

November 10, 2017

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte Submission, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Broadband Deployment Advisory Committee, GN Docket No. 17-83***

Dear Secretary Dortch:

On November 8, 2017, Scott Thompson of Davis Wright Tremaine LLP and Ken Simon, Monica Gambino, and Robert Millar of Crown Castle, met with Lisa Hone, Associate Bureau Chief, Wireline Competition Bureau; Dan Kahn, Division Chief; Adam Copeland, Assistant Division Chief; Michael Ray, Attorney-Advisor, and Annick Banoun, Attorney, of the Wireline Competition Bureau's Competition Policy Division. At the meeting, Crown Castle discussed its comments filed in the above referenced docket,<sup>1</sup> and its proposals to streamline deployment of wireline broadband infrastructure. In addition to the information outlined below, Crown Castle also provided photographic examples of small cell deployments, which are enclosed with this filing.

Crown Castle outlined the importance of aerial deployments, namely, overlashing and strand-mounted antennas, to expedited broadband deployment. As the FCC has recognized many times over, facilitating overlashing promotes the rollout of new, competitive broadband services. Furthermore, the benefits of overlashing are not limited to new wire bundles; many cable television amplifiers, splice boxes, and other necessary facilities have been deployed on the strand nationwide with no additional permitting or fees. Similarly, the reduced footprint of a wireless antenna mounted directly on the strand serves as an important tool in the deployment toolbox. In fact, strand-mounted antennas may be preferred by some pole owners, as they are not physically attached to the pole, as well as by communities, due to being less visually apparent. Strand-mounted antennas are of a similar size as traditional strand mounted equipment; while they may be slightly heavier than other strand-mounted equipment, at

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<sup>1</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017); *see* Comments of Crown Castle International Corp., WC Docket No. 17-84 (filed Jun. 15, 2017); Reply Comments of Crown Castle International Corp., WC Docket No. 17-84 (filed Jul. 17, 2017).

approximately 110 pounds for a three-panel strand-mounted antenna, they are still significantly lighter than overlying copper or coaxial cable, which can weigh over twice as much for a 100 foot span.

The Crown Castle representatives encouraged the Commission to move as swiftly as possible to reaffirm its existing position that strand-mounted small cell antennas are permissible under existing the FCC's overlying rules. As the draft Further Notice of Proposed Rulemaking in this Docket observes, "Commission precedent holds that 'neither the host attaching entity nor the third party overlayer must obtain additional approval from or consent of the utility for overlying other than the approval obtained for the host attachment.'" *See In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Report and Order, Declaratory Rulemaking, and Further Notice of Proposed Rulemaking, WC Docket No. 17-84 ¶ 159 (rel. Oct. 26, 2017) (citing *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12103, 12141, para. 75 (2001) ("2001 Pole Recon Order"); *Cable Television Ass'n of Georgia, et al., Complainants, v. Georgia Power Co., Respondent*, File No. PA 01-002, Order, 18 FCC Rcd. 16333, 16340-41, para 13 (EB 2003)). Indeed, the Commission has long recognized the benefits of overlying for promoting the deployment of competitive services and broadband. *See In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order 13 FCC Rcd. 6777, 6807 ¶ 62 (1998) ("We believe overlying is important to implementing the 1996 Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities."); 2001 Pole Recon Order ¶ 73.

Based on this existing law, Crown Castle has already entered into agreements with dozens of utilities, has about 1,600 strand-mounted small cell antennas already in operation in California, and has a contract to deploy approximately 2,500 additional strand-mounted small cell antennas there in the next year. Although Crown Castle appreciates the FCC's desire to provide clarity on this issue, it is concerned that the notice could create ambiguity where none currently exists. Accordingly, Crown Castle requested that the Commission resolve any uncertainty created by the Further Notice, clarify that existing overlying precedent extends to strand-mounted small cell antennas, and codify any rules it intends to adopt in this area as quickly as possible.

Crown Castle discussed other proposals to streamline the pole attachment process and speed broadband deployment by adopting one-touch make-ready ("OTMR") procedures. Crown Castle summarized the Broadband Deployment Advisory Committee ("BDAC") Competitive Access To Broadband Infrastructure Working Group, Methods and Practices Committee Proposals #1 and #2 regarding OTMR procedures, which was set forth in detail during the BDAC November 9, 2017 meeting, and stated its support for the proposal. Crown Castle

expressed its interest in participating in any pilot program should the Commission decide to adopt the BDAC recommendations.

Crown Castle underscored the point made in its comments that pole owners are inhibiting the deployment of broadband by imposing “construction standards” far in excess of National Electric Safety Code (“NESC”) and other industry-wide standards.<sup>2</sup> These excessive standards can often trigger requirements to replace poles unnecessarily, which hamper the FCC’s goal of swift deployment with no corresponding benefit.

