Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	
	)	
Petition for	)	WC Docket No. 07-245
Reconsideration or Clarification of	)	GN Docket No. 09-51
the National Cable and	)	
Telecommunications Association,	)	
COMTEL, and tw telecom inc.	)	
	)	

COMMENTS OF CROWN CASTLE

Crown Castle[1] hereby submits these comments in response to the Federal Communications Commission's ("FCC" or the "Commission") requests for comments to refresh the record in response to the above-captioned petition.[2]

INTRODUCTION

Crown Castle is one of the country's largest independent owners and operators of shared wireless infrastructure, with more than 40,000 towers and 11,000 distributed antenna system (DAS) and small cell installations.

Crown Castle affiliates hold certificates of public convenience and necessity or equivalent state regulatory authorization to operate as a telecommunications carrier in 45 states, Puerto Rico, and the District of Columbia. To date, Crown Castle through its affiliates has deployed approximately 7,000 miles of fiber over which it provides transport services for its customers, primarily through DAS and other small cell networks.[3] Crown

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[1] Crown Castle is Crown Castle International Corp. (CCI: NYSE) and its subsidiaries.

[2] *Parties Asked to Refresh Record Regarding Petition to Reconsider Cost Allocators Used to Calculate the Telecom Rate for Pole Attachments*, Public Notice, DA-15-542 (May 6, 2015).

[3] DAS and small cell networks are primarily comprised of fiber or cable used to transport broadband services between the nodes and a central communications hub site and "can be deployed on a variety of non-traditional structures such as utility poles … to enhance capacity or fill in coverage gaps." *In the Matter of Acceleration of*

Castle has over a decade of public right-of-way DAS and small cell installation experience, and is actively engaged in construction of new networks throughout the United States. In order to deploy its fiber and telecommunications network equipment in the rights-of-way, Crown Castle makes frequent use of existing utility poles and holds roughly 300 current, separate pole attachment agreements nationwide governing access to millions of utility poles. Thus Crown Castle is uniquely positioned to comment in this Proceeding regarding the challenges faced by the competitive industry in the application of the telecom rate to small cell attachments to utility distribution poles.

The Commission recognized in the National Broadband Plan that broadband deployment is "driving innovation and playing an increasingly important role in our lives and our economy"[4] and thus it is essential to take action to remove any unnecessary obstacles in order to ensure efficient broadband buildout.[5] Such broadband deployment is not possible without a robust infrastructure and networks to support the services that are growing our nation's economy. Crown Castle's fiber-fed transport service offerings provide an increasingly important role in facilitating the deployment of broadband infrastructure, as network operators seek to target broadband capacity to the locations where their customers use wireless broadband services and to improve in-building coverage. Unambiguous law and policy is a necessity to encourage these vital deployments.

In these comments, Crown Castle requests the Commission address the uneven

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Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, WT Docket No. 13-238, FCC 14-153 at ¶23 (October 21, 2014).

[4] Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 9-10 (2010), http://download.broadband.gov/plan/national-broadband-plan.pdf.

application of the telecom rate to pole-top attachments by offering clear direction and guidance on the application of the telecom rate formula to such installations.

DISCUSSION

I. SOME POLE OWNERS ARE IGNORING CLEAR FCC MANDATE ON POLE-TOP ANTENNA RATES

The Commission in Order 11-50 gave a clear directive with respect to pole-top installations, stating, "[w]e clarify that section 224 allows wireless attachers to access the space above what has traditionally been referred to as 'communications space' on a pole,"[6] and "[w]e also reaffirm that wireless carriers are entitled to the benefits and protection of section 224, including the right to the telecom rate under section 224(e). We do so in response to reports by the wireless industry of cases where wireless providers were not afforded the regulated rate. … Accordingly, 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."[7]

Crown Castle believes that this directive of the Commission could not have been stated more clearly. Many major investor-owned utilities ("IOUs") agree and have worked professionally with Crown Castle to come to agreement and permit installations. Since the release of Order 11-50, Crown Castle has reached agreement with utilities including Vectren Energy Delivery of Indiana, Oncor Electric Delivery Company in Texas, and PPL Corporation utilities in Kentucky and Pennsylvania[8], by applying the telecom formula

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[5] *Id.* at 107-118.

[6] *In the Matter of Implementation of Section 224 of the Act, Report and Order and Order on Reconsideration*, WC Docket No. 07-245, 25 FCC Rcd. 5240 at ¶77 (April 7, 2011) ("Order 11-50").

[7] *Id.* at ¶153.

[8] Crown Castle negotiated separate agreements with PPL regulated affiliates Louisville Gas & Electric (Kentucky), Kentucky Utilities, and PPL Electric Utilities (Pennsylvania).

multiplied by the amount of space exclusively occupied by attachments, including where necessary paying for the occupancy of "safety zone" space which must remain clear to create minimum required separations between conductors. In practice, this may yield pole-top rates 5-6 times the telecom rate, but Crown Castle readily accepts this outcome if properly calculated using the telecom rate multiplied by the number of feet exclusively occupied.

However, significant opposition remains and must be addressed. In current, ongoing negotiations:

- A major Midwestern IOU serving 2.4 million customers across two states has communicated to Crown Castle ***for an agreement in an FCC state*** that "wireless pole-top rates are not FCC regulated." The proposed agreement terms offered to Crown Castle include a pole-top attachment rate of $2,000 annually, nearly 200 times the telecom attachment rate of $10.07 urban or $10.13 rural.

- In a neighboring, non-FCC state, a different operating utility affiliate of the same holding company is seeking to charge $1,500 per pole-top, more than 167 times the fiber rate of $8.96. Even in non-FCC states, the state regulatory bodies in using their delegated authority to set rates should follow the FCC directive that pole-top rates are to be regulated.

- Another Midwestern utility serving 700,000 customers in an FCC state has offered a pole-top rate of $115, more than 13 times the telecom rate of $8.61.

While Crown Castle and other potential attachers can avail themselves of the FCC complaint process,[9] the Commission's valuable time and resources should be reserved to adjudicate good-faith disputes, and not be used to address utilities choosing to brazenly ignore the rules. In the face of these negotiating tactics, it is clear the Commission must once again reinforce the application of telecom rates to pole-top attachments.

II. MISCELLANEOUS FEES AND IMPROPER ESCALATORS ARE BEING USED TO CIRCUMVENT THE TELECOM RATE

In a more subtle attempt to bypass the regulated telecom rate, Crown Castle is seeing some IOUs attempt to tack additional discriminatory fees and escalators onto regulated telecom rates. For instance, additional application fees of as much as $1,000 per pole attachment are required by some IOUs, over and above reimbursement of make-ready and survey costs; this is discriminatory when similar application fees are not charged for other telecom attachments. Some IOUs are also seeking unauthorized attachment fees for small cell installations in the range of $7,500 to $10,000, well in access of similar fees for other telecom attachments. Finally, several utilities have proposed small cell attachment rates which are based on the telecom rate, but also include annual automatic escalators, often 3.5 percent. While such "consumer price index" or "cost of living adjustment" escalators are typical in a range of commercial contracts, such an adjustment is not appropriate in application to the regulated telecom rate. As the rate is calculated based on the pole owner's actual costs, it is self-adjusting with respect to inflation. The application of an escalator is discriminatory to small cell attachments, and will result in double-dipping and unjust enrichment over pole owner costs.

[9] Order 11-50 at ¶77.

CONCLUSION

As noted above, Crown Castle has negotiated extensively with electric utilities across the United States. Many of these discussions have been productive and resulted in mutually-acceptable attachment agreements meeting FCC rules. However, a subset of investor-owned utilities covering a substantial portion of the U.S. population (including rural areas where broadband investment is highly desired) refuse to recognize the Commission's clear mandate with respect to pole-top attachment rates, with resulting roadblocks, delays and unnecessary cost to vital broadband deployment projects. The charging of "unregulated" rates, excessive fees and unnecessary escalators impermissibly enriches pole owners at the expense of telecommunications consumers.

In order to preserve the competitive balance in the broadband telecommunications marketplace and support its mission of broadband deployment, the Commission should be firm and clear in communicating that such practices violate its rules.

Respectfully submitted,

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