



Legislation Text

File #: 19-0408, Version: 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

**City of Baltimore
Council Bill**

Introduced by: The Council President

At the request of: The Administration (Department of Transportation)

A Bill Entitled

An Ordinance concerning

Amending Ordinance 15-428 - Franchise - Crown Castle [NG Atlantic] Fiber LLC

For the purpose of amending Ordinance 15-428, to reflect the name change of the franchisee, since the Ordinance was enacted; to add Park Properties to those areas where the Distributed Antenna services are provided; and providing for a special effective date.

By amending

Ordinance 15-428, including the Baltimore City Distributed Antenna System (DAS) and Small Cell Franchise Agreement

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Ordinance 15-428

Franchise - Crown Castle [NG Atlantic] Fiber LLC

For the purpose of granting a franchise to Crown Castle [NG Atlantic] Fiber LLC, a Virginia limited liability company, to construct, install, maintain, repair, operate, relocate, replace, and remove certain facilities relating to the provision of a Distributed Antenna Systems services in and across certain streets [and], public ways, and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

...

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That a franchise or right is granted to Crown Castle [NG Atlantic] Fiber LLC (the "Grantee"), to construct, install, maintain, repair, operate, relocate, replace and remove certain facilities relating to the provision of Distributed Antenna Systems services in and across certain streets [and], public ways, and Park Properties subject to the terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and City Council of Baltimore and the Grantee, which

is attached and made a part of this Ordinance.

...

Section 2. And be it further ordained, That the Baltimore City Distributed Antenna System (DAS) and Small Cell Franchise Agreement of Ordinance 15-428 is amended to read as follows:

Baltimore City Distributed Antenna System (DAS) and Small Cell Franchise Agreement

This Franchise Agreement, (the "Agreement") is made this ____ day of _____, 2015, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland ("City") and Crown Castle [NG Atlantic] Fiber LLC, a Virginia limited liability company ("Franchisee").

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the [public ways] Public Way and Park Properties of the City.
2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Facilities relating to the provision of Distributed Antenna Systems ("DAS") services in the Public Way and on Park Properties within the City (the "Facilities"), in a manner consistent with this Agreement.

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1.0 Definitions

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1.9 "Franchise" means the non-exclusive right granted, by ordinance and subject to this Agreement, to Franchisee to construct, operator, repair, and maintain the Network on, over, under, upon, across, and along the Public Ways and Park Properties.

...

1.12 "Network" means, collectively, each of the DAS or Small Cell networks operated by Franchisee to provide Services within the corporate boundaries of the City, which include Facilities located on or within streetlights, stand-alone poles, third party utility poles, conduit, ducts and other structures located on or within the Public Way and Park Properties as permitted under this Agreement.

...

1.14 "Park Properties" means the real properties controlled by the Department of Recreation and Parks pursuant to the provisions of Article VII of the City Charter, which includes parks, zoos, squares, athletic and recreational facilities.

1.15 [1.14] "Person" means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit.

1.16 [1.15] “Public Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way utilized for compatible uses. Public Way shall not include any City buildings, structures or other improvements, regardless of whether they are situated in a public right-of-way.

1.17 [1.16] “Services” means the wireless and wireline access, transmission, and transport of commercial mobile radio services and private mobile services, as those terms are defined in 47 U.S. Code § 332, provided by Franchisee using the Network pursuant to one or more filed tariffs or on individual-case-basis agreements with customers, as authorized by Franchisee’s tariffs or by state or federal law.

1.18 [1.17] “Small Cell” means a wireless communications technology installation similar to a DAS network, as the term is generally known in the industry.

2.0 Grant of Franchise

The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair, operate, replace and remove Network Facilities within the Public Way and on Park Properties for the purpose of providing Services, which shall be exercised at Franchisee’s sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way or Park Properties. Nothing in this Agreement shall be deemed to grant, convey, create or vest in Franchisee a real property interest in land, including any fee, leasehold interest, or easement.

