

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Timothy A. Doughty
(202) 434-4271
doughty@khlaw.com

July 30, 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 Supplement to its Answer to
Complainant Crown Castle Fiber LLC's Pole Attachment Complaint for
Denial of Access (Proceeding Number 19-169; Bureau ID Number EB-
19-MD-004)**

Ms. Dortch:

Please find attached Commonwealth Edison Company's Supplement to its Answer to Complainant Crown Castle Fiber LLC's Pole Attachment Complaint for Denial of Access in Proceeding Number 19-169; Bureau ID Number EB-19-MD-004.

Sincerely,



Timothy A. Doughty
Attorney for Commonwealth Edison Company

Enclosures

cc: Lisa Saks, Enforcement Bureau
Anthony DeLaurentis, Enforcement Bureau

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

Defendant Commonwealth Edison Company (“ComEd”), pursuant to the letter issued on July 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 Supplement to its Answer to Crown Castle Fiber LLC’s (“Crown Castle”) Access Complaint (the “Access Complaint.”)

ComEd Answer: Paragraph 176 of the Complaint does not require an answer.

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 177 of the Complaint.

Crown Castle 178: *ComEd's failure to provide the information required by Section 1.1403(b) of the Commission's Rules to support denial of access to each pole creates a denial of access in violation of 47 U.S.C. § 224(f) and 47 C.F.R. § 1.1403.*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 178 of the Complaint.

Crown Castle 179: *Crown Castle incorporates by reference as if fully set forth herein paragraphs 1 through 179 of this Complaint.*

ComEd Answer: Paragraph 179 of the Complaint does not require an answer.

Crown Castle 180: *ComEd's requirement that Crown Castle first pays for correction of preexisting conditions that were not caused by Crown Castle, including but not limited to replacement or reinforcement of the pole, prior to attachment is an effective denial of access to ComEd's poles in violation of 47 U.S.C. § 224(f) and 47 C.F.R. § 1.1403. The Commission explicitly held this in its OTMR Order.*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 180 of the Complaint.

Crown Castle 181: *Crown Castle has been unlawfully required to and has paid ComEd \$11,288,367 in response to ComEd's unjust and unreasonable demand to pay for correction and replacement of red tag poles associated with fiber attachment applications. Crown Castle is entitled to refund of \$11,288,367 for the unlawful overpayment, plus interest pursuant to 47 C.F.R. § 1.1407(a)(3).*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here, except to note that Crown Castle identified different figures in Paragraph 65 of the Complaint. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 181 of the Complaint.

Crown Castle 182: *Crown Castle has been unlawfully required to and has paid ComEd \$2,923,906 in response to ComEd's unjust and unreasonable demand to pay for correction and replacement of red tag poles associated with wireless attachment applications. Crown Castle is entitled to refund of \$2,923,906 for the unlawful overpayment, plus interest pursuant to 47 C.F.R. § 1.1407(a)(3).*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 182 of the Complaint.

Crown Castle 183: *Crown Castle incorporates by reference as if fully set forth herein paragraphs 1 through 183 of this Complaint.*

ComEd Answer: Paragraph 183 of the Complaint does not require an answer.

Crown Castle 184: *ComEd's failure to provide the information required by Section 1.1403(b) of the Commission's Rules to support denial of access to each pole is an unjust and unreasonable term and condition of attachment in violation of 47 U.S.C. § 224(e) and 47 C.F.R. § 1.1403(b).*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 184 of the Complaint.

Crown Castle 185: *Crown Castle incorporates by reference as if fully set forth herein paragraphs 1 through 185 of this Complaint.*

ComEd Answer: Paragraph 185 of the Complaint does not require an answer.

Crown Castle 186: *ComEd's failure to conduct pre-construction surveys, issue make-ready estimates, and timely act on applications for Crown Castle's applications to attach fiber attachments within the timelines established by the Commission's Rules violates 47 C.F.R. § 1.1411 and constitutes a denial of access in violation of 47 U.S.C. § 224(f).*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 186 of the Complaint.

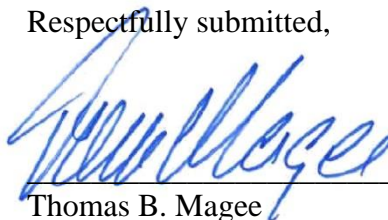
Crown Castle 187: *Crown Castle incorporates by reference as if fully set forth herein paragraphs 1 through 187 of this Complaint.*

ComEd Answer: Paragraph 187 of the Complaint does not require an answer.

Crown Castle 188: *ComEd's failure to conduct pre-construction surveys, issue make-ready estimates, and timely act on applications for Crown Castle's applications to attach wireless equipment within the timelines established by the Commission's Rules violates 47 C.F.R. § 1.1411 and constitutes a denial of access in contravention of 47 U.S.C. § 224(f).*

ComEd Answer: ComEd has already addressed these allegations in its answers to Paragraphs 1-175 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-175 and to the extent a response is otherwise required, ComEd denies the allegations in Paragraph 188 of the Complaint.

Respectfully submitted,



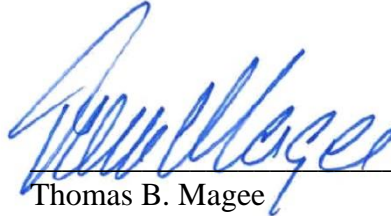
Thomas B. Magee
Timothy A. Doughty
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, DC 20001
(202) 434-4100 (phone)
(202) 434-4646 (fax)
magee@khlaw.com
doughty@khlaw.com

Attorneys for Commonwealth Edison Company

July 30, 2019

RULE 1.721(m) VERIFICATION

I, Thomas B. Magee, as signatory to this submission, verify that I have read the foregoing submission and ComEd's Answer filed on July 22, 2019, as Supplemented on July 30, 2019 and, to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.



Thomas B. Magee
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

Attorney for Commonwealth Edison Company

CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 30th day of July 2019, a true and authorized copy of Commonwealth Edison Company's Supplement to its 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.

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

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

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

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

T. Scott Thompson
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
scottthompson@dwt.com

/s/

Timothy A. Doughty