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August 28, 2023

Via Email
Mauricio Cardona
Davillier Law Group LLC
414 Church Street, Suite 106
Sanpoint, ID 83864

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

Dear Mr. Cardona:

This firm represents Horizon Tower LLC and Horizon Tower Limited Partnership II (collectively "Horizon").

This letter responds to your August 14, 2023 letter to Horizon, Cellco Partnership d/b/a Verizon Wireless, Dish Wireless, LLC, and AT&T Wireless.

As you may know, Mr. Allen previously requested that Horizon remove its wireless telecommunications facilities located at 2557 N. Sky View Lane, Ada County, Idaho, in a series of emails and letters in 2019. Mr. Allen's previous requests relied on different, albeit similarly inapplicable, provisions of the Americans with Disabilities Act ("ADA"). As explained in more detail below, just like Mr. Allen's 2019 demands, the legal claims and allegations set forth in your letter are without merit.

Your letter requests that Horizon acknowledge that it owes Mr. Allen duties pursuant to the ADA and Fair Housing Act ("FHA"). Your letter also requests that Horizon cease "discriminating against him on the basis of his disability." Finally, your letter seeks reasonable accommodations from Horizon "and/or modif[ication of Horizon's] policies, practices, or procedures in a manner that would allow [Horizon] to still comply with [its] obligations and requirements under federal communications laws and regulations." While stating that Mr. Allen is disabled, allegedly as verified by letters from his physician, no such letters were included with your letter, and as discussed below, there is no indication that the condition alleged is legitimate or valid.

First, even if Mr. Allen's alleged condition was legitimate, Title III of ADA, as it relates to "public accommodations," does not apply to Horizon and does not support Mr. Allen's claims.

Your letter asserts, without providing any rationale, that because Horizon's facilities are "commercial facilities" under 42 U.S.C. 12181(2) and 28 C.F.R. § 36.104, Horizon or its facilities are subject to unspecified obligations under "28 C.F.R. Part 36 Subpart D." However, 28 C.F.R. Part 36 Subpart D governs accessibility standards for construction and alterations of places of public accommodation or commercial facilities to make those facilities "readily accessible and usable by people with disabilities." 28 C.F.R. §36.402(a)(1). Even if Horizon's facility is a "commercial facility" under the ADA, the requirements outlined in 28 C.F.R. §§ 36.401-406 are focused on alterations related to improving the usability of a facility by those with disabilities, such as providing a path of travel for individuals in wheelchairs, or elevators. Nothing in your letter indicates that Mr. Allen intends to use or physically access Horizon's facility in any manner contemplated by the ADA, nor do you identify any standard of new construction or alteration with which Horizon does not comply. *See* 28 C.F.R. § 36.406.

More importantly, Horizon's facility simply does not meet the definition of a place of public accommodation. Your letter alleges that by permitting other wireless telecommunications service providers to use its facility, Horizon has "assumed the role of a public accommodation" pursuant to 42 U.S.C. § 12181(7) and 28 C.F.R. § 36.104. Consequently, according to your letter, Horizon's facility transforms into a place of public accommodation and is required to make reasonable accommodations pursuant to "36 C.F.R. Subpart B and C."[1] Your assertions are inaccurate and incorrect. Even if the ADA operated in such a matter – *i.e.,* that an entity could assume the role of public accommodation in this way – neither the wireless services attached to Horizon's facility nor the facility itself is a place of public accommodation under any reading of the statute or regulations. The ADA and the implimenting regulations define a "place of public accommodation" as:

> [A] facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories— **(1)** Place of lodging, except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the establishment as the residence of the proprietor. . . **(2)** A restaurant, bar, or other establishment serving food or drink; **(3)** A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; **(4)** An auditorium, convention center, lecture hall, or other place of public gathering; **(5)** A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment; **(6)** A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment; **(7)** A terminal, depot, or

[1] Your letter makes multiple references to either "36 C.F.R. 36.104" or "36 C.F.R. Subpart B and C." There is no 36 C.F.R. § 36.104 or Subpart B and C. Indeed, 36 C.F.R. concerns Parks, Forests, and Public Property. This response assumes that you mean 28 C.F.R § 36.104 and 28 C.F.R. §§ 36.201-213 and 36.301-311.

> other station used for specified public transportation; **(8)** A museum, library, gallery, or other place of public display or collection; **(9)** A park, zoo, amusement park, or other place of recreation; **(10)** A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education; **(11)** A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and **(12)** A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

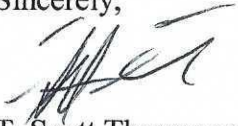
28 C.F.R. § 36.104; 42 U.S.C § 12181(7). Neither Horizon's facility, nor any of the wireless equipment thereon, falls into these categories and is, therefore, not subject to any ADA anti-discrimination obligation. *See* 42 U.S.C. § 12182(a) (referring only to "places of public accommodation"). Accordingly, Horizon is not required to make an accommodation for Mr. Allen under the ADA.

Second, your letter alleges that Horizon placing a wireless telecommunications facility at 2557 N. Sky View Lane violates 42 U.S.C. § 3617 by interfering with the rights protected by 42 U.S.C. §§ 3604, 3605. However, none of these provisions are remotely applicable to the circumstances here. Section 3604 refers only to discrimination "*in the sale or rental of housing*" – *i.e.,* discriminatory rental practices whereby a landlord would refuse to rent to a tenant based on one of the listed factors. *See* 42 U.S.C. § 3604. Likewise, Section 3605 prohibits any "entity whose business includes engaging in residential real-estate transactions to discriminate *against any person in making available such a transaction, or in the terms or conditions of such a transaction.*" 42 U.S.C. § 3605 (emphasis added). Thus, even if Horizon was an entity whose business included engaging in residential real-estate transactions, as contemplated by the FHA, which it is not, the prohibited discrimination relates only to those transactions – *i.e.,* a seller could not offer discriminatory terms to a buyer based on the factors, such as race or disability, listed in the statute. Section 3605 does not confer any rights on a third party wholly unrelated to the actual transaction, nor does it impose any obligation on a third party unrelated to another real estate transaction, as described by your letter. 42 U.S.C. § 3605. Similarly, under the FHA, "[i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title." 42 U.S.C. § 3617. But, as explained, Mr. Allen has no rights granted or protected under sections 3604 or 3605 with regard to any Horizon transaction.

Finally, without conceding the validity of any claim, we note that the health condition cited in your correspondence has been viewed dubiously by a number of courts and does not appear to be widely recognized as a medical condition with significant peer-reviewed, published literature supporting general causation between radiofrequency emissions and the constellation of ailments set out by your letter.[2] Moreover, your allegations of "imminent death" are remarkable given the fact that Mr. Allen has been making ADA arguments regarding the facility since at least 2019.

In summary, the claims in your letter are meritless, and Horizon does not agree that any of the statutes or regulations cited in your letter apply.

Sincerely,



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[2] *See, e.g., G v. Fay School, Inc. by and through its Board of Trustees*, 282 F. Supp. 3d 381, 352 Ed. Law Rep. 139 (D. Mass. 2017); *G.C. v. S. Washington County Sch. Dist. 833,* CV 17-3680 (DSD/TNL), 2018 WL 2694503 (D. Minn. June 5, 2018); *Atkins v. Saul*, 814 Fed. Appx. 150 (7th Cir. 2020).