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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION
15

16 CROWN CASTLE NG WEST LLC,
17 Delaware limited liability company,

18 Petitioner/Plaintiff,

19 vs.

20 CITY OF PIEDMONT, a California
21 municipality; CITY COUNCIL OF THE
22 CITY OF PIEDMONT, its governing
23 body; AND DOES 1-10,

24 Respondents/Defendants.
25

CASE NO.:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR:**

- 26 (1) **Prohibition of Service –47 USC § 332(c)(7)(B)(i)(II)**
- 27 (2) **Lack of Substantial Evidence – 47 USC § 332(c)(7)(B)(iii)**
- 28 (3) **Prohibitory Regulation of Rights-of-way – 47 USC § 253(a)**
- (4) **State Preemption – Violations of California Public Utilities Code sections 7901 & 7901.1**

Entitled to Expedited Review –47 U.S.C. section 332(c)(7)(B)(v)

FILE DATE:

TRIAL DATE SET: No Date Set

26 By this Petition and Complaint (“Action”) Petitioner and Plaintiff, Crown Castle NG West
27 LLC (“Crown Castle”) seeks a declaration of its rights and injunctive relief and/or writ of
28 mandate to direct Respondents and Defendants, the City of Piedmont (“City”) and the City

1 Council of the City of Piedmont (“City Council”) (collectively, “Defendants”) to set aside their
2 actions adopting resolutions of denial (“Resolutions”), either through express denials or
3 constructive denials under the guise of putative “approvals,” of conditional use permit (“CUP”)
4 applications for installation of critical telecommunications infrastructure in the City, and thus,
5 hereby alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. sections 1331,
8 1337, 2201 and 2202 and 47 U.S.C. section 332.

9 2. The Defendants are subject to the personal jurisdiction of this Court because they
10 are located in this district.

11 3. Venue is proper in this Court under 28 U.S.C. section 1391(b) in that the
12 Defendants reside in this district and a substantial part of the events or omissions giving rise to
13 the claims herein occurred in this district.

14 4. Crown Castle properly exhausted all of its administrative remedies prior to
15 bringing this Action. The Action therefore is ripe for review and is timely filed under 47 U.S.C.
16 332(c)(7)(B)(v).

17 **REQUEST FOR EXPEDITED REVIEW**

18 5. Pursuant to 47 U.S.C. section 332(c)(7)(B)(v), Crown Castle seeks expedited
19 review of this Action.

20 **THE PARTIES**

21 6. Crown Castle, a limited liability company existing under the laws of the State of
22 Delaware and doing business in the State of California, is a state regulated telephone corporation
23 and a public utility as defined by California Public Utilities Code, section 7901 (“Section 7901”).
24 By virtue of the California Public Utilities Code Crown Castle is vested with a statewide
25 franchise to “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other
26 necessary fixtures of their lines” in the public rights-of-way (“PROW”) without having to obtain
27 a municipal franchise or discretionary “fiat” from the City. Cal. Pub. Util. Code, § 7901. The
28 California Public Utilities Commission (“PUC”) has conferred on Crown Castle a “certificate of

1 public convenience and necessity” (“CPCN”) which certifies Crown Castle as a “competitive
 2 local exchange carrier” (“CLEC”) and a public utility under the constitutionally granted
 3 regulatory authority of the PUC. Because Crown Castle is a telephone corporation, a public
 4 utility and a CLEC, it therefore qualifies as a beneficiary of the Section 7901 statewide franchise
 5 right.

6 7. The City is a municipal corporation existing under the laws of the State of
 7 California and located within the County of Alameda. The City Council is the legislative body
 8 that enacts and applies City codes and regulations. The City and the City Council are required to
 9 comply with state and federal laws. Cities are not fiefdoms unto themselves. *Wilson v. City of*
 10 *Laguna Beach*, 6 Cal.App.4th 543, 561 (1992).

11 8. Crown Castle is unaware of the true names and capacities of respondents named
 12 herein as Does 1 through 10, inclusive, (“Does”) whether individual, corporate, associate, or
 13 otherwise, and therefore sues those respondents by such fictitious names.

