

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

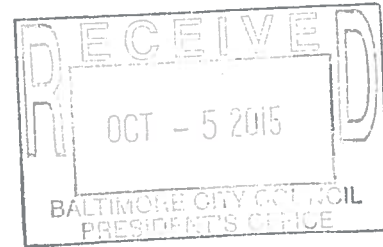


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

October 5, 2015

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 15-0551 – Franchise – Crown Castle NG Atlantic LLC

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0551 for form and legal sufficiency. The bill would grant a franchise to Crown Castle Systems, Inc. to construct, install, maintain, repair, operate, relocate, replace and remove facilities relating to the provision of a distributed antenna system in and across certain streets and public ways, subject to certain terms and conditions; and providing for a special effective date.

This franchise ordinance and the attached franchise agreement, which is made part of the ordinance, allows Crown Castle to use the City rights-of-way to conduct a business in which wireless antenna will be attached to poles to provide certain cellular communication services. Crown Castle is not itself a provider of cellular communications, but rather it provides the infrastructure used by cellular service providers. Specifically, the Crown Castle franchise will allow Verizon Wireless and future Crown Castle customers to provide robust cellular service in Baltimore.

The exercise of this franchise ordinance is conditioned on Crown Castle executing a separate attachment agreement with the City. The attachment agreement governs the actual attachments that will be used on City poles. In contrast, and pursuant to Article VIII of the City Charter, Council Bill 15-0551 concerns matters pertaining to Crown Castle's use of City rights-of-way.

Article VIII of the Baltimore City Charter requires that a bill granting a franchise be referred to the Board of Estimates after first reading. City Charter, Art. VIII, § 2. The BOE is empowered to change both the proposed compensation to be paid the City and the conditions under which the franchise is granted. *Id.* Furthermore, the Board of Estimates must approve by

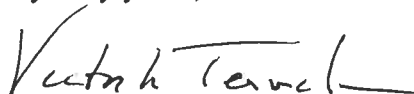
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vote or resolution the compensation and terms of the franchise and these are to be attached to the bill before the bill can be enacted. *Id.*

If the above procedural requirements are met, the bill shall be in accordance with Article VIII of the Baltimore City Charter and the Law Department will approve the bill for form and legal sufficiency.

Nonetheless, the Law Department seeks two amendments. First, we wish to limit the franchise to facilities used only to transmit and receive smartphones communications - nothing broader. Furthermore, we point out that the bill as drafted requires Crown Castle to use City-owned conduit for its cellular services. Crown Castle, however, reports that City conduit may not be used in some instances. Our second amendment states that Crown Castle agrees to pay a fee, as may be provided in a separate attachment agreement, when the company fails to use City conduit. The proposed amendments are attached.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victor K. Tervala", with a horizontal line extending to the right.

Victor K. Tervala
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief, Opinions & Advice
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor

Council Bill 15-0551 - – Franchise – Crown Castle NG Atlantic LLC

Amendment 1

Page 5, line 19. Delete the comma after the word “transmission” and add the word “AND”. After the word “transport” delete the phrase “and other communication-related services” and substitute “OF COMMERCIAL MOBILE RADIO SERVICES AND PRIVATE MOBILE SERVICES, AS THOSE TERMS ARE DEFINED IN 47 U.S. CODE § 332,”

Amendment 2

Page 8, line 12. After the period, delete the phrase “All such construction” and insert:

“IF THE FRANCHISEE ELECTS NOT TO USE OR CAUSE THE CONSTRUCTION OF CITY-OWNED CONDUIT, THE FRANCHISEE AGREES TO PAY AN ADDITIONAL FEE, AS MAY BE REQUIRED FOR LICENSES, LEASES OR OTHER AGREEMENTS PERMITTING THE ATTACHMENT OF FACILITIES TO CITY-OWNED STREET LIGHTS AND OTHER STRUCTURES. ANY CONSTRUCTION PERFORMED PURSUANT TO THIS SECTION”