—based on an ROE of 11.9 percent—is lowered to 8.235 percent (0.08767 – 0.5325 x (0.119 - 0.109) when the SCC's adopted ROE of 10.9 percent is used in place 11.9 percent. Application, Direct Testimony, Exhibits and Schedules of Virginia Electric and Power Company, Case No. PUE-2011-00027, March 31, 2011, Volume 2, Schedule 3, attached to Verizon's Pole Attachment Complaint as Exhibit 28 ("Dominion's Schedule 3"). Further, because the cost of preferred stock and investment tax credits are generally comparable to the cost of debt, it is reasonable to assume that their cost is the same as the cost of debt (5.22 percent). Using that assumption, the resulting rate of return is 8.20 percent (0.5325 x 0.109 + 0.4675 x 0.0514), or only three basis points different than the 8.234 percent rate of return reported in the SCC's 2011 Order.

[17] SCC's 2011 Order , p. 3.

[18] SCC's 2013 Order, p. 10.

[19] *Ibid.*, p. 21.

[20] *Ibid.*

[21] Dominion's Schedule 3.

[22] SCC's 2014 Order, p. 13.

15. Finally, for the 2011 and 2012 rental years (using 2009 and 2010 cost data) [redacted] the rate of return can be approximated from: (1) the SCC approved return of common equity of 11.9 percent for 2009 and 2010 that appears in the SCC's 2011 Order[23] and (2) capital share percentages and costs for the other components of the capital structure provided by Dominion in the proceeding that resulted in the 2011 Order.[24] In particular, the second category of information, which is the same information submitted by Dominion in the 2011 proceeding that the Commission relied upon in determining the overall rate of return,[25] reports an overall rate of return of 8.767 percent—based on an ROE of 11.9 percent and a common equity share of 53.25 percent. This return remains at 8.767 percent when the SCC's previously adopted ROE of 11.9 percent for 2009-2010 is used in place of the 10.9 percent ROE adopted for 2011-2012.

16. To summarize, the rates of return consistent with the SCC's orders that should be used to calculate just and reasonable rental rates are listed in Table 1 below.

Table 1: Rate of Return Inputs for Calculating Annual Pole Costs

Rate Years	**Cost Years**	**Rate of Return**
2011 and 2012	2009 and 2010	8.77 Percent
2013 and 2014	2011 and 2012	8.23 Percent
2015 and 2016	2013 and 2014	7.65 Percent

17. These rates of return are lower than the rate-of-return input to the Joint Use Agreements' rate methodology and to the corresponding inputs Dominion used when it purported to apply the FCC's rate methodology. In particular, Dominion's input was 11.25 percent [redacted] for its claimed FCC rates for 2011 through 2014, which corresponds to the FCC's default input for ILECs. Dominion's use of the FCC's default rate of return for these first four years is not consistent with the inputs required by the FCC, which utilize the authorized rate of return for

[23] SCC's 2011 Order, p. 3.

[24] Dominion's Schedule 3.

[25] See, note 16 *supra*.

the company.[26] Also, as the FCC itself has recognized, the default rate of return that Dominion employs for rate years 2011 through 2014 is woefully out of date because of substantial changes that have occurred since 1990.[27] In particular, in its 2011 Inter-Carrier Compensation Reform Order, the FCC tentatively concluded that an updated rate of return should be no higher than 9 percent.[28] Subsequently, the staff of the Wireline Competition Bureau recommended a range from 8.04 percent to 8.72 percent for a reasonable rate of return.[29]

18. Dominion's input for its claimed FCC rates for 2015 and 2016 is 10 percent, which equals the SCC's approved return on equity from the SCC's 2013 Order.[30] This return on equity is necessarily higher than the overall cost of capital (rate of return) that must be used to calculate proper annual pole costs. In particular, in rejecting Dominion's recommendation that the common equity share in the approved capital structure be higher than the 50 percent it authorized, the SCC observed:

> As noted above, we find for the purpose of setting rates, Dominion's proposed ratemaking cost of capital as of December 31, 2012, is not reasonable. In short, a utility's cost of capital is primarily comprised of its weighted (1) cost of debt, and (2) cost of equity, which incorporate the percentages of debt and equity in its capital structure, and the Company's customers must pay these costs. Since equity is typically more expensive than debt, an unreasonably high equity percentage results in an unreasonable cost of capital and an unreasonably high cost to ratepayers.[31]

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[26] "For attachments to poles, where it is claimed that…a rate is unjust or unreasonable,…the complaint shall provide data and information in support of said claim…The rate of return authorized by the utility for intrastate service." 47 C.F.R. § 1.1404(g)(1)(x).

[27] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers*; *High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket No. 10-90; GN Docket No. 09-51,WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-54, WC Docket No. 03-109, WT Docket No. 1-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 1046-1047. The Commission noted that it had last prescribed the authorized interstate rate of return in 1990, reducing it from 12% to 11.25%. "We believe fundamental changes in the cost of debt and equity since 1990 no longer allow us to conclude that a rate of return of 11.25% is necessarily 'just and reasonable' as required by Section 201(b)."

[28] *Ibid.*, ¶ 1057.

[29] Federal Communications Commission, Wireline Competition Bureau, *Prescribing the Authorized Rate of Return*, Staff Report, WC Docket 10-90, May 16, 2013, p. i.

[30] *See* SCC's 2013 Order, p. 21.

[31] *Ibid.*, pp. 21-22.

In short, Dominion's use of the cost of equity for rate years 2015 and 2016 would, in effect, employ a capital structure with 100 percent equity, which for the reasons explained by the SCC, would produce rates substantially more unreasonable than the SCC prohibited when it rejected Dominion's proposed capital structure with 55.02 percent equity for one that was 50 percent equity.[32]

B. Space Factor

19. Assuming that proper inputs (including rate of return) have been used, the difference between the rate Dominion has demanded under the Joint Use Agreements and the new telecom rate—the reference point when a joint use agreement does not materially advantage the ILEC—are the shares of annual pole cost recovered from Verizon in the respective rates: [redacted] percent in the rates in the Joint Use Agreements versus 7.4 percent for the new telecom rate. The FCC's 2011 Report and Order, by design, intended for the latter percentage to produce rates that closely approximate what power companies are allowed to charge cable television providers under an alternative rate formula.

20. While the new telecom rate and cable rate formulas differ, the 2011 Report and Order clearly stated that the objective in establishing the new telecom rate was to provide parity with the cable rate, in particular, that both the cable rate and the new telecom rate recover the same percentage (approximately 7.4 percent) of pole costs.[33] The DC Circuit noted this fundamental objective in upholding the 2011 Report and Order's "decision to adopt telecom rates under §§ 224(d) & (e) that it has designed to be substantially equivalent to its already adopted cable rates."[34] The FCC recently reiterated it expectation of rate comparability in the 2015 Open Internet Order. Responding to concerns that pole owners could use inputs into the new telecom rate that would result in the new telecom rate being higher than the cable rate, the FCC explained:

> [t]hese parties [NCTA, COMPTEL, and tw telecom] also expressed concern that the particular illustration used by the Commission in the rule text could be

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[32] *Ibid.*, p. 21.

[33] 2011 Report and Order, ¶¶ 149 and 151.

[34] *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183, 188 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013).

> construed as suggesting that the new formula includes only instances where there are three and five attaching entities, rather than providing the "corresponding cost adjustments scaled to other entity counts." We are concerned by any potential undermining of the gains the Commission achieved by revising the pole attachment rates paid by telecommunications carriers. We accordingly will be monitoring marketplace developments following this Order and can and will promptly take further action in that regard if warranted. [35]

21. In fact, Dominion's actions in this matter and in its filings to the FCC indicate that the FCC's concerns are well-founded. In particular, Dominion informed Verizon that it has calculated a telecom rate of [redacted] for 2014, which is 70 percent higher than the corresponding cable rate that Dominion calculates of [redacted][36]—completely undermining the FCC's parity objective. That result is the product of Dominion's apples-to-oranges mixing of the FCC's cost allocator of 0.66, which was designed to produce parity in urbanized areas when the presumptive average of 5 attaching entities is used, with only 2.6 attaching entities as an input.