2.4 Closing of Public Ways and Park Properties

Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Ways and Park Properties. In the event that all or part of the Public Ways or Park Properties within the Franchise Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated or if ownership of the land under the affected Public Ways or Park Properties [is] are otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Public Ways or Park Properties, or any part of such Public Ways or Park Properties so closed, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Franchisee shall remove its Network from such Public Ways or Park Properties. If such closing, vacation, or transfer of any Public Way or Park Properties or Park Properties is undertaken for the benefit of any private Person, the City shall, as appropriate, condition its consent to such closing, vacation, or transfer of such Public Way or Park Properties on the agreement of such private Person to: (i) grant the Franchisee the right to continue to occupy and use such Public Way or Park Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the affected part of the Cable System. The City shall provide reasonable prior notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to remove its Cable System where the right to continue to occupy and use such Public Way or Park Properties is not reserved for Franchisee.

3.0 Relation to Attachment Rights

This Franchise does not confer upon Franchisee any right to place or attach Facilities directly upon or to structures located in the Public Way or on Park Properties that are owned by the City or by a third party, including but not limited to City-owned streetlights and third party electric utility poles. Franchisee shall secure and maintain any license, lease or other right as may be

necessary for such desired attachment by way of a separate attachment agreement or other similar instrument executed with such entity.

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5.0

Franchise Fee

For the right to construct, install, maintain, repair, operate, replace and remove Network Facilities in the Public Way or on Park Properties, Franchisee shall pay to the City a Franchise Fee in the amount of one hundred dollars (\$100.00) per year. Payment shall be made no later than 30 days following the conclusion of each fiscal year.

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7.0

Installation Specifications

7.1

Conduit

For the deployment of new fiber optic cable in the Public Way or on Park Properties for the Network, Franchisee shall use existing City-owned Conduit. In the event there is no available City-owned Conduit to meet Franchisee's requirements, Franchisee may in coordination with the City causes the construction of additional Conduit in the Public Way or on Park Properties. 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 shall be consistent with City specifications and include at least two additional spare ducts for future City use for fiber installation. Franchisee agrees that title in such property shall transfer to the City upon its substantial completion.

7.2

Installation Plan

The installation of Facilities shall be made in accordance with plans and specifications approved by the City, and after obtaining all necessary permits for all work in the Public Way or on Park Properties. Franchisee shall submit to the Baltimore City Department of Transportation an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Facilities, (2) the specific proposed location of such Facilities (including specific identification of each attachment to a City-owned or third-party structure located in the Public Way or on Park Properties); (3) the route of fiber optic cable utilized by the Network; (4) the proposed type of construction materials for all structures, and any other details that the City may reasonably request which are also applicable to other regulated utilities operating within the Public Way or on Park Properties. Such installation plans may be submitted as part of Franchisee's annual construction report described in Section 14.

7.3

Approval by City

Franchisee shall not attach, install, maintain, or operate any Facilities in or on the Public Way or Park Properties until plans for such work have been approved by the City (which shall not be unreasonably withheld, delayed, conditioned or denied), and all necessary permits have been properly issued. Substantial modification to an installation plan (including, for example, a change of Node site) made in the course of construction shall require the written consent of the City, upon which the City shall act promptly, and may require modification of an existing or issuance of a new permit.

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8.0 Construction

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8.2 Safety Precautions

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8.2.2 Protection of Construction Areas

The Franchisee shall comply with the safety requirements of all permits, licenses, and other forms of approval or authorization. In addition, Franchisee shall maintain reasonable barriers, lights, signs, cones, and other similar warnings and protective devices required for the safety of the public in compliance with this Agreement and Applicable Law. If the Franchisee places any such device in any Public Way or on Park Properties, the device shall be placed and maintained in a way that does not interfere with the usual travel or other existing and anticipated uses of the Public Way or Park Properties.

...
8.6 Materials and Claims

All materials furnished for any work done [on the Franchised Premises] in the Public Way or on Park Properties by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchised Premises, and City, from all claims of contractors, laborers and material men arising from its work in the Public Way or on Park Properties. Franchisee shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the Facilities. Should any such lien be made or filed, Franchisee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

...
9.0 Maintenance and Repair

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9.2 Access to Facilities

Franchisee will be given reasonable access to each of the Facilities in the Public Way or on Park Properties for the purpose of routine maintenance, repair, or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, Franchisee shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

9.3 Repair of Public Way and Park Properties

Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Franchisee's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of Facilities in the Public Way. Franchisee shall promptly repair such damage and return the Public Way, Park Properties, and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. Franchisee's obligations under this Section 9.3 shall survive for one (1) year past the completion of such reparation and restoration work.

