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June 28, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**Re: Crown Castle Fiber LLC v. Commonwealth Edison Company,
Pole Attachment Complaint For Denial Of Access
Proceeding Number 19-169
Bureau ID Number EB-19-MD-004**

Ms. Dortch:

Pursuant to 47 C.F.R. § 1.730(a), (b), (d) and (f), Crown Castle Fiber LLC ("Crown Castle") submits the attached Response of Crown Castle Fiber LLC to Commonwealth Edison Company's Objections to Crown Castle's First Set of Interrogatories filed in the above-referenced proceeding.

Davis Wright Tremain LLP

A handwritten signature in blue ink, reading "Ryan Appel".

Ryan M. Appel

Cc: Service List

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

CROWN CASTLE FIBER LLC,

Complainant,

v.

COMMONWEALTH EDISON COMPANY,

Respondent.

Proceeding Number 19-169

Bureau ID Number EB-19-MD-004

**RESPONSE TO RESPONDENT’S OBJECTIONS TO FIRST SET OF
INTERROGATORIES**

Pursuant to 47 C.F.R. § 1.730(a), (b), (d) and (f), Crown Castle Fiber LLC (“Crown Castle”) responds to the objections filed by Respondent Commonwealth Edison Company (“ComEd”) to Crown Castle’s First Set of Interrogatories in this matter.

To the extent necessary, Crown Castle respectfully seeks leave to submit these responses to ComEd’s Objections. Although the relevance and need for each interrogatory is clear from the Complaint, Crown Castle seeks to provide specific responses to ComEd’s specific Objections to facilitate prompt resolution of the Objections by Commission Staff.

ComEd’s General Objections

Crown Castle will not respond to each of ComEd’s boilerplate “General Objections” because they are unconnected to any particular Interrogatory. ComEd’s objection to the FCC’s jurisdiction was addressed in paragraphs 12 through 21 of the Complaint and will be addressed if ComEd files an appropriate motion on the issue.

INTERROGATORY 1: Describe all documents related to ComEd's Pole Inspection program.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 1 on the basis that it is overly broad and unduly burdensome and because the term "ComEd's Pole Inspection program" is undefined.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 1 is relevant and necessary to this dispute because it concerns ComEd's "red tagging" practice, which is a product of its Pole Inspection program.

Second, ComEd's objection to the term "ComEd's Pole Inspection program" is meritless. "Pole Inspection program" is ComEd's own term, which is used in a ComEd Technical Bulletin dated June 23, 2017, which is attached to the Complaint via the Declaration of Maureen Whitfield as Exhibit 1.

Third, the information sought in Interrogatory 1 is not overly broad or unduly burdensome. Obviously, Crown Castle does not know what documents or even categories of documents may be related to ComEd's Pole Inspection program to even allow Crown Castle or the Commission to evaluate whether there is additional information or documents that ComEd should be required to produce to allow Crown Castle to prosecute its claims or respond to ComEd's defenses. Crown Castle does not seek a list of every document, but a description of the categories of documents would be highly relevant to identifying potentially relevant information given that the justification for ComEd's red tagging policy is potentially central to claims in this case.

Finally, the information sought in Interrogatory 1 is obviously not available from any other source because ComEd has not made this information publicly available.

INTERROGATORY 2: Describe the criteria or standards, including pole strength and structural integrity, that ComEd uses during pole inspections to determine whether a pole is classified as a Priority Non-Restorable (Replacement) Reject Pole, Non-Priority Non-Restorable (Replacement) Reject Pole, Priority Restorable (Reinforcement/C-Truss) Reject Pole, or Non-Priority Restorable (Reinforcement/C-Truss) Reject Pole.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 2 on the basis that it is overly broad and unduly burdensome and because the terms “pole inspection,” “Priority Non-Restorable (Replacement) Reject Pole,” “Non-Priority Non-Restorable (Replacement) Reject Pole,” “Priority Restorable (Reinforcement/C-Truss) Reject Pole,” and “Non-Priority Restorable (Reinforcement/C-Truss) Reject Pole,” are undefined.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 2 is relevant and necessary to this dispute because it concerns ComEd’s “red tagging” practice, the standards for classification of poles under the red tag practice as sought in the interrogatory are fundamental to Crown Castle’s claim, and the information is not available from any other source because ComEd has not made this information publicly available. Indeed, as set forth in the Complaint (¶¶ 47-51) ComEd has affirmatively refused to provide the requested information.

