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July 22, 2019

Via ECFS

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

**Re: Commonwealth Edison Company's Answer to Complainant Crown
Castle Fiber LLC's Pole Attachment Complaint – Unlawful Rates
(Proceeding Number 19-170; Bureau ID Number EB-19-MD-005)**

Ms. Dortch:

Please find attached the Public Version of Commonwealth Edison Company's Answer to Complainant Crown Castle Fiber LLC's Pole Attachment Complaint – Unlawful Rates in Proceeding Number 19-170; Bureau ID Number EB-19-MD-005.

Sincerely,



Timothy A. Doughty
Attorney for Commonwealth Edison Company

Enclosures

cc: Rosemary McEnery, Enforcement Bureau
Adam Suppes, Enforcement Bureau

PUBLIC VERSION

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

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)	
Crown Castle Fiber LLC)	
<i>Complainant,</i>)	
)	Proceeding Number 19-170
v.)	Bureau ID Number EB-19-MD-005
)	
Commonwealth Edison Company,)	
<i>Defendant</i>)	
_____)	

TO: ENFORCEMENT BUREAU

**COMMONWEALTH EDISON COMPANY'S ANSWER
TO THE POLE ATTACHMENT COMPLAINT – UNLAWFUL RATES
OF CROWN CASTLE FIBER LLC**

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*Attorneys for
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Dated: July 22, 2019

SUMMARY

Crown Castle's complaint, seeking an extraordinary level of refunds over an extended period, falters for both threshold and operational reasons. Notwithstanding the Bureau's Order, ComEd believes that the Illinois Commerce Commission has jurisdiction over this Complaint, and indeed Crown Castle itself acted for many years as if the state controlled these matters. Even if the FCC process applies, Crown Castle has failed to establish that it is a telecommunications provider with rights under the statute, particularly with respect to its wireless attachments. Crown Castle has also failed to demonstrate its rights under the agreements that it cites. At the operational level, Crown Castle's claims of excessive rates are incorrect—even apart from the jurisdictional issues noted already. ComEd's charges have been made in good faith, based on reasonable interpretations of the rules. Moreover, Crown Castle's attachments are significantly larger (and therefore more costly) than Crown Castle has described in its complaint. And Crown Castle's has misunderstood and misapplied the FERC account and tax issues on which it relies. In all events, even if the FCC finds that Crown Castle's complaint has some merit, the Commission's remedies can only be prospective.

Preserving its arguments for potential appeal of the July 15 Bureau Order, ComEd incorporates its Motion to Dismiss filed earlier in this proceeding as support that the Commission lacks jurisdiction to hear this Complaint.

Crown Castle's wireless antenna attachments are unregulated. The Communications Act, the Commission, and the courts recognize that an attaching entity like Crown Castle should be treated as a telecommunications carrier only to the extent that it is providing common carrier telecommunications service. Crown Castle has repeatedly admitted that it is not providing any telecommunications service using the antennas that it is attaching to ComEd's poles. As such,

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these antenna attachments by Crown Castle are unregulated attachments subject to negotiated rates, terms and conditions, not regulated rates, terms and conditions.

Moreover, Crown Castle has failed to establish a *prima facie* case that it is using ComEd's poles to provide any telecommunications service at all, either wireline or wireless. The Complaint provides no evidence of any tariff on file in Illinois authorizing it to provide telecommunication services, and the Certificate it produced does not cover all of the relevant Crown Castle entities. Crown Castle therefore has failed to establish that it is seeking attachment rights as a telecommunications carrier and not as an unregulated private carrier for the attachments at issue in this Complaint.

Crown Castle also does not appear to be the proper entity to be filing a complaint, as Crown Castle has not established that it is the entity properly entitled to enforce the three pole attachment agreements at issue in this proceeding.

If the Commission does not dismiss the Complaint for other reasons, any relief should be prospective only. Even assuming that the Commission has jurisdiction over this Complaint as the July 15 Bureau Order concludes, ComEd and Crown Castle both proceeded for many years with the understanding that the pole attachments at issue were regulated by the Illinois Commerce Commission (ICC) and not subject to the rules and regulations of the FCC. Indeed, the Commission's own pronouncements in the April 2011 Pole Attachment Order and in Section 1.1405(a) of the rules represented that Illinois had preempted FCC jurisdiction over all pole attachments in that State. In addition, Supreme Court and Commission precedent recognizes the fundamental principle that administrative rules generally should not have retroactive effect, and retroactive application would be unfair in the absence of fair notice. The Commission's new rulings in the OTMR Order are similarly subject to these retroactive rulemaking restrictions.

Finally, whatever the case, the applicable statute of limitations in Illinois is two years, establishing the limit on refunds.

The wireless attachments installed by Crown Castle are unregulated and are therefore subject to negotiated rates. ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate.

A question exists whether Crown Castle's wireline attachments are subject to FCC regulation. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula.

Crown Castle's calculation of ComEd's pole attachment rates do not accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes its recently revised calculations attached hereto reflect the proper calculation.

ComEd has not been charging excessive rates for any of its poles, whether solely-owned or not. Several provisions in the agreements do not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under those provisions.

Crown Castle offers no proof that the wireless equipment that they have installed is consistent with the specifications that they cite. The specifications that they actually do cite in every instance include far more equipment and pole usage than the total amount of feet that they claim are installed. Crown Castle moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

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The FCC formula rate should not be reduced due to the “EDIT issue.” The use of dollar amounts from FERC accounts other than those specified by the Commission are disfavored.

While there might or might not be limited exceptions, the change Crown Castle proposes is not a simple request to change one electric utility’s accounts. This is a request to change the intent of the Tax Cuts and Jobs Act to favor Crown Castle, which would have an effect on every electric utility and ILEC pole owner in the country that is subject to FCC regulations. FCC rules currently require utilities to calculate ADIT using Accounts 190, 281, 282 and 283, and ComEd properly applied income tax accounting guidelines regarding the treatment of the Tax Cuts and Jobs Act. If Crown Castle wants to change those rules nationwide to revise the calculation, it can request that the Commission open up a rulemaking proceeding so that the entire public can weigh in on why this Crown Castle proposal should not be adopted.

Crown Castle is not entitled to any refund. As explained in ComEd’s Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction. Refunds under these circumstances are not appropriate.

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

_____)	
)	
Crown Castle Fiber LLC)	
<i>Complainant,</i>)	
	)	Proceeding Number 19-170
v.	)	Bureau ID Number EB-19-MD-005
)	
Commonwealth Edison Company,)	
<i>Defendant</i>)	
_____)	

**COMMONWEALTH EDISON COMPANY’S ANSWER
TO THE POLE ATTACHMENT COMPLAINT – UNLAWFUL RATES
OF CROWN CASTLE FIBER LLC**

Defendant Commonwealth Edison Company (“ComEd”), pursuant to the Notice of Formal Complaint issued on June 25, 2019 by the FCC Enforcement Bureau in this proceeding and pursuant to Section 1.726 of the Commission’s Rules, 47 C.F.R. §1.726, submits the following Answer to Crown Castle Fiber LLC’s (“Crown Castle”) Rate Complaint (the “Rate Complaint.”).

In support of its Answer, ComEd respectfully submits the following Affirmative Defenses, which are followed by ComEd’s paragraph-by-paragraph responses to Crown Castle’s allegations.

I. AFFIRMATIVE DEFENSES

B. The FCC Lacks Jurisdiction to Resolve This Complaint

1. ComEd’s Motion to Dismiss, which was filed in the above-captioned proceeding on June 28, 2019, is attached hereto at Attachment A. The arguments contained therein are

incorporated herein by reference. As explained in the Motion to Dismiss, (1) the ICC’s certification was effectively made; (2) the FCC’s list of certified states, which is Appendix C to the April 2011 Pole Attachment Order, states that such certification “preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules,” and (3) Section 1.1405 of the Commission’s rules requires that Illinois’s certification be “conclusive proof” the Commission lacks jurisdiction. For these and the other reasons stated in ComEd’s Motion to Dismiss, the FCC should dismiss Crown Castle’s Complaint for lack of jurisdiction.¹

C. Crown Castle’s Wireless Antenna Attachments Are Unregulated

2. Crown Castle admits that it is not providing any telecommunications service using the antennas that it is attaching to ComEd’s poles. As such, these antenna attachments by Crown Castle are unregulated attachments subject to negotiated rates, terms and conditions, not regulated rates, terms and conditions. As explained below, Crown Castle has failed to establish a prima facie case that it is using ComEd’s pole to provide any telecommunications service, and additional discovery might be required to make that determination. But regardless of whether Crown Castle is providing a wireline telecommunications service using the facilities attached to ComEd’s poles, Crown Castle cannot recover for any of its wireless attachments.

3. The federal Pole Attachment Act, which is part of the Communications Act, provides attachment rights to two types of entities: cable television systems and providers of telecommunications service.²

¹ ComEd understands the Enforcement Bureau recently denied ComEd’s Motion to Dismiss. *See Crown Castle Fiber LLC v. Commonwealth Edison Company*, DA 19-640 (rel. July 15, 2019) (“July 15 Bureau Order”). ComEd nevertheless wishes to preserve these arguments for potential appeal to the full Commission.

² 47 U.S.C. §224(a)(4). “The term ‘pole attachment’ means any attachment by a cable television system or provider of telecommunications service....” *Id.*

4. Crown Castle makes no claim to be a “cable television system,” but it does claim to qualify as a “provider of telecommunications service.” The term “telecommunications service” is defined as “the offering of telecommunications for a fee directly to the public”³ In turn, “telecommunications” is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”⁴

5. But Crown Castle, by its own admission, does not offer wireless telecommunications and does not transmit wireless signals. Instead, the antennas that Crown Castle has installed on ComEd’s poles are being used by other entities who themselves are the entities that offer wireless communications service and that transmit the wireless signals. Crown Castle does not operate these antennas at all, and does not use them to provide any telecommunications service, because Crown Castle’s service is a wireline service not a wireless service.

6. Crown Castle (through its predecessors and affiliates) has repeatedly and consistently argued before this Commission and before state commissions that its RF transport service (at issue in this Complaint) is not a wireless telecommunications service and that it is not a wireless telecommunications provider. Significantly, in a petition for declaratory ruling that was ultimately withdrawn, NextG (a predecessor of Crown Castle, and through Crown Castle’s counsel in this proceeding) specifically asked the Commission to declare that the service it provides via DAS networks and other “Small-Cell Solutions” was not a wireless, CMRS service.⁵ In support of its request, NG represented that it “does not provide any radio

³ 47 U.S.C. §153(46).

⁴ *Id.* §153(43).

⁵ Petition For Declaratory Ruling, WT Docket No. 12-37, December 21, 2011, at p. 1 (“Petition”).

communication service and that NextG's service is provided entirely over fiber optic facilities between fixed points..."⁶

7. Likewise, in a recent court proceeding in Pennsylvania, Crown Castle NG East LLC and Pennsylvania-CLE LLC (wholly-owned subsidiaries in the Crown Castle family) represented that they do not provide mobile wireless service but that the "DAS networks provide only underlying transport services via its fiber optic lines to WSPs" or Wireless Service Providers.⁷ The Crown Castle entities also contended that simply because Wireless Service Providers "incorporate Crown Castle's transport service as a component part of their provision of mobile service does not convert Crown Castle's RF transport service into a mobile service."⁸ Industry stakeholders agreed that DAS networks "do not offer mobile or wireless services regulated by the Federal Communications Commission (FCC)."⁹ Ultimately, the Pennsylvania Court determined that Crown Castle is not a wireless service provider.

8. In describing RF transport service, Crown Castle's predecessor, NextG, represented to this Commission that "the carrier customer's Base Station equipment includes radio equipment that ultimately controls the radio frequency transmission."¹⁰ "[A]ll radio transmissions and wireless service are controlled and provided by NextG's carrier customers through the carrier customer's equipment located at the Base Station."¹¹ This is true for communications in both directions: "NextG does not provide or control radio transmissions between the Node and a carrier customer's subscriber's mobile device."¹² "Without the radio

⁶ Petition at 1.

⁷ *Crown Castle NG East LLC v. Pa PUC.*, 188 A. 3d 617, 628 (2018).

⁸ *Id.*

⁹ *Id.* at 622.

¹⁰ *NextG Networks of California Reply Comments In Support Of Petition For Declaratory Ruling*, WT Docket No. 12-37, p.3 ("Reply Comments").

¹¹ Reply Comments at p.3.

¹² *Id.*

frequency signal, which is generated and controlled by NextG's wireless carrier customers, the antennae are no more capable of providing service than they would be boxed up in a warehouse.”¹³

10. Crown Castle therefore admits that it installs antennas that are incapable of providing any telecommunications service until Crown Castle's wireless customers come along and use those antennas to themselves provide a service.

11. Although questions exist whether Crown Castle is providing any telecommunications service at all using any of Crown Castle's attachments, it is a fact verified by Crown Castle itself that Crown Castle is not using the antennas it installs to provide service.

12. The Communications Act, the Commission, and the courts recognize that an attaching entity like Crown Castle should be treated as telecommunications carriers only to the extent that it is providing common carrier telecommunications service. The Communications Act states: “A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.”¹⁴ As the D.C. Circuit explained: “A service provider is to be treated as a common carrier for the telecommunications services it provides, but it cannot be treated as a common carrier with respect to other, non-telecommunications services it may offer, including information services.”¹⁵ This ruling affirms the longstanding precedent that “one may be a common carrier with regard to some activities but not others.”¹⁶

¹³ *Id.* at p.6.

¹⁴ 47 U.S.C. § 153 (44).

¹⁵ *Verizon v. Federal Communications Commission*, 740 F.3d 623, 650 (D.C. Cir. 2014), quoting *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, at ¶50 (2007) (“*Wireless Broadband Order*”).

¹⁶ *Verizon v. FCC*, 740 F.3d 623, 653 (D.C. Cir. 2014) (quoting *Nat'l Ass'n. of Regulatory Util. Comm'rs v. Fed. Communications Commission*, 533 F.2d 601, 608 (D.C. Cir. 1976) (“*NARUC II*”); see also *Southwestern Bell Tel.*

13. In accordance with these statutory, judicial and FCC rulings, Crown Castle is not a telecommunications carrier to the extent it is not providing telecommunications service using the antennas it is installing. As a result, even if the FCC had jurisdiction over this Complaint, and even if Crown Castle were able to prove it is a telecommunications carrier with respect to its wireline attachments on ComEd's poles, Crown Castle, by its own admission would not have federal Pole Attachment Act rights to attach its wireless antennas to ComEd's poles.¹⁷

14. Since Crown Castle's wireless attachments are unregulated, ComEd's negotiated wireless attachment rates are not subject to FCC regulation.

D. The Complaint Should Also Be Dismissed Because Crown Castle Has Failed to Establish a *Prima Facie* Case That it is Providing Telecommunications Service on ComEd's Poles

15. Even more broadly, Crown Castle has not established that it is a telecommunications provider in any regard, and the Complaint should be dismissed for this threshold failure. The Commission considers a certificate and tariff from the State to be presumptive evidence that an entity is a telecommunications provider entitled to federal pole attachment access rights.¹⁸ Crown Castle fails this basic test.

16. Crown Castle claims to have federal pole attachment rights as a telecommunications carrier because it has a certificate to provide telecommunications service on file with the Illinois Commerce Commission ("ICC"). Attachment A to this Complaint is a

Co. v. FCC, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (explaining that "whether an entity in a given case is to be considered a common carrier or a private carrier turns on the particular practice under surveillance" and that the FCC "is not at liberty to subject [an] entity to regulation as a common carrier" if the entity is acting as a private carrier for a particular service").

¹⁷ This is not a case covered by *NCTA v. Gulf Power Co.*, 534 U.S. 327 (2002), and related FCC precedents, for Crown Castle is not providing any commingled services over these wireless attachments.

¹⁸ *Fiber Technologies Networks, L.L.C. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392 at ¶16 (Enf. Bur. 2007); *Salzgiver Telecom, Inc. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd 9285 at ¶12 (Enf. Bur. 2007).

Declaration with Exhibits asserting that Crown Castle Fiber LLC has such a valid certificate. At Exhibit 5 to Attachment A, a cover letter and footnote to the cover letter, along with the documents attached to Exhibit 5, attempt to explain that Crown Castle Fiber LLC has had a valid certificate since the attached RCN order was issued in 2007 -and the only development that happened since 2007 was that “RCN New York Communications, LLC” changed its name to “Sidera Networks d/b/a Lighttower Fiber Networks” (the entity that signed one of the three the pole attachment agreements), which changed its name to “Lighttower Fiber Networks II, LLC”, which then changed its name to the complainant, “Crown Castle Fiber LLC.”¹⁹

17. If the Commission were to accept this explanation, then Crown Castle Fiber LLC will have only very limited rights. That is because Crown Castle will have only shown that it is the successor to the Sidera entity that signed one of the three pole attachment agreements at issue in this proceeding, and that the entity installing the relatively few attachments subject to that agreement has had a certificate in place since 2007. 18. If the FCC were to decide it had jurisdiction over this Complaint, then such a finding by the Commission would support Crown Castle Fiber LLC’s claim to FCC jurisdiction over the relatively small number of poles associated with the Sidera agreement.

19. Crown Castle provides no such certificate and analysis with respect to the other two agreements that are subject to this Complaint. The Attachment A Declaration and Exhibits indicate that several predecessors in interest to Crown Castle Fiber LLC also were authorized by the ICC to provide telecommunications service and then they merged into Crown Castle Fiber LLC. In its Declaration and Exhibits, Crown Castle further claims that

¹⁹ Letter from Asa J. Herald, Counsel for Crown Castle Fiber LLC, to Chief Clerk’s Office, Illinois Commerce Commission, (May 23, 2018), attached to Crown Castle Pole Attachment Complaint at Attachment A, Exhibit 5 (CCF000089).

these predecessors are themselves predecessors to the specified entities that entered into the agreements with ComEd.

