IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

VERIZON WIRELESS PERSONAL COMMUNICATIONS, LP **PLAINTIFF**

v. **CAUSE NO. 1:14CV389-LG-RHW**

HARRISON COUNTY, MISSISSIPPI **DEFENDANT**

MEMORANDUM OPINION AND ORDER CONCERNING THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

BEFORE THE COURT are the Second Motion for Summary Judgment and Permanent Injunctive Relief [34] filed by Verizon Wireless Personal Communications, LP, and the Motion for Summary Judgment [39] filed by Harrison County, Mississippi, in this lawsuit that arose out of the County's denial of Verizon's Conditional Use Permit Application seeking approval to construct a wireless communication tower. Both of the parties' Motions for Summary Judgment have been fully briefed by the parties. In its Response [37] to Verizon's Motion for Summary Judgment, the County also requested permission to conduct discovery pursuant to Fed. R. Civ. P. 56(d)(2).[1] This request has also been fully briefed by the parties.

After reviewing the submissions of the parties, the record in this matter, and the applicable law, the Court finds that the County violated the Telecommunications Act (TCA), because its decision to deny Verizon's application was not supported by substantial evidence. As a result, Verizon is entitled to

[1] The County's request for Rule 56(d)(2) discovery was not filed as a Motion in the Court's CM/ECF system.

summary judgment and a permanent injunction. The Harrison County's Motion for Summary Judgment and request for discovery are denied.

BACKGROUND

On June 21, 2013, Verizon's agent, CMI Acquisitions, filed a Conditional Use Permit Application seeking approval to construct a 190 foot monopole wireless communications tower in a field located approximately 200 feet north of Switzer Park Road in Biloxi, Mississippi. (Admin. R., Ex. 15, ECF No. 128-15). The parties refer to the proposed location of the tower as the "Camp Hill site." (Compl. at 1, ECF No. 1). On June 19, 2014, one of Verizon's attorneys submitted an amendment to the application that proposed a 169 foot tower instead of a 190 foot tower. (Admin. R., Ex. 13, ECF No. 28-13). On July 17, 2014, the Harrison County Planning and Zoning Commission denied Verizon's amended application to construct the tower at the Camp Hill site. (Admin. R., Ex. 6 at 73, ECF No. 28-6). One of the reasons cited for denial of Verizon's application was the alleged availability of a nearby water tower for collocation. (*Id.* at 70). It was suggested that Verizon could attach a communications tower to the water tower in lieu of building a free standing structure. However, the water tower is located on land owned by the Harrison County School District and leased to the Harrison County Utility Authority, and, at the time that Verizon's application was filed, the lease entered into by those parties prohibited the sublease that would be required for collocation. (Admin. R., Ex. D to Ex. 19, ECF No. 29-4).

Verizon appealed the Planning Commission's decision to the Harrison County

Board of Supervisors. On October 6, 2014, the Board of Supervisors entered an Order finding that "it should grant the appeal filed by [Verizon] and reverse the decision of the Harrison County Planning and Zoning Commission to deny Verizon's application . . . with certain conditions . . . ." (Admin. R., Ex. 41, ECF No. 30-11). The Board of Supervisors remanded the matter to the Planning Commission "for a determination as to whether colocation [sic] of cellular equipment on the nearby water tower will provide adequate service to the area and if so whether the applicant can obtain agreements with the Harrison County Utility Authority and the Harrison County School District to do so . . . ." (*Id.*) The Board further stated:

> [I]f it is determined by the Harrison County Planning and Zoning Commission that collocation of cellular equipment on the nearby water tower will provide adequate service to the area and the applicant can obtain agreements with the Harrison County Utility Authority and the Harrison County School District to do so, then a permit should be issued to allow such for the water tower if necessary . . . .

(*Id.*) The Board did not specify what actions would or should be taken if the Planning Commission determined that the water tower site could not be utilized for collocation. (*See id.*)

On October 15, 2014, Verizon filed this lawsuit against the County pursuant to the TCA and Mississippi law, and it filed a Motion [11] for Summary Judgment and Permanent Injunction on January 8, 2015. Harrison County filed a Motion [14] to Stay Proceedings on January 30, 2015, because the matter was still under consideration by the County.

