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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
CROWN CASTLE NG EAST LLC,

Plaintiff,

-against-

THE CITY OF RYE and the CITY COUNCIL OF THE  
CITY OF RYE,

Defendants.

**17 CV 3535 VLB-PED**

**DECLARATION OF KRISTEN K.  
WILSON IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS**

**KRISTEN K. WILSON**, being duly sworn, declares as follows under penalty of perjury:

1. I am a partner in the law firm Blanchard & Wilson, LLP, and attorney for Defendants City of Rye and the City Council of the City of Rye (hereinafter referred to as the "City" or the "Defendants") in the above-referenced matter.

2. I submit this declaration upon direct knowledge and upon information and belief, the sources of which are my personal involvement in the defense of this matter, as well as my review of the file and all previous records that form the basis of this action.

3. This declaration is submitted in support of Defendants' Motion to Dismiss the Complaint, filed on May 11, 2017. *See* a true and accurate copy of the Complaint annexed hereto as **Exhibit "A"**.

4. As further explained in Defendants' accompanying Memorandum of Law submitted herein, Defendants' motion is wholly warranted as Crown Castle NG East, LLC

(hereinafter referred to as “Crown” or “Plaintiff”) has: 1) failed to establish subject matter jurisdiction as all causes of action sound in state law breach of contract; 2) there is no relief that can be granted; 3) Plaintiff has failed to name a necessary and indispensable party; and 4) Plaintiff’s fourth cause of action seeking to “reverse” the determination of City’s finding that there is the potential for a significant adverse environmental impact under the State Environmental Quality Review Act (“SEQRA”) (the “Positive Declaration”) is not ripe.

5. Furthermore, Plaintiff has failed to name a necessary party, Verizon Wireless, whose rights could be directly impacted by a decision of the issues raised in the Complaint.

### **FACTUAL BACKGROUND**

6. This matter involves Plaintiff’s impatience and dissatisfaction with the City’s review of Crown’s request to install over sixty distributed antennae systems (“DAS”) nodes directly in front of residences and adjacent to schools throughout the residential neighborhoods of Rye.

7. In order to install the requested DAS nodes and associated equipment, Crown requested an amendment to the agreement entered between NextG Networks of NY, Inc. (Crown’s predecessor) and the City of Rye to permit the installation of equipment into the City’s right-of-way (the “RUA”). A copy of the RUA entered into in 2011 is annexed hereto as **Exhibit “B”**.

8. For more than 18 months, over a dozen public hearings and over one hundred hours of testimony from Crown, Verizon, Crown’s and Verizon’s experts, and the public, the City Council diligently reviewed all of the information – both oral and written – presented in response to Crown’s application.

9. During this extensive public process, Crown informed the City that its current customer for which it would be installing the DAS nodes is Verizon Wireless. However, it was

made clear that additional wireless customers could possibly co-locate their equipment on Crown's existing nodes thereby potentially significantly increasing the size of the equipment boxes.

**NOTICE TO CURE**

10. On or around October 4, 2016, the City sent Crown a notice to cure (the "Notice to Cure") certain alleged breaches of the RUA and to provide information to the City of Rye by a certain date. A copy of the October 4, 2016 letter is annexed hereto as **Exhibit "C"**.

11. As a result of the Notice to Cure and the alleged timeframes under which the City was required to act, both parties agreed to enter into a tolling agreement to extend the time by which the respective parties had to respond and act – the tolling agreement.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT**

12. The State Environmental Quality Review Act is a process through which every action must be analyzed to ensure that any potential environmental impacts are identified and subsequently mitigated to the maximum extent practicable.

13. As set forth in more detail in the memorandum of law, the City was, and remains, diligent in reviewing the application under SEQRA. The City Council declared its intent to be lead agency under SEQRA and continued to review and consider the issues raised by the public and the City's consultants.

14. For the next several months, the City reviewed the sixty plus proposed locations of the DAS nodes and their close proximity to residential structures, schools, places of worship, parks and other traveled places.

15. On April 19, 2017, the City Council adopted a resolution finding that there may be a significant adverse environmental impact, a positive declaration, under SEQRA for the following reasons: 1) the potential for significant aesthetic/design/visual resource impacts and neighborhood

character impacts; 2) the potential for significant impacts related to noise associated with the two and three ion boxes; and 3) the potential for significant impacts to the community character and locally designated historic districts and landmarks. *See* Positive Declaration Resolution annexed hereto as **Exhibit “D”**.

16. The Positive Declaration was adopted after the City Council reviewed the necessary environmental assessment forms as part of its public deliberations and found that there were some areas where the environmental impact could be moderate to potentially large.

17. On April 22, 2017, the City Council adopted a resolution addressing all three iterations of Crown’s application to install DAS nodes. See City Council meeting minutes for the April 22, 2017 meeting annexed as **Exhibit “E”**.

18. In its resolution, the City Council explained why all three proposals were denied should it be required to act.

19. It is clear that the City has not discriminated against Crown nor has it prohibited Crown from installing its equipment in the City’s Right-of-Way.

20. Rather, the City has, and continues, to diligently undergo the SEQRA process.

### **Tolling Agreement**

21. As referenced above, throughout the City’s review process, Crown and the City agreed to a tolling agreement under which the City was granted extension of time to take a final action on Crown’s request and Crown was provided additional time to cure the items identified in the Notice of Breach.

22. Under the last version of the Tolling Agreement, Crown had until May 12, 2017 to correct the identified breaches.

23. On May 11, 2017, the day before the expiration of Crown's time to cure the breaches, Crown commenced this lawsuit.

**DEFENDANTS' MOTION TO DISMISS**

24. As set forth more fully in the accompanying memorandum of law, Plaintiff's causes of action are squarely based on New York law. Whether it is breach of contract, a violation of the Transportation Corporation Law, a violation of SEQRA or a breach of the implied covenant of good faith and fair dealing, they all sound in contract and must be resolved. Crown's federal jurisdiction claims fail because Telecommunications Act Sections 332(c)(7) and 253 explicitly do not apply to proprietary agreements – such as the RUA.

25. Indeed, throughout the Complaint and Crown's motion for a preliminary injunction, Crown consistently alleges that the City improperly applied the City of Rye's zoning laws and SEQRA; however, Crown has still commenced this action in federal court.

26. It is clear that Crown prefers to bring their state-based claims in federal court; however, Plaintiffs should not be permitted to so blatantly engage in forum shopping and burden this Court with their New York causes of action.

27. Rather, this Court should dismiss the Complaint on lack of subject matter jurisdiction or, in the alternative and as set forth in the accompanying memorandum of law, dismiss the case on failure to state a cause of action upon which federal relief can be granted or on failure to name an indispensable party.

**PRELIMINARY INJUNCTION**

28. On May 12, 2017, the City and Crown agreed to the terms of a TRO and agreed to a briefing schedule to address Plaintiff's preliminary injunction.

29. However, upon reviewing the Complaint in more detail, this Court does not have subject matter jurisdiction over the causes of action raised in the Complaint.

30. Thus, Defendants are filing this Motion to Dismiss.

31. The City would agree to voluntarily maintain TRO pending time to refile and seek relief in State court.

**WHEREFORE**, it is respectfully submitted that the Complaint be dismissed in its entirety, with prejudice, together with such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
May 26, 2017

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/s/  
Kristen K. Wilson, Esq.