20. But this analysis contains gaps that Crown Castle has not explained. Crown Castle explains that NextG Networks of Illinois, Inc. entered into a pole attachment agreement with ComEd on December 22, 2004.²⁰ Crown Castle also explains that an entity called Crown Castle NG Central LLC was acquired by Crown Castle Solutions Corp., and that Crown Castle NG Central LLC was consolidated into the complainant Crown Castle Fiber LLC on December 31, 2018.²¹ But Crown Castle does not provide any explanation as to how NextG Networks of Illinois, Inc. somehow might have become Crown Castle NG Central LLC, which then somehow became the complainant, Crown Castle Fiber LLC.

21. Similarly, Crown Castle explains that Sunesys, Inc. entered into a pole attachment agreement with ComEd on May 5, 2005, and that Sunesys, Inc. was later acquired by Crown Castle, but does not explain when Sunesys, Inc. was acquired by Crown Castle or whether there might have been some intermediate transactions leading up to that acquisition. Moreover, Crown Castle has not provided any evidence that either NextG Networks of Illinois, Inc., Crown Castle NG Central LLC, Sunesys, Inc., or any of the other as-yet unnamed intermediate entities were certificated by the ICC to provide telecommunications service, or whether such certificates were ever properly transferred from the predecessor companies to the intermediate companies, and finally to Crown Castle Fiber LLC.

22. Crown Castle accordingly has not provided any explanation as to why it should be entitled to federal pole attachment access rights under the NextG Agreement or the Sunesys Agreement. Crown Castle has not included with its Complaint any evidence that the

²⁰ Declaration of Rebecca Hussey, attached to Crown Castle Pole Attachment Complaint at ¶5 (CCF000003).

²¹ *Id.* at ¶¶ 8, 11 (CCF000003-CCF000004).

signatories to those agreements, NextG Networks of Illinois, Inc. and Sunesys, Inc., or any of the intermediate entities identified above or yet to be identified, were ever certificated by the ICC as telecommunications providers, or that any of these entities filed a tariff with the ICC. Accordingly, Crown Castle has failed to establish a *prima facie* case that it is a certificated telecommunications provider within the State of Illinois for its attachments made pursuant to the NextG and Sunesys pole attachment agreements with ComEd.

23. Even if it had provided certificates that were effective to cover the two entities which entered into these other two agreements, and certificates that were effective to cover all of the successor entities to the signatories to these agreements leading all the way up to the complainant Crown Castle Fiber LLC, Crown Castle has still failed to meet the *Fiber Technologies* and *Salsgiver* standards for establishing a *prima facie* case that it is a telecommunications carrier because Crown Castle's Complaint does not include or reference any tariff on file in Illinois to govern the services provided by Crown.

24. Crown Castle's website does point to a tariff in Illinois for its "legacy company" Sunesys.²² However, nowhere in the Sunesys tariff is there a description of "RF transport service." Nor is there any Illinois tariff on the website relating to NextG Networks or Lightower – the other two legacy companies with whom Com Ed entered into pole attachment agreements.

25. Without an applicable tariff, Crown Castle has failed to show it is providing its RF transport service as a telecommunications carrier. In fact, its most recent 10-K filed with the U.S. Securities and Exchange Commission indicates that Crown Castle is providing its services with individual terms and conditions on a private carrier basis and not on a non-discriminatory common carrier basis, which is a requirement to qualify as a telecommunications service: "Our

²² Crown Castle Fiber LLC, Regulatory Status (Jul. 22, 2019), <https://fiber.crowncastle.com/regulatory-status>.

core business is providing access, including space or capacity, to our shared communications infrastructure via long term contracts in various forms, including lease, license, sublease and service agreements.”²³

26. As explained above, the Communications Act, the courts and the Commission have recognized that a telecommunications carrier should be treated as a telecommunications carrier only to the extent that it is providing common carrier telecommunications.²⁴ In the pole attachment context, in its *Fiber Technologies* and *Salsgiver* orders, the Commission acknowledged that an entity recognized as a telecommunications carrier for some pole attachments is not necessarily recognized as a telecommunications carrier for all attachments. For example, it is possible for a telecommunications provider to have federal attachment rights in one part of a state but not in other parts: “a state might authorize an entity to provide telecommunications services only in some, but not all, portions of a state such that additional evidence of the entity’s status would be required to demonstrate a right of attachment in those non-certificated portions of the state.”²⁵

27. In sum, Crown Castle has failed to provide the certificate and tariff required to establish a *prima facie* case that it provides telecommunications service in Illinois, and has failed to establish that it is seeking attachment rights as a telecommunications carrier and not as a private carrier for the attachments at issue in this Complaint.

²³ Crown Castle International Corp., Form 10-K For the Fiscal Year Ended Dec. 31, 2018 at p.1, attached hereto at Attachment B (“Crown Castle 10-K”).

²⁴ 47 U.S.C. § 153 (44).

²⁵ *Fiber Technologies Networks, L.L.C. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392 at 3397, n.38 (Enf. Bur. 2007); *Salsgiver Telecom, Inc. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd 9285 at 9289, n.33 (Enf. Bur. 2007).

E. Crown Castle Does not Appear to be the Proper Entity to be Filing a Complaint

28. ComEd does not believe it has a written pole attachment agreement with Crown Castle because ComEd is unaware of any valid written notification of assignment of any of the pole attachment agreements with NextG, Sunesys, and Lightower, nor did ComEd provide any prior written consent to any such assignments.

29. The pole attachment agreements entered into between ComEd and NextG, Sunesys, and Lightower each contain assignment provisions. The NextG agreement dated December 22, 2004 states:

[REDACTED]

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above. Licensee shall give ComEd not less than sixty (60) days' prior written notice of any proposed assignment or transfer.²⁶

The Sunesys agreement dated May 5, 2005 states:

[REDACTED]

[illegible]

The Lightower agreement dated July 26, 2013 states:

[illegible]

²⁶ Pole Attachment Agreement Distribution Infrastructure Between Commonwealth Edison Company and NextG Networks of Illinois, Inc., attached to Crown Castle Pole Attachment Complaint at Attachment A, Exhibit 1 (CCF000024).

²⁷ Pole Attachment Agreement, Commonwealth Edison Company & Sunesys, Inc., attached to Crown Castle Pole Attachment Complaint at Attachment A, Exhibit 2 (CCF000044-CCF000045).

[REDACTED]
[REDACTED]
[REDACTED]²⁸

30. ComEd is unaware of receiving any prior written notice of assignment from NextG, Sunesys, or Lighttower as required under the pole attachment agreements, nor has ComEd found any such notice of assignment after a diligent search of its records.²⁹ Moreover, ComEd did not provide any prior written consent to NextG, Sunesys, or Lighttower to assign any portion of the rights, privileges, and obligations under the agreements to Crown Castle.

31. Crown Castle has demonstrated in other transactions that it is fully capable of providing such a prior written notice. On July 7, 2016, Crown Castle NG Central LLC provided prior written notification to ComEd stating that Nextel West Corp. (“Sprint”) and ComEd were parties to a Pole Attachment Agreement, and that Sprint desired to transfer a number of attachments to Crown Castle.³⁰ Section 15 of the pole attachment agreement between Sprint and ComEd states:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁸ Pole Attachment Agreement Between Commonwealth Edison Company, Inc. and Sidera Networks, LLC d/b/a Lighttower Fiber Networks, attached to Crown Castle Pole Attachment Complaint at Attachment A, Exhibit 3 (CCF000066-CCF000067).

²⁹ Declaration of Joe Gilchrist at ¶4, attached hereto at Attachment C.

³⁰ Letter from Crown Castle NG Central LLC to M. Alonso, Real Estate Infrastructure Management, Commonwealth Edison Company (July 7, 2016), attached here to at Attachment D.

[REDACTED]

A copy of the notification from Crown Castle NG Central LLC is attached hereto at Attachment D. In its letter, Crown Castle NG Central LLC referenced the Pole Attachment Agreement between Sprint and ComEd and stated, “Please accept this letter as notification that (a) Sprint desires to transfer the following number of node attachments and fiber attachments identified on the attached Exhibit A (collectively, the “Attachments”) currently issued pursuant to the Existing Sprint Pole Attachment Agreement to Crown Castle.”³² Therefore, Crown Castle has encountered an assignment provision similar to the assignment provisions in the Sunesys, Lighttower, and NextG agreements and fully complied with the provision; as to the agreements at issue here, Crown Castle did not seek or obtain any prior written consent to any such assignment of those agreements.

32. Despite the fact that Crown Castle encountered a similar assignment provisions in the Sprint pole attachment agreement and complied with that provision by providing ComEd prior written notice of such an assignment, it failed to provide any valid written notification of assignment of the pole attachment agreements with NextG, Sunesys, and Lighttower and ComEd, and ComEd did not provide any prior written consent to any such assignments.

33. Accordingly, the Commission should dismiss the Complaint unless Crown Castle can establish that it is the entity properly entitled to enforce these agreements.

³¹ *Id.*

³² Pole Attachment Agreement Between Commonwealth Edison Company and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, Sections 15, 15.1 (Mar. 26, 2003), attached hereto at Attachment D, Exhibit 1.

F. If the Commission Does Not Dismiss The Complaint For Other Reasons, Any Relief Should Be Prospective Only

34. Fundamental due process and fairness demand that any relief granted by the Commission pursuant to the Complaint must be prospective. Even assuming that the Commission has jurisdiction over this Complaint as the Enforcement Bureau recently ruled,³³ ComEd and Crown Castle both proceeded for many years with the understanding that the pole attachments at issue were regulated by the Illinois Commerce Commission (ICC) and not subject to the rules and regulations of the FCC. Indeed, the Commission's own pronouncements represented that Illinois had preempted FCC jurisdiction over all pole attachments in that State.

35. The Commission lacks statutory authority to impose its rules retroactively, and, even if it had the statutory authority, such an attempt would violate the "duty of fair notice" embedded in the due process clause and administrative law. It would also be inequitable and therefore arbitrary and capricious. Any such penalty would place an unfair burden on both ComEd and the customers of its utility services.

1. ComEd Reasonably Relied On The Preemption Certification of the State of Illinois And On Commission Rules In Believing That FCC Pole Attachment Rules Did Not Apply To the Attachments At Issue.

36. Under Section 224(c)(1) of the Act, 47 U.S.C. § 224 (c)(1), the Commission has no authority to regulate "pole attachments in any case where such matters are regulated by a State." In the April 2011 Pole Attachment Order, the Commission articulated this statutory provision as follows: "Under the 'reverse preemption' provision in section 224, states may certify that they regulate rates, terms, and conditions for pole attachments in their respective states; the Commission retains jurisdiction over pole attachments only in states that do not so

³³ *Crown Castle Fiber LLC v. Commonwealth Edison Company*, DA 19-640 (rel. July 15, 2019) ("July 15 Bureau Order").

certify.”³⁴ The Commission also represented that Illinois was one of the “States That Have Certified That They regulate Pole Attachments.”³⁵ In that document, the Commission states: “Certification by a state preempts the Commission from accepting pole attachment complaints.”³⁶ Nowhere in the Order does the Commission distinguish Illinois’ (or any other state’s) preemption of FCC regulation for cable attachments from telecommunications attachments.

37. The Commission’s pole attachment rules themselves state that state certification precludes Commission jurisdiction. Section 1.1405(a) states: “Such certificate shall be conclusive proof of lack of jurisdiction of this Commission” over pole attachments in the certifying state.³⁷

38. Because Appendix C to the April 2011 Pole Attachment Order and Section 1.1405(a) of the rules both conclusively state that the Illinois certification precludes FCC jurisdiction, ComEd was fully justified in relying on Illinois’ certification to conclude that FCC regulations do not apply.

39. In fact, both parties to the Complaint understood that the attachments were under the jurisdiction of the State of Illinois and not subject to FCC rules. On a number of occasions, both ComEd and Crown Castle approached the Illinois Commerce Commission in an attempt to resolve the dispute.³⁸

40. Until recently, it was always ComEd’s understanding that the ICC regulated all pole attachments in the State of Illinois. Based on developments which commenced in 2017,

³⁴ Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, 26 FCC Rcd 5240 (2011) (2011 Order), at para. 7.

³⁵ 2011 Order, Appendix C.

³⁶ *Id.*

³⁷ 47 C.F.R. § 1.1405(a).

³⁸ See Declaration of Martin Montes at ¶¶4-10, attached hereto at Attachment E (hereinafter “Montes Declaration”).

ComEd believes representatives of Crown Castle also had the understanding that all pole attachments in Illinois were regulated by the ICC. In 2017, the dispute arose between Crown Castle and ComEd regarding fiber and wireless attachments to ComEd poles. In October 2017, ComEd received a telephone call from the ICC, requesting a time to meet with ComEd representatives to discuss ComEd's third-party attachment application process and fees. Representatives of the ICC indicated they had just concluded a meeting with representatives from Crown Castle and its respective attorneys regarding ComEd's third party application process and fees, at which Crown Castle raised concerns with the ICC regarding the timeliness of ComEd's application process, as well as the fees ComEd charged. Thereafter, at the request of the ICC, on October 31, 2017, ComEd representatives met with the ICC to discuss the concerns raised by Crown Castle. On January 22, 2018, ComEd representatives had a follow-up meeting with the ICC. ComEd representatives provided an update on the progress made in addressing the issues raised by Crown Castle. Then, on information and belief, later in January 2018 Crown Castle representatives had a separate follow-up meeting with the ICC to discuss their issues related including wireless attachment fees, red tag pole replacement issues and timing under the application process.³⁹

41. Not until October 25, 2018, did the Illinois Commerce Commission adopt the letter to the FCC stating that it does not regulate "attachments by telecommunications companies to poles owned by electric utilities."⁴⁰ Prior to the adoption of this letter, neither the parties nor the FCC had reason to believe that FCC rules and regulations would apply to the pole attachments at issue. And at odds with this Illinois letter, both the April 2011 Pole Attachment

³⁹ Montes Declaration at ¶¶4-10.

⁴⁰ Letter from ICC Chairman Brien J. Sheahan dated October 25, 2018, attached to Crown Castle Pole Attachment Complaint at Attachment B (CCF000117-CCF000118).

Order at Appendix C and Section 1.1405(a) of the Commission’s rules both conclusively state that Illinois’s earlier certification precludes FCC jurisdiction.

42. For its part, the July 15 Bureau Order concluded that the original “1985 Certification” from Illinois standing alone did not provide sufficient notice that Illinois lacked jurisdiction. Rather, the Bureau found that “collectively” the initial certification and the October 2018 notice expressed the ICC’s position that it “has not exercised preemption authority over telecommunications attachments to electric utilities.”⁴¹ In other words, not until now has ComEd had any notice from the Commission that FCC rules would apply to the pole attachments at issue.

2. Based On Legal And Equitable Principles Any Relief Must Be Prospective And Not Retroactive.

43. The Commission has no statutory authority to impose retroactive rates, and any such attempt would be unconstitutional, inequitable, and arbitrary and capricious.

44. Section 224 does not authorize retroactive ratemaking. Under Supreme Court precedent “retroactivity is not favored in the law.”⁴² “[C]ongressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.”⁴³ The Commission has recognized this fundamental principle stating, “[a]s a general rule, in the absence of statutory authority, rules adopted pursuant to a rulemaking proceeding may only be applied prospectively.”⁴⁴ Nothing in the Pole Attachment Act allows for the retroactive application of rules and the Commission has previously rejected retroactive

⁴¹ *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1998).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Letter from Carol E. Matthey, Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, to Richard A. Belden, Chief Operating Officer, Interim chief Executive Officer, Universal Service Administrative Company re WC Docket Nos. 10-90, 05-337 and 06-122; CC Docket No. 96-45, DA 14-661 (May 2, 2014) (*citing Bowen*, 488 U.S. at 208).

application of its pole attachment rates.⁴⁵ It has no lawful basis to apply its pole attachment rules retroactively in the current case.

45. Retroactive application of FCC rules would also offend the duty of fair notice. Because ComEd had no notice from the Commission that it would assert jurisdiction to accept Crown Castle's Complaint and apply FCC pole attachment rules until the July 15 Bureau Order asserting FCC jurisdiction to review the Complaint, and because both the April 2011 Pole Attachment Order and Section 1.1405(a) of the rules both indicated the FCC did not have jurisdiction, ComEd relied in good faith on the Illinois Certification and the pronouncements from the Commission that Illinois law applied to all Illinois pole attachments.

46. Constitutional considerations of due process require that regulations be implemented only after an agency provides fair notice of the regulations.⁴⁶ The Commission cannot simply substitute which pole attachment rules apply and then retroactively apply those rules to past conduct. Such a decision would amount to an unlawful retroactive order in violation the due process clause and the Administrative Procedures Act.⁴⁷

47. "[A] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."⁴⁸ As the D.C. Circuit has emphasized to the Commission, "[t]raditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule

⁴⁵ *Georgia Power Co. v. Teleport Communications Atlanta, Inc.*, 346 F.3d 1033, 1041 (11th Cir. 2003) (The Court noted that the FCC disavowed the Cable Service Bureau's retroactive application of the presumptive averages of the number of attachers, but upheld the FCC's adoption of those averages on separate grounds) (citing *Teleport Communications Atlanta, Inc. v. Georgia Power Co.*, Order On Review, 17 FCC Rcd 19859 2008, at para ¶ 20 (2002)).

⁴⁶ U.S. CONST. AMEND V ("No person shall be ... deprived of life, liberty, or property, without due process of law.").

⁴⁷ 5 U.S.C. §551.