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11.0 New Poles; Pole Replacement

11.1 New Poles

Franchisee shall not erect poles, conduits, or other Facilities in [an] a Public Way or on Park Properties without all necessary permits and authorizations and the express permission of the City. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way or on Park Properties is not the City's preference and agrees to limit such requests as a last resort. In the event the construction of one or more new poles is necessary to execute Franchisee's planned installation of Facilities, Franchisee may request City approval to construct, at Franchisee's sole expense, such poles that will comply with all applicable building permits, applicable City, state and federal specifications and laws ("New Poles"). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area. City shall consider any request to construct a New Pole in a nondiscriminatory manner and shall accommodate Franchisee's request to the same or substantially similar extent as the City accommodates such requests from other providers of telecommunications services within the City.

12.0 Removal and Modification of Facilities During Term

12.1 Franchisee Right to Remove

During the Term, Franchisee shall have the right to remove from the Public Way or Park Properties all or any portion of Facilities from time to time, whether before or after a default under this Franchise, in Franchisee's sole discretion with prior notice to City. Franchisee, at its own cost and expense, shall promptly dispose of any materials used and/or generated any and all removal activities, and shall promptly repair any damage to the Public Way or Park Properties to its condition prior to construction and installation of such Facilities by Franchisee, reasonable wear and tear excepted. Should the Franchisee wish to exercise its right of removal, the Franchisee is required, at its own cost and expense, to leave in place the fiber strands provided for and dedicated to the use of the City.

12.3 Removal Due to Termination or Abandonment

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Network, Franchisee shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Facilities from the Public Way or Park Properties and restore the area affected by Facilities to its condition at the commencement of this Franchise, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Within 90 days of a written request from City, Franchisee will post a payment bond in the amount of \$500,000.00 to address the City's cost of removing any Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way or Park Properties relating to the Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Franchisee, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

13.0 Compliance With Laws

13.2 Permits and Other Authorizations

Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required in order to construct, operate, or otherwise implement and use Facilities in the Public Way or on Park Properties, including, but not limited to, a conduit permit and charge, a right of way construction permit, building permits, encroachment permits, and any variance, conditional use permit, ministerial permit, or special exception required under the Baltimore City Zoning Regulations. Franchisee shall pay, as they become due and payable, all fees, charges, taxes and expenses, including conduit charges, associated with such permits and/or other Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as required in this Section, Franchisee shall have the right, without obligation, to terminate this Franchise immediately.

14.0 Required Reports

14.1 Annual Construction Report

Not later than the fifteenth (15th) day after the close of each calendar year in which any work was performed in the Public Way or on Park Properties by Franchisee, the Franchisee shall provide the Baltimore Department of Transportation and, in regard to installations on Park Properties the Department of Recreation and Parks, with the following:

- A. An updated “as-built” map clearly indicating each Node, pad-mounted Facility, control box, and associated fiber network route in the Public Way or on Park Properties. Specific identification of attachments to City-owned structures or structures owned by a third party located in the Public Way or on Park Properties. Specifying owner of underlying facility (i.e., city, BGE);

15.0 Default and Remedies

15.1 Default by Franchisee

In the event of default by Franchisee, the City shall have the right, while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to Franchisee, to terminate this Franchise and promptly remove or require Franchisee to promptly remove Facilities from the Public Way or Park Properties, at Franchisee’s sole cost and expense, without prejudice to any other remedy which the City might be entitled to pursue, including but not limited to City’s rights under Section 17 to eliminate any interference caused by Facilities. No portion of the Franchise Fee shall be refunded in the event of a termination on default.

16.0 City Termination Right

In addition to the remedies set forth in this Section 17, the City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Public Way or Park Properties; (ii) if Franchisee’s licenses to operate the Network and/or provide Service are terminated, revoked, expired, or otherwise abandoned; or (iii) for the City’s convenience.

