

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Application of Crown Castle NG West LLC
(U-6745-C), pursuant to Decision 98-10-058
for Arbitration of Dispute over Denial by
Pacific Gas and Electric Company (U-39-E) of
Access to Utility Support Structures.

Application 18-10-004

ARBITRATED LICENSE AGREEMENT

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Pursuant to California Public Utilities Commission (the “Commission”) Decision 98-10-058 (“ROW Decision”), and the order set forth in the Final Arbitrator’s Report issued January 31, 2019, Crown Castle Fiber LLC (U-6190-C) (“Crown Castle Fiber”)¹ respectfully submits the attached arbitrated licensing agreement (“Licensing Agreement”) with Pacific Gas & Electric Company (“PG&E”) (U-39-E). See **Attachment 1**. The Licensing Agreement includes the minimum terms necessary for Crown Castle Fiber to rapidly deploy broadband, ensure superior reliable service, and compete on a level playing field with incumbent local exchange carrier (“ILECs”) pole-owners that benefit from the additional provisions included in the attached Licensing Agreement.

¹ While the present proceeding was initiated by Crown Castle NG West LLC (U-6745-C), the California operations and assets of that entity, along with its other California certificated affiliates including Sunesys, LLC (U-6991-C), were consolidated into Crown Castle Fiber LLC on December 31, 2018, as set forth in Advice Letter No. 71 of Crown Castle NG West LLC and Advice Letter No. 101 of Sunesys, LLC, which were effective November 24, 2018 pursuant to the Certificates of Acceptance issued by the Commission on November 27, 2018. Furthermore, Advice Letter No. 73 of Crown Castle NG West LLC and Advice Letter No. 102 of Sunesys, LLC, both filed on January 4, 2019, requested the Commission to cancel the certificates of Crown Castle NG West LLC and Sunesys, LLC because they no longer provide telecommunications services in California – the entity now providing telecommunications services in California is Crown Castle Fiber LLC (U-6190-C). Advice Letter No. 102 of Sunesys, LLC was effective January 9, 2019 pursuant to a Certificate of Acceptance issued by the Commission on February 5, 2019, and Advice Letter No. 73 of Crown Castle NG West LLC is expected to be effective on or about January 4, 2019. Therefore, Crown Castle Fiber LLC, which as of January 1, 2019 holds the certificate associated with Utility ID 6190 (formerly held by Freedom Telecommunications, LLC) along with the California operations and assets of Crown Castle NG West LLC and Sunesys, LLC is the appropriate party to this proceeding.

As an initial matter, Crown Castle Fiber reasserts that the Commission should adopt the Crown Castle Proposed Agreement, Exhibit Crown-2, submitted into evidence during the evidentiary hearing, which would ensure Crown Castle Fiber could purchase pole space from PG&E. The Crown Castle Proposed Agreement addresses directly the fact that PG&E's refusal to sell pole space to Crown Castle Fiber unnecessarily forces costs and obligations to Crown Castle Fiber, slows broadband deployment, erects barriers to superior reliable service, and creates an unlevel playing field.² To remedy these harms, the Commission should adopt the terms of the Crown Castle Proposed Agreement and thereby require PG&E to: (i) sell to Crown Castle Fiber the amount of available pole space requested for attaching equipment without requiring purchase of unneeded space, or conditioning purchase on the assumption of PG&E's role as a tenant manager; and (ii) cease its unlawful practice of denying Crown Castle Fiber's requests for purchase, without valid rationale

Although Crown Castle Fiber contends the Commission should adopt the Crown Castle Proposed Agreement, the Final Arbitrator Report requires that "parties must file an arbitrated License Agreement with the Commission." Final Arbitrator Agreement at 15. Pursuant to the language of the Final Arbitrator Report, therefore, Crown Castle Fiber submits the attached Licensing Agreement; however, Crown Castle Fiber also reserves its rights to advocate for pole access through purchase of available pole space (as described in the Crown Castle Proposed Agreement) in this proceeding, in other Commission proceedings, or in other venues.