⁴⁸ *FCC et al v. Fox Television Stations, Inc. et al*, 132 S. Ct. 2307, 2317 (2012) (citing *Connally v. General Constr. Co.*, 269 U.S. 385 (1926) (In *Fox*, the Court overturned FCC fines because the broad language used by the Commission to justify its enforcement did not constitute fair notice that a fleeting expletive could be "actionably indecent.")).

without first providing adequate notice of the substance of the rule.”⁴⁹ The D.C. Circuit has also held that “elementary fairness compels clarity in the notice of the material required as a condition for consideration.”⁵⁰ This “requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment.”⁵¹ And, where fair notice is not given, an agency may not impose any kind of “penalty” including “the expenditure of significant amounts of money.” *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354-44 (D.C. Cir. 1998); see also *Fox II*, 132 S. Ct. at 2318-19 (finding that, in addition to fines, any “legal consequences” or “reputational injury” from an adverse agency action is sufficient to trigger the due process requirement of fair notice). In this situation, ComEd had no opportunity to comply with Commission pole attachment regulations where they were not clearly applied by the Commission to the subject Illinois poles.

48. Moreover, retroactive relief would be unfair and unduly burdensome to both ComEd and its customers and therefore arbitrary and capricious. As the record shows, ComEd proceeded in good faith in relying on FCC statements that the Illinois attachment rules applied. Significantly, ComEd was not alone in its understanding that Illinois law applied. Both ComEd and Crown Castle sought assistance from the ICC in resolving the current dispute.⁵² Not until the Bureau’s Order did the FCC make its position clear that it would assert jurisdiction to accept Crown Castle’s Complaint and apply FCC pole attachment rules. Until then, Crown Castle had no reasonable expectation that Commission’s pole attachment complaint process would apply. Under these circumstances, retroactive financial relief would result in an unwarranted windfall to

⁴⁹ *Satellite Broadcasting Co., Inc. v. FCC*, 824 F.2d 1, 4 (D.C. Cir. 1987) (holding that the FCC could not dismiss applications to operate microwave radio stations if it did not give clear notice of where there applications were to be filed).

⁵⁰ *Radio Athens, Inc. v. FCC*, 401 F.2d 398, 404 (D.C. Cir. 1968).

⁵¹ *FCC et al v. Fox Television Stations, Inc. et al*, 132 S. Ct. 2307, 2317 (2012) (citing *Connally v. General Constr. Co.*, 269 U.S. 385 (1926)).

⁵² Montes Declaration at ¶¶7-10.

Crown Castle, while unfairly burdening ComEd and its customers, without achieving any legitimate regulatory goal.

3. Retroactive Ratemaking Restrictions Similarly Apply to Any Request for Red-Tagged Pole Relief Prior to the Effective Date of the August 2018 OTMR Order

49. Crown Castle’s request for refunds of alleged overpayments for make-ready work associated with “red tagged” poles depends upon the Commission’s new rulings in its August 2018 OTMR Order,⁵³ particularly those new rulings with respect to red tagged poles.⁵⁴ Those new rulings in the OTMR Order, however, including those applicable to red tagged poles, did not become effective until May 20, 2019.⁵⁵ For the reasons stated above, it would be unlawful and inequitable to grant the retroactive refunds requested by Crown Castle’s Complaint, when its arguments for such refunds are based on an Order that did not become effective until May 20, 2019.

4. The Applicable Statute of Limitations in Illinois is Two Years, Establishing the Limit on Refunds

50. In addition to the foregoing, Crown Castle’s long delay in initiating a complaint means that the FCC should not award any refunds or payments, and certainly not the five-plus years that Crown is seeking. First, section 224 itself does not require the FCC to award any damages; the statute mentions as its only example of a remedy a “cease and desist order.” Second, the regulations similarly do not require refunds, saying that they will be awarded “if appropriate.” Third, although Crown has recently raised issues with ComEd, Crown Castle’s

⁵³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, FCC 18-111 (Aug. 3, 2018) (“OTMR Order”).

⁵⁴ Pole Attachment Complaint for Denial of Access, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-169, Bureau ID Number EB-19-MD-004 (filed Jun. 19, 2019) at ¶¶ 103, 105, 112-113, 121-124, 177 and 180 (hereinafter “Crown Castle Pole Attachment Complaint”).

⁵⁵ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Final Rule, 84 FR 16412 (Apr. 19, 2019).

seeking more than five years’ worth of refunds demonstrates unreasonable delay in bringing this complaint. In adopting the current form of 47 CFR § 1.1410, the FCC noted concerns that a rule permitting refunds from periods prior to the date of the complaint “creates an incentive for attaching entities to attempt to maximize their monetary recovery by waiting until shortly before the statute of limitations has expired to bring a dispute over rates to the Commission.”⁵⁶ The Commission thought such delays would be unlikely,⁵⁷ but this appears to be such a case. The delay certainly is contrary to the Commission’s “encourage[ment]” to “attachers to provide early notice to utilities of any alleged overcharges.”⁵⁸

51. Finally, if the Commission were inclined to award a refund or payment, Crown Castle’s request for five years is both unexplained and incorrect. The regulation allows an award “consistent with the applicable statute of limitations.”⁵⁹ But, as the D.C. Circuit noted, the regulation “does not appear to specify what makes a limitations period applicable,”⁶⁰ and Crown provides no explanation for why it seeks refunds over the period that it describes. The federal Communications Act itself provides no applicable limitations period, as its provisions cover complaints against carriers,⁶¹ or Commission forfeiture actions, e.g., 47 U.S.C. § 503(b) – although it is worth noting that § 415(b), the most analogous provision because it governs private complaints against carriers, sets a two-year limitations period. Similarly, the most analogous provision of Illinois state law provides a two-year limitations period. In *Verizon Virginia v. Virginia Elec. Power Co.*⁶² the complaining party suggested a state contract-action statute of

⁵⁶ *Implementation of Section 224 of the Act, Report and Order and Order on Reconsideration*, 26 FCC Rcd. 5240, 5289 (¶ 111) (2011), *aff’d*, *American Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

⁵⁷ *Id.*

⁵⁸ *Id.* at 5290 (¶ 112).

⁵⁹ 47 C.F.R. § 1.1410(a)(3).

⁶⁰ *American Elec. Power*, 708 F.3d at 190.

⁶¹ *See* 47 U.S.C. § 415.

⁶² *Verizon Virginia v. Virginia Elec. Power Co.*, 32 FCC Rcd. 3750, 3764 & n.104 (2017) (Acting Chief, Market Disputes Resolution Division).

limitations and the defendant did “not dispute” that statute.⁶³ But this is not an action for breach of contract; it is an action contending that the rate is excessive or unjust and unreasonable.⁶⁴ The FCC regulation uses that exact language in the remedies regulation: “The refund or payment will normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, plus interest, consistent with the applicable statute of limitations.”⁶⁵ The most analogous provision of state law is a provision of the Illinois Public Utilities Act, which provides for a two-year limitations period for cases in which a consumer alleges that any “public utility” has made an “excessive charge.”⁶⁶ Thus, even if Crown Castle were entitled to any refunds at all, Crown Castle, at most, might recover two years’ worth of refunds.

⁶³ *Id.*

⁶⁴ The FCC does not resolve contract disputes and is not in the business of enforcing existing agreements. These are matters the FCC leaves for courts to decide. *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (noting the FCC’s “longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts”).

⁶⁵ 47 C.F.R. § 1.1410(a)(3).

⁶⁶ *See* 220 ILCS 5/9-252.

II. RESPONSE TO COMPLAINT ALLEGATIONS

A. INTRODUCTION

As explained in ComEd's answers to Paragraphs 1-2 below, the wireless attachments installed by Crown Castle are unregulated, and a question exists whether Crown Castle's wireline attachments are subject to FCC regulation. ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

The July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in this paragraph. As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject to FCC regulation. ComEd does not believe its pole attachment rental rates for Crown Castle's attachments "far exceed" the Commission's pole attachment formula rates, as explained below. And ComEd does not believe it has overcharged Crown Castle nearly \$1.8 million.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

ComEd denies that any rate it charged was in excess of the proper FCC formula and denies that it violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

***Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in this paragraph. As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject to FCC regulation.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

As for the rates ComEd charges for wireline attachments, ComEd denies that any rate it charged in excess of the proper FCC formula violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

B. PARTIES

As explained in ComEd's answers to Paragraphs 3-10 below, Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide "RF transport service" as a telecommunication service. Crown Castle

does not offer wireless telecommunications and is not providing any telecommunications services using the antennas it is installing.

Without a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 3 of the Complaint. For the reasons stated in its Affirmative Defenses, ComEd denies that Crown Castle is providing any telecommunications services. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle does not offer wireless telecommunications and is not providing any telecommunications services using the antennas it is installing.

Crown Castle 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.*

ComEd Answer: For the reasons stated in its Affirmative Defenses, ComEd denies that Crown Castle is providing any telecommunications services. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide “RF transport service” as a telecommunication service. Crown Castle does not offer wireless telecommunications and does not provide any telecommunications services using the antennas it is installing. Crown Castle attaches equipment that is wireless in nature, but Crown Castle itself is not operating that equipment at all, much less as a telecommunications carrier. In fact, without a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

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

ComEd Answer: ComEd denies the allegations in Paragraph 5 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 6 of the Complaint.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 7 of the Complaint.

Crown Castle 8: *Upon information and belief, ComEd jointly owns some, but not all, poles with AT&T.*

ComEd Answer: ComEd admits the allegations in Paragraph 8 of the Complaint.

Crown Castle 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.*

ComEd Answer: ComEd states that ComEd itself is not a railroad, a person who is cooperatively organized, or a person owned by the Federal Government or any State.

Crown Castle 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.*

ComEd Answer: ComEd admits that such a document is attached to the Complaint. The certificate of service speaks for itself.

C. JURISDICTION

As explained in ComEd's answers to Paragraphs 11-20 below, the FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that "[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission" over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission ("ICC") has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC's certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC's certification list states: "Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules."

Crown Castle 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”).*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁶⁷ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 11 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁶⁸

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

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁶⁹ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 12 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁷⁰

Crown Castle 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*

⁶⁷ See Motion to Dismiss for Lack of Jurisdiction, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-169, Bureau ID Number EB-19-MD-004 (filed Jun. 28, 2019); Motion to Dismiss for Lack of Jurisdiction, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-170, Bureau ID Number EB-19-MD-005 (filed Jun. 28, 2019) (hereinafter “ComEd Motion to Dismiss”).

⁶⁸ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁶⁹ See ComEd Motion to Dismiss.

⁷⁰ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

the Commission's jurisdiction.

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁷¹ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 13 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁷²

Crown Castle 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.”*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁷³ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 14 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁷⁴

Crown Castle 15: *While the ICC has certified to the FCC that it regulates pole attachments, 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.”*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses

⁷¹ See ComEd Motion to Dismiss.

⁷² *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁷³ See ComEd Motion to Dismiss.

⁷⁴ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

these allegations⁷⁵ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 15 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁷⁶ Additionally, 83 Ill. Admin. Code § 315.30 broadly covers all attachments.

Crown Castle 16: *The ICC’s pole attachment regulations do not apply to or make reference to attachments by telecommunications companies.*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁷⁷ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 16 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁷⁸ Additionally, 83 Ill. Admin. Code § 315.30 broadly covers all attachments.

Crown Castle 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.*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁷⁹ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 17

⁷⁵ See ComEd Motion to Dismiss.

⁷⁶ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁷⁷ See ComEd Motion to Dismiss.

⁷⁸ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁷⁹ See ComEd Motion to Dismiss.

are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁸⁰ Additionally, 83 Ill. Admin. Code § 315.30 broadly covers all attachments. Finally, the text of the current regulations do not define the ICC’s “authority.” The ICC would, of course, always “have the authority to regulate.”

Crown Castle 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. The ICC adopted the position set forth in the letter at an open meeting on October 25, 2018.*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁸¹ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 18 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁸² Notwithstanding the foregoing, ComEd states that the letter and ICC hearing transcript speak for themselves.

Crown Castle 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.*

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁸³ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 19

⁸⁰ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁸¹ See ComEd Motion to Dismiss.

⁸² *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁸³ See ComEd Motion to Dismiss.

are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁸⁴

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

ComEd Answer: ComEd filed a Motion to Dismiss in this proceeding that addresses these allegations⁸⁵ and ComEd incorporates its Motion to Dismiss by reference in this Answer. To the extent a response is otherwise required, the allegations of Paragraph 20 are denied. The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and the rules provide that “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State. The FCC recognized the ICC’s certification, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s certification list states: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”⁸⁶

D. BACKGROUND AND FACTS

As explained in ComEd’s answers to Paragraphs 21-26 below, Crown Castle does not need ComEd’s poles to deploy its services. And ComEd does not believe it has a written pole attachment agreement with Crown Castle because ComEd is unaware of any valid written notification of assignment of the pole attachment agreements with NextG, Sunesys, and Lighttower to Crown Castle or to any of the named and unnamed intermediate entities who may or may not form the links between the entities entering into these agreements and Crown Castle.

Crown Castle 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.*

⁸⁴ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

⁸⁵ See ComEd Motion to Dismiss.

⁸⁶ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

ComEd Answer: ComEd denies the allegations in this paragraph. Crown Castle has other options to deploy its services, including installing its facilities underground, uses the streetlights and other facilities owned by the City of Chicago and other municipalities located in ComEd's service territory.⁸⁷ For the reasons stated in its Affirmative Defenses, ComEd also denies that Crown Castle is providing any telecommunications services.

Crown Castle 22: *On December 22, 2004, Crown Castle (at the time operating under the name NextGNetworks 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.*

ComEd Answer: As explained in the Affirmative Defenses in the Answer, ComEd does not believe it has a written pole attachment agreement with Crown Castle because ComEd is unaware of any valid written notification of assignment of the pole attachment agreements with NextG, Sunesys, and Lightower to Crown Castle or to any of the named and unnamed intermediate entities who may or may not form the links between the entities entering into these agreements and Crown Castle.⁸⁸

Crown Castle 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.*

ComEd Answer: As explained in the Affirmative Defenses in the Answer, ComEd does not believe it has a written pole attachment agreement with Crown Castle because ComEd is unaware of any valid written notification of assignment of the pole attachment agreements with NextG, Sunesys, and Lightower to Crown Castle or to any of the named and unnamed intermediate entities who may or may not form the links between the entities entering into these agreements and Crown Castle.⁸⁹

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

ComEd Answer: As explained in the Affirmative Defenses in the Answer, ComEd does not believe it has a written pole attachment agreement with Crown Castle because ComEd is unaware of any valid written notification of assignment of the pole attachment agreements with NextG, Sunesys, and Lightower to Crown Castle or to any of the named and unnamed intermediate entities who may or may not form the links between the

⁸⁷ Declaration of Sarah S. Herrera at ¶8, attached hereto at Attachment H.

⁸⁸ *Supra* at I.D. ¶¶28-33.

⁸⁹ *Id.*

entities entering into these agreements and Crown Castle.⁹⁰

Crown Castle 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.*

ComEd Answer: ComEd admits that Crown Cast has installed and continues to install fiber and small cell facilities on ComEd poles in the Chicago area. ComEd denies that Crown Castle made those installations and continues to make them pursuant to the three agreements described above because Crown Castle and its predecessors in interest have not provided ComEd proper notice of any assignments of these agreements, as explained above.⁹¹

Crown Castle 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. To deploy the fiber optic lines for these projects, Crown Castle requires attachment to more than [REDACTED] ComEd poles. In addition, Crown Castle requires attachment to more than [REDACTED] ComEd poles in support of its deployment of wireless facility nodes for these projects.*

ComEd Answer: ComEd denies the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

1. Pole Attachment Rates

As explained in ComEd's answers to Paragraphs 27-28 below, Crown Castle's attachments to ComEd's poles are not subject to FCC regulation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation. As for wireline attachment rates, Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

Crown Castle's calculation of ComEd's pole attachment rates do not accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation.

Crown Castle 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.*

⁹⁰ *Id.*

⁹¹ *Id.*

ComEd Answer: ComEd denies the allegations in this paragraph. As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject to FCC regulation.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

As for the rates ComEd charges for wireline attachments, ComEd denies that any rate it charged in excess of the proper FCC formula violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 28.

a) Calculation of the Maximum Lawful Pole Attachment Rate

As explained in ComEd's answers to Paragraphs 29-42 below, Crown Castle's attachments to ComEd's poles are not subject to FCC regulation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation. As for wireline attachment rates, Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

Crown Castle's calculation of ComEd's pole attachment rates do not accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation.

The FERC accounts which are used to reflect accumulated deferred income taxes in the FCC's pole attachment rate formula are not Accounts 282, 283, 190 and 411. Instead, they are Accounts 190, 281, 282 and 283. The formula does not specify that other FERC accounts should

be used in the formula to calculate accumulated deferred income taxes. Account 254 is not captured in the FCC formula, nor should it be. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle regarding the Tax Cuts and Jobs Act is irrelevant to the FCC rental rate calculation. In any event, ComEd properly applied income tax accounting guidelines regarding the treatment of the Tax Cuts and Jobs Act.

Crown Castle 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.*

ComEd Answer: For the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle's attachments to ComEd's poles are subject to FCC regulation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation. As for wireline attachment rates, Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation.

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

ComEd Answer: For the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle's attachments to ComEd's poles are subject to FCC regulation. Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation. As for wireline attachment rates, Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

Crown Castle's wireless attachments are unregulated and are therefore subject to negotiated rates, not rates generated by Crown Castle's calculation.

Crown Castle 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.

ComEd Answer: ComEd admits that Crown Castle requested that ComEd provide its total pole count associated with its FERC Form 1 and its rates of return. ComEd denies that Crown Castle requested this information for “relevant periods” and the correspondence attached to Crown Castle’s Complaint at CCF237-239 does not support such a request. For the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle’s attachments to ComEd’s poles are subject to any regulated rental rate.

