

**IN THE UNITED STATES DISTRICT COURT FOR SOUTH DAKOTA
NORTHERN DIVISION**

HORVATH TOWERS VI, LLC
a Delaware Limited Liability Company,

Plaintiff,

v.

CLARK COUNTY BOARD OF
ADJUSTMENT, SOUTH DAKOTA

Defendant.

CIVIL ACTION FILE NO. 24-cv-10008

REQUEST FOR EXPEDITED REVIEW
PURSUANT TO 47 U.S.C. §332(c)(7)(B)(v)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE U.S.
TELECOMMUNICATIONS ACT OF 1996**

Plaintiff, Horvath Towers VI, LLC (“Horvath”), by and through their undersigned attorneys, hereby files this Complaint against Defendant Board of Adjustment for the County of Clark, South Dakota (the “BOA” or “County”), and states as follows:

Nature of the Action

This action arises out of the BOA’s unlawful denial of Horvath’s application to construct a wireless telecommunications facility for Verizon Wireless (“Verizon”) on a tract of land located at 42429 182nd Street in unincorporated Clark County, South Dakota (the “Hanson location”), which property is currently zoned AG in the County. On February 20, 2024, the BOA denied an application request by Plaintiff for a conditional use to build the facility, which denial is not in writing supported by substantial evidence contained in a written record. Moreover, the denial effectively prohibits the provision of personal wireless service in the vicinity of the proposed facility. Accordingly, the County’s denial of Horvath’s application violates the federal

Telecommunications Act of 1996, as amended, 47 U.S.C. § 332(c)(7) (the “TCA” or “Act”), and Plaintiff is entitled to an order directing the County to grant Horvath’s application for the proposed facility.

Pursuant to 47 U.S.C. § 332(c)(7)(B)(v), Plaintiff requests expedited treatment of this Complaint.

Parties, Jurisdiction, and Venue

1. Plaintiff Horvath is a Delaware Limited Liability Company and maintains its principal place of business at 720 Main Street, Suite 200, Saint Paul, Minnesota.

2. Defendant is a political subdivision of the State of South Dakota and is subject to the jurisdiction of this Court.

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

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that Defendant is located in this judicial district, the proposed wireless communications facility would be located in this judicial district, and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

Statement of Facts

Federal Statutory Control of Wireless Siting

5. In 1996, Congress enacted the Act, No. 104-104, 110 Stat. 56 (1996), which amended the Communications Act of 1934, codified in 47 U.S.C. §151 et seq. as a “pro-competitive, de-regulatory national policy framework designed to accelerate rapidly

private sector deployment of advanced telecommunications and information technologies and services to all Americans."

6. Congress has declared that there is a need for wireless communication services, including "personal wireless services," as set forth in the Act, and the rules, regulations and orders of the Federal Communications Commission ("FCC") promulgated pursuant thereto. In order to foster its pro-competitive, deregulatory national policy, Congress included provisions in the Act that encourage competition by restricting the regulation of the placement of personal wireless service facilities by state and local governments and instrumentalities thereof.

7. Section 332(c)(7) of the Act imposes substantive and procedural limitations on state and local governments and instrumentalities thereof to ensure that the Act's pro-competitive goals are not frustrated and it expressly preempts any action or inaction by state or local governments or their agents that effectively prohibits the provision of wireless services.

8. Pursuant to §332(c)(7)(B)(i)(II) of the Communications Act, the regulation of the placement, construction, and modification of personal wireless service facilities by a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services ("Prohibition of Services").

9. Pursuant to §332(c)(7)(B)(iii) of the Communications Act, any denial by a local government of a request to place, construct or modify personal wireless service facilities must be in writing and supported by substantial evidence in a written record ("Substantial Evidence").

10. Pursuant to §332(c)(7)(B)(iv) of the Communications Act, no local government may regulate the placement and construction of personal wireless service facilities on the basis of

environmental effects of radio frequency emissions to the extent such facilities comply with FCC regulations concerning such emissions.