Crown Castle also reiterated its prior comments regarding the importance of allowing approved contractors to complete make-ready work in the electric space to promptly deploy facilities. Currently, Crown Castle may only exercise this vital self-help remedy in the pole’s communications space. Crown Castle posits that it would only use authorized electrical workers, and Crown Castle noted that it has agreed to allow utility company inspectors to be present during the electric space work by contractors. Without the ability to use authorized contractors in the electric space, Crown Castle cannot timely complete small cell deployments on utility poles, particularly pole-top antenna installations. Any safety concerns the pole owners may have should be resolved by the fact that these are the same contractors utilized by the electric company. As such, the Commission should close this gap in its rules and allow for make-ready using approved contractors in the electric space.

Crown Castle also reiterated its prior comments regarding the practice by electric utilities to either refuse, or fail, to timely complete electric power activation of attachments, which impedes the make-ready timeline. Crown Castle’s equipment requires electricity to function, and because of its location on the poles, power connections – sometimes including power line extensions and meters or other methods to monitor power consumption - must be installed. If make-ready, and ultimately a guaranteed right to use poles under Section 224(f), are to be meaningful, at the end of the process, the attaching entity must have everything done at the pole that is necessary for it to provide service – including electricity. Therefore, Crown Castle urged the Commission to recognize electric power activation of all attachments as part of the make-ready work that must be completed within the Commission’s defined timeframe.

Crown Castle also reiterated its prior comments noting the significant problem of pole owners seeking to thwart the Commission’s timeline rules by requiring attaching parties to participate in “pre application” meetings and processes that the pole owner claims does not count against the Commission’s timelines. Crown Castle asks that the Commission adopt a rule, clarifying its Section 1.1420 of its current rules, that states that a utility may not require a potential attaching party to participate in any meetings or submit any materials as a precondition to submitting an application to attach, or in the alternative that any meetings or submissions of

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<sup>2</sup> See Letter from T. Scott Thompson, Counsel to Crown Castle, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 at 1-3 (filed Aug. 24, 2017).

Crown Castle  
WC Docket No. 17-84; GN Docket No. 17-83  
November 10, 2017  
Page 4

documents or information required by a utility as a condition of attachment count as part of the “Survey” portion of the timeframe.

Finally, Crown Castle highlighted the persistent problem of moratoria imposed by local governments, whereby a local jurisdiction refuses to process or even accept applications to site new facilities or upgrade existing facilities. Moratoria continue to be prevalent even in states that have recently enacted legislation seeking to curtail this local abuse of process. For example, Crown Castle noted the many moratoria in Florida, even after the adoption of HB 687 (enacting Fla. Stat. § 337.401(7)) earlier this year. Crown Castle also noted that Miami-Dade County, Florida claims the new Florida statute, which became effective in July, does not apply to it. Others jurisdictions, like Austin, Texas, require pre-application meetings that thwart the start of the shot clock and creating *de facto* moratoria. Crown Castle noted that it has filed a lawsuit against Charleston, South Carolina, where Crown Castle has faced a delay for nearly three years. These moratoria, whether *de facto* or explicit, only serve to thwart deployment and cannot be justified as lawful under the Commission’s shot clock rules. Accordingly, Crown Castle asks the Commission to adopt a rule that provides that any moratoria on the filing or processing of applications for the installation of telecommunications facilities by a local government constitutes an effective prohibition on the provision of telecommunications service in violation of 47 U.S.C. § 253, and, in the case of an application to install personal wireless services facilities, a failure to act on an application to install personal wireless facilities in a reasonable time in violation of 47 U.S.C. § 332(c)(7)(B)(II).

Pursuant to Section 1.1206(b) of the Commission’s rules, this letter is being filed via ECFS and a copy sent to all participants.

Respectfully submitted,

/s/ T. Scott Thompson  
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*Counsel to Crown Castle*

cc: Lisa Hone  
Dan Kahn  
Adam Copeland  
Michael Ray  
Annick Banoun

encl. “Small Cell Deployment Photos”

ATTACHMENT

# Small Cell Deployment Photos





Suburban neighborhood



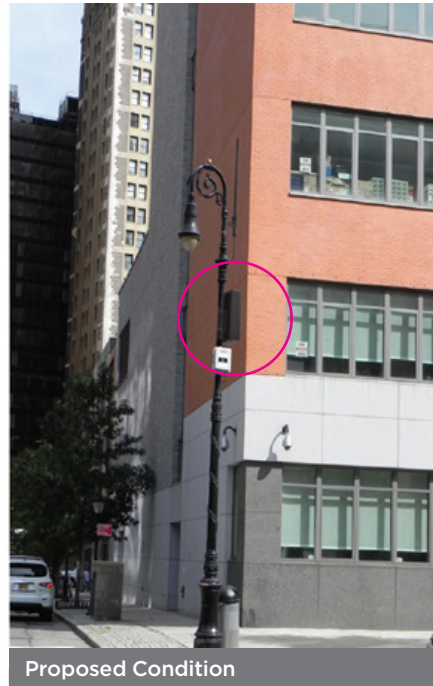
Camouflaged cactus (left)



Traffic pole



# Battery Park in New York City, NY







Traffic light (Jersey City)



Street light (Brooklyn)