Second, ComEd’s objection that the terms “pole inspection,” “Priority Non-Restorable (Replacement) Reject Pole,” “Non-Priority Non-Restorable (Replacement) Reject Pole,” “Priority Restorable (Reinforcement/C-Truss) Reject Pole,” or “Non-Priority Restorable (Reinforcement/C-Truss) Reject Pole” are undefined is meritless. Those terms are ComEd’s own terms. They are used in the ComEd Technical Bulletin dated June 23, 2017, which was attached to the Complaint via the Declaration of Maureen Whitfield as Exhibit 1.

Third, ComEd provides no explanation for how Interrogatory 2 is overly broad or unduly burdensome, which appears to be a boiler plate objection. Being required to describe the “criteria or standards, including pole strength and structural integrity” that ComEd uses is not overly broad or unduly burdensome. Indeed, such standards should already exist and be readily available. Otherwise, it suggests that ComEd is engaged in widespread classification of poles with no set or defined standards or criteria for doing so.

INTERROGATORY 3: State whether ComEd conducts Load Calculations of actual conditions on poles designated as “red tagged,” and if it does, for each pole for which Crown Castle has applied to attach that ComEd claims is red tagged, describe the Load Calculations performed, if any, including an explanation of the methodology that ComEd used to conduct the Load Calculations.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 3 on the basis that it is overly broad and unduly burdensome because no time period is specified, and because the term “Load Calculations” is undefined.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 3 is relevant and necessary to this dispute because it concerns ComEd’s “red tagging” practice as described in its Technical Bulletin dated June 23, 2017, and the information is not available from any other source because ComEd has not made this information publicly available.

Second, ComEd’s objection that the term “Load Calculations” is undefined is meritless. Again, the term “Load Calculations” is ComEd’s own term, used in the ComEd Technical Bulletin dated June 23, 2017, which was attached to the Declaration of Maureen Whitfield as Exhibit 1.

Third, there is nothing overly broad or unduly burdensome about stating whether, in fact, ComEd engages in the Load Calculations that are identified in its own document as the trigger for remediation timing for certain red tagged poles. Nor is it unduly burdensome to describe, if such calculations are actually done, how they are done, including methodology. To the extent that ComEd's objection is solely that no time period is identified, Crown Castle cannot meaningfully identify a time period because Crown Castle does not know when ComEd may have classified poles at issue as red tagged. However, for purposes of this interrogatory, Crown Castle will agree to have the question refer to any time in the past five years (*i.e.* since 2014), which would address ComEd's policies and practices regarding Load Calculations for red tagged poles that may affect poles at issue in Crown Castle's claims.

INTERROGATORY 4: If ComEd performs load calculations for Non-Priority Non-Restorable (Replacement) Reject Poles, identify the "set time frame" that ComEd works within to perform those load calculations for Non-Priority Non-Restorable (Replacement) Reject Poles.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 4 on the basis that it is overly broad and unduly burdensome because no time period is specified, and because the terms "set time frame," "Non-Priority Non-Restorable (Replacement) Reject Poles" are undefined.

RESPONSE: First, the information sought in Interrogatory 4 is relevant and necessary to this dispute because it concerns ComEd's "red tagging" practice, and the information is not available from any other source because ComEd has not made this information publicly available.

Second, ComEd's objection that the terms "set time frame" and "Non-Priority Non-Restorable (Replacement) Reject Poles" are undefined is meritless. "Set time frame" and "Non-Priority Non-Restorable (Replacement) Reject Poles" are ComEd's own terms, used in the

ComEd Technical Bulletin dated June 23, 2017, which is attached to the Complaint via the Declaration of Maureen Whitfield as Exhibit 1.