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

ComEd Answer: ComEd admits ComEd provided a pole count equivalent of 1,098,478 on that date. ComEd denies it did not provide a rate of return, since CCF237 shows that ComEd provided Crown Castle a link to a site where the rate of return information can be obtained.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 33 of the Complaint.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 34 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

Crown Castle 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.*

ComEd Answer: To the extent a response is required, ComEd denies the allegations for lack of knowledge or information sufficient to form a belief as to its truth.

Crown Castle 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. § 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.*

ComEd Answer: To the extent a response is required, ComEd admits the allegations in Paragraph 36 of the Complaint.

Crown Castle 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, 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.

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

ComEd Answer: ComEd admits that Crown Castle calculated these amounts. ComEd denies that Crown Castle’s calculation of ComEd’s pole attachment rates accurately reflect rates generated consistent with the FCC’s formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

Crown Castle 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”), which lowered the corporate tax rate by 40% (from 35% to 21%). 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), thereby reducing accumulated deferred taxes subtracted from investment, increasing net per pole investment, and increasing pole attachment rates.

ComEd Answer: ComEd denies that the FERC accounts which are used to reflect accumulated deferred income taxes in the FCC’s pole attachment rate formula are Accounts 282, 283, 190 and 411. Instead, they are Accounts 190, 281, 282 and 283.⁹²

ComEd admits that Account 254 is not captured in the FCC formula.

ComEd admits that any reduction in accumulated deferred income taxes has the effect of raising the net cost of a bare pole, which has the effect of increasing the pole attachment

⁹² See *In the Matter of Amendment of Commission’s Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12176, App. E-2 (2001). “Net Pole Investment = Gross Pole Investment (Account 364) – Accumulated Depreciation (Account 108) (Poles) – Accumulated Deferred Income Taxes (Account 190, 281-283) (Poles).” *Id.*

rental rate, but such reduction also has the effect of lowering the administrative, maintenance, depreciation and taxes carrying charges, and thus the overall carrying charges, which has the effect of lowering the rental rate. The net effect of the reduction in accumulated deferred income taxes is an increase in the rental rate.⁹³

ComEd denies that the Tax Cuts and Jobs Act of 2017 (“TCJA”) had the effect of transferring deferred taxes from 190, 281, 282 and 283 to Account 254.

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act of 2017 (TCJA) into law. The TCJA makes significant changes to the Internal Revenue Code, including, but not limited to, reducing the U.S. federal corporate tax rate from 35% to 21%.⁹⁴ When corporate income tax rates are changed, such as through TCJA, the financial accounting rules required utilities to re-measure the Accumulated Deferred Income Taxes (“ADIT”) balance to account for the new rate at which the ADIT amounts will reverse and become due in the future. Excess deferred income taxes (“EDIT”) for public utilities were created when the corporate rate reduction was implemented. EDIT represent the difference between the deferred income taxes at the old and new statutory tax rate.⁹⁵

Pursuant to the enactment of the TCJA, ComEd re-measured its existing deferred income tax balances as of December 31, 2017 to reflect the decrease in the federal corporate income tax rate from 35% to 21%. ComEd recorded a corresponding net regulatory liability (Account 254) to the extent such EDIT amounts are expected to pass through in customer rates and an adjustment to income tax expense for all other amounts.⁹⁶

ComEd properly applied income tax accounting guidelines regarding the treatment of the Tax Cuts and Jobs Act.⁹⁷ As the Federal Energy Regulatory Commission explains:

In Docket No. AI93-5-000, the Chief Accountant issued accounting guidance on the proper accounting for income taxes. Among other matters, the accounting guidance directed public utilities and natural gas companies to adjust their deferred tax liabilities and assets for the effect of the change in tax laws or rates in the period that the change is enacted. The guidance stated that adjustments should be recorded in the appropriate deferred tax balance sheet accounts (Accounts 190, 281, 282, and 283) based on the nature of the temporary difference and the related classification requirements of the accounts. Further, if as a result of action by a regulator, it is probably that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an

⁹³ Declaration of John L. Leick at ¶5, attached hereto at Attachment F (hereinafter “Leick Declaration”).

⁹⁴ Declaration of Jonathan R. Lyman at ¶3, attached hereto at Attachment G (hereinafter “Lyman Declaration”).

⁹⁵ Lyman Declaration at ¶4.

⁹⁶ *Id.* at ¶5.

⁹⁷ *Id.* at ¶6.

asset or liability should be recognized in Account 182.3 (Other Regulatory Assets), or Account 254 (Other Regulatory Liabilities), as appropriate, for the probable future revenue or reduction in future revenue.⁹⁸

Crown Castle 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. 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.

ComEd Answer: ComEd admits the allegations in Paragraph 39 of the Complaint.

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

- 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.
- 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.

ComEd Answer: ComEd admits that the dollar amounts and percentages reported in Paragraph 40 are accurate. ComEd denies that FERC Account 411 information is relevant to the pole attachment rental rate calculation.

Crown Castle 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

⁹⁸ Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset, 165 FERC ¶61,115, 2018 FERC LEXIS 1620, 2018 WL 6015912, at ¶9 (Nov. 15, 2018).

that it would be inappropriate to remove the excess ADIT for purposes of the pole attachment rate 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.” 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. 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.”

ComEd Answer: The cited documents speak for themselves. ComEd notes, however, that these documents do not have the effect of modifying the Commission’s pole attachment regulations.

Crown Castle 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 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.*

ComEd Answer: ComEd admits that changes to accumulated deferred income tax figures affect the FCC’s pole attachment rental rate calculation. ComEd notes, however, that the FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1,⁹⁹ and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

b) ComEd Wireline Rates

As explained in ComEd’s answers to Paragraph 43 below, ComEd denies that Crown Castle’s wireline attachments to ComEd’s poles are subject to FCC regulation. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

⁹⁹ See *In the Matter of Amendment of Commission’s Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12176, App. E-2 (2001). “Net Pole Investment = Gross Pole Investment (Account 364) – Accumulated Depreciation (Account 108) (Poles) – Accumulated Deferred Income Taxes (Account 190, 281-283) (Poles).”

ComEd's rates were not in excess of the proper FCC formula, and ComEd denies that it violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

Crown Castle 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*

ComEd Answer: ComEd denies that this is the range of rates ComEd has been charging Crown Castle for fiber attachments. CCF219, for example, shows a rate of \$7.43.

In addition, for the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle's wireline attachments to ComEd's poles are subject to FCC regulation. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

ComEd denies that any rate it charged in excess of the proper FCC formula violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

(a) Crown Castle Payment History

As explained in ComEd's answers to Paragraphs 44-47 below, ComEd denies that Crown Castle's wireline attachments to ComEd's poles are subject to FCC regulation. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities.

ComEd's rates were not in excess of the proper FCC formula and ComEd denies that it violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

The FCC formula rate should not be reduced due to the “EDIT issue.” The FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1, and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

Crown Castle 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.”*

ComEd Answer: ComEd admits the allegations in Paragraph 44 of the Complaint. ComEd notes, however, that the same language does not appear in the Sunesys and Lighttower agreements, which contain no reference to the FCC rate formula.

ComEd denies that any rate it charged in excess of the proper FCC formula violated 47 U.S.C. § 224 or the Commission’s Rules. As explained in ComEd’s Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

Crown Castle 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.*

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	██████	██████	██████	██████	██████████

██████████

ComEd Answer: ComEd admits the allegations in Paragraph 45 of the Complaint.

Crown Castle 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:

	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

ComEd Answer: For the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle's attachments to ComEd's poles are subject to FCC regulation and that ComEd has violated federal law. ComEd admits that the rates in the left hand column are those ComEd charged under the agreement, but ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates in the right hand column accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

Crown Castle 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.*

ComEd Answer: ComEd denies that the FCC formula rate should be reduced due to the "EDIT issue." The FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1,¹⁰⁰ and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

¹⁰⁰ See *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12176, App. E-2 (2001). "Net Pole Investment = Gross Pole Investment (Account 364) – Accumulated Depreciation (Account 108) (Poles) – Accumulated Deferred Income Taxes (Account 190, 281-283) (Poles)."

(b) Sunesys Payment History

As explained in ComEd's answers to Paragraphs 48-52 below, Crown Castle's attachments to ComEd's poles are not subject to FCC regulation.

ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

The FCC formula rate should not be reduced due to the "EDIT issue." The FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1, and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

ComEd has not been charging excessive rates for any of its poles, whether solely-owned or not. The Sunesys Agreement does not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under this agreement. ComEd denies that pole equivalents factor into the rate because the Sunesys Agreement specifies the rates to be charged. ComEd denies the allegations regarding Crown Castle's payments to AT&T for lack of knowledge or information sufficient to form a belief as to their truth.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 48 of the Complaint.

Crown Castle 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.*

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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	██████	██████	██████	██████	██████

██████████

ComEd Answer: ComEd admits the allegations in Paragraph 49 of the Complaint.

Crown Castle 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:*

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

ComEd Answer: For the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle’s attachments to ComEd’s poles are subject to FCC regulation and that ComEd has violated federal law. ComEd admits that the rates in the left hand column are those ComEd charged under the agreement, but ComEd denies that Crown Castle’s calculation of ComEd’s pole attachment rates in the right hand column accurately reflect rates generated consistent with the FCC’s formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

Crown Castle 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.*

ComEd Answer: ComEd denies that the FCC formula rate, even if it applied, should be reduced due to the “EDIT issue.” The FCC formula requires use of Accounts 190, 281,

282 and 283 as reported in FERC Form 1,¹⁰¹ and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

Crown Castle 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. 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.*

ComEd Answer: ComEd denies that ComEd has been charging excessive rates for any of its poles, whether solely-owned or not. The Sunesys Agreement does not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under this agreement. ComEd denies that pole equivalents factor into the rate because the Sunesys Agreement specifies the rates to be charged (see Complaint ¶48). ComEd denies the allegations regarding Crown Castle's payments to AT&T for lack of knowledge or information sufficient to form a belief as to their truth.

(c) Lighttower Payment History

As explained in ComEd's answers to Paragraphs 53-57 below, Crown Castle's attachments to ComEd's poles are not subject to FCC regulation.

ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

The FCC formula rate should not be reduced due to the "EDIT issue." The FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1, and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

ComEd has not been charging excessive rates for any of its poles, whether solely-owned or not. The Lighttower Agreement does not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under this agreement. ComEd denies that pole equivalents factor into the rate because the

¹⁰¹ See *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12176, App. E-2 (2001). "Net Pole Investment = Gross Pole Investment (Account 364) – Accumulated Depreciation (Account 108) (Poles) – Accumulated Deferred Income Taxes (Account 190, 281-283) (Poles)."

Lighttower Agreement specifies the rates to be charged. ComEd denies the allegations regarding Crown Castle's payments to AT&T for lack of knowledge or information sufficient to form a belief as to their truth.

Crown Castle 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.

ComEd Answer: ComEd admits the allegations in Paragraph 53 of the Complaint.

Crown Castle 54: Between 2016 and 2018, 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.

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

[REDACTED]

ComEd Answer: ComEd admits the allegations in Paragraph 54 of the Complaint.

Crown Castle 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:

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

ComEd Answer: For the reasons explained in its Affirmative Defenses, ComEd denies that Crown Castle's attachments to ComEd's poles are subject to FCC regulation and that ComEd has violated federal law. ComEd admits that the rates in the left hand column are those ComEd charged under the agreement, but ComEd denies that Crown Castle's calculation of ComEd's pole attachment rates in the right hand column accurately reflect rates generated consistent with the FCC's formula. Instead, ComEd believes the calculations attached hereto at Attachment F, Exhibit 2 reflect the proper calculation.

Crown Castle 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.*

ComEd Answer: ComEd denies that the FCC formula rate, even if it applied, should be reduced due to the "EDIT issue." The FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1, and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the information sought by Crown Castle is therefore irrelevant to the FCC rental rate calculation.

Crown Castle 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.*

ComEd Answer: ComEd denies that ComEd has been charging excessive rates for any of its poles, whether solely-owned or not. The Lighttower Agreement does not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under this agreement. ComEd denies that pole equivalents factor into the rate because the Lighttower Agreement specifies the rates to be charged.¹⁰² ComEd denies the allegations regarding Crown Castle's payments to AT&T for lack of knowledge or information sufficient to form a belief as to their truth.

c) ComEd Wireless Pole Attachment Rates

As explained in ComEd's answers to Paragraphs 58-70 below, the wireless attachments installed by Crown Castle are unregulated. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide "RF transport service" as a telecommunication service. Crown Castle does not offer wireless telecommunications and does not provide any telecommunications services using the antennas it is installing. Crown Castle attaches equipment that is wireless in nature, but Crown Castle itself is not operating that equipment at all, much less as a telecommunications carrier. In fact, without

¹⁰² See Crown Castle Pole Attachment Complaint at ¶53.

a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

Crown Castle offers no proof that the wireless equipment that they have installed is consistent with the specifications that they cite. The specifications that they actually do cite in every instance include far more equipment and pole usage than the total amount of feet that they claim are installed. Crown Castle moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. The agreement that Crown Castle refers to as the Crown Castle Pole Attachment Agreement does not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under this agreement. ComEd denies that pole equivalents factor into the rate because the Crown Castle Agreement specifies the rates to be charged. ComEd denies the allegations regarding Crown Castle's payments to AT&T for lack of knowledge or information sufficient to form a belief as to their truth.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 58 of the Complaint, except that the agreement the Complaint refers to as the "Crown Castle Pole Attachment Agreement" is more properly referred to as the "NextG Networks of Illinois, Inc. Pole Attachment Agreement."

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

ComEd Answer: ComEd admits the allegations in Paragraph 59 of the Complaint, except that the agreement the Complaint refers to as the "Crown Castle Pole Attachment Agreement" is more properly referred to as the "NextG Networks of Illinois, Inc. Pole Attachment Agreement."

Crown Castle 60: *Since 2010, ComEd has increased the pole attachment rate annually by 2.5%. 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:*

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Year	ComEd Wireless Rate Rate ⁵²
2013	
2014	
2015	
2016	
2017	
2018	

ComEd Answer: ComEd admits the allegations in Paragraph 60 of the Complaint.

Crown Castle 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:

Year	Node Rate Sole & Joint Rates	# of Attach Sole	# of Attach Joint	Paid Amount (Pre-Tax)
2013				
2014				
2015				
2016				
2017				
2018				

ComEd Answer: ComEd admits the allegations in Paragraph 61 of the Complaint.

Crown Castle 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.

ComEd Answer: ComEd denies the allegations in Paragraph 62 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Plus, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 5.28 feet claimed in Paragraph 62. CCF143 includes a drawing with a 24" tall antenna at the top of the pole, a "pole extension

mount” of unspecified height, a pole top extension of unspecified length, a U-Guard of unspecified length, although it appears to span from the top of the pole all the way down to the communications space on the pole, which could be 15 feet in length, a “small cell site solution shroud with bolts” that is 37.4” in height, a radio that is 20” in height, a “load center part” that is 12.65” in height, “fiber interconnect terminals” that are 18” in height, and an 8-foot long copper clad steel rod buried underground. These facilities Crown Castle claims to be attached to ComEd’s poles occupy far more than 5.28 feet of space, for a total of approximately 35 feet. Crown moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 63 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Plus, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 3.48 feet claimed in Paragraph 63. The drawing at CCF124 depicts the following attached equipment: an antenna 48” in height, a pole top extension of 40”, several “RRUS” facilities between 17”-20” in height, a 3” “hybrid coupler”, a 13” power supply, a 10” disconnect box, a 12” outdoor telco box, power cables of undisclosed length, fiber cables of undisclosed length, u-guards of undisclosed length, ground rods of undisclosed lengths, a “flexi zone radio” 10” in height, and an antenna kit 24” in height. This equipment adds up to far more than 3.48 feet. Crown moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 64 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Similar to the mistaken allegations in paragraphs 62 and 63, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 2.17 feet claimed in Paragraph 64. Crown moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 65 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Similar to the mistaken allegations in paragraphs 62 and 63, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 3.12 feet claimed in Paragraph 65. Crown moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 66 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Similar to the mistaken allegations in paragraphs 62 and 63, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 1.17 feet claimed in Paragraph 66. Crown moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 67 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Similar to the mistaken allegations in paragraphs 62 and 63, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 2 feet claimed in Paragraph 67. Crown moreover does not factor in all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in Paragraph 68 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. Crown Castle offers no proof that what they have installed is consistent with the specifications that they cite. Similar to the mistaken allegations in paragraphs 62 and 63, the specifications that they actually do cite appear to include far more equipment and pole usage than the total 5.2 feet claimed in Paragraph 68. Crown moreover does not factor in

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all of the space required to maintain safe clearances between its equipment and other energized and non-energized equipment on the pole.

Crown Castle 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 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 Rate	FCC Wireless Rate	
			Solely Owned	Jointly Owned 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

ComEd Answer: ComEd denies the allegations in this paragraph. As explained in ComEd’s Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide “RF transport service” as a telecommunication service. Crown Castle does not offer wireless telecommunications and does not provide any telecommunications services using the antennas it is installing. Crown Castle attaches equipment that is wireless in nature, but Crown Castle itself is not operating that equipment at all, much less as a telecommunications carrier. In fact, without a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

ComEd denies that Crown Castle occupies on average only six feet of space on ComEd’s poles. As explained in ComEd’s responses to Complaint Paragraphs 62-68 above, Crown Castle occupies far more than six feet.

ComEd admits that the rates in the left hand column are those ComEd charged to Crown Castle, but ComEd denies that Crown Castle’s calculation of ComEd’s per foot pole attachment rates in the right hand column accurately reflect rates generated consistent with the FCC’s formula. Instead, ComEd believes the calculations attached hereto at

Attachment F, Exhibit 2 reflect the proper calculation.

