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 11 CITY OF LOS ANGELES

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 LOS ANGELES SMSA LIMITED
 15 PARTNERSHIP, a California limited
 16 partnership dba VERIZON
 17 WIRELESS,
 18 Plaintiff,
 19 vs.
 20 CITY OF LOS ANGELES,
 21 Defendant.

CASE NO. 2:16-CV-04954 BRO(SKx)
 (Hon. Beverly Reid O’Connell)

**CITY OF LOS ANGELES’ ANSWER
 TO PLAINTIFF’S COMPLAINT
 FOR DECLARATORY JUDGMENT,
 INJUNCTION, AND WRIT OF
 MANDATE**

22 **DEFENDANT CITY OF LOS ANGELES** (“City”), a municipal
 23 corporation, answers the Complaint for Declaratory Judgment, Injunction, and Writ
 24 of Mandate (the “Complaint”) of Plaintiff Los Angeles SMSA Limited Partnership,
 25 doing business as Verizon Wireless (“Verizon Wireless”) as follows. Except as
 26 admitted, Defendant denies each and every allegation in the Complaint.
 27
 28

NATURE OF THE ACTION

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2
3 1. Answering paragraph 1, the City affirmatively alleges that the
4 Complaint and the Federal Telecommunications Act of 1996 speak for themselves.
5 Additionally, the City generally and specifically denies all allegations in this
6 paragraph based on a lack of sufficient information or belief to answer and also
7 because they constitute legal conclusions to which the City is not required to
8 respond.
9

10 2. Answering paragraph 2, the City generally and specifically denies all
11 allegations in this paragraph based on a lack of sufficient information or belief to
12 answer.
13

14 3. Answering paragraph 3, the City affirmatively alleges that the Federal
15 Telecommunications Act of 1996 and the Communications Act of 1934 speak for
16 themselves. Additionally, the City generally and specifically denies all allegations
17 in this paragraph because they constitute legal conclusions to which the City is not
18 required to respond.
19

20 4. Answering paragraph 4, the City affirmatively alleges that the Federal
21 Telecommunications Act of 1996 speaks for itself. Additionally, the City generally
22 and specifically denies all allegations in this paragraph based on a lack of sufficient
23 information or belief to answer.
24

25 5. Answering paragraph 5, the City affirmatively alleges that the Federal
26 Telecommunications Act of 1996 speaks for itself. Additionally, the City generally
27
28

1 and specifically denies all allegations in this paragraph based on a lack of sufficient
2 information or belief to answer.

3
4 6. Answering paragraph 6, the City affirmatively alleges that the Federal
5 Telecommunications Act of 1996 and the Complaint speak for themselves.

6 Additionally, the City generally and specifically denies all allegations in this
7 paragraph because they constitute legal conclusions to which the City is not
8 required to respond and based on a lack of sufficient information or belief to
9 answer.
10

11
12 7. Answering paragraph 7, the City affirmatively alleges that the Federal
13 Telecommunications Act of 1996 speaks for itself. Additionally, the City generally
14 and specifically denies all allegations in this paragraph because they constitute legal
15 conclusions to which the City is not required to respond.
16

17 **PARTIES**

18
19 8. Answering paragraph 8, the City generally and specifically denies all
20 allegations in this paragraph based on a lack of sufficient information or belief to
21 answer.
22

23 9. Answering paragraph 9, the City affirmatively alleges that the Federal
24 Telecommunications Act of 1996 and the rules, regulations, and orders promulgated
25 by the Federal Communications Commission speak for themselves. Additionally,
26 the City generally and specifically denies all allegations in this paragraph based on
27 a lack of sufficient information or belief to answer.
28

1 City is not required to respond. Additionally, the City affirmatively alleges that 28
2 U.S.C. Section 1391(b) speaks for itself.

3
4 15. Answering paragraph 15, the City generally and specifically denies all
5 allegations in this paragraph based on a lack of sufficient information or belief to
6 answer. Additionally, the City affirmatively alleges that 47 U.S.C. Section
7
8 332(c)(7)(B)(v) speaks for itself.

9
10 16. Answering paragraph 16, the City generally and specifically denies all
11 allegations in this paragraph based on a lack of sufficient information or belief to
12 answer. Additionally, the City affirmatively alleges that 47 U.S.C. Section
13
14 332(c)(7)(B)(v) speaks for itself.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 17. Answering paragraph 17, the City generally and specifically denies all
17 allegations in this paragraph based on a lack of sufficient information or belief to
18 answer.

19
20 18. Answering paragraph 18, the City generally and specifically denies all
21 allegations in this paragraph. The City affirmatively alleges that the City's records
22 for City Planning Case No. ZA-2014-4204-CUW and Case No. ENV-2014-4205-
23 MND (hereinafter, "City Record") speak for themselves.

