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August 20, 2018

Via Electronic Filing

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; In the Matter of Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling, WT Docket No. 16-421

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, I submit this *ex parte* letter on behalf of the City of Palo Alto, California, to respond to an assertion in an August 10, 2018 *ex parte* letter filed by Crown Castle in the above-captioned dockets made about a City permit application requirement for wireless communications facilities ("WCF").¹

In its discussion of alleged municipal contractual prohibitions on the use of Section 6409 eligible facilities request ("EFRs"), Crown Castle asserts that "the city of Palo Alto, California requires applicants to identify in their application for an initial installation a representation of the maximum possible future upgrade under Section 6409."² Crown Castle has misleadingly characterized the City code provision at issue and, in any event, offers no explanation as to how the City's requirement might be in any way inconsistent with Section 6409, Section 253, Section 332(c)(7), or any of the FCC's rules or decisions construing and implementing those statutory provisions.

¹ Letter from Kenneth Simon, *et al.*, Crown Castle, to Marlene Dortch, FCC, WT Dkt. Nos. 17-79 & 16-421 (Aug. 10, 2018) ("Crown Castle Letter").

² *Id.* at 14.

The wireless siting provisions of the City's municipal code distinguish between three types of WCF permit applications: (1) Section 6409 EFRs, (2) applications for non-EFR collocations, and (3) applications for new standalone WCFs that are neither EFRs nor non-EFR collocations. For this third category of facilities (referred to as "Tier 3" in the City's code), the City requires the applicant to provide "a scaled depiction of the maximum permitted increase in the physical dimensions of the proposed project that would be permitted by the Spectrum Act, using the proposed project as a baseline."³

Contrary to Crown Castle's claim, this application requirement does not "foreclose future EFRs" or "force infrastructure providers like Crown Castle to agree to a contractual provision that prohibits the providers from submitting EFRs in the future."⁴ The City code provision is not a "contractual" requirement at all, and it imposes no limitation, contractual or otherwise, on any future Section 6409 EFR application with respect to the proposed Tier 3 WCF for which the application is being submitted. The code provision merely requires that, when applying to erect a new Tier 3 WCF, an applicant must include in its application a depiction of how much its proposed WCF could be expanded in the future under Section 6409.

Crown Castle offers no explanation as to how this application requirement might constitute a prohibition of service, or how it might somehow allow the City to "evade the requirements of Section 6409."⁵ In fact, photo simulations are common land use application requirements that are not at all unique to WCF applications; they commonly apply to land use applications for buildings and other structures as well. Crown Castle does not allege, never mind demonstrate, that it is difficult or otherwise burdensome to comply with the City code's WCF photo simulation requirement. Nor does Crown Castle explain why the City, in assessing an application for a new Tier 3 WCF, should be prohibited from considering how much the applied-for WCF might be enlarged as of right in the future.

³ Palo Alto Municipal Code § 18.42.110(d)(8).

⁴ Crown Castle Letter at 13.

⁵ *Id.* at 14.

Finally, the City notes that, to the extent Crown Castle believes that the City code requires information about potential future Section 6409 expansions to be included in a Section 6409 EFR application,⁶ it has misread the code. The requirement at issue is imposed only on applications for Tier 3 WCF permits.⁷ The City requires a Tier 3 WCF permit for “any WCF that is not a collocation subject to a Tier 1 or Tier 2 WCF permit.”⁸ A Section 6409 EFR application, in contrast, is subject to Tier 1, not Tier 3, permit procedures under the City’s code.⁹

Respectfully submitted,



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⁶ *Id.* (asking the Commission to “clarify that jurisdictions may not condition EFR permit review on factors unrelated to the proposed EFR, including projections of future EFR applications and requirements for such projections that are not relevant to the EFR review”).

⁷ Palo Alto Municipal Code § 18.42.110(d)(8).

⁸ *Id.* § 18.42.110(c)(3).

⁹ *Id.* § 18.42.110(c)(1), (e)(2) & (f).