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11 Attorneys for Plaintiffs T-Mobile West Corp.,
12 NextG Networks of California, Inc., and
13 ExteNet Systems (California) LLC

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

16 T-MOBILE WEST CORPORATION, a)
17 Delaware Corporation, NEXTG NETWORKS)
18 OF CALIFORNIA, INC., a Delaware)
19 Corporation, and EXTENET SYSTEMS)
(CALIFORNIA) LLC, a California Limited)
20 Liability Company,)
Plaintiffs,)

21 v.)

22 THE CITY AND COUNTY OF SAN)
23 FRANCISCO, and the CITY AND COUNTY)
24 OF SAN FRANCISCO DEPARTMENT OF)
PUBLIC WORKS, public entities organized and)
25 existing under the laws of the State of California,)
26 Defendants.)

27 Plaintiffs T-Mobile West Corporation ("T-Mobile"), a Delaware corporation, NextG
28 Networks of California, Inc. ("NextG"), a Delaware corporation, and ExteNet Systems

SUMMONS ISSUED
FILED
San Francisco County Superior Court
MAY - 3 2011

CLERK OF THE COURT
BY: *P. Natt* Deputy Clerk
P. NATT

Case No. CGC-11-510703
COMPLAINT
Complaint Filed: May 3, 2011

1 (California) LLC (“ExteNet”), a California limited liability company (collectively “Plaintiffs”)
2 allege as follows:

3 **NATURE OF ACTION**

4 1. This is an action for declaratory judgment and injunctive relief seeking to prevent the
5 City and County of San Francisco (“San Francisco”) and the City of San Francisco Department of
6 Public Works (“DPW”) (jointly “Defendants”) from enforcing San Francisco’s newly adopted
7 Ordinance No. 12-11, which amended the San Francisco Public Works Code by adding Article 25,
8 Sections 1500 through 1526 to establish new requirements for Personal Wireless Service Facility
9 Site Permits, and which amended the San Francisco Administrative Code by repealing Section
10 11.9(b) (the “Wireless Ordinance”).

11 2. Government Code Section 65964 prohibits cities and counties from imposing
12 unreasonable term limits on wireless facility permits and defines as unreasonable anything less
13 than 10 years. Additionally, a new ordinance that prohibits a previously permitted, existing use
14 amounts to a deprivation of vested property rights without the due process of law, in violation of
15 the Constitutions of the United States and California.

16 3. In 2009 and 2010, under Defendants’ then-existing ordinances and regulations
17 governing the installation of wireless facilities in the public rights of way, T-Mobile received
18 permits for 52 personal wireless facilities in the public rights of way and has installed facilities at
19 51 of those locations. Each of those permits was granted for terms of two years, but with four
20 additional, essentially automatic, two-year renewal terms, for a total minimum expectancy of 10
21 years of use per site. Between 2007 and 2010, NextG received permits for 189 and installed 123
22 personal wireless facilities in the public rights of way. Each of those permits was granted for
23 terms of two years, but with four additional, essentially automatic, two year renewal terms, for a
24 total minimum expectancy of 10 years of use per site. In addition, prior to San Francisco’s
25 adoption of Ordinance 214-07, pursuant to a Utilities Condition Permit issued by San Francisco,
26 pursuant to an order of the United States District Court for the Northern District of California,
27 NextG installed 63 personal wireless facilities sites in the public rights of way in the City.
28 Between 2008 and 2010, ExteNet received permits for 59 and installed 54 personal wireless

1 facilities in the public rights of way. Each of those permits was granted for terms of two years, but
2 with four additional, essentially automatic, two-year renewal terms, for a total minimum
3 expectancy of 10 years of use per site.

4 4. The Wireless Ordinance violates Government Code Section 65964 by establishing
5 initial permit limits of two years and not providing for automatic renewal. Instead of automatic
6 renewal, the Wireless Ordinance requires permit holders to file applications as if they were for a
7 new installation, subject to subject to all the same discretionary reviews and subject to being
8 denied based on the results of those discretionary reviews, even if the personal wireless facility
9 itself is completely unchanged from its initial permitted installation.

10 5. Moreover, the Wireless Ordinance does not allow for the continuance and automatic
11 renewal of previously granted permits related to sites that pre-existed the Wireless Ordinance, thus
12 depriving providers, such as T-Mobile, NextG, and ExteNet, of their vested property rights
13 without due process of law, in violation of the Constitutions of the United States and California.
14 Rather, the Wireless Ordinance requires that the owner of any pre-existing personal wireless
15 facility permitted under the old regime, upon expiration of the initial two year term of such a
16 facility, must submit an application pursuant to the terms of the Wireless Ordinance for new
17 facility siting applications.

18 6. Finally, the Wireless Ordinance violates Sections 7901 and 7901.1 of the Public
19 Utilities Code. Section 7901 of the Public Utilities Code grants telephone corporations, such as T-
20 Mobile, NextG, and ExteNet, a statewide franchise right to install their facilities in the public
21 rights of way. The sole authority reserved to Defendants under Public Utilities Code Section
22 7901.1 is to exercise reasonable time, place, and manner regulation of the telephone corporations'
23 installation of facilities in the public rights of way. To be reasonable, at a minimum, such
24 regulations must be imposed on all entities in an equivalent manner. The Wireless Ordinance
25 unlawfully violates T-Mobile's, NextG's, and ExteNet's right to occupy the public rights of way
26 in violation of Section 7901 and exceeds Defendants' authority under Section 7901.1.

27 7. T-Mobile, NextG, and ExteNet seek a declaration that the Wireless Ordinance imposes
28 unreasonable term limits on wireless facility permits in violation of the Government Code,

1 deprives T-Mobile, NextG, ExteNet, and other holders of pre-existing wireless facility permits, of
2 their vested property rights without due process of law, in violation of the Constitutions of the
3 United States and California, and violates T-Mobile's, NextG's, and ExteNet's franchise rights to
4 occupy the public rights of way in violation of Section 7901 of the Public Utilities Code. T-
5 Mobile, NextG, and ExteNet also request an order of the Court permanently enjoining Defendants
6 from imposing on T-Mobile, NextG, or ExteNet the Wireless Ordinance.

7 JURISDICTION AND VENUE

8 8. This action arises under the laws of the State of California, the California Constitution
9 and the United States Constitution.

10 9. This Court has jurisdiction over these causes of action and the equitable and legal relief
11 sought by Plaintiffs in this Complaint may be properly received from this Court. The Court has
12 jurisdiction over these causes of action pursuant to Section 410.10 of the Code of Civil Procedure.
13 The Court's authority to grant declaratory and related injunctive relief is based upon Sections 525,
14 526, and 1060 of the Code of Civil Procedure.