Crown Castle 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.*

ComEd Answer: ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd therefore denies that ComEd has been charging excessive rates for any of its poles, whether solely-owned or not. The agreement that Crown Castle refers to as the Crown Castle Pole Attachment Agreement does not differentiate between rates for solely-owned poles and rates for jointly-owned poles, and so there was no reason for ComEd to charge different rates under this agreement. ComEd denies that pole equivalents factor into the rate because the Crown Castle Agreement specifies the rates to be charged (see Complaint ¶¶58-59). ComEd denies the allegations regarding Crown Castle's payments to AT&T for lack of knowledge or information sufficient to form a belief as to their truth.

d) Refund Calculation

As explained in ComEd's answers to Paragraphs 71-72 below, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject the FCC regulation.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

Crown Castle is not entitled to any refund. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction. Refunds under these circumstances are not appropriate.

Crown Castle 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.*

ComEd Answer: As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject the FCC regulation.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate.

ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

ComEd denies that any rate it charged entitles Crown Castle to any refund. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction. Refunds under these circumstances are not appropriate.

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

Agreement	Attachment Type	Refund Amount
Crown Castle	Wireless	██████████
Crown Castle	Fiber	██████████
Sunesys	Fiber	██████████
Lightower	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).

ComEd Answer: ComEd denies the allegations in this paragraph. As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject to the FCC regulation because of the lack of a tariff and a fully applicable certification. For these reasons, ComEd denies that it owes Crown Castle any refunds at all.

As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction. Refunds under these circumstances are not

appropriate.

E. DISCUSSION

1. ComEd's Wireless and Wireline Attachment Rates are Lawful, Just, and Reasonable Terms and Conditions of Attachment

As explained in ComEd's answers to Paragraphs 73-81 below, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject the FCC regulation. Crown Castle is not using its attachments on ComEd's poles to provide any telecommunications services, such that its attachments would be subject to FCC regulation. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide "RF transport service" as a telecommunication service. Crown Castle does not offer wireless telecommunications and does not provide any telecommunications services using the antennas it is installing. Crown Castle attaches equipment that is wireless in nature, but Crown Castle itself is not operating that equipment at all, much less as a telecommunications carrier. In fact, without a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

ComEd's rates do not exceed the proper FCC formula and ComEd denies that it violated 47 U.S.C. § 224 or the Commission's Rules. The July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

The 2011 Order granted wireless attachments by wireless carriers' rights to the telecom rate formula, not wireless attachments by entities like Crown Castle that are not wireless carriers.

The use of dollar amounts from FERC accounts other than those specified by the Commission are disfavored. While there might or might not be limited exceptions, the change Crown Castle proposes is not a simple request to change one electric utility's accounts. This is a

request to change the intent of the TCJA to favor Crown Castle, which would have an effect on every electric utility and ILEC in the country that is subject to FCC regulations. FCC rules currently require utilities to calculate ADIT using Accounts 190, 281, 282 and 283. If Crown Castle wants to change those rules nationwide to revise the calculation, it can request that the Commission open up a rulemaking proceeding so that the entire public can weigh in on why this Crown Castle proposal should not be adopted.

ComEd properly applied income tax accounting guidelines regarding the treatment of the Tax Cuts and Jobs Act.

Crown Castle is not entitled to any refund. The July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction. Refunds under these circumstances are not appropriate.

Crown Castle 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.

ComEd Answer: As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject the FCC regulation. ComEd denies that Crown Castle is using its attachments on ComEd's poles to provide any telecommunications services, such that its attachments would be subject to FCC regulation. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide "RF transport service" as a telecommunication service. Crown Castle does not offer wireless telecommunications and does not provide any telecommunications services using the antennas it is installing. Crown Castle attaches equipment that is wireless in nature, but Crown Castle itself is not operating that equipment at all, much less as a telecommunications carrier. In fact, without a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

ComEd denies that any rate it charged in excess of the proper FCC formula violated 47 U.S.C. § 224 or the Commission's Rules. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction.

Crown Castle 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 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. The mere fact that the equipment involved uses wireless technology is irrelevant under Section 224.*

ComEd Answer: Paragraph 74 contains legal conclusions to which no response is required. In addition, for the reasons stated in ComEd's Affirmative Defenses, ComEd denies that Crown Castle has rights under Section 224 or the Commission's Rules.

Crown Castle 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. 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."*

ComEd Answer: Paragraph 74 contains legal conclusions to which no response is required. In addition, for the reasons stated in ComEd's Affirmative Defenses, ComEd denies that Crown Castle has rights under Section 224 or the Commission's Rules.

The 2011 Order granted wireless attachments by wireless carriers rights to the telecom rate formula, not wireless attachments by entities like Crown Castle that are not wireless carriers. In the first sentence of the paragraph cited by the Complaint, the Commission states: "We also affirm that wireless carriers are entitled to the benefits and protection of section 224, including the right to the telecom rate under section 224(e)."¹⁰³ As explained in ComEd's Affirmative Defenses, Crown Castle appears not to be providing any telecommunications services at all, and by its own admission is not a wireless carrier. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide telecommunication services and the Certificate it produced does

¹⁰³ Implementation of Section 224 of the Act, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 ¶ 153 (Apr. 7, 2011).

not cover all Crown Castle entities. Crown Castle has not provided evidence in its Complaint of a tariff on file in Illinois authorizing it to provide “RF transport service” as a telecommunication service. Crown Castle does not offer wireless telecommunications and does not provide any telecommunications services using the antennas it is installing. Crown Castle attaches equipment that is wireless in nature, but Crown Castle itself is not operating that equipment at all, much less as a telecommunications carrier. In fact, without a proper tariff or certification, and without proof that it is not offering service on a private, as opposed to common carriage, basis, all of the antennas and other equipment Crown Castle attaches to ComEd poles – whether wireless or wireline – are not done by a telecommunications carrier.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in this paragraph. For the reasons stated in ComEd’s Affirmative Defenses, ComEd denies that Crown Castle’s wireless attachments are subject to the Commission’s Rules.

Crown Castle 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.*

ComEd Answer: ComEd denies the allegations in this paragraph. For the reasons stated in ComEd’s Affirmative Defenses, ComEd denies that Crown Castle’s wireline attachments are subject to the Commission’s Rules.

ComEd denies that this is the range of rates ComEd has been charging Crown Castle for wireline attachments. CCF219, for example, shows a rate of \$7.43.

Crown Castle 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.*

ComEd Answer: ComEd denies that the Tax Cuts and Jobs Act of 2017 (“TCJA”) had the effect of transferring deferred taxes from 190, 281, 282 and 283 to Account 254.

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act of 2017 (TCJA) into law. The TCJA makes significant changes to the Internal Revenue Code, including, but not limited to, reducing the U.S. federal corporate tax rate from 35% to 21%.¹⁰⁴ When corporate income tax rates are changed, such as through TCJA, the financial accounting rules required utilities to re-measure the Accumulated Deferred

¹⁰⁴ Lyman Declaration at ¶3.

Income Taxes (“ADIT”) balance to account for the new rate at which the ADIT amounts will reverse and become due in the future. Excess deferred income taxes (“EDIT”) for public utilities were created when the corporate rate reduction was implemented. EDIT represent the difference between the deferred income taxes at the old and new statutory tax rate.¹⁰⁵

Pursuant to the enactment of the TCJA, ComEd re-measured its existing deferred income tax balances as of December 31, 2017 to reflect the decrease in the federal corporate income tax rate from 35% to 21%. ComEd recorded a corresponding net regulatory liability (Account 254) to the extent such EDIT amounts are expected to pass through in customer rates and an adjustment to income tax expense for all other amounts.¹⁰⁶

ComEd properly applied income tax accounting guidelines regarding the treatment of the Tax Cuts and Jobs Act.¹⁰⁷ As the Federal Energy Regulatory Commission explains:

In Docket No. AI93-5-000, the Chief Accountant issued accounting guidance on the proper accounting for income taxes. Among other matters, the accounting guidance directed public utilities and natural gas companies to adjust their deferred tax liabilities and assets for the effect of the change in tax laws or rates in the period that the change is enacted. The guidance stated that adjustments should be recorded in the appropriate deferred tax balance sheet accounts (Accounts 190, 281, 282, and 283) based on the nature of the temporary difference and the related classification requirements of the accounts. Further, if as a result of action by a regulator, it is probably that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability should be recognized in Account 182.3 (Other Regulatory Assets), or Account 254 (Other Regulatory Liabilities), as appropriate, for the probable future revenue or reduction in future revenue.¹⁰⁸

The FCC formula requires use of Accounts 190, 281, 282 and 283 as reported in FERC Form 1,¹⁰⁹ and that those figures speak for themselves. The formula does not specify that other FERC accounts should be used in the formula to calculate accumulated deferred income taxes. Unless and until the FCC establishes a rulemaking proceeding to change the formula, the formula does not require what Crown Castle proposes.

¹⁰⁵ *Id.* at ¶4.

¹⁰⁶ *Id.* at ¶5.

¹⁰⁷ *Id.* at ¶6.

¹⁰⁸ *Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset*, 165 FERC ¶61,115, 2018 FERC LEXIS 1620, 2018 WL 6015912, at ¶9 (Nov. 15, 2018).

¹⁰⁹ *See In the Matter of Amendment of Commission’s Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12176, App. E-2 (2001). “Net Pole Investment = Gross Pole Investment (Account 364) – Accumulated Depreciation (Account 108) (Poles) – Accumulated Deferred Income Taxes (Account 190, 281-283) (Poles).”

Crown Castle 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. 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.*

ComEd Answer: ComEd denies it is receiving any “windfall.”

ComEd admits that any reduction in accumulated deferred income taxes has the effect of raising the net cost of a bare pole, which has the effect of increasing the pole attachment rental rate, but such a reduction also has the effect of lowering the administrative, maintenance, depreciation and taxes carrying charges, and thus the overall carrying charges, which has the effect of lowering the rental rate. The net effect of the reduction in accumulated deferred income taxes is an increase in the rental rate.¹¹⁰

Crown Castle 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.*

ComEd Answer: ComEd admits that the use of dollar amounts from FERC accounts other than those specified by the Commission are disfavored. While there might or might not be limited exceptions, the change Crown Castle proposes is not a simple request to change one electric utility's accounts. This is a request to change the intent of the TCJA to favor Crown Castle, which would have an effect on every electric utility and ILEC in the country that is subject to FCC regulations. ComEd therefore denies that any such proposed change would be “limited.” FCC rules currently require utilities to calculate ADIT using Accounts 190, 281, 282 and 283. If Crown Castle wants to change those rules nationwide to revise the calculation, it can request that the Commission open up a rulemaking proceeding so that the entire public can weigh in on why this Crown Castle proposal should not be adopted.

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

ComEd Answer: As explained in ComEd's Affirmative Defenses, the wireless attachments installed by Crown Castle are unregulated. In addition, a question exists whether Crown Castle's wireline attachments are subject the FCC regulation.

¹¹⁰ Leick Declaration at ¶5.

ComEd's wireless attachment rate is an appropriate, negotiated and unregulated rate. ComEd's wireline attachment rates were calculated by ComEd in good faith based on its good faith understanding of the FCC rate formula, because its December 22, 2004, pole attachment agreement with NextG Networks of Illinois, Inc., which the Complaint calls the "Crown Castle Pole Attachment Agreement," references the FCC formula. ComEd recently reviewed those calculations and revised them. Those original and revised calculations are attached hereto at Attachment F, Exhibit 1 and Exhibit 2, respectively.

ComEd denies that any rate it charged entitles Crown Castle to any refund. As explained in ComEd's Affirmative Defenses, the July 15 Bureau Order ruled that the FCC has jurisdiction over this Complaint, which has now caused ComEd to reexamine the applicability of FCC pole attachment rental rate regulation going forward. Prior to that time, ComEd (and indeed Crown Castle) operated consistent with ICC jurisdiction, recognizing the ICC had jurisdiction. Refunds under these circumstances are not appropriate.

F. ATTEMPTS TO RESOLVE ALL DISPUTES

As explained in ComEd's answers to Paragraphs 82-88 below, a number of meetings have taken place between the parties.

Crown Castle 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.

ComEd Answer: ComEd denies the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

Crown Castle 83: 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.

ComEd Answer: ComEd admits that a number of meetings have taken place between the parties.

Crown Castle 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.

ComEd Answer: ComEd admits that such a letter was sent. ComEd denies that it requested a "final" executive level negotiation. The letter was not received by ComEd

until November 7, 2018.¹¹¹ For the reasons explained above, ComEd denies that ComEd's pole attachment rates are unlawful.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 85 of the Complaint, except that the meeting took place on December 4, 2018.

Crown Castle 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.*

ComEd Answer: ComEd admits the allegations in Paragraph 86 of the Complaint.

Crown Castle 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).*

ComEd Answer: ComEd denies the allegations in this paragraph. Many meetings took place and ComEd does not know the exact number, but there were weekly meetings, Director-level meetings and two meetings between executives.

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

ComEd Answer: ComEd admits the parties have been unable to resolve their dispute. ComEd denies that its pole attachment rates are unlawful.

III. INFORMATION DESIGNATION

The following individuals are believed to have first-hand knowledge of the facts alleged in this Answer:

Joe Gilchrist
Manager, Real Estate & Facilities
Commonwealth Edison Company
2 Lincoln Centre
Oakbrook Terrace, IL 60181
630-576-6396

See attached Declaration for description of facts within such person's knowledge.

¹¹¹ See letter from Mark A. Falcone, Vice President of Support Services, Commonwealth Edison Company, to Brian Cabe, VP General Manager, Crown Castle Fiber LLC (Nov. 20, 2018), attached to Crown Castle Pole Attachment Complaint at Attachment B, Exhibit 11 (CCF000245-CCF000246).

PUBLIC VERSION

Jonathan R. Lyman
Tax Director
Exelon Corporation
10 S. Dearborn Street
Chicago, IL 60603
312-394-7688

See attached Declaration for description of facts within such person's knowledge

John L. Leick
Principal Rate Administrator
Commonwealth Edison Company
3 Lincoln Centre
Oakbrook Terrace, IL 60181
630-576-6750

See attached Declaration for description of facts within such person's knowledge.

Bradley R. Perkins
Assistant General Counsel, Regulatory
Exelon Corporation
10 S. Dearborn Street
Chicago, IL 60603
312-394-2632

Mr. Perkins has general knowledge of the facts within this Answer.

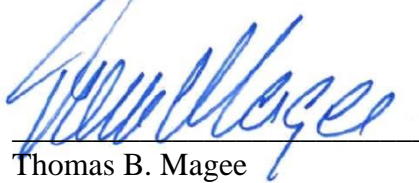
Martín Montes
Director, Regulatory Affairs
Commonwealth Edison Company
3 Lincoln Centre
Oakbrook Terrace, IL 60181
773-750-9028

See attached Declaration for description of facts within such person's knowledge.

IV. CONCLUSION

WHEREFORE, ComEd respectfully requests that the Commission deny Crown Castle's Complaint for the reasons stated herein.

Respectfully submitted,



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Attorneys for Commonwealth Edison Company

July 22, 2019

ATTACHMENT A



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Writer's Direct Access
Timothy A. Doughty
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June 28, 2019

Via ECFS

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

**Re: Commonwealth Edison Company's Motion to Dismiss for Lack of
Jurisdiction (Proceeding Number 19-169, 19-170; Bureau ID Number
EB-19-MD-004, EB-19-MD-005)**

Ms. Dortch:

Please find attached Commonwealth Edison Company's Motion to Dismiss for Lack of Jurisdiction in Proceeding Number 19-169, 19-170; Bureau ID Number EB-19-MD-004, EB-19-MD-005.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tim Doughty', is written over a faint, larger version of the same signature.

Timothy A. Doughty
Attorney for Commonwealth Edison Company

Enclosures

cc: Lisa Saks, Enforcement Bureau
Adam Suppes, Enforcement Bureau
Anthony DeLaurentis, Enforcement Bureau
Rosemary McEnery, Enforcement Bureau

PUBLIC VERSION

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

_____)	
)	
Crown Castle Fiber LLC,)	
<i>Complainant,</i>)	
	)	Proceeding Number 19-169
	)	19-170
v.	)	Bureau ID Number EB-19-MD-004
	)	EB-19-MD-005
Commonwealth Edison Company,)	
<i>Defendant</i>)	
_____)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

Pursuant to Section 1.729 of the Commission’s rules,¹ Commonwealth Edison Company (“ComEd”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) dismiss with prejudice the Pole Attachment Complaints (“Complaints”) filed on June 19, 2019, by Crown Castle Fiber LLC (“Crown Castle”) in the above-captioned proceedings.

The FCC currently recognizes the State of Illinois as a state that has certified that it regulates pole attachments, and “[s]uch certificate shall be conclusive proof of lack of jurisdiction of this Commission” over a pole attachment complaint. 47 C.F.R. § 1.1405(a). Crown Castle’s arguments that Illinois regulation is incomplete are therefore irrelevant. They are also wrong. This is therefore one of the “few circumstances justifying the filing of a separate motion to dismiss.”²

¹ 47 C.F.R. §1.729.

² *Rules Consolidation Order*, 33 FCC Rcd 7178, 7183, at ¶¶13 and 14.

A. FCC Rules “Conclusively” Divest Jurisdiction Where, As Here, a State Certifies Its Own Regulation of Pole Attachments

The federal Pole Attachment Act divides jurisdiction over pole attachments between the FCC and any State that certifies to regulate pole attachments and requires the FCC to defer to state regulation.³ All of the poles at issue in these proceedings are located in the State of Illinois, and the Illinois Commerce Commission (“ICC”) has properly certified that it regulates pole attachments in the State.

