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VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

October 29, 2018

**RE: Assumption of Commission Jurisdiction Over Pole Attachments from the
Federal Communications Commission – Docket No. L-2018-3002672**

Dear Secretary Chiavetta,

Enclosed for filing please find the Comments of Crown Castle Fiber LLC, Crown Castle NG East LLC, Fiber Technologies Networks, L.L.C., PA – CLEC LLC d/b/a Pennsylvania – CLEC LLC, and Sunesys, LLC (jointly “Crown Castle”) in the above-referenced matter.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert A. Millar', with a long horizontal flourish extending to the right.

Robert A. Millar
Associate General Counsel

Enclosure

Cc: Shaun Sparks, Law Bureau (via email: shsparks@pa.gov)
Colin W. Scott, Law Bureau (via email: colin.scott@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

In the Matter of)
)
Assumption of Commission Jurisdiction) Docket No. L-2018-3002672
Over Pole Attachments from the Federal)
Communications Commission)
)

COMMENTS OF CROWN CASTLE

Pursuant to the Commission’s July 12, 2018 Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding, Crown Castle Fiber LLC, Crown Castle NG East LLC, Fiber Technologies Networks, L.L.C., PA – CLEC LLC d/b/a Pennsylvania – CLEC LLC, and Sunesys, LLC (jointly “Crown Castle”)¹ submit these comments addressing the issues raised by the Commission regarding whether the Commission should “reverse preempt” the Federal Communications Commission’s (“FCC”) jurisdiction over pole attachments. Crown Castle has a direct interest in this proceeding, as it provides telecommunications services via facilities attached to utility poles, underground conduits, and in utility rights-of-way.

For the reasons stated below, Crown Castle recommends that the Commission not reverse preempt the FCC’s jurisdiction over pole attachments. If, however, the Commission decides to

¹ As the result of several mergers, Crown Castle Fiber LLC, Crown Castle NG East LLC, Fiber Technologies Networks, L.L.C., PA – CLEC LLC d/b/a Pennsylvania – CLEC LLC, and Sunesys, LLC are all wholly-owned subsidiaries of a common parent. On Sept. 19, 2018, the aforementioned companies submitted a Joint Application before the Commission to consolidate the multiple affiliates with common ownership. *See Amended Joint Application for Approval of a General Rule Transaction and Abandonment of Competitive Access Services by Crown Castle NG East LLC, Fiber Technologies Networks, L.L.C., PA – CLEC LLC, and Sunesys, LLC, Dkt. Nos. A-2018-3004131, A-2018-3004133, A-2018-____, A-2018-3004135, A-2018-3004136 (Sept. 19, 2018).*

reverse preempt the FCC's jurisdiction, it should adopt by reference the FCC's existing attachment rules, including any FCC promulgated updates to those rules.

I. BACKGROUND REGARDING CROWN CASTLE

Crown Castle is one of the country's largest independent owners and operators of shared telecommunications infrastructure, with more than 60,000 distributed antenna system ("DAS") and small cell installations, and over 60,000 miles of fiber. Crown Castle or its affiliates hold Certificates of Public Convenience ("CPCs") or their equivalent in 47 states, Puerto Rico and the District of Columbia. Among other facilities, Crown Castle provides telecommunications services via attachments to thousands of utility poles throughout the Commonwealth, making it uniquely qualified to comment on the issues raised in the instant proceeding.

Crown Castle was first granted a CPC as a competitive access provider by the Commission in 2005. Today, Crown Castle provides telecommunications services via approximately 8,700 miles of fiber optic lines that it either owns or has rights to use in Pennsylvania and has DAS networks operating or in development in around 150 communities in Pennsylvania. Crown Castle provides a host of telecommunications services via its networks in Pennsylvania. Crown Castle provides a telecommunications service over its DAS networks that is sometimes called "RF Transport," by which Crown Castle transports communications for its wireless carrier customers over Crown Castle's fiber optic lines between remote "Nodes" located on poles in the public rights-of-way and a central hub location. In addition, Crown Castle provides a variety of enterprise telecommunications services to institutional, governmental, educational, and carrier customers via its fiber optic lines.

II. THE COMMISSION SHOULD NOT REVERSE PREEMPT THE FCC'S JURISDICTION OVER POLE ATTACHMENT RULES AND DISPUTES

Although Crown Castle appreciates the Commission's desire to help promote the prompt deployment of advanced telecommunications services and facilities, Crown Castle believes that the Commission should maintain the regulatory status quo and not reverse preempt the FCC's jurisdiction over pole attachment rules and disputes. First, the FCC has significant institutional expertise on the issues. Second, the FCC has taken steps to expedite its review of pole attachment disputes. Finally, regulatory certainty and uniformity of pole attachment rules and adjudication is important and useful for supporting deployment of advanced telecommunications.

