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UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

T-MOBILE WEST LLC AND  
INDEPENDENT TOWERS HOLDINGS,  
LLC,  
  
Plaintiffs,  
  
vs.  
  
THE CITY OF MEDINA,  
WASHINGTON,  
  
Defendant.

CIVIL ACTION NO. 2:14-cv-  
01455-RSL

MEDINA'S ANSWER TO FIRST  
AMENDED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
EXPEDITED STATEMENT

Defendant, City of Medina, answers Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief and Expedited Treatment ("Plaintiffs' First Amended Complaint"), as follows:

NATURE OF THE ACTION

In response to Plaintiffs' description of the "Nature of the Action," Defendant admits that this action arises out of Plaintiffs' application to construct and operate a wireless telecommunications facility in the City in a portion of Fairweather Park adjacent to State Route (SR) 520; and by way of further answer, Defendant admits that Plaintiffs seek an order from this court directing the City to approve the Application for the



1 Proposed Facility; and, by way of further answer, Defendant admits that Plaintiffs request  
2 expedited treatment of this complaint pursuant to 47 U.S.C. § 332(c)(7); and, by way of  
3 further answer, Defendant denies that the denial of Plaintiffs' application was unlawful  
4 and denies that the denial is not supported by substantial evidence contained in a written  
5 record and denies that the denial effectively prohibits personal wireless service in the  
6 vicinity of the proposed facility; and, by way of further answer, Defendant is without  
7 sufficient knowledge or information to form a belief as to the truth of the remaining  
8 allegations set forth therein, and accordingly denies the same.

9 Parties

10 1. In answer to ¶ 1 of Plaintiffs' First Amended Complaint, Defendant is  
11 without sufficient knowledge or information to form a belief as to the truth of the  
12 allegations set forth therein, and accordingly denies the same.

13 2. In answer to ¶ 2 of Plaintiffs' First Amended Complaint, Defendant is  
14 without sufficient knowledge or information to form a belief as to the truth of the  
15 allegations set forth therein, and accordingly denies the same.

16 3. In answer to ¶ 3 of Plaintiffs' First Amended Complaint, Defendant  
17 admits the same.

18 JURISDICTION AND VENUE

19 4. In answer to ¶ 4 of Plaintiffs' First Amended Complaint, Plaintiffs'  
20 allegation that this court has subject matter jurisdiction over this action under 28 U.S.C.  
21 § 1331 because of the existence of federal questions arising under the Communications  
22 Act of 1934, as amended by the Telecommunications Act of 1996, is a legal conclusion,  
23 and to the extent that the same may be construed as containing an allegation to which a  
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1 response is required, the law speaks for itself. By way of further answer to ¶ 4 of  
2 Plaintiffs' First Amended Complaint, Plaintiffs' allegation that the court has authority to  
3 issue declaratory judgment relief pursuant to 28 U.S.C. § 2201(a) is a legal conclusion,  
4 and to the extent that the same may be construed as containing an allegation to which a  
5 response is required, the law speaks for itself.

6 5. In answer to ¶ 5 of Plaintiffs' First Amended Complaint, Defendant  
7 admits that a substantial part of the events or omissions described in Plaintiffs' First  
8 Amended Complaint occurred in King County, in the Western District of Washington.  
9 By way of further answer to ¶ 5 of Plaintiffs' First Amended Complaint, Plaintiffs'  
10 allegation that venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(2) is a legal  
11 conclusion, and to the extent that the same may be construed as containing an allegation  
12 to which a response is required, the law speaks for itself.

13 STATEMENT OF FACTS

14 Federal Statutory Control of Wireless Siting

15 6. In answer to ¶ 6 of Plaintiffs' First Amended Complaint, the  
16 Communications Act, 47 U.S.C. § 332(c)(7)(B), speaks for itself, and to the extent the  
17 same may be construed as containing an allegation to which a response is required, the  
18 Defendant is without sufficient knowledge or information to form a belief as to the truth  
19 of the allegations set forth therein, and accordingly denies the Plaintiffs' legal  
20 conclusions.  
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22 7. In answer to ¶ 7 of Plaintiffs' First Amended Complaint, the  
23 Communications Act, 47 U.S.C. § 332(c)(7)(B)(v), speaks for itself, and to the extent the  
24 same may be construed as containing an allegation to which a response is required, the  
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1 Defendant is without sufficient knowledge or information to form a belief as to the truth  
2 of the allegations set forth therein, and accordingly denies the Plaintiffs' legal  
3 conclusions.

