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T-MOBILE WEST LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

T-MOBILE WEST LLC, a Delaware corporation,

Plaintiff,

vs.

THE CITY AND COUNTY OF SAN FRANCISCO, and THE CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION; public entities organized and existing under the laws of the State of California,

Defendants.

Case No. 3:20-cv-8139

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Complaint Filed
Trial Date: Not set

1 Plaintiff T-Mobile West LLC (“T-Mobile”), alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff T-Mobile seeks a declaratory ruling affirming the “deemed granted” status
4 of sixteen Eligible Facilities Request applications T-Mobile made to the City of San Francisco for
5 the modification of T-Mobile’s wireless transmission facilities pursuant to Section 6409(a) of the
6 Spectrum Act (which is codified at 47 U.S.C. § 1455(a)). To improve and enhance its ability to
7 serve its customers, particularly in light of the significant increase in demand driven by the
8 Covid-19 pandemic, which has emphasized the importance of new technologies, such as 5G,
9 distance learning, and a robust network, T-Mobile needs to modify and upgrade many of its
10 existing wireless installations in the City of San Francisco. The modifications that T-Mobile
11 needs to make are minor, frequently involving only swapping existing antennas and perhaps
12 adding a small number of new antennas and associated equipment to existing rooftop
13 installations. To accomplish those upgrades, starting as early as June 2020, T-Mobile submitted
14 applications to the City via the City’s electronic planning review process to obtain approval of T-
15 Mobile’s proposed modifications. However, T-Mobile has encountered significant delays by the
16 City. Under Section 6409(a) of the Spectrum Act, the City must act on T-Mobile’s modification
17 applications within 60 days. Yet, for a group of 27 applications submitted by T-Mobile between
18 June 24, 2020 and August 14, 2020, the City had not acted on the applications even by late
19 October 2020, well over 60 days after they were submitted. The City also had not notified T-
20 Mobile that any of those applications were incomplete. As of October 20, 2020, the City still had
21 not acted on at least 27 of T-Mobile’s applications. Accordingly, pursuant to Section 6409(a) and
22 the Federal Communications Commission (“FCC”) rules implementing the statute, on October
23 20, 2020, T-Mobile notified the City in writing that the 27 applications were deemed granted.
24 Since T-Mobile sent the deemed granted notice, the City has issued permits for 11 of the 27
25 applications, but for the remaining 16 applications, the City has not issued the permits necessary
26 for T-Mobile to perform the modifications. Pursuant to the FCC’s rules, T-Mobile now files this
27 Complaint seeking a declaratory judgment providing the Court’s imprimatur on the applications’
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1 deemed granted status, and injunctive relief compelling the City to issue the permits for the
2 outstanding applications.

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331
5 because of the federal questions arising under the Communications Act of 1934, as amended by
6 Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), 47
7 U.S.C. § 1455(a). This Court has the authority to issue declaratory judgment relief pursuant to 28
8 U.S.C. § 2201(a).

9 3. Venue is proper in this Court under 28 U.S.C. § 1391(b) since the property that is
10 subject to this action is situated in this District.

11 **PARTIES**

12 4. Plaintiff T-Mobile West, LLC ("T-Mobile") is a limited liability corporation duly
13 organized, existing, and operating under the laws of the State of Delaware, with its principal
14 place of business in Bellevue, Washington. T-Mobile is authorized to do, and is doing, business
15 within the State of California, and in the City and County of San Francisco. T-Mobile is the
16 operating entity in California for T-Mobile USA Inc. T-Mobile is a wholly-owned subsidiary of
17 T-Mobile USA, Inc. Both T-Mobile and T-Mobile USA, Inc. are Delaware corporations, with
18 their principal places of business in Bellevue, Washington. T-Mobile uses FCC licenses held by
19 related T-Mobile USA, Inc. entities to provide commercial mobile radio service within the City
20 and County of San Francisco, and surrounding areas, as part of T-Mobile USA, Inc.'s national
21 wireless network. Among other things, T-Mobile is a "common carrier" and
22 "telecommunications carrier" which provides "personal wireless services" and "advanced wireless
23 services," as those terms are defined and commonly used in the Communications Act and the
24 rules, regulations and orders promulgated by the FCC pursuant to this overall statutory scheme.

25 5. Defendant City and County of San Francisco ("San Francisco") is a charter city,
26 duly organized and existing under the Constitution and laws of the State of California.

27 6. Defendant City and County of San Francisco Department of Building Inspection is
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1 an agency of the City and County of San Francisco.

2 **BACKGROUND AND FACTUAL ALLEGATIONS**

3 **Federal Control over Wireless Facilities Modification**

4 7. The demand for mobile services has never been higher. Technological changes
5 have revolutionized the wireless network landscape. One such change is the advent of 5G
6 wireless networks.

7 8. Section 151 of the Communications Act establishes a national policy to “make
8 available, so far as possible, to all people of the United States, without discrimination ... a rapid,
9 efficient, Nation-wide, and world-wide wire and radio communication service with adequate
10 facilities at reasonable charges, for the purpose of national defense, [and] for the purpose of
11 promoting safety of life and property through the use of wire and radio communications” 47
12 U.S.C. § 151.

13 9. Section 706 of the Telecommunications Act of 1996 provides that “[t]he
14 Commission and each State commission with regulatory jurisdiction over telecommunications
15 services shall encourage the deployment on a reasonable and timely basis of advanced
16 telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the
17 public interest, convenience and necessity . . . regulating methods that remove barriers to
18 infrastructure investment.” 47 U.S.C. § 1302(a).

19 10. Consistent with these policies, Congress and the FCC have sought to eliminate
20 barriers and streamline the regulatory review process to facilitate deployment and modification of
21 wireless communications infrastructure necessary for the efficient creation of new and upgraded
22 wireless networks such as 5G.

23 11. In 2012, Congress enacted Section 6409 of the Spectrum Act.¹ Under Section
24 6409(a) of the Spectrum Act, “a State or local government may not deny, and shall approve any
25 eligible facilities request for a modification of an existing tower or base station that does not
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¹ Section 6409 has been codified in the Communications Act as 47 U.S.C. § 1455, however the it is commonly referred to as “Section 6409” in reference to its location in the Spectrum Act.

1 substantially change the physical dimensions of such tower or base station.” 47 U.S.C. § 1455(a).

2 12. In 2014, the FCC adopted rules implementing section 6409(a). *Acceleration of*
3 *Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29
4 FCC Rcd 12865, ¶¶ 135-242 (2014) (*2014 Infrastructure Order*). The Rules were affirmed on
5 appeal in *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).

6 13. The rules provide that a State or local government must approve an eligible
7 facilities request within 60 days from the date that an applicant submits its request. 47 C.F.R.
8 § 1.6100(c)(2). As the FCC explained in the *2014 Infrastructure Order*, Section 6409(a) applies
9 to towers, base stations, and transmission equipment so long as they are used “in connection with
10 any Commission-authorized wireless communications service.” *2014 Infrastructure Order*, 29
11 FCC Rcd at ¶ 149.

12 14. In a *June 2020 Declaratory Ruling*, the Commission further clarified Section 6409,
13 clarifying that the 60-day “shot clock” begins to run “when an applicant takes the first procedural
14 step in a locality’s application process and submits written documentation showing that proposed
15 modification is an eligible facilities request.” *Implementation of State and Local Governments’*
16 *Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of*
17 *the Spectrum Act of 2012*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd
18 5977, ¶ 12 (2020) (“*2020 Declaratory Ruling*”). The FCC explained that this clarification would
19 provide certainty regarding the commencement of the 60-day timeline, especially in localities
20 where applications may need approval from multiple, separate entities. *Id.* at ¶ 15.

21 15. In the *2020 Declaratory Ruling*, the FCC also clarified that State and local
22 reviewing authorities may not delay the commencement of the 60-day review timeline by (1)
23 establishing a “first step” that is outside an applicant’s control; (2) defining a “first step” that is a
24 combination or sequence of steps rather than a single action; or (3) refusing to accept an
25 applicant’s submission intended to satisfy the written eligible facilities request requirement. *Id.* at
26 ¶¶ 18–22.

27 16. Pursuant to 47 C.F.R. § 1.6100(b)(3), an “eligible facilities request” is “any request
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