A. The FCC Has Extensive Institutional Expertise Regarding Pole Attachments

Under the current system, attachers, pole owners, and consumers' interests alike are already adequately protected by the FCC. Notably, the FCC can (and does) draw on its forty years' worth of experience dealing with the complexities surrounding pole attachments when developing appropriately tailored rules and correctly resolving disputes. As such, attachers and pole owners do not currently have an unmet need that would be aided by altering the current system. While many states have updated their pole attachment regulations in recent years to account for new types of attachments, especially as providers increasingly deploy wireless attachments, those states had long ago asserted jurisdiction over pole attachments and were simply making changes to their rules to account for changes the FCC had already incorporated in its rules.² What is more, many states exercising reverse preemption jurisdiction adopted rules

² See, e.g., Arkansas Public Service Commission, *In re Rulemaking Proceeding to Consider Changes to the Arkansas Public Service Commission's Pole Attachment Rules*, Order No. 5, Dkt. No. 15-019-R (rel. June 24, 2016, eff. May 19, 2017); Washington Utilities and Transportation Commission, *In re Adopting Chapter 480-54 WAC Relating to Attachment to Transmission Facilities*, General Order R-582, Docket U-140621 (rel. Oct. 22, 2015, eff. Jan. 1, 2016) ("WUTC Pole Attachment Adoption Order"). Notably, Washington State had reverse preempted the FCC's jurisdiction via a state statute enacted in 1979, but had never adopted rules until 2015.

very similar to the FCC’s regime, further underscoring the desirability of utilizing the FCC’s rules.³

The regulatory landscape for attachments continues to change at a rapid pace, even since the FCC promulgated rules in its 2011 Pole Attachment Order.⁴ For example, prior to amending its pole attachment rules to accommodate one-touch make ready (“OTMR”) procedures for attachments, the FCC took written comments and met with many stakeholders, including a working group report from the Broadband Deployment Advisory Committee (“BDAC”),⁵ a federal advisory committee, to determine the best approach prior to publishing final rules.⁶ This represents just one example of the FCC drawing on its expertise and resources to address a

See Mark Trinchero, *Worth the Wait? After Thirty-Six Years, the Washington Utilities and Transportation Commission Takes Comprehensive Action on Pole Attachments*, BROADBAND DEPLOYMENT LAW ADVISOR (Oct. 26, 2015), <https://www.broadbandlawadvisor.com/2015/10/articles/pole-attachments-2/worth-the-wait-after-thirty-six-years-the-washington-utilities-and-transportation-commission-takes-comprehensive-action-on-pole-attachments/>.

³ *See, e.g.*, WUTC Pole Attachment Adoption Order; Oregon Public Utility Commission, *In re Rulemaking to Amend and Adopt Rules in OAR 860, Divisions 024 and 028, Regarding Pole Attachment Use and Safety*, Order No. 07-137 (entered Apr. 10, 2007), at 3 (finding federal law “instructive” in adopting rules similar to the FCC’s, including adopting a slightly modified version of the FCC’s cable rate formula).

⁴ *In re Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, Dkt. Nos. 07-245 and 09-51, 26 FCC Rcd. 5240 (rel. Apr. 7, 2011), *aff’d*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013); *cert. denied*, 571 U.S. 940 (2013) (“2011 Pole Attachment Order”).

⁵ REPORT OF THE COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE WORKING GROUP, PRESENTED TO THE BROADBAND DEPLOYMENT ADVISORY COMMITTEE OF THE FEDERAL COMMUNICATIONS COMMISSION (January 2018), <https://www.fcc.gov/sites/default/files/bdac-competitiveaccess-report-012018.pdf>; ADDENDUM TO THE REPORT OF THE COMPETITIVE ACCESS TO BROADBAND INFRASTRUCTURE WORKING GROUP, PRESENTED TO THE BROADBAND DEPLOYMENT ADVISORY COMMITTEE OF THE FEDERAL COMMUNICATIONS COMMISSION (April 2018), <https://www.fcc.gov/sites/default/files/bdac-broadband-infrastructure-04242018.pdf>.

⁶ *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, Dkt. Nos. 17-79 and 17-84, FCC 18-111, (rel. Aug. 3, 2018) (“2018 Wireline Infrastructure Order”).

current issue affecting attachers and pole owners. Crown Castle is concerned that the Commission would be required to seek, obtain, and deploy additional regulatory resources at increased cost to keep up with the changing regulatory landscape in the same manner as the FCC. At a minimum, additional training will be required at the outset to familiarize Commission staff with the FCC's existing rules.

