

October 31, 2022

Via email (westernsuburbs@crowncastle.com) and Certified Mail

Maureen Whitfield
Director, Network Permitting & Utilities
Crown Castle
8020 Katy Freeway
Houston, TX 77024

**Re: Village of Clarendon Hills
Crown Castle Application
Small Wireless Facility on Replacement Wood Utility Pole North of the Intersection of Ruby
Street and Western Avenue
Location: On the west side of Ruby Street approximately 110' north of the intersection of Ruby
Street and Western Avenue.**

Dear Ms. Whitfield,

The Village of Clarendon Hills is in receipt of your September 13, 2022, reply to the Village's July 19, 2022, response to the above-referenced small wireless facility application submitted by you on behalf of Crown Castle Fiber LLC ("Crown Castle"), postmarked on June 17, 2022, and received by the Village on June 22, 2022 (the "Application"). As you are aware, the Village's July 20, 2022, response (the "Village July Response") identified numerous deficiencies in the Application. We appreciate you supplying, with your September 9 reply (the "CC September Reply"), additional requested information and compliance regarding several of the issues raised in the Village July Response.

You have, however, flatly refused to comply with many of the other Village requirements identified as deficiencies in the Village July Response, claiming, among other things, that the various requirements:

- Violate the Small Wireless Facility Deployment Act (50 ILCS 840/15, *et seq.*) (the "Act");
- Violate federal law (specifically, the FCC Declaratory Ruling and Third Report and Order – In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment) (the "FCC Order");
- Violate the Act's mandate that a municipality "not prohibit, regulate, or charge for the collocation of small wireless facilities" except as provided within the Act. 50 ILCS 840/15(b)
- Violate the Act's requirement that an authority's application and design requirements be applied on a non-discriminatory basis. 50 ILCS 840/15(d)(6);
- Violate the FCC Order by acting as an "effective prohibition" that "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." FCC Order at Section 34.
- Are preempted because they are:
 - o A material limitation on Crown Castle's ability to compete in the market
 - o Unreasonable
 - o Applied in a discriminatory fashion
 - o Not objective or published in advance

The Village categorically disputes your assertions and demands that you comply with all of the various requirements set forth in the Village July Response, except as otherwise noted below. The Village further objects to Crown Castle's reservation of rights relative to challenging the legality of any and all provisions required by the Village's small cell application process and design requirements, including requirements with which Crown Castle has already complied.

Except as specifically set forth below, the Village does not find it necessary to further respond at this point to all of the various objections raised by Crown Castle to the deficiencies enumerated in the Village's initial response. It is expected that you remedy the various deficiencies in order for a permit to issue.

Further, where the parties disagree on the application of the law to particular permit requirements, the applying party may not simply declare the requirements in question to be barred or preempted and unilaterally declare that the shot clock is no longer tolled. The Village continues to regard the application as incomplete and/or deficient, and the shot clock as tolled.

The Village does, however, sincerely hope that we can reach a mutually agreeable understanding regarding your application, and this proposed site, and we continue to be willing to further engage in discussions that may lead to resolution of the outstanding issues.

As to some of your specific arguments, please see as follows, again following the numerical system originally provided in the Village's July Response for ease of reference:

I. APPLICATION and DOCUMENTATION REQUIREMENTS: The documents provided by Crown Castle show basic schematic diagrams of the site, site plan documents, and site photos. In order to complete the Application and review process, additional information is required. The following supplementary information will be needed per the requirements of the State Act, the Village's Small Wireless Facilities Ordinance (Chapter 60 of the Village Code), the Village's Chapter governing construction of utility facilities in the right of way (Chapter 56 of the Village Code), and the Village's adopted Small Wireless Facility Design Standards:

1. The Application includes no information on whether, to the extent commercially available, technologically compatible with the local network system and already used in its national or regional wireless network system, the equipment has the smallest visual profile. Crown Castle asserts that local governments cannot dictate wireless technology choices under federal law. The requirement in question is an aesthetic regulation within the power of local governments under both State and federal law. The New York case you cite is not binding on Illinois State or federal courts. The information must be provided.

Crown Castle has indicated in the CC September Reply that it is complying with this requirement, and it is therefore no longer at issue.