On February 6, 2015, the Harrison County Zoning Administrator Patrick

Bonck sent a letter to Verizon asking it to provide numerous documents at least three days prior to the Planning Commission hearing scheduled to take place on February 19, 2015. (Admin. R., Ex. 48, ECF No. 31-5). All of the documents requested pertained to the issue of whether collocation was feasible. (*See id.*) On February 19, 2015, the Planning Commission held a hearing addressing the issues set forth in the Board's order of remand. (Admin. R., Ex. 45, ECF No. 31-2). Verizon did not appear at the hearing, and the Planning Commission found that Verizon's application should be denied.[2] (*Id.*) The Planning Commission's Order states:

> WHEREAS, additional evidence was presented by the Planning Department, including but not limited to the evidence that the water tower owned and operated by the Harrison County Utility Authority was available for colocation [sic] of cellular equipment within 1300 feet of the proposed site by Verizon; that the Lease between the Harrison County School District and the Harrison County Utility Authority had been amended by said parties to specifically permit subleasing by the Harrison County Utility Authority; that said Water Tower is 300 feet in height and would provide coverage for Verizon's customers and better fill the gap in coverage which Verizon desires to address, in fact Verizon itself considered the Water Tower as a viable location for its cellular equipment and was advised that prohibition from Federal regulation and the Lease restrictions were the only impediments to its use of the water tower for location of its cellular equipment and both of those restrictions have now been removed . . . .

(*Id.* at 1-2).[3] The Planning Commission further determined that the proposed tower

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[2] Verizon asked the Planning Commission to cancel its hearing due to this lawsuit, but the Planning Commission denied its request one hour prior to the hearing. (Admin. R., Ex. 49, ECF No. 31-6).

[3] Verizon disputes the assertion that the water tower is 300 feet tall. It also contends that there is currently insufficient information available to determine the

would be incompatible with the neighborhood surrounding the Camp Hill site. (*Id.* at 2). The Planning Commission also found that the proposed tower would be a hazard to public safety, because it found that the proposed tower would be within the fall zone of the 911 public safety communication tower. (*Id.*) It also summarily noted that the "public safety, health and welfare would not be protected" if the proposed tower were built, and that the proposed tower would "cause substantial injury to other property in the neighborhood." (*Id.* at 3). Finally, the Planning Commission found that the tower would "not be in harmony with the scale, bulk, coverage, density and character of the area" in which it would be located. (*Id.*) On March 6, 2015, Verizon appealed the Planning Commission's decision. (Admin. R., Ex. 49, ECF No. 31-6).

On March 25, 2015, this Court entered a Memorandum Opinion and Order [23] denying Verizon's Motion for Summary Judgment as premature, because the County had not taken final action with regard to Verizon's application. The Court also granted the County's Motion to Stay Proceedings.

On April 6, 2015, the Harrison County Board of Supervisors held a hearing concerning Verizon's appeal of the Planning Commission's decision to deny Verizon's application. (Admin. R., Ex. 50, ECF No. 31-7). The Board affirmed the Planning Commission's decision, holding:

> WHEREAS, evidence was presented before the Commission that Harrison County Utility Authority's water tower lease would permit

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water tower's suitability for collocation.

> subleasing for a [sic] cellular equipment to be located thereon and such would provide needed cellular service to the area, therefore the public interest would not be promoted by the location of a separate cellular tower at the proposed location rather than on the Harrison County Utility Authority's water tower; that public safety, health and welfare would not be protected by the location of a separate cellular tower at the proposed location; the location of a separate cellular tower at the proposed location would cause substantial injury to other property in the neighborhood; and a separate cellular tower at the proposed location would not be in harmony with the scale, bulk, coverage, density and character of the area in which it is proposed to be located . . . .

(Admin. R., Ex. 51 at 2, ECF No. 31-8).

On May 6, 2015, this Court entered an Order [25] granting Verizon's Motion for Leave to File a Supplemental and Restated Complaint, which was not opposed by the County, and Verizon's Amended Complaint [26] was filed that same day. On June 26, 2015, Verizon filed its Second Motion [34] for Summary Judgment and Permanent Injunctive Relief. The County has requested permission to conduct discovery related to Verizon's Motion for Summary Judgment, and it has also filed its own Motion for Summary Judgment. The parties finished briefing the Motions on October 6, 2015; therefore, the Motions are now ripe for the Court's review.

