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Writer's Direct Access
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August 16, 2019

Via ECFS

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20054

**Re: Commonwealth Edison Company's Motion to Allow Additional
Discovery (Proceeding Numbers 19-169, 19-170; Bureau ID Numbers
EB-19-MD-004, EB-19-MD-005)**

Dear Ms. Dortch:

Please find attached Commonwealth Edison Company's Motion to Allow Additional Discovery to be filed in the above referenced proceedings.

Please contact the undersigned counsel if you have any questions regarding this submission.

Sincerely,



Kathleen M. Slattery
Attorney for Commonwealth Edison Company

Enclosure

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

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

<div style="display: flex; justify-content: space-between; align-items: center;"><div style="width: 90%;"><p>Crown Castle Fiber LLC, <i>Complainant,</i></p><p style="text-align: center;">v.</p><p>Commonwealth Edison Company, <i>Defendant</i></p></div><div style="width: 5%; text-align: center; font-size: 2em;">)</div></div>)	<p>Proceeding Numbers 19-169 19-170</p> <p>Bureau ID Numbers EB-19-MD-004 EB-19-MD-005</p>
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MOTION TO ALLOW ADDITIONAL DISCOVERY

Pursuant to Sections 1.729 and 1.730(f) of the Commission’s rules,¹ Commonwealth Edison Company (“ComEd”) respectfully requests leave to file and serve in the above-captioned proceedings additional discovery on Complainant Crown Castle Fiber LLC (“Crown Castle”), to the extent explained below. In support of its motion, ComEd states as follows:

Crown Castle’s August 5, 2019 “Reply to Respondent’s Answer to Complainant’s Pole Attachment Complaint for Denial of Access” (“Access Reply”) and “Reply to Respondent’s Answer to Complainant’s Pole Attachment Complaint – Unlawful Rates” (“Rates Reply”) (together, “Replies”) make several new allegations about ComEd’s “RF transport service” to which ComEd has had no opportunity to respond, and about which certain additional discovery is required.

In response to certain issues that were raised in ComEd’s Answer, Crown Castle’s Replies for the first time fully explained Crown Castle’s “RF transport service.” Although

¹ 47 C.F.R. §§1.729, 1.730(f).

Crown Castle's Complaints suggested that Crown Castle was already using its wireless attachments to provide this RF transport service,² the Replies state that Crown Castle only "plans to provide" RF transport service.³ Thus, all of the numerous antennas and other wireless attachments that are the subject of these Complaint proceedings apparently are not being used at this time to provide RF transport service or any service at all. ComEd therefore would like to request additional interrogatories to determine whether, and the extent to which, Crown Castle has been using the numerous wireless attachments Crown Castle has installed on ComEd's poles.

In addition, while Crown Castle's Replies cite caselaw that it can provide service on a wholesale basis and still potentially qualify as a common carrier with attachment rights, Crown Castle fails to establish that it "holds [itself] out to service indifferently all potential users," which is the other common carriage prerequisite specified in this ruling.⁴

It is impossible to determine whether a service that is provided to a limited class of customers is a telecommunications service or a private carrier service offering without examining the contracts underlying Crown Castle's offering of this service. Crown Castle's RF transport service agreements with wireless carriers for dedicated connectivity between cell sites and switching centers appear to be private carrier arrangements, as Crown Castle has not posted its standard terms and conditions on a readily accessible public web site.⁵

ComEd therefore requests further discovery in the form of document production to review Crown Castle's agreements with the wireless carriers for these services in Illinois and elsewhere. ComEd in addition seeks leave to request that Crown Castle produce Block 1 of its

² June 19, 2019 Access Complaint at ¶7; June 19, 2019 Rates Complaint at ¶4.

³ Access Reply at 42; Rates Reply at 21.

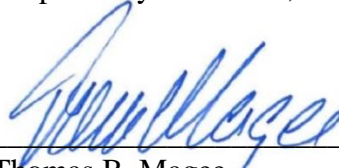
⁴ Access Reply at 41-42 and Rates Reply at 21, quoting *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976).

⁵ See 47 CFR § 42.10 (interexchange, interstate carriers must post their rates, terms and conditions on a readily accessible web site).

FCC Forms 499A filed with the Universal Service Administrative Company (USAC) for the past several years, in order to determine whether Crown Castle has represented itself as a “Private Service Provider.” Regardless of what Crown Castle has represented on its Forms 499A, however, review of the RF transport service contracts is still necessary in order to determine whether Crown Castle’s RF transport service is being offered on a common carriage basis.

This additional discovery will allow ComEd and Crown Castle both to respond more completely to the important threshold jurisdictional issues raised by these new allegations, thus supplementing the record with a more complete legal analysis. It would be unfair and prejudicial to ComEd not to allow ComEd an opportunity to review such proposed discovery. ComEd therefore respectfully requests leave to file and serve additional discovery on Crown Castle as explained above, in order to better respond to these new allegations in Crown Castle’s Replies.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "T. Magee", is written over a horizontal line.

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August 16, 2019

CERTIFICATE OF SERVICE

I, Kathleen M. Slattery, hereby certify that on this 16th day of August 2019, a true and authorized copy of Commonwealth Edison Company's Motion to Allow Additional Discovery was served on the parties listed below via electronic mail and was filed with the Commission via ECFS.

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/s/

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