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Ms. Nicole Jules, Deputy Director Public Works.
Community Development Department
City of Rancho Palo Verdes
30940 Hawthorne Boulevard
Rancho Palos Verde, CA 90275

RE: City of Rancho Palos Verdes
Amendment to Municipal Code- Section 13.12.320 of Chapter 12, Title 13
Wireless Telecommunication Facilities Ordinance in the Public ROW
Comments on Draft Ordinance

Dear Ms. Jules,

My client, Crown Castle NG West LLC ("Crown Castle"), and I would like to express our appreciation to the City of Rancho Palos Verdes ("City") for allowing us to participate and assist the City in revising its standards and procedures regarding the placement of wireless telecommunication facilities ("WTF") within the public Right-of-Way ("ROW"), that is to be codified under an amended Rancho Palos Verdes' Municipal Code Section 13.12.320 of Chapter 12, Title 13 ("Ordinance"). As the largest provider of Small Cells and Distributed Antenna Systems (collectively "Small Cells") in the United States, Crown Castle has deployed thousands of WTF in the ROW. Consequently, Crown Castle has developed an expertise in working with jurisdictions to thoughtfully plan and deploy WTF in some of the most exclusive communities in southern California including Del Mar, La Jolla, Beverly Hills and Montecito to name but a few. While Crown Castle would like to have a similar relationship with the City, the current Draft Ordinance significantly and adversely affects Crown Castle's ability to conduct business, and violates federal and state law.

It is acknowledged that local jurisdictions do have the ability to regulate WTF so long as the regulations are reasonable in regard to time, place and manner and so long as the regulations do not contravene federal and state law. Unfortunately, the City's proposed regulations are not reasonable and contravene federal law and state law. Specifically, the City's proposed regulations violate the intent and meaning of the Telecommunications Act of 1996 (USC 253), Section 6409 of the Spectrum Act, and Sections 7901 and 7901.1 of the California Public Utility Code.

Crown Castle is a Competitive Local Exchange Carrier ("CLEC") in the State of California that provides regulated telecommunications services under Certificate of

Public Convenience and Necessity ("CPCN") #U-6741-C granted by the California Public Utilities Commission ("CPUC"). Crown Castle is not a wireless service provider, nor does it provide wireless services to the general public. Instead, Crown is a telephone utility or "carrier's carrier" that builds whole communications networks. These networks include fiber optic cabling, digital processing hubs, and small antennas collectively referred to as Small Cells. These WTF are used to provide coverage and capacity solutions to wireless carriers such as Verizon, AT&T, T-Mobile and Sprint to name but a few. Because Crown Castle is a telephone corporation under California law, it has express rights to access the ROW to install its facilities in order to provide regulated services. Therefore, Crown Castle's primary areas of concern with the Draft Ordinance are the treatment of Small Cells in the ROW.

Below are specific areas of the Draft Ordinance that Crown Castle believes should be revised in order to comply with federal and state law.

Section 12.18.020 Definitions

Under the definition of *Collocation* "eligible support structures" and for that matter "eligible facilities requests" should be defined within the meaning and intent of Section 6409 of the Spectrum Act.

The definition of *Public right-of-way* should be modified to include "any public Street, way or alley laid out now or in the future dedicated, or maintained and the space on, above…"

Section 12.18.040(C) Speculative Facility Prohibited states that a WTF cannot be built without first having a tenant. This requirement is illegal because it unreasonably interferes with the business relations of wireless providers. The City should instead use the widely accepted "significant gap in coverage" standard which considers coverage holes and capacity bottlenecks when determining the necessity of a proposed WTF.

Section 12.18.050 Application for WTF Permit

Section 12.18.050(B)(3) the requirement that an Applicant secure "written authorization by any and all property owners authorizing the placement of the facility" is onerous and over-reaching. Although the City may own most of the poles within the ROW, there are poles and facilities in the ROW that have collective ownership such as the Joint Pole Authority ("JPA") poles. This requirement should therefore be re-written to read that Applicant's must secure "written authorization from the Property Owner authorizing the placement of the facility on or in the Property Owner's property."

