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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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27 _____
28 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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1 for modification of an existing tower or base station that does not substantially change the
2 physical dimensions of the tower or base station, involving (i) Collocation of new transmission
3 equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission
4 equipment. 47 C.F.R. § 1.6100(b)(3); 47 U.S.C. § 1455(a)(2).

5 17. Pursuant to 47 C.F.R. § 1.6100(b)(5), “existing” means, a
6 constructed base station that “has been reviewed and approved under the applicable zoning or
7 siting process, or under another State or local regulatory review process, provided
8 that a tower that has not been reviewed and approved because it was not in a zoned area when it
9 was built, but was lawfully constructed, is existing for purposes of this definition.” 47 C.F.R.
10 1.6100(b)(5).

11 18. Pursuant to Section 1.6100(b)(9), a “Tower” is defined as “Any structure built for
12 the sole or primary purpose of supporting any Commission-licensed or authorized antennas and
13 their associated facilities, including structures that are constructed for wireless communications
14 services including, but not limited to, private, broadcast, and public safety services, as well as
15 unlicensed wireless services and fixed wireless services such as microwave backhaul, and the
16 associated site.” 47 C.F.R. § 1.6100(b)(9).

17 19. Any tower or base station as defined by the Commission’s rules in Section 1.6100,
18 is considered an “eligible support structure” if that tower or base station existed at the time the
19 application for modification was submitted under the rules outlined in Section 1.6100. 47 C.F.R.
20 § 1.6100(b)(4).

21 20. Pursuant to 47 C.F.R § 1.6100(b)(7), a modification substantially changes the
22 physical dimensions of a tower or base station, or eligible support structure, when the
23 modification:

24 (i) For towers other than towers in the public rights-of-way, it increases the height
25 of the tower by more than 10% or by the height of one additional antenna array with
26 separation from the nearest existing antenna not to exceed twenty feet, whichever is
greater; for other eligible support structures, it increases the height of the structure by more
than 10% or more than ten feet, whichever is greater;

27 (ii) For towers other than towers in the public rights-of-way, it involves adding an
28 appurtenance to the body of the tower that would protrude from the edge of the tower
more than twenty feet, or more than the width of the tower structure at the level of the

1 appurtenance, whichever is greater; for other eligible support structures, it involves
2 adding an appurtenance to the body of the structure that would protrude from the edge of
the structure by more than six feet;

3 (iii) For any eligible support structure, it involves installation of more than the
4 standard number of new equipment cabinets for the technology involved, but not to
5 exceed four cabinets; or, for towers in the public rights-of-way and base stations, it
6 involves installation of any new equipment cabinets on the ground if there are no pre-
existing ground cabinets associated with the structure, or else involves installation of
ground cabinets that are more than 10% larger in height or overall volume than any other
ground cabinets associated with the structure;

7 (iv) It entails any excavation or deployment outside the current site;

8 (v) It would defeat the concealment elements of the eligible support structure; or

9 (vi) It does not comply with conditions associated with the siting approval of the
10 construction or modification of the eligible support structure or base station equipment,
11 provided however that this limitation does not apply to any modification that is non-
compliant only in a manner that would not exceed the thresholds identified in
§1.40001(b)(7)(i) through (iv).

12 47 C.F.R. § 1.6100(b)(7)(i)–(vi).

13 21. Pursuant to 47 C.F.R. § 1.6100(b)(8), “transmission equipment” is defined as
14 “equipment that facilitates transmission for any Commission-licensed or authorized wireless
15 communications service.” 47 C.F.R. § 1.6100(b)(8). The FCC has interpreted this to include
16 “antennas and other equipment associated with and necessary to their operation, including power
17 supply cable and backup power equipment.” *2014 Infrastructure Order* 29 FCC Rcd at ¶ 158.

18 22. Pursuant to 47 C.F.R. § 1.6100(b)(2), “collocation” is the mounting or installation
19 of transmission equipment on a tower for the purpose of transmitting and/or receiving radio
20 frequency signals for communications purposes. 47 C.F.R. § 1.6100(b)(2).

21 23. Pursuant to 47 C.F.R. § 1.6100(c)(1), “[w]hen an applicant asserts in writing that a
22 request for modification is covered by this section, a State or local government may require
23 the applicant to provide documentation or information only to the extent reasonably related to
24 determining whether the request meets the requirements of this section. A State or local
25 government may not require an applicant to submit any other documentation, including but not
26 limited to documentation intended to illustrate the need for such wireless facilities or to justify the
27 business decision to modify such wireless facilities.” 47 C.F.R. § 1.6100(c)(1).