24
25 19. Answering paragraph 19, the City generally and specifically denies all
26 allegations in this paragraph based on a lack of sufficient information or belief to
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28

1 answer. Additionally, the City affirmatively alleges that 47 U.S.C. Section
2 332(c)(7)(B)(ii) speaks for itself.
3

4 **THE CITY’S IMPROPERLY PROLONGED REVIEW OF THE**
5 **APPLICATION**

6 20. Answering paragraph 20, the City generally and specifically denies all
7 allegations in this paragraph. The City affirmatively alleges that the City Record
8 speaks for itself.
9

10 21. Answering paragraph 21, the City generally and specifically denies all
11 allegations in this paragraph. The City affirmatively alleges that the City Record
12 speaks for itself.
13

14 22. Answering paragraph 22, the City generally and specifically denies all
15 allegations in this paragraph. The City affirmatively alleges that the City Record
16 speaks for itself.
17

18 23. Answering paragraph 23, the City generally and specifically denies all
19 allegations in this paragraph. The City affirmatively alleges that the City Record
20 speaks for itself.
21

22 24. Answering paragraph 24, the City generally and specifically denies all
23 allegations in this paragraph. The City affirmatively alleges that the City Record
24 speaks for itself.
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1 25. Answering paragraph 25, the City generally and specifically denies all
2 allegations in this paragraph. The City affirmatively alleges that the City Record
3 speaks for itself.
4

5 26. Answering paragraph 26, the City generally and specifically denies all
6 allegations in this paragraph. The City affirmatively alleges that the City Record
7 speaks for itself.
8

9 27. Answering paragraph 27, the City generally and specifically denies all
10 allegations in this paragraph because they constitute legal conclusions to which the
11 City is not required to respond. The City affirmatively alleges that 47 U.S.C.
12 section 332(c)(7)(B)(ii) speaks for itself.
13

14 **THE CITY’S UNLAWFUL DENIAL OF THE APPLICATION**
15

16 28. Answering paragraph 28, the City generally and specifically denies all
17 allegations in this paragraph. The City affirmatively alleges that the City Record
18 speaks for itself.
19

20 29. Answering paragraph 29, the City generally and specifically denies all
21 allegations in this paragraph. The City affirmatively alleges that the City Record
22 and 47 U.S.C. section 332(c)(7)(B)(iv) speak for themselves.
23

24 30. Answering paragraph 30, the City generally and specifically denies all
25 allegations in this paragraph. The City affirmatively alleges that the City Record
26 speaks for itself.
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1 36. Answering paragraph 36, the City generally and specifically denies all
2 allegations in this paragraph based on a lack of sufficient information or belief to
3 answer.
4

5 37. Answering paragraph 37, the City generally and specifically denies all
6 allegations in this paragraph because they constitute legal conclusions to which the
7 City is not required to respond and based on a lack of sufficient information or
8 belief to answer.
9

10 38. Answering paragraph 38, the City generally and specifically denies all
11 allegations in this paragraph because they constitute legal conclusions to which the
12 City is not required to respond and based on a lack of sufficient information or
13 belief to answer.
14

15 39. Answering paragraph 39, the City generally and specifically denies all
16 allegations in this paragraph because they constitute legal conclusions to which the
17 City is not required to respond and based on a lack of sufficient information or
18 belief to answer.
19

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21 **GROUNDS FOR DECLARATORY RELIEF**

22 40. Answering paragraph 40, the City generally and specifically denies all
23 allegations in this paragraph because they constitute legal conclusions to which the
24 City is not required to respond and based on a lack of sufficient information or
25 belief to answer. Additionally, the City affirmatively alleges that the Complaint
26 speaks for itself.
27
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1 41. Answering paragraph 41, the City generally and specifically denies all
2 allegations in this paragraph because they constitute legal conclusions to which the
3 City is not required to respond.
4

5 **GROUND FOR WRIT OF MANDATE RELIEF**

6 42. Answering paragraph 42, the City generally and specifically denies all
7 allegations in this paragraph because they constitute legal conclusions to which the
8 City is not required to respond and based on a lack of sufficient information or
9 belief to answer. Additionally, the City affirmatively alleges that the Complaint
10 speaks for itself.
11

12 43. Answering paragraph 43, the City generally and specifically denies all
13 allegations in this paragraph because they constitute legal conclusions to which the
14 City is not required to respond.
15

16 **FIRST CAUSE OF ACTION**

17 **(Violation of 47 U.S.C. Section 332(c)(7)(B)(iii))**

18 **(Denial not Based on Substantial Evidence)**

19 44. Answering paragraph 44, the City incorporates by reference its
20 responses to paragraphs 1 through 43, above, as though set forth in full.
21

22 45. Answering paragraph 45, the City generally and specifically denies all
23 allegations in this paragraph because they constitute legal conclusions to which the
24 City is not required to respond. Additionally, the City affirmatively alleges that the
25 City Record speaks for itself.
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1 City is not required to respond. Additionally, the City affirmatively alleges that 47
2 U.S.C. Section 332(c)(7)(B)(ii)(II) speaks for itself.