Section 12.18.050(B)(5) an Applicant should not be required to produce Construction Drawing ("CD") level drawings to gain zoning approval. While CD-level drawings may be preferred by some Applicants, submittal requirements need only be sufficient for the City to make a determination about the physical dimensions and

appearance of a proposed WTF. As currently written "detailed engineering plans" imply CD level of detail which is unnecessary costly and time consuming for a WTF that may never be approved or built.

Section 12.18.050(B)(11) the need for photo simulations from at least 3 different angles is redundant and unnecessary given that the Applicant's is required to erect a mock-up of the facility under ***Section 12.18.050(B)(22***).

Section 12.18.050(B)(11) an Applicant should only be required to conduct a visual impact analysis and viewshed analysis to the extent that the proposed WTF is located in or would affect a visual resource as defined in the City's General Plan.

Section 12.18.050(B)(14) documentation certifying that required licenses from the FCC have been obtained should be applicable to the end user of the WTF (tenant), who may or may not be the same entity as the Applicant.

Section 12.18.050(B)(21) the phrase "in accordance with California Government Code Section 50030." should be added at the end of this requirement.

Section 12.18.050(B)(22) the thought that an Applicant must give Notice and obtain a permit (an Encroachment Permit for a mock-up in this case) in order to apply for another permit (WTF Permit) is nonsensical. If the City wants to control the mock-up activities it should be sufficient for the City to issue a Traffic Control Permit for this work, especially since the mock-up will be up for approximately 30 days. In any event, the City needs to be aware that its Notice and mock-up period requirements do count against the application processing times for the proposed WTF as dictated by the federal "Shot Clock" rule.

Section 12.18.050(B)(22) the requirement that the mock up include a sign with the image of the proposed installation seems silly. If people want to know what the proposed facility would look like, they should just look up.

Section 12.18.060(E)Review Procedure it should be clearly stated in the Ordinance that the City Review Procedure, even in its most protracted iteration, must comply with federal "Shot Clock" requirements.

Section 12.18.080 Requirements for Facilities within the ROW

Section 12.18.080(A)(1)(a) the visual inconspicuousness of a facility to hide from predominant views from surrounding properties needs to be tied back to specific sections of the General Plan referencing the views that must be protected.

Section 12.18.080(A)(1)(c) the views that shall not be impaired should reference specific sections of the General Plan or Community Plans that address such issues.

The protected views should be from "residences" not "residential structures". Surely the intent should not be to protect views from uninhabited structures such as garages.

Section 12.18.080(A)(4) Blending Methods the phrase "to the maximum extent possible" should be added to the end of this requirement.

Section 12.18.080(A)(6)Poles

Section 12.18.080(A)(6)(b) the City cannot prohibit the placement of new poles, unless the new pole is replacing an existing pole. This requirement clearly impinges on the rights of Certificate of Public Convenience and Necessity ("CPCN") holders and needs to be struck.

Section 12.18.080(A)(9)Obstructions should read, Each component part of a facility shall be located, "to maximum extent possible", so as not to cause…Inconvenience to the public's use of the ROW is an extremely low standard and should not be allowed to frustrate wireless deployments.

Section 12.18.080(A)(11)Screening it may not be possible for "all" pole-mounted equipment to be installed no less than eighteen (18) inches from the curb and gutter flow line. This requirement appears to conflict with ***Section 12.18.080(5)*** which requires antennas to be "flush mounted".

Section 12.18.080(A)(12)(b) where did the standard of height not to exceed five (5) feet and total footprint of fifteen (15) square feet for accessory equipment come from? The Ordinance should mirror FCC guidelines on these matters. What other land use in the Municipal Code requiring an electrical meter cabinet requires it to be screened? The screening of street furniture should be equally applied to all electric cabinets in the ROW.

Section 12.18.080(A)(12)(c) the requirement should read accessory equipment shall not be installed in front of "residences", not residential structures. This requirement should tie back to the General Plan and should be applied in a nondiscriminatory fashion to all electric meter pedestals and the like ("street furniture") in the ROW.

Section 12.18.080(A)(13) Landscaping. There needs to be a reasonable nexus between required screening and the impact created by a WTF. The City cannot simply impose landscape requirements "whether or not utilized for screening".