Following section 224(c), the Commission’s pole attachment regulations require dismissal of complaints in circumstances where a State regulates pole attachments:

§ 1.1405 Dismissal of pole attachment complaints for lack of jurisdiction.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to paragraph (b) of this section. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint alleging a denial of access shall be dismissed for lack of jurisdiction in any case where the defendant or a State offers proof that the State is regulating such access matters. Such proof should include a citation to state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of § 1.1402(a) of this subpart.

(b) It will be rebuttably presumed that the state is not regulating pole attachments if the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the consumers of the services offered via such attachments, as well as the interests of the consumers of the utility services; and

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific

³ 47 U.S.C. §§224(c)(1) (“(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation. Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.”).

methodology for such regulation which has been made publicly available in the state).⁴

Illinois has, in fact, filed a “suitable certificate” pursuant to rule 1.1405(b), and such certification constitutes “conclusive proof” that Illinois has jurisdiction. The State of Illinois originally certified its regulation of pole attachments on April 5, 1978.⁵ This certification stated:

The Illinois Commerce Commission of the State of Illinois does regulate rates, terms, and conditions for pole attachments to the poles, ducts, conduits, or right-of-ways owned or controlled by public utilities, as defined in the Illinois Public Utilities Act, and in so regulating such rates, terms, and conditions the State of Illinois through the Illinois Commerce Commission has the authority to consider and does consider the interests of the subscribers of cable television services in Illinois as well as the interests of consumers of utility services in Illinois.⁶

This is the precise language required by rule 1.1405(b)(1) and (2), except that Illinois is referencing “the interests of the subscribers of cable television services” rather than “the interests of the consumers of the services offered via such attachments.” This distinction is appropriate because at the time of Illinois’s certification, that was the precise language required.⁷

⁴ 47 C.F.R. § 1.1405.

⁵ *In the Matter of Public Utility Pole Attachments for Cable Television Services Pursuant to Amendment of the Communications Act of 1934, Set Forth in Section 224(c) Paragraphs (1) and (2)*, Illinois Commerce Commission, 78-R4 (Apr. 5, 1978) (available at <https://ecfsapi.fcc.gov/file/7020456679.pdf>), attached hereto at Exhibit A.

⁶ *Id.*

⁷ Prior to the passage of the *1996 Act*, the language of Section 224(c)(2) included a reference to State authority to consider the interests of the subscribers of cable television services. That language was revised by the *1996 Act* to reference State authority to consider the interests of the subscribers of the services offered via [pole attachments]. Section 224(c)(2) originally stated:

Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that –

- (A) it regulates such rates, terms, and conditions; and
- (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

The language was revised to the following:

Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that –

As for Section 1.1405(b)(3), Part 315 of Title 83 of the Illinois Administrative Code governs the rates, terms and conditions applicable to cable television company attachments to electric utilities and local exchange telecommunications carriers.⁸ By letter dated May 24, 1985, the Illinois Commerce Commission certified to the FCC as follows: “[T]he Illinois Commerce Commission has issued and made effective rules and regulations implementing this state’s regulatory authority over pole attachments. The attached rules, which include a specific methodology for such regulation, have been duly adopted by the Commission, filed with the Illinois Secretary of State, and made publicly available in Illinois.”⁹ This again is the precise language required by rule 1.1405(b)(3).

The Commission itself has recognized that the ICC’s certification was suitable, by including Illinois on the list of the 20 states and the District of Columbia that have certified to the FCC that they regulate pole attachments. The FCC’s list recognizes that Illinois is among the 20 states and D.C. which:

have certified that they regulate rates, terms, and conditions for pole attachments, and, in so regulating, have the authority to consider and do consider the interests of subscribers of cable television services, as well as the interests of the consumers of the utility services. Moreover, these states have certified that they have issued and made effective rules and regulations implementing their regulatory authority over pole attachments, including a specific methodology for such regulation which has been made publicly available in the state.¹⁰

-
- (A) it regulates such rates, terms, and conditions; and
 - (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

⁸ 83 Ill. Adm. Code 315.10, *et seq.*

⁹ See *WC Docket No. 10-101, States That Have Certified That They Regulate Pole Attachments*, State of Illinois, Illinois Commerce Commission, May 24, 1985 (available at <https://ecfsapi.fcc.gov/file/7020456531.pdf>), attached hereto at Exhibit B.

¹⁰ *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

Since Illinois has filed a “suitable certificate” pursuant to Section 1.1405(b), Section 1.1405 requires that certificate to be “conclusive proof” that this Commission lacks jurisdiction.¹¹ The FCC’s list of certificated states confirms this for the State of Illinois by stating: “Certification by a state preempts the Commission from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.”¹²

B. Arguments that Illinois Regulation Is Incomplete Are Irrelevant and Wrong

1. Crown Castle’s Regulation Arguments Should Be Ignored

Crown Castle’s arguments, identical in each of its complaints, that Illinois regulation is somehow incomplete are irrelevant under the FCC’s regulation, which treats a certification as “conclusive proof.”¹³

2. In All Events, Crown Castle’s Arguments Are Incorrect: Illinois Regulates All Pole Attachments

Crown Castle’s arguments concerning Illinois regulation are also incorrect, as the Illinois Public Utilities Act (“Illinois PUA”) and the applicable regulations easily cover these complaints. Crown Castle’s Complaints assert simply that “[t]he ICC’s pole attachment regulations do not apply to or make reference to attachments by telecommunications companies.”¹⁴ But the Illinois PUA does cover telecommunications carriers’ attachments to electric companies’ poles. That Act gives the ICC jurisdiction over any “lease ... of ... any part of ... its ... plant, equipment, ... or other property.”¹⁵ Thus, the state regulatory agency has

¹¹ 47 C.F.R. §1.1405(a).

¹² *States That Have Certified That They Regulate Pole Attachments*, Public Notice, DA No. 10-893, 25 FCC Rcd 5541 (2010).

¹³ 47 C.F.R. §1.1405(a).

¹⁴ See Pole Attachment Complaint for Denial of Access, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-169, Bureau ID Number EB-19-MD-004 (filed Jun. 19, 2019) at ¶17; Pole Attachment Complaint – Unlawful Rates, *Crown Castle Fiber LLC v. Commonwealth Edison Company*, Proceeding Number 19-170, Bureau ID Number EB-19-MD-005 (filed Jun. 19, 2019) at ¶16.

¹⁵ 220 ILCS 5/7-102(A)(c) (“(c) No public utility may [without ICC approval or exemption] assign, transfer, lease, mortgage, sell (by option or otherwise), or otherwise dispose of or encumber the whole or any part of its franchises,

statutory authority to review pole attachments – for they are leases of public utility property. And, although the ICC’s rules do, in general, reference cable television system attachments, some of those provisions are broad enough to cover other attachments. Thus, 83 Ill. Admin. Code 315.30 refers to *all* situations “[w]here consent and approval of the Commission to a pole attachment or conduit agreement is required by Section 7-102 of the Act”¹⁶ – and, as noted, section 7-102 creates ICC jurisdiction to all leases of public utility plant and equipment. Section 315.30 provides a mechanism through which any party complaining of a pole attachment agreement with an Illinois electric utility may bring the dispute to the ICC.¹⁷ Indeed, the federal definition of a “pole attachment” (as amended in 1996) covers “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”¹⁸ Section 315.30’s simple reference to “pole attachments” is therefore broad enough to cover telecommunications companies (as the Illinois PUA does). And section 315.30(b) refers to a specific rate calculation. While that rate calculation (in 315.20) refers to cable television rates, nothing in 315.30(b) makes it inapplicable to other pole attachments.

This interpretation of Illinois law best protects the Illinois PUA and it flows directly from Congress’s and the FCC’s history of protecting state jurisdiction during the entire history of the Pole Attachment Act. From 1978 to 1996, “pole attachment” was defined as any attachment by a cable television provider to a pole, duct, conduit, or right-of-way owned or controlled by a

licenses, permits, plant, equipment, business, or other property, but the consent and approval of the Commission shall not be required for the sale, lease, assignment or transfer (1) by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public, or (2) by any railroad of any real or tangible personal property.”).

¹⁶ 83 Ill. Admin. Code 315.30(a) & (b).

¹⁷ Due to an exemption in the Illinois PUA, the utility is not required to affirmatively file the leases for approval. 220 ILCS 5/7-102(E). But the regulations create a complaint procedure to invoke ICC jurisdiction.

¹⁸ 47 U.S.C. § 224(a)(4).

utility.¹⁹ With the passage of the *Telecommunications Act of 1996*, the Commission’s jurisdiction was broadened to include “access” to poles and to cover attachments not only by cable companies but also by telecommunications carriers.

When the *Telecommunications Act of 1996* was passed and the FCC’s jurisdiction expanded to cover “access” to poles and to cover attachments by telecommunications carriers, the statutory changes to Section 224 did not require the states to certify that they regulate “access” to poles or specifically that they regulate attachments by telecommunications carriers. And there was nothing in the *1996 Act* to require states that had certified previously that they regulate pole attachments to re-certify that they now regulate “access” to poles and that they now regulate attachments by telecommunications carriers. Nor was there any direction from the FCC to the states that they must re-certify. Accordingly, the ICC did not re-certify that it regulated pole attachments following passage of the *1996 Act*.

Neither did any other state.²⁰ While a handful of states (totaling only four) either re-certified, amended prior certifications, or filed to certify jurisdiction for the first time over pole attachments after the passage of the *1996 Act*, none of them re-certified after their initial certification specifically to address the expanded jurisdiction over attachments in the *1996 Act*. For example, the Massachusetts Department of Telecommunications and Cable updated its pole attachment certification in 2010 to share its pole attachment jurisdiction with the existing

¹⁹ *Id.* at (a)(4).

²⁰ On May 19, 2010, the FCC established Docket 10-101 to collect and maintain state pole attachments certifications and addenda. We checked all 264 entries in this docket and were unable to identify any that re-certified assertions of jurisdiction over pole attachments following the passage of the *1996 Act*. See *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 25 FCC Rcd 5541 (2010).

Massachusetts Department of Public Utilities, but did not mention anything about covering “access” to poles or attachments by telecommunications carriers.²¹

Both Arkansas²² and New Hampshire²³ filed to certify their jurisdiction over pole attachments after the passage of the *1996 Act*, but only certified that they adopted rules governing the rates, terms and conditions for pole attachments, consistent with the limited certification requirement in the statute.

Similarly, no re-certifications by any state appeared following the FCC’s decision in its April 2011 Pole Attachment Order that the Pole Attachment Act should be interpreted to give the FCC jurisdiction over attachments by incumbent local exchange carriers (ILECs) to electric utility poles.²⁴ The FCC’s newfound jurisdiction over these “joint use” agreements between ILEC and electric utility pole owners was at odds with the FCC’s previous understanding that it lacked such jurisdiction. Nevertheless, as with the *1996 Act*’s changes in jurisdiction, there was no direction given by the FCC to the states that they must re-certify that they have jurisdiction over such ILEC attachments, and no state submitted any such re-certification.

In short, Congress intended that Illinois’ certification that it regulates pole attachments has the effect of occupying the entire field of pole attachment regulation, so that the ICC has exclusive jurisdiction to regulate pole attachments, leaving no such regulation for the FCC. The fact that neither Congress nor the FCC required states to re-certify following the *1996 Act* and

²¹ See WC Docket No. 10-101, *States That Have Certified That They Regulate Pole Attachments*, Commonwealth of Massachusetts, Dept. of Telecommunications and Cable, Aug. 25, 2010 (available at <https://ecfsapi.fcc.gov/file/7020910618.pdf>).

²² See *Arkansas Certification of Regulations of the Rates, Terms and Conditions of Pole Attachments*, Arkansas Public Service Commission, Oct. 20, 2008 (available at <https://ecfsapi.fcc.gov/file/7020460248.pdf>).

²³ See *Certification of State-Law Regulations of Utility Pole Attachments Pursuant to 47 U.S.C. § 224(c) and 47 C.F.R. § 1.1414*, State of New Hampshire, Public Utilities Commission, Jan. 23, 2008 (available at <https://ecfsapi.fcc.gov/file/7020456133.pdf>).

²⁴ *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5328 at ¶ 203 (2011).

the 2011 Pole Attachment Order, and that no state actually did re-certify, supports this interpretation. Indeed, to accept Crown Castle’s argument here would create substantial uncertainty over what had been a previously well-settled line between state and federal jurisdiction over pole attachment complaints in many states.

For these same reasons, Crown Castle’s reliance on a procedurally unusual letter from the prior ICC Chair, Brian Sheahan, dated October 25, 2018, is misplaced. That letter states that the Illinois regulations do not specifically mention “telecommunications companies.” As a threshold matter, the letter does not withdraw Illinois’ prior certification. But, more importantly, as explained above, the Illinois PUA does give the ICC authority over all pole attachments, including those sought by telecommunications companies. And section 315.30 of the ICC’s rules reference all “pole attachments” covered by the Act, which again includes telecommunications companies. And, finally, 315.30 refers to a rate formula embedded in the rules. As a result, even as to telecommunications companies, Illinois regulation does meet all of the requirements of the Pole Attachment Act and FCC regulations for effective state regulation.

The Pole Attachment Act reflects Congress’s interest in allowing states regulatory priority in this field. As the FCC has recognized, “The legislative history [of section 224] states that ‘The FCC shall defer to any State regulatory program operating under color of State law, even if debate or litigation at the State level is in progress’”²⁵ Thus, in the event there is any doubt of the ICC’s jurisdiction (though there should not be), the FCC should dismiss this complaint. Crown Castle may initiate a complaint with the ICC, which may determine the issue

²⁵ *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 FCC 2d 1585, 1601 (1978) (quoting S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 17 (1977)), *aff’d*, *Monongahela Power v. FCC*, 655 F.2d 1254 (1981) (following subsequent administrative action).

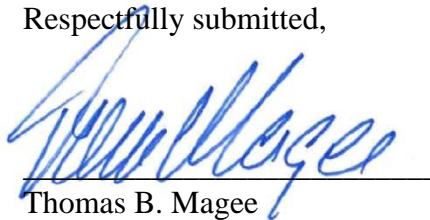
PUBLIC VERSION

definitively in a proper adjudicatory context. The federal law requires that the FCC allow the states to determine the matter in the first instance.

In sum, Crown Castle's Complaints should be dismissed for the reasons discussed above, because: (1) the ICC's certification was effectively made; (2) the FCC's list of certified states affirms that the FCC has no jurisdiction in Illinois; and (3) Section 1.1405 of the Commission's rules requires that Illinois's certification be "conclusive proof" the Commission lacks jurisdiction.

ComEd therefore respectfully requests that the Commission dismiss Crown Castle's Complaints.

Respectfully submitted,



Thomas B. Magee
Timothy A. Doughty
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
(202) 434-4100 (phone)
(202) 434-4646 (fax)
magee@khlaw.com
doughty@khlaw.com

Attorneys for Commonwealth Edison Company

June 28, 2019

EXHIBIT A



August 11, 1978

WC 10-101

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

Mr. J. M. Talens

Jim:

Attached for your information is a copy of an Illinois Commerce Commission Resolution and Certification adopted April 5, 1978, concerning its jurisdiction over pole attachments, etc. Based upon our earlier conversation, I am under the impression you do not have this.

DOCKET FILE COPY ORIGINAL

A handwritten signature, likely of A. E. Ross, in dark ink.

A. E. Ross

A. E. Ross, Jr.

10-101-6917

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
on its own motion

In the matter of Public Utility pole : 78-R4
attachments for Cable Television Services :
pursuant to Amendment of the Communications :
Act of 1934; set forth in Section 224(c) :
paragraphs (1) and (2). :

RESOLUTION AND CERTIFICATION

WHEREAS, the Communications Act of 1934 has been amended to permit regulation by the Federal Communications Commission of rates, terms and conditions of Public Utility pole attachments by cable television systems to a pole, duct, conduit or right-of-way owned or controlled by the Public Utility; and

WHEREAS, the amended legislation, Section 224(c), paragraphs (1) and (2) does not apply or give authority to the Federal Communications Commission to regulate such attachments with respect to rates, terms, and conditions in a State which regulates the rates, terms, and conditions of such attachments; and

WHEREAS, pursuant to the authority vested in this Commission by virtue of the Illinois Public Utilities Act, Chapter 111-2/3, Section 1, et seq. of the Illinois Revised Statutes, every assignment, transfer, lease, mortgage, sale, or contract of franchise, licenses, permits, plant, equipment, or other property of any public utility, as defined in Section 10.3 of said Act, is subject to the review of this Commission; and

WHEREAS, this Commission does regulate the rates, terms, and conditions for pole attachments to the poles, ducts, conduits, or right-of-ways owned or controlled by public utilities, as defined above;

THEREFORE, BE IT RESOLVED AND CERTIFIED TO THE FEDERAL COMMUNICATIONS COMMISSION that the Illinois Commerce Commission of the State of Illinois does regulate rates, terms, and conditions for pole attachments to the poles, ducts, conduits, or right-of-ways owned or controlled by public utilities, as defined in the Illinois Public Utilities Act, and in so regulating such rates, terms, and conditions the State of Illinois through the Illinois Commerce Commission has the authority to consider and does consider the interests of the subscribers of cable television services in Illinois as well as the interests of consumers of utility services in Illinois.

BE IT FURTHER RESOLVED that a copy of this Resolution and Certification be forwarded to the Federal Communications Commission at 1919 "M" Street, Washington, D.C.

Adopted by this Commission this 5th day of April, 1978.

