

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

MAY 18 2010

JAMES D. HATTEN, Clerk
[Signature]

T-MOBILE SOUTH LLC,

Plaintiff,

v.

CITY OF ROSWELL, GEORGIA,

Defendant.

CIVIL ACTION FILE

NO. 10-CV-1464

VERIFIED COMPLAINT

MHS

NOW COMES Plaintiff T-Mobile South LLC ("Plaintiff"), by and through its undersigned counsel of record, and shows this Honorable Court as follows:

INTRODUCTION

1.

This is an appeal and action for injunctive relief, brought pursuant to the Telecommunications Act of 1996, Pub. L. 104-104 § 704, 110 Stat. 56 (Codified in 47 U.S.C.A. § 332(c)) (the "Telecommunications Act"). Defendant's denial of Plaintiff's application for a permit to build and operate a wireless facility or "cell site" on property adjacent to 1060 Lake Charles Drive, Roswell, Georgia 30075, violates Plaintiff's rights under the Telecommunications Act and the Constitution of the State of Georgia. Further, Defendant's unlawful acts entitle Plaintiff to

injunctive relief compelling Defendant to grant Plaintiff a permit for construction and operation of a cell site at the designated location.

JURISDICTION AND VENUE

2.

This Court has jurisdiction over this matter pursuant to the Telecommunications Act (42 U.S.C. § 332(c)), 28 U.S.C. § 1331 and principles of pendent jurisdiction. Venue is proper in this Court under the Telecommunications Act and 28 U.S.C. § 1391 because the proposed structure site is located within this District. The Defendant is a duly organized and authorized governing body within this District and the acts described herein occurred within this District.

PARTIES

3.

Plaintiff is a Delaware limited liability company with its principal place of business in Bellevue, Washington. Plaintiff is qualified to do business in the State of Georgia, maintains an office in Georgia, is registered to do business under the name "T-Mobile" and operates a wireless network providing personal wireless services and advanced wireless services as defined by federal law in the State of Georgia.

4.

Defendant Roswell, Georgia (the "City"), is a political subdivision in the State of Georgia and is subject to the jurisdiction and venue of this Court. The City may be served by serving a copy of the Complaint upon Jere Wood, Mayor, City of Roswell, Georgia, 38 Hill Street, Roswell, Georgia 30075.

FACTS

5.

Wireless telephone service is essential to public safety and convenience, and providing dependable coverage is remarkably important to the safety of both residential and mobile users of wireless services. Since Congress amended the Telecommunications Act in 1996, there has been a sea change in the manner in which Americans use wireless services. According to the FCC, nearly everyone carries a wireless device. See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services (2008) ¶ 244, p. 107. From 1996 to 2009, the number of wireless telephone users increased more than fivefold - from 44 million to more than 276 million wireless subscribers. There are now more wireless subscriptions than landline telephone subscriptions in the United States. Approximately 80% of all Americans, and over 90% of those in the 20 to 49 age range, own wireless phones. For many Americans,

wireless services have become an indispensable replacement for traditional landline telephones.

6.

In 2003, the number of "wireless-only" households was three percent. According to a survey recently released by the Centers for Disease Control and Prevention, by the end of 2008 the number of "wireless-only" households had increased to 20% - more than six times greater than it had been in 2003. This trend is even more prevalent among younger adults, where over one-third of all adults aged 19-24 live in "wireless-only" households and nearly 40% of households with adults aged 25-29. Americans are opting increasingly to use their cell phones over their landline telephones. From 1996 to 2004, Americans more than quadrupled their time spent talking on their cell phones, while markedly reducing the number of long-distance and local calls made over conventional landlines.

7.

For Americans living in wireless-only homes and those outside of their homes, cell phones are often their only lifeline in emergencies. Since 1995, the number of 911 calls made by people using wireless phones has more than quintupled. Public safety agencies estimate that more than 290,000 emergency 911 calls are placed from cell phones every day.

8.

The vast decrease in the use of traditional land lines by households and the concurrent sizable increase in the use of wireless phones within households as their predominant means of telecommunications have significantly affected wireless services providers. The ability to provide reliable in home wireless coverage is critical to the ability of wireless service providers to remain competitive in one of America's most competitive industries.

9.

