Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317

April 16, 2019

VIA ELECTRONIC FILING

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

RE: Reporting of Intrastate Operating Revenues For Section 510 Assessment Purposes By Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services – Docket No. M-2018-3004578

Dear Secretary Chiavetta,

Enclosed for filing please find the Comments of Crown Castle Fiber LLC ("Crown Castle") in the above-referenced matter. If you have any questions, please feel free to contact me at robert.millar@crowncastle.com or 510-290-3086.

Sincerely,

Robert A. Millar
Associate General Counsel

Enclosure

cc: David E. Screven, Law Bureau (via email: dscreven@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120

In the matter of	)	
	)	
Reporting of Intrastate Operating Revenues	)	
For Section 510 Assessment Purposes	)	
By Jurisdictional Telecommunications Carriers	)	Docket No. M-2018-3004578
Offering Special Access and Other Similar	)	
Jurisdictionally-Mixed Telecommunications	)	
Services	)	

COMMENTS OF CROWN CASTLE

Pursuant to the Commission's March 2, 2019 "Proposed Policy Statement" in the above-captioned proceeding, Crown Castle Fiber LLC (jointly "Crown Castle")[1] submit these comments addressing the issues raised by the Commission's March 2, 2019 proposed Policy Statement[2] and accompanying amendment to 52 Pa. Code Chapter 69 to include proposed Section 69.3701.[3]

[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).

[2] Pennsylvania Public Utility Commission, "Statements of Policy: Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services", March 2, 2019 (hereinafter, the "Proposed Policy Statement").

[3] Text of the proposed Section 69.3701 is attached to the Proposed Policy Statement as Annex A (hereinafter "proposed Section 69.3701" or "Annex A").

I. INTRODUCTION AND SUMMARY

According to the Proposed Policy Statement, proposed Section 69.3701 would incorporate the policy that Commission-jurisdictional providers of jurisdictionally mixed-telecommunications services are obligated to report their "de facto gross intrastate revenue", as defined in the proposed section, so as to pay a revenue-based allocation of the Commission's indirect costs under Section 510. The Proposed Policy Statement explicitly states that this amendment is designed to recover costs from entities that "report zero gross intrastate revenues," and purportedly seeks to close a loophole that it believes was created by the FCC's "ten-percent" rule governing the designation of certain revenues as interstate.

Crown Castle has a direct interest in this proceeding, as it provides jurisdictionally-mixed telecommunications services in Pennsylvania, along with other services for which it reports intrastate revenues to the Commission. Crown Castle has identified an ambiguity that could have potentially unintended consequences for Crown Castle and other similarly-situated entities. The Proposed Policy Statement's stated goal is to target *only* those entities that provide jurisdictionally-mixed services and report zero intrastate operating revenues, while the actual text of proposed Section 69.3701 contains no such limiting language. Thus, Crown Castle, and other similarly situated entities that provide telecommunications services for which intrastate revenue is reported and assessed in addition to jurisdictionally-mixed services for which zero intrastate revenue is reported, could be subject to double assessment of regulatory expenses by the Commission. These entities are already subject to assessment for their reported gross intrastate operating revenues.

For the reasons stated below, Crown Castle recommends that the Commission either: (1) not amend the Pennsylvania Administrative Code to include proposed Section 69.3701; or (2) amend proposed Section 69.3701 and issue a new Proposed Policy Statement clarifying that

entities like Crown Castle that provide jurisdictionally-mixed services for which zero intrastate revenue is reported, along with other telecommunications entities that report non-zero intrastate revenue to the Commission are exempt from reporting their "de facto intrastate operating revenues" as defined in proposed Section 69.3701. At a minimum, the Commission should initiate a formal collaborative process with Staff and interested parties to clarify the proposed policy statement and address issues associated with the proposed change in reporting requirements for the purpose of establishing assessments. Such a collaborative will avoid uncertainties and unintended consequences.