22. Further, not only would Dominion's approach undermine the FCC's gains from establishing the new telecom rate, it could also be used to increase rates across the board. In its recent comments on the NCTA, COMPTEL, and tw telecom proposed space factor revision, a coalition that includes Dominion asked the Commission to, in effect, raise the rates charged to cable television providers: "As the Commission has reclassified broadband Internet access service as a 'telecommunications service,' the statute itself provides the level playing field Congress intended in adopting the 1996 Act: that is, attachments used to deliver broadband Internet service provided over *any* network, including cable television systems, are now

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[35] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, March 12, 2015, 30 FCC Rcd. 5601, ¶ 483. NCTA, COMPTEL, and tw telecom proposed a modification of the FCC's rule that multiplies the annual pole costs used in the cable formulas by 0.66 in urbanized areas (with a rebuttable presumption of 5 attaching entities) and 0.44 in non-urbanized areas (with a rebuttable presumption of 3 attaching entities) so that these factors would assign the same percentage of annual pole costs for any possible value for the number of attaching entities (all other default inputs remaining the same). *See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245; GN Docket No. 09-51, Petition for Reconsideration or Clarification of the National Cable and Telecommunications Association, COMPTEL, and tw telecom inc. (June 8, 2011). Absent such an adjustment to the FCC's cost factors, using a smaller number of attaching entities in the new telecom rate formula than reflected in the Commission's presumptions, as a number of pole owners have proposed, would produce rates in excess of the corresponding cable rate.

[36] Email from A. Hahn, Dominion, to S. Mills, Verizon (Oct. 30, 2013), attached to Verizon's Pole Attachment Complaint as Exhibit 4.

subject to the same Section 224(e) [new telecom] pole attachment rate."[37] Indeed, Dominion apparently has been charging cable companies rates higher than the cable rate since at least 2008, when it labeled the $6.08 cable rate it was charging as the "rental rate for attachments to Dominion's facilities used to provide solely cable service"[38] and reported that there were only 328 (out of 312,095 cable and 100,454 telecom) such attachments.[39]

C. Differences between the Joint Use Agreements and Third-Party License Agreements

23. In addition to proper calculation of the new telecom rate, the Enforcement Bureau requested, for existing agreements, a quantification of the value of each benefit a power company claims that an ILEC enjoys under the joint use agreement at issue that its competitors do not also enjoy under the terms of their license agreements. As a threshold matter, the parties' Joint Use Agreements were new in 2011, and so are not like the "existing" agreement at issue in the FPL complaint proceeding where quantification was requested. The Joint Use Agreements also differ substantially from joint use agreements as characterized in the 2011 Report and Order, and this difference further demonstrates that they are the result of Dominion's superior bargaining power. The FCC found that in the past joint use agreements were commonly structured as cost-sharing arrangements in which no money changed hands when pole ownership was in parity, which the FCC noted was ILEC pole ownership shares in the 40 percent to 50 percent range.[40] In contrast, at the rates specified in the Joint Use

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[37] Reply Comments of CenterPoint Energy Houston Electric LLC, Dominion Virginia Power, Florida Power & Light Company, and UGI Utilities – Electric Division in Opposition to Petition for Reconsideration, WC Docket No. 07-245, GN Docket No. 09-51, June 15, 2015, p. 5. This coalition also suggests (p. 7) that electric utilities have successfully rebutted the presumptive averages for attaching entities. In my experience, electric utilities attempting to increase rates through the use of fewer attaching entities have not provided the type of data required for a successful rebuttable. In particular, the FCC requires that "The utility shall make available its data, information and methodology upon which the averages were developed, unless the default averages are used." (Reconsideration Order, ¶ 67.) In contrast, the only information available to Verizon is the following statement by Dominion's declarant: "The average number of attachments on Dominion's facilities used to calculate the telecommunications rate is 2.6. This average number was determined by a statistical survey performed by a consultant in 2001." Declaration of Michael Roberts, Attachment 1 to the Comments of Ameren Services Company and Virginia Electric Power Company, WC Docket No. 07-245, March 7, 2008, ¶ 9 ("Roberts 2008 Opening Declaration").

[38] Roberts 2008 Opening Declaration, ¶ 8.

[39] *Ibid.*, ¶ 3. Dominion reported a 2008 telecommunications rate of $15.67. *Ibid.*, ¶ 9. Therefore, if one assumes Dominion's annual pole cost calculations have been correct, it may have been charging for the bulk of third party attachments at a rate 2.6 times ($15.67/$6.08) the FCC's cable rate from at least 2008 until the 2011 Report and Order went into effect and at a rate 1.7 times the FCC's cable rate subsequently.

[40] 2011 Report and Order, ¶ 216, note 651.

Agreements, substantial sums of money would change hands even if pole ownership were in the parity range specified by the FCC.

24. In particular, at the initial rates specified in the Joint Use Agreements, Verizon paid Dominion a total of [redacted] in annual net rent for the 2011 rental year.[41] Even if ownership shares were in the 58 percent to 42 percent ownership range that Dominion has claimed existed in 1972,[42] (which would be within the range of parity identified by the FCC), Verizon's net payment to Dominion that year would have been [redacted]—far from no money changing hands. Table 2 shows the calculation of these net rent amounts:

[redacted]

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[41] [redacted]

[42] Reply Declaration of Michael Roberts, Exhibit A to the Reply Comments of Ameren Services Company and Virginia Electric Power Company, WC Docket No. 07-245, April 22, 2008, ¶ 7.

[redacted] thus demonstrating Dominion's exercise of its superior bargaining power to maintain such high rates.[45] The fact that even if pole ownership shares were at parity levels, Verizon would still owe a net payment to Dominion of [redacted] as shown above, also demonstrates Dominion's superior bargaining power. Indeed, even if Verizon were the majority pole owner, the Joint Use Agreements would require Verizon to continue to make an annual net payment to Dominion until Verizon owned 69% of the joint use poles.[46] This is so even

[43] While Verizon's annual pole costs would increase if ownership were at a parity level, e.g., to reflect the installation of new poles and/or the purchase of Dominion's poles, the rates charged for Dominion's attachments on Verizon's poles, [redacted] would not change to reflect the cost increase.

[44] [redacted]

[45] [redacted]

[46] [redacted]

though Dominion's facilities are allocated at least [redacted] the amount of space on a joint use pole.[47]

26. The Joint Use Agreements also differ from the typical characterization of joint use agreements in that what is generally the single biggest purported advantage claimed by electric utilities—the allegation that joint use agreements have resulted in taller poles that minimize the make-ready work requirements to accommodate ILEC attachments relative to third party attachments[48]—does not come into play. In particular, I understand that the make-ready work provisions of the Joint Use Agreements do not differ materially from those of third party agreements. Indeed, Dominion has not even mentioned this issue, either in the current matter or in previous filings in FCC pole attachment proceedings.

27. In fact, Dominion's rate proposal in its 2008 filing in the FCC's pole attachment proceeding implies that it was previously Dominion's position that the only material difference between joint use agreements and third party license agreements is the greater amount of space purportedly occupied by ILEC attachments. In particular, Dominion's Proportionate Allocation Rate, which Dominion's declarant characterized as "fair and equitable,"[49] would allocate 3.87 percent more annual pole costs to an ILEC, solely based on purportedly greater space use.[50] Such a difference is equivalent to a difference of $3.13 between ILEC and third party rates for the 2016 rate year. Further, because that difference appears to be the result of assigning on the order of 1.5 more feet for ILEC attachments, Dominion's approach would produce a smaller rate differential if the difference in space use were smaller than 1.5 feet.[51] For example, if Verizon uses 1.25 feet and a third party uses 1 foot, the 0.25 foot differential is only one-sixth of what Dominion apparently assumed, resulting in a rate differential of $0.52 (3.13/6).