B. The FCC Has Adopted New Measures To Promote Expedited Resolution Of Pole Attachment Disputes

In the NPRM, the Commission noted that “pole owners and attaching entities seek more timely alternatives to the FCC complaint resolution process.”⁷ It appears, however, that the Commission has not recognized steps taken by the FCC in the past year to provide “more timely” dispute resolution. First, in its November 29, 2017 Report and Order, Declaratory Ruling, And Further Notice Of Proposed Rulemaking, the FCC adopted a new rule requiring the FCC to resolve pole attachment access complaints within 180 days.⁸ Then, in its *2018 Wireline Infrastructure Order*, the FCC adopted new formal complaint procedures, including for pole attachment complaints. In so doing, the FCC also held that parties could request that pole attachment complaints be placed on the FCC's accelerated docket, which provides resolution within 60 days.⁹ Finally, the FCC has adopted OTMR rules that further provide for resolution of issues without having to resort to dispute resolution.¹⁰ Those steps by the FCC promise to provide accelerated resolution of disputes.

⁷ NPRM at 10.

⁸ *In re Accelerating Wireline Broadband Deployment By Removing Barriers to Infrastructure Investment*, WC Docket 17-84, 32 FCC Rcd. 11128, 11132-34, ¶¶ 9-14 (Nov. 29, 2017) (“*2017 Wireline Infrastructure Order*”).

⁹ *2018 Wireline Infrastructure Order*, ¶ 19 (adopting 47 C.F.R. § 1.736).

¹⁰ *2018 Wireline Infrastructure Order*, ¶¶ 16-76.

The Notice of Proposed Rulemaking does not present any facts showing that the Commission can meet or exceed these dispute resolution time frames offered by the FCC. Resolution of formal complaints between business entities under the Commission's procedural framework can often take considerably longer than the FCC's proposed dispute resolution process. Moreover, unlike the FCC which decides many issues "on paper," the Commission does not currently have a formal complaint adjudication process that omits trial-type hearings before Administrative Law Judges, which can be lengthy and costly.

As also noted by Commissioner Sweet, Crown Castle is concerned about the Commission's ability to handle the increased workload to resolve disputes that would accompany its exercise of jurisdiction over pole attachments.¹¹ Like the additional resources Commission staff may need to develop expertise in the FCC's existing rules and future modifications, the Commission may require additional staff to manage disputes between owners and attachers that were formerly resolved at the FCC. As Commissioner Sweet correctly points out, exercising its authority over pole attachment disputes may bring with it an "additional caseload and demands on the Commission's resources." Adjudication will require the Commission to take on and train additional staff on an ongoing basis to manage the increased caseload and ensure disputes are resolved in a timely fashion.

Both the increased training necessary to familiarize staff with the FCC's rules as well as the ongoing need for qualified dispute resolution staff may be an undue burden on the Commission's existing resources. Consequently, Crown Castle recommends that the Commission not reverse preempt the FCC's jurisdiction over pole attachment rulemaking and adjudication.

¹¹ NPRM, Statement of Commissioner David W. Sweet.

C. Uniformity Provided By FCC Jurisdiction Is Important To Regional And National Deployment

Finally, Crown Castle also emphasizes the importance of uniformity that the FCC’s central pole attachment regulation provides. As the FCC noted in its September 27, 2018 Declaratory Ruling And Third Report And Order, companies, such as Crown Castle, are deploying networks and providing service not only on a local level, but regionally and nationally.¹² Having the FCC as a single point of regulatory reference and decision-making provides uniformity and certainty to telecommunications providers who are investing millions or billions of dollars to deploy the networks needed to meet current and future demand. Many of the electric utilities that operate in Pennsylvania are parts of larger, multi-state companies.¹³ Crown Castle and others like Crown Castle deal with those companies on a multi-state basis. It would simply create confusion and delay to have a particular term or condition vary in neighboring states on poles owned and operated by the same corporate entities. Moreover, although the Commission proposes to adopt the FCC’s rules, it is possible the Commission could reach a decision in a case that might conflict with the FCC’s precedent or how the FCC may have concluded if the same case had been brought to the FCC. Such inconsistency would

¹² *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Dkt. Nos. 17-79 and 17-84 (rel. Sept. 27, 2018) ¶ 42 (noting that a jurisdiction’s constituents’ telecommunications interests are statewide, national, and international and explaining that one jurisdiction inhibiting the provision of service can ripple through to other jurisdictions, leading to harm “to regional or national deployment efforts.”).

¹³ For instance, PECO Energy Company is a subsidiary of Exelon Corporation, “the nation’s leading competitive energy supplier.” *See About Us*, PECO, <https://www.peco.com/AboutUs/Pages/Default.aspx> (last visited Oct. 23, 2018). Pennsylvania Electric Company (“Penelec”), Metropolitan Edison Company (“Met-Ed”), Penn Power, and West Penn Power are owed by FirstEnergy Corporation, which also serves customers in New Jersey, Ohio, Maryland, and West Virginia. *See Electric Companies*, FIRSTENERGY, <https://www.firstenergycorp.com/about/utilities.html> (last modified June 15, 2018).

undermine the uniformity of regulation and process needed to allow the telecommunications industry to deploy the networks that consumers demand and deserve.

