

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA (DULUTH)**

MARCIA HALLER,

Plaintiff,

V.

AMERICAN TOWER, INC. dba
SPECTRASITE COMMUNICATIONS, LLC;
AT&T SERVICES, INC. dba NEW
CINGULAR WIRELESS PCS, LLC; T-
MOBILE LICENSE, LLC; and DOES 1
through 10 inclusive;

Defendants.

Case Number:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES

42 U.S.C. §§ 12181 *et seq.* (Title III of The Americans with Disabilities Act)

Introduction

1. Plaintiff Marcia Haller (“Plaintiff”) is “disabled” as that term is defined by the Americans with Disabilities Act (“ADA”).¹ According to her physician, when Plaintiff is exposed to radiofrequency radiation (“RF”) above a certain level of energy or to RF energy that is manipulated using certain types of pulsation and/or modulation she experiences, among other symptoms, life-threatening embolic strokes. Her physical impairments already substantially limit major life activities² and RF exposure triggers and/or exacerbates her symptoms and condition.

¹ 42 U.S.C. § 12102(1).

² 42 U.S.C. § 12102(2).

2. Defendants operate a wireless transmitting facility approximately 900 feet from Plaintiff's home. The facility, as presently constituted and operated, has triggered and will trigger adverse symptoms and further adverse medical events, thereby further aggravating Plaintiff's disability.

3. Defendants could easily and with minimal cost take readily achievable action that would end Plaintiff's debilitating symptoms and while also permitting Plaintiff to fully enjoy the use of Defendants' telecommunications services, but they have refused to do so, despite Plaintiff's request for reasonable accommodations and/or modifications to their standards, criteria, methods of administration, policies, practices, procedures, and/or commercial facilities (hereinafter "accommodation/modification").

4. Plaintiff has tailored her request for reasonable accommodation/modification in a manner that would allow Defendants to remain compliant with their obligations and requirements under federal communications laws and regulations and without fundamentally altering the nature of Defendants' goods, services, facilities, privileges, advantages, or accommodations.

5. Defendants failed to respond to Plaintiff's request. On information and belief Defendants believe they are exempt from the disabilities laws and owe no duty to Plaintiff.

6. Plaintiff asks this Court to find Defendants liable under the ADA for discrimination and a failure to provide accommodation/modification.

7. The Courts of Appeals are split on whether the statutory reference to a "place" in the definition of "public accommodation" refers to an actual physical structure or whether Congress had a broader intent to make goods, services, privileges, and advantages available to disabled members of society even if only delivered "virtually." Defendants operate and control

physical facilities to deliver their services, and this meets the test for “place” applied by District Courts in the Eighth Circuit.³

8. Defendants operate physical structures and facilities without which no services could be provided.⁴ Defendants do not just have a website that customers virtually “visit” using the internet. SpectraSite (“Tower Provider”) owns and operates towers that support network elements,⁵ and other equipment owned and operated by them or Defendants AT&T Services, Inc. dba New Cingular Wireless PCS, LLC and T-Mobile License LLC (collectively “Telecom Service Providers” or “TSPs”). Defendants collectively create a physical “place”: the network, over which the TSPs provide their services. Customers physically access this network: they use their own equipment, such as smartphones or other devices, to establish a physical and logical connection to the TSPs’ physical network that includes equipment located on the tower operated by the Tower Provider. Informational content is exchanged between the customer’s device and the network using physical energy, in the form of RF. Customers enter the network, much as a customer would walk through a door to obtain and use a more traditional service, go to a “motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment,” or a

³ See e.g., *Hutcheson v. JPMorgan Chase Bank, N.A.* (W.D. Mo. Aug. 28, 2015, No. 6:14-cv-03499-MDH) 2015 U.S. Dist. LEXIS 114191, at *10-11 (“As an initial matter, the Court notes there is currently a circuit split regarding whether Title III extends to cover goods and services that are unrelated to the physical structure of a place of public accommodation, for example, the servicing of a mortgage loan by a bank. Because the Eighth Circuit has not directly addressed this issue, and because this Court finds the reasoning of the First, Second, Seventh, and Eleventh Circuits more consistent with the statute and its purposes, the Court will not dismiss Plaintiffs’ disability claims solely because they concern the provision of services unrelated to physical barriers/location.”); *Nathanson v. Spring Lake Park Panther Youth Football Ass’n*, 129 F. Supp. 3d 743, 748 (D. Minn. 2015).

