



DAVILLIER LAW GROUP, LLC

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August 14, 2023

SENT BY U.S. MAIL

HORIZON TOWER LIMITED PARTNERSHIP-II
HORIZON TOWER, LLC
117 Town & Country Drive, Suite A
Danville, CA 94526

CELLCO PARTNERSHIP dba VERIZON WIRELESS
Attention: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

DISH WIRELESS, LLC
5701 South Santa Fe Drive
Littleton, CO 80120

AT&T WIRELESS
NEW CINGULAR WIRELESS PCS, LLC
7670 S. Chester Street
Centennial, CO 80112

Re: Federal Disability Law Accommodation and Modification for Mr. Henry Allen in Eagle, Idaho

Wireless Providers,

Together with Children's Health Defense and their EMR Litigation Counsel W. Scott McCollough, the Davillier Law Group ("Firm") has been engaged by Mr. Henry Allen, the homeowner and resident of 687 W. Rush Court, Eagle, Idaho 83616 to communicate with you regarding your wireless operations near his home.

Mr. Allen is disabled and hereby requests that you provide a reasonable accommodation and modification of your policies, practices, or procedures related to the wireless operations (tower, equipment, antennae, wireless services) serviced from 2557 N. Sky View Lane, Ada County, Idaho.

Mr. Allen has authorized our Firm, if necessary, to pursue litigation against you as joint defendants whose operations are an ongoing and continuous violation of Mr. Allen's rights under the following laws:

- (a) 42 U.S.C. §§ 12181 *et seq.* (Title III of The Americans with Disabilities Act); and
- (b) 42 U.S.C. §§ 3601 *et seq.* (Fair Housing Act).

Factual Background

Mr. Allen is disabled. See attached letters from his physicians.

He suffers, among other symptoms, atrial tachyarrhythmias, tinnitus, extreme fatigue, impaired memory and vision, sleep disruption and flu-like symptoms.¹ Exposure to radiofrequency radiation (RF) from wireless operations severely worsens Mr. Allen's condition and triggers his neurological and cardiac symptoms and events.

In 2017, Mr. Allen and his family moved to their small farm in rural Eagle, Idaho. To protect his health and livelihood, Mr. Allen selected a location approximately two miles away from any wireless tower. Mr. Allen hardwired his home with network cabling, and limited wireless devices in the home. By these proactive measures, and by changing his career from a licensed general contractor to a licensed real estate broker, Mr. Allen was able to successfully live and work normally from home despite his disability, largely because the environment at his home was relatively RF-free. As a direct result of these proactive RF-avoidance measures, Mr. Allen's health significantly improved.

However, Mr. Allen's health took a dramatic downturn in April 2021, within days of the new Horizon and Verizon tower/antennas becoming operational at 2557 N. Sky View Lane ("Tower Site"), approximately 660 yards from Mr. Allen's home. Dish, AT&T, and Verizon added additional antennas to the tower in 2022 and this equipment (that which is operational) also triggers Mr. Allen's severe and in some instances life-threatening symptoms associated with his recurring and ongoing disability.

As of this writing, Mr. Allen has suffered atrial fibrillation more than fifteen times because of your wireless operations in Eagle, Idaho. In his own home Mr. Allen lives and works in constant fear for his health and, ultimately, his life, because your RF emissions are ongoing, repeated and continuing.

Mr. Allen's physicians have advised and instructed him to monitor his disability, and to proactively avoid RF and EMF. Mr. Allen has followed his physicians' advice and instruction to the best of his ability. Mr. Allen has done all he can to mitigate your RF permeating his home (such as EMF/RF blocking paint and window screens) but due to the immediacy of your new wireless transmitting facilities his mitigation efforts have been rendered ineffective as your facilities still evoke severe and debilitating symptoms. Most significantly, Mr. Allen suffers sporadic but ongoing and potentially life-threatening cardiac events triggered by your wireless transmitting facility operations.

We have conducted scientific measurements demonstrating that the RF emitted from your operations at the Tower Site traverse Mr. Allen's property and intrudes and continually permeates his home. Although the intrusion is continuous, there are also daily and other periodic peaks that are particularly concerning because they routinely correlate with symptom onset and cardiac events.

¹ These symptoms are consistent with a syndrome known as "electromagnetic sensitivity" ("EMS") (also known as, *inter alia*, "Electromagnetic Hypersensitivity ("EHS"), "Microwave Syndrome" and "EMF Sensitivity"). Courts and several federal agencies have agreed that, if sufficiently severe, the symptoms associated with EMS can rise to the level of a disability. The cardiac related issues are also consistent with EMS but have independent significance.

Applying Federal Disability Laws To Your Actions

Mr. Allen hereby requests (1) your acknowledgment that you owe him duties under the above referenced federal disability laws, (2) your agreement to cease discriminating against him on the basis of his disability, and (3) you provide him with a reasonable accommodation and/or modify your policies, practices, or procedures in a manner that would allow you to still comply with your obligations and requirements under federal communications laws and regulations.

Duties Owed

ADA

The Horizon parties and their tower that hosts the antennae are commercial facilities pursuant to 42 U.S.C. § 12181(2) and 36 C.F.R. § 36.104. The Horizon parties are therefore subject to 28 C.F.R. Part 36, Subpart D. The remaining parties are a public accommodation, as defined in 42 U.S.C. §12181(7); their activities and operations create a place of public accommodation under 36 C.F.R. § 36.104. *See also* 28 CFR Part 36, Subparts B, C and D with respect to operations of a place of public accommodation. The Horizon parties also assumed the role of a public accommodation by hosting the activities of third parties that are public accommodations, so the Horizon parties are also subject to 36 C.F.R. Subpart B and C, in addition to their obligations under Subpart D.

