

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

CROWN CASTLE FIBER LLC,

Complainants,

v.

COMMONWEALTH EDISON COMPANY,

Respondent.

File

POLE ATTACHMENT COMPLAINT – UNLAWFUL RATES

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Crown Castle Fiber LLC (“Crown Castle”) respectfully submits this Pole Attachment Complaint pursuant to Subpart J of the Federal Communications Commission (“FCC” or “Commission”) Rules, 47 C.F.R. §§ 1.1401 *et seq.* against Commonwealth Edison Company, (“ComEd”) for imposing unlawful and unreasonable rates, terms, and conditions of pole attachment.

I. INTRODUCTION

1. For many years, ComEd has charged Crown Castle pole attachment rates for both wireless and wireline attachments that far exceed the maximum lawful rates permitted by the Commission’s pole attachment formula. Indeed, over the past six years, ComEd has overcharged Crown Castle nearly [REDACTED] for attachment of wireless and wireline telecommunications attachments, claiming that the attachment rates it charges telecommunications services are not regulated. In charging these excessive pole attachment rates, ComEd has charged unjust and unreasonable rates in violation of 47 U.S.C. § 224 and the Commission’s Rules.

2. ComEd refuses to recognize that wireless attachments are subject to the Commission’s Rules, and, as a result, ComEd has charged Crown Castle between [REDACTED] and [REDACTED] per pole per year for wireless attachments. Even using conservative estimates for the amount of space occupied by Crown Castle’s wireless attachments, ComEd’s rental charges are over ten times higher than the lawful rates calculated under the Commission’s Rules. This is not a complicated issue; ComEd simply refuses to abide by legal limits on its pole attachment rates for wireless equipment. ComEd’s attachment rental rates for wireline attachments likewise significantly exceed the rate allowed under the Commission’s Rules and Section 224.

II. PARTIES

3. Complainant Crown Castle provides facilities-based telecommunications services to enterprise customers and wireless carriers, among others, using fiber-optic lines and small cell

and distributed antenna system networks, in the state of Illinois pursuant to a Certificates of Authority issued by the Illinois Commerce Commission.¹

4. When it provides telecommunications service to wireless carriers, Crown Castle typically does so by means of a service it calls “RF transport service.” Crown Castle generally provides “RF transport service” using fiber optic lines to transport communications between remote wireless equipment called “Nodes” (consisting of antennas and related equipment) that are located on poles, typically in the public rights of way, and centralized hub facilities. Thus, Crown Castle attaches equipment to ComEd poles that is both “wireless” in nature and equipment that is “wireline” in nature.²

5. Crown Castle’s mailing address is 1220 Augusta Drive, Suite 600, Houston, Texas 77057-2261.

6. Respondent ComEd is an investor-owned electric utility in the business of providing electric transmission and distribution services. ComEd’s general business address is 440 South LaSalle Street, Chicago, IL 60605.

7. ComEd owns or controls poles in the State of Illinois that are used for, among other things, the attachment of wireline and wireless communication facilities.

8. Upon information and belief, ComEd jointly owns some, but not all, poles with AT&T.³

¹ See Attachment A hereto, Declaration of Rebecca Hussey dated June 17, 2019 (“Hussey Decl.”), and Exhibit 1, *RCN New York Communications, LLC, Application for a certificate of local and interexchange authority to operate as a reseller and a facilities based carrier of telecommunications services within the State of Illinois*, Order, Docket 07-0429 (Dec. 17, 2007) (Crown Castle’s Certificates of Authority).

² Hussey Decl. ¶ 12.

³ Attachment B hereto, Declaration of Maureen A. Whitfield, ¶ 11.

9. Crown Castle alleges, upon information and belief, that ComEd is not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

10. Attached to this Complaint is a certificate of service certifying that ComEd and the Illinois Commerce Commission (“ICC”) were served with copies of the Complaint.

III. JURISDICTION

11. The FCC has jurisdiction over this action under the provisions of the Communications Act of 1934, as amended, including, but not limited to, Section 224 thereof, 47 U.S.C. § 224 (hereinafter “Section 224”).

12. The Commission has jurisdiction over rates, terms, and conditions of pole attachments except “where such matters are regulated by a State.”⁴

13. The State of Illinois does not regulate telecommunication service providers’ pole attachments to poles owned by electric utilities, as required by Section 224(c) to preempt the Commission’s jurisdiction.

14. A State does not regulate pole attachment rates, terms, and conditions “unless the State has issued and made effective rules and regulations implementing the State’s regulatory authority over pole attachments.”⁵

⁴ 47 U.S.C. § 224(c)(1).

⁵ 47 U.S.C. § 224(c)(3).

15. While the ICC has certified to the FCC that it regulates pole attachments,⁶ the ICC's pole attachment regulations, set forth in Title 83, Sections 315.10 through 315.70 of the Illinois Administrative Code, apply only to attachments by "cable television ("CATV") companies."⁷

16. The ICC's pole attachment regulations do not apply to or make reference to attachments by telecommunications companies.⁸

17. Because the ICC's rules do not include attachments by telecommunications companies, the ICC does not have the authority to regulate attachments by telecommunications companies to electric utilities' poles, and, therefore, jurisdiction over Crown Castle's telecommunications attachments remains with the Commission.

18. Appended hereto as Attachment C is a letter from the Chairman of the ICC, confirming that the ICC does not claim jurisdiction over Crown Castle's attachments to ComEd's poles or this dispute.⁹ The ICC adopted the position set forth in the letter at an open meeting on October 25, 2018.¹⁰

19. The Commission has previously stated that jurisdiction for pole attachments reverts to the Commission if a State has not implemented pole attachment rules and regulations.¹¹

⁶ See *States That Have Certified They Regulate Pole Attachments*, Public Notice, WC Docket No. 10-101, 25 FCC Rcd. 5541 (2010).