2. Section 60.5 (Permits; Application Process) of Chapter 60 of the Clarendon Hills Village Code (the "Small Cell Ordinance"), at subsection A.7., requires inclusion in the Application of a "(c)ertification that, to the best of the applicant's knowledge, the collocation complies with the written design standards established by the Village, and with the various other requirements set forth in this chapter and code." The Certification of Compliance included with Crown Castle's Application certifies to compliance with the Village's written design standards (the "Design Standards") and other Village Code requirements, "to the extent they do not conflict with State or federal law." Crown Castle's statement suggests that it can "pick and choose" those requirements that it believes are in conflict with State or federal law. The Village asserts that its requirements do comply with State and federal law, and the certification should attest to compliance with all Village requirements.

Crown Castle refuses to remove the qualifier from its answer, asserting that the Village has failed to provide specifics regarding Crown Castle's alleged deficiencies, and that the requirement is preempted by federal law as an unreasonable material limitation on construction, given its vague nature. Not only is such a certification

required by the Act (50 ILCS 840/15(d)(6)), but the Village provided 7 ½ pages of detailed deficiencies in Crown Castle's initial application. To assert that we have failed to provide necessary specifics is absurd. The certification should be revised to attest to compliance with all Village requirements.

3. The Application and associated construction drawings do not include drawings or plans illustrating the route by which power lines and conduits will be extended in order to serve the site. The proposed location of the small wireless facility is on the west side of the right of way along Western Avenue. It is unclear as to whether any water or sewer facilities are buried beneath the west right of way along Western Avenue as no drawings showing utilities are provided. Crown Castle should provide its power and fiber routes identifying water, sewer, gas and electric utilities if such routes are to be located underground.

Although Crown Castle's plans (Page SWF-1) indicate "Fiber and power cables in new conduit (under separate permit submission)," no application for the fiber and power cable conduit permit for use of the right of way has been filed with the Village. Crown Castle should provide its drawings for the fiber and power conduit route and apply for the right of way permit.

The absence of plans indicating the extension of power to the proposed cell site also leaves open the question of whether power will be supplied aerially, or if it will be extended by way of directional boring.

Crown Castle must indicate if directional boring or aerial installation, or both, are contemplated for extension of power and fiber lines to the cell site. Also, if directional boring is used, Crown Castle should identify any and all driveways that will be disturbed by open cutting, and state that it will repair and replace the affected portion of the driveway(s) with the same or substantially similar materials.

Crown Castle asserts in the CC September Reply that it cannot confirm the location of sanitary sewers or water lines until it consults with JULIE, which cannot occur until the Village has approved the application and construction is ready to proceed. The Village responds that JULIE locates are available pre-application through a simple phone call, as is consultation with Village staff in order to obtain basic information on water and sewer facility locations. Power and fiber routes must be provided.

Crown Castle further asserts in the CC September Reply that any utility conflict is, in its opinion, "highly unlikely." That is a determination for the Village staff to make, based on information Crown Castle obtains and/or provides, not for Crown Castle to unilaterally make.

Finally, Crown Castle, in its response, failed to address the Village's requirement that it provide drawings showing its power and fiber routes and identifying water, sewer, gas and electric utilities if such routes are to be located underground. Right of way permits and their timing aside, that information must be provided.

The Village does acknowledge the portion of Crown Castle's response declaring that directional boring will be used, and no driveways will be disturbed. The remainder of Crown Castle's assertions are without merit and the Village's requirements must be complied with.

4. Crown Castle should provide an FAA 1-A Certification of the location of the cell site, or a legal description. The FAA 1-A Certification is commonly provided with small cell applications and as a public document, and the Village is within its rights to request it.

Crown Castle has, with the CC September Reply, provided the requested FAA 1-A Certification and this requirement is therefore satisfied.

5. Crown Castle does not provide a statement that the frequencies of the Small Wireless Facility will not interfere with those used by public safety providers, including the Village of Clarendon Hills Police and Fire Departments, in accordance with Section 60.9 of the Village's Small Cell Ordinance.

Crown Castle, in the CC September Reply, has provided the requested statement in compliance with this requirement, and it is therefore no longer at issue.