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[47] [redacted]

[48] See, for example, Memorandum Opinion and Order, ¶¶ 18 and 24.

[49] Roberts 2008 Opening Declaration, ¶ 13.

[50] *Ibid.*, ¶ 14.

[51] Assigning 3.87 percent more annual cost implies the occupancy of about 1.45 (0.0387 x 37.5) more feet of a 37.5 foot pole.

28. In summary, the lack of material advantages in the Joint Use Agreements relative to third party agreements leads to the conclusion that the just and reasonable rate for Verizon's attachments to Dominion's poles should not differ (or should only differ minimally) from the properly-calculated new telecom rate (or the cable rate). In no event should the just and reasonable rate meet or exceed the pre-existing telecom rate, which the 2011 Report and Order sets as an appropriate upper bound reference point for the just and reasonable rate charged Verizon.

By: Timothy J. Tardiff

Timothy J. Tardiff
Dated: August 3, 2015

Sworn to before me this 3rd day of August, 2015.

Ann marie power

Notary Public

ANN MARIE POWER
Notary Public, Commonwealth of Massachusetts
My Commission Expires December 3, 2021

Exhibit T-1

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Professional Summary

Dr. Timothy J. Tardiff has more than 30 years of academic and consulting experience. He has participated in numerous legal and regulatory proceedings regarding telecommunications, economics, intellectual property antitrust, and regulation issues. His research consulting, and expert witness experience in telecommunications has addressed pricing and costing issues involving increasingly competitive services, such as wireless and traditional wireline services. This experience has also included extensive examination and economic evaluation of all facets of the costing methodologies used to establish prices in rate-regulated industries—including expert reports and testimonies in a U.S. Department of Transportation proceeding on the reasonableness from an economic perspective of the rates international carriers at Los Angeles International Airport pay for use of terminal space. His work has included the telecommunications, software, transportation, energy, and public utility industries, and he has published extensively in economics, telecommunications, and transportation journals.

Dr. Tardiff is an economic consultant with clients in the telecommunications and regulated utilities industries. From 2006 to 2009, he was a Managing Director at Huron Consulting Group. Prior to joining Huron, Dr. Tardiff served as a vice president in the telecommunication practice at NERA Economic Consulting. During his career, he has served as the director of Marketing Research and senior member of the transportation practice at Charles River Associates, Inc. and assistant professor in the Department of Civil Engineering and Division of Environmental Studies at the University of California, Davis.

Dr. Tardiff's research has addressed the demand, cost, and competitive aspects of converging technologies, including wireless and broadband. He has evaluated pricing policies for increasingly competitive telecommunications markets, including appropriate mechanisms for pricing access services to competitors and studied actual and potential competition for services provided by incumbent telephone operating companies. Most recently, he has analyzed the effects of convergence and growing intermodal competition on whether incumbent firms should be considered dominant in the provision of certain services and the regulatory and antitrust implication of such determinations.

Since the passage of the United States Telecommunications Act, Dr. Tardiff has participated in interconnection arbitrations, unbundled element proceedings, universal service investigation, applications by incumbent local exchange carriers for authorization to provide interLATA long-distance, and implementation of the Triennial Review Order rules for unbundling network elements in over 25 states and before the United States Federal Communications Commission. His international research and consulting experience includes studies and expert reports on telecommunication competition issues in Canada, Japan, New Zealand, Peru, Australia, and Trinidad and Tobago, where he was an economic expert in an interconnection arbitration between two wireless carriers.

Education

- Ph.D., Social Sciences, University of California, Irvine, CA
- B.S., Mathematics, California Institute of Technology, Pasadena, CA

Testimony experience

- Affidavit of Timothy J. Tardiff on the economic evaluation of the monetary value of possible joint use agreement advantages, prepared for filing with the Federal Communications Commission on behalf of Verizon Florida, Verizon Florida LLC, Complainant v. Florida Power and Light Company, Respondent, Docket No. 15-73, File No. EB-15-MD-002, March 13, 2015.
- Reply Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications, Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and CTSI, LLC d/b/a Frontier Communications CTSI Company, LLC, Complainants v. UGI Utilities – Electric Division, Respondent, File No. EB-14-MD-007, September 15, 2014.
- Reply Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications, Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company, Frontier Communications of Breezewood, LLC, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications Company of West Virginia, and Frontier West Virginia Inc., Complainants, v. Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company d/b/a Allegheny Power , Monongahela Power Company, and the Potomac Edison Company, Respondents, File No. EB-14-MD-008, July 31, 2014.
- Supplemental Expert Report, Duke Energy Carolinas, LLC, Plaintiff v. Frontier Communications of the Carolinas LLC, Defendant, 2:13-cv-00040-MR-DLH, U.S. District Court for the Western District of North Carolina, June 27, 2014.

- Deposition Testimony, Florida Power & Light Company, Plaintiff v. Verizon Florida LLC, Defendant, Case No. 13-014808-CA-01, Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida, June 24, 2014.
- Affidavit of Timothy J. Tardiff on presumptive just and reasonable rates for pole attachments, prepared for filing with the Federal Communications Commission on behalf of Frontier Communications, Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company, Frontier Communications of Breezewood, LLC, Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications Company of West Virginia, and Frontier West Virginia Inc., Complainants, v. Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company d/b/a Allegheny Power , Monongahela Power Company, and the Potomac Edison Company, Respondents, File No. EB-14-MD-008, June 11, 2014.
- Expert Report, Florida Power & Light Company, Plaintiff v. Verizon Florida LLC, Defendant, Case No. 13-014808-CA-01, Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida, May 15, 2014.
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Professional associations

- Member, American Economic Association
- Associate Member, American Bar Association
- Member, Federal Communications Bar Association

Fellowships, grants and awards

- First Place, Dissertation Contest of the Transportation Science Section of the Operations Research Society of America.

- National Science Foundation (NSF) Research Initiation Grant (Engineering Division), 1976-1978.
- NSF Grant for Improving Doctoral Dissertation Research in the Social Sciences, 1973-1974.
- NSF Predoctoral Fellowship, 1972-1974.
- Public Health Service Traineeship, 1971-1972.

Exhibit 1

Confidential Exhibit

Exhibit 2

Confidential Exhibit

Exhibit 3

Confidential Exhibit

Exhibit 4

Mills, Stephen C (Steve)

From:	Arlie A Hahn (VirginiaPower - 1) <arlie.a.hahn@dom.com>
Sent:	Wednesday, October 30, 2013 11:19 AM
To:	Mills, Stephen C (Steve)
Cc:	Mike Graf (VirginiaPower - 1)
Subject:	Verizon/Dominion Joint Use Agreement Rate Adjustment
Attachments:	Rate Adjustment Notification 100813.pdf; Dominion - Template Fiber (CLEC) Agreement 9-18-13.doc

Dear Steve:

This email is in response to your letter dated October 8, 2013 (attached), notifying Dominion of Verizon's desire to negotiate new rates, in accordance with Section 33.08 of the Verizon-Dominion Joint Use Agreement. To facilitate this process, Verizon requested a copy of Dominion's standard pole attachment agreement, containing the standard rates, terms and conditions offered by Dominion to CLEC (telecommunications company) and CATV (cable television company) attachers. This template document is attached for your consideration. In addition I can provide the following, per attachment, rental rates that apply to each entity:

TYPE Telecom: [redacted] 2014 annual calculation
TYPE Cable: 2014 annual calculation

These rates are calculated in accordance with the corresponding formula found in the FCC's rules. Formula variables are adjusted annually as applicable. The total rent billed to each Attacher is based on the number and type of attachments.

