

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-60029-CIV-GOLD

T-MOBILE SOUTH LLC, a Delaware
Limited liability company,

Plaintiff,

vs.

THE CITY OF MARGATE, a
Municipal corporation,

Defendant.

DEFENDANT, CITY OF MARGATE'S ANSWER
AND AFFIRMATIVE DEFENSES

Defendant, THE CITY OF MARGATE, by and through its undersigned counsel,
files its Answer and Affirmative Defenses to Plaintiff's Complaint, and would state to the
Court the following:

1. Admitted for jurisdictional purposes only.
2. Admitted.
3. Without knowledge. Denied.
4. Admitted.
5. Admitted.
6. Denied.
7. Admitted.
8. Admitted.

THE IMPORTANCE OF THE COMMUNICATIONS ACT

9. Paragraph 9 contains no factual allegations, but to the extent that anything alleged in said paragraph is deemed to be factual, it is denied.

10. Without knowledge. Denied.

11. Without knowledge. Denied.

12. Without knowledge. Denied.

FACTS COMMON TO ALL COUNTS

A. T-Mobile's License

13. Without knowledge. Denied.

14. Without knowledge. Denied.

15. Without knowledge. Denied.

16. Without knowledge. Denied.

B. T-Mobile's Wireless System

17. Without knowledge. Denied.

18. Without knowledge. Denied.

19. Without knowledge. Denied.

20. Without knowledge. Denied.

21. Without knowledge. Denied.

22. Without knowledge. Denied.

C. The Coverage Gap Area

23. Without knowledge. Denied.

24. Without knowledge. Denied.

25. Without knowledge. Denied.

D. The Proposed Facility

26. Without knowledge. Denied.

27. Denied.

28. The description of the property is admitted, the remaining allegations contained in paragraph 28 are beyond the knowledge of the Defendant and same are denied.

29. It is admitted that Plaintiff's engineers have determined that a co-location on an existing site is not possible in this case, but the remaining allegations contained in paragraph 29 are denied.

30. Admitted.

E. Site Lease Agreement

31. The lease agreement is admitted. The purpose is beyond the knowledge of this Defendant and the allegations contained therein are denied.

32. Without knowledge. Denied.

33. Admitted.

F. The Application and Approval Process

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Admitted.

40. Admitted.

G. Compliance with the Telecommunications Ordinance

41. Denied as phrased.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

51. Admitted.

52. Denied.

G. The DRC Hearing

53. Admitted.

54. Admitted.

H. The City Commission Hearing

55. Admitted.

56. Denied .

I. Impact of the Denial

57. Denied.

58. Denied.

59. Denied.

60. Denied.

J. The Denials is Not Supported by Substantial Evidence

61. Denied.

**K. The Denial Has the Effect of Prohibiting the Provision of Personal
Wifeless Services**

62. Admitted.

63. Admitted.

64. Denied.

65. Admitted.

COUNT I

VIOLATION OF THE TELECOMMUNICATIONS ACT
DENIAL SUPPORTED BY SUBSTANTIAL EVIDENCE

66. The statutory language is admitted, to the extent that there are any factual allegations in paragraph 66 same are denied.

67. Denied.

COUNT II

VIOLATION OF THE TELECOMMUNICATIONS ACT
DENIAL RESULTS IN PROHIBITION

68. The statutory language is admitted, to the extent that there are any factual allegations in paragraph 66 same are denied.

69. Denied.

70. Denied.

COUNT III
DECLARATORY RELIEF
VIOLATION OF TELECOMMUNICATIONS ORDDINANCE

71. Admitted for jurisdictional purposes only. Entitlement to relief is denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

AFFIRMATIVE DEFENSES

80. The denial of the Conditional Use Permit by the Margate City Commission was based on substantial evidence which supports the denial.

82. The denial of the Conditional Use Permit does not satisfy the “in writing” requirement of 47 U.S.C. §332(c)(7)(B)(iii).

83. The Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.* does not provide a remedy under the TCA §332(c)(7)(B)(v). The exclusive remedy is provided by TCA and that does not include declaratory relief.

WHEREFORE, having fully answered TMOBILE SOUTH, LLC'S Complaint,
THE CITY OF MARGATE prays it be dismissed with prejudice and costs and fees
awarded to its favor.

Dated: February 2, 2010
Fort Lauderdale, Florida

Respectfully submitted,

s/Robert H. Schwartz
ROBERT H. SCHWARTZ (301167)
rhs@adorno.com
ADORNO & YOSS LLP
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 523-5885
Facsimile: (954) 446-1526
Counsel for Defendant,
THE CITY OF MARGATE

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Robert H. Schwartz
ROBERT H. SCHWARTZ

T-MOBILE SOUTH LLC v. THE CITY OF MARGATE
Case No. 10-60029-CIV-GOLD

SERVICE LIST

Perry Michael Adair, Esquire (434050)

padair@becker-poliakoff.com

Becker & Poliakoff

Alhambra Towers, Suite 1000

121 Alhambra Plaza

Coral Gables, Florida 33134-0003

Telephone: 305 262-4433

Facsimile: 305 442-2232

Attorneys for T-Mobile South LLC