⁷ See 83 Ill. Admin. Code 315.10-315.70; 315.10(a) ("The purpose of this Part is to designate a presumptive methodology for computation of annual rental rates to be paid by cable television ("CATV") companies to electric utilities and local exchange telecommunications carriers (collectively 'regulated entities') . . . for the use of space on distribution poles for attachment of CATV cables and associated facilities.").

⁸ See *id.*

⁹ See Attachment C, Letter from ICC Chairman Brien J. Sheahan dated October 25, 2018.

¹⁰ See Minutes of Illinois Commerce Commission October 25, 2018 meeting appended hereto as Attachment D.

¹¹ See, e.g., *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, 6781 n.20 (Feb. 6, 1998); *In the Matter of*

20. Accordingly, the Commission has jurisdiction over Crown Castle's telecommunications attachments to ComEd poles that are the subject of this Complaint.

IV. BACKGROUND AND FACTS

21. Crown Castle requires access to utility owned and controlled poles, conduits and rights-of-way to build its telecommunications services networks and to provide competitive telecommunications services to its customers.

22. On December 22, 2004, Crown Castle (at the time operating under the name NextG Networks of Illinois, Inc.) and ComEd entered into a pole attachment agreement (the "Crown Castle Pole Attachment Agreement") that permits Crown Castle to attach fiber optic lines and related attachments and wireless facilities to ComEd poles.¹²

23. On May 5, 2005, Sunesys, Inc., which was later acquired by Crown Castle, and ComEd entered into a pole attachment agreement (the "Sunesys Pole Attachment Agreement") that permits Sunesys to attach fiber optic lines and related attachments to ComEd poles.¹³

24. On July 26, 2013, Sidera Networks d/b/a Lighttower Fiber Networks, which was later acquired by Crown Castle, and ComEd entered into a pole attachment agreement (the "Lighttower Pole Attachment Agreement") that permits Lighttower to attach fiber optic lines and related attachments to ComEd poles.¹⁴

Implementation of Section 703(e) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 12 FCC Rcd 11725, 11,727 n.13 (Aug. 12, 1997).

¹² Hussey Decl. Ex. 1, Crown Castle Pole Attachment Agreement

¹³ Hussey Decl. Ex. 2, Sunesys Pole Attachment Agreement

¹⁴ Hussey Decl. Ex. 3, Lighttower Pole Attachment Agreement

25. Crown Castle has installed and continues to install fiber optic lines and wireless facilities on ComEd poles in the Chicago area pursuant to the three agreements described above.¹⁵

26. Crown Castle currently has multiple projects underway to deploy significant telecommunications infrastructure and services in the Chicago area. In connection with these projects, Crown Castle plans to deploy approximately [REDACTED] miles of fiber optic lines across multiple communities in the Chicago area that would be used to provide various telecommunications services, including to enterprise customers and wireless-carrier customers.¹⁶ To deploy the fiber optic lines for these projects, Crown Castle requires attachment to more than [REDACTED] ComEd poles.¹⁷ In addition, Crown Castle requires attachment to more than [REDACTED] ComEd poles in support of its deployment of wireless facility nodes for these projects.¹⁸

A. Pole Attachment Rates

27. From 2013 to 2018, ComEd charged both wireline and wireless attachment rates that exceeded the maximum lawful rates allowed for by the Commission's pole attachment rate formula.

28. As of the date of this Complaint, ComEd has not issued invoices to Crown Castle for wireline and wireless attachments for the year 2019.

i. Calculation of the Maximum Lawful Pole Attachment Rate

29. Crown Castle has calculated the maximum pole attachment rates that ComEd was permitted to charge from 2013 to 2018 using the Commission's formula set forth in 47 C.F.R. § 1.1406(d)(2)(i) and (ii) and ComEd's FERC Form 1 data.

¹⁵ Whitfield Decl. ¶ 8.

¹⁶ Whitfield Decl. ¶ 9.

¹⁷ Whitfield Decl. ¶ 9.

¹⁸ Whitfield Decl. ¶ 10.

30. Crown Castle has also calculated the maximum pole attachment rate that ComEd is permitted to charge for the year 2019.

31. To complete its analysis, Crown Castle requested that ComEd provide its total pole count associated with its FERC Form 1 and its rates of return for the relevant periods to allow Crown Castle to calculate the applicable regulated annual rental rate under the Commission's Rules.¹⁹

32. On September 27, 2018, ComEd provided a pole count *equivalent* of 1,098,478 but did not provide a rate of return.²⁰

33. On September 28, 2018, ComEd generally directed Crown Castle to find the appropriate rate of return on the ICC's website, without specifying the exact location of the rate.²¹

34. Crown Castle has identified a rate of return in ICC orders approving ComEd's annual electric service formula rate updates and revenue requirement reconciliations under 220 ILCS 5/16-108.5.²²

35. Crown Castle does not concede the accuracy of the pole count or other information provided by ComEd, but uses them for purposes of creating the calculation and subject to confirmation through discovery and further vetting throughout this proceeding.

36. In calculating the pole attachment rates, Crown Castle used the FCC's presumed average pole height of 37.5 feet and 15% appurtenance deduction, in accordance with 47 C.F.R. §

¹⁹ See Whitfield Decl. Ex. 10, Rate of Return and Pole Count Correspondence.

²⁰ See Whitfield Decl. Ex. 10, Rate of Return and Pole Count Correspondence.

²¹ See Whitfield Decl. Ex. 10, Rate of Return and Pole Count Correspondence.

