Crown Castle
116 Inverness Drive East
Suite 300
Englewood, CO 80112

June 29th, 2023

Jessica Eusebio| Operations Coordinator
City & County of Denver
Department of Transportation & Infrastructure | Right-Of-Way Services
Phone: 720-865-3218
Jessica.Eusebio@denvergov.org
Via E-mail

RE: Crown Castle application(s) for installation of Small Wireless Facilities within the Public Ways of the City & County of Denver: 2023 Group 13, DN0995

Dear Madam,

On behalf of Crown Castle Fiber, LLC, is submitting the accompanying complete applications to install (1) Small Wireless Facilities in the public right-of-way ("ROW"). Please be advised the Federal Communications Commission ("FCC") has adopted Rules that impact how the City must process this application. In addition, state law also limits your regulation of Crown Castle's access to the public rights of way.

Crown Castle's Deployment

Crown Castle provides telecommunications services to various customers, including wireless carriers. It does so via telecommunications networks installed in the public rights of way that integrate elements, including fiber optic cables as well as personal wireless services facilities, such as antennas and related equipment. The specific equipment sought to be installed by Crown Castle in this case is set forth in the accompanying permit applications and meet the definition of Small Wireless Facility provided in the Code of Federal Regulation. [1]

Pursuant to the laws of Colorado, Crown Castle has been granted a Tier III Resolution (No. CR18-1268) by the Council of the City and County of Denver. As a result, Crown Castle must be granted access to the public rights of way in the same manner and on the same terms applicable to other authorized telecommunications providers and utilities.[2]

Applicable Federal Regulations

Federal law and the FCC's rules implementing the law require that permit applications for the installation of Small Wireless Facilities be processed to a final decision by this jurisdiction without undue delay. The

[1] See 47 CFR § 1.6002(l).
[2] See §253 of the Telecommunications Act of 1996.

applicable federal timeframe (the "Shot Clock period") to make a decision commences with the submission of an application.[3] The applicable Shot Clock period for Small Wireless Facilities being installed on existing structures is 90 days.[4] A local authority must not merely take some action but must fully resolve application within the applicable timeframe. This means the City must issue all permits required for construction to commence within the applicable timeframe, absent permitted tolling.[5]

Pursuant to FCC regulations, an application is deemed complete 10 days after the date of submission unless the authority provides written notice to the applicant that its application is incomplete.[6] If a local authority contends an application is incomplete (thereby tolling the Shot Clock period), within 10 days of submission, it must provide written notice specifying any items it claims are missing to make the application complete. Moreover, for each item alleged to be missing, a local authority must specify the code provision, ordinance, application instruction, or otherwise publicly-stated procedure requiring submission of the information.[7]

If an authority properly complies with the above requirements regarding incompleteness, the Shot Clock period is tolled.[8] Once the Applicant submits the requested supplemental information, the Shot Clock period resets to 90 days and the locality then has 10 days to identify which previously-requested items remain missing, if any.[9] However, it cannot at that time request new information outside the scope of its original notice and "once the 10-day period passes, the period of review of the application may not thereafter be tolled for incompleteness."[10] Further, the Shot Clock period does not reset upon subsequent resubmissions.

Lastly, federal regulations place restrictions on the fees and costs state and local authorities may lawfully charge for communications infrastructure deployments. Fees for ROW access, the use of government property in the ROW, application or review fees, and other 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."[11]

Pursuant to federal regulations, the following fees are presumptively reasonable under Section 253 or

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[3] *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, etc. Report and Order*, FCC 14-153, WT Docket No. 13-238, ¶ 258 (FCC Oct. 17, 2014) (the "Wireless Infrastructure Order").
[4] *Id.*
[5] *See* FCC Order 18-133 at ¶¶ 132-134, 144. *See also, New Cingular Wireless PCS, LLC v. Town of Stoddard*, 2012 U.S. Dist. LEXIS 19453 *13-15 (D.N.H. Feb. 16, 2012) (finding a Shot Clock violation where a local government granted a rehearing on an application after the initial application review process had concluded and the Shot Clock period had expired).
[6] 47 CFR § 1.6003, *et seq.*
[7] *Id*.
[8] *Id.*
[9] *Id*.
[10] *Id*.
[11] FCC 18-133 at ¶ 50.

Section 332(c)(7) of the Telecommunications Act:

(a) $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or

(b) $1,000 for non-recurring fees for new structures (non-collocations) intended to support one or more Small Wireless Facilities; and

(c) $270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.[12]

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.

Crown Castle's Application(s)

The Applications submitted on behalf of Crown Castle today proposes Small Wireless Facilities on existing structures and are therefore subject to the FCC 90-day Shot Clock period. As such, the Shot Clock period for the Applications is scheduled to expire on **Wednesday, September 27th, 2023.** If the City contends any Application is incomplete, it must issue a valid notice of incompleteness within 10 days of submittal. If no valid notice is issued, the Applications will be deemed complete on **Monday, July 10th,** and the 90-day Shot Clock period will not toll but continue to run until their respective expiration date on **Wednesday, September 27th, 2023.**

Crown Castle is committed to working with the City on this project. Please let us know how we can best assist the City in meeting its processing requirements in advance of the above deadline. All written requests for additional information regarding may be sent to the following Crown Castle representative:

Rosalie Thim
Permitting Specialist | Small Cell
Crown Castle Fiber, LLC

We appreciate your attention to this matter.

Sincerely,

CROWN CASTLE FIBER, LLC
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Permitting Specialist | Small Cell
O: 720.881.5120
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[12] FCC 18-133 at ¶¶ 78-80.