UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

T-MOBILE WEST LLC,

Plaintiff,

v.

THE CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants.

Case No. 20-cv-08139-SI

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; GRANTING IN PART PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Re: Dkt. Nos. 29, 31

On March 12, 2021, this Court heard oral argument on motions by plaintiff T-Mobile West LLC ("T-Mobile") for summary judgment and preliminary injunction. For the reasons stated below, the Court **GRANTS IN PART** T-Mobile's motion for summary judgment and **GRANTS IN PART** T-Mobile's motion for preliminary injunction.

BACKGROUND

I. The Spectrum Act and Related Regulations

Under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), "[a] State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." 47 U.S.C. § 1455. Local governments must approve eligible facilities requests within 60 days of submission. 47 C.F.R. § 1.6100(c)(2). The 60-day period may only be tolled either by mutual agreement between the local government and applicant or if the local government determines that the application is incomplete. 47 C.F.R. § 1.6100(c)(3). If a local government fails to timely approve or deny an eligible facilities

deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling)." 47 C.F.R. § 1.6100(c)(4). Applicants subject to adverse decisions by local governments may bring claims related to this process in any court of competent jurisdiction within 30 days of such decision. 47 U.S.C. § 332(c)(7)(B)(5); 47 C.F.R. § 1.6100(c)(5).

On October 21, 2014, the Federal Communications Commission ("FCC") issued an order adopting rules to implement and enforce the Spectrum Act. *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, FCC 14-153 ("FCC Order") ¶ 15. According to the FCC Order, the Spectrum Act reflected Congress's goal of "facilitate[ing] the rapid deployment of wireless infrastructure and promot[ing] advanced wireless broadband services." *Id.* ¶ 204.

II. Factual Background

T-Mobile provides wireless telecommunications services throughout the United States. Wheeler Decl. ¶ 4. In San Francisco, T-Mobile utilizes a network of "cell sites" to provide telecommunications services. *Id.* ¶ 6. The cell sites require regular maintenance, such as adding or modifying antennas and other technology equipment, to provide services and increase coverage, capacity, and reliability. *Id.* ¶¶ 8-13, 18.

T-Mobile must obtain permits from the City and County of San Francisco and the City and County of San Francisco Department of Building Inspection (collectively, "defendants") to install or modify T-Mobile's cell sites and wireless facilities. Dkt. No. 36 at 2. Therefore, in 2020, T-Mobile submitted Eligible Facilities Applications to defendants for the purpose of upgrading its cell sites for more reliable cell towers. Kmetz Decl. ¶ 4.

On October 20, 2020, T-Mobile notified defendants that defendants failed to approve 27 of T-Mobile's applications and, pursuant to 47 C.F.R. § 1.1600, the 27 applications are "deemed granted." *Id.* ¶ 8. After T-Mobile's October notification, defendants continued to review for approval 19 of the 27 applications. *Id.* ¶ 9. On November 3, 2020, T-Mobile notified defendants that defendants failed to approve an application and, pursuant to 47 C.F.R. § 1.1600, the application

is "deemed granted." *Id.* ¶ 12. Defendants have not acted on this application. *Id.* Finally, on December 28, 2020, T-Mobile notified defendants that defendants failed to approve 6 of T-Mobile's applications and, pursuant to 47 C.F.R. § 1.1600, the 6 applications are "deemed granted." *Id.* ¶ 13.

In 2020, T-Mobile submitted a total of 81 Eligible Facilities Applications. Kmetz Decl. ¶ 4. At the filing of this action, defendants granted 47 of T-Mobile's applications. *Id.* ¶ 14. Of the 47 approved applications, defendants issued permits for 11 of T-Mobile's applications within 60 days of the application's submission. *Id.* For the applications where defendants failed to take action within 60 days of T-Mobile's submission, T-Mobile notified defendants in writing that T-Mobile's applications are deemed granted pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.1600. *Id.* ¶¶ 10-13. T-Mobile currently has 34 pending applications with defendants. *Id.* ¶ 15.