DISCUSSION

I. HARRISON COUNTY'S REQUEST FOR DISCOVERY

Fed. R. Civ. P. 56(d) provides that a court may defer ruling on or deny a motion for summary judgment if the "nonmovant shows . . . that, for specified reasons, it cannot present facts essential to justify its opposition" to the motion. The County seeks to obtain evidence related to the feasibility of collocation on the

water tower. As explained below, the issue before this Court is whether the County's decision is "supported by substantial evidence *contained in a written record*." 42 U.S.C. § 332(c)(7)(B)(iii) (emphasis added). Thus, it would be improper to consider evidence outside the administrative record to make this determination. Furthermore, for the reasons stated below, the alleged availability of collocation does not constitute substantial evidence supporting a denial of Verizon's application pursuant to the Harrison County Ordinance at issue. Finally, the County's apparent assertion that Verizon's application was incomplete is now time-barred, as the County was required to notify Verizon of a deficiency in its application within thirty days of receiving the application. *See* 24 FCC Rcd. 13994, 14015 ("[A] review period of 30 days gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants from a last minute decision that applications should be denied as incomplete."). As a result, the County's request for discovery is denied.

II. THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Congress enacted the Telecommunications Act (TCA), 47 U.S.C. § 332, in an attempt to (1) foster competition among telecommunications providers, (2) improve the quality of telecommunications services, and (3) "encourage the rapid deployment of new telecommunications technologies." *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005).

> To this end, the TCA amended the Communications Act of 1934 . . . to include § 332(c)(7), which imposes specific limitations on the traditional authority of state and local governments to regulate the location,

> construction, and modification of such facilities . . . . Under this provision, local governments may not "unreasonably discriminate among providers of functionally equivalent services," § 332(c)(7)(B)(i)(I), take actions that "prohibit or have the effect of prohibiting the provision of personal wireless services," § 332(c)(7)(B)(i)(II), or limit the placement of wireless facilities "on the basis of the environmental effects of radio frequency emissions," § 332(c)(7)(B)(iv). They must act on requests for authorization to locate wireless facilities "within a reasonable period of time," § 332(c)(7)(B)(ii), and each decision denying such a request must "be in writing and supported by substantial evidence contained in a written record," § 332(c)(7)(B)(iii).

Id. at 115-16. The TCA provides that "[a]ny person adversely affected by any final action or failure to act by State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction." 47 U.S.C. § 332(c)(7)(B)(v). Courts are required to hear and decide cases filed under this provision of the TCA on an expedited basis. *Id.*

In its Amended Complaint and its Motion for Summary Judgment, Verizon argues that the County's decision to deny its application was not supported by substantial evidence. In the alternative, Verizon asserts that the County unreasonably delayed its consideration of the application, and its ultimate decision was arbitrary, capricious, and illegal pursuant to Mississippi law.[4] This Court will first consider whether Harrison County's decision was supported by substantial evidence.

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[4] In its Amended Complaint, Verizon also argued that Harrison County's decision constituted an effective prohibition of the provision of personal wireless services. However, it did not make this argument in the pending Motion for Summary Judgment.

The Fifth Circuit has provided the following guidance for determining whether a local government's decision is supported by substantial evidence:

> "[S]ubstantial evidence" is such reasonable evidence that a reasonable mind would accept to support a conclusion. A finding of substantial evidence requires more than a mere scintilla and less than a preponderance. The reviewing court must take into account contradictory evidence in the record. However, the reviewing court may not re-weigh the evidence or substitute its judgment for the judgment of the local government. Substantial evidence review is therefore highly deferential. The plaintiff carries the burden of proving that no substantial evidence supports the local government's decision.
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> In the context of the Telecommunications Act, the substantial evidence standard limits the types of reasons that a zoning authority may use to justify its decision. First, generalized concerns about aesthetics or property values do not constitute substantial evidence. Second, because the Telecommunications Act is centrally directed at whether the local zoning authority's decision is consistent with the applicable zoning requirements, . . . courts have consistently required that the challenged decision accord with the applicable local zoning law. In sum, we must determine whether [the local government] had some reasonable evidence, beyond mere generalized concerns, to support the reasons it gave for applying its zoning standards the way it did.

U.S. Cellular Corp. v. City of Wichita Falls, 364 F.3d 250, 255 (5th Cir. 2004) (internal citations and quotation marks omitted).

Harrison County's Zoning Ordinance provides:

> The purpose of conditional use provisions is to provide for certain uses which because of their unique characteristics, can not be classified properly in any particular district or districts without special consideration in each case of the impact of those uses upon the neighboring lands and of the public interests associated with the particular location.

