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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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COLFAXNET, LLC,  
  
                                Plaintiff,  
  
          v.  
  
CITY OF COLFAX,  
  
                                Defendant.

No.2:19-cv-2167 WBS-CKD

MEMORANDUM AND ORDER RE:  
PLAINTIFF'S OBJECTIONS TO  
DISCOVERY ORDER OF MAGISTRATE  
JUDGE DELANEY DATED AUGUST  
19, 2020

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Plaintiff ColfaxNet, LLC ("Plaintiff"), brought this action against Defendant City of Colfax ("Defendant") alleging violations of the Federal Telecommunications Act ("FTA"), 47 U.S.C. § 332(c)(7)(B) and 47 U.S.C. § 1455, and its implementing regulations codified at 47 C.F.R. § 1600. Plaintiff seeks declaratory and injunctive relief in the form of a court order stating that the defendant violated the FCA and mandating that the defendant issue the requisite permits for plaintiff to proceed with the placement, construction, and/or modification of the ColfaxNet wireless service facilities proposed in the

1 applications. (See generally Compl. (Docket No. 1).) Plaintiff  
2 additionally requests that the court hear and decide this action  
3 on an expedited basis pursuant to 47 U.S.C. § 332(c)(7)(B)(v).<sup>1</sup>  
4 Before the court is the "Objection of Plaintiff ColfaxNet, LLC to  
5 Discovery Order of Magistrate Judge dated August 19, 2020."  
6 ("Objections") (Docket No. 31.)

7 I. Factual and Procedural Background

8 On October 25, 2019, plaintiff ColfaxNet, LLC,  
9 ("Plaintiff") brought this action against defendant City of  
10 Colfax ("Defendant") alleging violations of the Federal  
11 Telecommunications Act ("FTA"), 47 U.S.C. § 332(c)(7)(B) and 47  
12 U.S.C. § 1455, and its implementing regulations codified at 47  
13 C.F.R. § 1600. Plaintiff alleges in its operative complaint that  
14 the defendant: (i) did not act on plaintiff's request to modify  
15 an existing wireless communication facility within a reasonable  
16 period of time, (ii) failed to draft a written denial of the  
17 plaintiff's request supported by a written record, (iii)  
18 improperly considered radio frequency emissions in issuing the  
19 denial of plaintiff's request, (iv) unlawfully prohibited  
20 plaintiff from providing service, and (v) unlawfully denied  
21 plaintiff's eligible facilities request. (See generally Compl.  
22 (Docket No. 1).)

23 The parties filed a Rule 26(f) discovery plan on  
24 February 18, 2020, which contemplated discovery cut-offs and  
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26 <sup>1</sup> Plaintiff has not stated what time frame is required by  
27 the statute and has not cited any cases explaining what  
28 "expedited review" means or the timeline anticipated in these  
cases. Defendant does not appear to have even acknowledged this  
requirement.

1 limitations. Specifically, the parties expected to "propound up  
2 to 20 each of Interrogatories, Requests for Admission, and  
3 Requests for Production" and to "take up to eight percipient  
4 witness depositions, including Party depositions, each." (See  
5 Joint Status Report at 3) (Docket No. 7.) The plan did not state  
6 that the matter should be solely decided on the administrative  
7 record. (See generally Joint Status Report.)

8 Defendant served plaintiff with requests for  
9 written discovery on April 16, 2020. (Joint Statement Re:  
10 Discovery Disagreement at 2 ("Joint Statement") (Docket No. 25.)  
11 Defendant served plaintiff with notices of deposition for the two  
12 principals, Corey and Lynele Juchau, on May 6, 2020.

13 (Declaration of Mark Epstein in Support of Mot. to Compel at ¶ 4  
14 ("Epstein Decl.") (Docket No. 16).) After receiving two courtesy  
15 extensions from defendant to respond to the written discovery,  
16 plaintiff objected to each discovery request made by defendant.  
17 (Id.) Nearly every objection included the following, or  
18 substantially similar statement: "To the extent the request seeks  
19 information beyond the administrative record that is subject to  
20 review in this case, it is overbroad, unduly burdensome, and has  
21 no relevance to the claims or defenses raised." (See generally  
22 id. at Ex. K-N.) Plaintiff's counsel also informed defendant  
23 that they wished to put off the depositions because the motion  
24 for summary judgment would be dispositive and resolve the case  
25 without the need for those depositions. (Id. at ¶ 9).