15 10. Venue is proper in this Court pursuant to Sections 395 and 395.5 of the Code of Civil
16 Procedure because the Defendants are located in this County, Defendants' actions which give rise
17 to Plaintiffs' claims occurred in this judicial district, the facilities affected and governed by
18 Defendants' actions are located in this County, and the Wireless Ordinance at issue purports to
19 govern the City and County of San Francisco.

20 PARTIES

21 11. Plaintiff T-Mobile West Corporation ("T-Mobile") is a corporation duly organized,
22 existing, and operating under the laws of the State of Delaware, with its principal place of business
23 in Bellevue, Washington. T-Mobile is authorized to do, and is doing, business within the State of
24 California, and in this County. T-Mobile is the operating entity in California for T-Mobile USA
25 Inc. T-Mobile is a wholly-owned subsidiary of T-Mobile USA, Inc. Both T-Mobile and T-
26 Mobile USA, Inc. are Delaware corporations, with their principal places of business in Bellevue,
27 Washington. T-Mobile is a wireless carrier registered with the California Public Utilities
28 Commission ("CPUC") to provide facilities-based wireless service to the public in California. T-

1 Mobile uses FCC licenses held by related T-Mobile USA, Inc. entities to provide commercial
2 mobile radio service within the City and County of San Francisco, and surrounding areas, as part
3 of T-Mobile USA, Inc.'s national wireless network. Among other things, T-Mobile is a "common
4 carrier" and "telecommunications carrier" which provides "personal wireless services" and
5 "advanced wireless services," as those terms are defined and commonly used in the
6 Communications Act and the rules, regulations and orders promulgated by the Federal
7 Communications Commission (the "FCC") pursuant to this overall statutory scheme.

8 12. T-Mobile and Omnipoint Communications Inc. were both wholly-owned subsidiaries
9 of the parent corporation, T-Mobile USA, Inc. Pursuant to an "Assignment and Assumption
10 Agreement" dated June 17, 2009, Omnipoint transferred all of its California and Nevada assets to
11 TMO CA/NV Holdings LLC, which was Omnipoint Communications Inc.'s subsidiary. Effective
12 June 30, 2009, TMO CA/NV Holdings LLC was merged into T-Mobile, with the surviving
13 corporation being T-Mobile. Effective June 30, 2009, Omnipoint Communications, Inc. no longer
14 exists. To the extent that any of the rights asserted herein at any time belonged to Omnipoint
15 Communications Inc., those rights now belong to T-Mobile, and references herein to T-Mobile
16 shall include Omnipoint Communications Inc.

17 13. Plaintiff NextG Networks of California, Inc. ("NextG") is a Delaware corporation with
18 its principal place of business in Milpitas, California, operating its facilities in California. On
19 January 30, 2003, in Decision 03-01-061, the CPUC issued NextG a certificate of public
20 convenience and necessity ("CPCN") to provide limited facilities-based and resold local exchange,
21 access and interexchange telecommunications services in California as a telephone corporation.
22 By order dated January 12, 2006, the CPUC affirmed the scope of NextG's CPCN. On July 20,
23 2006, the CPUC modified its January 12, 2006 Order and denied rehearing of the decision as
24 modified. On April 12, 2007, in Decision 07-04-045, the CPUC granted NextG's application for
25 expanded full facilities-based authority and modified its CPCN to permit construction of facilities
26 that are exempt from the California Environmental Quality Act (CEQA).

27 14. Plaintiff ExteNet Systems (California) LLC ("ExteNet") is a California limited liability
28 company that is wholly-owned by ExteNet Systems, Inc., with its principal place of business in

1 Lisle, Illinois. ExteNet is and was at all times mentioned herein qualified to do business in
2 California and operate its Telecommunications Networks in California. Among other things,
3 ExteNet is a “telephone corporation” which provides service over “telephone lines,” as those terms
4 are defined and commonly used in the Public Utilities Code and the rules, regulations and orders
5 promulgated by the CPUC and pursuant to the overall state statutory scheme. On July 6, 2005, in
6 Decision 05-07-004, the CPUC granted ExteNet’s application for a certificate of public
7 convenience and necessity (“CPCN”) to operate as a facilities-based carrier of interLATA and
8 intraLATA telecommunications services. On April 27, 2006, in Decision 06-04-063, the CPUC
9 granted ExteNet’s application to expand its CPCN to operate as a full facilities-based provider of
10 local exchange services and interexchange services. ExteNet Systems, Inc. transferred its CPUC-
11 issued CPCN to its subsidiary ExteNet Systems (California) LLC via Advice Letter filed with the
12 CPUC on April 4, 2007, which the CPUC approved on April 24, 2007. ExteNet also is a
13 “telecommunications carrier” which provides “telecommunications services,” as those terms are
14 defined and commonly used in the Communications Act and the rules, regulations and orders
15 promulgated by the Federal Communications Commission (the “FCC”) and pursuant to the overall
16 federal statutory scheme..

17 15. Defendant City and County of San Francisco (“San Francisco”) is a charter city and
18 county, duly organized and existing under the Constitution and laws of the State of California.

19 16. Defendant San Francisco Department of Public Works is a department of Defendant
20 San Francisco that is empowered and required to adopt regulations implementing and then enforce
21 the Wireless Ordinance.

22 **BACKGROUND & FACTUAL ALLEGATIONS**

23 **T-Mobile’s Facilities And Services**

24 17. T-Mobile provides commercial mobile radio services, personal and advanced wireless
25 services, as well as other telecommunications services, as those terms are defined under federal
26 law, in San Francisco. T-Mobile’s operations seek to facilitate the development of a wireless
27 telecommunications network in keeping with the goals of the federal Communications Act. T-
28 Mobile, as the operating entity for T-Mobile USA, uses licenses issued by the FCC pursuant to 47

1 U.S.C. § 151 to provide wireless service in San Francisco.

2 18. Section 151 of the federal Communications Act establishes a national policy to “make
3 available, so far as possible, to all people of the United States, without discrimination . . . a rapid,
4 efficient, Nation-wide, and world-wide wire and radio communication service with adequate
5 facilities at reasonable charges, for the purpose of national defense, [and] for the purpose of
6 promoting safety of life and property through the use of wire and radio communications.”

7 47 U.S.C. §151. To meet these policy goals, T-Mobile seeks to provide myriad wireless services
8 to local businesses, public safety entities, and the general public. To advance the national policies
9 enumerated under 47 U.S.C. §151, and recently underscored by the Federal Communications
10 Commission (“FCC”) in its November 18, 2009 Declaratory Ruling, T-Mobile must create and
11 maintain a network of digital “cell sites,” each of which consists of antennas and related electronic
12 communications equipment designed to send and receive radio signals.