11. The Communications Act further provides that any person adversely affected by a state or local government's act, or failure to act, that is inconsistent with § 332(c)(7) of the Communications Act may, within 30 days of said act or failure to act, seek review in the federal courts, and that the courts shall hear and decide the action on an expedited basis. 47 U.S.C. § 332(c)(7)(B)(v).

The Wireless Communications Service Industry and Technology

12. Horvath develops, owns, and leases wireless communications facilities in South Dakota and elsewhere in the country. Horvath leases space on its facilities to national and regional wireless carriers such as Verizon who provide personal and advanced wireless services, as well as other telecommunications services, as those terms are defined under federal law, to end-user wireless consumers. In providing this service to wireless carriers, Horvath is facilitating the development and deployment of advanced wireless and broadband connectivity consistent with the goals of the Communications Act.

13. Verizon provides commercial mobile radio services, personal and advanced wireless services, and other telecommunications services, as those terms are defined under federal law, in the State of South Dakota, including in the County of Clark.

14. Verizon is seeking to facilitate the maintenance and development of a wireless telecommunications network in keeping with the goals of the Communications Act. Verizon uses licenses issued by the FCC pursuant to 47 U.S.C. § 151 to provide wireless service in and around Clark County, South Dakota.

15. 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, nationwide, 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.

16. To meet these policy goals, Verizon seeks to provide myriad wireless services to local businesses, public safety entities and the general public.

17. Wireless service is vitally important to public safety and convenience. The FCC estimates that approximately 240 million calls to 911 are made each year, and in many areas, over 80% of these calls are made from wireless phones.

18. Wireless devices utilizing digital technology operate by transmitting a radio signal to antennas mounted on a tower, pole, building or other structure. The antenna feeds the signal to electronic equipment housed in the small shelter building or equipment cabinet, which is called a base station. The base station is connected by microwave, fiber-optic cable or ordinary telephone wire to a base station controller, subsequently routing calls and data throughout the world.

19. Previously, signals were provided by analog carriers using lower frequencies and thus higher signal strength. More modern providers, such as Verizon, operate on the higher Personal Communications Service (“PCS”) and Advanced Wireless Services (“AWS”) frequencies. With the ever-increasing usage of smart-phones, tablets and mobile hotspots, and as more and more consumers abandon the use of land-lines, wireless communication facilities are becoming overloaded with network traffic – both voice and data – resulting in a reduced effective communications range between handheld wireless devices and a given facility.

20. Moreover, the last 35 years has seen an explosion in cell phone users. Per wireless industry publications by the FCC, the total number of cell phone subscribers in 1985 in the United States was approximately 340,000. By 2005, total subscribers had jumped to over 200 million. Current subscribers for the U.S. are over 400 hundred million.

21. To advance the national policies enumerated under 47 U.S.C. § 151 and repeatedly reiterated by the FCC, Horvath constructs towers and other wireless facilities that allow wireless carriers 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.

22. To provide reliable service to a user, coverage from cell sites must overlap in a grid pattern resembling a honeycomb. If Horvath is unable to construct a cell site within a specific geographic area, the wireless carriers it serves, such as Verizon, will not be able to provide service to the consumers within that area.

23. To determine where a new wireless facility is required, radio frequency (“RF”) engineers use various techniques, such as sophisticated computer programs and field testing, to complete a propagation study, which shows where cell sites need to be located in order to provide service. The propagation study also 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 around 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. Although 911 emergency calls are given priority in the call system, they too will be dropped or blocked if there is no coverage.

The Proposed Facility & Application Process

24. Based upon research and analysis by RF engineers, Verizon determined that it has a gap in its ability to provide reliable service in the County of Clark, South Dakota. This gap was both a gap in coverage, and based on a lack of capacity for the area.

25. This gap has been deemed significant and is a priority for Verizon based on the demand for service and the traffic in the area, and must be remedied in order for Verizon to provide reliable service to the targeted area.