1 24. Although the 60-day period commences when the application is filed, the
2 timeframe may only be tolled by either mutual agreement or in cases where the reviewing
3 authority determines that the application is incomplete. Notably, the deadline is not tolled by a
4 moratorium on review of applications. Pursuant to Section 1.6100(c)(3)(i), “to toll the timeframe
5 for incompleteness, the reviewing State or local government must provide written notice to the
6 applicant within 30 days of receipt of the application.” 47 C.F.R. § 1.6100(c)(3)(i). The notice
7 must “clearly and specifically delineat[e] all missing documents or information.” *Id.* A
8 reviewing authority may only toll the shot clock for missing information that complies with
9 Section 1.6100(c)(1). *Id.*

10 25. Under the FCC’s rules, if the State or local reviewing authority fails to act on an
11 eligible facilities request application within 60 days, the applicant may notify the reviewing
12 jurisdiction that the application has been “deemed granted.” The applicant must notify the
13 reviewing authority, as the deemed grant does not become effective until notice is given in
14 writing. 47 C.F.R. § 1.6100(c)(2); *see also 2014 Infrastructure Order* at ¶ 215; *see also 2020*
15 *Declaratory Ruling* at ¶ 16.

16 26. In the *2014 Infrastructure Order*, the Commission outlined the remedies available
17 when a modification or collocation application has been deemed granted. The Commission found
18 that the most appropriate recourse for an aggrieved party was to seek relief from a court of
19 competent jurisdiction. The Commission noted claims for relief would typically be one of three
20 options: (1) an applicant might seek to challenge the denial of an application; (2) an applicant
21 may invoke its right to deem granted its application, upon which the reviewing authority might
22 seek to challenge the applicant’s deemed grant; or (3) an applicant that deems granted its
23 application might seek some form of judicial imprimatur for the grant by filing a request for
24 declaratory judgment or other relief as the court might find appropriate. *2014 Infrastructure*
25 *Order* at ¶ 236.

26 **T-Mobile’s Wireless Communications Service**

27 27. T-Mobile provides commercial mobile radio services, personal and advanced
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1 wireless services, as well as other telecommunications services, as those terms are defined under
2 federal law, in and around the city of San Francisco.

3 28. T-Mobile West, as the operating entity of T-Mobile USA, uses licenses issued by
4 the FCC pursuant to 47 U.S.C. § 151 to provide wireless communications services in an around
5 the city of San Francisco.

6 29. T-Mobile seeks to provide a variety of wireless communications services to local
7 businesses, public safety entities, and the general public. To achieve these goals, and consistent
8 with the FCC's national policies enumerated by 47 U.S.C. § 151 and Section 706 of the
9 Communications Act, T-Mobile maintains a network of "cell sites" each of which consist of
10 antennas and other electronic communications equipment designed to send and receive radio
11 signals for the purpose of creating and maintaining a wireless communications network.

12 30. The antennas located at T-Mobile's cell sites transmit and receive radio frequency
13 signals that provide wireless communications services to personal communications devices, such
14 as cellular telephones.

15 31. To provide reliable service to these devices, coverage from the transmissions of
16 each cell site must overlap in a specific pattern, within a geographic area, and cell sites need to
17 maintain sufficient capacity to receive and send transmissions so as to handle the demand for
18 limited wireless spectrum.

19 32. Meeting capacity demands for service, in part, relies on maintaining a sufficient
20 number of functioning antennas at any given cell site. Consumers of wireless communications
21 services not only demand reliable service but also high capacity service in terms of download
22 speeds and data transmission. Newer technologies or additional spectrum allow T-Mobile to
23 provide such service, but require additional as well as newer antennas designed for this purpose.
24 In order to maintain a reliable and high capacity wireless communications network, T-Mobile
25 must periodically add additional or replace older antennas at its sites.

26 **T-Mobile's Eligible Facilities Requests**

27 33. T-Mobile has identified a number of its sites within the City of San Francisco that
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1 must be modified, consistent with T-Mobile's goals of providing reliable and high capacity
2 wireless services. As discussed below, none of T-Mobile's modifications involve substantial
3 changes to the current base station. Each application proposes to modify an existing base station,
4 or eligible structure, by adding or replacing one or more antennas designed to facilitate
5 transmission of T-Mobile's licenses wireless communications service and by adding or replacing
6 related equipment.