²² Attachment E, ComEd Annual Formula Rate Update ICC Order Excerpts. In 2011, the Illinois General Assembly passed the Energy Infrastructure Modernization Act. Among other things, the Act requires ComEd to file annual electric service formula rate updates and revenue requirement reconciliations. See e.g., <https://www.icc.illinois.gov/docket/files.aspx?no=18-0808&docId=280094>

1.1410. These presumptions are rebuttable. Crown has requested actual data concerning pole height and appurtenances in its interrogatories propounded to ComEd along with this Complaint and reserves the right to rebut these presumptions upon obtaining this information.

37. Applying the Commission’s telecom formula using the equivalent pole count provided by ComEd, the rate of return found on the ICC website, ComEd’s FERC Form 1 data for the relevant year-ends,²³ and FCC presumptions governing pole height, appurtenances and the number of attaching entities in ComEd’s urbanized service area, Crown Castle calculates a maximum annual pole attachment rate for solely-owned and jointly-owned poles for the years 2013-2019 as shown below.²⁴

Year	Solely Owned Rate	Jointly Owned Rate ²⁵
2013		
2014		
2015		
2016		
2017		
2018		
2019		

38. Significantly, the rates calculated using year-end 2017 and 2018 reported FERC Form 1 data (used to calculate 2018 and 2019 rates respectively) appear to reflect an accounting adjustment that many utilities made to account for excess accumulated deferred income taxes (“ADIT”) resulting from the Tax Cuts and Jobs Act of 2017 (“TJCA”),²⁶ which lowered the

²³ See Attachment F, ComEd FERC Form 1 Excerpts.

²⁴ See Attachment G, Pole Attachment Rate Calculations.

²⁵ In calculating a pole attachment rate for jointly owned poles, Crown Castle assumed a 50% ownership interest.

²⁶ Pub. L. No. 115-97, 131 Stat. 2054 (2017) (amending the Internal Revenue Code of 1986).

corporate tax rate by 40% (from 35% to 21%).²⁷ This accounting adjustment transferred certain accumulated deferred taxes ordinarily captured in FERC accounts used to calculate the pole attachment rental rate (typically, FERC Accounts 282, 283, 190 and 411) to one or more other FERC accounts not captured in the FCC formula (typically Account 254),²⁸ thereby reducing accumulated deferred taxes subtracted from investment, increasing net per pole investment, and increasing pole attachment rates.²⁹

39. Pursuant to the TCJA, most of such excess relating to so-called normalized ADIT is to be returned over a very extended amortization schedule using the so-called ARAM methodology.³⁰ In fact, in its 2018 ICC filing for its annual formula rate update and revenue requirement reconciliation, ComEd proposed a 39.47-year amortization period, which also used the ARAM methodology. The ICC approved this proposal, finding it aligned with the amortization of the excess ADIT with the useful life of the underlying assets.³¹

40. Specifically, ComEd's year-end FERC Form 1 filings for 2013 to 2018 show:

²⁷ See *id.* at 2095.

²⁸ Per the FERC Uniform System of Accounts General Instructions, Account 254 titled "Other Regulatory Liabilities," is used if there is uncertainty as to the regulatory treatment of revenue. 18 C.F.R. § Pt. 101, General Instruction 22(H).

²⁹ Notably, the 2017 year-end FERC Form 1 data does not reflect the reduced tax rate, since the lowered rate was not effective until 2018. Still, the carrying charge rate was lowered somewhat by the impact of the artificially reduced ADIT, but not enough to counter the investment reduction. While the 2018 FERC Form 1 data presumably reflects the lower tax rate, the ADIT issue still results in.

³⁰ Section 203(e)(2)(B) of the Tax Reform Act of 1986 defines the ARAM and explains the calculations under this method. ARAM is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its books of account that gave rise to the reserve for deferred taxes.

³¹ *Commonwealth Edison Company Annual Formula Rate Update And Revenue Requirement Reconciliation Under Section 16-108.5 of the Public Utilities Act*, Order, Docket 18-0808, p. 57-58 (Dec. 4, 2018) ("ComEd 2018 Annual Formula Rate Update"), which is attached hereto as Attachment H.

- The amount reported by ComEd for its 2017 year-end FERC Account 282 (\$3,266,721,507) was 39% less than the amount reported for year-end 2016 (\$5,354,257,495). The amount for year-end 2018 (\$3,525,737,824) reflected a relatively modest 8% increase over year-end 2017 numbers. This increase is consistent with year over year increases in ComEd's reported amounts for Account 282 prior to the TJCA.³²
- The amount reported by ComEd for its 2017 yearend FERC Account 283 (\$502,998,756) was 41% less than the amount reported for yearend 2016 (\$858,899,213). The amount for yearend 2018 (\$572,603,780) reflected a relatively modest 14% increase over yearend 2017 numbers. This increase is consistent with year over year increases in ComEd's reported amounts for Account 283 prior to the TJCA.
- The amount reported by ComEd for its 2017 yearend FERC Account 190 (\$262,461,556) decreased by 53% from the amount reported from yearend 2016 (\$557,637,369). The amount for yearend 2018 (\$245,037,242) also decreased, but by a modest 6.6%, which is consistent with fluctuations in this ComEd's amounts reported for Account 190 prior to the TJCA.
- The amounts transferred from FERC Account 411 are more difficult to track because they include subaccounts. Accordingly, Crown Castle has asked for this supplemental data in its interrogatories, along with request for additional information about its EDIT generally.