6. The Application is required to include copies of all licenses, permits and approvals required by or from the Village (i.e., zoning approval, where required), other agencies and units of government with jurisdiction over the design, construction, location and operation of the small wireless facility. The Application does not include such information, and Crown Castle has asserted that the request exceeds the authority granted to the Village by the State Act. Proof that you have authority for the installation from any necessary entity is basic information that is clearly necessary for issuance of a permit, is consistent with the State Act, and may clearly be requested pursuant to the Village's police powers. The information must be provided.

Crown Castle asserts in the CC September Reply that this requirement is "extremely vague" and duplicative of requirement in I(3), is not permissible under the Act, and preempted considering its lack of specificity and therefore amounts to a material limitation on construction. The Village asserts that it is within its rights to know whether the proposed project has approvals from IDOT and DuPage County should the project be installed in their rights-of-way in order to connect with the project location in the Village's right of way. This is also a generally applicable requirement for other wireless carriers and users of the right of way. There is no outright prohibition in the Act on requiring such information. The Village responds in addition that it is common among applicants for utility and other work for the applicant to have a basic understanding on what licenses, permits and approvals it needs from the Village and other governmental bodies in order to operate the proposed facility. Consultation with Village staff in advance of an application, something Crown Castle declined to do, is a common practice that provides applicants with such information. Further, it is certainly not the Village's obligation to inform an applicant of what approvals are required from other governmental bodies. Crown Castle's assertion that the requirement is somehow vague for that failing is without merit and the requested information must be provided.

7. The Application is required to include, where a small wireless facility is proposed to be attached to an existing utility pole or wireless support structure owned by an entity other than the Village, legally competent evidence of the consent of the owner of such pole or wireless support structure to the proposed collocation. The Application does not include such information, and Crown Castle has asserted that the request exceeds the authority granted to the Village by the Illinois Small Wireless Facilities Deployment Act. Proof that Crown Castle has a right to locate on personal property owned by an entity other than the Village is basic information that is clearly necessary for issuance of a permit, is consistent with the State Act, and may clearly be requested pursuant to the Village's police powers. The full ComEd collocation agreement must be provided, as well as proof that ComEd has approved this particular collocation.

Crown Castle asserts in the CC September Reply that this requirement is invalid as it is not permitted by the Act, and that such consents are typically obtained after an application is approved. The Act specifically provides, at Section 15(g) (50 ILCS 840/15(g)), that collocation is only authorized on "(1) property owned by a private party or property owned by or controlled by a unit of local government that is not located within rights-of-way, subject to subsection (j) of this Section, or a privately owned utility pole or wireless support structure without the consent of the property owner." The Village notes in addition that the Act was drafted by Crown Castle's client Verizon and other telecommunication providers in a manner that artificially caps application fees and thereby prevents local governments from recovering their full and actual processing and consultant fees in responding. It is the Village's very reasonable expectation then, that upon filing of an application, the applicant will have obtained the necessary consent to collocate on the third-party utility pole it is requesting to go on and will provide such consent to the Village in conformance with the Act. To assert that the Village must spend hours and hours and thousands of dollars in staff and consultant fees to process and respond to an application when the applicant has not even requested permission or received permission

from the utility pole owner to collocate is an unreasonable and meritless position to take. The Village requires proof of consent.

8. The Application includes no information on whether a pre-application review was conducted by or with Village staff, and Crown Castle asserts that the request exceeds the authority granted to local governments by the State Act. We note only that a pre-application review is encouraged but not required by the Village Code, and that requesting information on whether such a review was conducted is a very basic and innocuous thing to request in an application. No pre-application review was conducted in this case, which is unfortunate, as the process is designed to facilitate cooperation between the parties and allows the parties the opportunity to identify potential utility conflicts, consider possible alternative locations, and other related issues.

Crown Castle asserts in the CC September Reply that preapplication consultation is not required by the Village Code, and that it is not therefore obligated to comply. It goes on to assert that if a preapplication meeting was required, such a requirement is not permitted by the Act and constitutes a material limitation on construction. As the Village plainly stated in its Village July Response, a preapplication meeting is encouraged but not required, so we are unsure why you are providing us with legal objections. Our point was, and remains, that a preapplication meeting is an encouraged cooperative process that could have easily addressed certain of the issues that are currently being disputed, and that it is therefore unfortunate that Crown Castle declined to seek out such a meeting.