7 34. As set forth in detail below, in order to effectuate at least some of its facilities
8 upgrades, prior to and up to August 14, 2020, T-Mobile submitted to the electronic planning
9 review 38 Eligible Facilities Request applications seeking to modify sites.

10 35. Each application proposed a modification that meets the definition of an Eligible
11 Facilities request, and no proposed modification would, consistent with the statute and the FCC's
12 rules, substantially increase the physical dimensions of the existing base station.

13 36. As set forth below, this case addresses some, but not all, of the applications
14 submitted prior to August 14, 2020. Each of the Eligible Facilities Request applications at issue
15 in this Complaint was submitted over 60 days prior to October 20, 2020. On October 20, 2020,
16 T-Mobile sent the City written notice that the applications that are the topic of this Complaint, set
17 forth, below were deemed granted. A copy of the October 20, 2020 deemed granted notice is
18 attached hereto as Exhibit A.

19 37. As of November 18, 2020, 16 Eligible Facilities Request applications, submitted
20 between June 24, 2020 and August 14, 2020 the City has not acted on the 16 applications set
21 forth below.

22 38. Pursuant to 47 C.F.R. § 1.6100(c)(5), T-Mobile may bring claims related to Section
23 6409(a) to any court of competent jurisdictions. 47 C.F.R. § 1.6100(c)(5). This includes claims
24 for judicial imprimatur of T-Mobile's deemed granted status and a judicial declaration to that
25 effect.

26 **The Applications At Issue**

27 39. On June 24, 2020, T-Mobile Submitted an eligible facilities request application to
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1 modify its existing wireless transmission facility located on the roof of a building at 965 Sutter St.
2 (Site ID SF70072M/Permit # 202008282887). The application proposed to modify the existing
3 base station by replacing 6 existing antennas and adding 4 new antennas, 6 remote radio units
4 (RRUs) and 2 equipment cabinets. The proposed modification would not substantially change
5 the physical dimensions of the support structure. The proposed modification would not increase
6 the height of the support structure by 10% or 10 feet; the modification would not add an
7 appurtenance to the body of the support structure that would protrude from the edge of the
8 structure by more than 6 feet; the modification does not install more than the standard number of
9 new equipment cabinets for the technology involved, not to exceed four cabinets; the
10 modification does not involve any excavation or deployment outside the current site; the
11 modification does not defeat any concealment elements; and the modification does not violate
12 any conditions associated with the siting approval. San Francisco did not notify T-Mobile in
13 writing of any incompleteness in its application. San Francisco did not act on the application
14 within 60 days after June 24, 2020. Consequently, on October 20, 2020, pursuant to 47 U.S.C. §
15 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this application
16 granted.

17 40. On June 25, 2020, T-Mobile Submitted an eligible facilities request application to
18 modify its existing wireless transmission facility located on the roof of a building at 1398 Bryant
19 St. (Site ID SF03022A/Permit # 202008262665). The application proposed to modify the
20 existing base station by replacing 3 antennas and removing 3 RRUs and replacing 3 RRS. The
21 modification would not substantially change the physical dimensions of the support structure.
22 The proposed modification would not increase the height of the support structure by 10% or 10
23 feet; the modification would not add an appurtenance to the body of the support structure that
24 would protrude from the edge of the structure by more than 6 feet; the modification does not
25 install more than the standard number of new equipment cabinets for the technology involved, not
26 to exceed four cabinets; the modification does not involve any excavation or deployment outside
27 the current site; the modification does not defeat any concealment elements; and the modification
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1 does not violate any conditions associated with the siting approval. San Francisco did not notify
2 T-Mobile in writing of any incompleteness in its application. San Francisco did not act on the
3 application within 60 days after June 25, 2020. Consequently, on October 20, 2020, pursuant to
4 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this
5 application granted.