14 9. Crown Castle is informed and believes that the Does, and each of them, inclusive,
 15 are and were at all relevant times the agents, servants, employees, successors, predecessors,
 16 associates, and/or employees of each other and were acting within the course and scope of such
 17 relationships and with the full knowledge and consent of each of the other respondents.

18 THE TELECOM ACT

19 10. Congress enacted the Telecommunications Act of 1996 (“Telecom Act”) “to
 20 promote competition and higher quality in American telecommunications services and to
 21 ‘encourage the rapid deployment of new telecommunications technologies.’” *City of Rancho*
 22 *Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005).

23 11. In furtherance of its goal of facilitating the rapid deployment of
 24 telecommunications technologies, the Telecom Act imposes certain restrictions on the land use
 25 and zoning authority of local and state governments. Among those restrictions are the following:

- 26 a. State and local governments “shall not unreasonably discriminate among providers
 27 of functionally equivalent services.” 47 U.S.C. § 332(c)(7)(B)(i)(I).
- 28 b. State and local governments “shall not prohibit or have the effect of prohibiting the

1 provision of personal wireless services.” *Id.* § 332(c)(7)(B)(i)(II).

2 c. State and local governments “shall act on any request for authorization to place,
3 construct, or modify personal wireless service facilities within a reasonable period
4 of time” *Id.* § 332(c)(7)(B)(ii).

5 d. “Any decision by a State or local government or instrumentality thereof to deny a
6 request to place, construct, or modify personal wireless service facilities shall be in
7 writing and supported by substantial evidence contained in a written record.” *Id.* §
8 332(c)(7)(B)(iii).

9 12. If a state or local government takes any actions in violation of the above
10 restrictions, an aggrieved person may bring an action against the governmental entity in a court of
11 competent jurisdiction. Such actions are to be heard “on an expedited basis.” *Id.*
12 § 332(c)(7)(B)(v).

13 CALIFORNIA PUBLIC UTILITIES CODE SECTIONS 7901 & 7901.1

14 13. The California Legislature enacted California Public Utilities Code section 7901
15 and its predecessor statute, former California Civil Code section 536, (“Section 7901”) to confer
16 on telephone corporations a special statewide franchise to “erect poles, posts, piers, or abutments
17 for supporting the insulators, wires, and other necessary fixtures of their lines” in the PROW
18 without having to proceed through the morass of discretionary planning and zoning processes
19 imposed by local governments. Cal. Pub. Util. Code, § 7901.

20 14. For over one hundred years, the California Supreme Court has repudiated the
21 claims of various local governments that a telephone corporation must obtain a local or municipal
22 franchise, or grant-of-entry, to install their facilities in the PROW, holding that the matter of
23 installing telephone facilities in the PROW is *not* “a municipal affair, but a matter of statewide
24 concern.” As recently as 2015, the California Legislature echoed this determination stating “[t]he
25 Legislature finds and declares that a wireless telecommunications facility has a significant
26 economic impact in California and is not a municipal affair as that term has been used in Section
27 5 of Article VI of the California Constitution, but is a matter of statewide concern.” Cal. Gov.
28 Code, § 65964.1(c).

1 15. The California Supreme Court also has repeatedly held that the statewide franchise
2 right conferred by Section 7901 is elevated to the heightened status of a “vested” right “which the
3 constitutions, both state and federal, protect. They cannot be taken away by the state, even
4 though the legislature should repeal the section, or by the people through a constitutional
5 provision.” See, e.g., *Postal Telegraph Cable Co. v. Railroad Commission*, 200 Cal. 463, 472
6 (1927).

7 16. As a result of conferring the expansive Section 7901 statewide franchise right, the
8 California Legislature has withheld from local governments the full slate of zoning powers
9 ordinarily wielded by them. Put another way, the PROW carries a special status with respect to
10 telephone corporations seeking to deploy their statewide networks. That special status results in
11 the preemption of any attempt by a local government to require the equivalent of a local franchise
12 as a precondition to entry into the PROW.

