

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

T-MOBILE NORTHEAST, LLC,

Plaintiff,

v.

THE CITY OF REVERE
MASSACHUSETTS, CITY COUNCIL OF
THE CITY OF REVERE,
MASSACHUSETTS,

Defendants.

Civil Action No.:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND EXPEDITED TREATMENT

For its Complaint against Defendant, City of Revere, Massachusetts, City Council for the City of Revere, Massachusetts, (collectively “Defendants” or “City”), Plaintiff T-Mobile Northeast, LLC (“Plaintiff” or “T-Mobile”), by and through its undersigned counsel, upon knowledge as to its own actions and dealings and upon information and belief as to Defendants and their actions, alleges as follows:

Nature of the Action

1. This action presents the Court with a bold and brazen refusal by the City to comply with federal law. T-Mobile applied to the City for approval to install a wireless telecommunications facility that would include nine (9) roof-mounted antennae, concealed within two stealth fiberglass enclosures, and related equipment at 385 Broadway, Revere, MA. T-Mobile submitted unrefuted evidence complying with the City’s requirements, and, critically, demonstrating that the proposed facilities would comply with the Federal Communications Commission’s (“FCC”) regulations governing radio frequency (“RF”) emissions.

2. Under Section 332(c)(7)(B)(iv) of the Communications Act, “[n]o . . . local government . . . may regulate the placement, construction, and modification of personal wireless services facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [FCC]’s regulations concerning such emissions.” 47 U.S.C. § 332(c)(7)(B)(iv). Despite this clear statutory prohibition on local governments denying wireless installation based on fears regarding RF emissions, the City’s denial of T-Mobile’s application stated only a single basis: “Frequencies generated from 5G antennae are a potential public health risk.”

3. As a result, the City’s denial clearly violates Section 332(c)(7)(B)(iv). In addition, the City’s denial is not supported by substantial evidence in the record in violation of Section 332(c)(7)(B)(iii) and effectively prohibits personal wireless service in the vicinity of the proposed facility in violation of Section 332(c)(7)(B)(i)(II). 47 U.S.C. § 332(c)(7)(B)(i)(II), (iii).

4. T-Mobile therefore seeks an injunction from this Court directing the City to grant T-Mobile’s application for the proposed facility in accordance with T-Mobile’s rights under the Communications Act.

5. T-Mobile requests expedited treatment of this Complaint pursuant to 47 U.S.C. § 332(c)(7)(b)(v).

Parties

6. Plaintiff, T-Mobile Northeast LLC, is a Delaware limited liability company and a wholly owned subsidiary of T-Mobile USA, Inc., a Delaware corporation with its principal place of business in Bellevue, Washington. T-Mobile Northeast LLC is registered to do business in the Commonwealth of Massachusetts and maintains an office at 15 Commerce Way, Suite B, Norton, Massachusetts. T-Mobile Northeast LLC is the operating entity for T-Mobile USA in the

Northeast Region, including the Commonwealth of Massachusetts. T-Mobile Northeast LLC owns and operates assets including cell sites used to provide Personal Communications Services (PCS) and Advanced Wireless Services (AWS), as defined by federal law. T-Mobile Northeast LLC operates its wireless network using licenses issued by the Federal Communications Commission (“FCC”) to T-Mobile USA and held by related entities. T-Mobile Northeast LLC provides wireless communications services including voice, data and wireless broadband internet services throughout the New England states as part of T-Mobile USA’s national wireless network.

7. Defendant City of Revere, is a duly authorized municipality constituted and existing under the law of the Commonwealth of Massachusetts in the County of Suffolk.

8. Defendant, City Council (“Council” or “City Council”) is comprised of members Jessica A. Giannino, Arthur F. Guinasso, Patrick M. Keefe, Joanne McKenna, Steven Morabito, Ira Novoselsky, John F. Powers, Richard J. Serino, George J. Rotondo, Gerry Visconti, and Anthony T. Zambuto. The Council maintains administrative offices at 281 Broadway Revere, MA 02151. Among other things, the Council hears, acts upon, and issues final decisions in applications for use matters, including those related to wireless communications facilities.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 47 U.S.C. § 332(c)(7)(B)(v) and 28 U.S.C. § 1331 because of the existence of federal questions arising under the Communications Act of 1934, as amended by the Communications Act of 1996 (the “Communications Act”). The Court has authority to issue declaratory judgment relief pursuant to 28 U.S.C. § 2201(a).

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the acts, events, or omissions giving rise to this action occurred in Revere, Massachusetts in Suffolk County in the District of Massachusetts.

Statement of Facts

T-Mobile's Business Plan and National Wireless Policy Goals

11. T-Mobile provides commercial mobile radio services, personal and advanced wireless services, as well as other telecommunications services, as those terms are defined under federal law, throughout the northeastern United States including the City of Revere.

12. T-Mobile, the operating entity for T-Mobile USA, uses licenses issued by the FCC, pursuant to 47 U.S.C. § 151 to provide wireless service in the City of Revere.

13. Section 151 of the Communications Act 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.

14. Consistent with these policy goals, T-Mobile seeks to provide a variety of wireless services to consumers such as local businesses, public safety entities and the general public.

15. The provision of wireless communications services is a highly competitive industry. Customers demand that providers' networks perform reliably such that a customer's calls are not “dropped” due to poor connections.

16. To remain competitive as well as to advance the national policies enumerated under 47 U.S.C. § 151, T-Mobile constructs wireless facilities that allow T-Mobile to create and maintain a network of “cell sites,” each of which consists of antennas and related electronic communications equipment designed to send and receive radio signals. To provide reliable service to a user, coverage must overlap in a specified pattern resembling a honeycomb.

17. For a wireless network to perform, cell sites must be located, constructed and operated so that reliable service can be achieved. If there is no functioning cell site within a given area, or if the cell sites serving an area lack sufficient capacity to handle the amount of customer demand for limited wireless spectrum, there will be no reliable service for customers within that area, and customers who live or travel in the area will experience an unacceptable level of dropped calls and call connection failures, including calls to emergency services like 911.

18. If T-Mobile is unable to construct a cell site within a certain geographic area, the network will fail and T-Mobile will not be able to provide reliable service to the consumers within that area.

19. To determine where a new wireless facility is required, RF engineers use various techniques, such as sophisticated computer programs and field testing, to complete a study, which shows where cell sites need to be located in order to provide service. The study takes into account the topography of the land, the coverage boundaries of neighboring cell sites, and other factors. For a wireless network to perform, cell sites must be located, constructed and operated so that reliable service can be achieved. If there is no functioning cell site within a given area, or if the cell sites serving an area lack sufficient capacity to handle the amount of customer demand for limited wireless spectrum, there will be no reliable service for customers within that area.

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