41. Two certified state utility commissions, the Public Utility Commission of Ohio (PUCO) and the Connecticut Public Utility Regulatory Authority (PURA), presented with concerns about the impact of this accounting adjustment on pole attachment rates, recognized that it would be inappropriate to remove the excess ADIT for purposes of the pole attachment rate

³² See Attachment G, FCC Pole Rate Calculations.

calculation until such revenues are actually returned to electric rate payers. The PUCO directed “pole owners filing future pole attachment rate adjustment applications to deduct, in addition to ADIT and depreciation reserves, any unamortized excess ADIT resulting from the TCJA from total gross plant and gross pole investment in their pole attachment rate calculations.”³³ The specific required accounting adjustments were laid out in an approved Joint Stipulation and Recommendation governing Ohio Power Company’s implementation of the TCJA, subpart E, appended hereto as Attachment J for the Commission’s convenience.³⁴ Similarly, the PURA approved a settlement between Eversource and the New England Cable Television Association that revised pole attachment rates for cable television companies to “reduce Eversource’s total gross plant and gross pole investment by the amount of any unamortized Accumulated Deferred Income Tax (“ADIT”) expense resulting from the Federal Tax and Job Cuts Act of 2017, in addition to ADIT and depreciation reserves.”³⁵

42. As explained above, there is some indication that ComEd has adjusted certain ADIT related FERC accounts used to calculate pole attachment rates in connection with the TCJA. However, further information is required to understand how it is adjusting its ADIT

³³ *The Commission’s Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Finding and Order, PUCO Case No. 18-47-AU-COI (Oct. 24, 2018), appended hereto as Attachment I.

³⁴ *Ohio Power Company’s Implementation of the Tax Cuts and Jobs Act of 2017; Application of Ohio Power Company to Amend Its Tariffs*, Case No. 18-1008-EL-UNC; 18-1451-EL-ATA (Oct. 3, 2018).

³⁵ *Application of The Connecticut Light and Power Company d/b/a Eversource to Amend its Rate Schedules*, Approval of Amended Compliance Filing, CT PURA Docket No. 17-10-46 (Feb. 14, 2019); *Application of The Connecticut Light and Power Company d/b/a Eversource to Amend its Rate Schedules*, Amended Compliance Filing & Resolution of NECTA’s Objections Raised in Motion Nos. 46 & 47, CT PURA Docket No. 17-10-46 (Feb. 5, 2019). Eversource’s request for approval of its amended compliance filing and PURA’s approval of the amended compliance filing are appended hereto as Attachment K for the Commission’s convenience.

accounts due to the TCJA and how such adjustments have impacted the relevant FERC ADIT accounts used to calculate the attachment rates in question. Crown has propounded interrogatories to ComEd in an effort to obtain this information.

ii. ComEd Wireline Rates

43. The pole attachment rates that ComEd has been charging for fiber attachments, which have ranged from [REDACTED] to [REDACTED], exceed, the maximum lawful rate permitted under the FCC's telecom formula.

a. Crown Castle Payment History

44. Section 11.1.1 of the Crown Castle Pole Attachment Agreement provides that for each "Cable Attachment," Crown Castle must pay an annual fee "which fee shall be calculated in accordance with the Federal Communications Commission's rate formula applicable to attachments of telecommunications providers, insofar as that formula is applicable to the Cable Attachments."³⁶

45. Between 2013 and 2018, Crown Castle paid ComEd for fiber optic attachments in the amounts set forth in detail in the Declaration of Ms. Whitfield and summarized in the following chart.³⁷

³⁶ See Hussey Decl. Ex. 1 Crown Castle Pole Attachment Agreement § 11.1.1.

³⁷ See M. Whitfield Decl. ¶15, Ex. 8, ComEd Pole Attachment Invoices; Ex. 12, Refund Calculation. The invoices for Crown Castle attachments cover multiple communities in Illinois, including the City of Chicago. In 2013 and 2014, attachments in the City of Chicago were subject to an 8% lease transaction tax. From 2015 to 2018, the City of Chicago imposed a 9% lease transaction tax on attachments. The amounts displayed do not reflect these taxes and, therefore, are slightly less than the amounts listed in each invoice: [REDACTED]

Year	Fiber Rate <i>Sole</i>	Fiber Rate <i>Joint</i>	# of Attach <i>Sole</i>	# of Attach <i>Joint</i>	Paid Amount (Pre-Tax)
2013					
2014					
2015					
2016					
2017					
2018					

46. ComEd has both violated federal law and breached the Crown Castle Agreement because the annual attachment rates imposed by ComEd for both solely and jointly owned poles exceed the maximum lawful rates calculated using the Commission's pole attachment formula, as summarized in the following charts and set forth in detail in the Whitfield Declaration.³⁸

	Solely Owned	
Year	ComEd Rate	FCC Rate
2013		\$11.76
2014		\$11.16
2015		\$11.79
2016	\$	\$12.23
2017		\$12.43
2018		\$14.17

	Jointly Owned	
Year	ComEd Rate	FCC Rate
2013		\$5.88
2014		\$5.58
2015		\$5.90
2016		\$6.12
2017		\$6.22
2018		\$7.09

³⁸ See M. Whitfield Decl. Ex. 8, ComEd Pole Attachment Invoices, Ex. 12, Refund Calculation.