Plaintiff exercises rights under a license authorized by the Federal Communications Commission (the "FCC") to provide Commercial Mobile Radio Services, as defined in federal law, within Plaintiff's designated frequency spectrum assigned by the FCC in 1.7, 1.9 and 2.1 gigahertz bands in the licensed area of Metropolitan Atlanta, Georgia, including Roswell, Georgia.

10.

Pursuant to FCC license, Plaintiff is required to provide wireless telephone services to its customers within the licensed area. Plaintiff is currently engaged in expanding its coverage within boundaries established by the FCC rules and regulations, and complies with all tower requirements by the Federal Aviation

Administration (the "FAA"), and utilizes equipment that has been approved by the FCC and the FAA.

11.

Plaintiff is building out its infrastructure in the area covered by the FCC license, including Roswell, Georgia, in order to establish its network and provide high quality service in the area.

12.

Pursuant to the FCC license, Plaintiff is mandated to ensure that its wireless telephone signal strength is sufficient to provide proper reception and communication within the licensed area. As a result, Plaintiff needs a network of cell sites throughout the licensed area. This overlapping grid pattern of cell sites enables a customer's call to be handed off from one cell site to another as the customer moves through the area. If Plaintiff is prevented from installing a cell site within a specific geographic area, then T-Mobile is unable to provide service to customers within that area.

13.

Plaintiff's engineers develop propagation studies by using sophisticated radio frequency propagation prediction software that accurately identifies where new cell sites need to be located in order to provide reliable coverage within an area.

These propagation studies take into account such factors as the topography of the land, existing tall structures, vegetation, the coverage boundaries of neighboring cells and other factors to predict the wireless coverage that can be achieved over a defined geographic area if the antennas for a new cell site are located in a certain area and at a particular height above ground level.

14.

Plaintiff's coverage must be sufficient to make it competitive in the marketplace in order to fulfill the competitive mandates and purposes of the TCA. The coverage level must be more than a minimal level of coverage, particularly because customers use their wireless devices with increasing frequency in their homes and businesses as replacements for traditional "land line" phones.

15.

Plaintiff's need for a network of cell sites does not mean that it requires, or even desires, to place new towers or structures throughout the licensed area. To the contrary, Plaintiff is committed to co-location with other mobile telecommunications providers on existing towers or locating on other structures, whenever possible. Indeed, 16 of 19 (84%) of

Plaintiff's antenna facilities in the City of Roswell are co-located on pre-existing towers or structures.

16.

Plaintiff has investigated various sites for its cell site to avoid coverage gaps and service quality problems in Roswell, Georgia. Plaintiff's engineers established a "search ring" within which a cell site must be located in order to achieve Plaintiff's coverage and network quality goals.

17.

To address certain of its coverage issues, Plaintiff examined the City of Roswell Master Wireless Facilities Siting Plan (the "Siting Plan"), adopted by the City in July 2003. The Siting Plan identifies what are essentially "preferred locations" for wireless facilities in the City, and provides for location of wireless facilities on property owned, leased or controlled by the City. Plaintiff identified such a "preferred location", known as Roswell Fire Station No. 3, that would enable Plaintiff to construct a wireless facility that would aid in addressing certain of Plaintiff's coverage issues in the City. Because Fire Station No. 3 appeared on the Master Siting Plan, Plaintiff would be able to construct a wireless facility at Fire Station No. 3 by entering into a lease agreement with the City.

18.

In October 2008, Plaintiff approached the City about a lease to locate a wireless facility at Fire Station No. 3.

19.

Before the City would enter into a lease with Plaintiff, Mayor Jere Wood directed the City Planning Staff to obtain "neighborhood input" on the proposed facility, despite the fact that Fire Station No. 3 had already been identified as a preferred location on the Siting Plan.

20.

At the specially-called neighborhood meeting that followed, area residents appeared to protest the proposed facility, arguing that it would result in negative aesthetics, adverse health effects and that it would purportedly diminish property values. The area residents demanded that Fire Station No. 3 be removed from the Siting Plan. At the time, Mayor Wood noted, correctly, that "the issue here is that there are no commercial sites anywhere in the area in which [Plaintiff] need[s] the tower."

21.

Despite the recognized need for the facility, the fact that there were no commercial sites available, and the fact that Fire Station No. 3 was an approved site on the Siting Plan, the City bowed to political pressure, ignored its own ordinance and Siting

Plan, and refused to enter into a lease for the site at Fire Station No. 3.