(S E A L)

(SIGNED) CHARLES P. KOCORAS

EXHIBIT B

WC 10-101
RECEIVED

FILED/ACCEPTED

APR 26 2010

STATE OF ILLINOIS

MAY 28 1985

Illinois Commerce Commission

Federal Communications Commission
Office of the Secretary527 EAST CAPITOL AVENUE
SPRINGFIELD, ILLINOIS 62706

ENFORCEMENT DIVISION

May 24, 1985

DOCKET FILE COPY ORIGINAL

~~GRANTED~~~~Chief, Enforcement Division~~

Margaret Wood, Esq.
Federal Communications Commission
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Wood:

Enclosed is the Illinois Commerce Commission's certification that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments. This certification was requested by Howard M. Wilchins in his letter of May 15, 1985.

If you have any questions about this certification please contact Patrick Foster of our staff.

Sincerely,

Rose M. Claggett
Chief Clerk

RMC/ja

Enclosure

WC 10-101

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

RECEIVED

MAY 28 1985

ENFORCEMENT DIVISION

CERTIFICATION

I, Rose M. Claggett, Chief Clerk of the Illinois Commerce Commission, hereby certify that the Illinois Commerce Commission has issued and made effective rules and regulations implementing this state's regulatory authority over pole attachments. The attached rules, which include a specific methodology for such regulation, have been duly adopted by the Commission, filed with the Illinois Secretary of State, and made publicly available in Illinois.



Rose M. Claggett, Chief Clerk
Illinois Commerce Commission

PUBLIC VERSION

CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 28th day of June 2019, a true and authorized copy of Commonwealth Edison Company's Motion to Dismiss for Lack of Jurisdiction was served on the parties listed below via electronic mail and was filed with the Commission via ECFS.

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ecfs@fcc.gov
(By ECFS Only)

Lisa Saks
Federal Communications Commission
Enforcement Bureau
445 12th Street SW
Washington, DC 20554
Lisa.Saks@fcc.gov

Adam Suppes
Federal Communications Commission
Enforcement Bureau
445 12th Street SW
Washington, DC 20554
Adam.Suppes@fcc.gov

Anthony DeLaurentis
Federal Communications Commission
Enforcement Bureau
445 12th Street SW
Washington, DC 20554
Anthony.DeLaurentis@fcc.gov

Rosemary McEnery
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Enforcement Bureau
445 12th Street SW
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T. Scott Thompson
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
scottthompson@dwt.com

Ryan Appel
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
ryanappel@dwt.com

Maria T. Browne
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
MariaBrowne@dwt.com

/s/ _____
Timothy A. Doughty

ATTACHMENT B

PUBLIC VERSION

10-K 1 cci10-k123118.htm 10-K

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2018
or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____
Commission File Number 001-16441



CROWN CASTLE INTERNATIONAL CORP.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

76-0470458
(I.R.S. Employer
Identification No.)

1220 Augusta Drive, Suite 600, Houston Texas 77057-2261
(Address of principal executive offices) (Zip Code)
(713) 570-3000
(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	New York Stock Exchange
6.875% Mandatory Convertible Preferred Stock, Series A, \$0.01 par value	New York Stock Exchange
Securities Registered Pursuant to Section 12(g) of the Act: NONE.	

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicated by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of a "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant was approximately \$44.6 billion as of June 30, 2018, the last business day of the registrant's most recently completed second fiscal quarter, based on the New York Stock Exchange closing price on that day of \$107.82 per share.

Applicable Only to Corporate Registrants

As of February 22, 2019, there were 415,568,382 shares of common stock outstanding.

Documents Incorporated by Reference

The information required to be furnished pursuant to Part III of this Form 10-K will be set forth in, and incorporated by reference from, the registrant's definitive proxy statement for the annual meeting of stockholders ("2019 Proxy Statement"), which will be filed with the Securities and Exchange Commission not later than 120 days after the end of the fiscal year ended December 31, 2018.

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PUBLIC VERSION

PART I

Item 1. *Business*

Overview

We own, operate and lease shared communications infrastructure that is geographically dispersed throughout the U.S., including (1) approximately 40,000 towers and other structures, such as rooftops (collectively, "towers"), and (2) approximately 65,000 route miles of fiber primarily supporting small cell networks ("small cells") and fiber solutions. Our towers, fiber and small cells assets are collectively referred to herein as "communications infrastructure," and our customers on our communications infrastructure are referred to herein as "tenants." Our core business is providing access, including space or capacity, to our shared communications infrastructure via long-term contracts in various forms, including lease, license, sublease and service agreements (collectively, "contracts"). We seek to increase our site rental revenues by adding more tenants on our shared communications infrastructure, which we expect to result in significant incremental cash flows due to our low incremental operating costs.

Below is certain information concerning our business:

- Over the last two decades, we have assembled a leading portfolio of towers predominately through acquisitions from large wireless carriers or their predecessors. More recently, through both acquisitions (see note 3 to our consolidated financial statements) and new construction of small cells and fiber, we have extended our communications infrastructure presence by investing significantly in our Fiber segment. Through our product offerings of towers and small cells, we seek to provide a comprehensive solution to enable our wireless tenants to expand coverage and capacity for wireless networks. Furthermore, within our Fiber segment, we are able to generate cash flow growth and stockholder return by deploying our fiber for both small cells' and fiber solutions' tenants.
- Below is certain information regarding our Towers segment:
 - Approximately 56% and 71% of our towers are located in the 50 and 100 largest U.S. basic trading areas ("BTAs"), respectively. Our towers have a significant presence in each of the top 100 BTAs.
 - We derive approximately 40% of our Towers site rental gross margin from towers residing on land and other property interests (collectively, "land") that we own, including fee interests and perpetual easements, and we derive approximately 60% of our Towers site rental gross margin from towers residing on land that we lease, sublease, manage or license.
 - The contracts for the land under our towers have an average total remaining life of approximately 35 years (including all renewal terms at our option), weighted based on Towers site rental gross margin.
- Below is certain information regarding our Fiber segment:
 - The majority of our small cells and fiber are located in major metropolitan areas, including a presence within every major U.S. market.
 - The vast majority of our fiber assets are located on public rights-of-way.
 - We operate as a REIT for U.S. federal income tax purposes. See *"Item 1. Business—2018 Industry Highlights and Company Developments—REIT Status"* and note 10 to our consolidated financial statements.

Certain information concerning our tenant and site rental contracts is as follows:

- Our largest tenants include AT&T, T-Mobile, Verizon Wireless and Sprint, which collectively accounted for 73% of our 2018 site rental revenues.
- Site rental revenues represented 87% of our 2018 consolidated net revenues, of which approximately 66% and 34% were from our Towers segment and our Fiber segment, respectively.
- The vast majority of our site rental revenues are of a recurring nature and are subject to long-term contracts with our tenants.
- Our site rental revenues derived from wireless tenants typically result from long-term contracts with (1) initial terms of five to 15 years, (2) multiple renewal periods at the option of the tenant of five to 10 years each, (3) limited termination rights for our tenants, and (4) contractual escalations of the rental price and, in some cases, an additional upfront payment.
- Our site rental revenues derived from our fiber solutions tenants (including from organizations with high-bandwidth and multi-location demands), typically result from contracts with (1) initial terms that generally vary between three to 20 years and (2) a fixed monthly recurring fee and, in some cases, an additional upfront payment.
- Exclusive of renewals at the tenants' option, our tenant contracts have a weighted-average remaining life of approximately five years and represent \$23 billion of expected future cash inflows.

As part of our effort to provide comprehensive communications infrastructure solutions, we also offer certain services primarily relating to our towers and small cells, predominately consisting of (1) site development services relating to existing or new tenant equipment installations, including: site acquisition, architectural and engineering, or zoning and permitting (collectively,

ATTACHMENT C

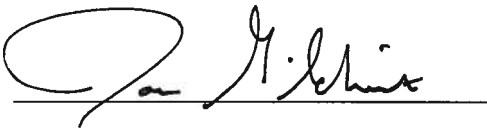
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Proceeding Number 19-169
19-170
Bureau ID Number EB-19-MD-004
EB-19-MD-005

CEC000024

PUBLIC VERSION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 

Joe Gilchrist
Manager, Real Estate & Facilities
Commonwealth Edison Company

Dated: July 19, 2019

ATTACHMENT D



Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317

July 7, 2016

ATTN: Manny Alonso
Real Estate Infrastructure Management
ComEd
Three Lincoln Centre
Oakbrook Terrace, IL 60181

RE: Attachment Increase to Existing Crown Castle Pole Attachment Agreement and Corresponding
Attachment Decrease to Existing Sprint Pole Attachment Agreement

Dear Mr. Alonso:

As you are aware, (a) Nextel West Corp. ("Sprint") and Commonwealth Edison Company ("ComEd") are parties to that certain Pole Attachment Agreement dated March 26, 2003 (the "Existing Sprint Pole Attachment Agreement"), and (b) NextG Networks of Illinois, Inc. now known as Crown Castle NG Central LLC ("Crown Castle") and ComEd are parties to that certain Pole Attachment Agreement dated December 22, 2004 (the "Existing Crown Castle Pole Attachment Agreement"). Please accept this letter as notification that (a) Sprint desires to transfer the following number of node attachments and fiber attachments identified on the attached Exhibit A (collectively, the "Attachments") currently issued pursuant to the Existing Sprint Pole Attachment Agreement to Crown Castle; and (b) Crown Castle desires to accept the Attachments and to add them as part of, and to be governed by, the Existing Crown Castle Pole Attachment Agreement. *Further asset detail contained in Schedule 1, attached.*

In addition, we are also notifying you that Crown Castle (or one of its affiliates) is acquiring certain fiber assets located in the Chicago region (the "Fiber Transaction") from SBA Communications Corporation (or one of its affiliates) ("SBA"). It is anticipated that the Fiber Transaction will occur on or before July 15, 2016. The transfer of the Attachments from Sprint to Crown Castle is conditioned upon the closing of the Fiber Transaction. You will be notified if the Fiber Transaction does not occur. Sprint and SBA hereby authorize Crown Castle to subsequently notify ComEd of the actual closing date of the Fiber Transaction (the "Transfer Date"). Upon such notification, ComEd is hereby authorized to transfer (effective as of the Transfer Date) the Attachments from Sprint to Crown Castle, it being acknowledged that the Attachments shall be governed on and after the Transfer Date by terms of the Existing Crown Castle Pole Attachment Agreement.

If, after the date of this letter, Crown Castle and/or ComEd identify additional Sprint node attachments and/or fiber attachments relating to the fiber assets associated with the Fiber Transaction that should have been

The Foundation for a Wireless World.
CrownCastle.com

CEC000027

PUBLIC VERSION

transferred from Sprint to Crown Castle, ComEd, Sprint and Crown Castle shall reasonably cooperate with one another to take all reasonable activities and to execute such documents to timely effectuate such transfer.

Thank you for your assistance in this matter. Please confirm that ComEd will transfer the Attachments on the Transfer Date by executing this letter and returning it to the signatories below at the email addresses identified below.

ComEd will perform the transfer within 30 days of the date it is notified of the Transfer Date. Any amounts that become due and payable to ComEd prior to ComEd's transfer of the Attachments will be billed under the terms of the Existing Sprint Pole Attachment Agreement.

Crown Castle NG Central LLC

By: [Signature]
Name: Keith Monahan
Title: Director - Tower Acquisitions
Email: Keith.monahan@CrownCastle.com

Nextel West Corp.

By: [Signature]
Name: John E. Beaudoin
Title: ACTING DIRECTOR, NETWORK REAL ESTATE
Email: JOHN.BEAUDOIN@SPRINT.COM

SBA Communications Corporation,
on behalf of itself and its affiliates

By: [Signature]
Name: Thomas P Hunt
Title: V.P. & GENERAL COUNSEL
Email: THUNT@SBASITE.COM

The Foundation for a Wireless World.
CrownCastle.com

CEC000028

Acknowledged and accepted as of this

14 day of July, 2016:

Commonwealth Edison Company

By: 

Name:

JOE GILCHRIST

Title:

MANAGER, REAL ESTATE, FAC

Email:

JOE.GILCHRIST@CEMEDI.COM

EXHIBIT A

Number of Attachments to be Transferred to Crown Castle

Node Attachments

As of the date of this letter, ComEd is charging Sprint for a total of 279 node attachments. 215 attachments out of the 279 node attachments should be transferred to Crown Castle on the Transfer Date. The balance of the node attachments (64 node attachments) should continue to be billed to Sprint (and shall not be transferred pursuant to this letter).

Fiber Attachments on Poles Solely Owned by ComEd

As of the date of this letter, ComEd is charging Sprint for a total of 751 fiber attachments located on poles solely owned by ComEd. 713 fiber attachments out of 751 fiber attachments should be transferred to Crown Castle on the Transfer Date. The balance of the fiber attachments (38 fiber attachments) should continue to be billed to Sprint (and shall not be transferred pursuant to this letter).

Fiber Attachments on Poles Jointly Owned by ComEd

As of the date of this letter, ComEd is charging Sprint for a total of ⁷²⁵722 fiber attachments located on poles jointly owned by ComEd and AT&T. 687 fiber attachments out of ⁷²⁵722 fiber attachments should be transferred to Crown Castle on the Transfer Date. The balance of the fiber attachments (³⁸36 fiber attachments) should continue to be billed to Sprint (and shall not be transferred pursuant to this letter). ³⁸

PUBLIC VERSION

Schedule I

Disposed Assets

All of the assets of SBA DAS, LLC which are or were intended to be granted, conveyed, sold, assigned, transferred and delivered to Crown Castle NG Central LLC pursuant to that certain Asset Purchase Agreement (the “Purchase Agreement”) by and between SBA DAS, LLC and Crown Castle NG Central LLC dated June 29, 2016 (the “Disposed Assets”), which shall include, but not be limited to, the following:

(a) all fiber optic cabling owned by SBA DAS, LLC or acquired by SBA DAS, LLC from a third party by lease, indefeasible right of use or otherwise (the “Fiber”), as more particularly described on Exhibit A attached hereto;

(b) all tangible assets of SBA DAS, LLC, whether such tangible asset is owned, leased, licensed or otherwise possessed by SBA DAS, LLC (the “Tangible Assets”), as more particularly described on Exhibit B attached hereto;

(c) all contracts, agreements, options, notes, bonds, mortgages, indentures, deeds of trust, leases, subleases, licenses, sublicenses, purchase or sale orders, or other commitments, obligations or instruments that are binding or enforceable upon the parties thereto, whether written or oral, express or implied, in each case as amended, modified, extended or renewed (collectively, “Contracts”):

(1) relating to any above ground or below ground infrastructure on, under or through which any Fiber is located, attached or installed, including conduit use Contracts and pole attachment Contracts (collectively, “Conduit Use Agreements”);

(2) whereby SBA DAS, LLC has the right to use Fiber owned by another Person¹, whether by lease, license or indefeasible right to use (collectively, “IRU Agreements”);

(3) relating to the use of property (other than Conduit Use Agreements and IRU Agreements), including access Contracts; easement Contracts; right-of-way use Contracts; cable or utility Contracts; railroad, waterway, bridge, street, highway, or other crowing Contracts; joint build/trench or other joint venture participation type Contracts; or any other Contracts of any kind or description relating to any above ground or below ground infrastructure on, under or through which any asset or equipment of SBA DAS, LLC (including Fiber) is located, attached or installed, or any real estate over or through which any asset or equipment of SBA DAS, LLC (including Fiber) traverses or crosses (collectively, “Property Use Agreements”); and

¹ “Person” means a natural person, corporation, partnership, limited liability company, trust, joint venture, unincorporated association, Governmental Authority or other entity. “Governmental Authority” means the United States of America, the state, commonwealth, county, town or other municipality in which any of the Disposed Assets are located, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of, over, or pertaining to any of the Disposed Assets, including the Federal Communications Commission and any state or local public service commission or similar state or local agency.

(4) relating to the Disposed Assets (other than Customer Contracts², Conduit Use Agreements, IRU Agreements and Property Use Agreements), to which SBA DAS, LLC is a party (or made for the benefit of SBA DAS, LLC) (collectively, “Other Contracts”);

(d) all Governmental Authorizations³ that are required for the ownership, use and operation of the Disposed Assets as conducted on June 29, 2016;

(e) all of the intangible rights and property of SBA DAS, LLC relating to the Fiber;

(f) all data and records related to the Fiber to the extent under the control of SBA DAS, LLC or any of its representatives, including service and warranty records, equipment logs, operating guides and manuals, and other similar documents and records; and

(g) all defenses, claims, deposits, prepayments, causes of action, credits, warranties, rights of recovery, and rights of setoff relating to any right, property or asset included in the Disposed Assets or against any party under the Conduit Use Agreements, IRU Agreements, Property Use Agreements and Other Contracts.

For the avoidance of doubt, the following Excluded Assets (as defined in the Purchase Agreement) are not Disposed Assets: (i) any rental obligations or penalties for breach owed by Sprint to SBA DAS, LLC under any Customer Contracts with SBA DAS, LLC, whether arising before or after the date of the Purchase Agreement; and (ii) any assets related to a Phase III fiber network known as the NU Hub.

² “Customer Contracts” means all Contracts between SBA DAS, LLC and any Person for (a) the use of Fiber, whether lit or dark, including any indefeasible rights to use or similar arrangement relating to the use of Fiber facilities or related equipment and also including any associated Fiber maintenance services, or (b) Cross Connect Services. “Cross Connect Services” means SBA DAS, LLC’s grant to any Person of the right to use fiber or other cabling to connect such Person’s network or system equipment located within space leased, licensed or otherwise acquired from SBA DAS, LLC with network or system equipment located in space owned or controlled by a third party.

³ “Governmental Authorization” means any approval, consent, filing requirement, notice, license, permit, registration, franchise, waiver or other authorization issued, granted, given or otherwise made available by, to or under the authority of any Governmental Authority.