On February 2, 2021, T-Mobile filed a motion for summary judgment and motion for preliminary injunction.[1] Dkt. Nos. 29, 31. T-Mobile argues that defendants violated the Spectrum Act by failing to timely approve T-Mobile's applications. Dkt. No. 29 at 1-2. T-Mobile requests an order from the Court that (1) as a matter of law, defendants are required to issue permits for Eligible Facilities Request applications after T-Mobile issued the deemed granted notice and (2) as a matter of law, defendants are required to approve T-Mobile's pending and future Eligible Facilities Request applications within 60 days of submission. Dkt. No. 29 at 3. T-Mobile also requests a preliminary injunction ordering defendants to issue T-Mobile permits for T-Mobile's 14 pending applications. Dkt. No. 31 at 1.

LEGAL STANDARD

I. Summary Judgment

Summary judgment is proper where the pleadings, discovery, and affidavits show that there is "no genuine dispute as to any material fact and [that] the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The moving party bears the initial burden of demonstrating

[1] T-Mobile filed a request for judicial notice of court documents in support of T-Mobile's motions for summary judgment and preliminary injunction. Dkt. No. 39. Defendants did not submit

the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party need only demonstrate to the Court that there is an absence of evidence to support the non-moving party's case. *Id*. at 325.

Once the moving party has met its burden, the burden shifts to the nonmoving party to "set forth, by affidavit or as otherwise provided in Rule 56, 'specific facts showing that there is a genuine issue for trial.'" *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex*, 477 U.S. at 324). To carry this burden, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986). "The mere existence of a scintilla of evidence ... will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party]." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 252 (1986).

The court's function on a summary judgment motion is neither to make credibility determinations nor to weigh conflicting evidence with respect to a disputed material fact. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). In deciding a summary judgment motion, the Court must view the evidence in the light most favorable to the non-moving party and draw all justifiable inferences in its favor. *Anderson*, 477 U.S. at 255.

II. Preliminary Injunction

To obtain a preliminary injunction, plaintiffs must establish: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, (2008) (citations omitted).

As an alternative avenue to a preliminary injunction, the Ninth Circuit has held that "serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can [also] support issuance of an injunction, assuming the other two elements of the Winter test are also met." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir.2011). "Serious questions" refers to questions "which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo lest one side prevent resolution

of the questions or execution of any judgment by altering the status quo." *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir.1991).

DISCUSSION

I. T-Mobile's Motion for Summary Judgment

T-Mobile argues that the Spectrum Act requires defendants to issue permits for T-Mobile's deemed granted applications. Dkt. No. 29 at 14-24. Defendants argue the Spectrum Act violates Tenth Amendment's anticommandeering doctrine because "the Constitution 'confers upon Congress the power to regulate individuals, not states.'" Dkt. No. 36 at 6-7. Defendants do not oppose "a judicial declaration that [T-Mobile's] deemed granted notices are effective." *Id.* at 8. However, defendants assert that the Spectrum Act does not create a duty for local government to affirmatively issue permits for deemed granted applications. *Id.*

A. Tenth Amendment's Anticommandeering Doctrine

Defendants argue that the Spectrum Act violates the Tenth Amendment anticommandeering doctrine because Congress may only regulate individuals, not states. Dkt. No. 26 at 5-6. T-Mobile argues that the Spectrum Act does not require defendants to enact or administer a federal regulatory scheme and defendants are estopped from raising their Tenth Amendment argument. Dkt. No. 38 at 4-7.

The anticommandeering doctrine reflects the Constitution's "decision to withhold from Congress the power to issue orders directly to the States." *Murphy v. Nat. Collegiate Athletic Ass'n.*, 138 S.Ct. 1461, 1475 (2018). "[T]he Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *United States v. California*, 921 F.3d 865, 888 (9th Cir. 2019) (citing *Printz v. United States*, 521 U.S. 898, 925 (1997). In *Murphy*, the Supreme Court held that the anticommandeering doctrine prohibits federal statutes that "commanded state legislatures to enact or refrain from enacting state law." *See Murphy*, 138 S.Ct. at 1478.

The Spectrum Act states, in relevant part, "a State or local government may not deny, and

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