⁴ See 28 CFR 36.104 (definition of “Facility”). See also 47 U.S.C. §§ 1001-1008, 1455 (references to telecommunications and “information service” “facilities”), 1504(2) (definition of “Broadband infrastructure”); 47 C.F.R. §§ 1.6002 and 1.6100 (repeated reference to wireless “facility” or “facilities”).

⁵ See 47 U.S.C. § 153(35); 47 CFR 51.5 (definition of “Network element”).

“museum, library, gallery, or other place of public display or collection,” a “park, zoo, amusement park, or other place of recreation” or an “auditorium, convention center, lecture hall, or other place of public gathering.”⁶ The network is not just “virtual” in the same way a website and the user exchange information using the internet protocol through applications running on a device; rather, Defendant TSPs provide the physical network used to access these other services, many of which the Defendant TSPs also provide.

Parties

9. Plaintiff Marcia Haller is an individual residing with her family in a single-family home located at 7420 Rice Lake Road, Duluth, Minnesota (“Residence” or “Home”).

10. Defendant American Tower, Inc. dba American Towers, LLC, and dba Central States Tower Holdings, LLC, and dba SpectraSite Communications, LLC (collectively “SpectraSite” or “Tower Company”) is a limited liability entity with US headquarters in Massachusetts and doing business in multiple states including Minnesota. SpectraSite, including any of its related entities and predecessors, leases the land located at 7359 Thompson Lake Road, St. Louis County, Minnesota (“Tower Site”). For commercial purposes, SpectraSite owns and operates the supporting structure for personal wireless services facilities (“Tower”) at Tower Site, and hosts the TSP antennas and related RF transmitting and processing equipment (“Antennas”).

11. Defendant AT&T Services, Inc. dba New Cingular Wireless PCS, LLC (“AT&T”) is a limited liability entity based in Texas and doing business in multiple states, including Minnesota.

12. Defendant T-Mobile License, LLC (“T-Mobile”) is a limited liability entity based in Washington and doing business in multiple states, including Minnesota.

⁶ See 28 C.F.R. § 36.104 (3), (4), (8), (9).

13. Collectively, AT&T and T-Mobile are referred to herein as “Telecom Service Providers” or “TSPs.” The TSPs, including any of their related entities and predecessors, each own and operate a wireless transmitting facility, including Antennas, at the Tower Site. At both the Tower Site and in various locations offsite, each TSP owns, licenses, and operates software and equipment to manipulate and control RF energy in order to process and transmit voice and non-voice data or information “by radio.” Each TSP also owns a nationwide core network—a collection of network hardware, devices, and software that supports and controls the communications services that the TSP provides. These are generally switches and routers and other computing devices. These core network capabilities also offer some of the technical means by which the accommodation/modification sought here can be accomplished without substantial cost or fundamental alteration.

14. DOES 1 through 10 are individuals and entities whose true names are unknown to Plaintiff at this time. Plaintiff will seek leave of this Court to amend their true names and capacities when they have been ascertained.

Jurisdiction and Venue

15. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). For declaratory relief and other relief requested, this Court has additional remedial authority under 28 U.S.C. §§ 2201(a) and 2202, together with 42 U.S.C. §§ 12188 and 2000a-3.

16. Venue is proper in the District of Minnesota under 28 U.S.C § 1391. Diversity of citizenship is present. The District of Minnesota, is where a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

17. Plaintiff has standing to bring this claim for declaratory and injunctive relief because she has suffered actual and threatened injury to her health and her legal rights, which can fairly be redressed by a favorable decision. There exists an actual and justiciable controversy between Plaintiff and Defendants requiring resolution by this Court. Plaintiff has no other adequate remedy at law. Plaintiff has subscribed to wireless service, and still does. She has a current account with AT&T but cannot use it except as urgently needed, because when she tries to use the service in the same way as other non-disabled customers her condition is worsened.

Plaintiff's Disability

18. Plaintiff and her husband Jason are both from Gnesen (town outside Duluth). They attended high school together in Duluth, married, and raised their son in Gnesen. They both work around Duluth.