4 The Wireless Communications Service Industry

5 8. In answer to ¶ 8 of Plaintiffs' First Amended Complaint, Defendant is  
6 without sufficient knowledge or information to form a belief as to the truth of the  
7 allegations set forth therein, and accordingly denies the same.

8 9. In answer to ¶ 9 of Plaintiffs' First Amended Complaint, Defendant is  
9 without sufficient knowledge or information to form a belief as to the truth of the  
10 allegations set forth therein, and accordingly denies the same.

11 10. In answer to ¶ 10 of Plaintiffs' First Amended Complaint, Defendant is  
12 without sufficient knowledge or information to form a belief as to the truth of the  
13 allegations set forth therein, and accordingly denies the same.

14 11. In answer to ¶ 11 of Plaintiffs' First Amended Complaint, the  
15 Communications Act, 47 U.S.C. § 151, speaks for itself, and to the extent the same may  
16 be construed as containing an allegation to which a response is required, the Defendant is  
17 without sufficient knowledge or information to form a belief as to the truth of the  
18 allegations set forth therein, and accordingly denies the Plaintiffs' legal conclusions.

19 12. In answer to ¶ 12 of Plaintiffs' First Amended Complaint, Defendant is  
20 without sufficient knowledge or information to form a belief as to the truth of the  
21 allegations set forth therein, and accordingly denies the same.  
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1           13. In answer to ¶ 13 of Plaintiffs' First Amended Complaint, Defendant is  
2 without sufficient knowledge or information to form a belief as to the truth of the  
3 allegations set forth therein, and accordingly denies the same.

4           14. In answer to ¶ 14 of Plaintiffs' First Amended Complaint, Defendant is  
5 without sufficient knowledge or information to form a belief as to the truth of the  
6 allegations set forth therein, and accordingly denies the same.

7           15. In answer to ¶ 15 of Plaintiffs' First Amended Complaint, Defendant is  
8 without sufficient knowledge or information to form a belief as to the truth of the  
9 allegations set forth therein, and accordingly denies the same.

10                           The Proposed Facility & Application Process

11           16. In answer to ¶ 16 of Plaintiffs' First Amended Complaint, Defendant  
12 admits that the Medina Hearing Examiner signed a decision on October 22, 2002,  
13 granting to VoiceStream Wireless a special use permit and variances for height, setback  
14 and locating equipment above ground for a wireless facility adjacent to the southwest  
15 corner of Fairweather Park on the north side of SR 520 next to the Evergreen Point Road  
16 overpass. By way of further answer, the Defendant admits the same on the location of  
17 the wireless facility. By way of further answer, the Defendant is without sufficient  
18 knowledge or information to form a belief as to the truth of the remaining allegations set  
19 forth therein, and accordingly denies the same.  
20

21           17. In answer to ¶ 17 of Plaintiffs' First Amended Complaint, Defendant  
22 admits that a building permit was issued on April 20, 2004, to T-Mobile to construct a  
23 proposed 55-foot tall wireless facility consistent with the hearing examiner's October 22,  
24 2002 decisions. By way of further answer, according to City inspection logs, the wireless  
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1 facility received a final inspection with corrections on July 16, 2004. The inspection logs  
2 do not show a final approval of the wireless facility. By way of further answer, the  
3 Defendant is without sufficient knowledge or information to form a belief as to the truth  
4 of the remaining allegations set forth therein, and accordingly denies the same.

5 18. In answer to ¶ 18 of Plaintiffs' First Amended Complaint, Defendant  
6 admits to receiving written communications from Liz Carrasquero, representing T-  
7 Mobile, that the Washington State Department of Transportation (WSDOT) had set a  
8 deadline of July 01, 2010, subsequently modified to May 2011, for T-Mobile to remove  
9 the subject wireless facility. By way of further answer, the Defendant is without  
10 sufficient knowledge or information to form a belief as to the truth of the remaining  
11 allegations set forth therein, and accordingly denies the same.