26. Verizon's RF engineers targeted an area of need within which a wireless communications facility would be required to remedy Verizon's gap in service, and provided this information to Horvath to conduct a search for a site.

27. Verizon's engineers ruled out any type of "small cell," as small cells are used to complement an existing robust macrosystem, not serve as a substitute for one.

28. Although Verizon also prefers to find existing structures to use or collocate to keep costs down and avoid more towers, it could not find any existing facility to replace, or find any existing buildings or base stations which were tall enough to enable sufficient coverage for the gap. Similarly, it could find no existing towers on which to collocate in the target area.

29. Horvath's real estate search team then investigated suitable properties in the vicinity of the targeted area that were appropriate for a new wireless communications facility. An appropriate candidate would have to (1) fill the gap in service, (2) have the potential to comply with the local zoning requirements, or have exceptions therefrom approved by the County, (3) be leasable, (4) be buildable (meaning the property is physically suitable for construction); and (5) be accessible for maintenance and monitoring. A property that does not meet each of those requirements is not a viable candidate.

30. From its analysis, Horvath identified a tract of land known as the Hanson Location. Verizon's engineers concluded that, with a 300-foot guyed tower, this location would address the coverage gap for the search area. Moreover the Hanson Location has a property owner willing to enter into a long-term lease for a portion of land for the construction of a wireless communications facility on commercially reasonable terms; and is physically suitable for constructing and maintaining a wireless communications facility, being close to an arterial road.

31. Alternative properties in the search area either did not have a willing landlord, or were insufficient to address the coverage gap for the area.

32. The Hanson location is located in the target area and addresses the coverage gap in the area.

33. Section 4.22.02 of the Clark County Zoning Code ("Code") governs the County's regulation of wireless communication services in the County.

34. Pursuant to the Code, on November 3, 2023, Horvath submitted its application for conditional use as well as other required documentation to the County to build a 300 foot guyed tower, along with related cabinets and a backup generator on the ground. After discussion with the County Zoning Administrator, Horvath submitted a few additional documents requested by the County. A copy of all of these initial submissions made by Horvath are attached hereto as group Exhibit A.

35. Per the County's zoning administrator, the application and submissions of Horvath met all conditions under the Code for installing a wireless communications facility and no variances were required.

The Board of Adjustment Hearings

36. On December 19, 2023, a public hearing was held before the BOA to consider Horvath's application. At this meeting, the BOA's Staff ("Staff") presented its own report

regarding the applicant's request. The report noted each of the Code's requirements for a Telecommunications Tower and that the Plaintiff was meeting all of the standards necessary for a Conditional Use permit. See Staff Report to BOA attached hereto as Exhibit B.

37. At the December 19, 2023 hearing, Plaintiff's representative presented the merits of its application, including, but not limited to, evidence regarding the specific need presented by Verizon's RF engineering team; the current coverage gap and the coverage that would be achieved after installation of the new facility; and the fact that Horvath had investigated and found no suitable collocation opportunities within the search ring area.

38. Per the minutes of the public hearing, eight residents spoke in opposition to the proposal at the hearing. Most questioned the location of the facility. Some speculated that their property values would suffer as a result of the tower but provided no data in support. Others had "concerns with possible health issues" from the tower's emissions. See page 1514 of the minutes of the public hearing attached hereto as Exhibit C.

39. After hearing the comments from the public, the BOA had a discussion amongst themselves. The Board members asked Plaintiff's representative if there was a possibility to move the cell tower further away from the residents' homes. Discussion was had whether another property further south of the proposed location (the "Warkenthien Property"), would work for Plaintiff.

40. The Plaintiff's representative indicated that he would find out and report back to the Board. As a result, the BOA voted to postpone their decision until February 20, 2024.

41. Subsequent to the public hearing, Verizon's engineers analyzed the Warkenthien Property as an alternative location for the wireless facility.

42. However, that analysis concluded that a coverage gap would still remain if the facility were able to be relocated to the Warkenthien Property.¹

43. Prior to the February 20, 2024 BOA meeting, Plaintiff submitted propagation maps to the BOA showing a gap still existing if the facility were to be relocated to the Warkenthien Property. A copy of the propagation maps, depicting the current coverage and projected coverage from a new tower on the Hanson Location or one on the Warkenthien Property, are attached hereto as Exhibit D.

44. In addition, Plaintiff also submitted additional documents to the BOA staff demonstrating its due diligence on the site, including compliance with the FAA, as well as the National Environmental Policy Act (“NEPA”) and a Phase One environmental assessment report.

45. At the February 20, 2024 meeting, the BOA staff reiterated that the standards for a Conditional Use had been met.

46. At the February 20, 2024 meeting, several representatives of Plaintiff answered questions by the Board members and informed the members that Verizon had analyzed the Warkenthien Property as an alternative location, but that this alternative location would not solve the coverage gap that currently exists.

47. Notwithstanding this, the BOA denied the Plaintiff’s application by a 3-2 vote.

48. Although the denial occurred on February 20, 2024, the minutes of that meeting were adopted on March 5, 2024, but not posted online by the County until March 15, 2024. A copy of the minutes of the February 20, 2024 meeting are attached hereto as Exhibit E.

49. At no time since the vote has the BOA provided Plaintiff with written notice of its decision supported by substantial evidence in a written record.

¹ At no time has the owner of the Warkenthien Property agreed to allow a facility on its property.

50. Pursuant to 47 U.S.C. § 332(c)(7)(B)(v), this Complaint has been timely filed within thirty (30) days of the final decision of the BOA to deny the Plaintiff's application.

COUNT I

(Violation of 47 U.S.C. § 332(c)(7)(B)(iii) – Substantial Evidence)

51. Plaintiff incorporates by reference and re-alleges the foregoing factual allegations in paragraphs 1 through 50 as if fully set forth herein.

52. Pursuant to 47 U.S.C. § 332(c)(7)(B)(iii), “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.”

53. The inquiry to be made by this Court is whether the BOA's decision is authorized by applicable local regulations and supported by “substantial evidence.” A denial based on a finding that is not authorized or required by applicable local law cannot be supported by substantial evidence.

54. Plaintiff presented evidence that Verizon has a gap in service and that no other alternative location is available in the search area to address the coverage gap.

55. Plaintiff presented evidence that the Wireless Facility justifies all standards needed for a Conditional Use Permit.

56. There is no substantial evidence in the written record contradicting Plaintiff's evidence.

57. Moreover, to the extent the BOA considered comments at the public hearing relating to the health effects of the proposed facility, the BOA was prohibited from doing so pursuant to §332(c)(7)(B)(iv) of the Act.

58. The BOA's denial of the application for the proposed facility was not timely provided in writing by the BOA and is not supported by substantial evidence contained in the written record.

59. Consequently, the BOA's action is in violation of, and preempted by, Section 332(c)(7)(B)(iii) of the Communications Act, and should be set aside and enjoined by the Court on that basis. Further, this Court should exercise its power to issue an order directing the BOA to approve the application for the proposed facility.

COUNT II

(Violation of 47 U.S.C. § 332(c)(7)(B)(i)(II) – Effective Prohibition)

60. Plaintiff incorporates by reference and re-alleges the foregoing factual allegations in paragraphs 1 through 50 as if fully set forth herein.

61. Pursuant to the Act, “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II).

62. On September 26, 2018, the FCC issued a declaratory ruling that interpreted the “effective prohibition” language of Section 332(c)(7)(B)(i)(II).²

63. The FCC 2018 Order limited the factors and issues that may be considered by the BOA in evaluating the placement of the proposed wireless communication facility.

64. The FCC declared that the standards adopted by the Circuit Courts and other courts applying Section 332(c)(7)(B)(i)(II) were incorrect. *FCC 2018 Order*, ¶ 40 n.94. Instead, the FCC

² *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT 17-29, WC 17-84, FCC 18-133, 33 FCC Red. 9,088, Sept. 26, 2018. (“FCC 2018 Order”). The FCC 2018 Order became effective as of January 14, 2019.

declared that “an effective prohibition [of service] occurs where a state or local legal requirement *materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service.*” *Id.* ¶ 37 (emphasis added).