24.0 Environmental

- (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not at any time within the Public Way or on Park Properties store, treat, transport or dispose of any hazardous substance, hazardous waste or oil as defined by the Resource, Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann., Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle 2.
- (b) “Environmental Conditions” as used in this Agreement shall mean discovered or undiscovered contaminants, pollutants, or toxic substances affecting health or the environment, in any way arising from or related to the subject matter of this Franchise which could, or do, result in any damage, loss, cost or expense to, or liability, by City to any person including a government agency or other entity.
- (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials, employees, agents and representatives (“Indemnified Parties”) from and against any and all losses, costs, liabilities, including but not limited to liabilities, demands, obligations, claims, suits, actions and expenses, attorneys’ fees, consultant fees and court costs connected therewith, brought against the Indemnified Parties, or incurred by any of them, by reason of injury to persons, including death, and damage to property arising out of Environmental Conditions or resulting from any direct, or indirect, willful, or negligent acts or omissions of Franchisee, its contractors, agents, or employees arising from Environmental Conditions, unless solely caused by the negligent act of City. Notwithstanding anything to the contrary herein, Franchisee agrees to defend, indemnify and hold harmless the Indemnified Parties from and against all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses judgments and reasonable attorney fees that the Indemnified Parties may suffer or incur due to the existence of any Hazardous Substances on the Franchised Premises [and], in the Public Way or on Park Properties or migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that arise from the Franchisee’s and or its representatives activities on the Franchised Premises [or], the Public Way or Park Properties. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This provision shall be in addition to, and separate from, any remedies available to City for breach by the Franchisee of its obligations under any of the provisions of this Agreement and shall in no way limit any recourse that the City may have at the time against Franchisee pursuant to any federal, state or local laws. The provisions of this Paragraph shall survive the termination or expiration of this Agreement.
- (d) City represents to best of its knowledge, without having made inquiry that there is no Hazardous Substance within the Public Way or Park Properties. Hazardous Substance is any substance identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. City shall not introduce or use any Hazardous Substance in the Public Way or on Park Properties in violation of any applicable law. City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance to the extent caused by the City, that have occurred or which may occur in the Public Way or on Park Properties. City agrees to defend, indemnify and hold harmless the Franchisee from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, “Claims”) including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that

the Franchisee may suffer or incur due to the existence of any Hazardous Substances in the Public Way or in Park Properties or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), arise from the City's activities [on the Franchised Premises] in the Public Way or on Park Properties to the extent allowable under subsection 5-303 (a), (b) and (c) of the Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend, indemnify and hold Franchisee harmless from Claims resulting from Actions on the [Franchised Premises Property] Public Way or on Park Properties caused by City prior to and during the Initial Term and any Renewal Term. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section shall survive the termination or expiration of this Agreement.

25.0 Notices

All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or by certified mail, return receipt requested; to the following addresses:

City: The Mayor and City Council of Baltimore
Department of Transportation
Attn: Director
417 E. Fayette Street, Fifth Floor
Baltimore, Maryland 21202

with a copy which shall not constitute legal notice to:

Baltimore City Department of Real Estate
Room 304 City Hall
100 North Holliday Street
Baltimore, Maryland 21202
410-396-4768
410-528-1437 (fax)

All Franchise Fee payments to the City should be mailed to the following address and to the attention of:

Director of Finance
Bureau of Treasury Management
Collections Division
200 N. Holliday Street
Baltimore, Maryland 21202

Franchisee:

Crown Castle [NG Atlantic] Fiber LLC
c/o Crown Castle USA Inc.
200 Corporate Drive
Cannonsburg, PA 15317-8564
Attn: [E. Blake Hawk] Ken Simon, General Counsel, Legal
Department

And with a copy which shall not constitute legal notice to:

Crown Castle [NG Atlantic] Fiber LLC
2000 Corporate Drive
Cannonsburg, PA 15317-8564
Attn: SCN Contracts Management

27.0 Miscellaneous

27.3 Taxes

(b) Franchisee shall indemnify City from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against City in relation to the taxes owed or assessed on the [Franchised Premises] Public Way or on Park Properties due to Franchisee’s improvements therein.

27.6 Change in Law and Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Franchisee’s occupation of the Public Way or Park Properties (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

ATTEST:

MAYOR AND
CITY COUNCIL OF BALTIMORE

CUSTODIAN OF THE CITY SEAL

BY: _____
FRANK MURPHY
ACTING DIRECTOR
DEPARTMENT OF TRANSPORTATION

BY: _____
REGINALD MOORE, DIRECTOR
DEPARTMENT OF RECREATION AND

PARKS

WITNESS/ATTEST:

CROWN CASTLE FIBER LLC

BY: _____ **(SEAL)**

NAME:

TITLE:

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

APPROVED BY THE BOARD OF

ESTIMATES

CHIEF SOLICITOR

**CLERK
DATE**

Section 3. And be it further ordained, That this Ordinance takes effect when it is enacted.