The Final Arbitrator Agreement orders the parties:

to craft an arbitrated License Agreement reflecting mutually agreeable terms for leasing space on PG&E's poles. In crafting the arbitrated License Agreement, PG&E must negotiate terms with Crown Castle that: 1) will not constrain Crown Castle's goals to

² See *Post-Hearing Brief of Crown Castle NG West LLC (U-6745-C)* at Section IV.

rapidly deploy broadband; 2) will permit Crown Castle to continue to provide reliable service for its customers, and 3) will enable Crown Castle fulfill its goal to compete within the highly competitive markets which comprise the state of California.

Accordingly, Crown Castle Fiber met with PG&E on February 6, 2019 to craft such an agreement. Despite the order from the presiding Administrative Law Judge mandating negotiation of terms, and its duty under Commission rules to negotiate,³ PG&E refused to entertain any of the key provisions that are vital to ensuring that Crown Castle Fiber is able to rapidly deploy broadband, ensure superior reliable service, or compete on a level playing field. In fact, PG&E rejected all negotiation terms presented by Crown Castle Fiber and offered no additional terms beyond the terms in the PG&E Overhead Licensing Agreement, Exhibit PG&E-2—and that agreement is inadequate for ensuring Crown Castle Fiber can rapidly deploy broadband, ensure superior reliable service, or compete on a level playing field.⁴

Crown Castle Fiber reasserts that the appropriate course of action is for the Commission to adopt the Crown Castle Proposed Agreement.⁵ However, in light of the order in the Final Arbitrator Report, and PG&E's refusal to sell space, Crown Castle Fiber has set forth a Licensing Agreement, which includes the minimum terms necessary for Crown Castle Fiber to rapidly deploy broadband, ensure superior reliable service, and compete on a level playing field. Below is a summary of the key provisions added to the PG&E Overhead Licensing Agreement to ensure the same rights Crown Castle Fiber would have as an owner if PG&E were willing to sell

³ See, e.g., D.98-10-058 ("ROW Decision) at Appendix A, Section IX.20 ("Within 30 days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement (*including those parts arrived at through negotiations.*") (emphasis added); ROW Decision at 18 ("In order to guide parties in negotiations, we shall therefore adopt a general set of rules...while leaving discretion to parties to tailor specific terms to the demands of individual situations.").

⁴ *Post-Hearing Brief of Crown Castle NG West LLC (U-6745-C)* at 26 (discussing why the PG&E Overhead Licensing Agreement is inadequate for Crown Castle's purposes).

⁵ Pub. Util. Code § 767 (Authorizing the Commission to "prescribe..reasonable terms and conditions for the joint use" of facilities in the event parties fail to negotiate an agreement.)

space to Crown Castle Fiber. Each of these provisions are necessary to compete on a level playing field with ILEC pole-owners, who already benefit from these provisions through agreements governing joint pole-ownership.⁶ In the provisions below, PG&E is identified as “Company” and Crown Castle Fiber is identified as “Permittee.”

