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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 – Unlawful Rates  
Proceeding Number 19-170  
Bureau ID Number EB-19-MD-005**

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", with a long horizontal flourish extending to the right.

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 19-170

Bureau ID Number EB-19-MD-005

**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 requests 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 11 through 20 of the Complaint and will be addressed if ComEd files an appropriate motion on the issue.

**INTERROGATORY 1:** Identify the amount of the total excess accumulated deferred income tax (“excess ADIT”) amounts created by the federal Tax Cuts and Jobs Act of 2017 (TCJA), including any amounts recorded in FERC Accounts 190, 281, 282, and 283, that have been or will be transferred or recorded in special regulatory liability accounts (including but not limited to FERC Account 254) for 2017 and 2018. Please also identify each of the specific accounts to which the excess ADIT amounts have been or will be transferred or recorded in, and the related debited or credited amounts for each such account.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 1 on the basis that it is irrelevant to the FCC’s pole attachment calculations.

**CROWN CASTLE RESPONSE:** The information sought in Crown Castle’s Interrogatory No. 1 is relevant to the FCC’s pole attachment rate calculation for the reasons set forth in the Complaint at paragraphs 38 to 42. In summary, ComEd appears to have made certain accounting adjustments to reflect its over-collection of accumulated deferred income taxes resulting from the significant reductions in corporate taxes occasioned by the Tax Cuts and Jobs Act of 2017 (TCJA). Based on information made available in other regulatory proceedings, Crown believes that ComEd transferred certain accumulated deferred income taxes (ADIT) 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). As recognized by two public utility commissions applying the FCC cable formula, until such revenues are actually returned to rate payers, it would be inappropriate to remove the excess ADIT for purposes of the pole attachment rate calculation. This

information is necessary so that the costs can be added back into the pool of costs captured by the FCC cable formula.

The information sought in Interrogatory No. 1 is not available from any other source because ComEd has not made this information publicly available.

**INTERROGATORY 2:** Identify Your amortization periods for the return of excess ADIT to ratepayers for protected and unprotected categories.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 2 on the basis that it is irrelevant to the FCC's pole attachment calculations.

**CROWN CASTLE RESPONSE:** The information sought in Crown Castle's Interrogatory No. 2 is relevant to the FCC's pole attachment rate calculation for the reasons set forth in the Complaint at paragraphs 39, 41, 79 and 80, and in Crown Castle's response to ComEd's objection to Interrogatory No. 1, above. Pursuant to the TCJA, most of the excess revenue relating to so-called normalized ADIT is to be returned over a very extended amortization schedule. Until such revenues are returned, they should be included in the revenues used to calculate the FCC pole attachment rates.

The information sought in Interrogatory No. 2 is not available from any other source because ComEd has not made this information publicly available.

**INTERROGATORY 3:** Identify any projections calculated by ComEd of the impact of the company's TCJA related adjustments to ADIT on future pole attachment rents.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 3 on the basis that it is irrelevant to the FCC's pole attachment calculations.

**CROWN CASTLE RESPONSE:** The information sought in Crown Castle's Interrogatory No. 3 is relevant to the FCC's pole attachment rate calculation for the reasons set forth in the Complaint at paragraphs 38 to 42. To the extent that ComEd has projected a cost impact of the TCJA on future pole attachment rates that is relevant to the maximum permitted rates allowed by the FCC.

The information sought in Interrogatory No. 3 is not available from any other source because ComEd has not made this information publicly available.

**INTERROGATORY 4:** For each year from 2012 to 2018, identify the number of distribution poles that were solely owned by ComEd in Illinois.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 4 on the basis that it requests information for periods of time that are not subject to FCC refunds.

**CROWN CASTLE RESPONSE:** First, the information sought in Interrogatory No. 4 is relevant and necessary to this dispute because it is required to accurately derive ComEd's per pole investment needed to calculate the maximum lawful pole attachment rate that ComEd is permitted to charge under 47 C.F.R. § 1.1406. The information sought in Interrogatory No. 4 is not available from any other source because ComEd has not made this information publicly available.