II. 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 48 states, Puerto Rico and the District of Columbia. Among other facilities, Crown Castle provides jurisdictionally-mixed telecommunications services, 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. Crown Castle reports intrastate revenues for its fiber optic lines and the other more "traditional" telecommunications services it offers to customers in Pennsylvania, and thus does not fall into the category of an entity that reports zero gross intrastate revenues.

Crown Castle's various services are intrastate services regulated by the Commission's regulatory authority. However, pursuant to well-established federal laws, the revenues from certain of Crown Castle's services are deemed jurisdictionally interstate under the FCC's Ten-Percent Rule Order,[4] as more than 10% of the traffic carried by these services are interstate. Although some of Crown Castle's prior entities reported zero revenues for jurisdictionally-mixed services, as a result of the corporate restructuring described in footnote 1, above, Crown Castle anticipates that it will report non-zero intrastate revenues. Furthermore, all of Crown Castle's services are deregulated and impose little or no regulatory burden on the Commission.

III. THE COMMISSION SHOULD NOT ADOPT THE PROPOSED CHANGE TO THE SECTION 510 ASSESSMENT PROCESS FOR INTRASTATE OPERATING REVENUE

While Crown Castle understands the Commission's desire to have regulated entities pay their reasonable share of the costs of administering the Public Utility Code, Crown Castle believes that the current attempt as outlined in the Proposed Policy Statement and proposed Section 69.3701 are misguided. First, the Commission's Proposed Policy Statement and proposed Section 69.3701 are ambiguous. Second, the Proposed Policy Statement and proposed Section 69.3701 are inconsistent with the plain language of Section 510 of the Public Utility

[4] *See* Special Access 10% Order, 4 FCC Rcd 5660.

Code. Third, the Proposed Policy Statement and proposed Section 69.3701 are potentially discriminatory because they do not apply to local exchange carriers and unfairly impact deregulated entities. Fourth, proposed Section 69.3701 and the accompanying Proposed Policy Statement have the potential to violate Section 253 of the Communications Act by effectively prohibiting the provision of wireless services. Finally, the Proposed Policy Statement incorrectly disregards the import of jurisdictional separations principles. Therefore, Crown Castle urges the Commission to decline to enact proposed Section 69.3701, or, in the alternative, to modify the language in Section 69.3701 so as to clarify that only those entities who currently report zero intrastate operating revenues for jurisdictionally-mixed services and that report no other intrastate operating revenues are subject to report their de facto intrastate operating revenues.

At a minimum, Crown Castle supports the question raised by Vice Chairman Place that the Commission should initiate a formal collaborative process between its Staff and the interested parties and entities to address the potential change of reportable revenues. As these comments demonstrate, the proposed new assessment regime raises many significant issues, uncertainties, and unintended consequences. Before proceeding with this radical change, the Commission should follow Vice Chairman Place's suggestion and allow a more detailed and fully-developed dialogue regarding these complex issues among the Commission and the potentially impacted parties.

A. The Proposed Policy Statement is Ambiguous

Crown Castle urges the Commission to decline to amend 52 Pa. Code Chapter 69 to include proposed Section 69.3701 because it is ambiguous in light of the expressed purpose in the Proposed Policy Statement. "A statute is ambiguous when there are at least two reasonable

interpretations of the text."[5] As currently written, the Proposed Policy Statement and Section 69.3701 appear to contradict each other. Specifically, the Proposed Policy Statement includes a qualification about the entities that will be affected by proposed Section 69.3701 that is not found in the proposed Section 69.3701 text.

In discussing the goal of proposed Section 69.3701, the Proposed Policy Statement states that the "section will incorporate the policy determination that Commission-jurisdictional providers of special access or other similar jurisdictionally-mixed telecommunications services *that report zero gross intrastate revenues* are obligated to report their de facto gross intrastate operating revenues . . . and are obligated to pay a reasonable share of the costs of administering the Public Utility Code."[6] The Proposed Policy Statement thus states in at least one place that the requirement of reporting "de facto gross intrastate operating revenues" applies *only* to telecommunications entities that otherwise "report zero gross intrastate revenues." However, the language in proposed Section 69.3701 is different. Specifically, it requires

> [a]ny [Competitive Access Provider] or other telecommunications public utility holding a Commission-issued CPC operating in Pennsylvania and providing special access or other similar jurisdictionally-mixed telecommunications services is obligated to submit its de facto gross intrastate revenues from providing these services . . . along with all supporting information (such as traffic studies, tax returns, jurisdictional allocations formulas and factors, books of account, reports, etc.) on which the carrier bases its revenue determination . . . .[7]

Unlike the Proposed Policy Statement, this language does not appear to limit the reporting of "de facto gross intrastate operating revenues" only to those entities that currently report zero gross intrastate revenues for jurisdictionally-mixed services. Instead, it appears to apply this new

[5] *A.S. v. Pa. State Police*, 143 A.3d 896, 905-06 (Pa. 2016).

[6] Proposed Policy Statement, at 2 (emphasis added).

[7] Annex A § 69.3701(7).

requirement to *all* "telecommunications public utility[ies]" in the Commonwealth that hold a certificate of public convenience and provide jurisdictionally-mixed services.

It is further unclear how entities like Crown Castle—that are reporting intrastate gross operating revenues separate from services other than those jurisdictionally-mixed services that qualify as interstate under the ten percent rule—would be treated under Section 510(b)(3)-(4) if proposed Section 69.3701 is enacted. In *United Parcel Service, Inc. v. Public Utility Comm'n*,[8] the Commonwealth Court noted that the word "group" in these sections means that the Commission "must allocate its balance to *each group of utilities furnishing the same type of service*."[9] However, proposed Section 69.3701 appears to potentially discriminate in favor of certain telecommunications entities depending on whether they provide services whose revenues are treated as jurisdictionally mixed. If the Commission does choose to adopt proposed Section 69.3701, it should modify the language to be consistent with the Proposed Policy Statement, and make clear that the section *only* applies to entities that otherwise report zero gross intrastate operating revenues.

Furthermore, the language in Section 69.3701 requiring the submission of "traffic studies, tax, returns, jurisdictional allocations formulas and factors, books of account, [and] reports"[10] appears to conflict with the definition of "de facto gross intrastate operating revenues" provided in the Section, and therefore, at a minimum, presents further ambiguity and uncertainty. Proposed Section 69.3701 defines this revenue as "operating revenues that are billed, charged, or otherwise due for all telecommunications services and traffic between points that are both

[8] 789 A.2d 353 (Pa. Commw. Ct. 2001).

[9] *Id.*, at 359.

[10] Annex A § 69.3701(7).

located within the Commonwealth of Pennsylvania."[11] This language makes it appear that the "de facto" intrastate revenue include *any* revenue derived from any services with endpoints within the Commonwealth, without regard for jurisdictional allocation, traffic studies, or similar methods traditionally used in jurisdictional separations analysis.[12] Accordingly, the reference to matters such as jurisdictional allocation formulas and traffic studies creates uncertainty regarding what is intended.

Finally, as defined, the term "de facto gross operating revenues" is also ambiguous and potentially radically overbroad. Proposed Section 69.3701 purports to include "revenues that are *billed, charged or otherwise due.*"[13] This definition is so broad as to essentially encompass all of Crown Castle's accounts receivable for intrastate services, regardless of whether the revenue is ever actually realized by Crown Castle. While neither the Pennsylvania Administrative Code nor the Public Utility Code define the term revenue in related sections, Black's Law Dictionary defines revenue as "income from any and all sources."[14] It further defines "income" as "money or other form of payment *that one receives.*"[15] Thus, in the interest of fairness and all other issues aside, the definition of "de facto gross operating revenues" should be revised to only apply to revenues actually received, rather than amounts "charged" or "otherwise due."

B. The Proposed Policy Statement and Proposed Section 69.3701 are Inconsistent with the Public Utility Code

[11] *Id.*, § 69.3701(8).

[12] *See* 47 C.F.R. § 36.1, *et seq.*

[13] Annex A § 69.3701(8) (emphasis added).