47. Even the FCC formula rate for 2018 reflected in the charts is artificially high due to the EDIT issue, described above. Answers to Crown’s interrogatories are necessary to determine what the 2018 rate should be when the appropriate adjustments are made.

b. Sunesys Payment History

48. Section 12.1.1 of the Sunesys Pole Attachment Agreement provides that during the initial year of the agreement, the annual pole attachment rate is [REDACTED] for each “Facility” (which is defined as any cable or other form of attachment to a ComEd pole) and for each “Power Supply” and during the second year, the annual attachment rate will be [REDACTED] for each Facility and each Power Supply. Section 12.1.2 provides for a 3% increase in the annual rate each subsequent year.³⁹

49. Between 2013 and 2018, Crown Castle paid ComEd under the Sunesys agreement for fiber optic attachments in the amounts set forth in detail in the Declaration of Ms. Whitfield and summarized in the following chart.⁴⁰

Year	Fiber Rate <i>Sole</i>		Fiber Rate <i>Joint</i>		# of Attach <i>Sole</i>		# of Attach <i>Joint</i>		Paid Amount (Pre-Tax)
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

³⁹ Hussey Dec. Ex. 2, Sunesys Pole Attachment Agreement § 12.1.2.

⁴⁰ See Whitfield Decl. ¶ 16, Ex. 8, ComEd Pole Attachment Invoices, Ex. 12, Refund Calculation. The invoices for Sunesys attachments cover multiple communities in Illinois, including the City of Chicago. In 2013 and 2014, attachments in the City of Chicago were subject to an 8% lease transaction tax. From 2015 to 2018, the City of Chicago imposed a 9% lease transaction tax on attachments. The amounts displayed do not reflect these taxes and, therefore, are slightly less than the amounts listed in each invoice: [REDACTED]

50. The rates imposed by ComEd under the Sunesys agreement to date for fiber pole attachments are more than double those permitted under the Commission's rules as summarized in the following chart:⁴¹

Year	ComEd Rate	FCC Rate
2013		\$11.76
2014		\$11.16
2015		\$11.79
2016		\$12.23
2017		\$12.43
2018		\$14.17

51. Even the FCC formula rate for 2018 reflected in the chart is artificially high due to the EDIT issue, described above. Answers to Crown's interrogatories are necessary to determine what the rate 2018 should be when the appropriate adjustments are made.

52. Not only has ComEd been charging excessive rates for solely owned poles, it has applied 100% of those rates to fiber attachments to poles that ComEd *jointly* owns with AT&T and for which Crown Castle is required to, has paid, and continues to pay AT&T rent.⁴² In other words, rather than apply a rate to reflect AT&T's shared ownership of the pole, ComEd is charging Crown Castle the full rental rate even in cases where Crown Castle is also paying AT&T for AT&T's shared ownership of the pole. Yet ComEd has also used the equivalent pole count which presumably reduces its pole count based on AT&T joint ownership.

⁴¹ See Whitfield Decl. Ex. 8, ComEd Pole Attachment Invoices.

⁴² See Whitfield Decl. ¶ 14, Ex. 8, ComEd Pole Attachment Invoices.

c. Lightower Payment History

53. Section 12.1.1 of the Lighttower Pole Attachment Agreement provides that during the initial year of the agreement, the annual pole attachment rate is [REDACTED] for each “Facility” (which is defined as any cable or other form of attachment to a ComEd pole) as well as for each “Power Supply” and during the second year, the annual attachment rate will be [REDACTED] for each Facility and each Power Supply. Section 12.1.2 provides for a 5% increase in the annual rate each subsequent year.⁴³

54. Between 2016 and 2018,⁴⁴ Crown Castle paid ComEd for fiber optic attachments under the Lighttower Pole Agreement in the amounts set forth in detail in the Declaration of Ms. Whitfield and summarized in the following chart.⁴⁵

[illegible]

⁴³ Hussey Decl. Ex. 3, Lighttower Pole Attachment Agreement § 12.1.2.

⁴⁴ Lightower did not have attachments to ComEd poles prior to 2016. *See* Whitfield Decl. ¶ 17.

⁴⁵ Whitfield Decl. ¶ 17, Ex. 8, ComEd Pole Attachment Invoices, Ex. 12, Refund Calculation.

55. The following chart shows a year-by-year list of the rates that ComEd imposed under the Lighttower agreement for fiber pole attachments, which are more than double the lawful rates permitted under the Commission's Rules:⁴⁶

Year	ComEd Rate	FCC Rate
2013		\$11.76
2014		\$11.16
2015		\$11.79
2016		\$12.23
2017		\$12.43
2018		\$14.17

56. Even the FCC formula rate for 2018 in the chart is artificially high due to the EDIT issue, described above. Answers to Crown's interrogatories are necessary to determine what the 2018 rate should be when the appropriate adjustments are made.

57. Not only has ComEd been charging excessive rates for attachments to solely owned poles, it has applied 100% of those rates to fiber attachments to poles that ComEd *jointly* owns with AT&T and for which Crown Castle is required to, has paid, and continues to pay AT&T rent.⁴⁷

iii. ComEd Wireless Pole Attachment Rates

58. In Section 11.1.1 of the Crown Castle Pole Attachment Agreement, ComEd requires Crown Castle to pay ComEd [REDACTED] for each wireless attachment (what the Crown Castle Pole Attachment Agreement terms a "Micro Cell") to ComEd poles for the first year of the agreement.⁴⁸

⁴⁶ Whitfield Decl. Ex. 8, ComEd Pole Attachment Invoices.

⁴⁷ Whitfield Decl. ¶ 14; Ex. 8, ComEd Pole Attachment Invoices.

⁴⁸ Hussey Decl. Ex. 1, Crown Castle Pole Attachment Agreement § 11.1.1.

