

ACCEPTANCE

May 13, 2020

Auditor of the City of Portland
City Hall Room 140
1221 SW 4th Avenue
Portland, Oregon 97204

This is to advise the City of Portland, Oregon that Crown Castle Fiber, LLC hereby accepts the terms and provisions of Ordinance No. 189942, passed by the Portland City Council on April 29, 2020, **Grant a one-year temporary, revocable permit to Crown Castle Fiber, LLC for wireless communications services in the City (Ordinance)**, and in consideration of the benefits received thereunder by the corporation, Crown Castle Fiber, LLC hereby agrees to abide by and perform each and all of the applicable terms and provisions thereof.

Angela McIntyre Director, West Region
(Signature – Title) *

Angela McIntyre
Crown Castle
2055 South Stearman Drive
Chandler, AZ 85286
Angela.McIntyre@crowncastle.com

Approved as to form:
/s/ Maja K. Haium 7/13/2020

City Attorney

*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.



Crown Castle
1505 Westlake Avenue North
Suite 800
Seattle, WA 98109

May 12, 2020

Office for Community Technology
City of Portland
1120 SW Fifth Avenue, Fourth Floor
Portland, OR 97204

RE: Temporary Revocable Permit (“TRP”) between the City of Portland, Oregon (the “City”) and Crown Castle Fiber LLC (“Crown Castle”)

Dear Sir or Madam,

Attached, please find a singly executed copy of the above-referenced Temporary Revocable Permit. While Crown Castle is signing such TRP and will abide by its terms, the purpose of this letter is to (1) outline Crown Castle's standing objections to the fees the City is charging for installation of small wireless facilities (“SWFs”) in its public rights of way (the “ROW”) and the basis for such objections and (2) make a standing request that the City provide written justification for its fees per the FCC's Orders.

Applicable Law.

1. The Telecommunications Act.

The Telecommunications Act of 1996 (“Telecom Act”) governs the deployment of telecommunications infrastructure and was “intended to remove all barriers to entry in the provision of telecommunications services.” *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket Nos. 17-79, 17- 84, FCC 18-133, ¶ 14 (rel. Sept. 27, 2018) (“*Removing Barriers*”) (citing congressional conference report on the Telecom Act).

Sections 253 and 332 of the Telecom Act speak directly to Congress's determination that certain state and local regulations are unlawful. *Id.* at ¶ 15.¹ Section 253 represents a “broad preemption of laws that inhibit competition.” *Id.* at ¶ 15 (citing *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999)). Section 253(a) provides, in relevant part:

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

Similarly, section 332(c)(7) states:

The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—(l) shall not unreasonably discriminate among

¹ Section 253(a) addresses “any interstate or intrastate telecommunications service,” while section 332(c)(7)(B)(i)(II) addresses “personal wireless services”—a type of telecommunications service (wireless) *Removing Barriers*, at ¶ 34.

providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. § 332(c)(7)(B)(i).

Section 332 further provides as follows:

A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request. 47 U.S.C. § 332(c)(7)(B)(ii).

2. Federal Regulations.

The Federal Communications Commission's ("FCC") interpretation and implementation of the above federal law is binding. The proper standard for determining whether a state or local requirement has the effect of prohibiting service and violates sections 253 and 332 is the "materially inhibit" standard articulated in the FCC's 1997 *California Payphone* decision. *Removing Barriers*, at ¶¶ 10, 31. Under that decision, a state or local law improperly has the effect of prohibiting the provision of telecommunications services if it "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." *Id.* (citing *California Payphone Ass'n*, 12 FCC Rcd 14191, 14206, ¶ 31 (1997) ("*California Payphone*"). The FCC established rules specifically determining how and when localities can fail to meet the *California Payphone* standard, resulting in a failure to act and/or a prohibition of services in violation of federal law.

The FCC determined that local government fees can violate the *California Payphone* standard, resulting in a prohibition of service and placed restrictions on the fees and costs state and local authorities may lawfully charge for communications infrastructure deployments. Application "... or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless ... (1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations." *Removing Barriers to Infrastructure Investment*, at ¶ 50.

After examining a detailed record, which included fee restrictions imposed on small cell deployments by a wide range of state legislatures, the FCC set (by regulation) "presumptively reasonable" safe harbor fees rates under Sections 253 and 332(c)(7) of the Telecommunications Act. *Id.*, at ¶¶ 78-80. Pursuant to these regulations, the safe harbor fee for annual payment for all recurring fees, including "attachment to municipally owned structures in the ROW" is \$270 per year. *Id.* at ¶ 79.

While the FCC has allowed for localities to charge fees that exceed the presumptively reasonable fee rates to "recognize local variances in costs" if such fees are: (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory, "there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of [federal law]." *Id.* at FN 233. The FCC also determined a locality may pass consultant fees on to applicants, but such fees are also preempted unless they satisfy the standards outlined above and the FCC specifically condemned the "cottage industry of consultants who have wrongly counseled communities to adopt excessive and arbitrary fees." *Removing Barriers*, at ¶¶ 64, 76, 80.

Crown Castle's will pay the City's presumptively unreasonable \$1,288 annual fee under protest.

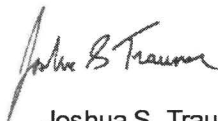
The TRP requires that Crown Castle pay the City **\$1,288 per year** for installing a SWF in the City's ROW with

annual increases. As noted above, the FCC's presumptively reasonable rate for all recurring fees is \$270 per year (the "safe harbor"). Further, the City has consistently refused to provide any justification for the fee amount charged in the TRP. Therefore, the City's fees are presumptively unreasonable and an effective prohibition of service in violation of Section 253 and 332 of the Telecom Act.

Crown Castle objects to the fees in the TRP as presumptively unreasonable and an effective prohibition of service in violation of Section 253 and 332 of the Telecom Act. Further, Crown Castle expressly reserves the right to challenge any fee in excess of the above safe harbor limits and which otherwise fails to conform to applicable laws and regulations, including the basis, justification, or method used to calculate such fee.

Regardless, and without waiving any right Crown Castle may have to challenge any fee or basis for assessing such fee, Crown Castle is signing the TRP. However, Crown Castle requests the City consider this letter to be a standing request that the City provide a full accounting, with specificity, as noted above, of how the fees are applied to the City's actual costs, what such costs are, and an explanation of how such fees are applied in a non-discriminatory manner.

Sincerely,
CROWN CASTLE FIBER LLC



Joshua S. Trauner
Senior Government Relation Counsel

cc: Maya Haium, Esq., City Attorney
Anne Hill, City of Portland, Program Manager