Please let me know if you have any questions.

Best regards,

Arlie A. Hahn, Jr.

Dominion
It all starts here.
Dominion Customer Solutions
System - Joint Use Business
OJRP 8th floor
804-771-4234(off)
804-380-1496 (cell)

From: Mills, Stephen C (Steve) [mailto:stephen.c.mills@verizon.com]
Sent: Tuesday, October 08, 2013 3:32 PM
To: Arlie A Hahn (VirginiaPower - 1)
Subject: Verizon/Dominion Joint Use Agreement Rate Adjustment

Arlie,

Please see the attached letter regarding the rental rates. Hard copy to follow.

Steve Mills
Section Manager
National Joint Use and Licensing
(540)829-2711
stephen.c.mills@verizon.com

Confidential Attachment

Exhibit 5

Confidential Exhibit

Exhibit 6

Confidential Exhibit

Exhibit 7

GENERAL JOINT USE AGREEMENT

This agreement, made this 1st day of January, 1978, by and between the VIRGINIA ELECTRIC AND POWER COMPANY, hereinafter called the "Electric Company," party of the first part, and CONTINENTAL TELEPHONE COMPANY OF VIRGINIA, hereinafter called the "Telephone Company," party of the second part, both of said parties being corporations duly organized and doing business under the laws of the

W I T N E S S E T H :

WHEREAS, the Electric Company in the conduct of its business constructs, maintains, and operates electric lines in the COMMONWEALTH OF VIRGINIA; AND

WHEREAS, the Telephone Company in the conduct of its business constructs, maintains, and operates telephone lines in the same territory; and

WHEREAS, in many instances the same streets, roads, alleys, highways, public and private property are used by the parties hereto for burying plant or for the erection and maintenance of poles and pole attachments; and it is often desirable that certain of such rights of way, buried plant routes, or poles be used jointly by said parties; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety, appearance, and economy; and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be met properly by the joint use of poles, rights of way, or buried plant routes,

NOW, THEREFORE, in consideration of the premises and the agreements herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

A. This Agreement shall be in effect in such portions of the Commonwealth of Virginia as both parties hereto now or in the future have the right to operate, and shall cover:

1. Joint use of rights of way, clearing, disposal of debris, and maintenance of such rights of way as covered more particularly in Appendixes I and II.

2. Joint use of wood poles as covered more particularly in Appendix I.

3. Joint use of buried plant routes either by boring, plowing, or trenching as covered more particularly in Appendix II.

B. Each party reserves the right to exclude from joint use (1) poles or buried plant routes which, in the judgment of the individual company, are necessary for its own sole use; and (2) poles or buried plant routes which carry or are intended to carry circuits of such a character which, in the judgment of the individual company, the proper rendering of its service now or in the future makes joint use of such poles or buried plant routes undesirable.

ARTICLE II

SPECIFICATIONS

A. Installation and maintenance practices of both parties hereto shall conform to the safety rules covering electric supply and communication lines as provided in the current edition of the "National Electrical Safety Code" in effect from time to time.

B. The joint use of the poles covered by this Agreement shall at all times be in conformity with the terms and provisions of the attached specifications entitled "Joint Pole Practices for Supply and Communication Circuits" published - October, 1945, marked Exhibit "B", or subsequent revisions and amendments, and hereby made a part hereof.

C. The joint use of trenches covered by this Agreement shall, unless otherwise provided herein, be at all times in conformity with the recommendations of "A Report of the Joint Subcommittee to Study Buried Distribution Systems of the Edison Electric Institute and Bell Telephone System" EEI Publication 68-62, June 1968.

ARTICLE III

DEFAULTS

A. If either party shall default in the annual payments herein provided for, or in any other of its obligations under this Agreement, and such default continues ninety (90) days after notice thereof in writing from the other party, all rights of the party in default hereunder shall be suspended as far as concerns future granting of joint use.

B. If either party shall default in the performance of any work which it is obligated to do under this Agreement, the other party may elect to do such work; and the party in default shall reimburse the other party for its portion of the cost thereof. Failure on the part of the defaulting party to make such payment within sixty (60) days after presentation of bills therefor shall, at the election of the other party, constitute a default under Section A of this Article.

C. The provisions of this Article III shall not be construed to deprive either party of any rights at law or in equity arising from a default of the other party.

ARTICLE IV

LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees, or for injury to the property of either party, or for injuries to other persons or their property arising out of the joint use of poles or buried plant routes under this Agreement, or due to the proximity of the wires and fixtures of the parties attached to the jointly used poles covered by this Agreement, the liability for such damages, as between the parties hereto, shall be as follows:

A. Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence, or solely by its failure to comply at any time with the specifications herein provided for.

B. Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

C. Each party shall be liable for one-half of all damages for such injuries to persons other than employees of either party, and for one-half of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto, or that are due to causes which cannot be traced to the sole negligence of either party; provided, however, that the Telephone Company shall not be liable for damage to property or injuries to persons resulting from direct contact with buried electric conductors which cannot be traced to the sole negligence of the Telephone Company, and provided further that the Electric Company will indemnify and hold the Telephone Company harmless from and against all such claims resulting from direct contact with buried electric conductors which cannot be traced to the sole negligence of the Telephone Company.

D. Where, on account of injuries of the character described in the preceding paragraphs in this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with (1) the provisions of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding Sections A and B and shall be paid by the parties hereto accordingly.

E. All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party which said terms are acceptable may, at its election, pay to the other party its proportionate share of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

F. In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements, and other proper charges and expenditures.

ARTICLE V

ATTACHMENTS OF OTHER PARTIES

If either of the parties hereto has, prior to the execution of this Agreement, conferred upon others not parties to this Agreement, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges; and either party hereto shall have the right to continue such existing rights or privileges. Owner of any joint poles covered by this Agreement shall have the sole right to confer upon others, not parties to this Agreement, rights or privileges to use such poles as may be owned by such grantor. It is expressly understood, however, that for the purpose of this Agreement, the attachments of any such outside party, except attachments of a municipal signal system as hereinafter provided; shall be treated as attachments belonging to the grantor; and the rights, obligations, and liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof; provided, however, that where municipal regulations or franchises require either party to allow the use of its poles for fire alarm, police, or other like signal systems, such use shall be permitted; but attachments of a municipal signal system made under such regulations or franchises shall not be treated as belonging to either party hereto.

ARTICLE VI

SERVICE OF NOTICES

Wherever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal deliver, to the Electric Company at its office at Richmond, Virginia, or to the Telephone Company at its office at Mechanicsville, Va., as the case may be, or to such other address as either party may, from time to time, designate in writing for that purpose.

ARTICLE VII

BILLS IN PAYMENT FOR WORK

Upon completion of any work performed hereunder by either party, the expense of which is to borne wholly or in part by the other and which is not covered by an agreed upon flat fee, the party performing the work shall present to the other party, within sixty (60) days after the completion of such work, an itemized statement showing the specific location, the entire cost of the labor and material employed herein, supervision, and all overhead charges, and such other party shall, within sixty (60) days after such statement is presented, pay to the party doing the work such other party's proportion of the cost of such work.

ARTICLE VIII

TERM OF AGREEMENT

Subject to the provisions of Article III herein, this Agreement may be terminated, after the first day of January, 1983, upon one (1) year's notice in writing to the other party, provided, that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon one (1) year's notice in writing to the other party as aforesaid, and provided, however, that this Agreement shall not be terminated while any provisions of any Appendix hereto remain in effect.