[14] *Revenue*, Black's Law Dictionary (10th ed. 2014).

[15] *Income, id.* (emphasis added).

The Commission should also decline to enact proposed Section 69.3701 because it and the Proposed Policy Statement are inconsistent with Pennsylvania's Public Utility Code. First, by endorsing the Proposed Policy Statement and proposed Section 69.3701, the Commission is attempting to unilaterally modify Section 510 of the Public Utility Code—something that it lacks the power to do.

The Commission is a "creature of statute" and thus "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication."[16] Section 501 of the Public Utility Code specifically identifies the Commission's powers. They include *enforcement* of the Public Utility Code via regulations and orders, as well as the "general administrative power and authority to supervise and regulate all public utilities doing business within" Pennsylvania.[17] However, if the Commission were to amend the Pennsylvania Administrative Code by enacting proposed Section 69.3701 and endorsing its accompanying Proposed Policy Statement, the Commission would be acting beyond its statutory authority. Proposed Section 69.3701 essentially *sua sponte* modifies Section 510 of the Public Utility Code by creating the new category of "de facto" gross operating revenues.[18] "The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct."[19] Adopting proposed Section 69.3701 and the accompanying Proposed Policy Statement would constitute legislative action because they would modify the legislative policy and rules contained in Section 510 of the

[16] *Vertis Grp. v. PUC*, 840 A.2d 390, 399 (Pa. Commw. Ct. 2003).

[17] 66 Pa.C.S. § 501(a)-(b).

[18] Notably, no Pennsylvania cases, statutes, or administrative codes use the term "de facto revenue", much less "de facto gross operating revenue."

[19] *Yakus v. United States*, 321 U.S. 414, 424 (1944).

Public Utility Code. This action would thus impede on the General Assembly's legislative authority and violate the Pennsylvania Constitution, which vests all legislative power with the General Assembly, and gives it the exclusive power to amend, repeal, or enact statutes.[20]

C. The Proposed Policy Statement and Proposed Section 69.3701 are Potentially Discriminatory

Crown Castle is also concerned that the Proposed Policy Statement and proposed Section 69.3701 are potentially discriminatory to the extent they seek to impose additional burdens only on certain ill-defined telecommunications entities to the exclusion of others. Notably, proposed Section 69.3701 attempts to modify Public Utility Code Section 510's requirements only as to Competitive Access Providers ("CAPs") and "other telecommunication public utilities holding Commission-issued" Certificates of Public Convenience.[21] Neither the Proposed Policy Statement nor proposed Section 69.3701 define the term "other telecommunications public utilities" as used therein. If proposed Section 69.3701 does not include local exchange carriers ("LECs")—specifically incumbent local exchange carriers ("ILECs")—it is discriminatory because it would evidently allow LECs to report their intrastate revenues as defined by the federal jurisdictional separations process, while avoiding these new reporting requirements. The Commission cannot purport to allow the LECs to continue defining their intrastate revenues under the widely accepted ten percent rule while explicitly disallowing CAPs from doing the same.

[20] Pennsylvania Constitution Art. I, § 12 ("No power of suspending laws shall be exercised unless by the Legislature or by its authority."); Art. II, § 1 ("The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.")

[21] Annex A § 69.3701(3).

Additionally, the Proposed Policy Statement and proposed Section 69.3701 unfairly impact deregulated entities like Crown Castle in conflict with Section 510(f) of the Public Utility Code. Section 510(f) provides that "it is the intent and purpose of this section that each public utility subject to this part shall advance to the commission its reasonable share of the cost of administering this part."[22] Unlike the ILECs, deregulated CAPs, such as Crown Castle, are subject to "alternative forms of regulation" as defined in the Public Utility Code.[23] Imposing on such largely deregulated CAPs the same regulatory assessment percentage imposed on highly-regulated ILECs that by their very nature inflict much higher regulatory costs on the Commission, does not lead to each party paying "its reasonable share of the cost of administering this part." As the Commission is well aware, Crown Castle and other largely deregulated entities impose little or in some cases no year-over-year regulatory burdens or costs on the Commission, particularly when compared with regulatory oversight required of ILECs. Crown Castle's revenues are entirely and wholly unrelated to the level of activity and cost that it imposed on the Commission. It would be manifestly unjust—and directly contra to Section 510's explicitly stated intent—to impose this extra burden on telecommunications entities like Crown Castle whose services are largely deregulated.

