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6 OMNIPOINT COMMUNICATIONS, INC.

7 Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 1 of 16

8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA

11 OMNIPOINT COMMUNICATIONS,
12 INC., a Delaware corporation, d/b/a
T-MOBILE,

13 Plaintiff,

14 vs.

15 CITY OF SAN BERNARDINO;
16 COMMON COUNCIL OF THE CITY OF
SAN BERNARDINO, AND DOES 1-10,
17 INCLUSIVE

18 Defendants.

CASE NO.: CV08-01881 GAF (OPx)

COMPLAINT FOR:

- 19 (1) Violation of 47 U.S.C.
§ 332(c)(7)(B)(iii);
- 20 (2) Violation of 47 U.S.C.
§ 332(c)(7)(B)(i)(I);
- 21 (3) Violation of Supremacy Clause;
- 22 (4) Declaratory Relief; and
- 23 (5) Writ of Mandate

1 Plaintiff Omnipoint Communications, Inc. ("Omnipoint"), d/b/a T-Mobile, alleges
2 as follows:

3 **BRIEF SUMMARY**

4 1. Omnipoint brings this action to seek redress for the defendants' violation of
5 the Federal Telecommunications Act of 1966 ("Telecom Act"), arising from defendants'
6 denial of Omnipoint's application for a permit to install, maintain, and operate a wireless
7 telecommunications facility at 1838 West Baseline Street, San Bernardino, California. Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 2 of 16

8 **JURISDICTION AND VENUE**

9 2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331,
10 1337, 1367(a) and 2202, and 47 U.S.C. § 332. Venue is proper in this Court under 28
11 U.S.C. § 1391(b) in that the defendants reside in this district and a substantial part of the
12 events or omissions giving rise to the claims herein occurred in this district.

13 **THE PARTIES**

14 3. Plaintiff Omnipoint Communications, Inc. is a corporation duly organized
15 and operating under the laws of the State of Delaware with its principal place of business
16 in Bellevue, Washington. Omnipoint is authorized to do, and is doing, business within
17 the State of California, and in this judicial district. Omnipoint is a wholly owned
18 subsidiary of T-Mobile USA, Inc. ("T-Mobile"), also a Delaware corporation with its
19 principal place of business in Bellevue, Washington. T-Mobile is licensed to and does do
20 business within the State of California, including within this judicial district. Omnipoint
21 is the holder of the FCC PCS and AWS licenses to provide CMRS services within the
22 Southern California area. Omnipoint provides personal wireless services as defined
23 under federal law and markets them in Southern California under the T-Mobile name.
24 T-Mobile operates a national wireless network available to more than 280 million
25 Americans across the country.

26 4. Defendant City of San Bernardino ("City") is a city of the State of
27 California, located in this district.

1 5. Defendant Common Council of the City of San Bernardino is the governing
2 and legislative body of the City.

3 6. Omnipoint is informed and believes, and based thereon alleges, that at all
4 times mentioned herein, each of the defendants was the agent, joint venturer, partner,
5 servant, and/or employee of each of the other defendants, and each was acting within the
6 scope of its authority as such agent, joint venturer, partner, servant, and/or employee,
7 with the permission and consent of the defendants, and each of them.

Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 3 of 16

8 THE TELECOM ACT

9 7. By enacting the Telecom Act, Congress sought to promote the rapid
10 deployment of advanced communications services and to make such services available
11 everywhere in the country by creating a pro-competitive and de-regulated environment.
12 In furtherance of this goal, the Telecom Act protects the ability of telecommunications
13 service providers to deploy their systems nationwide and vests substantial jurisdiction
14 over the national telecommunications system in the Federal Communications
15 Commission ("FCC"). The Telecom Act also preempts state and local regulation, with
16 few exceptions, by imposing numerous restrictions on local land use authority:

17 (a) States and local governments cannot discriminate among providers of
18 functionally equivalent services;

19 (b) States and local governments cannot regulate placement, construction or
20 modification of wireless service facilities on the basis of radio frequency "RF" emissions
21 as long as the facilities comply with the FCC's RF emissions guidelines;

22 (c) States and local governments must support denials in writing with
23 substantial evidence contained in a written record.