9. The Application includes no detailed information on compliance with FCC standards, including compliance with radio frequency emissions, technical data reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC, and a monitoring plan relative to radio frequency emissions, and asserts that requesting such information exceeds the authority of a local government under the State Act. Requiring information designed to ensure the installation will comply with applicable FCC Codes, including radio frequency emissions, is consistent with the State Act and federal law, and is basic health and safety information which a local government may seek pursuant to its police powers. The request is also consistent with subsection 50 ILCS 840/15(d)(6)(G) of the State Act, and Section 60.9.G. of the Village's Small Cell Ordinance, both of which require that wireless providers comply with applicable codes and local code provisions or regulations that concern public safety. The omission of this important safety information is troubling; it must be provided.

Crown Castle has, with the CC September Reply, provided a Maximum Permissible Exposure ("MPE") Study, but it is for a facility in Western Springs. A similar study for the proposed location should be conducted and provided. In addition, Crown Castle has failed to provide a monitoring plan, as required by the Village Code. The monitoring plan must be submitted in order to resolve this issue.

10. The Application includes no proof of all applicable licenses or other approvals required by the FCC, including but not limited to information showing the small wireless facility has received any required review (e.g., environmental assessment and review) by the FCC pursuant to the National Environmental Policy Act ("NEPA"), or is exempt from such requirements. While an applicant may claim the small wireless facility is exempt, it must state the basis for the exemption and provide proof, including supporting documents that establish that the proposed facility meets such exemption. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. Again, information designed to ensure the installation will comply with applicable FCC Regulations and has had required federal reviews and approvals, is consistent with the State Act and federal law, and is basic health and safety information which a local government may seek pursuant to its police powers. The request is also consistent with subsection 50 ILCS 840/15(d)(6)(G) of the State Act, and Section 60.9.G. of the Village's Small Cell Ordinance, both of which require that wireless providers comply with applicable codes and local code provisions or regulations that concern public safety. The information must be provided.

Crown Castle asserts in the CC September Reply that because this requirement implicates public safety, but provides no support for that implication, it is invalid and "likely" applied in a discriminatory fashion. Crown Castle further asserts that the requirement is preempted as it is onerous and an infeasible material limitation on construction. Finally, Crown Castle concedes that it is open to supplying a copy of proof of license as it

progresses to construction. The Village responds that its requirement that an applicant demonstrate compliance with requirements set forth in federal law, including compliance with NEPA, is neither “invalid” nor onerous or an infeasible material limitation on construction. It is the minimum expected by an applicant seeking to locate new telecommunications equipment in a residential area and compliance is expected. The required information must be provided.

11. The Application does not include a written report that analyzes acoustic levels for the small wireless facility and all associated equipment, for the purpose of demonstrating compliance with generally applicable Village noise regulations, including, but not limited to, subsection 44.8.C. of the Village Code, which sets forth noise standards generally applicable to all utility equipment located in Village rights of way. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The Village disagrees – requiring compliance with generally applicable acoustic regulations is clearly within the authority of a local government under the State Act as amended by Public Act 102-0009. The information must be provided.

Crown Castle asserts in the CC September Reply that this requirement is not expressly required by the Act and is therefore invalid, and that the requirement is preempted as it is practically infeasible and it is impossible to analyze the acoustic levels of the facility prior to construction. As noted in the Village July Response, the Act specifically provides that an applicant may be required to demonstrate compliance with generally applicable acoustic regulations. Further, the Village Code, at Section 60.5.A(13) provides that in the case of small wireless facilities, compliance may be demonstrated for application purposes via an analysis of the manufacturer’s specifications for all noise-emitting equipment, and a depiction of the proposed equipment relative to all adjacent property lines. The Village Code, in that same section, also provides that in the alternative, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment, including equipment underground, will not, both individually and cumulatively, exceed the applicable limits. Contrary to Crown Castle’s assertions then, two manners of compliance are permitted, neither of which involves post-construction testing. Crown Castle must supply the written report.

12. The Application does not include a written description and/or map identifying the geographic service area for the small wireless facility. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The Village request for this information is a reasonable one designed to, among other things, help the Village better understand the nature and need for additional small wireless facility installations going forward, and to help the Village plan for, and minimize, the visual aesthetic impacts of future installations. The information must be provided.