13 17. Enacted in 1995, California’s Public Utilities Code Section 7901.1 provides:
14 “municipalities shall have the right to exercise reasonable control as to the time, place, and
15 manner in which roads, highways, and waterways are accessed.” As the words of the statute
16 make clear, the “time, place, and manner” triad was intended to govern only the accidents of
17 “access” to the city streets and did not affect the basic right of access itself. As such,
18 Section 7901.1 does not operate to give local governments the authority to prohibit a telephone
19 company’s right to access under Section 7901. The plain language of Section 7901.1 only allows
20 a locality “reasonable control as to the time, place, and manner in which roads, highways, and
21 waterways are accessed.” This phrase does not contemplate outright prohibition of access.

22 18. In withholding the ordinary land use and zoning powers from local governments,
23 the California Legislature ceded to local governments only limited rights. California Public
24 Utilities Code section 7901.1 (“Section 7901.1”) clarifies that those rights are restricted to an
25 exercise of “reasonable control as to the time, place, and manner in which roads, highways, and
26 waterways are accessed.” Cal. Pub. Util. Code, § 7901.1. Such “time, place and manner”
27 controls, “to be reasonable, shall, at a minimum, be applied to all entities in an equivalent
28 manner.” *Id.* Local governments have no authority beyond those circumscribed boundaries.

1 19. Courts have held that a local government decision that has the effect of prohibiting
 2 a telephone company’s access to the PROW is in direct conflict with Sections 7901 and 7901.1.
 3 Section 7901 is an explicit statutory grant of a franchise to telephone companies to use public
 4 rights of way. *Williams Communication v. City of Riverside*, 114 Cal.App.4th 642, 648 (2003)
 5 [upon obtaining a CPCN, a telephone corporation has “the right to use the public highways to
 6 install [its] facilities.”]. Thus, a local government may not prohibit a telephone company from
 7 using the PROW as this would represent a clear conflict with Section 7901.

8 **FACTS**

9 **The Project**

10 20. The wireless telecommunications facilities project at issue in this Action consists
 11 of nine¹ small cell antenna “nodes” with supporting electrical equipment (“Project”) all located
 12 entirely within the PROW of the City. Each node comprising the Project integrates with the
 13 others to provide a larger wireless telecommunications network within the City. The Project
 14 nodes are distributed throughout the City in a strategic fashion intended to fill critical service gaps
 15 in the City. The Project nodes are designated as follows:

- 16 (a) PHS-01, near 342-370 Magnolia Avenue
- 17 (b) PHS-02, near 505 Blair Avenue
- 18 (c) PHS-03, near 799 Magnolia Avenue
- 19 (d) PHS-04, near 358 Hillside Avenue
- 20 (e) PHS-05, near 303 Hillside Avenue
- 21 (f) PHS-06, near 428 El Cerrito Avenue
- 22 (g) PHS-07, near 355 Jerome Avenue
- 23 (h) PHS-08, near 1159 Winsor Avenue

24 21. Each site within the Project was selected by Crown Castle after exhaustive
 25 analysis, site-walks, a community workshop and design development and collaboration with the
 26 same City Planning Department staff (“City Staff”) that drafted the Resolutions. The sites were
 27

28 ¹ Only eight sites are at issue here. The disposition of Site PHS-09 is pending.

1 chosen after extensive input from the community and the City Staff as the least intrusive location
2 to achieve the radio frequency (“RF”) coverage objectives required for the location.

3 **Evolution of the Project**

4 22. Crown Castle submitted applications for approval of the Project to the City in
5 November 2016, pursuant to the City’s codified procedure for processing and approving
6 applications for wireless telecommunications facilities. That process is codified in the City’s
7 code as City of Piedmont Municipal Code (“PMC”), section 17.46.010, et seq.

8 23. In the applications and in the subsequent months that followed the filing of those
9 applications, Crown Castle repeatedly demonstrated that significant gaps in service exist
10 throughout the City and specifically in the area to be served by the proposed facilities that make
11 up the Project.