Second, the information sought in Interrogatory No. 4 does, in fact, concern periods of time that are subject to FCC refunds. Pursuant to 47 C.F.R. § 1.1407(a)(3), the Commission may order a refund “consistent with the applicable statute of limitations.” The Illinois statute of limitations for breach of written contract is 10 years. *See* 735 ILCS 5/13-206. The information sought in Interrogatory No. 4 (data from the years 2012 to 2018) falls well within the Illinois statute of limitations for breach of written contract, which is the “applicable statute of limitations” in this proceeding.

**INTERROGATORY 5:** For each year from 2012 to 2018, identify the number of distribution poles that were jointly owned by ComEd with another entity, including specifically AT&T.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 5 on the basis that it requests information for periods of time that are not subject to FCC refunds.

**CROWN CASTLE RESPONSE:** First, the information sought in Interrogatory No. 5 is relevant and necessary to this dispute because it is required to accurately derive ComEd’s per pole investment needed to calculate the maximum lawful pole attachment rate that ComEd is permitted to charge under 47 C.F.R. § 1.1406. The information sought in Interrogatory No. 5 is not available from any other source because ComEd has not made this information publicly available.

Second, the information sought in Interrogatory No. 5 does, in fact, concern periods of time that are subject to FCC refunds. Pursuant to 47 C.F.R. § 1.1407(a)(3), the Commission may order a refund “consistent with the applicable statute of limitations.” The Illinois statute of limitations for breach of written contract is 10 years. *See* 735 ILCS 5/13-206. The information

sought in Interrogatory No. 5 (data from the years 2012 to 2018) falls well within the Illinois statute of limitations for breach of written contract, which is the “applicable statute of limitations” in this proceeding.

**INTERROGATORY 6:** For each year from 2012 to 2018, identify, as a percentage, ComEd’s ownership interest in distribution poles that ComEd jointly owned with any other entity, including specifically AT&T.

**COMED OBJECTION:** ComEd relies on its general objections listed above.

**CROWN CASTLE RESPONSE:** First, the information sought in Interrogatory No. 6 is relevant and necessary to this dispute because it is required to accurately derive ComEd’s per pole investment needed to calculate the maximum lawful pole attachment rate that ComEd is permitted to charge under 47 C.F.R. § 1.1406. The information sought in Interrogatory No. 6 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 No. 6. It is not clear which if any of ComEd’s General Objections apply to Interrogatory No. 6.

**INTERROGATORY 7:** For each year from 2012 to 2018, identify the number of poles included by ComEd in FERC Account 364 broken down by pole height. If ComEd includes this information in its continuing property records (CPR), please provide the information in the same format in which it is included in ComEd’s CPR.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 7 on the basis that it requests information for periods of

time that are not subject to FCC refunds and on the basis that it requests information that is irrelevant to the calculation of pole attachment rates.

**CROWN CASTLE RESPONSE:** First, the information sought in Crown Castle's Interrogatory No. 7 is relevant to the FCC's pole attachment rate calculation for the reasons set forth in the Complaint at paragraph 36, to wit: in calculating ComEd's pole attachment rates, Crown Castle relied primarily upon publicly available data and FCC presumptions. For example, Crown Castle used the FCC's presumed average pole height of 37.5 feet, in accordance with 47 C.F.R. § 1.1410. This presumption is rebuttable. To the extent that ComEd has information that would confirm or rebut the FCC's pole height presumption, that information is directly relevant to the calculation of FCC pole attachment rates. In addition, Crown Castle relied upon pole count information provided by ComEd. If ComEd's property records show a different number of poles, that is also relevant to the pole attachment rental rate, which calculates a per pole investment amount by dividing net investment by the number of poles.

Second, the information sought in Interrogatory No. 7 concerns periods of time that are subject to FCC refunds. Pursuant to 47 C.F.R. § 1.1407(a)(3), the Commission may order a refund "consistent with the applicable statute of limitations." The Illinois statute of limitations for breach of written contract is 10 years. *See* 735 ILCS 5/13-206. The information sought in Interrogatory No. 7 (data from the years 2012 to 2018) falls well within the Illinois statute of limitations for breach of written contract, which is the "applicable statute of limitations" in this proceeding.