Section 12.18.080(A)(15) Lighting. It is inappropriate for the City to count legally required lightning arresters and beacons to a facility's height. A lighting study should only be required if it is tied back to specific sections of the General Plan. Are proposed street light and traffic signal placements in the ROW required to perform a light study for potential impacts to adjacent properties?

Section 12.18.080(A)(16)(b)Noise the noise from a WTF should not exceed the stated General Plan and Municipal Code standards for business, commercial, manufacturing, utility or school zones at the Property Line of those uses. It does not make sense to require such a standard three (3) feet from the source, if the receptor would not be impacted. Furthermore, a 45-dBA requirement five hundred (500) feet from a residential use similarly must be codified elsewhere in the Municipal Code in order to be enforceable.

Section 12.18.080(A)(18) Modification the requirement that modifications must use smaller equipment flies in the face of Section 6409 of the Spectrum Act that envisions ministerial approval for facilities modifications that increase a facilities' dimensions by less than 5%.

Section 12.18.080(B Conditions of Approval

Section 12.18.080(B)(2) the Permittee should have thirty (30) days to notify the City of Ownership change. Given the size and geographic scope of such transactions and the number of jurisdictions involved seven (7) days is not practical.

Section 12.18.080(B)(3) while the change of Ownership of facilities in the ROW is a legitimate City concern, why does such an event trigger a compliance review?

Section 12.18.080(B)(5) the Permittee should have the option of providing a performance bond "or another form of financial surety such as a letter of credit" to cover the coast of removing a facility and restoring the ROW.

Section 12.18.080(B)(6) the Permittee should be given the opportunity to cure a noise violation, if a noise complaint has been verified, prior to the City hiring a consultant to study, examine and evaluate the noise complaint, Noise complaints for WTF should be handled no differently that other noise complaints in the City.

Section 12.18.080(B)(8) the City cannot have and create indefinite, open ended Conditions of Approval for WTF. If there are issues of public health and safety, interference with ROW uses, or damage to the ROW, the City should work in consultation with the Permittee to address those concerns. There is no justification for the City to hold another public hearing and impose additional conditions on a legally permitted land use.

Section 12.18.080(B)(9) this condition does not allow the transfer of a permit for a WTF until after the completion of construction of a facility. This condition affects the alienability of the facility and should therefore be struck.

Section 12.18.080(B)(10) as currently written, the Draft Ordinance requires that an Applicant must apply for an Encroachment Permit to erect a mock-up for a facility, in

order to apply for a WTF Permit. Following the issuance of the WTF Permit, the Permittee must then secure an Encroachment Permit?

Section 12.18.080(B)(12) the last sentence should be modified to read, "In the event the Permittee fails to commence and continuously pursue repair within thirty (30) days, the City Engineer may cause such repair to be completed at Permittee's sole cost and expense".

Section 12.18.080(B)(13) unless the City's General Plan or Community Plans prohibits all improvements in the ROW in the drip line of any tree, this requirement should be struck. The City must apply its regulations equally to all uses and users of the ROW. WTF cannot be singled out for discriminatory treatment.

Section 12.18.080(B)(14) the City's insurance shall be in excess of Permittee's insurance. The extent of the City's insurance contribution, however, should be in relation to the City's culpability in causing the claim. The City and Permittee should both allow for subrogation or both Parties should waive subrogation rights. Permittee is already required to indemnify the City per ***Section 12.18.080(B)(15).***.

Section 12.18.080(B)(15) the last sentence should be modified to read, "The City shall have the option of coordinating the defense, including, but not limited to choosing counsel for the defense in consultation with Permittee, at Permittee's expense".

Section 12.18.080(B)(16) the City's liability should be limited to the City's gross negligence or willful misconduct, not sole negligence or willful misconduct. The phrase, "are in any way related" in the ninth line should be struck.

Section 12.18.080(B)(17) if an above electric meter cabinet is no longer required, the Permitte shall have one hundred eighty (180) days to remove and restore the area. The Permittee must work with the electrical utility provider to remove the cabinet, thirty (30) days is insufficient to complete the required tasks.

