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EXEMPT FROM FILING
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GOVT. CODE § 6103

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20 D/B/A VERIZON WIRELESS

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28 Attorneys for Real Party in Interest
CROWN CASTLE GT COMPANY LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

EMF SAFETY NETWORK, et al.,

Petitioners,

vs.

CITY OF SEBASTOPOL, et al.,

Respondents.

**Case No.: SCV 250976
(Administrative Mandamus Proceeding)**

**JOINT ANSWER OF RESPONDENT
CITY OF SEBASTOPOL AND REAL
PARTIES IN INTEREST VERIZON
WIRELESS AND CROWN CASTLE GT
COMPANY LLC**

[Caption Continued on Next Page]

1 CROWN CASTLE GT COMPANY LLC; GTE
2 MOBILNET OF CALIFORNIA LIMITED
3 PARTNERSHIP D/B/A VERIZON WIRELESS;
and DOES 11 through 15, inclusive,

4 Real Parties in Interest.
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Judge: Honorable Elliot Lee Daum
Dept.: 16

Date Action Filed: January 11, 2012

7 Respondent CITY OF SEBASTOPOL ("City"), and Real Parties in Interest GTE
8 MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS
9 ("Verizon Wireless"), and CROWN CASTLE GT COMPANY LLC ("Crown") hereby answer
10 and respond to the Petition for Writ of Mandate filed herein as follows:

11 **ANSWER TO ALLEGATIONS**

12 1. The City, Verizon Wireless, and Crown (referred to collectively below as
13 "Responding Parties") deny the allegation that the City's approval of a use permit to install
14 additional panel antennas (the "Project") was in violation of the California Environmental
15 Quality Act and Sebastopol's Telecommunication Ordinance and deny that the City abused its
16 discretion in approving the Project. To the extent the allegations attempt to characterize the
17 requirements or provisions of existing laws, Responding Parties do not accept or concede to
18 Petitioner's characterization.

19 2. Responding Parties admit the factual allegations of Paragraph 2. To the extent
20 the allegations attempt to characterize the requirements or provisions of existing laws,
21 Responding Parties do not accept or concede to Petitioner's characterization.

22 3. Responding Parties deny that Petitioner's members have been or will be injured
23 or aggrieved in any manner by the City's approval of the Project or the failure of this Court to
24 set it aside, and lack sufficient knowledge of the organizational status of Petitioner EMF Safety
25 Network, or the membership thereof, to answer the remaining allegations of Paragraph 3, and
26 accordingly deny the allegations of Paragraph 3 on that basis.

27 4. Responding Parties admit the allegations of Paragraph 4.
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1 5. No response is required to Paragraph 5 in that it consists of generic "Doe"
2 allegations and related legal conclusions. To the extent a response is required, Responding
3 Parties generally and specifically deny each and every allegation of Paragraph 5.

4 6. Responding Parties admit the allegations of Paragraph 6.

5 7. Responding Parties admit the allegations of Paragraph 7.

6 8. No response is required to Paragraph 8 in that it consists of generic "Doe"
7 allegations and related legal conclusions. To the extent a response is required, Responding
8 Parties generally and specifically deny each and every allegation of Paragraph 8.

9 9. No response is required to Paragraph 9 as it is non-substantive and does not
10 contain any allegation.

11 10. Responding Parties admit the allegations of Paragraph 10.

12 11. Responding Parties admit the allegations of Paragraph 11.

13 12. Responding Parties admit the allegations of Paragraph 12.

14 13. Responding Parties admit the allegations of Paragraph 13.

15 14. Responding Parties admit the allegations of Paragraph 14.

16 15. Responding to Paragraph 15, Responding Parties admit that this action was filed
17 on January 11, 2012, admit that the Petitioner mailed a notice of the action to the City on the
18 same date, lack sufficient knowledge to answer Petitioner's allegation that it served notice of this
19 action on the Attorney General and deny the allegation on that basis. To the extent the
20 allegations of Paragraph 15 attempt to characterize the requirements or provisions of existing
21 laws or Petitioner's compliance with those laws, Responding Parties do not accept or concede to
22 Petitioner's characterization.

23 16. Responding Parties deny the factual allegations of Paragraph 16. To the extent
24 the allegations attempt to characterize the requirements or provisions of existing laws,
25 Responding Parties do not accept or concede to Petitioner's characterization.

26 17. No response is required to Paragraph 17 as it is non-substantive and does not
27 contain any allegation.

1 18. Responding Parties generally and specifically deny each and every allegation in
2 Paragraph 18. To the extent the allegations attempt to characterize the requirements or
3 provisions of existing laws, Responding Parties do not accept or concede to Petitioner's
4 characterization.

5 19. Responding Parties deny the factual allegations of Paragraph 19. To the extent
6 the allegations attempt to characterize the requirements or provisions of existing laws,
7 Responding Parties do not accept or concede to Petitioner's characterization.