59. The Crown Castle Pole Attachment Agreement then provides that the pole attachment fee is to escalate annually by 2.5%.⁴⁹

60. Since 2010, ComEd has increased the pole attachment rate annually by 2.5%.⁵⁰ As a result, as confirmed by invoices from ComEd, ComEd has required the following rates over the past 6 years for both solely owned poles and jointly owned poles:⁵¹

Year	ComEd Wireless Rate ⁵²
2013	

61. Between 2013 and 2018, Crown Castle paid ComEd for wireless equipment attachments in the amounts set forth in detail in the Declaration of Ms. Whitfield and summarized in the following chart:⁵³

⁴⁹ Hussey Decl. Ex. 1, Crown Castle Pole Attachment Agreement § 11.1.2.

⁵⁰ See Whitfield Decl. Ex. 8, ComEd Pole Attachment Invoices.

⁵¹ See Whitfield Decl. Ex. 8, ComEd Pole Attachment Invoices.

⁵² In 2013, ComEd charged Crown Castle wireless node attachment rates that ranged from [REDACTED] depending on the date of the attachment. In 2014, ComEd imposed wireless node attachment rates that ranged from [REDACTED], likewise depending on the date of the attachment.

⁵³ See Whitfield Decl. Ex. 6, ComEd Pole Attachment Invoices; Ex. 8, Refund Calculation. The invoices for Crown Castle wireless node attachments cover multiple communities in Illinois, including the City of Chicago. In 2013 and 2014, attachments in the City of Chicago were subject to an 8% lease transaction tax. From 2015 to 2018, the City of Chicago imposed a 9% lease transaction tax on attachments. The amounts displayed do not reflect these taxes and, therefore, are slightly less than the amounts listed in each invoice: [REDACTED]

Year	Node Rate <i>Sole & Joint Rates</i>	# of Attach <i>Sole</i>	# of Attach <i>Joint</i>	Paid Amount (Pre-Tax)
2013				

62. Crown Castle has deployed several different configurations of wireless equipment on ComEd poles, with different sized equipment occupying the usable space on the pole, and in the future, it may deploy additional configurations, some of which may be larger or some may be smaller. To date in ComEd's Illinois territory, the most space occupied by any of Crown Castle's configurations is in one configuration where Crown Castle has a pole top extension that uses a bracket at the top of the pole that occupies 26 vertical inches of space, and wireless equipment in a shroud below the power supply space that is 37.4 inches high, for a total of 5.28 feet of space occupied in the usable space on the pole.⁵⁴

63. In four configurations deployed in ComEd's territory in Illinois, Crown Castle occupies 3.48 feet of useable space on the pole, consisting of a bracket at the top of the pole that occupies 17.75 vertical inches and an antenna/equipment configuration located below the power zone that occupies 24 vertical inches.⁵⁵

⁵⁴ Whitfield Decl. Ex. 5, Construction Drawing for CH90XSA54.

⁵⁵ Whitfield Decl. Ex. 1, Drawings for Configurations 5-8.

64. In six configurations deployed in ComEd's territory in Illinois, Crown Castle occupies 2.17 feet of useable space on the pole, comprising a 26 inch high bracket at the top of the pole that affixes a pole extension.⁵⁶

65. In one configuration deployed in ComEd's territory in Illinois, Crown Castle occupies 3.12 feet in the useable space, consisting of an antenna and equipment configuration within a shroud located below the power supply space that is 37.4 inches tall.⁵⁷

66. In one configuration deployed in ComEd's territory in Illinois, Crown Castle occupies only 1.17 feet of useable space with a 14 inch bracket at the top of the pole that mounts a pole extension.⁵⁸

67. In one configuration deployed in ComEd's territory in Illinois, Crown Castle occupies 2 feet of useable space with an antenna/equipment grouping that is 24 inches in height.⁵⁹

68. Finally, in one configuration deployed in ComEd's territory in Illinois, Crown Castle occupies 5.2 feet of useable space, consisting of a 14 inch mounting bracket connecting the antenna at the top of the pole, and allowing for 48 inches of safety clearance between the antenna and the highest power lines.⁶⁰

69. Thus, although the Commission has not identified a presumptive amount of space occupied by wireless attachments, Crown Castle is willing to agree for purposes of the ComEd Illinois area in this case that Crown Castle's wireless equipment attached to ComEd poles occupies

⁵⁶ See Whitfield Decl. Ex. 6, Construction Drawings for CHPH33541, CH90XSQ06, CH90XSR50, CH90XSC70, CHPH30017, CHPH30424.

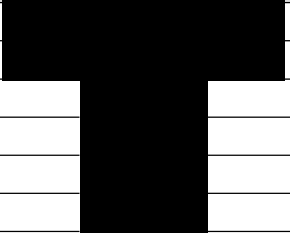
⁵⁷ See Whitfield Decl. Ex. 7, Construction drawing for CHPH31170.

⁵⁸ See Whitfield Decl. Ex. 2, Drawing for Configuration 2.

⁵⁹ See Whitfield Decl. Ex. 3, Drawing for Configuration 1.

⁶⁰ See Whitfield Decl. Ex. 4, Drawing for Configuration 4.

up to 6 feet of usable space, which would include even the largest of Crown Castle's wireless configurations. Applying an assumption of 6 feet of useable space per wireless attachment (even though in most cases Crown Castle occupies less), Crown Castle calculates a maximum annual pole attachment rate for wireless attachments under the Commission's Rules for the years 2013-2019 as shown in the following chart:

Year	ComEd Wireless Rate	FCC Per Foot Rate	FCC Wireless Rate	
			Solely Owned	Jointly Owned
2013		\$11.76	\$70.56	\$35.28
2014		\$11.16	\$66.96	\$33.48
2015		\$11.79	\$70.74	\$35.37
2016		\$12.23	\$73.38	\$36.69
2017		\$12.43	\$74.58	\$37.29
2018		\$14.17	\$85.02	\$42.51
2019	Not Yet Issued	\$14.00	\$84.00	\$42.00

70. In addition, in the case of poles that ComEd owns jointly with AT&T, ComEd has charged 100% of these unlawful rates, even though Crown Castle is also paying AT&T pole attachment rent for AT&T's partial ownership.⁶¹

iv. Refund Calculation

71. Because Crown Castle has been paying pole attachment rates that grossly exceed those permitted under the FCC's telecom formula, Crown Castle is entitled to a refund.