Section 12.18.080(B)(18)(iv) Relocation. The Director must show cause and provide evidence that a WTF has become incompatible with public health, safety or welfare or the public's use of the ROW. Furthermore, the Permittee should have the right to address the Director's concerns prior to being required to relocate. The exigent circumstances mentioned in the last sentence whereby the City may remove, or relocate a WTF "without prior notice" to Permittee must be of an immediate and imminent threat to the public's health and safety before a Permittee's rights are abrogated.

Section 12.18.080(B)(20) the City cannot require a Permittee to enter into a ROW Agreement with the City unless the Permittee is attaching to a City facility.

Section 12.18.130 (ii) Operation and Maintenance Standards the words "a resident" should be struck from the last sentence, first paragraph.

Section 12.18.130(C) the Permittee should have forty-eight (48) hours to remove graffiti in order to be consistent with the remainder of ***Section 12.18.130.***

Section 12.18.140 RF Emissions and Other Monitoring Requirements most jurisdictions in southern California require a monitoring report every five (5) years or if there have been changes to the equipment or power output at a facility.

Section 12.18.150 No Dangerous Condition or Obstruction Allowed before the word impedes, the word "unreasonably" should be added in the 6th line.

Section 12.18.180(B) Removal and Restoration – Permit Expiration, Revocation or Abandonment removal of a WTF and restoration of the ROW usually takes longer than thirty (30) days to complete. It is requested that this timeframe be one hundred (180) days.

Section 12.18.180(C) The Director/City Engineer must document and demonstrate cause and provide evidence that a WTF constitutes a dangerous condition or imminent threat upon removing a WTF without Notice or hearing to the Permittee. The City additionally must use reasonable care during the removal and storage of Permittee's equipment.

Section 12.18.190 Exceptions It is obvious from the substance of the Draft Ordinance that the City is trying to create a regulatory environment that disfavors or hinders the deployment of WTF in the ROW. While local siting sensitivities are apparent, the City's current approach will likely end in litigation. When an Applicant has to provide the same evidentiary standards required by a court of law, in order to secure a permit, there is little holding the Applicant back from proceeding to litigation. In the end, the City will therefore end up with WTF that aren't as small and inconspicuous as desired as well as litigation costs. It is therefore recommended that the City pause and work collaboratively with all stakeholders to develop siting criteria and design guidelines that all sides can live with.

Crown Castle recommends that the City adopt "pre-approved" antenna configurations that have been vetted by the City Council so that Applicants will have certainty of process that such facilities could be approved ministerially. This is particularly true for ROW sites where the uniformity of vertical infrastructure, such as street lights, traffic signals or utility poles, lend themselves to standardization

Section 12.18.200(A) and (B) Location Restrictions The City's Draft Ordinance does little if anything to address "last mile" connectivity issues at people's homes. Prohibiting WTF from local and collector streets precludes the use of Small Cells that have limited range, primarily due to their limited size. Consequently, the

current Draft Ordinance will result in larger macro facilities along arterials. The aesthetic impacts from such deployments will more than likely result in an aesthetic outcomes that are less than optimum.

Section 12.18.200(C) The City does not have the legal authority to require a new pole replace an existing pole in order to be approved.

Section 12.18.220 State and Federal Law. If a determination is made that the City's discretionary permitting is prohibited by State or Federal law, it will not be sufficient for the City's to merely reclassify its discretionary requirements as now being ministerial requirements. If it walks like a duck, quacks like a duck, it's a duck. No amount of word-smithing will relive the City from its obligation to overhaul its wireless Ordinance to comply with State and Federal law.

Section 12.18.230(B) The City is over-stepping its authority when it attempts to place a ten (10) year sunset on existing legal non-conforming facilities. In order for these facilities to come under the purview of any new Ordinance, the Applicant must request a modification which would then act as a trigger for the City to require compliance with any new regulations.

Finally, the Ordinance is silent with respect to the recently adopted Assembly Bill 57, codified as Government Code 65964.1 and set to take effect January 1, 2016. This new law requires local jurisdictions to approve "non-covered" wireless projects within 90-days for collocations and 150-days for all other projects. These time limits should be included in the Ordinance.

If you should have any questions regarding these comments, please do not hesitate to contact me. Crown Castle looks forward to continue working with the City to establish wireless regulations that are appropriate for the City and that can withstand legal scrutiny. Thank you.

Respectfully,

Paul R. O'Boyle