Nothing herein contained shall be construed to prevent the modification of the terms of this agreement by mutual written consent of the parties hereto.

ARTICLE IX

ASSIGNMENT OF RIGHTS

A. Except as otherwise provided in this Agreement, neither party shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation, or individual without the written consent of the other party.

B. Nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidations; and in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to and be acquired and assumed by the purchaser on foreclosure, or the transferee, lessee, assignee, merging, or consolidating company.

ARTICLE X

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XI

PRIOR CONTRACTS

All prior agreements between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement, are, by mutual consent, hereby terminated; and all joint use facilities after the effective date of this Agreement, shall be governed and paid for in accordance with the terms hereof.

IN WITNESS WHEREOF, the party of the first part has caused its name to be signed hereto by its Senior Vice President and its Corporate Seal to be hereunto affixed and duly attested, and the party of the second part has caused this instrument to be signed by its Vice President and its Corporate Seal to be affixed hereunto and duly attested, as of the day and year first written above.

VIRGINIA ELECTRIC AND POWER COMPANY

By: ______________________
Senior Vice President

ATTESTED:

____
Assistant Corporate Secretary

CONTINENTAL TELEPHONE COMPANY OF VIRGINIA

By: ______________________

ATTESTED:

____

APPENDIX NUMBER I

TO GENERAL JOINT USE AGREEMENT DATED 1-1-78

BETWEEN VIRGINIA ELECTRIC AND POWER COMPANY

AND

CONTINENTAL TELEPHONE COMPANY OF VIRGINIA

COVERING THE

JOINT USE OF WOOD POLES

AND

OVERHEAD RIGHTS-OF-WAY

1. GENERAL

1.01 This Appendix Number I outlines responsibilities, practices, and procedures to be followed when right-of-way clearing, trimming, maintenance and joint use of wood poles for overhead construction is to be utilized by the Virginia Electric and Power Company, hereinafter called the "Electric Company," and Continental Telephone Company of Virginia , hereinafter called the "Telephone Company."

1.02 Nothing herein contained shall be construed to prevent the modification of the terms contained herein by mutual consent of the parties hereto.

1.03 Each Company shall be responsible for acquiring rights from property owners prior to use of right-of-way for installation of its facilities.

2. EXPLANATION OF TERMS

2.01 For the purpose of this Agreement, the following terms when used herein, shall have the following meanings:

(a) "JOINT USE" is the simultaneous use of any pole or structure for attachments by both of the parties.

(b) "JOINT POLE" is a pole or structure suitable for the requirements of the parties and which is the subject of joint use. Push braces where either pole of both are contacted shall be counted as one pole contacted.

(c) "BASIC POLE" means a 35-foot Class 5 wood pole which at least meets the latest specifications of the American Standards Association, and has a preservative treatment in accordance with the best modern practice. For the purpose of this Agreement, it is agreed between the parties hereto that such basic pole provides space and strength for the requirements of both parties in normal joint use as hereinafter set forth. Nothing herein contained shall be construed to preclude the use of poles or structures shorter or smaller than the basic pole provided that such poles or structures provide the necessary space for the attachments of both parties and comply with the specifications hereinafter referred to.

(d) "INTERMEDIATE POLE" means a new pole adequate for the attachments of both parties set between existing poles in a continuous pole line where the Owner of the existing poles does not need and foresees no future need for the new pole. This does not apply to poles required to make a line suitable for joint use under paragraph 3.01 of this appendix.

(e) "OWNER" shall mean the party having sole ownership of a pole or anchor.

(f) "LICENSEE" shall mean the party using a pole or anchor jointly with the Owner.

(g) "PARTIES" means the Electric Company and the Telephone Company as herein defined.

(h) "ATTACHMENTS" are any material or apparatus owned by either of the parties now or hereafter attached to a joint pole.

(i) "TRANSFERRING" refers to the moving of attachments from one pole to another.

(j) "REARRANGING" refers to the reconstruction or relocation of attachments on the same pole.

(k) "POLE RELOCATION" means changing the location of a pole by skidding or replacing.

(l) "UNEXPIRED LIFE" shall mean the value of the remaining life of the pole in place.

(m) "BASIC SPACE" is the space on a joint-use pole for the exclusive use of the parties hereto.

(1) "Basic Space" for Electric Company is four feet, eight inches, located above the space of the Telephone Company and at a sufficient distance above the space of the Telephone Company to provide at all times clearances required by the specifications referred to in Article II of the General Joint Use Agreement dated January 1, 1978.

(2) "Basic Space" for the Telephone Company is three feet at a sufficient distance below the space of the Electric Company to provide at all times clearances required by the specifications referred to in Article II of the General Joint Use Agreement dated January 1, 1978.

(n) "ENCROACHMENT" means one party using such space on a pole as to prevent the other party from making full use of its basic space.

3. ESTABLISHING JOINT USE OF NEW POLE

3.01 Both parties will mutually exchange any information related to the initial phases of planning of new pole lines.

3.02 EACH PARTY SHALL MAKE ITS ATTACHMENTS AT SUCH A LEVEL AS TO PROVIDE THE MAXIMUM POSSIBLE UNUSED SPACE BETWEEN THE TWO PARTIES' ATTACHMENTS.

3.03 Whenever either party hereto proposes to construct a new pole line or reconstruct an existing line in a location where it appears the other party may require space, it shall notify the other party in writing and if the other party desires to make use of such poles, the Owner shall then place poles suitable for joint use. POLES TALLER OR STRONGER THAN THE BASIC POLE WILL BE USED ONLY WHEN THE KNOWN REQUIREMENT FOR HEIGHT OR STRENGTH EXCEEDS THE NORMAL JOINT USE AND SPACE UTILIZATION. (See Section 13.)

3.04 In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, and the party proposing to construct the new pole facilities already owns more than its proportionate share of the joint poles, the party owning less than its proportionate share of joint poles shall have the right to erect and own the proposed new joint poles, and will endeavor to minimize the difference in ownership by setting and owning poles for new joint use lines, where possible.

4. ESTABLISHING JOINT USE OF EXISTING NON-JOINT-USE POLES

4.01 All poles of either party hereto may be used by the other party without application, subject however, to all the other terms and conditions of the Agreement.

4.02 EACH PARTY SHALL MAKE ITS ATTACHMENTS AT SUCH A LEVEL AS TO PROVIDE THE MAXIMUM POSSIBLE UNUSED SPACE BETWEEN THE TWO PARTIES, ATTACHMENTS.

4.03 IN THE EVENT EITHER PARTY CAN REARRANGE ITS ATTACHMENTS TO AVOID REPLACING AN EXISTING POLE, IT SHALL PROMPTLY DO SO PROVIDED SUCH REARRANGEMENTS MEET THE MINIMUM CLEARANCES REQUIRED BY THE SPECIFICATIONS REFERRED TO IN THE GENERAL JOINT-USE AGREEMENT OF EVEN DATE HEREWITH.

4.04 Whenever any existing pole is insufficient in height or strength for Licensee's proposed attachment, Owner shall, upon written request from the Licensee, promptly replace such pole with a new pole of the necessary height and strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require. (See Section 13)

5. PLACING ADDITIONAL ATTACHMENTS ON EXISTING JOINT-USE POLES

5.01 IN THE EVENT EITHER PARTY CAN REARRANGE ITS ATTACHMENTS TO AVOID REPLACING AN EXISTING POLE, IT SHALL PROMPTLY DO SO PROVIDED SUCH REARRANGEMENTS MEET THE MINIMUM CLEARANCES REQUIRED BY THE SPECIFICATIONS REFERRED TO IN THE GENERAL JOINT-USE AGREEMENT DATED JAN. 1, 1978. THE PARTY MAKING THE REQUEST SHALL REIMBURSE THE OTHER PARTY THIS REARRANGEMENT COST AS SET FORTH IN SECTION 22 OF THIS APPENDIX I.