22.

Further, the City then removed Fire Station No. 3 from the Siting Plan via an amendment to the City Code.

23.

Following the events surrounding the Fire Station No. 3 site, Plaintiff "re-worked" the search area to attempt to find an alternative location. Plaintiff's engineers have determined that a cell site is needed at or near a parcel of property located at 1067 Lake Charles Drive, Roswell, Georgia 30075 (the "Property"), which is owned by Robert Shearer. The Property is a 2.8 acre parcel. Location of a cell site upon the Property would provide coverage in an area where coverage currently either does not exist, is extremely weak, or is below the level of coverage necessary for Plaintiff to be competitive in the marketplace. Plaintiff's engineers have determined that a co-location is not possible in this case because there is no existing tower or other structure which met engineering specifications in or near the search area established for the proposed structure.

24.

Therefore, Plaintiff negotiated a lease with the Property owner, who agreed to lease a parcel of the Property, with an

access easement, to Plaintiff for purposes of locating the antenna on the Property.

25.

The Property is located within the City of Roswell and is zoned "E-2" (Residential). A true and correct copy of a diagram depicting the Property and the location of the proposed structure is attached as part of Exhibit "1". The Property is more fully described in the legal description a true and correct copy of which is attached hereto as Exhibit "2".

26.

Telecommunications towers in the "E-2" classification are permitted following approval by the Roswell City Council, pursuant to the City's Standards for Wireless Communications Facilities (the "Ordinance").

27.

On or about February 2, 2010, Plaintiff filed an application seeking permission to construct a 108 ft. stealth "monopine" telecommunications tower on the Property. A monopine tower is a telecommunications tower that is designed to resemble a pine tree. The application ("Application") was accepted by the City. A true and correct copy of the Application is attached hereto as Exhibit "3".

28.

The Application met all requirements for obtaining a permit for a telecommunications tower as set forth in the Ordinance. A true and correct copy of the Ordinance which addresses telecommunications towers, and the issuance of permits for telecommunications towers, is attached hereto as Exhibit "4".

29.

The Ordinance provides guidelines and requirements for telecommunications towers and antennas, and sets forth the requirements for a permit for the location and construction of telecommunication towers.

30.

The Ordinance requires that a scaled site plan of the proposed wireless facility including elevations, accessory structures, topography, parking, proximity to adjacent roadways, proposed means of access, and setbacks for property lines be included with the Application. Ordinance, Section 21.2.4(c)(1). Plaintiff's Application included this requested information.

31.

The Ordinance requires that a legal description of the parent tract and leased parcel be included with the Application. Ordinance, Section 21.2.4(c)(2). Plaintiff's Application complies with this requirement.

32.

The Ordinance requires an applicant to provide a definition of the area of coverage and radio frequency goals to be served by the proposed wireless facility and to describe the nature of the need for the proposed facility. Ordinance, Section 21.2.4(c)(3). Plaintiff's Application included this requested information.

33.

The Ordinance requires an applicant to identify the setback distance between the proposed facility and the nearest residential unit or residentially-used structure. Ordinance, Section 21.2.4(c)(4). Plaintiff's Application complies with this requirement.

34.

Plaintiff's Application complied with the landscaping requirement contained in the Ordinance, by incorporating a landscaping plan to shield the ancillary facilities at the base of the tower. See Ordinance, Section 21.2.4(c)(6). In addition, the property is wooded, shielding the proposed site from adjacent properties.

35.

Pursuant to the requirements set forth by the FAA, the telecommunications tower provided for in Plaintiff's Application would not be lighted.

36.

Plaintiff's Application met or exceeded standards and regulations of the FAA, the FCC and all other agencies of the federal government with authority to regulate antennas and towers.

37.

Plaintiff's proposed tower and security fencing, when built, would meet requirements of all building codes and safety standards regarding the structural integrity and construction of the proposed tower.

38.

Plaintiff demonstrated that no existing antenna, tower, or structure could accommodate Plaintiff's proposed antenna.

39.

The tower proposed by Plaintiff met all setback and separation requirements contained in the Ordinance.

40.