72. Attached to the declaration of Maureen Whitfield as Exhibit 12 is a calculation that derives the following refund amounts as of April 30, 2019. ComEd has not yet issued invoices for

⁶¹ See Whitfield Decl. ¶ 14, Ex. 8, ComEd Pole Attachment Invoices.

2019 as of the date of this Complaint. The overpayments/refunds due are summarized in the following table:⁶²

Agreement	Attachment Type	Refund Amount
Crown Castle	Wireless	
Crown Castle	Fiber	
Sunesys	Fiber	
Lighttower	Fiber	
Total Refund		

This amount will likely increase slightly to account for any change in rate occasioned by the EDIT accounting issue described above. It may also increase depending upon the pole height and appurtenance data requested by Crown in its discovery. Crown reserves the right to adjust this amount based upon ComEd's responses to Crown's interrogatories and/or any information requests posed by the Commission according to its authority in 47 C.F.R. § 1.732(c).

V. DISCUSSION

A. ComEd's Wireless and Wireline Attachment Rates Are Unlawful, Unjust, and Unreasonable Terms and Conditions of Attachment

73. Pursuant to Section 224(e), ComEd may not charge Crown Castle an annual rate for attachment of Crown Castle's equipment that exceeds the maximum lawful rate as calculated using the Commission's formula.⁶³

74. The fact that some of Crown Castle's equipment is "wireless" in nature does not change Crown Castle's rights under Section 224 or the Commission's Rules. The Commission has repeatedly confirmed that Section 224 applies to wireless attachments. In *National Cable & Telecommunications Association v. Gulf Power Company*, the Supreme Court of the United States

⁶² See Whitfield Decl. Ex. 12, Refund Calculation.

⁶³ 47 U.S.C. § 224(e); 47 C.F.R. § 1.1406.

affirmed the Commission's conclusion that companies providing service via wireless equipment are still providers of telecommunications services and thus entitled to pole access on regulated rates, terms, and conditions pursuant to Section 224.⁶⁴ The mere fact that the equipment involved uses wireless technology is irrelevant under Section 224.

75. The Commission has reiterated, on several occasions, that Section 224 protects wireless pole attachments, including guaranteed access and regulated rates. In its 2011 Order, the Commission confirmed, among other things, that wireless attachments are entitled to access under Section 224(f) (including pole top attachment), may only be charged regulated annual rental rates pursuant to the FCC's formula, and also set forth a specific timeline applicable to wireless attachment applications.⁶⁵ In the 2011 Order, the Commission emphasized that "wireless attachments are entitled to the telecom rate formula, and where parties are unable to reach agreement through good faith negotiations, they may bring a complaint before the Commission."⁶⁶

76. In this case, ComEd's imposed rates for wireless attachments ranging from \$1,230.00 to \$1,462.08 vastly exceed the maximum permitted just and reasonable rate for attachment calculated using the Commission's pole attachment rate formula prescribed in Section 1.1406(d) of the Commission's Rules.

77. Moreover, as set forth above, ComEd's wireline rates, which have ranged from \$13.76 to \$36.47, are also significantly in excess of the rates permitted by the Commission's Rules.

⁶⁴ *National Cable & Telecomms. Ass'n v. Gulf Power Co.*, 534 U.S. 327, 341-42 (2002).

⁶⁵ *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, ¶¶ 74-77, 153 (Apr. 7, 2011) ("2011 Order").

⁶⁶ *See id.* at ¶ 153; *see also Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates*, Public Notice, 19 FCC Rcd 24930 (WTB 2004).

78. Finally, if, as it appears from the steep reductions to ComEd's FERC accounts related to accumulated deferred taxes in year 2017, ComEd transferred funds to a FERC account not reflected in the FCC formula, it should be directed to add such transferred amounts back into its pole rental calculation until such time as the funds are returned to rate payers.

79. Since accumulated deferred taxes are a *reduction* to gross investment, any TCJA-related reduction to accumulated deferred taxes that is prorated to pole investment will result in a corresponding *increase* in the Net Bare Pole component of the formula. However, consistent with the ICC's 2018 Order and well-established tax and regulatory principles, any such return of the EDIT to ratepayers should be amortized over the life of utility assets, which in ComEd's case is 39.47 years.⁶⁷ Failure to do so would result in a windfall to ComEd, which retains the right to use this interest free capital until it is returned to electric ratepayers, and also receives the benefit of the tax reduction.

80. Generally speaking, use of dollar amounts from FERC accounts other than those specified by the Commission are disfavored. However, there are limited exceptions where accounting adjustments are necessary to ensure that the formula reflects the costs intended by the Commission. For example, in the mid-nineties the Commission acceded to Duke Power's request to add storm damage amortization apportioned to poles and overhead conductors caused by Hurricane Hugo booked to FERC Account 407.3 to the maintenance carrying cost, despite the fact that this account is not ordinarily included in the pole attachment rate formula.⁶⁸

81. As such, Crown Castle is entitled to a refund for pole attachment payments made from 2013.

⁶⁷ ComEd 2018 Annual Rate Update at p. 57.

⁶⁸ *TeleCable of Piedmont, Inc. v. Duke Power Co.*, 10 FCC Rcd 10898, DA 95-1362, ¶¶ 19-20 (June 15, 1995).

VI. ATTEMPTS TO RESOLVE ALL DISPUTES

82. Pursuant to Section 1.722(g) of the Commission's Rules, Crown Castle has engaged in good faith attempts to resolve the dispute regarding ComEd's unlawful pole attachment rates.⁶⁹

83. As a threshold matter, Crown Castle has engaged in many meetings and communications with ComEd in an attempt to address the pole attachment rate dispute.

84. Pursuant to the Commission's Rules, on October 25, 2018, Mr. Brian Cabe of Crown Castle sent a letter to Mr. Vito Martino of ComEd, requesting a final executive level negotiation before November 6, 2018 to resolve the ongoing disputes between Crown Castle and ComEd related to ComEd's unlawful pole attachment rates.⁷⁰

85. On December 4, 2019, Crown Castle and ComEd held an executive-level meeting at ComEd's office located at 2 Lincoln Centre, Oakbrook Terrace, IL 60181.⁷¹

86. During a follow-up call on December 14, 2018, the parties agreed to form "sub-teams" comprised of operational representatives from both Crown Castle and ComEd to specifically focus on resolving the pole attachment rates dispute.⁷²

87. Since the follow-up meeting on December 14, 2018, Crown Castle and ComEd have held eight additional meetings to address the pole attachment rate dispute (four executive meetings and four sub-team meetings).⁷³

⁶⁹ Whitfield Decl. ¶¶ 19, 22-27.

⁷⁰ Whitfield Decl. Ex. 11, Executive Level Meeting Correspondence.

⁷¹ Whitfield Decl. ¶ 25.

⁷² Whitfield Decl. ¶ 26.

⁷³ Whitfield Decl. ¶ 27.

88. Crown Castle and ComEd have not been able to resolve their current and on-going disputes regarding ComEd's unlawful pole attachment rates.

VII. INFORMATION DESIGNATION

The following individuals likely have information relevant to the proceeding:

Maureen Whitfield

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Manager, Utility Relations
2000 Corporate Drive, Canonsburg, PA 15317
(724) 416-2791
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VIII. COUNTS

Count 1: Unlawful Wireline Attachment Rates

89. Crown Castle incorporates by reference as if fully set forth herein paragraphs 1 through 88 of this Complaint.

90. ComEd's pole attachment rates for wireline pole attachments for 2013 to 2018 exceeded the maximum just and reasonable rate permitted under the Commission's telecommunications rate formula prescribed in 47 C.F.R. § 1.1406(d).

91. Accordingly, ComEd's annual pole attachment rates for wireline attachments are unjust and unreasonable in violation of 47 U.S.C. § 224.

Count 2: Unlawful Wireless Attachment Rates

92. Crown Castle incorporates by reference as if fully set forth herein paragraphs 1 through 88 of this Complaint.

93. ComEd's pole attachment rate for wireless attachments for 2013 to 2018 exceeded the maximum just and reasonable rate permitted under the Commission's telecommunications rate formula prescribed in 47 C.F.R. § 1.1406.

94. Accordingly, ComEd's annual pole attachment rates for wireless attachments are unjust and unreasonable in violation of 47 U.S.C. § 224.

IX. RELIEF REQUESTED

Based on the foregoing, Crown Castle respectfully requests an order from the Commission:

95. Declaring that the Commission has jurisdiction over this dispute and over the rates charged by ComEd for pole attachment by Crown Castle in Illinois.

96. Declaring that ComEd's pole attachment rates are unjust and unreasonable in violation of 47 U.S.C. § 224 and 47 C.F.R. § 1.1406.

97. Declaring that from 2013 to 2018, ComEd overcharged Crown Castle [REDACTED] for wireless pole attachments.

98. Ordering ComEd within 30 days of such order to pay to Crown Castle [REDACTED] plus interest for overpayment for wireless attachments between 2013 and 2018.

99. Declaring that from 2013 to 2018, ComEd overcharged Crown Castle [REDACTED] for wireline pole attachments.

100. Ordering ComEd within 30 days of such order to pay to Crown Castle [REDACTED] plus interest for overpayment for wireline attachments between 2013 and 2018.

101. Declaring that **\$14.00** is the maximum lawful amount per foot of useable space that ComEd may charge for wireline attachments to poles that ComEd wholly owns for the year 2019.

102. Declaring that **\$7.00** is the maximum lawful amount per foot of useable space that ComEd may charge for wireline attachments to jointly owned poles for the year 2019.

103. Declaring that **\$84.00** is the maximum lawful rate that ComEd may charge for wireless attachments to poles that ComEd wholly owns for the year 2019.

104. Declaring that **\$42.00** is the maximum lawful rate that ComEd may charge for wireless attachments to poles that ComEd jointly owns with AT&T for the year 2019.

105. Ordering ComEd to calculate future pole attachment rates to deduct, in addition to ADIT booked to FERC accounts used in the Commission's pole attachment rate formula and depreciation reserves, any unamortized excess ADIT resulting from the TCJA from total gross plant and gross pole investment in their pole attachment rate calculations.

106. Ordering all such other relief as the Commission deems just, reasonable and proper.

Respectfully submitted,

/s/ T. Scott Thompson
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Ryan M. Appel
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Attorneys for Crown Castle Fiber LLC

Robert Millar
Rebecca Hussey
Crown Castle Fiber LLC

Date submitted: June 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2019, I caused a copy of the foregoing Complaint, exhibits and declarations in support thereof, to be served on the following via overnight delivery unless otherwise noted:

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
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Room TW-A325
Washington, DC 20554
(original and four copies by hand delivery)

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/s/ T. Scott Thompson
T. Scott Thompson