13 19. Traditional analog wireless carriers use spectrum in the 850 megahertz range. T-
14 Mobile operates on Personal Communications Service (“PCS”) frequencies in the 1.9 gigahertz
15 band and in the Advanced Wireless Services (“AWS”) frequencies in the 1.7 and 2.1 gigahertz
16 bands. Because the PCS and AWS systems have lower signal strengths and operate at much
17 higher frequency bands than traditional analog cellular technology, the effective communications
18 range between a handheld wireless device and the cell site is limited.

19 20. Unlike cellular services using analog-based systems, digital technology converts voice
20 or data signals into a stream of digits to allow a single radio channel to carry multiple
21 simultaneous signal transmissions. This allows T-Mobile to offer services unavailable in analog-
22 based systems, such as secured transmissions and enhanced voice, high-speed data, paging and
23 imaging capabilities as well as voice mail, call forwarding and call waiting.

24 21. Wireless devices utilizing all digital technology operate by transmitting a radio signal
25 to antennas mounted on a tower, pole, building, or other structure. The antenna feeds the signal to
26 electronic devices housed in a small equipment cabinet or base station. The base station is
27 connected by microwave, fiber optic cable, or ordinary telephone wire to a base station controller,
28 which subsequently routes calls throughout the world.

1 22. To operate its network in San Francisco, T-Mobile installs “wireless
2 telecommunications facilities,” as defined in Government Code Section 65850.6(d).

3 **NextG’s Facilities And Services**

4 23. NextG provides telecommunications services that consist of providing transport, over
5 fiber optic lines, of NextG’s customers’ communications (both voice and data) between points
6 designated by the customer without alteration of the content of the communications.

7 24. NextG’s customers typically are providers of retail wireless telecommunications
8 services (also known as Commercial Mobile Radio Services (“CMRS”) providers, cellular, or
9 Personal Communications Services (“PCS”) providers); however, NextG’s services are not limited
10 to serving any specific type of wireless customer.

11 25. NextG may also provide telecommunications services to other large users of
12 telecommunications services.

13 26. NextG’s typical telecommunications service offering, and the one that it provides
14 currently in San Francisco, involves a communication signal handed off from NextG’s customer to
15 NextG that NextG then transports over its fiber optic facilities. This handoff and transport takes
16 place at and through equipment configurations called “Nodes” that are located on utility or
17 streetlight poles located in the public rights-of-way or in private utility easements.

18 27. The typical “Node” in NextG’s network consists of electronic equipment that converts
19 Radio Frequency (*i.e.*, “RF” or wireless) format communications to light signals carried over
20 NextG’s fiber optic lines. The equipment comprising a typical Node in NextG’s network includes
21 a small, low-power antenna, laser and amplifier equipment for the conversion of RF signals to
22 optical signals (and *vice versa*, *i.e.*, from optical to RF), that is connected to the antenna, fiber
23 optic lines, and associated equipment such as power supplies, all of which are owned, operated,
24 controlled, managed, or maintained by NextG.

25 28. Upon handoff from its customer at a Node, NextG transports communications through
26 NextG’s fiber optic network to a distant point that is typically, but not always, an aggregation
27 point for NextG’s communications called a “Base Station.” The Base Station is typically a facility
28 of NextG’s customer that is a central location that contains such equipment as routers, switches,

1 and signal conversion equipment. The Base Station is typically installed in a building located on
2 private property. NextG hands the communication signal back to its customer at the Base Station,
3 where the communications signal may be interconnected with the public switched telephone
4 network.

5 29. All wireless transmissions are performed by NextG's customers, who control and are
6 responsible for their licensed, proprietary radio frequency spectrum.

7 30. Although NextG's service and network incorporate wireless reception devices, NextG
8 is not a wireless or CMRS provider.

9 31. NextG does not hold or control any wireless spectrum licenses from the FCC.

10 32. NextG's fiber optic transmission lines are a fundamental component of its network.

11 ExteNet's Facilities And Services

12 33. ExteNet provides telecommunications services that consist of providing transport, over
13 fiber optic lines, of ExteNet's customers' communications (both voice and data) between points
14 designated by the customer without alteration of the content of the communications.

15 34. ExteNet's customers typically are providers of retail wireless telecommunications
16 services (also known as CMRS providers, cellular, or PCS providers); however, ExteNet's
17 services are not limited to serving any specific type of wireless customer.

18 35. ExteNet may also provide telecommunications services to other large users of
19 telecommunications services.

20 36. ExteNet's typical telecommunications service offering, and the one that it provides
21 currently in San Francisco, involves a RF signal handed off from ExteNet's customer to ExteNet.
22 ExteNet then converts the signal from RF to light signals ("optical") and bi-directionally
23 transports those signals over its fiber optic facilities. This handoff and transport takes place at and
24 through equipment configurations called "Nodes" that are located on utility or streetlight poles
25 located in the public rights-of-way or in private utility easements. The Nodes subsequently re-
26 convert the signal from optical to RF for over the air transmission and reception to end users.

27 37. The typical "Node" in ExteNet's network consists of electronic equipment that
28 converts RF (or wireless) format communications to optical signals carried over ExteNet's fiber

1 optic facilities. The equipment comprising a typical Node in ExteNet's network includes a small,
2 low-power antenna, remote radio equipment and optical conversion hardware for the conversion
3 of RF signals to optical signals (and *vice versa, i.e.*, from optical to RF), that is connected to the
4 antenna, fiber optic lines, and associated equipment such as power supplies, all of which are
5 owned, operated, controlled, managed, or maintained by ExteNet.

6 38. ExteNet accepts the handoff from the customer networks at a distant point called a
7 Base Station Hub "Base Station." The Base Station is typically a facility owned or managed by
8 ExteNet selected by ExteNet's customer and contains such equipment as customer radio
9 equipment, i.e. Base Transceiver (BTS) Equipment, optical conversion equipment and fiber
10 interconnection points. The Base Station is typically installed in a building located on private
11 property. ExteNet hands the communication signal back to its customer at the Base Station, where
12 the communications signal may be interconnected with the public switched telephone network.

13 39. All wireless transmissions are performed by ExteNet's customers, who control and are
14 responsible for their licensed, proprietary radio frequency spectrum.

15 40. Although ExteNet's service and network incorporate wireless reception devices,
16 ExteNet is not a wireless or CMRS provider.

17 41. ExteNet does not hold or control any wireless spectrum licenses from the FCC.

18 Section 65964 Of The Government Code

19 42. Section 65964 of the Government Code sets forth certain limitations on the authority of
20 cities and counties in California to condition approval of the construction or reconstruction of
21 "wireless telecommunications facilities," as defined in Section 65850.6 of the Government Code.

22 43. Government Code Section 65964(b) states that, "a city or county shall not . . .
23 [u]nreasonably limit the duration of any permit for a wireless telecommunications facility. *Limits*
24 *of less than 10 years are presumed to be unreasonable* absent public safety reasons or substantial
25 land use reasons. . . ." (Emphasis added).

26 44. Section 65850.6(d) defines a "wireless telecommunications facility" as "equipment and
27 network components such as towers, utility poles, transmitters, base stations, and emergency
28 power systems that are integral to providing wireless telecommunications services."

The Public Utilities Code

1
2 45. Section 7901 of the Public Utilities Code grants telephone corporations the right to
3 install lines and associated equipment along public rights-of-way. Section 7901 provides that
4 “[t]elegraph or telephone corporations may construct lines of telegraph or telephone lines along
5 and upon any public road or highway, along or across any of the waters or lands within this State,
6 and may erect poles, posts, piers, or abutment for supporting the insulators, wires, and other
7 necessary fixtures of their lines, in such manner and at such points as not to incommode the public
8 use of the road or highway or interrupt the navigation of the waters.” Pub. Util. Code § 7901.

9 46. A “telephone corporation” “includes every corporation or person owning, controlling,
10 operating, or managing any telephone line for compensation within the state.” Pub. Util. Code §
11 234(a).

12 47. A “telephone line” is defined broadly to include “all conduits, ducts, poles, wires,
13 cables, instruments, and appliances, and all other real estate, fixtures, and personal property
14 owned, controlled, operated, or managed in connection with or to facilitate communication by
15 telephone, whether such communication is had with or without the use of transmission wire.”
16 Pub. Util. Code § 233.

17 48. Public Utilities Code Section 7901.1 provides that “municipalities shall have the right
18 to exercise reasonable control as to the time, place, and manner in which roads, highways, and
19 waterways are accessed” but that “[t]he control, to be reasonable, shall, at a minimum, be applied
20 to all entities in an equivalent manner.” Pub. Util. Code § 7901.1.

21 49. T-Mobile is a “telephone corporation” which provides service over “telephone lines,”
22 as those terms are defined and commonly used in the Public Utilities Code and the rules,
23 regulations and orders promulgated by the CPUC and pursuant to the state statutory scheme
24 governing the provision of telecommunications services.

25 50. NextG is a “telephone corporation” which provides service over “telephone lines,” as
26 those terms are defined and commonly used in the Public Utilities Code and the rules, regulations
27 and orders promulgated by the CPUC and pursuant to the state statutory scheme governing the
28 provision of telecommunications services.

1 51. ExteNet is a “telephone corporation” which provides service over “telephone lines,” as
2 those terms are defined and commonly used in the Public Utilities Code and the rules, regulations
3 and orders promulgated by the CPUC and pursuant to the state statutory scheme governing the
4 provision of telecommunications services.

5 **T-Mobile’s Facilities In San Francisco**

6 52. On or about April 16, 2008, pursuant to the then-applicable City Administrative Code §
7 11.9, DPW issued T-Mobile a Utility Conditions Permit (“UCP”) to install telecommunications
8 facilities, including Personal Wireless Services Facilities, in the public rights of way generally in
9 the City and County of San Francisco.

10 53. Section 4.14 of the UCP requires that T-Mobile also obtain Personal Wireless Service
11 Facilities Site Permits for each particular installation T-Mobile intends to construct in the public
12 rights of way.

13 54. Accordingly, between the middle of 2009 and early 2010, T-Mobile applied for and
14 received 52 individual Personal Wireless Service Facilities Site Permits from San Francisco.

15 55. T-Mobile has constructed wireless telecommunications facilities in the public rights of
16 way in San Francisco at 51 of the 52 sites for which it has received Personal Wireless Service
17 Facilities Permits.

18 56. T-Mobile’s 52 Personal Wireless Service Facilities Permits were each issued pursuant
19 to San Francisco Administrative Code § 11.9(B) and DPW Order No. 177,163 as they existed at
20 the time the permits were issued.

21 57. San Francisco Administrative Code § 11.9(b), as it existed at the time T-Mobile’s
22 Personal Wireless Service Facilities Permits were issued, provided that “A Personal Wireless
23 Service Facilities Permit shall have a term of no longer than two (2) years and may be renewed in
24 accordance with requirements established by the Department [of Public Works] in the Personal
25 Wireless Service Facilities Site Permit.” A true and correct copy of San Francisco Administrative
26 Code § 11.9(b), as it existed prior to amendment in January 2011, is attached hereto as Exhibit 1.

27 58. DPW Order No. 177,163 was issued in December 2007. A true and correct copy of
28 Order No. 177,163 is attached hereto as Exhibit 2.

1 59. Order No. 177,163 states that its purpose is to establish application procedures for
2 Personal Wireless Service Facilities Site Permits under Administrative Code § 11.9(b).

3 60. Section V.A. of Order No. 177,163 states that a Personal Wireless Service Facilities
4 Site Permit shall have a term of two years after the completion of construction, and “at the request
5 of Permittee, and subject to Permittee’s Compliance with the terms and conditions of the Personal
6 Wireless Service Facilities Site Permit, its UCP, and Applicable Law, the Director shall renew a
7 Permit for four (4) additional two (2) year periods.” (Emphasis added.)

8 61. Section V.B. of Order No. 177,163 provides that a permittee must file a “new
9 application . . . at the end of the ten (10) year period allowed under Section V.A.,” and that DPW
10 “shall approve an application” for a facility “at the same location provided that the Applicant can
11 show that there have been no changes to the existing permitted Personal Wireless Service Facility”
12 other than previously permitted changes “or to the status of the location under San Francisco
13 Administrative Code §§ 11.9(b)(A)-(B).”

14 62. Section V.B. of Order No. 177,163 also provides that if DPW previously referred the
15 original application to the Planning Department or Recreation and Parks Department, no further
16 referral will be required for the ten year “new application.”

17 63. Thus, when issued, each of T-Mobile’s 52 Personal Wireless Service Facilities Site
18 Permits was permitted for a term of two years and subject to automatic renewal for four additional
19 two year terms, so long as T-Mobile requested renewal and complied with the terms and
20 conditions of the permit, the UCP, and applicable law.

21 64. For each of the 52 sites for which it has received Personal Wireless Service Facilities
22 Site Permits, T-Mobile has complied with the terms and conditions of its permit, the UCP, and
23 applicable law.

24 65. T-Mobile has at least 32 existing permitted facilities that are coming up for their first
25 renewal in 2011.

26 66. In addition, T-Mobile presently has the intention to seek to install new Personal
27 Wireless Service Facilities in the public rights of way in San Francisco in the immediate future.
28

NextG's Facilities In San Francisco

1
2 67. On or about July 7, 2006, pursuant to an order of the United States District Court for
3 the Northern District of California in *NextG Networks of California, Inc. v. City and County of San*
4 *Francisco* and the then-applicable City Administrative Code § 11.9, DPW issued NextG a Utility
5 Conditions Permit ("UCP") to install telecommunications facilities, including Personal Wireless
6 Services Facilities, in the public rights of way in the City and County of San Francisco.