Finally, the information sought in Interrogatory No. 7 is not available from any other source because ComEd has not made this information publicly available.



**INTERROGATORY 8:** For each year from 2012 to 2018, provide the aggregated total of ComEd's capital costs and associated depreciation reserve for appurtenances included in FERC Account 364.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 8 on the basis that it requests information for periods of time that are not subject to FCC refunds and to the extent that it would require ComEd to produce a document that ComEd does not already possess.

**CROWN CASTLE RESPONSE:** First, the information sought in Crown Castle's Interrogatory No. 8 is relevant to the FCC's pole attachment rate calculation for the reasons set forth in the Complaint at paragraph 36, to wit: In calculating the pole attachment rates, Crown Castle used the FCC's presumed 15% appurtenance deduction, in accordance with 47 C.F.R. § 1.1410. This presumption is rebuttable. Accordingly, ComEd's actual data concerning the dollar amount attributable to appurtenances is directly relevant to rebutting the FCC presumption.

Second, the information sought in Interrogatory No. 8 concerns periods of time that are subject to FCC refunds. Pursuant to 47 C.F.R. § 1.1407(a)(3), the Commission may order a refund "consistent with the applicable statute of limitations." The Illinois statute of limitations for breach of written contract is 10 years. *See* 735 ILCS 5/13-206. The information sought in Interrogatory No. 8 (data for the years 2012 to 2018) falls well within the Illinois statute of limitations for breach of written contract, which is the "applicable statute of limitations" in this proceeding.

Third, information sought in Interrogatory No. 8 is not available from any other source because ComEd has not made this information publicly available.

Finally, this is not a document request, and, therefore, the objection that it would require ComEd to produce a document that may not exist is inapplicable.

**INTERROGATORY 9:** Explain whether ComEd now invoices or at any point since 2013 invoiced Crown Castle, including Sunesys, Lighttower, and Crown Castle NG Central, for pole attachments in advance or in arrears, and for what billing period (i.e., calendar year).

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 9 on the basis that it requests information for periods of time that are not subject to FCC refunds.

**CROWN CASTLE RESPONSE:** First, the information sought in Interrogatory 9 is relevant and necessary to this dispute because it pertains to the refund that Crown Castle seeks for paying ComEd excessive pole attachment fees. The information sought in Interrogatory 9 is not available from any other source because ComEd has not made this information publicly available.

Second, the information sought in Interrogatory 9 concerns periods of time that are subject to FCC refunds. Pursuant to 47 C.F.R. § 1.1407(a)(3), the Commission may order a refund “consistent with the applicable statute of limitations.” The Illinois statute of limitations for breach of written contract is 10 years. *See* 735 ILCS 5/13-206. The information sought in Interrogatory No. 9 (billing periods since 2013) falls well within the Illinois statute of limitations for breach of written contract, which is the “applicable statute of limitations” in this proceeding.

**INTERROGATORY 10:** If You contend that Crown Castle, including Sunesys, Lighttower, and Crown Castle NG Central, has not paid You in full for any annual pole attachment rental, identify the invoice or invoices that you contend has not paid in full.

**COMED OBJECTION:** In addition to the general objections listed above, ComEd objects to Interrogatory Number 10 on the basis that it requests information for periods of time that are not subject to FCC refunds.

**CROWN CASTLE RESPONSE:** First, the information sought in Interrogatory 10 is relevant and necessary to this dispute because it pertains to the refund that Crown Castle seeks for paying ComEd excessive pole attachment fees. The information sought in Interrogatory 10 is not available from any other source because ComEd has not made this information publicly available.

The information sought in Interrogatory 10 concerns periods of time that are subject to FCC refunds. Pursuant to 47 C.F.R. § 1.1407(a)(3), the Commission may order a refund “consistent with the applicable statute of limitations.” The information sought in Interrogatory No. 10 (whether ComEd claims any of the Crown Castle companies have not paid) falls well within the ten-year Illinois statute of limitations for breach of written contract, which is the “applicable statute of limitations” in this proceeding.

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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/S/ T. Scott Thompson  
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