65. The FCC 2018 Order holds that the County effectively prohibits the provision of wireless services if it inhibits or limits the provider “not only when filling a coverage gap *but also when densifying a wireless network, introducing new services or otherwise improving service capabilities.*” *Id.* ¶ 37 (emphasis added).

66. In its 2018 Order, the FCC also ruled that local governments cannot deny an application for a wireless site based on the alleged existence of alternative locations. *Id.* ¶ 34-35.

67. The *FCC 2018 Order* is currently in effect, and it governs Plaintiff’s claim under 47 U.S.C. § 332(c)(7)(B)(i)(II).

68. Under the *FCC 2018 Order*, Verizon has identified an area in which it needs to install a wireless facility to provide coverage, network capacity, and ultimately provide service.

69. Verizon requested that Horvath find a property in that area and construct a communications tower that will meet Verizon’s needs.

70. The BOA’s denial of the application for Conditional Use Permit materially inhibits or limits Horvath’s ability to install the proposed Wireless Facility, and thus materially inhibits or limits Verizon’s ability to provide its service at levels it deems appropriate.

71. Accordingly, the BOA’s denial amounts to an effective prohibition of personal wireless services in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II).

72. Plaintiff investigated alternative sites in and around the search area within which Verizon determined that a significant gap exists and that a wireless communications facility must be located to remedy the significant gap in reliable service for the wireless carrier.

73. No potential alternative site is available and feasible to remedy Verizon's service gap in a way that is less intrusive on the values the BOA's denial sought to serve than is the Wireless Facility at the Hanson Location.

74. There is no existing structure in or near the vicinity of the Hanson Location, or the targeted area, that is both reasonably available and technologically feasible to remedy the significant gaps in personal wireless service in the area.

75. The BOA's denial of Plaintiff's application causes an effective prohibition of personal wireless service in the area surrounding the Proposed Wireless Facility at the Hanson Location.

76. Consequently, the BOA's denial of Plaintiff's application for a Conditional Use is in violation of, and preempted by, Section 332(c)(7)(b)(i)(II) of the Communications Act, and should be set aside and enjoined by the Court on that basis.

WHEREFORE, HORVATH respectfully requests that the Court:

- (a) Conduct an expedited review of the matters set forth in this Complaint pursuant to 47 U.S.C. § 332(c)(7)(B)(v);
- (b) Find and declare that the BOA's denial of the request for a Conditional Use was not supported by substantial evidence contained in a written record in violation of 47 U.S.C. §332(c)(7)(B)(iii);
- (c) Find and declare that the BOA's denial of the request for a Conditional Use is an effective prohibition of personal wireless services in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II);
- (d) Issue an injunction or writ of mandamus compelling and ordering the BOA to grant the Conditional Use, and all ancillary approvals and permits

necessary for the construction of the proposed Wireless Facility at the Hanson Location; and

- (e) Grant such other and further relief in favor of Plaintiff as may be just and proper.

Dated: March 21, 2024

Respectfully submitted,

SIEGEL, BARNETT & SCHUTZ, L.L.P.

/s/ Reed Rasmussen

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ATTORNEY FOR PLAINTIFF

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HORVATH TOWERS VI, LLC, a Delaware Limited Liability Company,

(b) County of Residence of First Listed Plaintiff Ramsey County, MN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Siegel, Barnett & Schutz, L.L.P., 415 S. Main, Suite 400,
PO Box 490, Aberdeen, SD 57402-0490, 605-225-5420

DEFENDANTS

Clark County Board of Adjustment, South Dakota

County of Residence of First Listed Defendant Clark
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☒ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 332(c)(7)

Brief description of cause:

Denial of application for construction of wireless telecommunications facility

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Mar 21, 2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Reed Rasmussen

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____