Key Agreement Provision	Rationale for Inclusion in Agreement
<p>Approval Timeline. “Permittee shall not install any Attachments on or in the Company Facilities without first securing the Company’s written authorization, unless 45 days have run from the time of request of access and Company has provided no response.” Section 3.1(b).</p> <p>“Permittee shall not install any additional Attachments on or in the Company Facilities without first securing the Company’s written authorization, unless 45 days have run from the time of request to install and Company has provided no response.” Section 3.2.</p>	<p>ILEC pole owners have a 45-day attachment approval process; PG&E’s agreement includes no similar application timeframe. PG&E approvals can take significantly longer, with no recourse to ensure timely access. This provision is critical for rapid broadband deployment because Crown Castle Fiber is growing at an exponential rate and cannot meet the demand for its services without reasonable and standard deployment timeframes. Crown Castle Fiber benefits from similar timeframes in numerous states where it operates under the federal pole attachment rules, and throughout California where it is a joint pole owner. While timeframes are being explored in other pole dockets, those rules will not be finalized for some time. In the meantime, Crown Castle Fiber’s deployment should not be unduly delayed.</p>
<p>Pole Replacement. “Replacement may be made at the written request of Permittee, and adjustment as to sales, salvage, pulling, transportation, and transfer costs shall be at current prices as per date of replacement. Company will execute replacement within (60) days of Permittee’s advance written request or less if circumstances require.” Section 7.4(c).</p>	<p>ILEC pole owners may initiate a pole replacement when necessary to ensure facilities are upgraded. Tenant requests for pole upgrades are a low priority for PG&E. The ability to facilitate pole replacement ensures safety, reliability, and is critical to swift and predicable broadband deployment.</p>
<p>Rearrangement. “However, Company is not authorized to undertake any rearrangement or relocation work on any pole occupied by Permittee without written approval by Permittee.” Section 7.4(b).</p>	<p>ILEC pole owners can buy a specific location on the pole and generally stay in that position. Tenants are subject to being moved up and down the pole per the direction of owners. Avoiding rearrangement is critical for Crown Castle Fiber’s wireless attachments that depend on specific positions designed by engineers with exacting measurements to ensure optimal propagation, for reliability purposes.</p>

⁶ *Post-Hearing Brief of Crown Castle NG West LLC (U-6745-C)* at 15 & 21.

<p>Insight into Pole Safety. “When a new Company permittee or other attacher requests access to a pole on which Permittee is attached, Company is required to provide Exhibit A or similar request for access, without identifying Company permittee, to Permittee within 30 days of the Company receiving Exhibit A or similar request for access.” Section 7.4(b)</p>	<p>ILEC pole owners have insight into requests for pole attachments and have the right to comment on/object to such requests when, for example, the request would result in unsafe clearance or loading violations. Crown Castle Fiber seeks to have insight into proposed additions to the poles it occupies, to ensure attachments are safe and do not impact its own facilities or the underlying structural integrity of the pole. Again, giving the ILEC this benefit and not others results in an unfair competitive advantage.</p>
<p>Maintenance. Removed the following language: “Permittee shall notify the Company forty-eight (48) hours in advance by calling the Company’s designated representative before any routine repair or maintenance of its facilities is performed on the Company Facilities when an electric service shutdown is not required.” Section 4.5</p>	<p>ILEC pole owners have the right to repair their equipment without delay, however, PG&E requires tenants provide at least 48 hours advance notice before permitting any work. If Crown Castle Fiber is unable to commit to resolve infrastructure issues immediately (as is the case in leasing arrangements), it would negatively impact reliability and customer service. It also puts Crown Castle Fiber at a distinct competitive disadvantage as compared to ILECs who promise customers immediate repair of service outages. Additionally, there is no greater need for an owner to have this ability than for a tenant.</p>

If, for some reason, the Commission does not adopt the Licensing Agreement, as an interim measure until Crown Castle Fiber can purchase space on PG&E solely-owned poles, or negotiate adequate licensing terms with PG&E, Crown Castle Fiber plans to make use of a licensing agreement between PG&E and Sunesys, LLC, a prior affiliate of Crown Castle Fiber which recently was consolidated into Crown Castle Fiber. Nevertheless, operating under this agreement would significantly slow deployment, erect challenges to ensuring superior reliable service, and create an unlevel playing field such that the competitors of Crown Castle Fiber would benefit from enhanced attachment provisions.

I. CONCLUSION

For the reasons stated above, Crown Castle Fiber requests that the Commission adopt the previously submitted Crown Castle Proposed Agreement. To the extent the Commission determines that it is preferable to adopt a licensing agreement, Crown Castle Fiber urges the Commission to approved the attached Licensing Agreement, which includes the minimum terms

necessary for Crown Castle Fiber to rapidly deploy broadband, ensure superior reliable service, and compete on a level playing field.

Respectfully submitted February 8, 2019 at San Francisco, California.

/s/

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