8 20. Responding Parties deny the factual allegations of Paragraph 20. To the extent
9 the allegations attempt to characterize the requirements or provisions of existing laws,
10 Responding Parties do not accept or concede to Petitioner's characterization.

11 21. Responding Parties generally and specifically deny each and every allegation in
12 Paragraph 21. To the extent the allegations attempt to characterize the requirements or
13 provisions of existing laws, Responding Parties do not accept or concede to Petitioner's
14 characterization.

15 22. Responding Parties deny the factual allegations of Paragraph 22. To the extent
16 the allegations attempt to characterize the requirements or provisions of existing laws,
17 Responding Parties do not accept or concede to Petitioner's characterization.

18 23. Responding Parties generally and specifically deny each and every allegation in
19 Paragraph 23.

20 **AFFIRMATIVE DEFENSES**

21 24. Responding Parties further assert the following affirmative defenses to the
22 Petition.

23 **FIRST AFFIRMATIVE DEFENSE**

24 25. The claims in the Petition are preempted by the federal Telecommunications Act
25 of 1996 to the extent they are based directly or indirectly on any harm or environmental impact
26 that will allegedly be caused by the low-power radio frequency emissions resulting from the
27 Project. After completion of the Project, the telecommunications facility will continue to
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1 operate well within safety guidelines established by the Federal Communications Commission
2 (“FCC”), and any regulation or decision by the City based on the alleged health effects of radio
3 frequency emissions is therefore preempted by 47 U.S.C. § 332(c)(7)(B)(iv).

4 **SECOND AFFIRMATIVE DEFENSE**

5 26. The claims in the Petition are preempted by the federal Telecommunications Act
6 of 1996 to the extent Petitioner seeks to compel a decision that would “prohibit or have the
7 effect of prohibiting the provision of personal wireless services,” *see* 47 U.S.C.
8 §332(c)(7)(B)(i)(II)), as such provision has been interpreted and applied by applicable case law
9 (generally holding that state or local governments may not deny an application for a wireless
10 facility that represents the “least intrusive means” of filling a “significant gap”).

11 **THIRD AFFIRMATIVE DEFENSE**

12 27. The claims in the Petition are preempted by the federal Telecommunications Act
13 of 1996 to the extent Petitioner seeks to compel a decision that would discriminate unreasonably
14 against Verizon Wireless, *see* 47 U.S.C. §332(c)(7)(B)(i)(I)), as such provision has been
15 interpreted and applied by applicable case law. Because the City previously approved the
16 installation of a substantially similar installation by MetroPCS on the same tower with the same
17 or greater visual impact, the relief sought in the Petition would be preempted under the
18 foregoing provision of the Telecommunications Act.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 28. The claims in the Petition are barred for failure to exhaust administrative
21 remedies as required under the City’s zoning code (§ 17.320(B)(3)), Public Resources Code
22 §21177(a), Govt. Code Section 65009(b)(1), and applicable case law to the extent they depend
23 on allegations of visual or aesthetic impacts of the Project (as opposed to the existing facility) or
24 “hazardous materials.” No such claims were preserved in the administrative appeal or otherwise
25 presented to the City.
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1 **FIFTH AFFIRMATIVE DEFENSE**

2 29. The First Cause of Action in the Petition, alleging failure to comply with the
3 California Environmental Quality Act (CEQA), fails to state a cause of action and is barred on
4 the grounds that Petitioner failed to exhaust its administrative remedies as required under the
5 City's zoning code (§ 17.320(B)(3)), Public Resources Code §21177(a), and applicable case law
6 in that the appeal failed to mention CEQA or to allege any violation thereof.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 30. The Petition fails to state facts sufficient to constitute a cause of action.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 31. The City acted properly within its discretion in approving the Project in that its
11 decision was supported by substantial evidence, followed all required procedures, and was
12 consistent with applicable law, including but not limited to the City's zoning code and applicable
13 state and federal law.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 32. The relief sought by Petitioner would harm the public interest in reliable
16 telecommunications services and threaten public safety. Verizon Wireless' services provide a
17 critical means of communication among police, fire, and other emergency service providers, and
18 for the public in reporting emergencies. The proposed facility is necessary to enable Verizon
19 Wireless to provide reliable services within the City of Sebastopol.