Third, there is nothing overly broad or unduly burdensome about providing the “set time frame” that ComEd works within to perform Load Calculations for Non-Priority Non-Restorable (Replacement) Reject Poles. ComEd should have this information readily available. Otherwise, it suggests that ComEd is engaged in a Pole Inspection program without a set schedule in place. To the extent that ComEd’s objection is solely that no time period is identified, Crown Castle cannot meaningfully identify a time period because Crown Castle does not know when ComEd may have classified poles at issue as red tagged. However, for purposes of this interrogatory, Crown Castle will agree to have the question refer to any time in the past five years (*i.e.* since 2014), which would address ComEd’s policies and practices regarding Load Calculations for red tagged poles that may affect poles at issue in Crown Castle’s claims.

INTERROGATORY 5: For each and every pole that Crown Castle has applied to attach to that ComEd has designated as red tagged, state the basis for denying Crown Castle access to each and every one of those poles.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 5 on the basis that it is overly broad and unduly burdensome because of the number of poles involved.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 5 is relevant and necessary to this dispute because it concerns ComEd’s “red tagging” practice, and the information is not available from any other source because ComEd has not made this information publicly available.

Second, Interrogatory 5 is not overly broad or unduly burdensome because of “the number of poles” involved. As stated in Paragraph 50 of the Complaint, Crown Castle understands that ComEd has a database that contains detailed information about “red tagged” poles. Therefore, the information sought in Interrogatory 5 should be readily available.

Third, the information is not overly broad. Indeed, Commission Rule 1.1403(b) specifically requires ComEd to provide in writing a basis for denying Crown Castle access to each and every one of its poles. Therefore, the information sought in Interrogatory 5 is required by the Commission’s Rules.

INTERROGATORY 6: Describe the basis for prohibiting Crown Castle to install temporary fiber and wireless attachments on poles that ComEd has classified as “red tagged.”

COMED OBJECTION: ComEd relies on its general objections above.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 6 is relevant and necessary to this dispute because it concerns ComEd’s denial of access and “red tagging” practice, and the information is not available from any other source because ComEd has not made this information publicly available.

Second, ComEd’s reference to the “General Objections” makes it impossible for Crown Castle to meaningfully respond to ComEd’s Objection to Interrogatory 6. It is not clear which if any of ComEd’s General Objections apply to Interrogatory 6.

INTERROGATORY 7: If You contend that ComEd does not have sufficient resources to process Crown Castle’s applications for attachments within timelines prescribed by the Federal Communications Commission, identify all facts and assumptions on which you rely to support such contention.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 7 on the basis that it is speculative, and because the term “all facts and assumptions” is overly broad. In addition, as recognized by ComEd’s general objections, this request presupposes that the FCC’s timelines apply.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 7 is relevant and necessary to this dispute because it pertains to ComEd’s failure to process pole attachment applications within the Commission’s timeframes prescribed in 47 C.F.R § 1.1411. The information sought in Interrogatory 7 is not available from any other source because ComEd has not made this information publicly available.

Second, Interrogatory 7 is not “speculative.” Contention interrogatories are well established. If ComEd does not contend that it does not have sufficient resources to process Crown Castle’s applications within the FCC’s timelines, it can state that it does not so contend. If ComEd does so contend, then it must identify all facts and assumptions on which ComEd relies for that contention.

Third, requesting identification of “all facts and assumptions” that are the basis for ComEd’s contention is not overly broad. It seeks only the basis for ComEd’s position in the case.

Finally, as stated in Paragraphs 12 through 21 of the Complaint, the Commission has jurisdiction over Crown Castle’s attachments to ComEd poles and therefore the Commission’s

timeframes provided in 47 C.F.R § 1.1411 apply to these attachments.