12 19. In answer to ¶ 19 of Plaintiffs' First Amended Complaint, Defendant  
13 admits that on March 15, 2011, a stop work order was issued by the City to Wren  
14 Construction and T-Mobile with regard to their work to install a wireless communication  
15 facility without a permit at the location specified in ¶ 19 of Plaintiffs' First Amended  
16 Complaint. By way of further answer, the Defendant admits that Wren Construction and  
17 T-Mobile subsequently applied for and were granted permits by the City to install a  
18 temporary wireless facility and that installation was completed at this location. By way  
19 of further answer, the Defendant is without sufficient knowledge or information to form a  
20 belief as to the truth of the remaining allegations set forth therein, and accordingly denies  
21 the same.  
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23 20. In answer to ¶ 20 of Plaintiffs' First Amended Complaint, Defendant  
24 admits that the Plaintiffs submitted a temporary use permit application to the City on  
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1 April 19, 2012, for a wireless facility in an area of Fairweather Park leased to  
2 Independent Towers Holding, LLC located on the north side of SR 520. By way of  
3 further answer, Defendant admits that a temporary use permit was granted by the City on  
4 October 26, 2012. By way of further answer, the Defendant is without sufficient  
5 knowledge or information to form a belief as to the truth of the remaining allegations set  
6 forth therein, and accordingly denies the same.

7 21. In answer to ¶ 21 of Plaintiffs' First Amended Complaint, Defendant  
8 admits being involved with the relocation process only to the extent of its authority to act  
9 as a regulatory agency responsible for reviewing, processing and deciding permits within  
10 its jurisdictional boundaries. By way of further answer, the Defendant is without  
11 sufficient knowledge or information to form a belief as to the truth of the remaining  
12 allegations set forth therein, and accordingly denies the same.

13 22. In answer to ¶ 22 of Plaintiffs' First Amended Complaint, Defendant is  
14 without sufficient information to form a belief as to the truth of the allegation that the  
15 proposed facility will be located 158 feet from the site of the original wireless facility.  
16 The Defendant admits the remaining allegations contained therein.

17 23. In answer to ¶ 23 of Plaintiffs' First Amended Complaint, Defendant  
18 admits to the allegation that the temporary use permit issued for the temporary facility  
19 has expired and that Plaintiffs' temporary wireless facility is now in violation of the  
20 Medina Municipal Code. By way of further answer, Defendant is without sufficient  
21 information to form a belief as to the truth of the remaining allegations set forth therein,  
22 and accordingly denies the same.  
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1           24. In answer to ¶ 24 of Plaintiffs' First Amended Complaint, Defendant is  
2 without sufficient knowledge or information to form a belief as to the truth of the  
3 allegations set forth therein, and accordingly denies the same.

4           25. In answer to ¶ 25 of Plaintiffs' First Amended Complaint, Defendant is  
5 without sufficient knowledge or information to form a belief as to the truth of the  
6 allegations set forth therein, and accordingly denies the same.

7           26. In answer to ¶ 26 of Plaintiffs' First Amended Complaint, Defendant is  
8 without sufficient knowledge or information to form a belief as to the truth of the  
9 allegations set forth therein, and accordingly denies the same.

10           27. In answer to ¶ 27 of Plaintiffs' First Amended Complaint, Defendant is  
11 without sufficient knowledge or information to form a belief as to the truth of the  
12 allegations set forth therein, and accordingly denies the same.

13           28. In answer to ¶ 28 of Plaintiffs' First Amended Complaint, Defendant is  
14 without sufficient knowledge or information to form a belief as to the truth of the  
15 allegations set forth therein, and accordingly denies the same.

16           29. In answer to ¶ 29 of Plaintiffs' First Amended Complaint, Defendant is  
17 without sufficient knowledge or information to form a belief as to the truth of the  
18 allegations set forth therein, and accordingly denies the same.

19           30. In answer to ¶ 30 of Plaintiffs' First Amended Complaint, Defendant  
20 admits that evidence was presented at the administrative hearing before the City of  
21 Medina Hearing Examiner that the average daily traffic across the SR-520 floating bridge  
22 is 62,223 vehicles per day. By way of further answer, Defendant is without sufficient  
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1 knowledge or information to form a belief as to the truth of the allegations set forth  
2 therein, and accordingly denies the same.