The nature of uses on adjacent and nearby properties is primarily residential. The Property is undeveloped, and is heavily wooded. The Property owner's residence is located on an adjacent parcel. The Property is in a residentially-zoned area which completed its growth and development several years ago. The Property has mature tree coverage and vegetation. The Property is bounded on all sides by property zoned "E-2", including the

Property owner's parcel to the west. Beyond the residentially-zoned properties to the east is Lake Charles Drive.

41.

Section 21.2.4(a) of the Ordinance provides factors to be considered by the Defendant in determining whether to issue a permit for a wireless telecommunications facility. All of the factors were addressed by Plaintiff, and all of the requirements of the Ordinance were met or exceeded.

42.

Plaintiff submitted revised site plans reflecting certain changes to the planned development of the site. A true and correct copy of the revised site plan is attached hereto as Exhibit "5".

43.

Plaintiff also submitted a letter to the City suggesting that the City reconsider its decision on the Fire Station No. 3 site. A true and correct copy of the letter is attached hereto as Exhibit "6". The City never responded to this letter.

44.

Plaintiff's Application was reviewed by the Defendant's Planning and Zoning Staff who are employed by the Defendant to evaluate such applications (the "Planning Staff").

45.

The Planning Staff applied the Defendant's standards adopted for issuance of wireless telecommunications facility permits to the Application, and determined that Plaintiff complied with all objective standards set out in the Ordinance. A true and correct copy of the Planning Staff's analysis is attached hereto as Exhibit "7".

46.

The Planning Staff recommended a finding that the proposed monopine structure is compatible with the natural setting and surrounding structures in the area.

47.

The Planning Staff noted as follows:

Should the Mayor and City Council approve the application for a mono-pine alternative tower structure, the staff would recommend the application be approved with the following conditions:

1. The applicant/developer shall construct the mono-pine structure not to exceed 108 feet, located 120 feet east of the west property line and in conformance with the plans submitted to the City of Roswell Community Development Department stamped received "March 24, 2010."
2. The applicant/developer, T-Mobile shall construct a black vinyl fence with black screening so the facility equipment cannot be seen through the fence. The type of fencing shall be

approved by the Roswell Design Review Board.

3. The applicant/developer, T-Mobile shall install thirty-three (33) evergreen trees around the lease area to screen the view of the structure and equipment facilities from the residential homes located to the east of the property. A variety of evergreen trees and the placement of the trees shall be approved the City Arborist and the Roswell Design Review Board.

See Exhibit "7", pg. 4. All of the conditions were acceptable to T-Mobile except the relocation of the proposed tower to the location recommended by the Staff, as the Property owner was not agreeable to the move.

48.

Further, although it was not obligated to do so but in an effort to be cooperative, Plaintiff submitted responses to a lengthy list of questions propounded by a citizens group via the City's Planning Staff. A true and correct copy of Plaintiff's responses are attached hereto as Exhibit "8".

49.

The Defendant heard Plaintiff's Application on April 12, 2010. In the presentation on Plaintiff's Application, Plaintiff reiterated that its Application met all the requirements of the Ordinance. A true and correct copy of the transcript of the April 12, 2010 hearing is attached hereto as Exhibit "9".

50.

Plaintiff demonstrated to Defendant that, as noted by the Planning Staff, it met the specified standards and criteria for the grant of a permit for the location of the tower on the subject Property.

51.

Plaintiff presented evidence that the location for the proposed structure was appropriate and would serve the residents and businesses of the City. Plaintiff demonstrated that the proposed structure was part of a plan for extending Plaintiff's network, and coverage, within Roswell, Georgia.

52.

Plaintiff's design will not disturb the existing vegetation on the Property.

53.

Plaintiff presented evidence that the cell site consists of cabinets for its radio equipment and the tower which would support its antennas. This cell site would be an unmanned site that would require only one or two visits per month to perform routine maintenance.

54.

Plaintiff presented evidence that there was no existing tower or alternative structure located in the search area that would

accommodate its cell site and coverage needs. Further, Plaintiff presented evidence that the structure would be designed to allow for co-location which would assist in minimizing the number of additional towers or structures needed in the area.

55.

Plaintiff presented evidence that there is no technically suitable space on an existing tower site within or near its established search area.

56.