24 THE IMPORTANCE OF THE TELECOM ACT

25 8. Wireless telephone service is essential to public safety and convenience.
26 From 1996 to 2006, the number of wireless telephone users has increased more than
27 fivefold -- from 44 million to more than 219 million wireless subscribers. There are now
28 more wireless subscriptions than landline telephone subscriptions in the United States.

1 Sixty-two percent of all Americans and over 90% of those in the 20 to 49 age range own
2 cell phones. For many Americans, cell phones have become an indispensable
3 replacement for traditional landline telephones. As of 2005, approximately 5.5% of all
4 Americans and 14% of 18 to 24 year olds lived in wireless-only households. Even when
5 they maintain both types of telephone service, Americans are opting increasingly to use
6 their cell phones over their landline telephones. From 1996 to 2004, Americans more
7 than quadrupled their time spent talking on their cell phones, while making only 20% of
8 the number of long-distance and local calls made over conventional landlines.

9 9. For Americans living in wireless-only homes and those outside of their
10 homes, cell phones are often their only lifeline in emergencies. Since 1995, the number
11 of 911 calls made by people using wireless phones has more than doubled, to over 50
12 million a year. Public safety agencies estimate that approximately 30% of the millions of
13 911 calls they receive daily are placed from cell phones, and the percentage is growing.

14 **OMNIPOINT'S EFFORTS TO OBTAIN A PERMIT FROM THE CITY**

15 10. On or about October 2, 2007, Omnipoint submitted an application to the
16 City seeking a conditional use permit ("CUP") for the establishment of a wireless
17 telecommunications facility at 1838 West Baseline Street, San Bernardino, California
18 (the "Location"). The proposed wireless telecommunications facility would consist of a
19 tower, camouflaged as a 70'0" palm tree, or "monopalm," and related equipment.

20 11. Prior to October 2, 2007, when Omnipoint applied for the subject permit, the
21 City of San Bernardino had authorized the construction of three separate monopalm
22 facilities at the Location. The third of these facilities was authorized by the City only 14
23 days after Omnipoint filed its application.

24 12. In order to approve a CUP, Section 19.36.050 of the City of San Bernardino
25 Development Code ("Section 19.36.050") requires the Planning Commission to make the
26 following findings:
27
28

- 1 (a) The proposed use is conditionally permitted within, and would not
2 impair the integrity and character of the subject land use district and
3 complies with all of the applicable provisions of the Development Code;
4 (b) The proposed use is consistent with the General Plan;
5 (c) The approval of the Conditional Use Permit for the proposed use is in
6 compliance with the requirements of the California Environmental
7 Quality Act and Section 19.20.030(6) of the Development Code;
8 (d) There will be no potentially significant negative impacts upon
9 environmental quality and natural resources that could not be properly
10 mitigated and monitored;
11 (e) The location, size, design, and operating characteristics of the proposed
12 use are compatible with the existing and future land uses within the
13 general area in which the proposed use is to be located and will not
14 create significant noise, traffic or other conditions or situations that may
15 be objectionable or detrimental to other permitted uses in the vicinity or
16 adverse to the public interest, health, safety, convenience, or welfare of
17 the City;
18 (f) The subject site is physically suitable for the type and density/intensity
19 of use being proposed; and
20 (g) There are adequate provisions for public access, water, sanitation, and
21 public utilities and services to ensure that the proposed use would not be
22 detrimental to public health and safety.

23 13. After thoroughly reviewing the application and supporting materials, and
24 addressing the requirements of Section 19.36.050, the City staff submitted a report to the
25 Planning Commission recommending that the Planning Commission approve
26 Omnipoint's application. With regard to the requirements of Section 19.36.050, the City
27 staff reported:
28

- 1 (a) The site currently has two existing monopalm towers and equipment
2 enclosures and was recently approved to have another monopalm tower.
3 All of the facilities are or will be landscaped by a few live palm trees
4 and shrubs. The proposal of an additional monopalm
5 telecommunications facility would not alter the character of the site, and
6 would therefore not impair the integrity and character of the subject land
7 use district. In addition, the camouflaged telecommunication facility
8 would comply with the applicable provisions of the Development Code.
- 9 (b) The proposed tower is consistent with a number of General Plan goals
10 and policies. General Plan Policy 9.8.1 (Utilities) provides for the
11 continued development and expansion of telecommunication systems.
12 General Plan Goal 2.2 (Land Use) promotes development that integrates
13 with and minimizes impacts on surrounding land uses. Operation of the
14 antenna and tower would not be apparent to the surrounding residential
15 neighborhood, and would provide for continued development of the
16 wireless telecommunications system. Finally, the new monopalm would
17 also be consistent with Community Design Policy 5.2.4 for screening of
18 above-ground support structures.
- 19 (c) The approval of a Conditional Use Permit for the 70'0" monopalm
20 wireless facility is in compliance with the requirements of CEQA and
21 Development Code §19.20.030(6), in that the project is exempt from
22 CEQA under Section 15303 for new construction of small structures.
- 23 (d) The site is not located within an area identified by the General Plan as
24 having potentially significant biological resources or other potentially
25 sensitive natural resources. The property is already disturbed by two
26 existing telecommunication towers and is surrounded by urban
27 development. No potentially significant impacts on environmental
28 quality or natural resources can be anticipated to result from the

1 proposed project. Therefore, no environmental mitigation would be
2 necessary.

3 (e) The site currently has two existing monopalm towers, two equipment
4 enclosures and is landscaped by a few live palm trees. On October 16,
5 2007, the Planning Commission approved another monopalm tower and
6 equipment enclosure. Therefore, the proposal is harmonious and
7 compatible with existing improvements on the project site and future
8 development within the land use district and general area. Currently,
9 surrounding parcels to the north and northwest are developed with
10 single-family houses and to the southwest and east are vacant properties.
11 These surrounding properties are located within residential and
12 commercial land use districts. Since the proposed project and related
13 site improvements would be consistent with the existing uses on site, the
14 proposed monopalm facility would not be detrimental to surrounding
15 uses or adverse to the public interest, health, safety, convenience, or
16 welfare of the City.

17 (f) Although the subject parcel is approximately 23,000 square feet in size,
18 it has a narrow lot width of 50 feet and an extremely long lot depth of
19 460 feet. Due to the unusual lot dimensions, this parcel is not suitable
20 for commercial development. However, the site is sufficient in size for
21 the proposed telecommunications facility. The intensity of the proposed
22 project would be negligible and would not negatively affect surrounding
23 properties. The proposed monopalm site will be accessible by an
24 existing 12' wide paved driveway from Baseline Street. Therefore,
25 there are no physical constraints or conditions on the site that would
26 prevent development of the project.

27 (g) The existing site currently has adequate provisions for public access,
28 water, and public utilities and services. The proposed use will not create

1 additional demands for access, water, sanitation, or other public
2 services. All necessary public and private utilities currently serve the
3 site. Therefore, the proposed use will not be detrimental to public health
4 and safety.

5 14. On November 20, 2007, the Planning Commission held a public hearing on
6 Omnipoint's application. After eliciting public comments and considering the
7 recommendation and report filed by the City staff, the Planning Commission
8 Omnipoint's request for a CUP, adopting the staff's recommended findings, as set forth
9 above. Shortly thereafter, a project opponent appealed the Planning Commission's
10 decision.

11 15. On February 4, 2008, at a public hearing, the Common Council for the City
12 of San Bernardino ("Council") considered the appeal from the Planning Commission's
13 approval of Omnipoint's application. Despite the City staff's recommendation to deny
14 the appeal and uphold the Planning Commission's approval of the CUP application, the
15 Council voted, four to three, to reverse the Planning Commission's decision. So that City
16 staff could prepare a report with recommended findings supporting the reversal, the
17 Council continued the hearing to February 19, 2008.

18 16. As directed by the Council, the City staff prepared a second report, and on
19 February 19, 2008, the Council adopted the findings and facts stated therein. Based on
20 the statements from this second report, the Council attempted to justify its reversal on
21 ambiguous aesthetic and general welfare grounds, among other grounds, stating that the
22 wireless monopalm facility would

23 impair the integrity and character of the subject land use
24 district, would not be compatible with existing land uses within
25 the general area in which the project is proposed to be located,
26 would create significant noise and other conditions that would
27 be objectionable or detrimental to other permitted land uses in
28

1 the vicinity, and would be generally adverse to the public
2 interest, safety, convenience, or welfare of the City.

3 **FIRST CLAIM FOR RELIEF**

4 **(Violation of 47 U.S.C. § 332(c)(7)(B)(iii):**

5 **No Substantial Evidence – Against All Defendants)**

6 17. Omnipoint incorporates herein by this reference, as though fully set forth,
7 each and every allegation contained in paragraphs 1-16, inclusive. Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 9 of 16

8 18. The denial of Omnipoint's CUP application was not supported by substantial
9 evidence contained in a written record, and therefore violates 47 U.S.C. §
10 332(c)(7)(B)(iii). In addition, the defendants relied on grounds for which there is no
11 support under state or local law.

12 19. Omnipoint has been injured by the above-described violation of the law, and
13 cannot be adequately compensated in money damages for its injury.

14 **SECOND CLAIM FOR RELIEF**

15 **(Violation of 47 U.S.C. § 332(c)(7)(B)(i)(I): Discrimination Among Providers of**

16 **Functionally Equivalent Services – Against All Defendants)**

17 20. Omnipoint incorporates herein by this reference, as though fully set forth,
18 each and every allegation contained in paragraphs 1-16, inclusive.

19 21. Omnipoint is a commercial mobile radio services ("CMRS") provider, as
20 defined by the Telecom Act, and provides broadband PCS service on a common carrier
21 basis.

22 22. Omnipoint is presently in the process of attempting to deploy its network in
23 the City of San Bernardino, by installation and operation of a functional and competitive
24 infrastructure throughout the City.

25 23. Defendants have approved similar applications by Omnipoint's competitors,
26 providers of functionally equivalent services, and there is no reasonable basis upon which
27 to discriminate between Omnipoint and its competitors.

1 24. Omnipoint has been injured by the above-described violation of the law, and
2 cannot be adequately compensated in money damages for its injury.

3 **THIRD CLAIM FOR RELIEF**

4 **(Supremacy Clause – Against All Defendants)**

5 25. Omnipoint incorporates herein by this reference, as though fully set forth,
6 each and every allegation contained in paragraphs 1-24, inclusive.

7 26. The defendants' actions described above violate § 332(c)(7)(B)(i) and
8 332(c)(7)(b)(i)(I) of the Telecom Act, and are preempted by the Supremacy Clause of the
9 United States Constitution.

10 27. Omnipoint has been injured by the above-described violation of the law, and
11 cannot be adequately compensated in money damages for its injury.

12 **FOURTH CLAIM FOR RELIEF**

13 **(Declaratory Judgment – Against All Defendants)**

14 28. Omnipoint incorporates herein by this reference, as though fully set forth,
15 each and every allegation contained in paragraphs 1-27, inclusive

16 29. An actual controversy exists between the parties in that Omnipoint has
17 sought to exercise the rights described above and defendants have denied that Omnipoint
18 has those rights, denied that their actions interfere with those rights, and have sought to
19 exercise authority not vested in them in a manner that deprives Omnipoint of those rights.
20 Moreover, the enforcement of the requirements described above places Omnipoint in a
21 dilemma that it was the purpose of the Declaratory Judgment Act to ameliorate, in that
22 compliance with the unlawful requirements imposed on Omnipoint will be costly and
23 non-compliance may be even more costly. The validity of these requirements and
24 defendants' actions are therefore ripe for review.

25 30. This controversy lies within the Court's jurisdiction because the rights in
26 dispute arise under the laws of the United States, there is complete diversity between the
27 parties, and the amount in controversy exceeds \$75,000.
28

1 **FIFTH CLAIM FOR RELIEF**

2 **(Writ of Mandate – Against All Defendants)**

3 31. Omnipoint incorporates herein by this reference, as though fully set forth,
4 each and every allegation contained in paragraphs 1-30, inclusive.