12 24. The City Park Commission reviewed the Project on June 7, 2017, followed by the
13 City Planning Commission on June 12, 2017. At that time, five of the nodes required both height
14 and curb setback variances to obtain relief from the 35-foot height limit in Zone A and the
15 requirement to maintain an 18-inch minimum distance from the curbface. PMC, §§ 17.20.040,
16 17.46.070.A.2 [height]; §§ 17.46.070.5, 17.46.070.A.5 [curb setback]. Seven of the sites required
17 variances to encroach on pedestrian clearance requirements. *Id.*, § 17.46.070.5. Following hours
18 of testimony from the public and the applicant, the Planning Commission adopted resolutions
19 recommending denial of all nine nodes. Planning and Park Commissions also expressed many
20 concerns with underground vaults proposed for Projects equipment.

21 25. After the hearing, Crown Castle worked with City Staff to implement a number of
22 significant revisions to each node, with the goal of addressing all of the Park and Planning
23 Commission’s concerns. Crown Castle offered extensive revisions to mitigate any potential
24 visual impacts and impacts to trees. Specifically, Crown Castle worked with City Staff to engage
25 in exhaustive, collaborative efforts to redesign the facilities and find new, less intrusive locations,
26 heights, and designs for the facilities. Those results yielded smaller antennas, less intrusive sites,
27 lower heights and above-ground equipment cabinets to replace the underground vaults. In fact,
28 whereas the Application once required a number of height and right-of-way clearance variances,

1 the revised designs eliminated the need for any variances. Moreover, the City Staff provided
2 direct guidance to Crown Castle in its selection of sites and designs. Finally, the City Staff
3 recommended a “Class 3” exemption from the California Environmental Quality Act (Cal. Pub.
4 Resources Code, § 21000, et seq.), which constituted a legal determination that the Project had no
5 significant environmental impacts.

6 26. Furthermore, to address the reservations of the community, Crown Castle held a
7 community workshop and conducted further analysis and prepared additional reports for the
8 record. Crown Castle’s additional evidence included a noise and visual analyses, additional
9 structural and engineering reports, additional RF maps to show the significant coverage deficits,
10 and also provided additional pole loading calculations prepared by a structural engineer which
11 definitively established that the poles used for the Project would be structurally adequate.

12 27. During its regularly scheduled meeting of October 2, 2017, the City Council
13 considered the applications for the eight proposed sites at the center of this Action. At that
14 hearing, as well as all other City Council sessions, though the City Staff was allowed to proffer
15 extensive negative testimony to the City Council at the hearing in addition to its written report,
16 and while the City Council allowed hours of collective testimony from approximately 30 Project
17 opponents, Crown Castle was denied an adequate opportunity to address the issues raised by the
18 City Staff and Project opponents. Rather, Crown Castle was allowed only to address the City
19 Council in three minute increments via different Crown Castle representatives, making it
20 impossible to comprehensively address the concerns raised by the voluminous staff report and
21 from community participants who significantly outnumbered the Crown Castle representatives at
22 the meeting. At the end of its discussion, the City Council continued the consideration of the
23 applications to its next regularly scheduled meeting. In advance of that session, the City Council
24 directed City Staff to prepare draft resolutions on each of the sites incorporating the City
25 Council’s preliminary findings.

26 28. At the Project hearings, and in the staff reports, the City Staff made repeated
27 claims that the applications were not complete -- even though the City Staff was required by law
28 (California Permit Streamlining Act, Cal. Gov. Code, § 65920, et seq.) to ensure complete

1 applications as a pre-requisite to being heard by the City Council, the City's final decision-
2 makers. Worse, the City Staff never clearly advised Crown Castle on what it had to do to ensure
3 the applications were complete, again leaving Crown Castle handicapped in its attempt to present
4 and defend its applications.

5 29. On October 12, 2017 -- the day after Crown Castle's deadline to address the draft
6 resolutions -- the City Staff posted to the City's website approximately 44 pages of draft
7 resolutions of denials for five of the eight sites -- sites PHS-02, PHS-05, PHS-06, PHS-07, and
8 PHS-08 ("Resolutions"). The timing of the issuance of those Resolutions left Crown Castle with
9 little time to prepare a rebuttal and/or response. The Resolutions contained multiple pages of
10 misinformation and convoluted findings -- the detail and substance of which were even not
11 discussed or deliberated by the City Council. The Resolution included several items Crown
12 Castle had no reason to believe were at issue, thus effectively sandbagging Crown Castle after the
13 deadline to address the Resolutions had lapsed.

