

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 17-cv-02535-CMA-STV

Consolidated for all purposes with Civil Action No. 17-cv-02862-CMA-STV

ECO-SITE LLC, a Delaware limited liability company, and
T-MOBILE WEST LLC, a Delaware limited liability company,

Plaintiffs,

v.

COUNTY OF PUEBLO, COLORADO, a Colorado County, acting by and through its
Board of County Commissioners,

Defendant, and

SAM C. BROWN,

Intervenor Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR
ORAL ARGUMENT ON SUMMARY JUDGMENT AND SETTING HEARING**

This matter is before the Court upon Plaintiffs Eco-Site, LLC (“Eco-Site”) and T-Mobile West, LLC (“T-Mobile”) (collectively, “Plaintiffs’) Motion for Oral Argument on Plaintiffs’ Motions for Summary Judgment. (Doc. # 88.) For the reasons described herein, the Court grants in part and denies in part Plaintiffs’ Motion for Oral Argument.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from two cases involving the same Plaintiffs and Defendant Board of County Commissioners for the County of Pueblo, Colorado,¹ and substantially similar claims under the Federal Telecommunications Act of 1996,⁴⁷ U.S.C. § 332(c)(7), *et seq.* In both cases, Plaintiffs alleges that Defendant unlawfully denied their requests to construct telecommunications towers at two sites in Pueblo County. The Court consolidated for all purposes the two cases on April 9, 2018, and described the factual and procedural background of the matters in its Order Granting Defendant's Motion to Consolidate Cases. (Doc. # 24.) The Court incorporates herein its recounting of the facts from its April 9, 2018, Order. *See (id.)* It details factual and procedural developments only to the extent necessary to address Plaintiffs' Motion for Oral Argument.

On September 27, 2018, the Federal Communications Commission ("FCC") issued its Declaratory Ruling and Third Report and Order in *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 9088 (Sept. 27, 2018) (the "Declaratory Ruling"). *See* (Doc. # 66-3 at 146.) On January 10, 2019, the Court of Appeals for the Tenth Circuit denied a request by several cities to stay the Declaratory Ruling, *City of San Jose, Cal. v. FCC*, No. 18-9568 (10th Cir. Jan. 10, 2019), and the Declaratory Ruling is therefore presently in effect.

¹ The Court granted Sam C. Brown's request to intervene in this matter as a Defendant Intervenor on October 29, 2018. (Doc. # 55.) Defendant Intervenor Brown owns property adjacent to one of the proposed sites for Plaintiffs' wireless communication facilities. (*Id.* at 2.)

On March 1, 2019, Defendant, Plaintiff Eco-Site, and Plaintiff T-Mobile separately filed Motions for Summary Judgment. (Doc. ## 64–66.) In its Motion for Summary Judgment, Plaintiff T-Mobile argues that the Declaratory Ruling requires summary judgment in its favor (Doc. # 66 at 7–16) and requests in an attached exhibit that the Court entertain oral argument on the Motions for Summary Judgment in light of the Declaratory Ruling (Doc. # 66-5). It states that the Declaratory Ruling “represents a sea change in the law in favor of wireless telephone carriers” and, relevant to this case, “fundamentally impacts the relevant legal standard for determining whether Defendant has effectively prohibited [Plaintiff] T-Mobile from providing service in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II).” (Doc. # 66 at 7.) Defendant responds that the Declaratory Ruling is inapplicable to Plaintiffs’ claims. (Doc. # 79 at 24–36.) The three Motions for Summary Judgment are now fully briefed. (Doc. ## 76, 77, 79, 85–87.)

On April 10, 2019, Plaintiffs filed the Motion for Oral Argument presently before the Court. (Doc. # 88.) Plaintiffs assert that in light of the Declaratory Ruling and because this matter now includes two consolidated cases, each with “a different proposed telecommunication facility site” and “specific factual issues,” oral argument will assist the Court in clarifying the issues addressed in the parties’ Motions for Summary Judgment. (*Id.* at 2–3.) Defendant responded to Plaintiffs’ Motion for Oral Argument on April 26, 2019. (Doc. # 89.) It concedes that oral argument on the effect, if any, of the Declaratory Ruling “might assist” the Court and implies that it wishes to respond to Plaintiff T-Mobile’s Reply in support of its Motion for Summary Judgment (Doc. # 86).

(Doc. # 89 at 2–3.) However, Defendant asserts that oral argument on the factual record is not necessary because the parties’ briefs “adequately focus the Court on the disputed issues in this case.” (*Id.* at 3.) Plaintiffs filed a Reply in support of oral argument on April 29, 2019. (Doc. # 90.)

II. DISCUSSION

The Court agrees with the parties that oral argument on the effect of the Declaratory Ruling on this case would be beneficial as it considers the parties’ Motions for Summary Judgment. Accordingly, the Court grants Plaintiffs’ Motion for Oral Argument (Doc. # 88) to the extent Plaintiffs seek to address the Declaratory Ruling.

However, the Court will not hear argument on the factual record. As Defendant asserts, the parties’ lengthy briefs have adequately cited the record and focused the Court on the issues of disputed fact. See (Doc. # 89 at 3.) The Court therefore denies Plaintiff’s Motion for Oral Argument (Doc. # 88) with respect to further development of the factual record of this case.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART Plaintiffs’ Motion for Oral Argument. (Doc. # 88.) It will hear oral argument on the effect of the Declaratory Ruling but not on the factual record of this dispute. It is

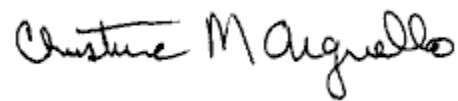
FURTHER ORDERED that within five (5) business days of the date of this Order, the parties shall confer and have one attorney email the Court

(Arguello_chambers@cod.uscourts.gov) with proposed dates and times at which all

parties are available for oral argument. The Court will set aside two hours for oral argument.

DATED: May 29, 2019

BY THE COURT:

A handwritten signature in black ink that reads "Christine M. Arguello". The signature is written in a cursive style with a large, looped initial "C".

CHRISTINE M. ARGUELLO
United States District Judge