5 32. By virtue of the acts and omissions described above, and the requirements
6 imposed by defendants, defendants have abused their discretion, and have failed to
7 comply with mandatory legal duties to which they are subject. Filed 03/20/2008 Page 11 of 16

8 33. As a result of the defendants’ failure to comply with their mandatory legal
9 duties, and their abuse of discretion, Omnipoint has been injured in that it has been
10 prevented from developing its telecommunications infrastructure in the City of San
11 Bernardino. This injury continues, and will continue, unless and until defendants are
12 compelled to authorize Omnipoint’s facilities. Such facilities are necessary to provide
13 full coverage and service to Omnipoint’s customers within the City.

14 34. Omnipoint has a beneficial interest in the issuance of the writ of mandate as
15 the applicant for the permit required to erect its facilities in the City. Omnipoint’s rights
16 and interests have been adversely affected, and its use and enjoyment of its rights have
17 been denied, and will continue to be denied, until the requisite permit is issued.
18 Omnipoint has met all lawful requirements for issuance of that permit and has no
19 adequate remedy at law to obtain the permit. Omnipoint therefore is entitled to a writ of
20 mandate by this Court compelling the defendants to issue to Omnipoint the requested
21 CUP and all other permits necessary to the maintenance and operation of Omnipoint’s
22 wireless telecommunications facility.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, plaintiff prays for judgment as follows:

25 1. On the First through Third Claims for Relief:

26 For a temporary restraining order, and preliminary and permanent
27 injunctions prohibiting defendants from enforcing the requirements imposed upon the
28

1 exercise of Omnipoint's legal rights, and compelling the defendants to comply with their
2 obligations under the law and issue the requested permit to Omnipoint.

3 2. On the Fourth Claim for Relief:

4 For a declaration by the Court that the requirements imposed and relied upon
5 by the defendants, and the actions and omissions described above, violated the relevant
6 provisions of the Telecom Act and the Supremacy Clause of the United States
7 Constitution. Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 12 of 16

8 3. On the Fifth Claim for Relief:

9 A writ of mandate compelling the defendants to comply with their legal duty
10 to issue the requested permit.

11 4. On all Claims for Relief:

12 An award of costs and reasonable attorneys' fees, and all other relief that the
13 Court may deem just and proper.

14
15 Dated: March 20, 2008

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
JOHN J. FLYNN III

16
17 By: 

18 John J. Flynn III

19 Attorneys for Plaintiff
20 OMNIPOINT COMMUNICATIONS, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Gary A. Fees and the assigned discovery Magistrate Judge is Oswald Parada.

Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 13 of 16

The case number on all documents filed with the Court should read as follows:

CV08 - 1881 GAF (OPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

John J. Flynn III (SBN 76419)
Nossaman Guthner Knox & Elliott, LL

18101 Von Karman Avenue, Suite 1800
Irvine, California 92612
(949) 833-7800

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

OMNIPOINT COMMUNICATIONS, INC., a
Delaware corporation, d/b/a/ T-MOBILE,

Plaintiff(s)

CASE NUMBER

CV08-01881 GAF (OPx)

Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 14 of 16

v.

CITY OF SAN BERNARDINO, COMMON COUNCIL
OF THE CITY OF SAN BERNARDINO; and DOES
1-10, inclusive.

Defendant(s)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
John J. Flynn III, whose address is:

Nossaman, Guthner, Knox & Elliott, LLP, 18101 Von Karman Avenue, Suite 1800,
Irvine, California 92612-0177

an answer to the complaint amended complaint counterclaim cross-
claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded
in the complaint.

CLERK, U.S. DISTRICT COURT

Date: MAR 20 2008

By: _____

ROLLS ROYCE PASCHAL

Deputy Clerk

(Seal of the Court) 1144

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

(a) PLAINTIFFS (Check box if you are representing yourself)
OMNIPOINT COMMUNICATIONS, INC., a Delaware corporation, d/b/a

DEFENDANTS
CITY OF SAN BERNARDINO, COMMON COUNCIL OF THE CITY OF SAN BERNARDINO

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

County of Residence of First Listed Defendant (in U.S. Plaintiff Cases Only)
San Bernardino

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Attorneys (If Known)