3
4 **THIRD CAUSE OF ACTION**

5 **(Violation of 47 U.S.C. Section 332(c)(7)(B)(i)(I))**

6 **(Unreasonable Discrimination)**

7
8 51. Answering paragraph 51, the City incorporates by reference its
9 responses to paragraphs 1 through 50, above, as though set forth in full.

10 52. Answering paragraph 52, the City generally and specifically denies all
11 allegations in this paragraph. The City affirmatively alleges that 47 U.S.C. Section
12 332(c)(7)(B) speaks for itself.

13
14 53. Answering paragraph 53, the City generally and specifically denies all
15 allegations in this paragraph because they constitute legal conclusions to which the
16 City is not required to respond. The City affirmatively alleges that the City Record
17 and 47 U.S.C. Section 332(c)(7)(B)(i)(I) speak for themselves.

18
19 54. Answering paragraph 54, the City generally and specifically denies all
20 allegations in this paragraph based on a lack of sufficient information or belief to
21 answer.

22
23 55. Answering paragraph 55, the City generally and specifically denies all
24 allegations in this paragraph because they constitute legal conclusions to which the
25 City is not required to respond. The City affirmatively alleges that 47 U.S.C.
26 Section 332(c)(7)(B)(i)(I) speaks for itself.
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1 **FOURTH CAUSE OF ACTION**

2 **(Petition for Writ of Mandate Under**

3 **California Code Civ. Pro. Section 1094.5)**

4
5 56. Answering paragraph 56, the City incorporates by reference its
6 responses to paragraphs 1 through 55, above, as though set forth in full.
7

8 57. Answering paragraph 57, the City generally and specifically denies all
9 allegations in this paragraph because they constitute legal conclusions to which the
10 City is not required to respond. The City affirmatively alleges that the City Record
11 and the Los Angeles Municipal Code speak for themselves.
12

13 58. Answering paragraph 58, the City generally and specifically denies all
14 allegations in this paragraph because they constitute legal conclusions to which the
15 City is not required to respond.
16

17 **REQUEST FOR EXPEDITED REVIEW**

18
19 59. Answering paragraph 59, the City generally and specifically denies all
20 allegations in this paragraph. The City affirmatively alleges that 47 U.S.C. Section
21 332(c)(7)(B)(v) speaks for itself.
22

23 60. Answering paragraph 60, the City generally and specifically denies all
24 allegations in this paragraph because they constitute legal conclusions to which the
25 City is not required to respond and based on a lack of sufficient information or
26 belief to answer. The City affirmatively alleges that 47 U.S.C. Section
27 332(c)(7)(B)(v) speaks for itself.
28

1 **AFFIRMATIVE DEFENSES**

2 By asserting the following affirmative defenses, the City does not concede
3 that it bears the burden of proof on any such defense.
4

5 **FIRST AFFIRMATIVE DEFENSE**

6 1. As a first and separate affirmative defense, the City alleges that
7 Plaintiff is precluded by the doctrines of waiver and estoppel from raising in this
8 lawsuit any issues that were not specifically identified and raised in the proceedings
9 before the City.
10
11

12 **SECOND AFFIRMATIVE DEFENSE**

13 2. As a second and separate affirmative defense, the City alleges it acted
14 in full compliance with all relevant federal, state and local laws, standards,
15 procedures, and regulations.
16

17 **THIRD AFFIRMATIVE DEFENSE**

18 3. As a third and separate affirmative defense, the City alleges that 47
19 U.S.C. section 332(c)(7)(B)(ii), and the Federal Communications Commission's
20 interpretation of that statute, simply establish a rebuttable presumption of what is a
21 reasonable period of time to act on an application and that Petitioner carries the
22 ultimate burden of persuasion to demonstrate an unreasonable delay on an
23 application.
24 application.
25

26 ///

27 ///

1 DATED: August 9,
2
3 2016

Respectfully submitted,

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TERRY KAUFMANN MACIAS, Assistant City Attorney
KENNETH T. FONG, Deputy City Attorney
ERNESTO VELÁZQUEZ, Deputy City Attorney

6
7 By /S/ Ernesto Velazquez

ERNESTO VELÁZQUEZ

8
9 Attorneys for Defendant,
CITY OF LOS ANGELES

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