Crown Castle asserts in the CC September Reply that this requirement is not expressly required by the Act and is therefore invalid, and that the requirement is preempted as it is onerous and amounts to a material limitation on construction. The Village stands by its original assertion in the Village July Response that the request is a reasonable one given the unique nature of small wireless facilities, and the need to, among other things, to assist the Village in understanding, planning for and minimizing the visual aesthetic and other impacts of planned future installations. The information must be provided.

13. The Application does not include information indicating whether the proposed small wireless facility is claimed to be located in an “easement for compatible use” as referred to in the State Act, and proof of Crown Castle’s right to install a small wireless facility at this location in conformance with the State Act. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The requirement that an applicant demonstrate a legal ability to locate a small wireless facility at a proposed location fits squarely within the intent of the State Act to allow such installations as permitted uses in the public right of way, but not elsewhere. The information must be provided.

Crown Castle asserts in the CC September Reply that this requirement is not expressly required by the Act and is therefore invalid, and that the requirement is preempted as it amounts to a material limitation on construction. The Village strongly disagrees. The Act only applies to small wireless facilities located in a right-of-way, which is defined to include an “easement for compatible use.” To claim that the Act must then

specifically call out that an applicant must demonstrate a legal ability to locate where it seeks to locate is without merit. Further, the Act, at subsection (d)(6)(E) (840 ILCS 15(d)(6)(E)), provides broad language as to what the Village may require relative to certain subjects, including location. Simply put – the Village has authority to require this information, and if there is no authority to locate a small wireless facility where an applicant seeks to place it, the Act does not even apply. The requested information must be provided.

14. The Application does not include a master plan which identifies the location of the proposed small wireless facility in relation to all existing and potential locations in the Village that are reasonably anticipated for construction within two (2) years of submittal of the application. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The Village request for this information is a reasonable one designed to, among other things, help the Village better understand the nature and need for additional small wireless facility installations going forward, and to help the Village plan for, and minimize, the visual aesthetic impacts of future installations. The information must be provided.

Crown Castle asserts in the CC September Reply that this requirement is invalid as it is being applied in a discriminatory fashion and not expressly permitted by the Act. Crown Castle further asserts that the requirement is preempted by federal law in that it amounts to a material limitation, and it is completely unreasonable for the Village to expect a provider to provide each and every location "reasonably anticipated" for construction within two (2) years.

Crown Castle did, however, provide a map of the nodes it plans in the current project. Assuming that the provided plan will likely take approximately two (2) years to implement, the Village will accept the submitted plan as being in compliance with the Village's requirement, and this requirement is no longer at issue in this application.

15. The Application does not include the name of the wireless service provider on whose behalf the proposed installation is being performed, and any additional parties proposed to be involved in the installation. Crown Castle asserts in the Application that this request exceeds the authority granted to local governments by the State Act. The State Act defines "wireless infrastructure provider" as any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the authority." Assuming Crown Castle is acting as a wireless infrastructure provider for purposes of submitting the Application, it is then necessary for the Village to ascertain the actual wireless service provider on whose behalf the work is being performed and to be provided with proof of such agency. Wireless infrastructure providers cannot build small wireless facilities on spec. Please provide signed agreements or other documentation clearly establishing what wireless services provider Crown Castle is acting on behalf of in this application and the scope of its authority to be an applicant.

Crown Castle has, with the CC September Reply, provided the requested information relative to this requirement, but has failed to provided documentary proof of the relationship, as required. The requested documentation must be provided for the reasons stated in the Village July Response.

16. The Application does not include a proposed notice for mailing by Crown Castle as the applicant to owners and occupants of nearby properties, and the Village has received no supplemental proof of the mailing of such a notice as required to take place within three (3) days of the submission of an application. Crown Castle asserts in the Application that these requests exceed the authority granted to local governments by the State Act. The requests do not exceed the Village's authority under the State Act. They implement neither a zoning process, nor impact the timelines for decision-making on the Application. The Code provision in question merely requires proof that reasonable notice was made to nearby property owners, so that they have an opportunity to comment on the aesthetics of the proposed installation, and an opportunity to communicate any comments and suggestions to the applicant and Village for purposes of achieving the best possible aesthetic results. The proposed notice must be provided, and the mailing must be performed.