26 Defendant filed a Motion to Compel Plaintiff's  
27 Responses to Written Discovery, Production of Documents, and  
28 Appearance at Deposition on July 10, 2020. ("Mot. to Compel")

1 (Docket No. 15). The hearing on that motion was set for August  
2 12, 2020 before Magistrate Judge Delaney. (See id.) Plaintiff  
3 filed for summary judgment on August 3, 2020, more than three  
4 weeks after defendant moved to compel discovery. (See Pl.'s Mem.  
5 in Supp. of Summ. J ("MSJ") (Docket No. 22-1).)<sup>2</sup> The parties  
6 submitted their Joint Statement regarding the discovery dispute  
7 only two days later, on August 5, 2020. (See generally Joint  
8 Statement.)

9 On August 19, 2020, Judge Delaney issued an order  
10 granting defendant's Motion to Compel Discovery Responses and  
11 ordering Plaintiff to respond to defendant's written discovery  
12 within 30 days and present ColfaxNet's principals for deposition  
13 within 90 days. (Order Granting Mot. to Compel Discovery  
14 Responses at 10 ("Order") (Docket No. 27).) Judge Delaney  
15 awarded defendant's attorney's fees, ruling that "plaintiff  
16 unreasonably and without justification refused to respond to  
17 discovery in this matter." (See Order at 9.) Plaintiff  
18 requested reconsideration of Judge Delaney's order on September  
19 2, 2020. (See generally Objections.) Defendant replied to that  
20 request on September 9, 2020. (See Df.'s Opp. to Pl.'s  
21 Objection/ Request for Reconsideration of Discovery Order ("Reply  
22 to Objections") (Docket No. 34).)

## 23 II. Discussion

24 A party seeking reconsideration of the Magistrate

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26 <sup>2</sup> Plaintiff ColfaxNet has not moved for summary judgment  
27 on two counts in their complaint (denial not based on substantial  
28 evidence and effective prohibition of wireless service.) (See  
Reply Brief of Plaintiff ColfaxNet, LLC in Support of Motion for  
Summary Judgment at 2) (Docket No. 30).)

1 judge's ruling shall file a request for reconsideration by a  
2 Judge and serve the Magistrate Judge and all parties. See Loc.  
3 R. 303(c). Such request shall specifically designate the ruling,  
4 or part thereof, objected to and the basis for that objection.  
5 Id. "The standard that the assigned Judge shall use in all such  
6 requests is the 'clearly erroneous or contrary to law' standard  
7 set forth in 28 U.S.C. § 636(b)(1)(A)." See Loc. R. 303(f); See  
8 Fed. R. Civ. P. 72(a).

9 Federal Rule of Civil Procedure 26(b)(1) states that  
10 unless otherwise limited by court order, "parties may obtain  
11 discovery regarding any nonprivileged matter that is relevant to  
12 any party's claim or defense and proportional to the needs of  
13 the case." Fed. R. Civ. P. 26(b)(1). Information within the  
14 scope of discovery "need not be admissible in evidence to be  
15 discoverable." Id. The Court is vested with broad discretion  
16 to manage discovery. See Hunt v. County of Orange, 672 F.3d  
17 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor  
18 Prods., 406 F.3d 625, 635 (9th Cir. 2005).

19 First, plaintiff claims that the Magistrate Judge  
20 focused solely on ColfaxNet's contentions that no discovery was  
21 necessary or appropriate due to the pending motion for summary  
22 judgment and that defendant's discovery requests were improper  
23 because they sought information beyond the administrative record.  
24 (See Objections at 3.) Plaintiff argues that because of this,  
25 the Magistrate Judge did not consider or require defendant to  
26 demonstrate relevance, proportionality, or any of the other  
27 factors governing the permissible scope of the discovery requests  
28

1 under Federal Rule of Civil Procedure 26(b)(1).<sup>3</sup> (See id.)  
2 Defendant contends that its discovery requests fall well within  
3 the proper scope of Federal Rule of Civil Procedure 26(b)(1)  
4 because they seek to compel plaintiff to produce the basic and  
5 non-privileged information upon which it bases its claims against  
6 defendant in this case. (See Reply to Objections at 3.)

7 Plaintiff's argument is without merit because Judge  
8 Delaney specifically stated that "the parties can assume that the  
9 court has determined that any objection not discussed in this  
10 order has been overruled because it is too general or otherwise  
11 meritless." (See Order at 3.) Thus, the fact that the  
12 Magistrate Judge did not specifically detail whether each request  
13 satisfied each element of Rule 26(b)(1) does not indicate that  
14 she disregarded plaintiff's arguments as to the relevance of the  
15 discovery requests or whether such requests were unduly  
16 burdensome under Rule 26(b)(1).

17 Plaintiff additionally objects to the Magistrate  
18 Judge's Order on the basis that defendant has not cited to any  
19 piece of discovery relevant to any of the four counts moved for  
20 on the Motion for Summary Judgment. (See Objections at 3-4.)  
21 Although this issue is relevant to the question of whether the

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22 <sup>3</sup> Although plaintiff criticizes the Magistrate Judge for  
23 allegedly not ruling as to whether each of defendant's discovery  
24 requests were proportional to the needs of this case, in the  
25 entire Joint Statement submitted to the Magistrate Judge, which  
26 totals 131 pages, plaintiff never even mentions the word  
27 proportional in their objections to defendant's requests.  
28 Instead, plaintiff repeats variations of their boilerplate  
objection that to the extent that information is sought beyond  
the administrative record it is "overbroad, unduly burdensome and  
has no relevance to the claims or defenses raised." (See  
generally Joint Statement.)

1 court's ruling on the pending summary judgment motion should be  
2 postponed until defendant receives discovery pursuant to Federal  
3 Rule of Civil Procedure 56(d), it has no bearing on the issue  
4 here.<sup>4</sup> The defendant is clearly entitled to take discovery  
5 "regarding any nonprivileged matter that is relevant to any  
6 party's claim or defense." Fed. R. Civ. P. 26(b)(1).

7 Finally, plaintiff objects to the Magistrate Judge's  
8 award of attorney's fees to defendant. Under Federal Rule of  
9 Civil Procedure 37(a)(5)(A), if a motion to compel is granted,  
10 the court must require the party whose conduct occasioned the  
11 motion "to pay the movant's reasonable expenses incurred in  
12 making the motion, including attorney's fees." Fed. R. Civ. P.  
13 37(a)(5)(A). The court must not award attorney's fees if:

- 14 (i) the movant filed the motion before attempting  
15 in good faith to obtain the disclosure or  
16 discovery without court action;
- 17 (ii) the opposing party's nondisclosure, response,  
18 or objection was substantially justified; or
- 19 (iii) other circumstances make an award of expenses  
20 unjust.

20 Fed. R. Civ. P. 37(a)(5)(A).

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21 <sup>4</sup> Moreover, plaintiff's claim that the discovery sought  
22 does not touch on any of the issues which are the subject of the  
23 motion for summary judgment lacks support. As just one example,  
24 plaintiff claims that the city failed to approve the ColfaxNet  
25 eligible facilities request in violation of 47 U.S.C. § 1455 and  
26 47 C.F.R. §1.6100. (MSJ at 11.) One of defendant's defenses is  
27 that ColfaxNet's proposed tower was not an "eligible facilities  
28 request." (Def.'s Mem. in Opp. of Mot. for Summ. J. at 18)  
("Opp. to MSJ" (Docket No. 28).) Defendant's Interrogatory No.  
11 goes directly to this request and defense and seeks to  
discover the facts upon which plaintiff bases this assertion.  
(See Joint Statement at 37.)

1           None of these exceptions apply here. First, the  
2 defendant attempted to resolve the discovery dispute before  
3 bringing the matter to the court. The parties met on June 4,  
4 2020 via Zoom to meet and confer and resolve all pending  
5 discovery disputes. (See Epstein Decl. at ¶ 16.) Second,  
6 plaintiff's objections and response to defendant's discovery  
7 requests were not substantially justified. As Judge Delaney  
8 points out, "[p]laintiff was afforded multiple opportunities to  
9 inform defendant of its position, but instead decided to rest on  
10 its boiler-plate objections." (See Order at 9.) That these  
11 boilerplate responses and objections by the plaintiff were  
12 inadequate and deficient seems evident to even the plaintiff, as  
13 they felt the need to include expanded rationales for their  
14 objections in their Objections to Judge Delaney's Order. (See  
15 Objections at 9-22.) Third, there are no other circumstances  
16 that make an award of expenses unjust. Plaintiff points out that  
17 they are a very small company, owned and managed by a husband and  
18 wife. (See Objections at 7.) However, had plaintiff produced  
19 the discovery that they previously agreed to in a timely and  
20 adequate fashion, the expense of these motions could have been  
21 avoided.

22           Accordingly, because plaintiff has not demonstrated  
23 that the Magistrate Judge's decision to compel plaintiff to  
24 comply with defendant's discovery requests was "clearly  
25 erroneous" or "contrary to law" as required under Local Rule  
26 303(g) and Federal Rule of Civil Procedure 72(a), plaintiff's  
27 request for reconsideration of the Magistrate Judge's order is  
28 hereby DENIED. Plaintiff is ORDERED to comply with the

1 Magistrate Judge's Order (Docket No. 27) within 30 days from the  
2 date of this Order.

3 Dated: September 14, 2020



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4 WILLIAM B. SHUBB  
5 UNITED STATES DISTRICT JUDGE  
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