14 30. Moreover, the eleventh-hour grounds for denial in the Resolutions acted as a de
15 facto blanket prohibition of wireless telecommunications in the City, in violation of state and
16 federal law. The freewheeling and contradictory bases for denial of the sites constituted a post-
17 hoc rationalization of what appeared to be a pre-existing bias against the Project.

18 31. On October 30, 2017, the City Council adopted resolutions of approval of three of
19 the nine sites (PHS-01, PHS-03, and PHS-04) ("Approval Resolutions"). The approvals followed
20 demonstrations by Crown Castle that it could not comply with the conditions of approval
21 contained in the Approval Resolutions.

22 32. The conditions of approval for conditional use permits ("CUP") proposed for PHS-
23 01, PHS-03 and PHS-04 are so onerous that they are tantamount to denials themselves.² The
24 CUPs include provisions that are infeasible, prohibitory, and pro se unlawful. The CUPs render
25 the Approval Resolutions de facto denials, as they are impossible to comply with because, among
26

27 ² As an example, evidence exists in the record that the vaults required in the conditions of
28 approval will exceed the City's noise threshold of 50 dB when measured at the adjacent property
line.

1 other things, the conditions (a) have the potential to result in the violation of other City
 2 ordinances, including the City's noise ordinance; (b) are technically infeasible to implement; (c)
 3 impose onerous fiscal requirements; and (d) provide for no alternative, feasible designs -- thereby
 4 rendering the facilities incapable of being constructed ("De Facto Denials").

5 33. During its regularly scheduled meeting of October 16, 2017, the City Council
 6 adopted Resolutions of denial for sites PHS-02, PHS-05, PHS-06, PHS-07, and PHS-08. The
 7 grounds for the denials adopted by the City Council are legally invalid and do not rest on
 8 substantial evidence in violation of federal and state law. The Resolutions give rise to a pro se
 9 prohibition of service. The grounds for denial are vague and conclusory and exceed the City's
 10 authority to regulate Crown Castle's right to install critical telecommunications infrastructure in
 11 the PROW of the City.

12 34. The Approval Resolutions are approvals in name only; the CUPs render the
 13 Approval Resolutions De Facto Denials, as they are impossible to comply with because the
 14 conditions result in the violation of other City ordinances, impose draconian mitigation
 15 requirements and/or are technically infeasible.

16 **FIRST CLAIM FOR RELIEF**

17 **Violation of 47 U.S.C. § 332(c)(7)(B)(i)(II) -- Unlawful Prohibition of Service**

18 **(Against All Defendants)**

19 35. Crown Castle incorporates herein by this reference, as though fully set forth, each
 20 and every allegation contained above.

21 36. The Telecom Act mandates that "[t]he regulation of the placement, construction,
 22 and modification of personal wireless service facilities by any State or local government or
 23 instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of
 24 personal wireless services." 47 U.S.C. § 332(c)(7)(B)(i)(II).

25 37. A state or local government violates section 332(c)(7)(B)(i)(II) "if it prevent[s] a
 26 wireless provider from closing a 'significant gap' in service coverage." *T-Mobile USA Inc. v.*
 27 *City of Anacortes*, 572 F.3d 987, 995 (9th Cir., 2009). A violation of this provision arises upon a
 28 showing that: (1) a "significant gap" in service coverage exists in the area to be served by the

1 proposed facility; and (2) that the proposed facility is the “least intrusive means” of filling that
2 coverage gap. *Id.*

3 38. The City Council expressly denied the applications for sites PHS-02, PHS-05,
4 PHS-06, PHS-07, and PHS-08 (the “Denials”), and issued De Facto Denials to the applications
5 for PHS-01, PHS-03 and PHS-04. Those Denials and De Facto Denials are based in part on the
6 unsupported contention that these sites are not the “least intrusive” locations and/or designs for
7 the Project.

8 39. Crown Castle cited substantial evidence to demonstrate the existence of a
9 significant gap in service in the Project area. The City does not refute, contradict, or otherwise
10 undermine Crown Castle’s demonstration of significant gap in service coverage. Nor do any of
11 the grounds of the Denials and De Facto Denials contest Crown Castle’s demonstration of a
12 significant gap in service coverage. The demonstration of significant gap therefore is
13 uncontroverted.

14 40. Crown Castle demonstrated that the Project is the least intrusive means of filling
15 the significant gap in service. Indeed, the site and designs were chosen after extensive comments
16 from the community and input from the City Staff as the least intrusive locations and/or designs
17 to fill the significant service gap in the City. The City offered no substantial evidence to refute
18 Crown Castle’s demonstration of least intrusive means. Nor did the City offer any other
19 potentially feasible alternative for Crown Castle to consider as an alternative, as it is required to
20 do to rebut Crown Castle’s demonstration of least intrusive means. Having failed to do so, it has
21 failed to rebut Crown Castle’s demonstration of least intrusive means. See, e.g., *T-Mobile U.S.A.*
22 *Inc. v. City of Anacortes* 572 F.3d 987, 998 (9th Cir. 2009) [“[w]hen a locality rejects a prima
23 facie showing, it must show that there are some potentially available and technologically feasible
24 alternatives.”].

25 41. The Denials and De Facto Denials therefore prohibit and/or have the effect of
26 prohibiting the provision of personal wireless services in violation of section 332(c)(7)(B)(i)(II).

27 42. A controversy now has arisen between Crown Castle and the Defendants and/or
28 Does 1 through 10, and each of them, in that Crown Castle alleges that the Defendants and/or

1 Does 1 through 10, and each of them, have violated section 332(c)(7)(B)(i)(II). It would be fair,
2 just and equitable for the Court to determine such rights between the parties.

3 43. Crown Castle has been adversely affected by the above-described violations of law
4 and Crown Castle has a clear right to relief. The City has a mandatory duty to take action to
5 correct those violations. Crown Castle has no other adequate relief available to it. Crown Castle
6 has been adversely affected by the above-described violations of law. Unless and until enjoined
7 by this Court, Crown Castle will continue to be adversely affected, and Crown Castle has no
8 adequate remedy at law.

9 **SECOND CLAIM FOR RELIEF**

10 **Violation of 47 U.S.C. § 332(c)(7)(B)(iii) – Lack of Substantial Evidence**

11 **(Against All Defendants)**

12 44. Crown Castle incorporates herein by this reference, as though fully set forth, each
13 and every allegation contained above.

14 45. 47 U.S.C. section 332(c)(7)(B)(iii) provides that “[a]ny decision by a State or local
15 government or instrumentality thereof to deny a request to place, construct, or modify personal
16 wireless service facilities shall be in writing and supported by substantial evidence contained in a
17 written record.”

18 46. The City’s findings that form the basis of the Denials and De Facto Denials are
19 conclusory, vague, and contradictory and do not rise to the level of qualifying as substantial
20 evidence under federal and state local law. The City Staff’s claims that the applications were not
21 complete at the time of the hearing and its prejudicial hearing procedures, which thwarted Crown
22 Castle’s right to make a case for approval of the applications, all contributed to undermine the
23 City’s evidentiary bases for the Denials and De Facto Denials. Accordingly, the Denials and De
24 Facto Denials were not supported by substantial evidence in a written record and therefore violate
25 section 332(c)(7)(B)(iii).

26 47. A controversy has now arisen between Crown Castle and the Defendants and/or
27 Does 1 through 10, and each of them, in that Crown Castle alleges that the Defendants and/or
28 Does 1 through 10, and each of them, have violated section 332(c)(7)(B)(iii). It would be fair,

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1 just and equitable for the Court to determine such rights between the parties.

2 48. Crown Castle has been adversely affected by the above-described violations of law
3 and Crown Castle has a clear right to relief. The City has a mandatory duty to take action to
4 correct those violations. Crown Castle has no other adequate relief available to it. Crown Castle
5 has been adversely affected by the above-described violations of law. Unless and until enjoined
6 by this Court, Crown Castle’s rights will continue to be adversely affected, and Crown Castle has
7 no adequate remedy at law.