5.02 Whenever any jointly used pole is insufficient in height or strength for the existing attachments and the proposed additional attachments, the party desiring the change shall notify the other party in writing and the Owner shall promptly replace such pole with a new pole of the necessary height and strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require. (See Section 13.)

5.03 An encroaching party shall rearrange its facilities or replace the pole if necessary at its expense.

6. PLACING ATTACHMENTS IN SPACE OF THE OTHER PARTY

6.01 Either party requiring space in excess of normal joint use may encroach in space provided for the other party on an existing or newly erected pole without application provided that the terms of this Agreement and the Specifications referred to in Article II of the General Joint-Use Agreement, of even date herewith, are fully complied with.

7. REPLACING POLES FOR CIRCUITS ABOVE 20.0 KV

7.01 Whenever any Telephone Company pole must be replaced after a joint engineering decision to accomodate an electric power circuit being converted to a voltage exceeding 20 k. v. phase to phase the Electric Company shall take over the location and set the new pole at its expense. The Telephone Company shall remove the old pole at its expense.

8. RELOCATING POLES

8.01 Whenever it is necessary for Owner to change the location of a jointly used pole, Owner shall, before making such change, give notice thereof in writing (except in cases of emergency when verbal notice may be given, and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed relocation, and the Licensee shall, at the time so specified, transfer its attachments to the relocated pole.

8.02 If an existing pole is relocated at Licensee's request or for Licensee's sole benefit, Licensee shall reimburse Owner.

(a) Actual cost if Owner's conductors must be spliced in order to reach the new pole location.

(b) Flat charges provided in Section 22 if conductors can be transferred without splicing.

9. JOINT USE OF ANCHORS

9.01 Whenever either party desires to attach its guy wires to the anchor rod of the other party, it shall make written application therefore specifying therein the location of the anchor rod in question and giving the ultimate strength of the proposed guy wire to the anchor rod.

9.02 When a line is being constructed or reconstructed for joint use, the Owner shall place one double-eye rod and an anchor adequate for the ultimate strength of the guy wires to be placed immediately by both parties. When the ultimate strength of the guy wires to be attached is greater than the capacity of one anchor, each party shall place an anchor adequate for its own needs. When the Owner places an anchor for joint use, the Licensee shall have clear access to one eye of the rod.

9.03 It is understood and agreed that attachments to existing anchor rods by Licensee shall be made with an approved fitting attached to the anchor rod, unless the rod is a double-eye rod with space available for another attachment.

9.04 Whenever public authorities or private property owners require the replacement of multiple anchors with a single anchor, the Owner of the pole shall proceed in accordance with Paragraph 9.02.

9.05 The Owner of the anchor in any case reserves the right to require the other party to remove its attachment if and when the Owner requires the full holding power of the anchor.

10. RESPONSIBILITY FOR PLACING, REARRANGING, TRANSFERRING, MAINTAINING, AND REMOVING ATTACHMENTS

10.01 Except as herein otherwise expressly provided, each party shall at its own expense, place, maintain, rearrange, transfer, and remove its own attachments, and do any tree trimming or cutting incidental thereto, place such guys as are necessary to sustain the unbalanced strain of its own attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

11. TRANSFERRING CERTAIN TELEPHONE ATTACHMENTS BY ELECTRIC COMPANY CREWS

11.01 Whenever it is necessary to replace or relocate a jointly used pole, the Owner shall, before making the change, give written notice to the Licensee so that the Licensee may make arrangement for the transfer of its attachments. HOWEVER, THE ELECTRIC COMPANY MAY, WHEN RELOCATING OR REPLACING A POLE CARRYING CERTAIN KINDS OF TELEPHONE COMPANY ATTACHMENTS, REMOVE SAID ATTACHMENTS FROM THE OLD POLE AND TEMPORARILY FASTEN THEM TO THE NEW POLE IN A SAFE AND SECURE MANNER, where the Telephone Company attachments are such that they can be temporarily transferred without damaging the equipment or interrupting service. The Telephone Company will inform the Electric Company as to the certain kinds of attachments which may be handled by the Electric Company.

11.02 IN ANY CASE WHERE SUCH TEMPORARY TRANSFER IS MADE, VERBAL NOTICE SHALL BE PASSED TO THE TELEPHONE COMPANY NOT LATER THAN THE BEGINNING OF THE NEXT REGULAR WORKING DAY. The verbal notice is to be confirmed in writing, referring to the fact that verbal notice was given, thus preventing temporary transfer conditions from posing a hazard to the public or to the workmen.

12. RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

12.01 No guarantee is given by the Owner of permission from property owners, municipalities or others for the use of its poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time, upon ninety (90) days' notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved; and the Licensee shall, within ninety (90) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided, the Owner may remove them at the Licensee's expense without any liability whatever for such removal or the manner of making it. The Licensee shall reimburse the Owner on demand for the expense incurred.

13. COST OF ERECTION OF JOINT POLES

13.01 Basic Pole

Poles which provide basic space shall be furnished and erected at the sole expense of the Owner.

13.02 Poles Taller and/or Stronger Than Basic Pole

(a) Cost of Extra Height Due to Excessive Sag

When the sag of line conductors requires extra pole height and class to give ground clearances under flat terrain conditions and clearances between conductors of the parties hereto in compliance with the specifications named in Article II, the cost of such extra pole height and strength as provided in Paragraph 22 shall be borne as follows:

(1) The Electric Company shall bear the cost if the facilities of the Electric Company sag to the extent that the facilities of the Telephone Company cannot be placed at the highest point in its allocated space, using normal attachment construction, and if the facilities of the Telephone Company, when so placed, would not sag lower than permitted by the specifications named in Article II, under flat terrain conditions.

(2) The Telephone Company shall bear the cost if the facilities of the Electric Company do not sag to the extent that they prevent the Telephone Company from attaching its facilities at the highest point in its allocated space, using normal attachment construction, and if the facilities of the Telephone Company do sag lower than permitted by the specifications named in Article II, under flat terrain conditions.

(3) The costs shall be borne equally if the facilities of the Electric Company sag to the extent that the facilities of the Telephone Company cannot be placed at the highest point in its assigned space, using normal attachment construction, and if the facilities of the Telephone Company, when so placed, would sag lower than permitted by the specifications named in Article II, under flat terrain conditions.

(4) In spans of more than 150 feet the responsibility for bearing the cost of excessive sag shall be determined as provided in Paragraphs (1),(2) and (3) for spans of 150 feet or less, except that the cost of any extra pole height required solely to meet the requirements of Rule 238B3 (c) of the National Electric Safety Code which further limits sag with reference to a straight line joining the highest points of support of the highest communications attachments, shall be borne equally by the parties under the terms of Paragraph 13.03 below.

(b) Cost of Extra Height for Other Reasons

(1) The cost of extra height or class to provide ground or other code clearance to meet the requirements of other than the parties hereto shall be borne equally by the parties (see General Agreement, Article V, "Attachments of Other Parties".)

(2) The cost of extra height or class to provide pole space in addition to Basic Space required by either party shall be borne by that party.

(3) The cost of extra height or class to provide pole space in addition to Basic Space when required by both parties hereto shall be borne equally by both parties.

13.03 Pole Replacement by Licensee

It is recognized by the parties hereto that the service requirements of customers sometimes makes prompt replacement of poles necessary. If such is the case, the Licensee shall so notify the Owner.