Plaintiff presented a letter from a radiofrequency engineer regarding the proposed tower and Plaintiff presented radiofrequency propagation maps demonstrating the poor and/or non-existent coverage in the area, further demonstrating the need for the proposed tower. See copies of January 26, 2010 letter from radiofrequency engineer and copies of radiofrequency propagation maps presented to Defendant, attached hereto for as Exhibit "10". The radiofrequency engineer was also present at the April 12, 2010 hearing. She addressed numerous technical and system design questions posed by the Defendant and by various citizens. See Exhibit "9" at pgs. 16-21 and 92-97.

57.

Plaintiff also presented a diagram showing the location of the proposed tower and the zoning of all of the parcels in the

search ring and in the surrounding area. A true and correct copy of the diagram is attached hereto as Exhibit "11". In the Application and at the April 12, 2010 hearing, Plaintiff's representative described the search process. See Exhibit "3" at pgs. 4-5 and Exhibit "9" at pgs. 12-16, 83-87. The site selection process is also discussed in Exhibit "10" at pgs. 2-3.

58.

Plaintiff's representative discussed the fact that there are no other properties within the search ring that, because of restrictions under the Ordinance, are available for the proposed tower.

59.

Plaintiff presented evidence that it would construct and maintain the structure in compliance with local, state and federal requirements and applicable standards published by the Electronic Industries Association.

60.

The site plan proposed by Plaintiff provides for a security fence with an anti-climbing device and a locked gate entrance.

61.

Plaintiff presented evidence that the support equipment located at the base of the proposed structure would be screened by natural buffers and landscaping. Plaintiff presented balloon test

photos showing a photograph of a weather balloon floated at 108 ft. from various vantage points around the proposed site. Plaintiff also presented photographic simulations of the tower at the proposed site based upon the balloon test performed at the site. Copies of the balloon test photos and photo simulations are attached as Exhibit "12".

62.

Plaintiff also addressed the concern about purported diminution of property values resulting from the proposed tower. Plaintiff presented property valuation studies that indicate that the existence of a wireless telecommunications structure does not result in decreased property values for properties located in the area of the tower. Plaintiff had present a property appraisal professional who conducted and submitted the studies regarding the effect of cell towers on property values and who discussed his conclusion that cell towers do not result in a diminution of property values. See true and correct copies of property appraisals attached hereto as Exhibit "13" and Exhibit "9" at pgs. 87-91.

63.

The proposed tower complies with all requirements set forth in the Ordinance.

64.

The proposed tower site is not located in an area in which tower construction is prohibited.

65.

The proposed structure will not increase or overtax the load on public facilities.

66.

The proposed structure will not result in increased cost to the City.

67.

The proposed structure will not adversely impact the environment.

68.

The proposed structure will not deter the value or impede the development of adjacent property.

69.

At the April 12, 2010 hearing, several citizens spoke in opposition to the proposed facility primarily voicing generalized aesthetic concerns, speculating about the possible diminution of property values that would be caused by the proposed tower, speculating about the signal coverage afforded by the tower, and speculating about T-Mobile's "true" motives for constructing the tower.

70.

Following the presentations by Plaintiff and the opposition, several Commissioners commented about the Application and the presentations from Plaintiff and from the opposition. Councilman Igleheart made the completely incorrect and unsupported statement with respect to the Application that "[i]t's not our mandate to level the field for inferior technology." Further, ignoring the facts that the entire search area for the site is residentially zoned and that the Ordinance allows towers in residentially-zoned areas, Councilman Igleheart noted his belief that "I just don't think it's appropriate for residentially zoned properties to have cell towers in their location." Councilman Dippolito echoed this comment by stating "I think it's pretty hard to look at a cell tower like this and to not consider that would have an adverse impact on a residential area." This statement also reflects an intent to preclude and prohibit telecommunications towers from residential areas despite the fact that the entire search area is residentially-zoned and that the Ordinance allows the construction of wireless telecommunications facilities in residentially-zoned areas.

71.

The undisputed evidence of record demonstrates that the proposed tower will comply with all requirements of the Ordinance.

72.

The record evidence demonstrates that the proposed tower will not detract from the aesthetic appeal of the surrounding area.

73.

Further, generalized aesthetic concerns are an insufficient basis for denial of a telecommunications tower tall structures permit.

74.

Despite the evidence showing that the proposed tower meets or exceeds all requirements of the Ordinance, the Application was denied.

75.