Uniformity of regulation is also threatened by the basic regulatory structure presented by the Commission's proposed reverse preemption approach. As proposed by the Commission, it would adopt existing FCC rules and updates to those rules as they are promulgated by the FCC. However going forward the FCC and the Commission would be separately and independently interpreting, applying, and enforcing those same rules in specific disputes. Generally, good public policy has the same agency that promulgates rules also interpreting and applying those rules. As noted by Commissioner Place in his Statement, reverse preemption also creates the potential for state regulatory conflict and uncertainty if the Commission is interpreting and enforcing FCC regulations and prospectively the Pennsylvania General Assembly legislates in a manner that impacts pole attachment issues. Moreover, the Notice of Proposed Rulemaking does not rule out the Commission augmenting FCC rules with new regulations it may promulgate, further increasing the potential for a confusing hybrid regulatory regime being created in Pennsylvania.

III. SHOULD THE COMMISSION REVERSE PREEMPT THE FCC'S JURISDICTION, IT SHOULD FOLLOW THE FCC'S EXISTING RULES

If the Commission decides to reverse preempt the FCC's jurisdiction, it should follow its proposal in the Order and adopt the FCC's rules by reference.

There are numerous advantages to the Commission adopting the FCC's rules by reference rather than beginning the time-consuming process of developing its own pole attachment rules. The FCC currently has jurisdiction to regulate and adjudicate pole attachment issues in

approximately thirty U.S. states.¹⁴ Therefore, by adopting the FCC’s rules by reference, as the Commission has proposed, Pennsylvania will allow providers the certainty of knowing that attaching broadband infrastructure to poles in the Commonwealth will follow the same rules and procedure as in a majority of other states, creating efficiencies for nationwide providers such as Crown Castle. Moreover, the Commission’s proposal to follow the FCC’s updates to the rules (proposed § 77.4 “inclusive of future changes as those regulations may be amended”), will allow attachers and pole owners in the Commonwealth to immediately avail themselves of any regulatory developments codified by the FCC.

Should the Commission elect to reverse preempt the FCC, it will not present any unique issues that would require Pennsylvania-specific changes to the FCC’s applicable regulatory framework. Currently, and for the past forty years, the Commission has exercised its jurisdiction parallel to and consistent with the FCC’s pole attachment rules. Accordingly, there are no jurisdiction-specific changes needed. For example, the FCC regulations already provide an adequate means for pole owners to address unauthorized attachments. The 2011 Pole Attachment Order set new presumptively reasonable limits on penalties for unauthorized attachments without adopting a new remedy; the FCC expressed its continued support for pole attachment agreements negotiated between parties, which typically contain provisions that give the pole owner mechanisms to address unauthorized attachments.¹⁵ As a result, this Commission does not need to provide any additional mechanism for addressing unauthorized attachments beyond the existing rules.

¹⁴ See *States That Have Certified That They Regulate Pole Attachments*, Public Notice, Dkt. No. 10-101, DA 10-893 (rel. May 19, 2010).

¹⁵ See 2011 Pole Attachment Order ¶¶ 113-18 (abandoning the *Mile Hi* limits on penalties and finding new presumptively reasonable limits on penalties for unauthorized attachments).

Finally, Crown Castle also wishes to respond directly to issues raised by Commissioners that would be relevant should the Commission decide to reverse preempt the FCC's jurisdiction over pole attachments:

- Crown Castle sees merit in the concept of establishing working groups bridging public and private entities in relation to pole attachments and related issues.

Connecticut's Public Utilities Regulatory Authority ("PURA") has implemented a number of working groups on attachment issues and Crown Castle affiliates have participated in those groups. Crown Castle would recommend that working groups be limited to addressing emerging issues or issues of special concern to facilitate focused inquiries and input on an as-needed basis.

- Crown Castle does not favor the tariff approach to attachment agreements.

However, standardized agreement terms that comport with the FCC's rules can be a useful way to create efficiencies and reduce both conflict and delay.

IV. CONCLUSION

For the reasons discussed herein, Crown Castle respectfully submits that the Commission should maintain the status quo and not exercise reverse-preemption of pole attachments, and continue to allow the FCC to regulate attachments and resolve disputes. If, however, the Commission decides to reverse preempt the FCC, it should do so by adopting the FCC's pole attachment rules by reference as the Commission proposes.

Respectfully submitted,

/s/ Monica Gambino

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