7 68. On or about July 11, 2008, DPW issued NextG a renewal UCP.

8 69. On or about June 11, 2010, NextG renewed its July 11, 2008 UCP for an additional two
9 year term.

10 70. Prior to the adoption of Ordinance No. 214-07 by San Francisco, NextG installed 63
11 Nodes in the public rights of way pursuant to the authority granted in NextG's UCP.

12 71. The 63 Nodes installed by NextG pursuant to its UCP prior to the adoption of
13 Ordinance No. 214-07 had no specific renewal or expiration date.

14 72. After the adoption of Ordinance No. 214-07 by San Francisco, NextG applied for and
15 was granted Personal Wireless Service Facilities Permits for 189 Nodes in the public rights of
16 way.

17 73. The 189 Personal Wireless Service Facilities Permits issued to NextG were each issued
18 pursuant to San Francisco Administrative Code § 11.9(b) and DPW Order No. 177,163 as they
19 existed at the time the permits were issued.

20 74. San Francisco Administrative Code § 11.9(b), as it existed at the time NextG's
21 Personal Wireless Service Facilities Permits were issued, provided that "A Personal Wireless
22 Service Facilities Permit shall have a term of no longer than two (2) years and may be renewed in
23 accordance with requirements established by the Department [of Public Works] in the Personal
24 Wireless Service Facilities Site Permit."

25 75. DPW Order No. 177,163 was issued in December 2007. Order No. 177,163 states that
26 its purpose is to establish application procedures for Personal Wireless Service Facilities Site
27 Permits under Administrative Code § 11.9(b).

28 76. Section V.A. of Order No. 177,163 states that a Personal Wireless Service Facilities

1 Site Permit shall have a term of two years after the completion of construction, and “at the request
2 of Permittee, and subject to Permittee’s Compliance with the terms and conditions of the Personal
3 Wireless Service Facilities Sit Permit, its UCP, and Applicable Law, the Director *shall renew* a
4 Permit for four (4) additional two (2) year periods.” (Emphasis added.)

5 77. Section V.B. of Order No. 177,163 provides that a permittee must file a “new
6 application . . . at the end of the ten (10) year period allowed under Section V.A.,” and that DPW
7 “shall approve an application” for a facility “at the same location provided that the Applicant can
8 show that there have been no changes to the existing permitted Personal Wireless Service Facility”
9 other than previously permitted changes “or to the status of the location under San Francisco
10 Administrative Code §§ 11.9(b)(A)-(B).”

11 78. Section V.B. of Order No. 177,163 also provides that if DPW previously referred the
12 original application to the Planning or Recreation and Parks Department, no further referral will be
13 required for the ten year “new application.”

14 79. Thus, when issued, each of NextG’s 189 Personal Wireless Service Facilities Site
15 Permits was permitted for a term of two years and subject to automatic renewal for four additional
16 two year terms, so long as NextG requested renewal and complied with the terms and conditions
17 of the permit, the UCP, and applicable law.

18 80. For each of those 189 permitted and 123 existing sites, NextG has complied with the
19 terms and conditions of its Personal Wireless Service Facilities Permit, the UCP, and applicable
20 law.

21 81. Fifteen of NextG’s existing permitted facilities are coming up for their first renewal in
22 November, 2011.

23 82. In addition, NextG presently has the intention to seek to install new Personal Wireless
24 Service Facilities in the public rights of way in San Francisco in the immediate future.

25 ExteNet’s Facilities in San Francisco

26 83. On or about June 13, 2007, ExteNet signed and submitted under protest a UCP
27 application to install telecommunications facilities, including Personal Wireless Services
28 Facilities, in the public rights of way in the City and County of San Francisco. DPW issued

1 ExteNet a UCP shortly thereafter.

2 84. On or about April 6, 2011, DPW renewed ExteNet's UCP.

3 85. Pursuant to its UCP and Personal Wireless Services Facilities Permits issued by DPW,
4 ExteNet has installed DAS telecommunications networks in the Noe/Eureka Valley and Marina
5 areas in San Francisco.

6 86. The 59 Personal Wireless Service Facilities Permits issued to ExteNet were each issued
7 pursuant to San Francisco Administrative Code § 11.9(b) and DPW Order No. 177,163 as they
8 existed at the time the permits were issued.

9 87. San Francisco Administrative Code § 11.9(b), as it existed at the time ExteNet's
10 Personal Wireless Service Facilities Permits were issued, provided that "A Personal Wireless
11 Service Facilities Permit shall have a term of no longer than two (2) years and may be renewed in
12 accordance with requirements established by the Department [of Public Works] in the Personal
13 Wireless Service Facilities Site Permit."

14 88. DPW Order No. 177,163 was issued in December 2007. Order No. 177,163 states that
15 its purpose is to establish application procedures for Personal Wireless Service Facilities Site
16 Permits under Administrative Code § 11.9(b).

17 89. Section V.A. of Order No. 177,163 states that a Personal Wireless Service Facilities
18 Site Permit shall have a term of two years after the completion of construction, and "at the request
19 of Permittee, and subject to Permittee's Compliance with the terms and conditions of the Personal
20 Wireless Service Facilities Site Permit, its UCP, and Applicable Law, the Director *shall renew* a
21 Permit for four (4) additional two (2) year periods." (Emphasis added.)

22 90. Section V.B. of Order No. 177,163 provides that a permittee must file a "new
23 application . . . at the end of the ten (10) year period allowed under Section V.A.," and that DPW
24 "shall approve an application" for a facility "at the same location provided that the Applicant can
25 show that there have been no changes to the existing permitted Personal Wireless Service Facility"
26 other than previously permitted changes "or to the status of the location under San Francisco
27 Administrative Code §§ 11.9(b)(A)-(B)."

28 91. Section V.B. of Order No. 177,163 also provides that if DPW previously referred the

1 original application to the Planning or Recreation and Parks Department, no further referral will be
2 required for the ten year "new application."

3 92. Thus, when issued, each of ExteNet's 59 Personal Wireless Service Facilities Site
4 Permits was permitted for a term of two years and subject to automatic renewal for four additional
5 two year terms, so long as ExteNet requested renewal and complied with the terms and conditions
6 of the permit, the UCP, and applicable law.

7 93. For each of those 59 permitted and 54 existing sites, ExteNet has complied with the
8 terms and conditions of its permit, the UCP, and applicable law.

9 94. In addition, ExteNet presently has the intention to seek to install new Personal Wireless
10 Service Facilities in the public rights of way in San Francisco in the immediate future.