Defendant issued a letter dated April 14, 2010 denying the Application. The letter gives no reasons for the denial. A true and correct copy of the denial letter is attached hereto as Exhibit "14".

76.

Defendant knew that the denial of the Application or the imposition of unreasonable conditions would have the effect of prohibiting the expansion of Plaintiff's wireless network in such a manner as to cause coverage gaps in the area, or to negatively impact the network by causing an inability of Plaintiff's system to properly function.

77.

Upon information and belief, other providers of services that are functionally equivalent to those provided by Plaintiff are able to provide reliable, uninterrupted, in-building wireless telephone services to their customers. Indeed, as noted by Councilman Igleheart, "other carriers apparently have sufficient coverage in this area."

78.

Defendant knew that denial of the Application or the imposition of unreasonable conditions would have the effect of unreasonably discriminating against Plaintiff and in favor of other providers of services functionally equivalent to those services provided by Plaintiff.

79.

At the hearing on its Application, Plaintiff presented in detail the need for the proposed structure and submitted its evidence regarding Plaintiff's compliance with all requirements of the Ordinance relating to telecommunication towers.

80.

Defendant, in making its denial, did not comply with the City's law, nor with the law of the State of Georgia, nor with the law of the United States.

81.

As a result, Plaintiff has been deprived of its rights to use the Property in accordance with the law for a use permitted under the law.

82.

In addition, Plaintiff's legal remedy is inadequate, and there has been a defect of legal justice.

83.

Plaintiff has suffered and continues to suffer a substantial detriment and damages as a result of the actions of Defendant.

84.

Unless the Plaintiff's Application is granted and a permit is issued, Defendant will continue to refuse to issue the approvals necessary to place the structure on the Property.

85.

Defendant has been stubbornly litigious with regard to this Application. Specifically, Defendant arbitrarily and capriciously refused to enter into a lease for the proposed site at Fire Station No. 3, despite the fact that it was a preapproved site contained in the Siting Plan. Left with no alternative, Plaintiff sought to place its tower on the Property, another site which meets all requirements contained in the Ordinance, and Defendant denied that site as well. Finally, despite the fact that

Defendant's Ordinance permits the construction of tower in residentially-zoned areas, it is clear that the City will refuse to approve a tower for construction in a residential area absent a court order.

86.

Defendant's actions and conduct in connection with the denial of the permit represented in the Application, as well as Defendant's conduct with respect to the proposed site at Fire Station No. 3, have occurred in bad faith and have caused Plaintiff unnecessary trouble and expense. Defendant has been stubbornly litigious.

87.

The issue of the location of wireless telecommunications facilities is an issue of national and federal concern.

COUNT I -- VIOLATION OF THE TELECOMMUNICATIONS ACT
(DECISION NOT SUPPORTED BY SUBSTANTIAL EVIDENCE)

88.

The allegations contained in the foregoing paragraphs are hereby incorporated by reference as if rewritten in their entirety.

89.

The Telecommunications Act became effective on February 8, 1996. Section 332(c) of 47 U.S.C.A. provides, in pertinent part, as follows:

- (i) The regulation of the placement, construction and modification of personal wireless service facilities by any State or local government or instrumentality thereof --
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services;
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii) Any decision by a State or local government or instrumentality thereof to deny a request for authorization to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record; and
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of 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.A. § 332(c)(7)(B).

90.

The Telecommunications Act further provides that:

- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis

Id.

91.

Plaintiff is entitled to the protections of the Telecommunications Act. Plaintiff's Application constituted a request to place and construct a cell site on the subject Property.

92.

Defendant's denial of Plaintiff's Application was not supported by substantial evidence. Therefore, Defendant's denial of Plaintiff's Application constituted a violation of the Telecommunications Act.

93.

The failure and refusal of the Defendant to approve Plaintiff's Application is based upon materially incorrect findings of fact and a misunderstanding or misapplication of the applicable laws.

94.

Plaintiff has no adequate remedy at law and will suffer irreparable injury unless the relief requested is granted.

95.

Plaintiff is entitled to expedited issuance of an injunction directing Defendant to approve Plaintiff's Application and to issue the permit that is the subject of the Application.

96.

Plaintiff is entitled to recovery of its attorneys' fees in this action.

COUNT II - VIOLATION OF THE TELECOMMUNICATIONS ACT
(PROHIBITION OF WIRELESS SERVICES)

97.

The allegations contained in the foregoing paragraphs are hereby incorporated by reference as if rewritten in their entirety.

98.

As a consequence of Defendant's denial of the Application, Plaintiff will be unable to fill a gap in coverage necessary to provide competitive, reliable, uninterrupted, in-building wireless telephone services to its customers. Plaintiff's ability to render quality service to Defendant's own constituents will be hampered substantially.

99.

Defendant's actions have the effect of prohibiting the provision of personal wireless services in a given area in

violation of federal law, and should be reversed under the authority of 47 U.S.C.A. § 332(c)(7)(B)(v).

100.

Plaintiff has no adequate remedy at law and will suffer irreparable injury unless the relief requested is granted. Plaintiff is entitled to expedited issuance of an injunction directing Defendant to issue the permit sought in Plaintiff's Application.

101.

Plaintiff is entitled to recovery of its attorneys' fees in this action.

COUNT III - VIOLATION OF THE TELECOMMUNICATIONS ACT
(UNREASONABLE DISCRIMINATION AMONG PROVIDERS OF
FUNCTIONALLY EQUIVALENT SERVICES)

102.

The allegations contained in the foregoing paragraphs are hereby incorporated by reference as if rewritten in their entirety.

103.

Other providers of services that are functionally equivalent to those provided by Plaintiff are able to provide reliable, uninterrupted, in-building wireless telephone services to their customers.

104.

As a consequence of Defendant's denial of the Application, Plaintiff will be unable to provide competitive, reliable, uninterrupted, in-building wireless telephone services to its customers. Plaintiff's ability to render quality service to Defendant's own constituents will be hampered substantially.

105.

Defendant's actions have the effect of unreasonably discriminating among providers of functionally equivalent services in violation of federal law, and should be reversed under the authority of 47 U.S.C. § 332(c)(7)(B)(v).

106.

Plaintiff has no adequate remedy at law and will suffer irreparable injury unless the relief requested is granted. Plaintiff is entitled to expedited issuance of an injunction directing Defendant to issue the permit sought in Plaintiff's Application.

107.

Plaintiff is entitled to recovery of its attorneys' fees in this action.

WHEREFORE, Plaintiff prays as follows:

(a) That summons and process issue and that the Defendant be served as provided by law;

(b) That this Court issue an Order granting an injunction or other mandatory equitable relief compelling Defendant to issue the tall structures permit sought by Plaintiff;

(c) That this Court set aside and declare the decision of the Defendant on Plaintiff's Application to be unlawful, unconstitutional, null and void;

(d) That this Court hold a hearing on an expedited basis as to Plaintiff's claims under the Telecommunications Act;

(e) That this case be given any and all preferences on the Court's calendars as may be required by law;

(f) That the Clerk of the Roswell City Council be required to forward the entire record on an expedited basis, including all exhibits, evidence, documents, video and tape recordings, and other matters collected in connection with Defendant's consideration of the Application to this Court for use in connection with the relief sought by Plaintiff; and

(g) For such other, further and different relief as the Court may deem just and proper under the evidence and the law.

ARNALL GOLDEN GREGORY LLP



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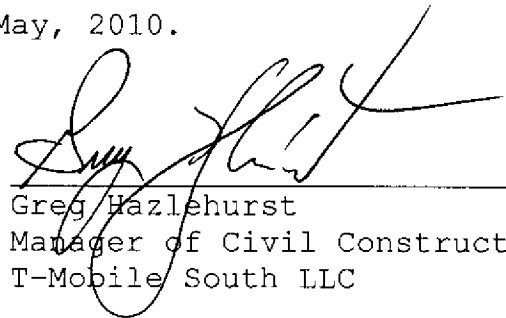
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

T-MOBILE SOUTH LLC,	}	
	}	
Plaintiff,	}	
	}	CIVIL ACTION FILE
v.	}	
	}	NO. _____
GWINNETT COUNTY, GEORGIA,	}	
	}	
Defendant.	}	

VERIFICATION

I **GREG HAZLEHURST** hereby declare under penalty of perjury that the facts contained in the foregoing Verified Complaint are true and correct.

Executed on this 7th day of May, 2010.



Greg Hazlehurst
Manager of Civil Construction
T-Mobile South LLC