John J. Flynn III (SBN 76419)
Nossaman Guthner Knox & Elliott, LLP

18101 Von Karman Avenue, Suite 1800
Irvine, California 92612
(949) 833-7800

Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 15 of 16

II. BASIS OF JURISDICTION (Place an X in one box only.)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. 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 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** N/A

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

47 U.S.C. section 332(c)(7)(B)(i)(I); 47 U.S.C. 332(c)(7)(B)(iii); Defendants violated Plaintiff's rights under the Federal Telecommunications Act of 1996

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
400 State Reapportionment	110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	510 Motions to Vacate Sentence Habeas Corpus	710 Fair Labor Standards Act
410 Antitrust	120 Marine	310 Airplane	370 Other Fraud	530 General	720 Labor/Mgmt. Relations
430 Banks and Banking	130 Miller Act	315 Airplane Product Liability	371 Truth in Lending	535 Death Penalty	730 Labor/Mgmt. Reporting & Disclosure Act
450 Commerce/ICC Rates/etc.	140 Negotiable Instrument	320 Assault, Libel & Slander	380 Other Personal Property Damage	540 Mandamus/Other	740 Railway Labor Act
460 Deportation	150 Recovery of Overpayment & Enforcement of Judgment	330 Fed. Employers' Liability	385 Property Damage Product Liability	550 Civil Rights	790 Other Labor Litig.
470 Racketeer Influenced and Corrupt Organizations	151 Medicare Act	340 Marine	BANKRUPTCY	555 Prison Condition	791 Empl. Ret. Inc. Security Act
480 Consumer Credit	152 Recovery of Defaulted Student Loan (Excl. Veterans)	345 Marine Product Liability	422 Appeal 28 USC 158	FORFEITURE/PENALTY	PROPERTY RIGHTS
490 Cable/Sat TV	153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	423 Withdrawal 28 USC 157	610 Agriculture	820 Copyrights
810 Selective Service	160 Stockholders' Suits	355 Motor Vehicle Product Liability	CIVIL RIGHTS	620 Other Food & Drug	830 Patent
850 Securities/Commodities/Exchange	190 Other Contract	360 Other Personal Injury	441 Voting	625 Drug Related Seizure of Property 21 USC 881	840 Trademark
875 Customer Challenge 12 USC 3410	195 Contract Product Liability	362 Personal Injury-Med Malpractice	442 Employment	630 Liquor Laws	SOCIAL SECURITY
<input checked="" type="checkbox"/> 890 Other Statutory Actions	196 Franchise	365 Personal Injury-Product Liability	443 Housing/Accommodations	640 R.R. & Truck	861 HIA (1395ff)
891 Agricultural Act	REAL PROPERTY	368 Asbestos Personal Injury Product Liability	444 Welfare	650 Airline Regs	862 Black Lung (923)
892 Economic Stabilization Act	210 Land Condemnation		445 American with Disabilities - Employment	660 Occupational Safety/Health	863 DIWC/DIWW (405(g))
893 Environmental Matters	220 Foreclosure		446 American with Disabilities - Other	690 Other	864 SSID Title XVI
894 Energy Allocation Act	230 Rent Lease & Ejectment		440 Other Civil Rights		865 RSI (405(g))
895 Freedom of Info Act	240 Torts to Land				FEDERAL TAX SUITS
900 Appeal of Fee Determination Under Equal Access to Justice	245 Tort Product Liability				870 Taxes (U S Plaintiff or Defendant)
950 Constitutionality of State Statutes	290 All Other Real Property				871 IRS - Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes
If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: CV08-01881 GAF (OPx)

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
 - B. Call for determination of the same or substantially related or similar questions of law and fact; or
 - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

Case 2:08-cv-01881-GAF-OP Document 1 Filed 03/20/2008 Page 16 of 16

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

Delaware

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

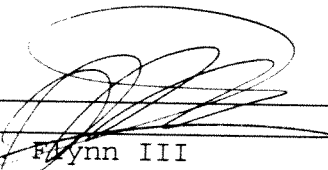
Check here if the U.S. government, its agencies or employees is a named defendant.

San Bernardino County

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

San Bernardino County

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date 3/20/08

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))