6 41. On July 2, 2020, T-Mobile Submitted an eligible facilities request application to
7 modify its existing wireless transmission facility located on the roof of a building at 965 Mission
8 St. (Site ID SF70039M/Permit # 202009093747). The application proposed to modify the
9 existing base station by replacing 3 antennas and adding 3 RRUs. The modification would not
10 substantially change the physical dimensions of the support structure. The proposed modification
11 would not increase the height of the support structure by 10% or 10 feet; the modification would
12 not add an appurtenance to the body of the support structure that would protrude from the edge of
13 the structure by more than 6 feet; the modification does not install more than the standard number
14 of new equipment cabinets for the technology involved, not to exceed four cabinets; the
15 modification does not involve any excavation or deployment outside the current site; the
16 modification does not defeat any concealment elements; and the modification does not violate
17 any conditions associated with the siting approval. San Francisco did not notify T-Mobile in
18 writing of any incompleteness in its application. San Francisco did not act on the application
19 within 60 days after July 2, 2020. Consequently, on October 20, 2020, pursuant to 47 U.S.C. §
20 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this application
21 granted.

22 42. On July 16, 2020, T-Mobile Submitted an eligible facilities request application to
23 modify its existing wireless transmission facility located on the roof of a building at 510 26th Ave.
24 (Site ID SF03581A/Permit # 202009043504). The application proposed to modify the existing
25 base station by adding 3 antennas, adding 3 RRUs, removing one equipment cabinet, and adding
26 2 equipment cabinets. The modification would not substantially change the physical dimensions
27 of the support structure. The proposed modification would not increase the height of the support
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1 structure by 10% or 10 feet; the modification would not add an appurtenance to the body of the
2 support structure that would protrude from the edge of the structure by more than 6 feet; the
3 modification does not install more than the standard number of new equipment cabinets for the
4 technology involved, not to exceed four cabinets; the modification does not involve any
5 excavation or deployment outside the current site; the modification does not defeat any
6 concealment elements; and the modification does not violate any conditions associated with the
7 siting approval. San Francisco did not notify T-Mobile in writing of any incompleteness in its
8 application. San Francisco did not act on the application within 60 days after July 16, 2020.
9 Consequently, on October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-
10 Mobile notified San Francisco that it deemed this application granted.

11 43. On July 20, 2020, T-Mobile Submitted an eligible facilities request application to
12 modify its existing wireless transmission facility located on the roof of a building at 2601
13 Mariposa St. (Site ID SF03456A/Permit # 202010076130). The application proposed to
14 modifying the existing base station by adding 3 antennas, removing and replacing 3 RRUs,
15 removing 1 equipment cabinet, and adding 2 cabinets. The modification would not substantially
16 change the physical dimensions of the support structure. The proposed modification would not
17 increase the height of the support structure by 10% or 10 feet; the modification would not add an
18 appurtenance to the body of the support structure that would protrude from the edge of the
19 structure by more than 6 feet; the modification does not install more than the standard number of
20 new equipment cabinets for the technology involved, not to exceed four cabinets; the
21 modification does not involve any excavation or deployment outside the current site; the
22 modification does not defeat any concealment elements; and the modification does not violate
23 any conditions associated with the siting approval. San Francisco did not notify T-Mobile in
24 writing of any incompleteness in its application. San Francisco did not act on the application
25 within 60 days after July 20, 2020. Consequently, on October 20, 2020, pursuant to 47 U.S.C. §
26 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this application
27 granted.

1 44. On July 29, 2020, T-Mobile Submitted an eligible facilities request application to
2 modify its existing wireless transmission facility located on the roof of a building at 555 Market
3 St. (Site ID SF53572B/Permit # 202009033415). The application proposed to modify the
4 existing base station by replacing 3 antennas, adding 3 new antennas, and removing and replacing
5 3 RRUs. The modification would not substantially change the physical dimensions of the support
6 structure. The proposed modification would not increase the height of the support structure by
7 10% or 10 feet; the modification would not add an appurtenance to the body of the support
8 structure that would protrude from the edge of the structure by more than 6 feet; the modification
9 does not install more than the standard number of new equipment cabinets for the technology
10 involved, not to exceed four cabinets; the modification does not involve any excavation or
11 deployment outside the current site; the modification does not defeat any concealment elements;
12 and the modification does not violate any conditions associated with the siting approval. San
13 Francisco did not notify T-Mobile in writing of any incompleteness in its application. San
14 Francisco did not act on the application within 60 days after July 29, 2020. Consequently, on
15 October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified
16 San Francisco that it deemed this application granted.