(Admin. R., Ex. 57 at 76 (§ 904.01), ECF No. 32-2). The Ordinance grants the County's Planning Commission the authority to determine whether a conditional

use application should be granted. (*Id.* at 76 (§ 904.02)). To obtain a permit, applicants are required to prove the following elements:

> a. The subject use is necessary to promote the public interest at the location proposed,
> b. The subject use is designed, located and proposed to be operated in a manner that public safety, health and welfare are protected,
> c. The subject use will not cause substantial injury to other property in the neighborhood in which it is located,
> d. The subject use conforms to all district regulations for the district in which it is located unless other provisions are specifically set forth in the application[,] and
> e. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

(*Id.* at 76-77 (§ 904.02.01)).[5] The Court will consider whether the County had substantial evidence to deny Verizon's application by considering each of the five elements separately.

A. WHETHER "THE SUBJECT USE IS NECESSARY TO PROMOTE THE PUBLIC INTEREST AT THE LOCATION PROPOSED"

The parties do not dispute that more reliable cellular service is needed in the area surrounding the Camp Hill site. However, the County argues that a new tower is not necessary, because it claims that collocation is available on the nearby water tower. The County claims that Verizon was required to show that collocation was not available on the tower before its application could be approved.

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[5] In a reply brief filed on September 24, 2015, the County argued for the first time that a 2013 amendment to this Ordinance should actually be applied to Verizon's application. Since the County did not rely on the amendment to the Ordinance while making its decision and since the Ordinance is not a part of the administrative record, it would be improper for the Court to consider the amendment in this opinion.

The County cites *Sprint Spectrum v. Willoth*, for the proposition that "[a] local government may reject an application for construction of a wireless service facility in an under-served area . . . if the service gap can be closed by less intrusive means." *Sprint Spectrum v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999). However, the less intrusive means standard is only applicable to an effective prohibition of service claim filed under § 332(c)(7)(B)(i)(II). *See Sprint Spectrum*, 176 F.3d at 640 (explaining that Sprint relied on § 332(c)(7)(B)(i)(II)) of the TCA). In the present Motion, Verizon argues that the County violated a separate portion of the TCA, § 332(c)(7)(B)(iii), which sets forth a different standard of review – whether the County's decision was based on substantial evidence.[6] Other cases relied on by the County for the proposition that Verizon is required to show that further reasonable efforts to gain approval for alternative facilities would be fruitless also pertain to effective prohibition claims, not claims for lack of substantial evidence. *See, e.g., USCOC of Va. RSA #3 v. Montgomery Cty. Bd. of Sup'rs*, 343 F.3d 262, 269 (4th Cir. 2003); *360° Commc'ns Co. v. Bd. of Supervisors of Albemarle Cty.*, 211 F.3d 79, 88 (4th Cir. 2000). As a result, the County's arguments in this respect are not persuasive.

The County also argues that the alleged availability of collocation was a proper consideration under the necessity element of the Ordinance. However, the Tenth Circuit has held that an ordinance containing a similar necessity

[6] As explained previously, Verizon has filed an effective prohibition claim, but that claim is not the subject of its pending Motion for Summary Judgment.

requirement did not require the cellular service provider to demonstrate that there was no feasible alternative to the proposed site. *T-Mobile Cent., LLC v. Unified Gov't of Wyandotte Cty.*, 546 F.3d 1299, 1310 (10th Cir. 2008). Furthermore, the Harrison County, Mississippi Circuit Court has stated, while interpreting the same Ordinance at issue here, "absent from the Zoning Ordinance is an element that there are no other alternatives, whether such alternatives are currently available or may potentially become available at some point in the future." (Pl.'s Mot., Ex. 5, ECF No. 34).[7] This Court agrees. As a result, the Court finds that the alleged availability of collocation on the water tower does not constitute substantial evidence to support the County's decision, because the Ordinance does not require applicants to prove no feasible alternative exists.