11 **San Francisco's Newly Enacted Wireless Ordinance**

12 95. On January 4, 2011, the San Francisco Board of Supervisors approved Ordinance No.
13 12-11, amending the San Francisco Public Works Code by adding Article 25, Sections 1500
14 through 1526, to establish new requirements for Personal Wireless Service Facility Site Permits,
15 and amending the San Francisco Administrative Code by repealing Section 11.9(b) (the "Wireless
16 Ordinance"). A true and correct copy of the Wireless Ordinance is attached hereto as Exhibit 3.

17 96. The Wireless Ordinance was signed by the Mayor on January 14, 2011 and became
18 effective on February 14, 2011.

19 97. Section 4 of the Wireless Ordinance repeals Section 11.9(b) of the San Francisco
20 Administrative Code, and asserts that the requirements of the Wireless Ordinance shall apply to
21 facilities installed in the public rights of way prior to the effective date of the Wireless Ordinance.

22 98. Section 4 of the Wireless Ordinance also states that "the Department [of Public Works]
23 shall not renew any permit issued under former Section 11.9(b)," and instead shall require that any
24 facility previously permitted be subject to all of the requirements of the Wireless Ordinance.

25 99. Newly enacted Article 25 of the San Francisco Public Works Code encompasses
26 Sections 1500 through 1528 and establishes a new regime governing Personal Wireless Service
27 Facilities and the Site Permits required for those facilities.

28

Wireless Ordinance Term Limits And Renewal Provisions

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100. Among other things, Article 25, as adopted by the Wireless Ordinance, establishes new term lengths and renewal standards for Personal Wireless Service Facility Site Permits.

101. Section 1519 establishes that Personal Wireless Service Facility Site Permits “shall have a term of two (2) years.”

102. Section 1520(a) states that at the end of the two year term, DPW “may renew” a Personal Wireless Service Facility Site Permit for the “identical” facility at the same location for four additional two year terms.

103. Section 1520(b) provides that a Permittee “must file a renewal Application,” which must include a written report from a certified engineer confirming compliance with the Public Health Compliance Standard.

104. Section 1520(c) sets forth the standards for approval of renewal applications, providing that DPW “shall” approve a renewal for existing equipment but only if there have been no changes to (A) “Applicable Law that would allow the Department [of Public Works] to deny a new Application” for identical facilities at the location; or (B) “readily available technology for Personal Wireless Service Facilities that would make it feasible for the Applicant . . . to replace the existing equipment with less visually obtrusive equipment.”

105. Section 1520(d) requires referral of a renewal application to relevant City Departments (Public Health, Planning, and/or Recreation and Parks) under certain circumstances, and ultimately allows DPW to refer a renewal to one of the other City Departments at its “discretion” if the location of the Personal Wireless Service Facility is in the “Immediate Vicinity” of a planning protected, zoning protected, or park protected location, regardless of whether the original Personal Wireless Service Facility Site Permit was referred to another Department.

106. Section 1520(e) requires that a renewal application referred to another Department by DPW requires compliance with all other provisions of Article 25, not normally applicable to renewals.

107. The Wireless Ordinance, through its repeal of former San Francisco Administrative Code § 11.9(b) and adoption of new Article 25 of the San Francisco Public Works Code,

1 retroactively imposes new permitting and renewal requirements on T-Mobile's, NextG's, and
2 ExteNet's previously permitted, existing personal wireless service facilities.

3 108. On information and belief, Defendants intend to implement the Wireless Ordinance so
4 as to terminate T-Mobile's, NextG's, and ExteNet's existing Personal Wireless Service Facilities
5 Site Permits immediately upon their reaching two years after the date they were issued.

6 109. Defendant DPW has initiated the process of drafting and adopting regulations to
7 implement the Wireless Ordinance.

8 110. Defendant DPW has not adopted regulations to implement the Wireless Ordinance.

9 111. Defendants have communicated to NextG that Defendants will not accept any
10 application for a permit to install Personal Wireless Service Facilities in the public rights of way at
11 this time or until DPW adopts regulations implementing the Wireless Ordinance.

12 112. At the time of this Complaint, Defendants are effectively prohibiting T-Mobile, NextG,
13 and ExteNet from installing any new Personal Wireless Service Facilities in the public rights of
14 way.

15 Wireless Ordinance Site Permit Process

16 113. In addition, the Wireless Ordinance imposes a complicated, burdensome, and wholly
17 discretionary process for the issuance of permits for the deployment of new Personal Wireless
18 Service Facilities on existing structures in the public rights of way.

19 114. The Wireless Ordinance prohibits the installation of new structures in the public rights
20 of way for the deployment of Personal Wireless Services Facilities.

21 115. Among other things, the Wireless Ordinance adopts the following provisions, rules,
22 requirements, and procedures.

23 116. The Wireless Ordinance establishes three "Tiers" of Personal Wireless Services
24 Facilities.

25 117. Tier I, Tier II, and Tier III Facilities are each subject to a different level of application,
26 review, and standard for approval.

27 118. Under Section 1505 of the Wireless Ordinance, any City department reviewing an
28 Application for a Personal Wireless Service Facility Site Permit may add Conditions to its

1 approval, tentative approval, or determination.

2 119. Under Section 1506 of the Wireless Ordinance, when reviewing an application for a
3 Tier II or Tier III Facility, the Planning Department and/or the Recreation and Park Department, as
4 appropriate, may require as a Condition of approval of a Personal Wireless Service Facility Site
5 Permit that the permittee plant and maintain a “street tree” adjacent to the existing utility or street
6 light pole in the public right of way.

7 120. Under Section 1507 of the Wireless Ordinance, the Department is required to refer
8 every Application for a Personal Wireless Service Facility Site Permit to the San Francisco
9 Department of Public Health for review of the proposed Facility under the “Public Health
10 Compliance Standard,” which standard is defined in the Wireless Ordinance.

11 121. No Application for a Personal Wireless Service Facility Site Permit may be granted by
12 the Department if the Department of Public Health does not give an affirmative determination
13 under the Public Health Compliance Standard.

14 122. Personal Wireless Services Facilities falling within the “Tier I” designation are subject
15 to the least burdensome application requirements and review standards.

16 123. On information and belief, none of T-Mobile’s, NextG’s, or ExteNet’s existing
17 Personal Wireless Service Facilities in the City fall within the Tier I classification.

18 124. On information and belief, all of T-Mobile’s, NextG’s, and ExteNet’s existing Personal
19 Wireless Service Facilities in the City fall within the Tier III classification.

20 125. For the Department to grant a Tier III Personal Wireless Service Facility Site Permit, it
21 must first determine that the application satisfies the Tier III “Necessity” Standard, receives an
22 affirmative determination from the Department of Public Health, and receives an affirmative
23 determination from the Planning Department or the Recreation and Park Department (or both if
24 required) under the applicable Tier III “Compatibility” Standard. If the Department determines
25 that a Tier III Personal Wireless Service Facility satisfies those three criteria, it issues only a
26 “tentative approval,” pursuant to Section 1511(d). Pursuant to Section 1512, the applicant is then
27 required to notify the public of the tentative approval. Pursuant to Section 1513 “any person may
28 protest a tentative approval” of an application for a Tier III Facility Permit within twenty days of

1 the date the notice was mailed and posted. If a protest is timely filed, the Department is required
2 to hold a public hearing.

3 126. The grounds for granting a protest are if the evidence at the hearing supports a finding
4 that the Department of Public Health incorrectly determined that the Application complies with
5 the Public Health Compliance Standard, the Department incorrectly determined that the
6 Application meets the Tier III Necessity Standard, the Planning Department incorrectly
7 determined that the Application meets the relevant Compatibility Standard, or the Recreation and
8 Park Department incorrectly determined that the Application meets the relevant Compatibility
9 Standard.

10 127. The Tier III Compatibility Standards are subjective, ambiguous, and discretionary.

11 128. All of the Tier III Compatibility Standards involve some comparison of the additional
12 impact of the Tier III Facility compared to the impact of a Tier II Facility in the same location.
13 For example, the "Tier III-A Compatibility Standard" provides that the "Planning Department
14 shall make a compatibility determination based on an analysis of the additional impact, if any, that
15 a proposed Tier III-A Facility would have on the character of the neighborhood, as compared to
16 the impact of a Tier II Facility would have at the same location." There is no objective criterion
17 for evaluating whether a proposed Tier III Facility will meet the "Tier III Compatibility Standard."
18 The issue is entirely within the subjective discretion of the relevant City Department.
19

20 **San Francisco's Regulation Of Other Facilities Installed In The Public Rights Of Way**

21 129. The requirements of the Wireless Ordinance govern and apply to only the installation
22 of Personal Wireless Service Facilities in the public rights of way.

23 130. The City has adopted and enforces different rules and regulations governing the
24 installation of facilities in the public rights of way, including but not limited to facilities for the
25 provision of telecommunications services other than Personal Wireless Service.

26 131. On information and belief, the City allows other entities to install, operate, and
27 maintain facilities in the public rights of way, including but not limited to other facilities for the
28 provision of telecommunications services, that are larger than Tier I and Tier II Personal Wireless

1 Services Facilities, as defined in the Wireless Ordinance, subject to processes and standards that
2 are not equivalent to the process and standards imposed on Personal Wireless Services Facilities
3 under the Wireless Ordinance.

4 132. The City allows entities to install, operate, and maintain facilities in the public rights of
5 way, including but not limited to facilities for the provision of telecommunications services other
6 than Commercial Mobile Radio Services or Personal Wireless Services, without requiring those
7 entities to obtain discretionary approval from the City.

8 133. Pacific Gas and Electric ("PG&E") has installed antennas on utility poles in the public
9 rights of way.

10 134. On information and belief, the City did not require PG&E to apply for or obtain
11 discretionary permits as a condition of deploying antennas on utility poles in the public rights of
12 way.

13 135. The City does not require entities that are installing, operating, or maintaining facilities
14 or equipment on utility poles in the public rights of way, other than facilities for the provision of
15 Personal Wireless Service, to apply for or obtain permits or other approvals from the City that are
16 subject to same or similar level of analysis, review, and discretion as required for the installation
17 of Personal Wireless Service Facilities under the Wireless Ordinance.

18 136. Under the Wireless Ordinance, the City does not regulate the installation, operation, or
19 maintenance of Personal Wireless Services Facilities in an equivalent manner to its regulation of
20 the installation, operation, and maintenance of facilities and equipment on utilities poles in the
21 public rights of way other than Personal Wireless Services Facilities.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of Government Code § 65964(b))**

24 **(Against all Defendants)**

25 137. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 136,
26 above.

27 138. T-Mobile, NextG, and ExteNet construct and install "wireless telecommunications
28 facilities" as defined in Government Code Section 65850.6(d).

1 139. Section 65964(b) of the Government Code states that, “a city or county shall not . . .
2 [u]nreasonably limit the duration of any permit for a wireless telecommunications facility. *Limits*
3 *of less than 10 years are presumed to be unreasonable* absent public safety reasons or substantial
4 land use reasons. . . .” (Emphasis added).

5 140. The Wireless Ordinance limits the term for Personal Wireless Service Facility Site
6 Permits to two years and does not provide for automatic renewal up to a minimum of ten years.

7 141. T-Mobile has received 52 Personal Wireless Service Facility Site Permits and has
8 constructed facilities at 51 of those 52 permitted sites.

9 142. NextG has 189 existing, previously permitted or otherwise authorized Personal
10 Wireless Service Facility sites in the public rights of way in San Francisco.

11 143. ExteNet has 54 existing, previously permitted Personal Wireless Service Facility Sites
12 in the public rights of way in San Francisco.

13 144. The Wireless Ordinance, by its terms, applies to T-Mobile’s, NextG’s, and ExteNet’s
14 existing, previously permitted sites. Section 4 of the Wireless Ordinance provides that “the
15 Department shall not renew any permit issued under former Section 11.9(b). The Department
16 shall instead require that any Personal Wireless Service Facility permitted under that section be
17 subject to all of the requirements of this ordinance.” Thus, the Wireless Ordinance has the effect
18 of terminating T-Mobile’s, NextG’s, and ExteNet’s current Site Permits two years after the date
19 they were granted, and requires T-Mobile, NextG, and ExteNet to submit an application for an
20 entirely new permit subject to the requirements of the new Article 25 of the San Francisco Public
21 Works Code.

22 145. Section 4(b)(2) of the Wireless Ordinance provides that “The [DPW] shall require that
23 any Personal Wireless Service Facility installed in the Public Rights-of-Way prior to the effective
24 date of Ordinance No. 214-07 be subject to all of the requirements of this ordinance.” On
25 information and belief, Defendants interpret and intend to enforce Section 4(b)(2) as requiring the
26 termination of NextG’s authority to occupy the public rights of way with its Nodes installed prior
27 to the effective date of Ordinance No. 214-07 and to require NextG to apply for all new Wireless
28 Services Facilities Site Permits under the terms and conditions of the Wireless Ordinance.

1 146. Under Article 25, Sections 1519 and 1520, as amended by the Wireless Ordinance, any
2 new sites permitted under the Wireless Ordinance, and Article 25 of the San Francisco Public
3 Works Code, will be limited to a two-year term and not subject to automatic renewal.

4 147. The Wireless Ordinance violates Government Code Section 65694(b) by unreasonably
5 limiting the duration of Plaintiffs' permits for wireless telecommunications facilities.

6 148. Defendants can articulate no public safety reason to justify two year permit limits.

7 149. Defendants can articulate no substantial land use reason to justify two year permit
8 limits.

9 Wherefore, T-Mobile, NextG, and ExteNet pray for judgment as set forth below.

10 **SECOND CAUSE OF ACTION**

11 **(Unlawful Taking of Property in Violation of Due Process Under the U.S. and California**
12 **Constitutions) (Against all Defendants)**

13 150. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-149, above.

14 151. T-Mobile, NextG, and ExteNet are entitled under the Fourteenth Amendment of the
15 United States Constitution and Article 1, Section 7 of the California Constitution, to due process
16 of law.

17 152. T-Mobile undertook investment, received permits for, and installed its 51 existing
18 wireless facility sites based on the laws in existence at the time it received authorization to
19 construct the sites. Those laws included a series of automatic two year renewals up to ten years
20 and even longer if there was no change in the site equipment.

21 153. NextG undertook investment, received permits for 189 and installed 123 existing
22 wireless facility sites based on the laws in existence at the time it received authorization to
23 construct the sites. Those laws included a series of automatic two year renewals up to ten years
24 and even longer if there was no change in the site equipment.

25 154. ExteNet undertook investment, received permits for, and installed its 54 existing
26 wireless facility sites based on the laws in existence at the time it received authorization to
27 construct the sites. Those laws included a series of automatic two year renewals up to ten years
28 and even longer if there was no change in the site equipment.

1 155. T-Mobile, NextG, and ExteNet have vested property rights, and an expectation of at
2 least ten years of use, in their existing, previously permitted wireless facility sites.

3 156. The Wireless Ordinance deprives T-Mobile, NextG, and ExteNet of that vested
4 property right by terminating the existing permits at the end of the initial two years and requiring
5 new applications subject to the newly adopted permitting requirements of Article 25.

6 157. T-Mobile, NextG, and ExteNet have a vested right in their statewide franchise to
7 occupy the public rights of way pursuant to Public Utilities Code Section 7901, which is protected
8 by the United States and California Constitutions.

9 158. The Wireless Ordinance deprives T-Mobile, NextG, and ExteNet of their vested
10 franchise rights.

11 159. Thus, the Wireless Ordinance amounts to a regulatory taking of T-Mobile's, NextG's,
12 and ExteNet's vested property rights without due process of law in violation of the United States
13 and California Constitutions.

14 Wherefore, T-Mobile, NextG, and ExteNet pray for judgment as set forth below.

15 **THIRD CAUSE OF ACTION**

16 **(Violation of Public Utilities Code §§ 7901 & 7901.1)**

17 **(Against all Defendants)**

18 160. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-159, above.

19 161. T-Mobile is a telephone corporation under the Public Utilities Code.

20 162. NextG is a telephone corporation under the Public Utilities Code.

21 163. ExteNet is a telephone corporation under the Public Utilities Code.

22 164. Public Utilities Code Section 7901 constitutes "a continuing offer extended to
23 telephone and telegraph companies . . . which offer when accepted by the construction and
24 maintenance of lines" [citation omitted] gives a franchise from the state to use, without
25 compensation, the public highways for the prescribed purposes without the necessity for any grant
26 by a subordinate legislative body. *Pacific Tel. & Tel. Co. v. City & County of San Francisco*
27 (1959) 51 Cal. 2d 766, 771 ("*Pac. Tel. P.*"); *City of Salinas v. Pacific Tel. & Tel. Co.* (1946) 72 Cal.
28 App. 2d 494, 497.

1 165. The Wireless Ordinance impairs T-Mobile's, NextG's, and ExteNet's ability to
2 exercise their franchise rights under Public Utilities Code Section 7901 to occupy the public rights
3 of way in San Francisco.

4 166. Under the Wireless Ordinance, the City does not regulate Plaintiffs' installation,
5 operation, and maintenance of Personal Wireless Services Facilities on utility poles in the public
6 rights of way in a manner equivalent to the City's regulation of facilities and equipment other than
7 Personal Wireless Services Facilities on utility poles in the public rights of way, in violation of
8 Public Utilities Code §§ 7901 and 7901.1(b). The Wireless Ordinance exceeds Defendants'
9 authority under Public Utilities Code Section 7901.1 to regulate Plaintiffs' access to and
10 occupancy of the public rights-of-way.

11 167. The Wireless Ordinance violates Section 7901 of the Public Utilities Code by
12 interfering with or preventing T-Mobile, NextG, and ExteNet from exercising their franchise to
13 occupy the public rights of way in San Francisco.

14 168. The Defendants' current refusal to process applications or issue permits for Personal
15 Wireless Service Facilities prohibits Plaintiffs from installing new facilities in the public rights of
16 way in violation of Section 7901 of the Public Utilities Code.

17 Wherefore, T-Mobile, NextG and ExteNet pray for judgment as set forth below.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for the following relief:

20 1. For a declaration and judgment that the terms and conditions that San Francisco
21 imposes in the rules, regulations, and requirements in the San Francisco Public Works Code,
22 including but not limited to the Wireless Ordinance and those identified in this Complaint, on their
23 face and/or as applied, exceed the scope of San Francisco's authority and violate Section 65694 of
24 the Government Code, the Fourteenth Amendment of the United States Constitution, and Article 1
25 Section 7 of the California Constitution, and therefore are void, invalid, and unenforceable;

26 2. For a declaration and judgment that the terms and conditions that San Francisco
27 imposes in the rules, regulations, and requirements in the San Francisco Public Works Code,
28 including but not limited to the Wireless Ordinance and those identified in this Complaint, as

1 applied to Plaintiffs and Plaintiffs' existing, previously permitted wireless communications
2 facilities in the public rights of way, exceed the scope of San Francisco's authority and violate
3 Section 65694 of the Government Code, the Fourteenth Amendment of the United States
4 Constitution, and Article 1 Section 7 of the California Constitution, and therefore are void, invalid,
5 and unenforceable;

6 3. For an order enjoining Defendants from requiring Plaintiffs to comply with any
7 provision of the Wireless Ordinance with respect to renewal of Plaintiffs' existing, previously
8 permitted wireless communications facilities in the public rights of way, and requiring Defendants
9 to adhere to prior automatic renewal process for those existing facilities;


10 4. For a declaration that the Wireless Ordinance violates Sections 7901 and 7901.1 of
11 the Public Utilities Code.

12 5. For an order enjoining Defendants from enforcing the Wireless Ordinance on
13 Plaintiffs.

14 6. For such other and further relief as the Court may deem just and proper.

15 DATED this 3rd day of May, 2011.

16 DAVIS WRIGHT TREMAINE LLP

17
18 By: 
19 Martin L. Fineman

20 Attorneys for T-Mobile West Corporation,
21 NextG Networks of California, Inc., and
22 ExteNet Systems (California) LLC
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