

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CLOUD 1 SERVICES, LLC, a Wisconsin
limited liability company

Plaintiff,

v.

**THE BOARD OF ADJUSTMENT OF
MADISON COUNTY**, an administrative
body created by the Madison County Board
of Supervisors

Case No.: 4:20-cv-281

and

MADISON COUNTY, a county in the State
of Iowa,

Defendant.

COMPLAINT

The Plaintiff, Cloud 1 Services, LLC, by its attorneys, Husch Blackwell LLP, for its Complaint against the defendants, the Board of Adjustment of Madison County and Madison County alleges:

THE PARTIES

1. Plaintiff, Cloud 1 Services, LLC (“Cloud 1”), is a Wisconsin limited liability company registered to do business in the State of Iowa, with a principal business address of 417 Pine Street, Green Bay, Wisconsin 54301.

2. Defendant, the Board of Adjustment of Madison County, Iowa (the “Board”) is an administrative body created by the Madison County Board of Supervisors with an address of 112 N. John Wayne Drive, Winterset, Iowa 50273.

3. Defendant, Madison County (the “County”) is a municipal body existing under the laws of the State of Iowa with an address of 112 N. John Wayne Drive, Winterset, Iowa 50273.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because of federal questions arising under the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, and specifically 47 U.S.C. § 332(c). This Court has supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367 as the claim is part of the same case or controversy as the federal questions before the Court.

5. This action presents an actual controversy under Article III of the United States Constitution and 28 U.S.C. § 2201 because the County and Board have violated federal law, in particular Cloud 1’s rights granted under the Telecommunications Act of 1996.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in Madison County, Iowa, which is located in this judicial district.

REQUEST FOR EXPEDITED REVIEW

7. Cloud 1 requests expedited review of this action pursuant to 47 U.S.C. § 332(c)(7)(B)(v), which provides that “court[s] shall hear and decide [actions under the Telecommunications Act of 1996] on an expedited basis.”

STATEMENT OF FACTS

A. Wireless Service Technology

8. Federally licensed wireless communications carriers work to provide commercial mobile radio services, personal and advanced wireless services, and other telecommunications services, as those terms are defined under federal law, in Iowa, including in the County. These

carriers seek to facilitate the development of wireless telecommunications networks in keeping with the goals of the Telecommunications Act of 1996 and often times employs entities such as Cloud 1 to develop, construct and manage their necessary telecommunications infrastructure, including, among other things, communications towers.

9. Section 151 of the Telecommunications Act of 1996 establishes a national policy to “make available, so far as possible, to all people of the United States, without discrimination ... a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.” 47 U.S.C. § 151.

10. To meet these policy goals, Cloud 1, a provider of wireless infrastructure, works with federally licensed wireless communications carriers to develop wireless networks which offer a myriad of wireless communications services to local businesses, public safety entities, and the general public. To advance national policies enumerated under 47 U.S.C. § 151, wireless communications carriers work with infrastructure providers such as Cloud 1 to create and maintain a network of digital “cell sites” each of which consists of antennas and related electronic communications equipment designed to send and receive radio communications signals.

11. Unlike cellular services using analog-based systems, digital technology converts voice or data signals into a stream of digits to allow a single radio channel to carry multiple simultaneous signal transmissions. This allows wireless communications carriers to offer services unavailable in analog-based systems, such as secured transmissions and enhanced voice, high-speed data and imaging capabilities as well as voice mail, call forwarding and call waiting.

12. Wireless devices utilizing all digital technology operate by transmitting a radio

signal to antennas mounted on a tower, pole, building, or other structure. The antenna feeds the signal to electronic devices housed in a small equipment cabinet, or base station. The base station is connected by microwave, fiber optic cable, or ordinary telephone wire to a base station controller, which subsequently routes calls throughout the world.

13. To provide reliable service to a user, coverage from cell sites must overlap in a grid pattern resembling a honeycomb. If a wireless communications carrier cannot construct a cell site within a specific geographic area, it will not be able to provide service to its consumers within that area.

14. Engineers from the wireless communications carriers use sophisticated, established industry standard computer programs and extensive field testing to complete a propagation study, which shows where cell sites need to be located in order to provide service. The propagation study also considers the topography of the land, the coverage boundaries of neighboring cell sites and other factors. For a wireless network to perform well, cell sites must be located, constructed and operated so reliable coverage can be achieved. Only when the entire wireless network is operational will a mobile user have reliable service and uninterrupted communications throughout a given territory. If there is no functioning cell site within a given area, there will be no mobile wireless service for customers within that area, and mobile customers who travel into that area will experience an unacceptable level of mobile wireless service.

B. The Macksburg Tower Site

15. On or about May 05, 2020, Cloud 1, through its agent Michele Roth, submitted an application to the County for a Special Use Permit (the “Macksburg Application”) to install a 300-foot communications tower within a 100 x 100 lease area (the “Macksburg Tower”) with associated ground equipment on the property located in the County along Carver Road in Monroe

Township with a Parcel ID of 660141062040000 (the “Macksburg Property”). One purpose of the Macksburg Tower was to support AT&T’s wireless voice and data communications services including its FirstNet emergency communications network. A true and correct copy of the Macksburg Application is attached hereto and incorporated herein as **Exhibit A**.

16. The Macksburg Property is owned by Sherry L. Corkrean and is zoned “A-Agricultural” per the County’s zoning map.

17. The Macksburg Property was chosen by Cloud 1 after an extensive effort by Cloud 1’s agent, Michele Roth, to identify a property owner who was willing to enter into a lease agreement for a property that was located within the geographic area which met the coverage needs of Cloud 1’s tenants.

C. The Winterset Tower Site

18. On or about May 05, 2020, Cloud 1, through its agent Michele Roth, submitted an application to the County for a Special Use Permit (the “Winterset Application”) to install a 300-foot communications tower within a 100’ x 100’ lease area (the “Winterset Tower”) with associated ground equipment on the property located in the County along Burr Oak Avenue in Jackson Township with a Parcel ID of 290053260010000 (the “Winterset Property”). One purpose of the Winterset Tower was to support AT&T’s wireless voice and data communications services including its FirstNet emergency communications network. A true and correct copy of the Winterset Application is attached hereto and incorporated herein as **Exhibit B**.

19. The Winterset Property is owned by William C. and Kathleen Eggers and is zoned “A-Agricultural” per the County’s zoning map.

20. The Winterset Property was chosen by Cloud 1 after an extensive effort by Cloud 1’s agent, Michele Roth, to identify a property owner who was willing to enter into a lease

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