20 **NINTH AFFIRMATIVE DEFENSE**

21 33. Pursuant to its broad Congressional mandate to regulate wireless
22 communications, the FCC has promulgated technical and operational standards for wireless
23 telecommunications service and has made clear that these regulations are preemptive and that
24 local governments have no authority to establish or enforce technical standards for wireless
25 service. *See, e.g., In re Future Use of Frequency Band 806-960 MHZ*, 46 FCC 2d 752, 766-67
26 (¶¶ 43, 44) (1974) (the FCC's "technical standards and . . . operational rules are to apply nation-
27 wide . . . without regard to state boundaries or varying local jurisdictions."); *Use of the Bands*
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1 825-845 MHz and 870-890 MHz, 86 FCC 2d 469, 503-05 (¶¶ 79, 82) (1981) (“asserting federal
2 primacy over the areas of technical standards and competitive market structure for cellular
3 service”); *Use of the Bands 825-845 MHz and 870-890 MHz*, 89 FCC 2d 58, 95 (¶ 81) (1982)
4 (“It is imperative that no additional requirements be imposed by the states which could conflict
5 with our standards and frustrate the federal scheme for the provision of nationwide cellular
6 service.”). *See also New York SMSA v. Ltd. v Town of Clarkstown*, 612 F.3d 97 (2010)
7 (Congress has imbued the Federal Communications Commission with plenary authority over the
8 technical aspects of the nation’s wireless communications facilities development). The relief
9 sought in the Petition would intrude on this exclusive federal authority and is therefore
10 preempted under the Supremacy Clause of the United States Constitution.

11
12 WHEREFORE, Responding Parties pray for relief as follows:

- 13 1. That the Petition for Writ of Mandate be denied;
14 2. That Petitioner take nothing by way of this proceeding;
15 3. That Responding Parties recover their costs and attorneys’ fees in this proceeding; and
16 4. That the Court award such other and further relief as it deems warranted and
17 appropriate.

18
19 DATED: June 28, 2012

SEBASTOPOL CITY ATTORNEY'S OFFICE

20
21 By: See attached signature via email
22 Lawrence W. McLaughlin

23 Attorneys for Respondent City of Sebastopol
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19 DATED: June 28, 2012

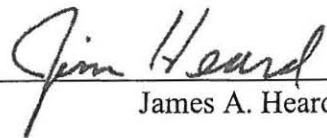
SEBASTOPOL CITY ATTORNEY'S OFFICE

20
21 By: 
22 Lawrence W. McLaughlin

23 Attorneys for Respondent City of Sebastopol
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1 DATED: June 28, 2012

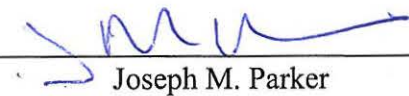
MACKENZIE & ALBRITTON LLP

2
3 By: 
James A. Heard

4 Attorneys for Real Party in Interest GTE
5 Mobilnet Of California Limited Partnership
6 d/b/a Verizon Wireless

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8
9 DATED: June 28, 2012

SHUSTAK FROST & PARTNERS, P.C.

10
11 By: 
Joseph M. Parker

12 Attorneys for Real Party in Interest Crown
13 Castle GT Company LLC

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I am the District Manager – SF0 for Crown Castle GT Company LLC, and am authorized to make this verification on its behalf. The foregoing Answer is true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on June ___, 2012, at Pleasanton, California.

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VERIFICATION

I, Angela Castellano, declare:

I am the District Manager – SF0 for Crown Castle GT Company LLC, and am authorized to make this verification on its behalf. The foregoing Answer is true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on June 29, 2012, at Pleasanton, California.


Angela Castellano

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I am the Manager – Network Real Estate for Real Party GTE Mobilnet Of California Limited Partnership, d/b/a Verizon Wireless, and am authorized to make this verification on its behalf. The foregoing Answer is true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I believe them to be true.

Executed on July __, 2012, at Walnut Creek, California.

Peter Maushardt

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VERIFICATION

I, Peter Maushardt, declare:

I am the Manager – Network Real Estate for Real Party GTE Mobilnet Of California Limited Partnership, d/b/a Verizon Wireless, and am authorized to make this verification on its behalf. The foregoing Answer is true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on July 2, 2012, at Walnut Creek, California.


Peter Maushardt

DECLARATION OF SERVICE

I, the undersigned, declare:

1. I am over 18 years of age and not a party to this action. My business address is 401 West "A" Street, Suite 2330, San Diego, California 92101 which is located in the county where the service described below took place.

2. On July 2, 2012, I served the following document:

**JOINT ANSWER OF RESPONDENT CITY OF SEBASTOPOL AND REAL
PARTIES IN INTEREST VERIZON WIRELESS AND CROWN CASTLE GT
COMPANY LLC**

- (X) BY MAIL. I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.
- () BY PERSONAL SERVICE. I caused to be hand-delivered said document(s) to parties listed on the attached Service List pursuant to Code of Civil Procedure §1011.
- () BY OVERNIGHT EXPRESS DELIVERY. I deposited said document(s) in a box or other facility regularly maintained by the express service carrier providing express delivery pursuant to Code of Civil Procedure §1013c.
- () BY FACSIMILE. In addition to service by mail as set forth above, a copy of said document(s) were also delivered by facsimile transmission to the addressee pursuant to Code of Civil Procedure §1013e.
- (X) BY ELECTRONIC MAIL ("Email").

addressed to the parties listed on the attached Service List.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 2, 2012 at San Diego, California.



SUZANNE LIVINGSTON

SERVICE LIST

EMF Safety Network, et al. v. City of Sebastopol, et al.
Sonoma Superior Court Case No. SCV 250976

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NETWORK*

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