17 45. On July 31, 2020, T-Mobile Submitted an eligible facilities request application to
18 modify its existing wireless transmission facility located on the roof of a building at 450 Harrison
19 St. (Site ID SF03287A/Permit # 202009043497). The application proposed to modify the
20 existing base station by replacing 3 existing antennas, adding 3 antennas, adding 3 new RRUs,
21 and adding 2 cabinets. The modification would not substantially change the physical dimensions
22 of the support structure. The proposed modification would not increase the height of the support
23 structure by 10% or 10 feet; the modification would not add an appurtenance to the body of the
24 support structure that would protrude from the edge of the structure by more than 6 feet; the
25 modification does not install more than the standard number of new equipment cabinets for the
26 technology involved, not to exceed four cabinets; the modification does not involve any
27 excavation or deployment outside the current site; the modification does not defeat any
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1 concealment elements; and the modification does not violate any conditions associated with the
2 siting approval. San Francisco did not notify T-Mobile in writing of any incompleteness in its
3 application. San Francisco did not act on the application within 60 days after July 31, 2020.
4 Consequently, on October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-
5 Mobile notified San Francisco that it deemed this application granted.

6 46. On August 4, 2020, T-Mobile Submitted an eligible facilities request application to
7 modify its existing wireless transmission facility located on the roof of a building at 375 Alabama
8 St. (Site ID SF70045M/Permit # 202009174385). The application proposed to modify the
9 existing base station by replacing 6 existing antennas, adding 3 antennas, adding 6 RRUs, and
10 adding 2 cabinets. The modification would not substantially change the physical dimensions of
11 the support structure. The proposed modification would not increase the height of the support
12 structure by 10% or 10 feet; the modification would not add an appurtenance to the body of the
13 support structure that would protrude from the edge of the structure by more than 6 feet; the
14 modification does not install more than the standard number of new equipment cabinets for the
15 technology involved, not to exceed four cabinets; the modification does not involve any
16 excavation or deployment outside the current site; the modification does not defeat any
17 concealment elements; and the modification does not violate any conditions associated with the
18 siting approval. San Francisco did not notify T-Mobile in writing of any incompleteness in its
19 application. San Francisco did not act on the application within 60 days after August 4, 2020.
20 Consequently, on October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-
21 Mobile notified San Francisco that it deemed this application granted.

22 47. On August 6, 2020, T-Mobile Submitted an eligible facilities request application to
23 modify its existing wireless transmission facility located on the roof of a building at 611 2nd St.
24 (Site ID SF90341E/Permit # 202009184471). The application proposed to modify the existing
25 base station by relocating 3 existing antennas, adding 6 new antennas, relocating 3 RRUs, and
26 adding 3 new RRUs. The modification would not substantially change the physical dimensions
27 of the support structure. The proposed modification would not increase the height of the support
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1 structure by 10% or 10 feet; the modification would not add an appurtenance to the body of the
2 support structure that would protrude from the edge of the structure by more than 6 feet; the
3 modification does not install more than the standard number of new equipment cabinets for the
4 technology involved, not to exceed four cabinets; the modification does not involve any
5 excavation or deployment outside the current site; the modification does not defeat any
6 concealment elements; and the modification does not violate any conditions associated with the
7 siting approval. San Francisco did not notify T-Mobile in writing of any incompleteness in its
8 application. San Francisco did not act on the application within 60 days after August 6, 2020.
9 Consequently, on October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-
10 Mobile notified San Francisco that it deemed this application granted.

11 48. On August 6, 2020, T-Mobile Submitted an eligible facilities request application to
12 modify its existing wireless transmission facility located on the roof of a building at 2696 Geary
13 Blvd. (Site ID SF03579A/Permit # 202009174400). The application proposed to modify the
14 existing base station by adding 3 new antennas, removing and replacing 3 existing RRUs, and
15 removing and replacing 1 cabinet. The modification would not substantially change the physical
16 dimensions of the support structure. The proposed modification would not increase the height of
17 the support structure by 10% or 10 feet; the modification would not add an appurtenance to the
18 body of the support structure that would protrude from the edge of the structure by more than 6
19 feet; the modification does not install more than the standard number of new equipment cabinets
20 for the technology involved, not to exceed four cabinets; the modification does not involve any
21 excavation or deployment outside the current site; the modification does not defeat any
22 concealment elements; and the modification does not violate any conditions associated with the
23 siting approval. San Francisco did not notify T-Mobile in writing of any incompleteness in its
24 application. San Francisco did not act on the application within 60 days after August 6, 2020.
25 Consequently, on October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-
26 Mobile notified San Francisco that it deemed this application granted.