D. The Proposed Policy Statement and Proposed Section 69.3701 Have the Potential to Effectively Prohibit the Provision of Service in Violation of 47 U.S.C. § 253

The FCC's September 27, 2018 Declaratory Ruling and Third Report and Order (the "*Declaratory Ruling*"),[24] sought to clarify "the types of fees that run afoul of Congress's limits in

[22] 66 Pa.C.S. § 510(f).

[23] *Id.* § 3015.

[24] *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment by Removing Barriers to Infrastructure Investment*, WT Docket 17-70 and *In re*

Section 253" of the Communications Act.[25] Specifically, the FCC stated that "fees are only permitted *to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs,* and are non-discriminatory."[26] The *Declaratory Ruling* noted that Section 253(a)[27] broadly limited the ability of states to regulate deployment of intrastate or interstate telecommunications facilities, while each subsection below set forth "defined areas in which states may regulate."[28] The FCC went on to note that while Section 253(c)[29] only expressly governed fees for use of rights-of-way, the same analysis applies to all fees that affect the deployment of small cell technology because they all "drain limited capital resources that otherwise could be used for deployment."[30] The *Declaratory Ruling* further endorsed the policy statement outlined in Section 510(f) and discussed above—namely that government fees are permissible only if they "represent a reasonable approximation of actual and direct costs incurred by the government."[31] Critically, similar to Section 510(f), the FCC made clear that the costs a

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Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-84

[25] *Id.* at ¶ 32.

[26] *Id.*

[27] 47 U.S.C. § 253(a) ("No state or local regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service.")

[28] *Declaratory Ruling*, at ¶ 52.

[29] 47 U.S.C. § 253(c) ("Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is public disclosed by such government.")

[30] *Declaratory Ruling* at ¶ 54.

[31] *Id.* at ¶ 55; *cf.* 66 Pa. C.S. § 510(f) ("It is the intent and purpose of this section that each public utility subject to this part shall advance to the commission its reasonable share of the cost of administering this part.")

state or local government may recover must be only the costs "specifically related to and caused by the deployment."[32] Although the FCC was speaking in the context of a specific "deployment," it is clear that it meant that the government's fees must reflect the costs caused by the particular entity subject to the fee.

The *Declaratory Ruling* went on to further interpret Section 253 in a manner that focused on the ability of states and localities to *only* recoup costs of entry.[33] The FCC summed up its policy saying:

> [f]ees charged by a state or locality that recover the reasonable approximation of reasonable costs do not "materially inhibit" a provider's ability to compete in a "balanced" legal environment. To the contrary, those costs enable localities to recover their necessary expenditures to provide a stable and predictable framework in which market participants can enter and compete. On the other hand . . . the [FCC] concluded that state or local legal requirements such as fees that impose a "financial burden" on providers can be materially prohibitive.[34]

As stated above, the FCC's interpretation of Section 253 is congruent with the stated purpose of Pennsylvania's Public Utility Code Section 510(f). However, the Proposed Policy Statement and proposed Section 69.3701 appear to go beyond the mere recoupment of reasonable costs caused by specific entities and thus may act to materially inhibit the provision of telecommunications services. Given the largely deregulated nature of most of their service offerings,CAPs do not impose significant costs on the Commission, and more importantly, their revenues bear no relation to what level of cost they impose on the Commission. Collection based on revenues inherently fail to reflect those costs actually borne by the Commission, and

[32] *Declaratory Ruling* n.131.

[33] *Declaratory Ruling*, at ¶ 56.

[34] *Id.* at ¶ 57.

they thus have the potential to violate Section 253 as interpreted in the FCC's *Declaratory Ruling*. Therefore, the Commission should decline to enact proposed Section 69.3701.

E. The Proposed Policy Statement and Proposed Section 69.3701 Incorrectly Disregard the Import of Jurisdictional Separations Principles

Furthermore, the Proposed Policy Statement disregards the importance of jurisdictional separations principles and misreads and misapplies *Illinois Bell Tel. Co. v. FCC*[35] and *Qwest Corp. v. Scott*.[36] The Proposed Policy Statement purports to rely on each of these cases to support its argument that the ten percent rule applies to the allocation of costs only and regulatory authority over ratemaking.[37] In doing so, the Commission takes too narrow of a view that is ultimately belied by other relevant authority.

The Commission's reliance on *Illinois Bell* and *Qwest Corp.* is also misplaced. Each of those cases involved regulation of *services*, whereas the present issue involves the appropriate treatment of *revenues*, an action that falls squarely within the rubric that the jurisdictional separations doctrine is designed to address. Indeed, the Eighth Circuit in *Qwest Corp.* explicitly recognized that "the jurisdictional separations procedures are designed primarily for the allocation of . . . revenues . . . ."[38] Notably, the FCC has never interpreted either case in the manner put forth by the Commission. While other courts have cited both *Illinois Bell* and *Qwest Corp.* favorably, none have adopted the interpretation that the Commission urges in the Proposed Policy Statement. Additionally, while the First Circuit in *P.R. Tel. Co. v. T-Mobile*

[35] 883 F.2d 104 (D.C. Cir. 1989).

[36] 380 F.3d 367 (8th Cir. 2004).

[37] Proposed Policy Statement, at 7-8.

[38] 380 F.3d at 372.

P.R. LLC[39] recognized that the Eighth Circuit in *Qwest Corp.* purported to hold that the ten percent rule does not confer exclusive regulatory authority to the FCC, it still recognized that the rule directly applies to "costs and expenses."[40] This interpretation of jurisdictional separations tracks with that espoused in *Qwest Corp.* and undercuts the Commission's argument based on *Qwest Corp.*

The FCC's 2017 decision *In the Matter of Federal-State Joint Board on Universal Service Changes to the Board of Directors of the National Exchange Carrier Association, Inc. Universal Service Contribution Methodology*

Request for Review[41] further supports the proposition that for purposes of allocating revenues, the FCC's 10% rule applies. In that Order, the FCC, in determining the jurisdictional nature of revenues for Universal Service Fund contribution services, explicitly stated that the ten percent rule is properly used to determine whether *revenues* should be assigned to interstate or intrastate jurisdictions.[42]

IV. AT A MINIMUM, THE COMMISSION SHOULD FIRST INITIATE A FORMAL COLLABORATIVE PROCESS BETWEEN STAFF AND INTERESTED PARTIES

As noted above, at a minimum, Crown Castle supports the question raised by Vice Chairman Place that the Commission should initiate a formal collaborative process between its Staff and the interested parties and entities to address the potential change of reportable revenues. As these comments demonstrate, the proposed new assessment regime raises many

[39] 678 F.3d 49 (1st Cir. 2012).

[40] *Id.* at 65 n.11.

[41] 32 FCC Rcd 2140.

[42] *Id.* at 2143-44.

significant issues, uncertainties, and unintended consequences. Before proceeding with a significant change in law that involves complex, multi-jurisdictional issues, the Commission should establish a process that allows a more detailed and fully-developed dialogue among the Commission and the potentially impacted parties.

V. CONCLUSION

For the reasons discussed herein, Crown Castle respectfully requests that the Commission should decline to adopt proposed Section 69.3710 and its accompanying Proposed Policy Statement. If, however, the Commission would adopt proposed Section 69.3710, Crown Castle requests that the Commission add qualifying language to make clear that the proposed amendment only applies to telecommunications entities that otherwise report zero intrastate operating revenue for jurisdictionally-mixed services, and excludes telecommunications entities that otherwise report non-zero intrastate operating revenue.

Respectfully submitted,

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