B. WHETHER "THE SUBJECT USE IS DESIGNED, LOCATED AND PROPOSED TO BE OPERATED IN A MANNER THAT PUBLIC SAFETY, HEALTH AND WELFARE ARE PROTECTED"

In support of its application, Verizon submitted an engineering report confirming that the proposed tower would comply with the Federal Communications Commission's rules and regulations related to radio frequency safety. (Admin. R., Ex. 27, ECF No. 29-12). Verizon has agreed to construct the tower in compliance with all county, state, and federal building codes. (Admin. R., Ex. 15 at 5, ECF No. 28-15). The proposed tower would be surrounded by a locked security gate, and it

[7] Harrison County argues that this Court should not consider the Harrison County decision, because it is not a part of the administrative record. However, the decision constitutes persuasive, although not binding, caselaw that this Court may consider while deciding the pending Motions.

would not generate any waste. (*Id.*)

However, the County argues that the proposed 169 foot tower would cause a safety risk, because it claims that the proposed tower would be in the fall zone of an emergency communications tower, which is located 102 feet away. The only evidence of the proposed tower's actual fall zone that the Court has located in the record is an engineering report Verizon provided in support of its initial application. This report states that the tower would be designed so that excessive wind speeds would cause the tower to "fold over," "essentially collapsing upon itself." (Admin. Rec., Ex. 16, ECF No. 29-1). The report further stated, "In the unlikely event of total separation, this, in turn, would result in collapse of that section to the ground within a radius of 50% of the monopole height." (*Id.*) As a result, it appears that the County merely assumed that the proposed tower's fall zone would equal its height.

In order to satisfy the substantial evidence standard established by the TCA, a local government's decision must be substantiated. *T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794, 800-01 (6th Cir. 2012). Denials of permits that are based on "hollow generalities" and "empty records" do not satisfy the substantial evidence test. *Town of Amherst v. Omnipoint Commc'ns Enters., Inc.*, 173 F.3d 9, 16 (1st Cir. 1999), *cited with approval in Telespectrum Inc. v. Public Serv. Comm'n of Ky.*, 227 F.3d 414, 424 (6th Cir. 2000). The County's general, unsupported concerns about the tower's alleged fall zone do not constitute

evidence sufficient to deny Verizon's application.

Furthermore, the Harrison County Zoning Ordinance merely requires that "[a]ll towers in excess of 100 feet must be set back from any structure located on the premises and any structures on adjacent properties a distance of one-third the height of the tower or 100 feet, whichever is greater." (Admin. R., Ex. 57 at 75, ECF No. 32-2). As a result, the proposed tower satisfies the Ordinance's set back requirement.

Finally, the Harrison County Emergency Communications Commission, which owns the emergency tower, adopted a resolution stating that it does not object to the proposed placement of Verizon's tower as long as certain conditions related to the possibility of radio frequency interference are placed on any conditional use permit received by Verizon. (Admin. R., Ex. 15 at 4, ECF No. 29-15).

The County also generally mentioned the proximity of the tower to a school and a sports field, but it has not articulated the basis for this concern. To the extent that the County was concerned about environmental effects of radio frequency emissions, this is an impermissible basis for denying an application for a cellular tower under the TCA. 47 U.S.C. § 332(c)(7)(B)(iv); *see also Telespectrum*, 227 F.3d at 424 ("concerns of health risks due to the emissions may not constitute substantial evidence in support of denial by statutory rule, as no state or local government . . . may regulate the construction of personal wireless facilities on the basis of the environmental effects of radio frequency emissions . . . .").

Since the proposed Verizon tower complies with the Ordinance's set back requirements and measures will be taken to avoid and manage any radio frequency interference, the County did not have substantial evidence to deny Verizon's application on the basis of safety concerns.

C. WHETHER "THE SUBJECT USE WILL . . . CAUSE SUBSTANTIAL INJURY TO OTHER PROPERTY IN THE NEIGHBORHOOD IN WHICH IT IS LOCATED"

Both the County Planning Commission and Board of Supervisors have stated, without further explanation, that the proposed tower would cause substantial injury to other property in the neighborhood. (Admin. R., Ex. 45, ECF No. 31-2; Admin. R., Ex. 51, ECF No. 31-8). "Merely repeating an ordinance does not constitute substantial evidence." *T-Mobile*, 691 F.3d at 801. As a result, the County did not have sufficient evidence to deny the permit application on this basis.

D. WHETHER "THE SUBJECT USE CONFORMS TO ALL DISTRICT REGULATIONS FOR THE DISTRICT IN WHICH IT IS LOCATED UNLESS OTHER PROVISIONS ARE SPECIFICALLY SET FORTH IN THE APPLICATION"

The County also has not identified any regulations that the proposed tower would violate, and the Court has not located any support for such a finding in the record. As a result, a denial of Verizon's application would not be supported by this portion of the Ordinance.