3 31. In answer to ¶ 31 of Plaintiffs' First Amended Complaint, Defendant is  
4 without sufficient knowledge or information to form a belief as to the truth of the  
5 allegations set forth therein, and accordingly denies the same.

6 32. In answer to ¶ 32 of Plaintiffs' First Amended Complaint, Defendant is  
7 without sufficient knowledge or information to form a belief as to the truth of the  
8 allegations set forth therein, and accordingly denies the same.

9 33. In answer to ¶ 33 of Plaintiffs' First Amended Complaint, Plaintiffs'  
10 allegations therein call for a legal conclusion, and to the extent that the same may be  
11 construed as containing an allegation to which a response is required, the law speaks for  
12 itself.

13 34. In answer to ¶ 34 of Plaintiffs' First Amended Complaint, Plaintiffs'  
14 allegations therein call for a legal conclusion, and to the extent that the same may be  
15 construed as containing an allegation to which a response is required, the law speaks for  
16 itself.

17 35. In answer to ¶ 35 of Plaintiffs' First Amended Complaint, Plaintiffs'  
18 allegations therein call for a legal conclusion, and to the extent that the same may be  
19 construed as containing an allegation to which a response is required, the law speaks for  
20 itself.

21 36. In answer to ¶ 36 of Plaintiffs' First Amended Complaint, Plaintiffs'  
22 allegations therein call for a legal conclusion, and to the extent that the same may be  
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1 construed as containing an allegation to which a response is required, the law speaks for  
2 itself.

3 37. In answer to ¶ 37 of Plaintiffs' First Amended Complaint, Plaintiffs'  
4 allegations therein call for a legal conclusion, and to the extent that the same may be  
5 construed as containing an allegation to which a response is required, the law speaks for  
6 itself.

7 38. In answer to ¶ 38 of Plaintiffs' First Amended Complaint, Defendant is  
8 without sufficient knowledge or information to form a belief as to the truth of the  
9 allegations set forth therein, and accordingly denies the same.

10 39. In answer to ¶ 39 of Plaintiffs' First Amended Complaint, Defendant is  
11 without sufficient knowledge or information to form a belief as to the truth of the  
12 allegations set forth therein, and accordingly denies the same.

13 40. In answer to ¶ 40 of Plaintiffs' First Amended Complaint, Defendant  
14 admits that on March 14, 2011 during the regular meeting of the Medina City Council,  
15 the City Council approved a motion authorizing the former Medina City Manager,  
16 following design approval by the Medina City Council, and resolution of remaining  
17 administrative details to the satisfaction of the City Manager, to execute a site lease  
18 agreement with Independent Towers Holdings, LLC on behalf of the City. By way of  
19 further answer, the Defendant admits that the lease authorized Independent Towers  
20 Holdings, LLC to lease a portion of a City owned park commonly referred to as  
21 "Fairweather Park" for use and operation of a wireless communications facility and  
22 related improvements. By way of further answer, Defendant is without sufficient  
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1 knowledge or information to form a belief as to the truth of the remaining allegations set  
2 forth therein, and accordingly denies the same.

3 41. In answer to ¶ 41 of Plaintiffs' First Amended Complaint, Defendant  
4 admits that during the regular meeting of the Medina City Council held on June 13, 2011,  
5 a summary of the proposed design of a wireless communications facility to be  
6 constructed or installed at Fairweather Park by Independent Towers Holdings, LLC was  
7 presented to the City Council, and that by way of a motion the City Council approved a  
8 design for this proposal. By way of further answer, the Defendant admits that some time  
9 in December of 2011 the former City Manager executed a site lease agreement with  
10 Independent Towers Holdings, LLC, for the construction and operation of a wireless  
11 communications facility on a portion of the Fairweather Park. By way of further answer,  
12 Defendant is without sufficient knowledge or information to form a belief as to the truth  
13 of the remaining allegations set forth therein, and accordingly denies the same.  
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15 42. In answer to ¶ 42 of Plaintiffs' First Amended Complaint, Defendant  
16 admits the same.

17 43. In answer to ¶ 43 of Plaintiffs' First Amended Complaint, Defendant  
18 admits the applications for the special use permit and two variances were determined not  
19 complete and requested additional information on October 18, 2013. By way of further  
20 answer, the City admits to receiving revisions to the application on January 29, 2014 and  
21 on April 20, 2014.

22 44. In answer to ¶ 44 of Plaintiffs' First Amended Complaint, Defendant  
23 admits the same.  
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1           45. In answer to ¶ 45 of Plaintiffs' First Amended Complaint, Medina City  
2 Code Section 20.37.060(A) speaks for itself and no further answer is required.

3           46. In answer to ¶ 46 of Plaintiffs' First Amended Complaint, Medina City  
4 Code Section 20.37.070(B)(3) speaks for itself and no further answer is required.

5           47. In answer to ¶ 47 of Plaintiffs' First Amended Complaint, Defendant  
6 admits that Robert Grumbach, City Development Services Director, and Jenny Ngo, City  
7 of Medina Planning Consultant, prepared a staff report dated July 8, 2014 regarding  
8 Plaintiffs' applications for a special use permit and variances for a proposed wireless  
9 communications facility, and that the recommendation in the staff report was for approval  
10 of the special use permit, subject to conditions, and that no recommendation was made  
11 regarding the application for the variances. By way of further answer, Defendant admits  
12 that the staff report recommends approval of the special use permit, but denies the  
13 remaining allegations set forth therein.

14           48. In answer to ¶ 48 of Plaintiffs' First Amended Complaint, Defendant  
15 admits that the City staff report includes conclusion statements that the Plaintiffs'  
16 application with conditions met the approval criteria for a special use permit prescribed in  
17 MMC 20.72.010(E). By way of further answer, Defendant denies the remaining  
18 allegations set forth therein.

19           49. In answer to ¶ 49 of Plaintiffs' First Amended Complaint, Defendant  
20 admits that a hearing on Independent Towers Holdings, LLC's applications Nos. PL-13-  
21 031 and PLC-13-032 for a special use permit and two variances was held before the  
22 Hearing Examiner for the City of Medina on July 16, 2014, and that the record was kept  
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1 open until August 11, 2014 for the applicant and parties of record to file additional  
2 responses.

3 50. In answer to ¶ 50 of Plaintiffs' First Amended Complaint, Defendant  
4 admits that at the July 16<sup>th</sup> hearing Independent Towers Holdings, LLC presented  
5 documentary and testimonial evidence. By way of further answer, Defendant is without  
6 sufficient knowledge or information to form a belief as to the truth of the remaining  
7 allegations set forth therein, and accordingly denies the same.

8 51. In answer to ¶ 51 of Plaintiffs' First Amended Complaint, Defendant  
9 admits that at the July 16<sup>th</sup> hearing Independent Towers Holdings, LLC presented  
10 documentary and testimonial evidence. By way of further answer, Defendant is without  
11 sufficient knowledge or information to form a belief as to the truth of the remaining  
12 allegations set forth therein, and accordingly denies the same.

13 52. In answer to ¶ 52 of Plaintiffs' First Amended Complaint, Defendant  
14 denies the same.

15 53. In answer to ¶ 53 of Plaintiffs' First Amended Complaint, Defendant is  
16 without sufficient knowledge or information to form a belief as to the truth of the  
17 allegations set forth therein, and accordingly denies the same.

18 54. In answer to ¶ 54 of Plaintiffs' First Amended Complaint, Defendant is  
19 without sufficient knowledge or information to form a belief as to the truth of the  
20 allegations set forth therein, and accordingly denies the same.

21 55. In answer to ¶ 55 of Plaintiffs' First Amended Complaint, Defendant  
22 admits the same.  
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1           56. In answer to ¶ 56 of Plaintiffs' First Amended Complaint, Defendant  
2 admits that on August 25, 2014 City of Medina Director of Development Services issued  
3 a "notice of decision" notifying the applicant and parties of record of the Hearing  
4 Examiner's written decision denying the applications of Independent Towers Holding,  
5 LLC for a special use permit and two variances for applicant's proposed wireless  
6 communications facility.

7           57. In answer to ¶ 57 of Plaintiffs' First Amended Complaint, this paragraph  
8 is blank and no answer is required.

9           58. In answer to ¶ 58 of Plaintiffs' First Amended Complaint, Defendant  
10 admits that on September 8, 2014, the City received Plaintiffs' motion for reconsideration  
11 of the Hearing Examiner's decision denying Plaintiffs' applications for a special use  
12 permit and a variance for a proposed wireless communications facility. By way of  
13 further answer, Plaintiffs' motion speaks for itself. By way of further answer, Defendant  
14 admits that on September 15, 2014, the City received a notice of appearance from G.  
15 Richard Hill, appearing on behalf of "Medina Residents, a party of record" and a motion  
16 submitted by G. Richard Hill on behalf of such party of record entitled Medina  
17 Residents' Motion to Deny Independent Towers' Reconsideration Request." By way of  
18 further answer, said motion speaks for itself. By way of further answer, to the extent ¶ 58  
19 of Plaintiffs' First Amended Complaint may be construed as containing an allegation to  
20 which a response is required, the Defendant is without sufficient knowledge or  
21 information to form a belief as to the truth of the remaining allegations set forth therein,  
22 and accordingly denies the same.  
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59. In answer to ¶ 59 of Plaintiffs' First Amended Complaint, Defendant admits that a hearing was held before the City of Medina Hearing Examiner on September 17, 2014 on Plaintiffs' motion for reconsideration and on the motion to dismiss and that by order of the Hearing Examiner dated September 15, 2014, applicant and the City of Medina were allowed additional time to file responses to the motion filed on behalf of Medina Residents.

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60. In answer to ¶ 60 of Plaintiffs' First Amended Complaint, Defendant admits the same.

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61. In answer to ¶ 61 of Plaintiffs' First Amended Complaint, Defendant denies the same.

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62. In answer to ¶ 62 of Plaintiffs' First Amended Complaint, 47 U.S.C. § 332(c)(7)(B)(v) speaks for itself and no further answer is required.

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63. In answer to ¶ 63 of Plaintiffs' First Amended Complaint, Defendant denies the same.

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COUNT I

17  
(Violation of 47 U.S.C. § 332(c)(7)(B)(iii) – Substantial Evidence)

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64. In answer to ¶ 64 of Plaintiffs' First Amended Complaint, Defendant incorporates its answers to the preceding paragraphs as if fully set forth herein.

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65. In answer to ¶ 65 of Plaintiffs' First Amended Complaint, 47 U.S.C. § 332(c)(7)(B)(iii) speaks for itself and no further answer is required.

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66. In answer to ¶ 66 of Plaintiffs' First Amended Complaint, Defendant denies the same.

1           67. In answer to ¶ 67 of Plaintiffs' First Amended Complaint, Defendant  
2 admits that Robert Grumbach, City Development Services Director, and Jenny Ngo, City  
3 of Medina Planning Consultant, prepared a staff report regarding Plaintiffs' applications  
4 for a special use permit and a variance for a proposed wireless communications facility,  
5 and that the recommendation in the staff report was for approval of the special use  
6 permit, subject to conditions, and that no recommendation was made regarding the  
7 application for the variances. By way of further answer, Defendant denies the remaining  
8 allegations set forth in ¶ 67 of Plaintiffs' First Amended Complaint.

9           68. In answer to ¶ 68 of Plaintiffs' First Amended Complaint, Defendant  
10 admits that at the July 16, 2014 hearing before the City of Medina Hearing Examiner,  
11 Plaintiffs presented evidence in support of their applications for a special use permit and  
12 a variance. By way of further answer, the remaining allegations call for legal  
13 conclusions, and to the extent that the same may be construed as containing an allegation  
14 to which a response is required, the Defendant denies Plaintiffs' legal conclusions.

15           69. In answer to ¶ 69 of Plaintiffs' First Amended Complaint, Defendant  
16 admits that the Hearing Examiner in his order issued August 25, 2014 and in his order on  
17 reconsideration dated October 13, 2014, denied Plaintiffs' application for a special use  
18 permit and for two variances for a proposed wireless communications facility. By way of  
19 further answer, Defendant denies the remaining allegations set forth therein.

20           70. In answer to ¶ 70 of Plaintiffs' First Amended Complaint, Defendant  
21 denies the same.

22           71. In answer to ¶ 71 of Plaintiffs' First Amended Complaint, Defendant  
23 denies the same.  
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COUNT II

(Violation of 47 U.S.C. § 332(c)(7)(b)(i)(II) – Effective Prohibition)

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3 72. In answer to ¶ 72 of Plaintiffs’ First Amended Complaint, Defendant  
4 incorporates its answers to the preceding paragraphs as if fully set forth herein.

5 73. In answer to ¶ 73 of Plaintiffs’ First Amended Complaint, 47 U.S.C.  
6 § 332(c)(7)(b)(i)(II) speaks for itself and no further answer is required.

7 74. In answer to ¶ 74 of Plaintiffs’ First Amended Complaint, Defendant is  
8 without sufficient knowledge or information to form a belief as to the truth of the  
9 allegations set forth therein, and accordingly denies the same.

10 75. In answer to ¶ 75 of Plaintiffs’ First Amended Complaint, Defendant is  
11 without sufficient knowledge or information to form a belief as to the truth of the  
12 allegations set forth therein, and accordingly denies the same.

13 76. In answer to ¶ 76 of Plaintiffs’ First Amended Complaint, the allegations  
14 contained therein call for a legal conclusion, and to the extent that the same may be  
15 construed as containing an allegation to which a response is required, the Defendant  
16 denies Plaintiffs’ legal conclusions.

17 77. In answer to ¶ 77 of Plaintiffs’ First Amended Complaint, Defendant is  
18 without sufficient knowledge or information to form a belief as to the truth of the  
19 allegations set forth therein, and accordingly denies the same.

20 78. In answer to ¶ 78 of Plaintiffs’ First Amended Complaint, Defendant  
21 denies the same.  
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AFFIRMATIVE DEFENSES

1  
2 BY WAY OF FURTHER ANSWER, AND AS AFFIRMATIVE DEFENSES,  
3 Defendant alleges as follows:

- 4 1. Plaintiffs have failed to state a claim upon which relief can be granted.  
5 2. Some or all of Plaintiffs' claims are barred under the federal common law  
6 doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion).  
7 3. Defendant reserves the right to amend its answer and assert additional  
8 affirmative defenses, cross-claims, counter claims and third-party claims as further  
9 information becomes known.

10 WHEREFORE, HAVING ANSWERED PLAINTIFFS' FIRST AMENDED  
11 COMPLAINT AND ASSERTED ITS AFFIRMATIVE DEFENSES, Defendant  
12 respectfully seeks the following relief:

- 13 1. That Plaintiffs' First Amended Complaint against the Defendant be  
14 dismissed with prejudice and Plaintiffs take nothing thereby.  
15 2. That Defendant is awarded their costs and attorney's fees as allowed by  
16 law.  
17 3. For such other and further relief as the Court deems just and equitable.

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DATED this 11<sup>th</sup> day of December, 2014.

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By s/ Chris D. Bacha  
Chris D. Bacha  
WSBA No. 16714  
By s/ Kari L. Sand  
Kari L. Sand  
WSBA No. 27355  
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Email: [Kari@kenyondisend.com](mailto:Kari@kenyondisend.com)  
Attorneys for Defendant City of  
Medina



**DECLARATION OF SERVICE**

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I hereby certify that on December 11, 2014, I electronically filed the foregoing *Medina's Answer to First Amended Complaint for Declaratory and Injunctive Relief and Expedited Treatment* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Linda Gayle White Atkins**  
lindaatkins@dwt.com, ScottThompson@dwt.com, DanielReing@dwt.com, sheilacroisier@dwt.com
- **George Richard Hill**  
rich@mhseattle.com, laura@mhseattle.com, IMorrison@mhseattle.com
- **Medina Residents**  
imorrison@mhseattle.com
- **Ian Sterling Morrison**  
imorrison@mhseattle.com
- **Daniel P. Reing**  
DanielReing@dwt.com, WDCDocket@dwt.com, GinaLee@dwt.com
- **Richard M Stephens**  
LHall@GSKlegal.pro, stephens@GSKlegal.pro
- **Thomas Scott Thompson**  
ScottThompson@dwt.com, PauletteHumphries@dwt.com

DATED: December 11, 2014.

  
\_\_\_\_\_  
Sheryl Loewen