19. Plaintiff has been diagnosed with multiple embolic strokes and autoimmune cerebral arteritis, for which she receives immunosuppressive agents. Plaintiff's condition meets the definition of a disability under the ADA as the resulting impairments substantially limit her in more than one major life activity, including balance, orientation, mobility and cognition. In addition, major bodily functions are impacted particularly the nervous system, as manifested by motor weakness, and impaired hearing, reading, learning and inability to concentrate. The levels of RF exposure in Plaintiff's home have the potential to cause and have caused or at least contributed to new strokes and exacerbate the deficits caused by past strokes. RF exposure is known to cause and exacerbate cognitive impairment.

20. Plaintiff recalls she first experienced severe, disabling symptoms starting immediately after the Tower Site and Antennas were upgraded in October 2019 ("Tower Upgrade"). Thus began a series of visits to urgent care and emergency rooms beginning days

after the Tower Upgrade concluded which occurred around October 4 and/or October 5, 2019. By Monday, October 7, 2019 Plaintiff was seen in urgent care after experiencing vertigo. The day prior, October 6, Plaintiff had called her husband and described a disturbing pressure in her head. In addition to pressure in her head, Plaintiff felt lightheadedness, dizziness and nausea. On Thursday, October 10, Plaintiff was brought to the hospital ER and admitted with suspected embolic stroke. Tiny bilateral strokes were confirmed via MRI. Most unfortunately for Plaintiff, the strokes continued, necessitating referral to Mayo Clinic where she has cumulatively spent months hospitalized.

21. By March 2020, Plaintiff had suffered multiple strokes, vision loss, hearing loss, headaches, sleep disruption, chronic fatigue and cognitive impairment. These severe and unrelenting symptoms forced Plaintiff to move to her parents' home. Living at her parents' home greatly alleviated her symptoms. All strokes ceased during the eight months Plaintiff lived there, from March 3, 2020 until October 2020.

22. When Plaintiff's parents returned to their home, there was no longer enough room for the Hallers and their son. Upon returning to the Haller Home, Plaintiff's symptoms as described above returned. After consultation with a professional building biologist, Plaintiff began constructing a small, shielded enclosure used to block RF. This "Faraday Cage" is just large enough for a mattress and this is where Plaintiff sleeps and where Plaintiff must spend most of her time while at the Haller Home. It is only because of the construction of this RF-free room that Plaintiff was able to move back to the Haller Home in October 2020.

23. In order to tolerate being in the Haller Home, Plaintiff stays largely confined to her small, "Faraday Cage" in the garage, although she can temporarily walk around the home. She has recently begun wearing RF insulated head gear.⁷

24. Plaintiff's symptoms alleviate when she leaves home so long as she proactively avoids certain RF permeated areas. Plaintiff is uncomfortable at the Haller Home. Her head feels different because of a sensation of pressure. At times she describes a vibration in her head. Clear thinking is disrupted, balance is disrupted, headaches are common, together with ear and eye pain. Fatigue is ever present.

25. Plaintiff lives with constant uncertainty that she is risking yet another stroke as she goes about the necessities of daily life outside the protection of the Faraday cage in the garage. She has already experienced 51 strokes since the tower upgrade in 2019.

26. Plaintiff's physician has advised accommodation is urgently needed to protect Plaintiff's health, safety and ability to function. Plaintiff's requires a home environment where the RF-EMF exposure is as close to zero as possible. The Hallers have employed every feasible protection within their financial means to protect Plaintiff from RF-EMF radiation at home.

27. The RF emitted by the Antennas at the Tower Site threatens Plaintiff's life. Her condition is such that she may die from RF exposure.

28. Plaintiff and her family have established themselves in Gnesen, Minnesota and cannot readily sell their home and move to another rural location far from an RF transmitting facility. Plaintiff considers this lawsuit her last hope for a remedy.

⁷ At the Haller Home, the only appreciable relief comes from escaping to this room in the garage, which is essentially a sleeping area within a Faraday cage. Yet household chores and activities take place throughout the Haller Home, such as cooking and cleaning, eating meals, and being present for her family at the kitchen table. Plaintiff wears an RF-blocking insulated baseball cap to mitigate the harm, but it offers only limited benefit.

