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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
ORDER RE: PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

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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 alleges in its operative complaint that the defendant: (i) did not act on plaintiff's request to modify an existing wireless communication facility within a reasonable period of time, (ii) failed to draft a written denial of the plaintiff's request supported by a written record, (iii) improperly considered radio frequency

1 emissions in issuing the denial of plaintiff's request, (iv)
2 unlawfully prohibited plaintiff from providing service, and (v)
3 unlawfully denied plaintiff's eligible facilities request. (See
4 generally Compl. (Docket No. 1).)

5 Plaintiff seeks declaratory and injunctive relief in
6 the form of a court order stating that the defendant violated the
7 FCA and mandating that the defendant issue the requisite permits
8 for plaintiff to proceed with the placement, construction, and/or
9 modification of the ColfaxNet wireless service facilities
10 proposed in the applications. (See generally Compl. (Docket No.
11 1).)

12 On August 3, 2020, plaintiff filed a Motion for Summary
13 Judgment.¹ ("MSJ") (Docket No. 22.) On August 25, 2020,
14 defendant filed its opposition to Plaintiff's motion, in which
15 defendant requested, inter alia, that the court defer deciding
16 plaintiff's motion for summary judgment until plaintiff complies
17 with its court-ordered discovery obligations. (Docket No. 28.)

18 Federal Rule of Civil Procedure 56(d)(1) provides that
19 if a nonmovant shows by affidavit or declaration that, for
20 specified reasons, it cannot present facts essential to justify
21 its opposition, the court may "defer considering the motion or
22 deny it." Fed. R. Civ. P. 56(d)(1). The Supreme Court has
23 recognized that this rule prevents parties from being
24 "railroaded" by premature motions if the nonmoving party has not
25 had an opportunity to make full discovery. See Celotex Corp. v.

26 ¹ 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
Pl.'s Reply at 2) (Docket No.30).)

1 Catrett, 477 U.S. 317, 326 (1986).

2 Pursuant to the discussion with the parties at the
3 hearings held on September 8 and 14, 2020, the court will grant
4 defendant's request to defer consideration of the summary
5 judgment motion in order to allow defendant to conduct limited
6 discovery to respond to plaintiff's motion for summary judgment.
7 Accordingly, the court ORDERS as follows:

8 1. On or before September 29, 2020, plaintiff shall
9 respond to defendant's Interrogatories Nos. 2, 4, 7, 13, and 14
10 and defendant's Request for Admission No. 5. Plaintiff shall
11 also produce the principals of ColfaxNet LLC, Corey and Lynele
12 Juchau, for their respective depositions, which shall be
13 completed by September 29, 2020. The depositions shall each be
14 completed within four hours, without subject matter limitation,
15 and with the understanding that the time consumed by objections
16 of counsel and any discussion of objections will not count
17 against the four-hour time limitation.


18 2. Defendant shall have until October 13, 2020 to
19 file its amended Opposition to Plaintiff's Motion for Summary
20 Judgment.

21 3. Plaintiff shall have until October 20, 2020 to
22 submit its amended Reply Brief in Support of Plaintiff's Motion
23 for Summary Judgment.

24 4. The hearing on the Motion for Summary Judgment
25 will be held at 1:30 PM on November 2, 2020.

26 IT IS SO ORDERED.

27 Dated: September 14, 2020

28 
WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE