

**FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., SW
Washington, DC 20554**

June 26, 2020

Copies sent by E-mail

NOTICE OF FORMAL COMPLAINT

Crown Castle Fiber LLC,)	
)	
Complainant,)	
)	
v.)	Proceeding Number 20-196
)	Bureau ID Number EB-20-MD-001
Potomac Electric Power Co.;)	
Pepco Holdings, LLC,)	
)	
Defendants.)	

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Dear Counsel:

On June 24, 2020, Crown Castle Fiber LLC (Crown Castle) filed with this Commission a formal complaint against Potomac Electric Power Company and Pepco Holdings LLC (collectively, Pepco) under section 224 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 224.¹ As agreed to by the parties, Pepco should have a copy of the Complaint as served by overnight delivery and electronic mail by Crown Castle on June 24, 2020. *See* Complaint at 45. If that is not the case, Pepco immediately should contact Commission counsel.

¹ Pole Attachment Complaint, Proceeding No. 20-196, Bureau ID No. EB-20-MD-001 (filed June 24, 2020) (Complaint).

Lisa Griffin, Sonja Rifken, and I are Commission counsel for this proceeding. My phone number is (202) 418-7336, and my email address is rosemary.mcenery@fcc.gov. Lisa's phone number is (202) 418-7273, and her e-mail address is lisa.griffin@fcc.gov. Sonja's phone number is (202) 418-1730, and her email address is sonja.rifken@fcc.gov.

This letter outlines the procedural rules relevant to this case and establishes a schedule for the proceeding. We will conduct this proceeding in accordance with the Commission's rules governing section 208 formal complaint proceedings, which are found at 47 CFR §§ 1.720-1.740, as well as the additional rules relevant to pole attachment complaint proceedings, which are found at 47 CFR §§ 1.1401-1.1415.²

In reviewing the Complaint, we observed these procedural deficiencies:

- 1) The "Information Designation" section in the Complaint failed to provide an adequate description of the subject of the information held by each individual identified. 47 CFR § Section 1.722(i)(1) ("information of designation" must contain, among other things, the "name . . . of each individual likely to have information relevant to the proceeding, along with the subjects of that information."). Please submit a revised Information Designation which includes a brief description of the subject of the information held by each individual identified to the extent that you have such information.
- 2) The Interrogatories served on Pepco failed to include an explanation of why the information sought in each interrogatory is both necessary to resolve the dispute and not available from another source. 47 CFR § 1.730(b). Although there is a general statement as to all of the interrogatories, *see* Complainant's First Set of Interrogatories at 3, para. 4, section 1.730(b) requires an explanation as to each interrogatory. 47 CFR § 1.730(b). Please amend your Interrogatories to include an explanation for why the information sought in each interrogatory is necessary to resolve the dispute and not available from another source.

Pursuant to our customary practice in such instances, we direct Crown Castle to file supplemental materials in compliance with the Commission's rules as described above by July 6, 2020. The time period for Pepco to respond to the Complainant's First Set of Interrogatories will begin when the amended interrogatories are served. 47 CFR § 1.730(c).

On June 23, 2020, Crown Castle informed us that it would be filing this pole attachment complaint and sought inclusion of the complaint on the Commission Accelerated Docket.³ We do not find this complaint suitable for inclusion on the Accelerated Docket and decline that request. 47 CFR § 1.736(d).

² See also *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018) (*Rule Consolidation Order*); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed when Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997) (*Formal Complaints Order*), Order on Reconsideration, 16 FCC Rcd 5681 (2001) (*Formal Complaints Recon Order*); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, Order, 29 FCC Rcd 14078 (2014) (*Formal Complaints Amendment Order*). The rules governing this proceeding differ significantly from the Federal Rules of Civil Procedure. For example, the Commission requires parties to file fact-based pleadings. See *Formal Complaints Order*, 12 FCC Rcd at 54, para. 120, 47 CFR §§ 1.721(b)-(d), (r), 1.726(b). Further, section 208 proceedings "are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record." 47 CFR § 1.721.

³ Letter from T. Scott Thompson, Counsel for Crown Castle, to Rosemary McEnery, Chief, Market Disputes Resolution Division, FCC Enforcement Bureau (June 23, 2020) (on file EB-20-MD-001).

Schedule for this Proceeding

The schedule for this proceeding is set forth below. All filings must comply with the Commission's rules and with this Notice.⁴

1) By July 24, 2020, Pepco must file and serve an answer to the complaint that complies with 47 CFR § 1.726. Any interrogatories posed by Pepco must be filed and served concurrently with the answer. 47 CFR § 1.730(a). Responses to any motions filed with the complaint should also be submitted with the answer.⁵ Crown Castle also requested FCC staff-assisted mediation in this matter. 47 CFR § 1.737. Pepco must respond to this request no later than July 24, 2020.

2) By August 3, 2020, Crown Castle must file and serve a reply to the answer that complies with 47 CFR § 1.728. Any second request for interrogatories posed by Crown Castle must be filed and served concurrently with its reply. 47 CFR § 1.730(a).

3) A party must file and serve any opposition and objections to the opposing party's interrogatories within seven calendar days after service of the interrogatories. Any interrogatories to which no opposition or objection is raised must be answered within 20 days of service. 47 CFR § 1.730(c).

4) The parties must meet to discuss the resolution or narrowing of as many issues as possible. Such discussions should include the following matters: settlement prospects, discovery, factual and legal issues in dispute, the case schedule, and the preparation of joint statements.⁶ See 47 CFR § 1.733(b). Based on these discussions, the parties should prepare joint statements of (a) stipulated facts, disputed facts, and key legal issues; and (b) all proposals agreed to and any disputes remaining regarding the matters listed in 47 CFR § 1.733(b)(1). The joint statements must be filed by August 17, 2020. The parties may submit these two joint statements in a single document if each is separately identified therein. **We strongly encourage the parties to devote substantial effort to developing comprehensive and detailed joint statements.** See *Formal Complaints Recon Order*, 16 FCC Rcd at 5696-97.

5) An initial status conference in this proceeding has been scheduled for August 27, 2020 at 9:00 am. In light of the ongoing COVID-19 pandemic, this meeting will be conducted via conference call. We strongly encourage each party to include in the conference a client representative with knowledge of the central facts and authority to settle the dispute.

⁴ Staff has authority under sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, to modify the filing deadlines and other requirements contained in the formal complaint rules as the circumstances of individual cases warrant and to the extent consistent with section 1.740 of the rules, 47 CFR § 1.740. In addition, if a filing contains a citation to material that appears on the Internet, the filing must attach a hard copy of that material. See 47 CFR §§ 1.721(g), (k).

⁵ Although motions to dismiss are permitted, they should be filed only in rare circumstances. 47 CFR § 1.729(d); *Rule Consolidation Order*, 33 FCC Rcd at 7182-83, paras. 13-14 (“[M]otions to dismiss are rarely warranted. The formal complaint rules “are designed so that a defendant’s answer is a comprehensive pleading containing complete factual and legal analysis, including a thorough explanation of every ground for dismissing or denying the complaint.” (quoting *Formal Complaints Recon Order*, 16 FCC Rcd at 5696, para. 34); *Rule Consolidation Order*, 33 FCC Rcd at 7183, para. 14 (“[W]e consider there to be few circumstances justifying the filing of a separate motion to dismiss . . .”).

⁶ Parties should attempt to resolve any discovery disputes prior to the submission of the joint statement(s). Staff will address any unresolved discovery disputes at the status conference. Staff generally will consider motions to compel discovery filed pursuant to sections 1.729(b) and 1.730(h), 47 CFR §§ 1.729(b), 1.730(h), only after a party fails to comply with discovery ordered at the status conference.

6) The above schedule anticipates final action on the Complaint within 180 days of its filing. *See* 47 CFR § 1.1414(a).⁷ The Enforcement Bureau has discretion to pause the review period where actions outside the Commission’s control (such as settlement discussions or mediation) delay Commission review of the complaint or where the Bureau determines that the issues and record are particularly complex, necessitating additional time for discovery, briefing or the submission of information requested by the Bureau. *See* 47 CFR §§ 1.740(b), 1.1414(a); *Wireline Infrastructure Order*, 32 FCC Rcd 11128 at 11133-34, para. 12; *Rule Consolidation Order*, 33 FCC Rcd at 7186, para. 23. The Division intends to meet the 180-day deadline for final action and will be disinclined to grant requests for deadline extensions, absent a showing of good cause. Further, tight deadlines will apply to any discovery and briefing that may be permitted in this matter, and discovery and briefing must be completed by October 8, 2020. The parties and their counsel should plan their schedules accordingly. Any request for extension of the scheduled filing dates must be for good cause shown, and the parties should understand that the grant of such request will result in an adjustment to the deadline for final action based on the length of the extension.

The parties must file a public version of all written submissions in this proceeding using the Commission’s Electronic Comment Filing System (ECFS). All written submissions should (a) prominently contain the Proceeding Number and Bureau ID Number referenced above, and (b) be addressed to the Commission Secretary. A party that seeks to file both a public version and a confidential version of a submission must do so in compliance with section 1.731 of the Commission’s rules, and must file the public (redacted) version on ECFS and file the confidential (unredacted) version in hard copy form with the Office of the Commission Secretary. 47 CFR § 1.731. In light of the ongoing COVID-19 pandemic, hard copy documents should be sent in accordance with the Commission’s Public Notice *FCC Provides Further Instructions Regarding Submission of Confidential Materials*, DA 20-361 (rel. Mar. 31, 2020) (*March Public Notice*). A party asserting confidentiality for any information or materials should restrict its designations to encompass only the specific information that it asserts is confidential. Confidential designations in pleadings must be clearly identified and marked accordingly, e.g., [Begin Confidential]/[End Confidential]. Confidential filings also must clearly identify and mark each page, or portion thereof, which includes confidential designations. *See* 47 CFR § 1.731(a)(1). In addition to filing the unredacted version with the Office of the Secretary and until otherwise informed, please arrange to send an electronic version of unredacted documents to staff. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e); *March Public Notice*. The parties must serve all filings via e-mail or overnight delivery, together with proof of service unless otherwise directed by staff. *See* 47 CFR § 1.734(f). Also, please email to Commission counsel for this proceeding courtesy copies of all filings (both public versions and confidential versions) in a format that permits full text searching, if possible. *See* 47 U.S.C. § 154(i); 47 CFR § 1.734(e). *See Formal Complaints Amendment Order*, 29 FCC Rcd at 14081, para. 11 (requiring parties to provide hard copies of submissions to Commission staff upon request).

This proceeding is restricted for *ex parte* purposes. *See* 47 CFR Part 1, Subpart H. Further, the parties are required to retain all records that may be relevant to the complaint, including electronic records, until the Commission’s decision in this proceeding is final and no longer subject to judicial review. *See* 47 U.S.C. §§ 154(i), 208(a); 47 CFR § 42.7.

⁷ Staff reserves the right to decide later that all or part of the allegations in the Complaint are not subject to a 180-day deadline for access complaints and are instead subject to the 270-day shot clock for formal complaints. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11132, at para. 9, n.21 (2017) (*Wireline Infrastructure Order*). *See also Rule Consolidation Order*, 33 FCC Rcd 7185, para. 20.

We issue this letter ruling under sections 4(i), 4(j), 208, and 224 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, sections 1.3, 1.720-1.740, and 1.1401-1415 of the Commission's rules, 47 CFR §§ 1.3, 1.720-1.740, 1.1401-1415, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary H. McEnery

Rosemary H. McEnery
Chief, Market Disputes Resolution Division
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