INTERROGATORY 8: Explain Your basis for prohibiting Crown Castle from directing third party contractors, approved by ComEd, to complete pre-construction surveys, make-ready estimates, or make-ready work.

COMED OBJECTION: ComEd relies on its general objections above.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 8 is relevant and necessary to this dispute because it pertains to ComEd's failure to process pole attachment applications within the Commission's timeframes prescribed in 47 C.F.R § 1.1411. The information sought in Interrogatory 8 is not available from any other source because ComEd has not made this information publicly available.

Second, ComEd's reference to the "General Objections" makes it impossible for Crown Castle to meaningfully respond to ComEd's Objection to Interrogatory 8. It is not clear which if any of ComEd's General Objections apply to Interrogatory 8.

INTERROGATORY 9: Since January 1, 2014, for each and every red tag pole designated by You as Priority Non-Restorable (Replacement), Priority Restorable, Non-Priority Non-Restorable (Replacement), or Non-Priority Restorable, identify the date the pole was designated as red tag, the date it was replaced, and the standards or criteria used to designate it as Priority Non-Restorable (Replacement), Priority Restorable, Non-Priority Non-Restorable (Replacement), or Non-Priority Restorable.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 9 on the basis that it covers time periods that are not subject to FCC refunds and on the basis that it is overly broad and unduly burdensome

because of the number of poles involved. In addition, ComEd objects to Interrogatory Number 9 because the terms “Priority Non-Restorable (Replacement),” “Priority Restorable,” “Non-Priority Non-Restorable (Replacement),” and “Non-Priority Restorable” are undefined.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 9 is relevant and necessary to this dispute because it concerns ComEd’s “red tagging” practice, and the information is not available from any other source because ComEd has not made this information publicly available.

Second, the “period for refunds” is irrelevant to this Interrogatory 9. ComEd has denied access to red tag poles that may have been designated as red tagged at any time. As far as Crown Castle understands, some of the red tagged poles may have been so classified as many as ten years ago. The January 1, 2014 date in Interrogatory 9 is an attempt to provide reasonable timeframe for evaluation.

Third, Interrogatory 9 is not overly broad or unduly burdensome because of “the number of poles” involved. As stated in Paragraph 50 of the Complaint, Crown Castle understands that ComEd has a database that contains detailed information about “red tagged” poles. Therefore, the information sought in Interrogatory 9 should be readily available.

Fourth, ComEd’s objection that the terms “Priority Non-Restorable (Replacement) Reject Pole,” “Non-Priority Non-Restorable (Replacement) Reject Pole,” “Priority Restorable (Reinforcement/C-Truss) Reject Pole,” and “Non-Priority Restorable (Reinforcement/C-Truss) Reject Pole” are undefined is meritless. Those terms are ComEd’s own terms, used in the ComEd Technical Bulletin dated June 23, 2017, which was attached to the Declaration of Maureen Whitfield as Exhibit 1.

INTERROGATORY 10: Describe ComEd’s pole inspection program, including but not limited to the scope of work for inspecting wood poles, such as the steps, if any, that are include in addition to visual inspection and any remedial treatments applied during the inspection.

COMED OBJECTION: In addition to the general objections listed above, ComEd objects to Interrogatory Number 10 on the basis that the term “pole inspection program” is undefined.

CROWN CASTLE RESPONSE: First, the information sought in Interrogatory 10 is relevant and necessary to this dispute because it concerns ComEd’s “red tagging” policy and practice, and the information is not available from any other source because ComEd has not made this information publicly available.

Second, ComEd’s objection to the term “pole inspection program” is meritless. The term “pole inspection program” is ComEd’s own term, used in a ComEd Technical Bulletin dated June 23, 2017, which was attached to the Complaint via the Declaration of Maureen Whitfield as Exhibit 1.

Respectfully submitted,

/s/ T. Scott Thompson

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Date submitted: June 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2019, I caused a copy of the foregoing Response to Respondent's Objections to First Set of Interrogatories to be served on the following (service method indicated):

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