Then, if within ten working days after receipt of such notification to replace a pole the Owner has not done so, the Licensee may, in order to meet the emergency conditions, replace the pole with a pole of the required height and strength from Licensee's supply. The Owner of the replaced pole shall reimburse the Licensee the actual cost of the replacement including material cost of the pole in accordance with Article VII, Bills in Payment for Work, of the General Joint-Use Agreement. The special provisions of this paragraph shall not be construed to relieve the Owner of its obligations to replace poles as necessary to provide for the requirements of the Licensee, as outlined in Paragraphs 4.04 and 5.02, Appendix I.

13.04 Intermediate Pole

See Section 22 of this Appendix I for costs.

14. MAINTENANCE OF POLES AND ATTACHMENTS

14.01 Owner shall, at its own expense, maintain its jointly used poles in a safe and serviceable condition, and in accordance with the specifications referred to in Article II of our General Joint-Use Agreement and shall replace or repair such of said poles as become defective. Except as otherwise provided in Paragraph 14.02, each party shall, at its own expense, at all times maintain all of its attachments in accordance with the Specifications referred to in Article II of the General Joint-Use Agreement, and keep them in safe condition and thorough repair.

14.02 Any existing joint-use construction of the parties hereto which does not conform to the Specifications referred to in Article II of the General Joint-Use Agreement, shall be brought into conformity therewith as rapidly as practicable and reasonable; and the plan for the order of carrying on the work shall be as mutually agreed upon by the parties hereto. In case of reconstruction of the attachments on any joint-use pole or in case of replacement of any joint-use pole, the pole and any attachments thereon shall be made to conform to such Specifications.

14.03 When such existing joint-use construction shall have been brought into conformity with the Specifications referred to in Article II of our General Joint-Use Agreement, it shall at all times thereafter be maintained as provided in Paragraph 14.01.

15. RESTORATION OF SERVICE IN EMERGENCIES

15.01 It is recognized by the parties hereto that prompt restoration of electric and telephone service in emergencies is vital. Accordingly, whenever it is necessary for the Licensee, rather than the Owner, to replace or repair an existing pole in an emergency because of its having been damaged or destroyed, the Owner of the pole being replaced or repaired will pay the Licensee the actual cost of such replacement or repairs in accordance with Article VII of the General Joint-Use Agreement. This provision shall not apply to major casualties such as those caused by hurricanes, sleet storms, or war, unless by mutual agreement, but shall apply to minor damage due to such causes.

16. ABANDONMENT OF JOINTLY USED POLES

16.01 If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses, or charges incurred, because of or arising out of, the presence or condition of such pole or of any attachments thereon at any time thereafter and shall pay the Owner of such abandoned pole or poles in accordance with Paragraph 22.05 of this Appendix. Owner shall give to Licensee a bill-of-sale covering the pole or poles involved.

16.02 The Licensee may at any time abandon the use of a jointly used pole by removing therefrom any and all attachments it may have thereon.

16.03 Whenever a pole is abandoned as provided in Paragraph 16.01 above, the Owner shall remove its identification of ownership as soon as practicable.

17. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

17.01 When either party desires to change the character of its circuits on jointly used poles in such a manner as could be reasonably deemed to have an adverse effect on the other party's ability to render its service, the party desiring to make such change shall give written notice to the other party ninety (90) days prior to such contemplated change or sooner if possible.

17.02 The parties shall then cooperate in determining (1) the conditions under which joint use may be continued on a mutually satisfactory basis, or (2) the most practical and economical method of providing for separate lines.

17.03 In the latter event, the party whose circuits are to be removed from the joint poles shall promptly carry out the necessary work. Unless otherwise agreed, the party remaining on the old poles shall pay the party removing its circuits a sum equal to the value of the unexpired life of the facilities that are being removed from the old line, plus the cost of removal minus the salvage value, as determined by the party removing its facilities.

18. ANNUAL PAYMENT

18.01 All poles jointly occupied by the parties hereto shall be subject to annual payment.

18.02 The party owning the least number of joint use poles shall make an annual payment to the other party in an amount equal to the number of poles by which it is deficient times an annual payment rate as follows:

1978 - $5.05
1979 - $5.25
1980 - $5.45
1981 - $5.65

18.03 A field survey of poles shall be conducted at intervals of five (5) years, or as otherwise mutually agreed upon, beginning in 1983 to determine the then current number of joint use poles owned by each party.

18.04 The party owning the larger number of joint use poles shall submit by November 1, of each year, a bill to the other party in accordance with Paragraphs 18.02, and 18.04 (a) and (b).

(a) The bill for the year of a survey shall be based on the number of poles determined by the survey.

(b) The bill for each of the years between surveys shall be based on the number of poles determined by the preceding survey.

(c) Settlement for shortages or overpayment shall be made at the completion of the next field survey.

18.05 Final settlement for the years between surveys. Upon completion of each field survey, the number of joint use poles determined thereby shall be compared with the number of poles determined by the preceding survey. Any difference shall be deemed to have occurred at a uniform rate annually and shall be spread evenly to the years back to the preceding survey. Payments previously made in accordance with the provision of Paragraph 18.04 (b) for the intervening years shall be adjusted for shortage or overpayment accordingly.

18.06 Annual payment shall cover the calendar year, and shall be made after receipt of the bill but not later than December 1, of the calendar year.

19. PERIODIC READJUSTMENT OF ANNUAL PAYMENTS

19.01 On January 1, 1982 and at the end of every three year period thereafter, the annual payment rate shall be subject to readjustment at the request of either party made in writing to the other not later than sixty (60) days before said date or at the end of any such three year period, as the case may be. If (6) six months after the receipt of such a request by either from the other, the parties hereto have not agreed upon a readjustment, then the annual payment rate for the latest year set forth in section 18 shall be applied until otherwise agreed by the parties, provided, however, that said annual payment rate shall be cumulatively increased each year by an annual escalation factor of 3.82%.

20. CLEARING, TRIMMING AND MAINTENANCE OF JOINT USE OVERHEAD RIGHTS-OF-WAY

20.01 EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms, when used herein, shall have the following meanings:

(a) "PARTIES" means the Electric Company and the Telephone Company as defined in the General Agreement.

(b) "UNIFORM RIGHT-OF-WAY" means a right-of-way that requires, or has required, ground and sidewall clearing.

(c) "NON-UNIFORM RIGHT-OF-WAY" means a right-of-way where no groundline clearing is required, such as along a city street.

(d) "GROUND-LINE CLEARING" means the cutting and disposition of all trees and underbrush within the limits of the right-of-way.

(e) "SIDEWALL CLEARING" means the cutting and disposition of tree limbs and branches from trees growing outside the limits of the right-of-way to establish a vertical "wall" at the limits of the right-of-way.

(f) "INITIAL CLEARING" means the clearing done at the time the right-of-way is first cleared.

(g) "MAINTENANCE RIGHT-OF-WAY CLEARING" means subsequent ground-line clearing and sidewall clearing up to a height of eight (8) feet on "Uniform Right-of-Way".

(h) "TREE TRIMMING" means initial tree trimming done by each company to make its own wires and facilities free and clear in a non-uniform right-of-way situation, and maintenance trimming done to keep the wires and facilities free and clear whether the right-of-way is uniform or non-uniform.

20.02 OVERHEAD RIGHT-OF-WAY USED FOR OVERHEAD PLANT

(a) Initial right-of-way clearing and tree trimming - It shall be the responsibility of the pole Owner to perform the initial ground clearing and sidewall trimming where a uniform right-of-way exists to care for the requirements of both parties. The work shall include cutting undergrowth and trimming of trees from ground to tree tops and required disposition of effects. The party performing the initial clearing shall be advised by the other party of its right-of-way requirements.

(b) Initial clearing when only tree trimming is involved - Each party shall, at its own cost and expense, do such tree trimming and disposition of effects as it deems necessary to provide clearance when a non-uniform condition exists. Generally, ground clearing is refered to as right-of-way clearing.