Crown Castle asserts in the CC September Reply that this requirement is invalid as not expressly permitted by the Act, is being applied in a discriminatory fashion, and is preempted by federal law as an unreasonable material limitation. Crown Castle then, however, notes that it will agree to send notice to all residences within 200 feet of the proposed location within sixty (60) days of construction and attaches its proposed notice.

The Village notes that Crown Castle is unclear in its CC September Reply as to whether it plans to send the notice prior to construction or after ("within" construction could be either). In either case, the proposed timing fails to conform to Village Code requirements. The Village further notes that the form of notice is insufficient as the link appears to be inoperable, it fails to include the required information, a list of intended recipients, and is not in the form required by the Village, which is available from Village staff.

17. Crown Castle should provide a statement of compliance with local, federal and state regulations and safety standards, including certification that it complies with paragraph 6 of 50 ILCS 840/15(d)(6) of the State Act.

Crown Castle asserts in the CC September Reply that this requirement is invalid as it is not required by the Village Code, is duplicative of the statement of compliance referenced in (I)(3), that Section 15(d)(6) of the Act does not indicate that a certificate of compliance with all safety standards at all government levels may be required, that the requirement is vague with respect to the Village's reference to "local, federal, and safety regulations standards" without specifying them, and is thus not permitted by the Act, and that the Village has failed to specifically spell out how the Crown Castle response is deficient that that this requirement is therefore "deemed complete." As noted in the Village July Response, compliance with various Codes is required by paragraph 6 of 50 ILCS 840/15(d)(6) of the State Act, which is echoed in the Village Code. Additional requirements specified in the Village Code include, for instance, compliance with generally applicable codes such as Chapter 56 (Construction Of Utility Facilities In Rights-Of-Way) of the Village Code, as well as compliance with the Federal Americans With Disabilities Act of 1990 (42 USC section 12101 et seq.). See Section 60.9(B)(4) & (5) of the Village Code. Crown Castle is deficient in failing to provide the required statement. As to additional specificity, it is not for the Village to know what safety or other generally applicable standards Crown Castle may fail to adhere to. If Crown Castle has concerns that there are local, federal and safety or other regulations that the installation may not comply with, it should affirmatively raise them as the party with such knowledge – not the Village.

18. Crown Castle should provide information on the contractor for the project, including contact information. All contractors and subcontractors working on the project shall be registered with the Village of Clarendon Hills.

Crown Castle asserts in the CC September Reply that it is discriminatory and unreasonable to require identification of contractors before a project has been put out to bid. It is common for utilities to provide information on what contractors they will be using on a project. The information must be supplied.

19. Crown Castle should identify the entity providing the backhaul network for the small wireless facility. In the event that Crown Castle is providing the backhaul network, it should so identify that on its plans.

Crown Castle has, with the CC September Reply, provided the requested information relative to this requirement, and it is therefore no longer at issue.

20. Crown Castle should complete the FCC Office of Engineering and Technology (OET) Bulletin 65 Appendix A forms showing that the proposed project is exempt from FCC RF regulations and requirements. These forms may be found at: http://wireless.fcc.gov/siting/FCC_LSGAC_RF_Guide.pdf on page 18.

Crown Castle asserts in the CC September Reply that this requirement is neither explicitly provided in the Village Code nor expressly permitted by the Act. The Village asserts that both the Village Code, the Act and federal law require compliance with federal safety regulations, and proof of compliance with federal safety regulations for radio frequency emitting equipment is within the Village's police powers regardless of the Act. The FCC's publication A Local Government Official's Guide to Transmitting Antenna RF Emission Safety:

Rules, Procedures, and Practical Guidance, published in June, 2000, states that ". . . as a practical matter, state and local governments have a role to play in ensuring compliance with the FCC's [RF exposure] limits, and [the Guide] provides guidance to assist you in effectively fulfilling that role." (Guide, at 2). It is clearly the FCC's intention for local governments to assure that sites are in compliance with FCC radio frequency exposure limits, and to identify sites that do not comply. For local governments such as the Village, one way to determine this compliance is to utilize the FCC's questionnaire that is found in FCC Office of Engineering and Technology Bulletin 65, Appendix A. Express permission by statute is not referenced in the regulations, nor was it contemplated either under the Act or the 1996 Telecommunications Act. Furthermore, completion of the OET Bulletin 65 Appendix A questionnaire is necessary for a local government to determine if safety measures, such as warning signage, that protect the public where radio frequency emissions levels exceed FCC standards are necessary, or if physical barriers and/or protective gear are needed to protect workers who come in close proximity to emissions from antennas that exceed FCC radio frequency standards. The questionnaire is an essential element for a local government carrying out its duty to protect the safety of the public. It is concerning that Crown Castle is reluctant to comply with this requirement.

21. Crown Castle must affirm that it will comply with the various building codes adopted by the Village.

Crown Castle asserts in the CC September Reply that this requirement is not included in Village Code, is duplicative of the statement referenced in (l)(3) above, is not expressly permitted by the Act. Crown Castle further asserts that the Village has failed to identify specific deficiencies, and the requirement is therefore "deemed complete" under the Act. The Village notes once again that the Village Code and State Act require compliance with generally applicable standards that are adopted by an authority for construction and public safety in the rights-of-way, and with applicable codes and local code provisions or regulations that concern public safety. See 50 ILCS 840/15(d)(6) & (G). Building Codes concern public safety. The affirmation of compliance must be provided.

II. DESIGN REQUIREMENTS: Crown Castle has indicated that it complies with the Village's design standards for small wireless facilities. However, Crown Castle's plans do not meet the following standards:

1. Crown Castle's photo simulations do not show the equipment to be painted the same color as the proposed pole.

Crown Castle in its CC September Reply asserts that this requirement is preempted by federal law as it is unreasonable and amounts to a material limitation, is practically infeasible. Crown Castle asserts that it cannot paint the equipment the exact same shade as a distressed and weathered wooden pole. Crown Castle further asserts that the Village does not require other utilities to paint or repaint their equipment to exactly match the pole and that the requirement is discriminatory and unreasonable. The Village reiterates its requirement that the equipment be painted the same color as the pole. An exact weathered and distressed match is not required. Nor do the Village's design standards require Crown Castle to check paint wear. Regarding other utilities, connection of electrical and telephone equipment to utility poles is governed by ICC rules and regulations. Cable television equipment is not pole-mounted, other than span connecting points. Crown Castle's objections lack validity. The Village's design requirement is a reasonable aesthetic and concealment measure authorized by the Act and federal law.

2. Crown Castle has not indicated placement of a 4" x 6" plate with the wireless provider's name, location, identifying information, and emergency telephone number.

Crown Castle asserts in its CC September Reply that this requirement is not included in the Village Code and is not expressly permitted by the Act. The requirement is included in the Village Code through the Village's adopted design standards, as specifically authorized by the Act. See 50 ILCS 840/15(d)(6)(H) The design must be modified to show the required plate.

3. Crown Castle's proposed pole does not minimize the visual or aesthetic impact of the new vertical element and its associated small wireless facilities upon the surrounding area and does not blend in with the surrounding streetscape.

Crown Castle asserts in its CC September Reply that this requirement is vague and appears arbitrary, and is preempted as a material limitation and unreasonable. Crown Castle further asserts that the Village has not specifically identified CC's alleged deficiencies and this portion of the requirement is therefore deemed complete. As noted previously, the Village's July Reply noted 7 ½ pages of deficiencies in Crown Castle's application, including deficiencies specifically related to aesthetics and concealment. Additional measures to minimize the visual or aesthetic impact of the proposed small wireless facility are required to be demonstrated.

4. Crown Castle's plans do not indicate how the pole will be supported. The Village's design standards require a "... reinforced concrete foundation designed, stamped, sealed, and signed by a professional engineer licensed and registered in the State of Illinois, and subject to the approval of the Director of Public Works or his or her designee." Crown Castle's plans do not include a reinforced concrete foundation, or any other identified means of support.