8 **THIRD CLAIM FOR RELIEF**

9 **Violation of 47 U.S.C. § 253 – Prohibitory Regulation of Public Right-of-Way**
10 **(Against All Defendants)**

11 49. Crown Castle incorporates herein by this reference, as though fully set forth, each
12 and every allegation contained above.

13 50. 47 U.S.C. section 253(a) provides that “[n]o State or local statute or regulation, or
14 other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of
15 any entity to provide any interstate or intrastate telecommunications service.”

16 51. The City’s ordinances, regulations and procedures are onerous, confusing, and
17 prejudicial to Crown Castle. They impose an unreasonably high bar to obtain approvals, and
18 therefore prohibit and have the effect of prohibiting the provision of telecommunications service
19 in violation of section 253(a). The City’s ordinances also are inherently discriminatory, as they
20 impose prohibitory barriers on telephone corporations like Crown Castle, but do not impose such
21 barriers on other public utilities in the PROW, in violation of 47 U.S.C. section 253(c).

22 52. Crown Castle has been adversely affected by the above-described ordinances,
23 regulation and procedures and Crown Castle has a clear right to relief. Unless and until enjoined
24 by this Court, Crown Castle’s rights will continue to be adversely affected, and Crown Castle has
25 no adequate remedy at law.

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FOURTH CLAIM FOR RELIEF

State Preemption- Public Utilities Code Sections 7901 and 7901.1

(Against All Defendants)

53. Crown Castle incorporates herein by this reference, as though fully set forth, each and every allegation contained above.

54. The California Legislature has declared that the matter of the installation of telecommunications facilities in the PROW by telephone corporations, including CLECs such as Crown Castle, is unequivocally a matter of statewide -- not municipal -- concern. The Legislature intended to occupy the field in this matter, to the exclusion of municipal regulation. Pursuant to Section 7901, local governments, such as the City, are limited only to controlling the time, place and manner of access to the PROW and nothing more. Local governments are prohibited from adopting any ordinance or regulation purporting to impose their regular zoning and land use authority in excess of those limited time, place and manner powers.

55. The CPUC has issued a CPCN which authorizes Crown Castle to construct the Project pursuant to its regulatory status under state law. Crown Castle’s special regulatory status as a CLEC gives rise to a vested right under Public Utilities Code section 7901 to use the PROW in the City to “construct ... telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State” and to “erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway[.]” Cal. Pub. Util. Code, § 7901.

56. The City has violated Section 7901 in at least two ways. First, by requiring Crown Castle to comply with the City’s onerous and prohibitive ordinances and requiring Crown Castle to obtain a fully discretionary CUP as a precondition to entry into the PROW, the City and its ordinances violate Crown Castle’s existing vested rights to enter the PROW, pursuant to Section 7901. Second, by adopting the Denials and De Facto Denials, the City exercised authority well in excess of the limited time, place and manner controls ceded to local governments by the People of the State of California through enactment of Section 7901.

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1 rescind, revoke and set aside the Denials and De Facto Denials; and

2 (d) For permanent injunctions and/or a writ of mandate compelling Defendants to
3 approve Crown Castle’s applications for the Project and to issue any and all necessary land use
4 approvals for the Project.

5 2. As to the Fourth Claim for Relief:

6 (a) For an order declaring the Denials and De Facto Denials to be void and unlawful,
7 invalid and unenforceable as a matter of law;

8 (b) For an order requiring Defendants to approve Crown Castle’s applications for the
9 Project and to issue any and all necessary land use approvals for the Project;

10 (c) For permanent injunctions and/or a writ of mandate compelling the City Council to
11 rescind, revoke and set aside the Denials and De Facto Denials; and


12 (d) For permanent injunctions and/or a writ of mandate compelling Defendants to
13 approve Crown Castle’s applications for the Project and to issue any and all necessary land use
14 approvals for the Project.

15 3. As to all claims for relief: for attorneys’ fees to the extent allowed by federal
16 and/or state law and any other relief deemed appropriate by the Court and for the costs of the suit
17 herein.

18 Dated: November 15, 2017

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By: 

Jacquelyn Mohr
Michael W. Shonafelt
Attorneys for Plaintiff
CROWN CASTLE NG WEST LLC