27 49. On August 7, 2020, T-Mobile Submitted an eligible facilities request application to
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1 modify its existing wireless transmission facility located on the roof of a building at 510
2 Frederick (Site ID SF13009C/Permit # 202009234793). The application proposed to modify the
3 existing base station by removing 3 antennas, adding 9 antennas, and adding 3 RRUs. The
4 modification would not substantially change the physical dimensions of the support structure.
5 The proposed modification would not increase the height of the support structure by 10% or 10
6 feet; the modification would not add an appurtenance to the body of the support structure that
7 would protrude from the edge of the structure by more than 6 feet; the modification does not
8 install more than the standard number of new equipment cabinets for the technology involved, not
9 to exceed four cabinets; the modification does not involve any excavation or deployment outside
10 the current site; the modification does not defeat any concealment elements; and the modification
11 does not violate any conditions associated with the siting approval. San Francisco did not notify
12 T-Mobile in writing of any incompleteness in its application. San Francisco did not act on the
13 application within 60 days after August 7, 2020. Consequently, on October 20, 2020, pursuant to
14 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this
15 application granted.

16 50. On August 7, 2020, T-Mobile Submitted an eligible facilities request application to
17 modify its existing wireless transmission facility located on the roof of a building at 430 Bush St.
18 (Site ID SF03006A/Permit # 202009174419). The application proposed to modify the existing
19 base station by removing 3 antennas, adding 10 antennas, and adding 3 RRUs. The modification
20 would not substantially change the physical dimensions of the support structure. The proposed
21 modification would not increase the height of the support structure by 10% or 10 feet; the
22 modification would not add an appurtenance to the body of the support structure that would
23 protrude from the edge of the structure by more than 6 feet; the modification does not install more
24 than the standard number of new equipment cabinets for the technology involved, not to exceed
25 four cabinets; the modification does not involve any excavation or deployment outside the current
26 site; the modification does not defeat any concealment elements; and the modification does not
27 violate any conditions associated with the siting approval. San Francisco did not notify T-Mobile
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1 in writing of any incompleteness in its application. San Francisco did not act on the application
2 within 60 days after August 7, 2020. Consequently, on October 20, 2020, pursuant to 47 U.S.C. §
3 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this application
4 granted.

5 51. On August 7, 2020, T-Mobile Submitted an eligible facilities request application to
6 modify its existing wireless transmission facility located on the roof of a building at 1485 Bush
7 St. (Site ID SF03010A/Permit # 202009184476). The application proposed to modify the
8 existing base station by removing 1 antenna, adding 3 antennas, removing 3 RRUs, adding 3
9 RRUs, and adding 1 19-inch rack. The modification would not substantially change the physical
10 dimensions of the support structure. The proposed modification would not increase the height of
11 the support structure by 10% or 10 feet; the modification would not add an appurtenance to the
12 body of the support structure that would protrude from the edge of the structure by more than 6
13 feet; the modification does not install more than the standard number of new equipment cabinets
14 for the technology involved, not to exceed four cabinets; the modification does not involve any
15 excavation or deployment outside the current site; the modification does not defeat any
16 concealment elements; and the modification does not violate any conditions associated with the
17 siting approval. San Francisco did not notify T-Mobile in writing of any incompleteness in its
18 application. San Francisco did not act on the application within 60 days after August 7, 2020.
19 Consequently, on October 20, 2020, pursuant to 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-
20 Mobile notified San Francisco that it deemed this application granted.

21 52. On August 7, 2020, T-Mobile Submitted an eligible facilities request application to
22 modify its existing wireless transmission facility located on the roof of a building at 1501 Lincoln
23 Way (Site ID SF53430A/Permit # 202009184484). The application proposed to modify the
24 existing base station by replacing 6 antennas, replacing 9 RRUs, and adding 1 19-inch rack. The
25 modification would not substantially change the physical dimensions of the support structure.
26 The proposed modification would not increase the height of the support structure by 10% or 10
27 feet; the modification would not add an appurtenance to the body of the support structure that
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1 would protrude from the edge of the structure by more than 6 feet; the modification does not
2 install more than the standard number of new equipment cabinets for the technology involved, not
3 to exceed four cabinets; the modification does not involve any excavation or deployment outside
4 the current site; the modification does not defeat any concealment elements; and the modification
5 does not violate any conditions associated with the siting approval. San Francisco did not notify
6 T-Mobile in writing of any incompleteness in its application. San Francisco did not act on the
7 application within 60 days after August 7, 2020. Consequently, on October 20, 2020, pursuant to
8 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this
9 application granted.