Tower History

29. The Tower was initially installed in 2008-2009,⁸ via Conditional Use Permit (CUP) issued by Gnesen. And as described above, the Tower Upgrade was completed in 2019. The terms of the CUP specify the CUP is rereviewed for compliance every five years⁹ (the next review is scheduled for approximately September 2024), such that to comply the Tower must not be operated to “be detrimental to the public health, safety morals, or general welfare [or] be injurious to the use and enjoyment.”¹⁰

30. Gnesen local officials have publicly recognized Plaintiff’s health claims stated herein, and have stated publicly and repeatedly they *would* like to help protect public health from RF. However, Gnesen local officials were advised by legal advocates with Minnesota Association of Townships (MAT) that on the subject of RF local zoning authorities are preempted by federal law.

31. The Tower is unpopular in the rural Gnesen community, which already had communications capabilities (including internet access) that do not depend on the Tower or Antennas. Moreover, Gnesen has received grants for wired broadband (high speed internet) and is beginning construction of the same in Summer 2024, which further renders the Tower and Antennas unnecessary for broadband delivered to residences.

32. The Tower and Antennas are primarily for wireless-based video streaming—which is more lucrative than video delivery on a wired basis but also far less efficient and more destructive. Based on the new local ordinance (e.g., requiring at least 1,500 feet distance from a home), the Gnesen Town Board does not want this Tower that threatens the lives of the disabled.

⁸ See e.g., FCC Application A1157006 (Antenna Structure Registration) <https://wireless2.fcc.gov/UlsApp/AsrSearch/asrApplication.jsp?applKey=4608216>

⁹ See e.g., Town of Gnesen, *Regular Town Board Meeting Minutes*, December 10, 2007.

¹⁰ See e.g., Town of Gnesen, *Application for Conditional Use Permit*, September 15, 2014.

Cause of Action
Title III of The Americans with Disabilities Act
42 U.S.C. §§ 12181 *et seq.*

33. The allegations contained in the previous paragraphs are repeated and incorporated as though fully set forth herein.

34. Plaintiff is an ADA covered individual with a disability, pursuant to 42 U.S.C. § 12102 and 28 C.F.R. § 36.105. Plaintiff's physical impairment substantially limits major life activities, including but not limited to seeing, hearing, sleeping, standing, breathing, thinking, and working.

35. Plaintiff has medical records of the impairment showing the injurious disruption of multiple bodily systems and functions, including but not limited to severe neurological complications. Plaintiff's disability presents in both intermittent acute and more recurring forms.

36. The SpectraSite Defendant and its Tower that hosts the TSP facilities are "commercial facilities" pursuant to 42 U.S.C. § 12181(2) and 28 C.F.R. § 36.104. The SpectraSite Defendant is therefore subject to 28 C.F.R. Subpart D.

37. Because the SpectraSite Defendant leases space on the tower to the TSP Defendants and (as explained below) the TSPs are public accommodations, the SpectraSite Defendant is also a "public accommodation."¹¹ Therefore, the SpectraSite Defendant is also subject to 28 C.F.R. Subpart B and C.

38. Through its leases with the TSPs, SpectraSite is required to place operations and other legal restrictions on the TSPs, such that the SpectraSite Defendants are essential parties to

¹¹ See Department of Justice, Americans with Disabilities Act, *ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities*, III-1.2000, available at <http://www.ada.gov/taman3.html>. (ADA Technical Manual) (Discussing landlord/tenant classification and relative duties.)

ensure ADA compliance by the current TSPs as well as any future TSPs that may come and go with the market in which SpectraSite operates.

39. Each TSP as an entity constitutes a “public accommodation,” as defined in 42 U.S.C. § 12181(7). Its activities and operations make it a “place of public accommodation” under 28 C.F.R. § 36.104. *See also* 28 CFR Ch. I, Pt. 36. Each TSP is therefore subject to 28 C.F.R. Subpart B, C, and D with respect to its operations of a place of public accommodation.

- a. Each TSP operates a physical network and offers goods and services.
- b. Each TSP operates a “place of exhibition and entertainment,” “place of recreation,” “place of public gathering,” “sales or rental establishment,” and “service establishment.” 42 U.S.C. § 12181(7)(C), (D), (F), (I). Congress provided flexibility to “keep pace with the rapidly changing technology of the times.” H.R. Rep. 101-485 (II), at 108 (1990).
- c. The DOJ rules note that “the category of sales or rental establishments would include an innumerable array of facilities that would sweep far beyond the few examples given in the regulation.”¹²
- d. Each TSP also and separately owns and operates commercial facilities.

40. Defendants have shown deliberate indifference to Plaintiff’s rights under the ADA.

41. Plaintiff’s injuries as alleged herein are proximately caused by Defendants’ unlawful discrimination against Plaintiff on the basis of her pre-existing disability.

42. Plaintiff seeks relief to end the discrimination, whether characterized as a modification or accommodation.¹³

¹² 28 C.F.R. Part 36, Appendix C (Guidance).

43. Plaintiff further invokes the general prohibition under 42 U.S.C. § 12182(b)(1)(A)(i)-(iii)¹⁴ because:
- a. Per section (i), Plaintiff is denied the right to participate in the benefits afforded by Defendants' services on the basis of Plaintiff's disability. For example, Plaintiff subscribes to but cannot use TSP services because it severely exacerbates her disability. If Defendants remove their discrimination against Plaintiff, then Plaintiff could fully use the service in the same way as non-disabled customers.
 - b. Per section (ii), Plaintiff does not receive the same privileges, advantages, and accommodations as those who are not made ill from the services. For example, if Defendants accommodate Plaintiff's disability, then Plaintiff would have access to (1) the same privilege of wireless service coverage on demand, (2) the same advantage of enjoying the places of exhibition and entertainment, recreation,

¹³ See 42 U.S.C. § 12182(a) ("General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.")

¹⁴ 42 U.S.C. § 12182(b)(1)(A), "(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity. (ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals. (iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.")

sales, service, video delivery, and the like that attend wireless service as a public accommodation.

- c. Per section (iii), those who are not made ill receive a separate benefit not accorded to the disabled, *to wit*, use without illness. For example, if Defendants remove their discrimination against Plaintiff, then (1) Plaintiff can access family plan wireless services that grant the full suite of public accommodation services without suffering symptoms or illness, and (2) Plaintiff can access on equal footing the suite of public accommodation services available to customers who are not physically injured by the services, including but not limited to online community services providing a “place of public gathering.”¹⁵

44. 42 U.S.C. § 12182(b)(2)(A) prohibits Defendants from discriminating against Plaintiff as follows:

(2) Specific prohibitions. (A) Discrimination. For purposes of subsection (a), discrimination includes—

...

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

¹⁵ See e.g., AT&T (2024). *AT&T Community Forums*, available at <https://forums.att.com/categories/wireless/5def942a238f4a196321ddeb>

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

See also 28 C.F.R. §§ 36.201, 202, 204.

45. Plaintiff therefore seeks accommodation/modification because:

- a. At present Plaintiff cannot use Defendants' goods, services, facilities, privileges, advantages, or accommodations because doing so triggers severe and potentially life-threatening symptoms. Per (b)(1)(A)(i), Defendants can make reasonable modifications to the policies, practices, and procedures so that Plaintiff can have the opportunity to benefit from Defendants' goods, services, facilities, privileges, advantages, or accommodations.
- b. Per (b)(1)(A)(ii) and (b)(2)(A)(ii), Defendants can make reasonable modifications to their policies, practices, and procedures that do not elicit Plaintiff's severe and potentially life-threatening symptoms without fundamentally altering the nature of said policies, practices, or procedures. Defendants can utilize their existing technological capabilities to sufficiently reduce the RF exposures at Plaintiff's residence without significantly affecting services to others and while making their services usable by Plaintiff.¹⁶ If Defendants had engaged in a substantive good

¹⁶ This reasonable accommodation ensures that Defendants can still meet their obligations to provide services to third parties (i.e., first responders, utility providers) accessing the Home, even though first responders and utility providers already enjoyed sufficient access to necessary

faith interactive process, the parties could have discussed many practically feasible options to modify without materially reducing Defendants' ability to provide service to the rest of the public, such as reorienting antennas and/or taking advantage of newer antennas' ability to beamform.

- c. Per (b)(1)(A)(iii) and (b)(2)(A)(iii), Defendants must take steps to ensure Plaintiff is not excluded, denied services, *or otherwise treated differently than other individuals*,¹⁷ and Defendants can take steps to do so that do not fundamentally alter the nature of their services. For example, if Defendants cease their discrimination against Plaintiff, then Plaintiff can utilize TSP services in such a manner that will comply with her physicians' advice to limit RF exposure.
- d. Per (b)(1)(A)(iv) and (b)(2)(A)(iv), Defendants must take steps to remove architectural barriers¹⁸ in the Tower and Antennas, and communication barriers

communications sufficient for service without the Tower and Antennas. Nor are Plaintiff's proposed accommodations violative of the Communications Act, FCC guidelines, or any pre-existing commitments (i.e., Terms of Service) owed to third parties. Nothing in the Communications Act or FCC guidelines require that any Defendant irradiate Plaintiff's Home, nor do they prohibit the requested accommodation under the co-equal ADA statute and the Justice Department's implementing rules and guidelines, which stand on equal stead with the FCC's regulations.