Crown Castle asserts in its CC September Reply that this requirement is not technically feasible for a wooden pole, as only metal poles are reinforced with a concrete foundation, and that to apply this requirement to a wooden pole amounts to a material limitation, is unreasonable under federal law, and is therefore preempted. Crown Castle further argues that the requirement is discriminatory in that ComEd is not similarly required to support wooden poles with a concrete foundation. As noted throughout the Village July Response and this further reply, new wooden poles are prohibited. This design requirement applies to a new metal pole that Crown Castle should submit in compliance with the Village requirements.

5. Other than painting the equipment to match the proposed wooden pole, Crown Castle proposes no other concealment measures that would minimize adverse aesthetic and visual impacts upon the right of way or nearby properties or buildings. Crown Castle should propose alternative and/or additional measures for concealment.

Crown Castle asserts in its CC September Reply that this requirement is extremely vague and applied in a discriminatory fashion, that the Village has not specifically identified CC's alleged deficiencies and this portion of the requirement is therefore deemed complete, that the requirement is preempted considering requiring the provider to experiment and come up with additional concealment measures outside those required by local code, and is therefore unreasonable and amounts to a material limitation on construction. While aesthetics and visual impacts may not matter to some communities Crown Castle deals with, they are high priorities in our older, beautiful and fully built-out community. And despite telecommunication industry efforts to remove all local control over small wireless facility placements, both federal and State law allow local governments to impose reasonable requirements relative to aesthetics, concealment and design. Alternative and/or additional measures for concealment should be proposed.

6. Crown Castle proposes concealing an underground power conduit and connection in a Quazite box and handhole adjacent to the proposed pole, however, it does not propose or illustrate a similar box and handhole for an underground fiber conduit and interface.

Crown Castle asserts in its CC September Reply that it has already complied with this requirement by showing these items to the Village.

7. Crown Castle makes a general assertion that any design standards that do not apply to other occupiers of the right of way are preempted by the State Act. We disagree with your reading of the State Act. Compliance with the Village's adopted Design Standards is required.

Crown Castle has not replied to the Village's response, other than to refer the Village to its responses throughout the CC September Reply. As noted in the Village July Response, the Village disagrees with your assertion and requires compliance with all of its adopted applicable Design Standards.

8. The following additional information relative to compliance with the Village's Design Standards must be provided:

- Confirm various equipment has UL listing that provides for painting without voiding listing.

Crown Castle in its CC September Reply has indicated compliance with this item, and it is no longer at issue.

III. OTHER:

1. The Certificate of Liability Insurance should include limits that meet or exceed the requirements set forth in Section 60.8 of the Village's Small Cell Ordinance.

Crown Castle in its CC September Reply has provided an updated insurance certificate at Exhibit H in compliance with this item, and it is no longer at issue.

2. The Certificate of Insurance and policies reflected therein, should name, as additional insureds on a primary and non-contributory basis: "the Village of Clarendon Hills and its appointed and elected officials, officers, president and trustees, employees, attorneys, engineers and agents."

Crown Castle in its CC September Reply has provided an updated insurance certificate at Exhibit H in compliance with this item, and it is no longer at issue.

Once you have updated your application with the requested information, we will be in a position to further review it for compliance with the Village's requirements. As noted at the outset of this letter, pursuant to the State Act, the Village continues to regard the processing deadlines for the Application as tolled given your refusal to provide certain required application items based on, among other things, your unilateral assertion that certain of the Village requirements violate federal, State or local law. In the Village's opinion, the timelines have remained tolled since the Village July Response and will not restart without submission of the requested information. As also noted at the outset, the Village will continue to meet with you in an attempt to resolve the open issues.

Please do not hesitate to contact me, should you need clarification or have any other questions.

Sincerely,



Jonathan Mendel

Jonathan Mendel
Community Development Director

cc: Kevin Barr, Village Manager (via email)
Stu Chapman, MSA (via email)
Jason Guisinger, Village Attorney (via email)



1 N. Prospect Avenue
Clarendon Hills, Illinois 60514
630.286.5410

NOTIFICATION OF PROPOSED SMALL WIRELESS FACILITY INSTALLATION

Date: _____

Recipient: Owner or Resident

Sender: Small Wireless Facility Provider/Applicant

Sender submitted plans for a small wireless facility at the below location:

Plain language description of the proposed facility, photo simulations or illustrations depicting the proposed wireless facility:

Address where comments may be sent to the wireless provider:

Applicant Signature

Date

Applicant Print Name