(c) Maintenance right-of-way clearing

(1) It shall be the responsibility of the pole Owner to perform normal ground clearing or chemical brush control and sidewall trimming up to a level of eight (8) feet to maintain the uniform portion of the right-of-way at its established width.

(2) If maintenance right-of-way clearing is not performed by the pole Owner as required by Paragraph (1) above, the other party may upon mutual agreement clear said right-of-way, or after sixty (60) days' notice in writing, clear said right-of-way.

(d) Maintenance tree trimming - Each party shall, at its own cost and expense, do such trimming as it deems necessary to keep its own wires and facilities free and clear in all maintenance situations regardless of whether a uniform or non-uniform condition, or both conditions apply. By mutual agreement, such tree trimming may be done for the benefit of the two parties, by one party, or by one contractor approved by both parites.

(e) Occasional maintenance tree removals - Either party may ask the other to participate in the cost of removing a tree which is considered to be interfering or endangering joint-use facilities of the parties. Upon such request by the one party, the other party may elect, or not elect, to share such cost. If the notified party elects to share the cost, the cost shall be divided as provided in following Paragraph 20.02 (g). Either party may remove such tree depending upon their agreement to participate and to share cost.

(f) Widening rights-of-way on existing joint-use lines

(1) When the cleared width of right-of-way for an existing joint-use line is increased beyond its established width to satisfy the requirements of one party to the Agreement, that party will be responsible for performing the work and will bear 100% of the cost.

(2) If it is mutually agreed that the extra width will benefit both parties, the party owning the pole line will perform the work, and the cost will be divided as follows:

Up to 15 feet from center line:	
Telephone Company	35%
Electric Company	65%

Beyond 15 feet from center line:
Electric Company 100%

(3) The pole Owner shall perform normal ground clearing or chemical brush control and sidewall trimming up to a level of eight (8) feet to maintain the right-of-way at its newly established width, in accordance with the terms of Paragraph 20.02 (f) (2).

(g) Division of cost of right-of-way clearing - The cost of work covered in Paragraphs 20.02 (a) and 20.02 (c), excepting the portion of right-of-way more than 15 feet from the center line, shall be divided between the two parties, 35% to the Telephone Company and 65% to the Electric Company. The cost of work in Paragraph 20.02 (e) shall be subject to this same division between the parties if by mutual consent both parties agree to share such cost.

(h) Determination of billing - The cost to be divided shall consist of only the contractor's bill and shall exclude any costs of supervision and overhead of the party having the contractor to perform the work.

(i) Joint use of existing cleared right-of-way - Where joint use is not entered into when a new line is first constructed but is entered into within twelve (12) months of the initial construction the party who performed the initial clearing shall be reimbursed as provided in Paragraph 20.02 (f) (2).

20.03 OVERHEAD RIGHT-OF-WAY USED FOR BURIED PLANT

(a) The party placing its buried facilities in a trench on a right-of-way which has been cleared by the other party for overhead plant shall pay 20% of the initial clearing costs.

(b) The party placing its buried facilities by means of plowing shall pay 35% of the initial clearing costs.

(c) If the underground facilities are placed more than twelve (12) months after the initial clearing of the overhead right-of-way, the above charges are not applicable.

(d) Should either party desire to locate its underground facilities on right-of-way used by the other for overhead facilities, it shall, insofar as possible, locate its underground facilities a minimum of seven (7) feet from the pole line. When the pole line parallels a highway, street, or road, the underground facilities may be located on the field side and at a minimum of seven (7) feet from the line insofar as possible. Crossings from one side of the pole line to the other shall be located as near midpoint of the pole span as possible and markers shall be installed at each angle point of the crossing. Crossings shall be held to an absolute minimum due to the operating hazards that would result.

(e) The party desiring to install parallel underground facilities on overhead right-of-way shall notify the other party in writing prior to making the installation.

21. BONDING FOR AERIAL LINES

This section covers the procedures to be followed when it becomes necessary to bond the Telephone Company cable sheath to Electric Company multi-grounded common neutral system.

21.01 Definition - Pole Ground consists of a ground rod and a #6 or larger solid copper wire or equivalent aluminum wire running vertically from the rod to the multi-grounded neutral.

21.02 New Joint-Use Pole Lines - The company setting poles will install pole grounds at all jointly engineered pole locations, where necessary.

21.03 Existing Joint-Use Pole Lines

(a) When the Electric Company changes the character of an overhead circuit by increasing the primary voltage above 20 k.v. phase to phase, pole grounds along that circuit required by the Telephone Company shall be provided by the Electric Company at the Electric Company's expense.

(b) When the Telephone Company requires pole grounds beyond the limits of an Electric Company conversion covered in (a) above and/or on other joint-use lines the Telephone Company will place the pole ground at its expense and the Electric Company will attach it to the multi-grounded neutral and bill the Telephone Company $21.00 for the first attachment and $7.00 for each subsequent attachment, all located in the same vicinity. The bill will show the number of attachments and the Telephone Company order number for such work.

(c) The Telephone Company will make the connection from the pole ground to the telephone cable under (b) above.

21.04 Adjustment of Fixed Charges - After two (2) years from the effective date of this Appendix, and every two (2) years thereafter, the fixed charges established in Paragraph 21.03 (b) above may be revised if mutual studies substantiate the need.

22. FIXED CHARGES TO BE BILLED FOR UNEXPIRED LIFE, EXTRA HEIGHT, INTERMEDIATE POLES, REARRANGEMENTS, AND PURCHASE OF POLES

This section covers the fixed charges to be billed by the Owner to the Licensee for purchase of poles, unexpired life, extra height and/or strength when the Owner is requested by the Licensee to install or replace a pole to provide extra height and/or strength; also fixed charges to be billed to the Licensee by the Owner for installation of intermediate poles and rearrangements.

22.01 Unexpired Life ------------------------------------$33.00

22.02 Extra Height - When the Licensee requests the Owner to provide extra height, including poles on which cost is shared, the Owner shall bill the Licensee ---------------------------------$18.50

22.03 Intermediate Pole(s)

(a) When the Electric Company requests the Telephone Company to install an intermediate pole, the charge shall be -- $70.00

(b) When the Telephone Company requests the Electric Company to install an intermediate pole, the charge shall be -- $88.00

22.04 Rearrangement -- $15.00

22.05 Purchase of Poles

(a) It is mutually agreed that the purchase price of poles by either company will be for the fixed sum of $20.00 per pole. This is a weighted average figure for all poles, regardless of age, height, class, or additional height payments.

(b) It is also mutually agreed that each bill of sale will cover all the poles purchased within a period of approximately three (3) months, and bill of sale shall be paid within six (6) months after delivery to purchaser.

22.06 Adjustment of Fixed Charges - After two (2) years from the effective date of this Appendix, and every two years thereafter, the fixed charges established in this Paragraph may be revised if mutual studies substantiate the need.

23. EFFECTIVE DATE

23.01 The effective date of this Appendix Number I, concerning the joint use of wood poles and overhead rights-of-way, shall be January 1, 1978.

24. TERM OF APPENDIX

24.01 Subject to the provisions of Article III, this Appendix may be terminated, so far as concerns further granting of joint use by either party, after the first day of January, 1982, upon one (1) year's notice in writing to the other party provided, that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon one (1) year's notice in writing to the other party as aforesaid, and provided further that notwithstanding such termination, this Appendix shall remain in full force and effect with respect to all right-of-way and wood poles jointly occupied by the parties at the time of such termination.

PUBLIC VERSION

DONE in duplicate, each part being an original.

VIRGINIA ELECTRIC AND POWER COMPANY

By: ______________________
Manager - Division Services

CONTINENTAL TELEPHONE COMPANY OF VIRGINIA

By: ______________________