¹⁷ Whereas the (b)(1)(A)(i)-(iii) duties only apply to those who seek to be clients or customers, that limitation *does not apply* to (a) or (b)(2)(A)(ii) and (iii). So, a public accommodation can illegally discriminate against even those who do not affirmatively seek access to the good or service. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1333-34 (11th Cir. 2013), *citing, inter alia*, *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 679, 121 S. Ct. 1879, 1891, 149 L. Ed. 2d 904 (2001) (noting that §12182(b)(1)(A)(iv) "is not literally applicable to Title III's general rule prohibiting discrimination against disabled individuals" and holding that "Title III's broad general rule contains no express 'clients or customers' limitation, §12182(a), and §12182(b)(1)(A)(iv) provides that its limitation is only '[f]or purposes of' the clauses in that separate subparagraph.").

¹⁸ The architectural design of a tower and its transmitting equipment is one of the factors that leads to the manifestation of Plaintiff's symptoms. To take a single example, when a tower and its antennas are designed, one aspect is the orientation of the antennas (up and down/left and

that are structural in nature, in existing facilities, where such removal is readily achievable.¹⁹ For example, each TSP's network and beamforming equipment is sufficiently technologically advanced to allow each TSP to easily modify the output of some of their transmitters to prevent the significant beaming of RF directly at Plaintiff's home through technically and economically feasible actions. They, in conjunction with SpectraSite, can manually or remotely adjust antenna orientation and directionality. It is entirely possible to address Plaintiff's disability without substantial increased costs in relation to the conduct of any Defendant's particular business or fundamentally altering the nature of its services. Simple technical adjustments can be made to the equipment or its operation so that Plaintiff is not subjected to debilitating radiation. Defendants' Tower and Antennas erect a "barrier" to accessing the service and even enjoying a peaceful, safe home environment. The DOJ rules make clear that if "barrier removal is not readily achievable" the public accommodation must still make the "goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable."²⁰ Plaintiff contends they are.

46. Consistent with 28 C.F.R. Part 36, the accommodation/modification requested herein to avoid recklessly injuring the disabled are "readily achievable" and would not impose an "undue burden." Plaintiff's request for "reasonable modifications" will not "fundamentally alter

right). These can be adjusted in ways that significantly reduce the amount of energy beamed at a specific physical location.

¹⁹ If the barrier removable is not readily achievable then Defendants must provide access through other means, even if they are not the most integrated settings appropriate. ADA Technical Manual III-3.100.

²⁰ 28 C.F.R. § 36.305(a).

the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered [nor] would result in an undue burden, i.e., significant difficulty or expense.”

47. If Plaintiff attempted to engage in self-defense by deploying a RF-defeating device at her own Residence (i.e., jamming device or giant wall) to interfere with Defendants’ delivery of RF to others in the community, Plaintiff would be at risk of a claim *by Defendants* for interference,²¹ trespass, nuisance, or harm to personal property. The RF (that is, the right to employ it) is at least notionally Defendants’ intangible personal property since Defendants have FCC Radio Station Authorization to emit the energy.²² This emphasizes that federal disability law is necessary, and the last hope for a remedy, to restore balance to the parties’ positions.

48. It is a maxim of jurisprudence that for every wrong there is a remedy. The ADA provides the remedy here. As Defendants’ technological power and capability grows ever more infiltrating, legal vigilance is the remedy to protect the innocent. Plaintiff has done her part to protect herself as much as she can. Jurisprudence must do its part to ensure profits are earned fairly in respect of *all* applicable federal laws.

49. Defendants’ willful failure to engage in a meaningful interactive accommodation process, and Defendants’ refusal to provide accommodation/modification in light of Plaintiff’s disability in plain disregard of her rights, both constitute unlawful discrimination within the meaning of the ADA.

50. Plaintiff is entitled to declaratory and injunctive relief, as well as reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 12205.²³

²¹ See 47 U.S.C. § 302a, 47 C.F.R. §§15.3(m), 15.5(c).