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ATTACHMENT E

PUBLIC VERSION

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

_____)	
)	
Crown Castle Fiber LLC)	
<i>Complainant,</i>)	
	)	Proceeding Number 19-169
	)	19-170
v.	)	Bureau ID Number EB-19-MD-004
	)	EB-19-MD-005
)	
Commonwealth Edison Company,)	
<i>Defendant</i>)	
_____)	

DECLARATION OF MARTÍN MONTES


I, Martín Montes, declare as follows:

1. My name is Martín Montes. I am Vice President of Large Customer Services with Commonwealth Edison Company (“ComEd”) and have served in that position for 7 months. Prior to my current role, I was ComEd’s Director External Affairs and served in that position for 5 years.
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaints in the above-captioned proceedings.
3. In that role, my job responsibilities included interfacing with the Illinois Commerce Commission (ICC) on issues related to ComEd, including issues relating to Crown Castle’s attachments to ComEd’s distribution electric utility poles in the State of Illinois.
4. Until recently it was always my clear understanding and the understanding of others at ComEd that the ICC regulated all pole attachments in the State of Illinois.
5. Based on developments which commenced in 2017, it is also my understanding that representatives of Crown Castle also had the understanding that all pole attachments in Illinois were regulated by the ICC.
6. In 2017 a dispute occurred between Crown Castle and ComEd regarding fiber and wireless attachments to ComEd poles.

PUBLIC VERSION

7. In October 2017, I received a telephone call from the ICC, requesting a time to meet with ComEd representatives to discuss ComEd's third-party attachment (TPA) application process and fees. Representatives of the ICC indicated they had just concluded a meeting with representatives from Crown Castle and its respective attorneys regarding ComEd's TPA application process and fees. Crown Castle raised concerns with the ICC regarding the timeliness of ComEd's application process, as well as the fees ComEd charged.
8. Thereafter, at the request of the ICC, on October 31, 2017, ComEd representatives met with the ICC to discuss the concerns raised by Crown Castle.
9. On January 22, 2018, ComEd representatives had a follow-up meeting the ICC. ComEd representatives provided an update on the progress made in addressing the issues raised by Crown Castle.
10. It is also my understanding that in January 2018 Crown Castle representatives had a separate follow-up meeting with the ICC to discuss their issues related including wireless attachment fees, Red Tag pole replacement issues and timing under the application process.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 
Martín Montes
Vice President, Large Customer Services
Commonwealth Edison Company

Dated: July 19, 2019

ATTACHMENT F

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

Proceeding Number 19-170
Bureau ID Number EB-19-MD-005


DECLARATION OF JOHN L. LEICK

I, John L. Leick, declare as follows:

1. My name is John L. Leick. I am currently the Principal Rate Administrator at Commonwealth Edison Company (“ComEd”).
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. I have held roles in the Retail Rates Department for 20 years and have worked at ComEd for 29 years.
4. I performed the pole attachment rental rate calculations that are attached hereto at Exhibits 1 and 2.
5. Under the Federal Communications Commission pole attachment rental rate calculation, any reduction in accumulated deferred income taxes has the effect of raising the net cost of a bare pole, which has the effect of increasing the pole attachment rental rate, but such reduction also has the effect of lowering the administrative, maintenance, depreciation and taxes carrying charges, and thus the overall carrying charges, which has the effect of lowering the rental rate. The net effect of the reduction in accumulated deferred income taxes is an increase in the rental rate.

PUBLIC VERSION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 
John L. Leick
Principal Rate Administrator
Commonwealth Edison Company

Dated: July 18, 2019

EXHIBIT 1

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ATTACHMENT G

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

Proceeding Number 19-170
Bureau ID Number EB-19-MD-005

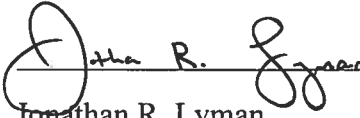
1. My name is Jonathan R. Lyman. I am currently the Tax Director at Commonwealth Edison Company (“ComEd”).
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act of 2017 (TCJA) into law. The TCJA makes significant changes to the Internal Revenue Code, including, but not limited to, reducing the U.S. federal corporate tax rate from 35% to 21%.
4. When corporate income tax rates are changed, such as through TCJA, the financial accounting rules required utilities to re-measure the Accumulated Deferred Income Taxes (“ADIT”) balance to account for the new rate at which the ADIT amounts will reverse and become due in the future. Excess deferred income taxes (“EDIT”) for public utilities were created when the corporate rate reduction was implemented. EDIT represent the difference between the deferred income taxes at the old and new statutory tax rate.
5. Pursuant to the enactment of the TCJA, ComEd re-measured its existing deferred income tax balances as of December 31, 2017 to reflect the decrease in the federal corporate income tax rate from 35% to 21%. ComEd recorded a corresponding net regulatory

liability (Account 254) to the extent such EDIT amounts are expected to pass through in customer rates and an adjustment to income tax expense for all other amounts.

6. ComEd properly applied income tax accounting guidelines regarding the treatment of the Tax Cuts and Jobs Act. As the Federal Energy Regulatory Commission explains:

In Docket No. AI93-5-000, the Chief Accountant issued accounting guidance on the proper accounting for income taxes. Among other matters, the accounting guidance directed public utilities and natural gas companies to adjust their deferred tax liabilities and assets for the effect of the change in tax laws or rates in the period that the change is enacted. The guidance stated that adjustments should be recorded in the appropriate deferred tax balance sheet accounts (Accounts 190, 281, 282, and 283) based on the nature of the temporary difference and the related classification requirements of the accounts. Further, if as a result of action by a regulator, it is probably that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability should be recognized in Account 182.3 (Other Regulatory Assets), or Account 254 (Other Regulatory Liabilities), as appropriate, for the probable future revenue or reduction in future revenue.¹

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 
Jonathan R. Lyman
Tax Director
Commonwealth Edison Company

Dated: July 18, 2019

¹ *Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset*, 165 FERC ¶61,115, 2018 FERC LEXIS 1620, 2018 WL 6015912, at ¶9 (Nov. 15, 2018).

ATTACHMENT H

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

Proceeding Number 19-169
19-170
Bureau ID Number EB-19-MD-004
EB-19-MD-005

DECLARATION OF SARAH S. HERRERA

I, Sarah S. Herrera, declare as follows:

1. My name is Sarah S. Herrera. I am currently the Senior Business Analyst at Commonwealth Edison Company (“ComEd”).
2. I make this declaration in support of ComEd’s Answer to the Pole Attachment Complaint in the above-captioned proceeding.
3. I have held by current role for 11 months and have worked at ComEd for 6 years.
4. ComEd believes the Exhibit 3 list provided by Crown Castle at Attachment D of its Pole Attachment Complaint shows 976 red tagged poles, 894 designated for replacement, and 82 designated for reinforcement, leaving one not designated for replacement or reinforcement.
5. ComEd believes the invoices for the replacements listed in Attachment D, Exhibit 3 of Crown Castle’s Pole Attachment Complaint total [REDACTED] and the invoices for the reinforcements total [REDACTED].
6. ComEd believes that Crown Castle, through April 30, 2019 has paid [REDACTED] for the replacements and [REDACTED] for the reinforcements listed in Attachment D, Exhibit 3 of Crown Castle’s Pole Attachment Complaint.

PUBLIC VERSION

7. ComEd's policies are neither unreasonable nor unlawful and must factor in considerations related to reliability, resiliency, and planning, the safety of all those working on its poles, and the safe and efficient operation of its pole plant as a whole.
8. ComEd has not denied Crown Castle access to red tagged poles, but instead allows Crown Castle to gain access by paying to replace or, if appropriate, reinforce the pole. In addition, Crown Castle has other options to deploy its facilities, including by installing its facilities underground, and by using the streetlights and other facilities owned by the City of Chicago and other municipalities located in ComEd's service territory.
9. Out of the 6,701 poles listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 26 poles were cancelled by Crown Castle; 652 poles require payment from Crown Castle; 47 poles are on hold pending updated information from Crown Castle; less than 193 days has elapsed between the date of submission and April 30, 2019 for 372 poles. More than 193 days elapsed between the date of submission and April 30, 2019 for only 5,604 red tag poles associated with attachment applications.
10. ComEd believes the Exhibit 3 list provided by Crown Castle at Attachment D of its Pole Attachment Complaint shows 214 red tagged poles to which Crown Castle has proposed to attach wireless nodes.
11. The invoices for the cost to replace the 214 red tagged poles for wireless attachments listed in Exhibit 3, Attachment D of Crown Castle's Pole Attachment Complaint total \$3,113,790.28.
12. Crown Castle has paid invoices through April 30, 2019, for 206 of the 214 poles listed in Exhibit 3, Attachment D of Crown Castle's Pole Attachment Complaint totaling [REDACTED]
13. Out of the 254 poles listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 43 poles were submitted less than 223 days prior to April 30, 2019 and of those 43 poles, 24 have been permitted by ComEd. Moreover, six of the poles have been cancelled by Crown Castle; 10 poles are on hold pending updated information from Crown Castle; and 39 poles require payment from Crown Castle. More than 223 days elapsed between the date of submission and April 30, 2019 for only 156 poles.
14. ComEd denies the allegation that replacement costs have increased. The invoices issued by ComEd on May 30, 2019 were for poles that were particularly expensive due to additional scope. Invoice 18-2953-CN included two poles with transformer equipment and one T corner pole. Invoice 18-2955-CN included two transformer equipment poles. Invoice 18-3037-CN included two transformer poles. Invoice 18-0900-CN required installation of an alley arm, installation of a new pole top pin, the relocation of neutral/secondary, and relocation of services. Invoice 18-2777-CN included two poles

with transformer equipment and one T corner pole.

15. As of April 30, 2019, Crown Castle has paid ComEd a total of [REDACTED] (for both wireline and wireless attachments) to replace red tag poles. ComEd denies that red tagged poles have “preexisting conditions.” Instead, red tagged poles lack the capacity to accommodate the additional attachments, so capacity must be expanded by replacing or, if appropriate, reinforcing the red tag pole.
16. The forecasts provided by Crown Castle were inaccurate and unreliable, and therefore could not be used by ComEd from planning perspective. As shown in the chart attached hereto at Exhibit 1, for the first five months of the year Crown Castle’s actual number of applications was below their planned number of applications by 40%. By September they got back on track, and by the end of the year they were 30% over their estimate. It is very difficult to plan for either back office and line resources with such large variability from Crown Castle’s projections. Moreover, providing ComEd with the number of projected applications proves to be little value as an application can be for one pole or many poles and the associated make-ready can be minimal or extensive. Thus, while Crown Castle is correct that they provided ComEd with a schedule of applications (which was way off), Crown did not provide ComEd with meaningful and accurate information.
17. ComEd does not know what the 29 meetings are Crown Castle referred to in Paragraph 78 of its Pole Attachment Complaint. ComEd denies the allegations that all of these meetings were an attempt to remedy delays. ComEd conducts weekly meetings to discuss operational issues and prioritize attachments, similar to ComEd’s meetings with other attachers. At these weekly meetings, Crown Castle took the opportunity to reprioritize more recent applications over older applications, consistent with ComEd’s continuing efforts to collaborate with Crown Castle. The reprioritization requested by Crown Castle had the effect of delaying ComEd’s completion of other pending aged applications.
18. Since May 2018, Crown Castle has submitted 748 fiber applications (covering 8,075 poles) that are still pending without a permit being issued by ComEd as of April 30, 2019.
19. Out of the 41 pending fiber applications listed in Attachment D, Exhibit 12 of Crown Castle’s Complaint, eight applications were submitted to ComEd less than 60 days ago; eight applications were cancelled by Crown Castle; eight applications require payment from Crown Castle; one is on hold pending updated information from Crown Castle; one application was submitted to ComEd on May 7, 2019, which is outside the May 1, 2017 – April 30, 2019 timeframe; and two applications are not even in ComEd’s records as valid attachment applications. More than 60 days elapsed between the date of submission and April 30, 2019 for only 13 attachment applications.

PUBLIC VERSION

20. None of the surveys listed in Attachment D, Exhibit 12 of Crown Castle's Complaint are overdue by 262 days or anywhere close to that length of time. Moreover, only two of the attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint are listed as being over 262 days from submission to ComEd. Out of these two attachment applications, ComEd has not received a survey payment from Crown Castle for one of the applications, and for the other application, ComEd performed the survey well under 262 days.
21. Out of the 446 attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, six applications have been cancelled by Crown Castle; three are on hold pending updated information from Crown Castle; 37 applications did not require make-ready and therefore no make-ready estimate was necessary; one application was submitted to ComEd on May 7, 2019, which is outside the May 1, 2017 – April 30, 2019 timeframe; and 12 applications were submitted to ComEd 74 days or less from April 30, 2019. More than 74 days elapsed between the date of submission and April 30, 2019 for only 387 attachment applications.
22. Some of the delay for make-ready estimates are caused by the reprioritizations requested by Crown Castle, and others are caused by Crown Castle's request to have these applications reviewed for potential reinforcement pursuant to the pilot program. Although ComEd has not submitted some of these estimates within 78 days from the completion of the survey, there is only one that ComEd has not submitted for almost a year since the survey. For that one, the submission date for ComEd Fiber Application Number 18-0899-CN is listed in Attachment D, Exhibit 12 of Crown Castle's Complaint as May 10, 2018 (355 days elapsed from submission to April 30, 2019). This statement is incorrect. ComEd Fiber Application Number 18-0899-CN was submitted on May 10, 2018, which is 345 days prior to April 30, 2019. The poles associated with Application Number 18-0899-CN are part of the second Osmose pilot program, which seeks to determine whether the poles can be reinforced as an alternative to being replaced. The pilot program is the reason 345 days elapsed from the date of submission.
23. Out of the 446 attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, three applications have been cancelled by Crown Castle; two applications are on hold pending updated information from Crown Castle; 59 applications require payment from Crown Castle; and less than 193 days elapsed between the date of submission and April 30, 2019 for 33 applications. More than 193 days elapsed between the date of submission and April 30, 2019 for only 482 applications.
24. Since March of 2018 Crown Castle has submitted 783 wireless applications that were still pending as of April 30, 2019. Some of these delays are caused by the reprioritizations requested by Crown Castle, and others are caused by Crown Castle's request to have these applications reviewed for potential reinforcement pursuant to the pilot program.

25. Out of the 114 wireless applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 13 applications were cancelled by Crown Castle; 21 applications are on hold pending updated information from Crown Castle; five applications are for modifications of existing Third Party Attachments and do not require an additional walk; four applications have no Third Party Attachment number and can't be identified; one application is listed twice (18-3827-CN); and two applications were submitted to ComEd after April 30, 2019. Pre-construction surveys have not been completed for only 37 attachment applications within 60 days of submission.
26. Out of the 378 attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, 14 applications did not require make-ready and therefore no make-ready estimate was necessary; 11 applications were cancelled by Crown Castle; 14 applications are on hold pending updated information from Crown Castle; one was a modification of another attachment application for which the make-ready estimate was already provided to Crown Castle; and 74 days or less elapsed between the date of submission and April 30, 2019 for 16 of the applications. More than 74 days elapsed between the date of submission and April 30, 2019 for only 322 applications.
27. Out of the nine wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, four were rejected by ComEd, and less than 365 days has elapsed between the date of submission and April 30, 2019 for four applications. More than 365 days elapsed between the date of submission and April 30, 2019 for only one wireless attachment application that requires a make-ready estimate.
28. Out of the 254 wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, six applications have been cancelled by Crown Castle; 10 are on hold pending updated information from Crown Castle; 39 applications require payment from Crown Castle; two are completed modifications and did not need a permit; and less than 223 days elapsed between the date of submission and April 30, 2019 for 41 of the applications. Of those 41 applications, permits were issued by ComEd for 24 applications in less than 223 days. More than 223 days elapsed between the date of submission and April 30, 2019 for only 156 wireless attachment applications.
29. Out of the 124 wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, more than 273 days (nine months) elapsed between the date of submission and April 30, 2019 for only 71 wireless attachment applications.
30. Out of the 17 wireless attachment applications listed in Attachment D, Exhibit 12 of Crown Castle's Complaint, permits were issued by ComEd for five applications in less than 365 days; one requires payment from Crown Castle; four are on hold pending updated information from Crown Castle; and one has been cancelled by Crown Castle. More than 365 days elapsed between the date of submission and April 30, 2019 for only six wireless attachment applications.

PUBLIC VERSION

31. From May 27-30, 2019, ComEd replaced three poles for Crown Castle. But ComEd's records also show that from May 28-June 1, 2019, ComEd replaced 21 poles for Crown Castle. No one worked on May 27 because it was Memorial Day. And ComEd made up for it by hiring crews to work overtime on Saturday, June 1.
32. Allowing Crown Castle to direct and control third party contractors would be an inappropriate draconian solution considering that the parties only recently learned that the FCC is asserting jurisdiction. Prior to that time, the assumption was FCC make-ready deadlines do not apply. At the very least, the FCC should give the parties time to allow ComEd and Crown Castle to work collaboratively to accommodate Crown Castle's facilities, and revisit the situation in twelve months.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 

Sarah S. Hererra
Senior Business Analyst
Commonwealth Edison Company

Dated: July 19, 2019

EXHIBIT 1

REDACTED

CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 22nd day of July 2019, a true and authorized copy of Commonwealth Edison Company's Answer to Complainant Crown Castle Fiber LLC's Pole Attachment Complaint was served on the parties listed below via electronic mail and was filed with the Commission via ECFS and via Hand Delivery (Confidential Version).

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554
ecfs@fcc.gov

(By ECFS for Public Version)

(By Hand Delivery for Confidential Version)

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Federal Communications Commission
Enforcement Bureau
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Ryan Appel
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Washington, DC 20006
MariaBrowne@dwt.com

/s/

Timothy A. Doughty