Since all of you are covered under the ADA, none may discriminate against Mr. Allen on the basis of his disability. Mr. Allen would like to subscribe to your personal wireless services, but cannot since use of them, as configured, will trigger severely debilitating and life-threatening symptoms. Your other subscribers can obtain service without suffering health consequences. This discrimination – denial of equivalent access and conferral of a separate benefit – is prohibited under the ADA. Further, even if Mr. Allen were to not desire your service, he is forced to receive it since the RF that is used for physical layer service delivery is continuously forced on him without his consent. In effect, you are forcing Mr. Allen to “enjoy” a significant aspect of your service regardless of whether he wants it or not. In any event, 42 U.S.C. § 12182(a) and (b)(2)(A)(ii) and (iii) impose certain anti-discrimination duties on public accommodations, even as to those who do not desire equal access to the provider’s goods and services. Each of you must eliminate the discrimination by affording a reasonable accommodation and/or modification of your policies, practices, or procedures.

FHA

Utilizing the services of a licensed real estate broker in 2017, and with a secured loan, Mr. Allen purchased his home, which is a dwelling within the meaning of 42 U.S.C. § 3602(b). The RF emitted from your facilities interferes with Mr. Allen’s exercise and enjoyment of rights granted or protected by sections 42 U.S.C. §§ 3604 or 3605, and therefore you are violating 42 U.S.C. § 3617.

Your placement of the tower and antennae on a private residential property (2557 N. Sky View Lane) constitutes a residential real estate-related transaction under 42 U.S.C. § 3605(b)(1)(A). You maintain a financial arrangement with the tower site owner and lessee. Your construction at the residential site is a type of improvement that, when made operational, has had a discriminatory effect as defined by 24 C.F.R. § 100.500. *See also* 24 C.F.R. §§ 100.115(a)(1), 100.202.

Your RF objectively interferes with the enjoyment of the premises and unreasonably interferes with Mr. Allen's use and enjoyment of his property to the point of forcing him out of his home (i.e., forcing him into the hospital; forcing him to selectively use only portions of the home at certain time intervals; forcing him to take healing vacations).

Your wireless operations so severely sicken Mr. Allen such that he is unable to stay in his own home to accomplish major life activities, thereby making the home unavailable and uninhabitable in violation of 42 U.S.C. § 3617.

Mr. Allen cannot move to other locations that are already flooded by your RF, because those places are unavailable to Mr. Allen, contrary to the requirements of 42 U.S.C. §§ 3604 and 3617. Locations are made unavailable by your wireless systems, which violate the § 3617 protection against interference with, and impose discriminatory effects on, Mr. Allen's exercise of his right to live and earn a living in the neighborhood of his choice.

Disability accommodation is necessary to afford Mr. Allen an equal opportunity to use and enjoy his home. Your discriminatory housing practice has not ended but, rather, is ongoing, repeated and continuing.

Reasonable Accommodation and Modification

There are several options available. Mr. Allen's first preference is that you remove or disable the operation of your tower and antennae.

If you decline that request, his second preference is that you conduct your Eagle, Idaho operations in a manner that does not injure or trigger major life function-affecting conditions on Americans suffering from an EMS disability. Regarding equal access, certain of your customers can access your wireless services without being injured, but EMS-disabled individuals are not afforded that opportunity. The EMS-disabled individuals are, therefore, not afforded equal access. In particular, we specifically request that you modify your operations at the Tower Site so they do not act as an access bar to his home environment by triggering severe and potentially life-threatening symptoms and cardiac events.

You are currently forcing your service on Mr. Allen whether he wants it or not, with devastating effects. You flood his home with RF radiation against his will, thereby affecting subscription by conscription. The uninvited and unwanted harm from your products crosses over the property line. It permeates all areas and seeps through the walls, doors, and windows. Mr. Allen has effectively become your 'client and customer' on an involuntary basis because he has no choice but to 'enjoy' your service's irradiation even though it harms him to no end. Therefore, you must end the discrimination against (or, in the alternative, make reasonable modifications for) the disabled Mr. Allen by not forcing the harmful effects of your service on him in a fashion that causes him to suffer debilitating symptoms.

Your software and equipment are technologically advanced. You could easily accommodate or modify your transmitters and networks through technically and economically feasible actions that would address Mr. Allen's disability without substantially increasing costs in relation to the conduct of your business or fundamentally altering the nature of your goods, services, facilities, privileges, advantages, or accommodations. Technical and/or mechanical adjustments can be made to your equipment or its operation so that Mr. Allen is not subjected to the highly debilitating and symptom-triggering radiation.

Mr. Allen's position is that federal disability law accommodation/modification is not precluded by the Communications Act, 47 U.S.C. §§151 *et seq* (including Title III) or the Federal Communications Commission's RF exposure rules. The issue, as always, is whether the requested accommodation/modification is reasonable.

Conclusion

Please reply within 14-days to address the points above and, specifically, to confirm (a) whether you recognize the applicability of the federal disability laws to your wireless operations irradiating Mr. Allen's home, and (b) the reasonable accommodation or modification that you can offer Mr. Allen to prevent his further injury or imminent death. We will be happy to engage in an interactive process to determine the best approach that will satisfy legal requirements without unduly burdening your operations or impacting service to others.

Regards,



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