²² See 47 U.S.C. §§ 301, 318.

²³ 42 U.S.C. § 12188(a)(1) allows Plaintiff as a private party subjected to Title III discrimination to receive remedies under § 204(a) of the federal Civil Rights Act of 1964 (Civil

- a. Plaintiff requests a declaratory judgment that (1) Title III of the ADA applies to Defendants' operation of the Tower and Antennas at Tower Site when transmitting RF throughout the community including Plaintiff's Home, (2) Defendants' acts and omissions in declining to engage in a substantive good faith interactive process, and refusal to provide accommodation/modification in light of Plaintiff's disability, violated the ADA, and (3) Plaintiff is entitled to a remedy that will allow the disabled Plaintiff to access the public accommodation services without being injured by the services.
- b. For injunctive relief, Plaintiff's first request, as a means to end the discrimination, is for relocation of the Tower and Antennas to a new location that is reasonably calculated to avoid injuring the disabled population. But if such request is disallowed, then Plaintiff's request is for Defendants to utilize their existing technological capabilities to eliminate or adequately reduce the amount of RF energy directed at Plaintiff's Home and body.

Request for Relief

For the foregoing reasons, Plaintiff requests the Court issue judgment as follows, under the ADA, 42 U.S.C. § 12205, and the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3(a):

- a. That this Court issue a declaratory judgment that (1) Title III of the ADA applies to Defendants' operation of the Tower and Antennas at Tower Site when transmitting RF throughout the community including Plaintiff's Home and body; (2) Defendants' acts and omissions in declining to engage in a substantive good faith interactive process, and refusal to provide accommodation/modification in

Rights Act), 42 U.S.C. § 2000a-3(a), including declaratory and injunctive relief, and an award of reasonable attorney's fees. *See* 42 U.S.C. § 2000a-3(b).

light of Plaintiff's disability, violated the ADA; (3) Plaintiff is entitled to a remedy that will allow the disabled Plaintiff to access the public accommodation services without being substantially injured by the services; and (4) Defendants' actions and omissions in discriminating against Plaintiff have violated the ADA by the:

1. denial and discrimination in public accommodation under 42 U.S.C. § 12182(b)(1)(A)(i)-(iii) after the disabled Plaintiff reasonably requested access to Defendants' services; and
 2. discrimination in public accommodation under 42 U.S.C. § 12182(b)(2)(A)(ii) and (iii) regardless of whether the disabled Plaintiff seeks access for herself to Defendants' services.
- b. That this Court issue injunctive relief to end Defendants' discrimination against Plaintiff by relocating the Tower and Antennas to a new location that is reasonably calculated to avoid injuring the disabled population, or, in the alternative, requiring Defendants to utilize their existing technological capabilities to adequately reduce the amount of RF energy directed at Plaintiff's Home and body.
- c. That this Court enjoin Defendants under 42 U.S.C. § 12182(b)(1)(A)(i)-(iii) from further denial and discrimination toward Plaintiff in her reasonable request for access to Defendants' services, and requiring Defendants promptly comply with Plaintiff's reasonable request for reasonable accommodations and/or modifications, without substantial cost or fundamental alteration, to Defendants' Antennas and operations in a manner that would allow Defendants to still comply

with their obligations and requirements under federal communications laws and regulations.

- d. That this Court enjoin Defendants under 42 U.S.C. § 12182(b)(2)(A)(ii) and (iii),
from further discrimination.
- ii. Awarding reasonable attorney fees and costs; and
- iii. Providing such further and/or other relief as the Court deems appropriate under the
circumstances and in the interests of justice.

Request for Jury Trial

Plaintiff requests a trial by jury for the issues a jury properly may decide and for the requested relief that a jury may award.

Dated: March 7, 2024

Respectfully Submitted,

/s/ Marjorie J. Holsten

Marjorie Holsten, Esq.
8525 Edinbrook Crossing, Suite 210
Brooklyn Park, MN 55443
Tel: (763) 420-7034
Minnesota Bar No. 0185899
marjholsten@yahoo.com

W. Scott McCollough, Esq.
McCollough Law Firm, P.C.
2290 Gatlin Creek Rd.
Dripping Springs, TX 78620
Tel: (512) 888-1112
Fax: (512) 692-2522
Texas Bar No. 13434100
wsmc@dotlaw.biz
(Pro Hac Vice pending)

Attorneys for Plaintiff