10 53. On August 10, 2020, T-Mobile Submitted an eligible facilities request application
11 to modify its existing wireless transmission facility located on the roof of a building at 2011
12 Bayshore Blvd. (Site ID SF03040B/Permit # 202009174427). The application proposed to
13 modify the existing base station by adding 1 antenna and 1 RRU for each sector (total 3),
14 removing 3 existing RRUs, and installing associated equipment. The modification would not
15 substantially change the physical dimensions of the support structure. The proposed modification
16 would not increase the height of the support structure by 10% or 10 feet; the modification would
17 not add an appurtenance to the body of the support structure that would protrude from the edge of
18 the structure by more than 6 feet; the modification does not install more than the standard number
19 of new equipment cabinets for the technology involved, not to exceed four cabinets; the
20 modification does not involve any excavation or deployment outside the current site; the
21 modification does not defeat any concealment elements; and the modification does not violate
22 any conditions associated with the siting approval. San Francisco did not notify T-Mobile in
23 writing of any incompleteness in its application. San Francisco did not act on the application
24 within 60 days after August 10, 2020. Consequently, on October 20, 2020, pursuant to 47 U.S.C.
25 § 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this
26 application granted.

27 54. On August 14, 2020, T-Mobile Submitted an eligible facilities request application
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1 to modify its existing wireless transmission facility located on the roof of a building at 965
2 Mission St. (Site ID SF70039M/Permit # 202009093747). The application proposed to modify
3 the existing base station by replacing 3 antennas and adding 3 RRUs. The modification would
4 not substantially change the physical dimensions of the support structure. The proposed
5 modification would not increase the height of the support structure by 10% or 10 feet; the
6 modification would not add an appurtenance to the body of the support structure that would
7 protrude from the edge of the structure by more than 6 feet; the modification does not install more
8 than the standard number of new equipment cabinets for the technology involved, not to exceed
9 four cabinets; the modification does not involve any excavation or deployment outside the current
10 site; the modification does not defeat any concealment elements; and the modification does not
11 violate any conditions associated with the siting approval. San Francisco did not notify T-Mobile
12 in writing of any incompleteness in its application. San Francisco did not act on the application
13 within 60 days after August 14, 2020. Consequently, on October 20, 2020, pursuant to 47 U.S.C.
14 § 1455(a) and 47 C.F.R. § 1.6100, T-Mobile notified San Francisco that it deemed this
15 application granted.

16 **FIRST CAUSE OF ACTION**

17 **(Violation of Section 6409(a), 47 U.S.C. § 1455(a))**

18 55. T-Mobile incorporates by reference and realleges the foregoing factual allegations
19 in paragraphs 1 through 54 as if fully set forth herein.

20 56. The City has failed to act on T-Mobile's applications identified in paragraphs 39
21 through 54 above within 60 days after T-Mobile's application. The City had not notified T-
22 Mobile in writing within 10 days after submission of the application that any of the applications
23 was incomplete. T-Mobile notified the City on October 20, 2020 that the applications are deemed
24 complete, but the City has not acted to grant the applications. The City has, therefore, violated 47
25 U.S.C. § 1455(a) as to each of the applications.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for the following relief:
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1. A declaration and judgment that the applications listed in paragraphs 39 through 54 have been deemed granted.
2. An order requiring the City of San Francisco to issue permits for the wireless facilities applications deemed granted in paragraphs 39 through 54 within 5 days of the Court's Order.
3. For such other and further relief as the Court may deem just and proper.

DATED: November 18, 2020

Respectfully submitted,
MINTZ LEVIN COHN FERRIS GLOVSKY
and POPEO, P.C.

By: /s/ Evan S. Nadel
Evan S. Nadel
T. Scott Thompson (*pro hac vice forthcoming*)
Jonathan P. Garvin (*pro hac vice forthcoming*)

Attorneys for Plaintiff,
T-MOBILE WEST LLC