E. WHETHER "THE PROPOSED USE OR DEVELOPMENT OF THE LAND WILL BE IN HARMONY WITH THE SCALE, BULK, COVERAGE, DENSITY, AND CHARACTER OF THE AREA OR NEIGHBORHOOD IN WHICH IT IS LOCATED"

Once again, the County cited this portion of the Ordinance as a basis for its

denial without explaining how the proposed tower would be incongruent with the surrounding neighborhood. The County merely notes the Mississippi Department of Transportation's designation of the nearby highway, Highway 67, as a "scenic byway." (Admin. R., Ex. 38, ECF No. 30-8). The proposed tower would be located approximately 482 feet from the highway. (Admin. R., Ex. 23, ECF No. 29-8). The property at issue has been zoned for general agricultural use. (Admin. R., Ex. 2, ECF No. 28-2; Admin R., Ex. 28, ECF No. 29-13). A water tower, an emergency communication tower, two shooting ranges, a vehicle storage yard, a fire station, a work center where tractors and dump trucks are parked, two schools[8], and other public and commercial sites are already located near the proposed tower site. (Admin. R., Ex. 19, ECF No. 29-4; Admin. R., Ex. C to Ex. 20, ECF No. 29-5). Verizon produced photographs of the surrounding area to demonstrate that the tower would not change the character of the surrounding area. (Admin. R., Ex. C to Ex. 20, ECF No. 29-5). The Court has not located any evidence in the record to support the County's conclusion that the proposed tower would not be in harmony with the surrounding area. Therefore, there is no evidence supporting the denial of Verizon's application on this basis.

In summary, the County's decision violated § 332(c)(7)(B)(iii) of the TCA, because the County's decision to deny Verizon's application was not supported by

[8] The Harrison County School District, which operates the two schools near the proposed tower site, supported Verizon's application, due to the schools' need for more reliable wireless communication service. (Admin. R., Ex. 22, ECF No. 29-7).

substantial evidence. Accordingly, Verizon is entitled to summary judgment as to its § 332(c)(7)(B)(iii) claim. It is not necessary to consider Verizon's other, alternative claims and arguments, as the lack of substantial evidence warrants an injunction requiring the County to permit construction of the proposed tower.[9] *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 497 (2d Cir. 1999) (holding that injunctive relief requiring a town to issue a permit "best serves the TCA's stated goal of expediting resolution of this type of action").

CONCLUSION

For the foregoing reasons, the County's request for discovery and Motion for Summary Judgment are denied. Verizon's Motion for Summary Judgment as to its claim filed pursuant to 42 U.S.C. § 332(c)(7)(B)(iii) is granted. All other claims asserted by Verizon are moot.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Second Motion for Summary Judgment and Permanent Injunctive Relief [34] filed by Verizon Wireless Personal Communications, LP, is **GRANTED**. Verizon is granted a permanent injunction requiring Harrison County, Mississippi, to grant its application for a conditional use permit. A separate, final judgment will be filed pursuant to Fed. R. Civ. P. 58.

IT IS, FURTHER, ORDERED AND ADJUDGED that the Motion for Summary Judgment [39] and the response requesting discovery [37] filed by

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[9] A violation of the TCA moots any state law claims. *See T-Mobile*, 691 F.3d at 809.

Harrison County, Mississippi are **DENIED**.

SO ORDERED AND ADJUDGED this the 9th day of November, 2015.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

VERIZON WIRELESS PERSONAL COMMUNICATIONS LP **PLAINTIFF**

v. **CAUSE NO. 1:14CV389-LG-RHW**

HARRISON COUNTY, MISSISSIPPI **DEFENDANT**

JUDGMENT

This matter having come on to be heard on the Second Motion for Summary Judgment and Permanent Injunctive Relief [34] filed by Verizon Wireless Personal Communications, LP, the Court, after a full review and consideration of the Motion, the pleadings on file and the relevant legal authority, finds that in accord with the Memorandum Opinion and Order entered herein,

IT IS ORDERED AND ADJUDGED that because there is no genuine issue as to any material fact, judgment is rendered in favor of Verizon Wireless Personal Communications, LP, pursuant to Fed. R. Civ. P. 56 as to its 42 U.S.C. § 332(c)(7)(B)(iii) claim. Verizon is also granted a permanent injunction requiring Harrison County, Mississippi, to grant its application for a conditional use permit. In accordance with Fed. R. Civ. P. 54(d)(1), Verizon Wireless Personal Communications, LP, is entitled to recover costs from Harrison County, Mississippi.

SO ORDERED AND ADJUDGED this the 9th day of November, 2015.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE