

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Children’s Health Defense, Dr. Erica
Elliot, Ginger Kesler, Angela Tsiang,
and Jonathan Mirin,
Petitioners

USCA No. 21-1075

v.

Petition for Review of Order
by the Federal Communications
Commission
(FCC 21-10)

Federal Communications Commission
and United States of America,
Respondents

AFFIDAVIT OF DAFNA TACHOVER IN SUPPORT OF STANDING

1. My name is Dafna Tachover. I have been the Director of the Children’s Health Defense 5G and Wireless Harms Project since December of 2019. I am also a member of Children’s Health Defense.
2. I am a licensed attorney in New York and Israel. I have an MBA and a technology background from my service as a Telecommunications and Computers Officer in the Israeli Defense Forces, where I served as the commander of the military’s headquarters and operations’ center computer center.
3. After years of avid wireless use, in 2009 I started suffering from Radiation Sickness. As a result, since 2012, I have focused my work on advancing the rights of those who have become sick from wireless radiation, especially children. Because of my professional background, my work in the past decade and my own sickness, I am familiar with the various aspect of wireless technology,

including the technical elements, the science of the biological effects of radio frequencies (“RF”) radiation, and the medical literature associated with these conditions, especially Radiation Sickness.

4. The purpose of this Affidavit is to provide evidentiary support for Children’s Health Defense’s Article III and Hobbs Act standing to pursue this matter on its own behalf and on behalf of its members. I will also provide some of the basic facts particular to the injuries suffered by Children’s Health Defense members, including those that have requested that we represent them in lieu of them seeking review themselves.

5. I also provide some background on Radiation Sickness and other illnesses or conditions caused or exacerbated by wireless radiation, and the effect the OTARD rule amendment we are challenging has and will have on CHD and its members. I created Addendum Record References (“ARR”), which contain three tables (“T1,” T2” and “T3”). These tables provide many of the extracts from or links to the administrative record that I address in this Affidavit, and we cite in our principal brief.

Children’s Health Defense.

6. Children’s Health Defense (“CHD”) is a non-profit organization. Its mission is to end the [epidemic of children’s chronic health conditions](#) by working

to eliminate harmful exposures to toxins and to establish safeguards. CHD educates about the harms of various toxins, provides advice, supports the injured and advocates on their behalf in educational and legal matters. Our purposes are to defend children's health, obtain justice for those already injured and ensure accountability. I will return to CHD organizational and representational interests below.

For Some, RF is a Toxin

7. Wireless technology uses Radio Frequencies (RFs) to carry data. RF's emit energy, referred to as "RF radiation." To encode the data being transferred over the RF carrier frequencies, the signal is pulsed and modulated. The radiation created by pulsed and modulated RF frequencies, is referred to hereinafter as "wireless radiation." This radiation can and does harm adults and children. The proliferation of wireless technology, its devices (such as cell phones and tablets) and infrastructure (including Wi-Fi, smart electric meters, and fixed transmitters), is a contributory factor to growing rates of certain conditions. CHD's mission requires that it address wireless radiation's contribution to the overall levels of environmentally induced, toxicity-related children's sicknesses.

OTARD Rule Change

8. Until the rule was amended, OTARD systems were limited to fixed wireless use within the customer's property only and could include only Customer Premises Equipment ("CPE"). The rule amendment changed that. The purpose of the rule change is to allow carrier-grade base stations ("hubs") and powerful "relay" antenna installations on private property that wirelessly extend voice/video/data service to users over a wide area. The rule effectively transforms residential areas into radiation-saturated industrialized zones.

9. In fact, it gets worse. The rule preempted any state laws, including zoning, homeowner association and deed protections that would otherwise apply. This is a significant change with major consequences. The wireless companies agree.

10. Comments filed by fixed wireless companies and their organizations confirm they too believe the rule amendment will have far-reaching impact. In an article published a day after the FCC passed the rule change, VP of Policy for the Wireless Internet Service Providers Association (WISPA) [stated](#) "[t]he rule change

vastly increases the ability of our members to use customer locations to serve additional nearby customers in areas that lack other vertical infrastructure.”¹

11. Dr. David Hoffman’s affidavit in support of CHD’s organizational standing provides two real-life examples of the strategy taken by these companies that benefit from the rule change. His affidavit contains pictures of a massive fixed wireless base station and antennas that were installed in his parents’ neighbor’s backyard to “service” the area. As a result, the health of both his parents is quickly deteriorating and his daughter, who suffers from Radiation Sickness, cannot visit there anymore. She used to visit with her grandparents every Monday.

12. I personally spoke to the company that installed the antennas. I was told that the four transmitting antennas transmit to a 3-5 mile radius in all directions. Although the local laws required a permit at the time, none was ever sought. Now, the OTARD amendment bars any enforcement. In exchange, the owner of the property gets free Internet.

13. When Dr. Hoffman’s own next-door neighbor was looking for the best deal for her Internet service, the same company offered her a similar arrangement. The antenna would have been 100 feet from Dr. Hoffman’s home. He only learned

¹ [New OTARD Rule Supercharges WISP Model of Broadband Deployment](#) (January 8, 2021)

about it before it was built because the company needed his permission to pass the electric cables through his property. It seems strange they need permission to occupy his property with shielded electric cables, but do not need his permission to similarly burden his property with radiation, even though it will be extremely toxic to his wife and daughter.

CHD Comments

14. CHD filed comments in the FCC “OTARD” proceeding against the adoption of the rule change.² CHD extensively addressed the substantive and procedural problems arising from the adoption of the proposed rule amendment and the devastating effects it will have on the many adults and children, including [CHD members](#), who are already sick from wireless radiation or whose condition may be aggravated from exposure.³ CHD observed that the rule would not just eliminate local zoning and preempt deed restrictive covenants; it would also preempt federal and state civil rights laws that protect the disabled and handicapped and eliminate current requirements for accommodations.

15. Realizing the devastating implications of the amended rule, CHD started a campaign to educate the public and to build resistance. Following a one-

² <https://www.fcc.gov/ecfs/filing/104171342025759>.

³; <https://www.fcc.gov/ecfs/filing/105191672708448>

month campaign in April 2020, with our limited resources, [15,090 people joined CHD's comments](#). Of these, 1,988 are CHD members. Our efforts exposed widespread sickness: [6,231 people](#) declared that they and/or their children have become sick from wireless radiation. 823 of them are CHD members.

16. Approximately 1,200 people filed meaningful comments explaining their personal experience and position. They objected to intrusions on their property. They consider the non-consensual irradiation to be a battery on them and a violation of their constitutional right to privacy and bodily autonomy.

17. About 250 of those and/or their children are sick from radiation. See *Addendum Record Reference Table 2: Comments of People Who Filed with CHD, Reporting Children/Adults/Families Being Affected by Wireless Radiation*.

("ARR-T2"). The few lines they added often revealed heart-wrenching stories. They reported that exposure to wireless radiation has caused and/or aggravated their sickness, including Radiation Sickness, neurodevelopmental conditions, cancer, epilepsy, and seizures. They provide a disheartening glimpse into the unconscionable effects the rule amendment will have on those who are the most vulnerable.

18. These commentators justly demanded that they not be forced to endure radiation permeating their home and property that will make them and/or their children or family members sicker and may even kill or constructively evict them

from their home. They expressed a plaintive but eminently reasonable desire to be safe at least in their homes, their only refuge.

Sickness from Wireless Radiation

19. The FCC completely failed to address CHD's comments and the comments of those who will be impacted the most - people who suffer from Radiation Sickness or have conditions aggravated by exposure to wireless radiation.⁴ Instead of being protected by their government, the rule eliminates their protections.

(i) Radiation Sickness

20. Radiation Sickness (also called Microwave Sickness; Electro-Sensitivity, Electro Hypersensitivity or EHS) is likely the most widespread sickness associated with exposure to wireless radiation. It describes a constellation of symptoms, mainly neurological (but not exclusively), that manifest with exposure to wireless radiation. [Diagnosis guidelines](#) exist.

21. Radiation Sickness is a spectrum condition. People who develop the condition become intolerant and react to levels of wireless radiation they previously could tolerate. As with other toxins or allergens, eliminating exposure is

⁴ See Addendum Record Reference Table 2 and Table 3.

the only way to avoid symptoms. The condition is progressive, so symptoms reappear with exposure.

22. The symptoms were found to indicate [severe physiological injuries](#) associated with wireless radiation exposure, including damage to the [Blood Brain Barrier](#), [impaired brain blood flow](#) and adverse effects on the immune and hormonal systems. There may be [genetic predispositions](#). [Oxidative Stress](#) is the causal mechanism of harm for at least some of the injuries.

23. In January 2021, the Swiss government-appointed expert advisory committee ([BERENIS](#)) published a [preliminary paper](#) following extensive evaluation of the scientific literature on RF/EMFs (the full report is forthcoming)⁵ that confirmed that oxidative stress from chronic exposure is the underlying mechanism for RF/EMF-induced injuries. See also Drs. Golomb, Jelter and Bray affidavits.

(ii) Accommodation

24. Various US government agencies have recognized Radiation Sickness as a disability and have required accommodation. They stress the importance of exposure avoidance and that people's home must be a sanctuary.

⁵ The full paper is attached to Dr. Erica Elliot's affidavit.

25. In 2002, the “Access Board,” the US federal agency responsible for publishing ADA Accessibility Guidelines used by the Justice Department to enforce the ADA, recognized that “electromagnetic sensitivities may be considered disabilities under the ADA.”⁶ The National Institute of Building Sciences (NIBS) was contracted by the Access Board to provide recommendations on how to accommodate people with Radiation Sickness. [Their 2005 report](#) concluded that wireless radiation is an “access barrier” and can render buildings “inaccessible” to those with Radiation Sickness:

People with electromagnetic sensitivities can experience debilitating reactions... from electromagnetic fields emitted by computers, cell phones... The severity of sensitivities varies among people...

... public and commercial buildings are required to provide reasonable accommodations for those disabled by electromagnetic sensitivities.

26. The US. Department of Labor’s Office of Disability Employment Policy issued [guidelines for accommodations](#) in 2015. Tachover Attachment 1. The guidelines state:

...the nature of electromagnetic sensitivity is such that even levels that are deemed safe for the general public can cause trigger symptoms for individuals who are hypersensitive...and therefore may need accommodation.

...

⁶ See Architectural and Transportation Barriers Compliance Board, [ADA Accessibility Guidelines for Recreation Facilities](#), 68 FR 56351 (Sept. 3, 2002).

Individuals with electromagnetic sensitivity may experience ... fatigue, weakness, neurological issues, immunological issues, gastrointestinal issues, increased irritability, lack of ability to think clearly and quickly, sleep disturbance, overall malaise, and anxiety...Common workplace issues involve exposure to Wi-Fi, cell phones.”

General considerations include: ...Relocate workplace away from areas where symptoms are triggered...limiting certain types of devices in the vicinity of the employee’s workstation... Provide wired telephones and network connections.

27. The US Department of Education (“DOE”) has recognized that people with other conditions may also develop intolerance to EMFs. In 2011, DOE issued a memorandum regarding accommodation of people with Multiple Chemical Sensitivities (“MCS”), including minimizing exposure to electromagnetic fields and radiation because it may trigger their symptoms. Tachover Attachment 2. The memo acknowledges the impact that Radiation Sickness can have on some people and the importance of their home as a refuge.

[I]ndividuals affected by MCS have created “sanctuaries” relatively free from chemical emissions and electromagnetic fields in their homes. Because of the serious impact of even an accidental unavoidable exposure, people often spend as much time at home as possible and often cannot participate fully in society. As a result, they may experience intense isolation, loss of self-esteem, and depression from not being able to have an active work, family, or social life.

28. An October 2020 [report of the New-Hampshire committee](#) established by the legislature to learn the health effects of wireless radiation, concluded that 5G and wireless radiation can be harmful and acknowledged the need to accommodate those who suffer from Radiation Sickness.

29. Wireless radiation in the environment has significantly increased since many of these reports were published. Most of those who are sick can no longer access any service or facility, or work in government offices or anywhere. They even cannot access a hospital or walk on the street. Despite official acknowledgement, those who suffer from the condition and their situation are routinely ignored and their rights denied. Their condition is inconvenient to the FCC's relentless push for more wireless everywhere. To the FCC those who suffer and complain are a "barrier." The OTARD rule amendment now renders even their own homes "inaccessible" and "unavailable" to them while removing *all* their rights to be accommodated.

(iii) Radiation Sickness Prevalence

30. The effects of the rule amendment will be vast. Even though ignored by policy makers, Radiation Sickness is widespread. Papers published through 2005 show an average rate of 10% of the population may be affected to some degree.⁷ A 2012 European Parliament resolution stated that the problem is

⁷ [https://ecfsapi.fcc.gov/file/1005862318785/Dr_Erica_Mallery-Blythe_EHS_A_Summary_Working_Draft_Version_1_Dec_2014_for_EESC_Brussels_\(3\)%20\(1\).pdf](https://ecfsapi.fcc.gov/file/1005862318785/Dr_Erica_Mallery-Blythe_EHS_A_Summary_Working_Draft_Version_1_Dec_2014_for_EESC_Brussels_(3)%20(1).pdf) pages 3 and 13.

growing “exponentially.”⁸ The current rates are likely higher as observed in Affiant Dr. Jelter’s and Petitioner Dr. Erica Elliot’s Affidavits. They explain that lack of awareness among doctors leads to misdiagnosis.

31. For example, several experts believe that at least some of those who have been diagnosed with “anxiety” are in fact suffering from Radiation Sickness. The symptoms are similar. It may explain the [exponential increase in anxiety in children](#). A psychologist who filed with CHD agrees.⁹ Adults and parents of children with “anxiety” report significant improvement of their alleged anxiety symptoms when they remove exposure to wireless.¹⁰

32. CHD’s comments are another indication the sickness is widespread. 6,231 of those who joined CHD’s filing declared that they and/or their children have been injured by wireless radiation. This astounding number of reports came after a mere one-month campaign.

33. The other affidavits in our Standing package also give a glimpse of the huge scale of those who will be affected by the order. Prof. Golomb reports being

⁸<https://ecfsapi.fcc.gov/file/100518466598/FCC%20comments%20of%20Deborah%20Kopald%2014-177%2C%2015-256%2C%2010-112%2C%20and%2097-95.pdf#page=2>.

⁹<https://ecfsapi.fcc.gov/file/105191672708448/Tachover%20Exhibit%202%20List%20of%20Objecting%20Persons.pdf#page=329> row 7057.

¹⁰ See Addendum Record References Table 2 and Table 3.

in touch with scores or hundreds of individuals who suffer from Radiation Sickness. Prof. Bray testifies that her hospital clinic diagnosed 400 patients and has a long waiting list. Dr. Jelter has 100 patients, including 20 children. Petitioner Dr. Elliot has 50 patients. Affiant Hertz founded an advocacy non-profit in New York to help those who suffer from Radiation Sickness and knows hundreds of sufferers. Petitioner Mirin personally knows 15 people with Radiation Sickness who reside in his small rural area. I also personally know hundreds of adults and children who suffer from the condition, and I am contacted by more every day.

(iv) Conditions Aggravated by Wireless Exposure

34. Exposure can also aggravate existing conditions, while reducing exposure can alleviate symptoms. The Swiss committee report confirmed that exposure can cause or worsen several chronic illnesses, and that children, especially those with immune deficiencies or diseases, are especially at risk.

35. Conditions often affected by exposure include ADHD, neurodevelopmental conditions, and seizures to name a few. Many testimonials in the record confirm that the symptoms of these conditions are aggravated by wireless radiation exposure.¹¹

¹¹ Addendum Record Reference (“ARR”) Table 2 (“T2”): ARR-T2 Rows 35-44 and 201-246.

36. The prevalence of these conditions has been increasing in the past 20 years, and extensive scientific and clinical evidence shows that the exponential increase in exposure to wireless radiation is at least a possible contributory factor.

37. Affiant Dr. Jelter is a pediatrician with 40 years of clinical experience. She provided 5 case studies showing the effects that removing exposure had on her patients, who were children with neurodevelopmental conditions including autism. She reported that a non-verbal 10-year-old said his first sentence 3 days after the parents turned off all wireless devices at night.

38. The following comment was written by a parent who filed below with CHD:

I have children with Autism, we have had to implement a lot of safety precautions regarding emfs in our home. Since we have, our children are finally sleeping through the night and my non-verbal child has begun speaking.¹²

39. Affiant Baran's younger son was diagnosed with ADHD, Autism and seizures. A year after the family eliminated wireless exposure, the ADHD diagnosis was removed. The Autism and his seizures significantly improved. If the amended rule goes into effect, many families will be forced to try and survive in homes with toxic radiation that causes them to be sicker and can be fatal to them.

¹² Addendum Record Reference ("ARR") Table 2 ("T2"), Row 50, ARR-T1-R50

40. [McKenzie, a youth, filed a comment to the docket](#). He wrote that he was diagnosed with epilepsy and three other central nervous system conditions. He asked for accommodation and to stop the OTARD legislative process. He explained:

“Continual exposure to microwave radiation would increase my seizure frequency, cause physical impairment due to the increased number of seizures, and further damage my central nervous system and brain; all of which will negatively affect my quality of life and ability to function.”¹³

Comments About the Effects of OTARD on the Sick

41. [CHD’s FCC submission](#) included 246 comments of people who are sick. Sixty comments were from parents writing about their children’s suffering and the devastating effects the OTARD amendment will have on them:¹⁴

“My special needs daughter is sensitive to this and it will directly effect her! We don’t even have Wi-Fi in our home because of the health implications!”¹⁵

“My six year old gets migraine headaches from wireless radiation exposure please don’t force this killing technology into our neighborhoods against our will and put my son in endless agony.”¹⁶

“Our daughter was having seizures while the smart meter was in use, but not anymore. God knows what 5G would do to her.”¹⁷

¹³ ARR-T1, Foot Note 6 Row 4 (ARR-T1-FN6-R4).

¹⁴ Addendum Record Reference Table 2 provides all 246 comments. Comments about children’s sickness are in Rows 1-60.

¹⁵ ARR-T2-R12

¹⁶ ARR-T2-R6

¹⁷ ARR-T2-R22

“My daughter is 100% disabled because of radio frequency radiation and it is life threatening. My daughter cannot go anywhere...she will not survive.”¹⁸

42. Adults who have already been injured begged not to have more radiation forced on them and described their severe and even life-threatening symptoms.

“My wife is 100% disabled from radio frequency radiation. It is life threatening for my wife she will die.”¹⁹

“My nervous system is already sensitive to EMF! I am living with constant tinnitus, headaches, palpitation, anxiety...I cannot be subjected to anymore!”²⁰

43. Many others filed comments directly to the FCC record reporting their sickness and describing the impact the OTARD rule amendment will have on them.

“My wife is chronically ill, dealing with disabling effects of brain tumors and autoimmunity, and she is especially sensitive to EMF emissions. Your proposal could very likely cause severe health consequences for my wife and many others, and it is at odds with our Constitutionally protected rights to Life, Liberty and the pursuit of Happiness.”²¹

“I am a resident of Elburn with multiple brain tumors, severe migraine disorder, and vertigo. These symptoms are exacerbated greatly by EMF emissions from wireless devices to the point of being quite debilitating. The proposed rules would allow the proliferation of EMF-emitting wireless antennas without regulation, blocking the assertion of my rights and my due process. The installation of 5G on my property or in my town without my or my town’s consent would be disabling to my health and infringes upon my rights as well as state’s and town’s rights.”²²

¹⁸ ARR-T2-R7

¹⁹ ARR-T2-R134

²⁰ARR-T2-R129

²¹ ARR-T1-FN6-R8

²² ARR-T1-FN36-R8

44. Many of those who have been injured have had to leave their homes because of a radiation source. In many cases, a “small cell” or base station that was installed near their home made them sick. These people will be forced (once again) to leave their homes in search of the next refuge, but because of the rule amendment, there will be no refuge.

“I’m radiation sensitive and cannot tolerate proximity to microwave transmitters. I’ve already had to move away from a cell transmitter once to maintain my health. I should not have to be forced to do this!”²³

“We have been greatly affected by wireless radiation near our home. In fact we moved because a tower was within 250 yards of our home. This would be a nightmare if it passed. I’m signing to keep my family safe.”²⁴

“Please, STOP this! My parents’ health has declined ever since a 5G tower was installed next door to them. They are having to move as a result.”²⁵

CHD’s Standing

45. Children’s Health Defense participated below^{26, 27} CHD has Hobbs Act and Article III standing and grounds to pursue this case on its own behalf and also in a representative capacity on behalf of its members.

²³ ARR-T2-R82

²⁴ ARR-T2-R55

²⁵ ARR-T2-R179

²⁶ <https://www.fcc.gov/ecfs/filing/104171342025759>.

²⁷ <https://www.fcc.gov/ecfs/filing/105191672708448>.

CHD Representational Standing

46. The Order under review has directly injured our members. 823 of the 1,988 of our members who filed below together with CHD declared that they and/or their children are sick from wireless radiation, or that their conditions are being aggravated from exposure. All, therefore, have individual Hobbs Act and Article III standing.

47. Several of the Affiants (Dr. David Hoffman, Jennifer Baran and Michele Hertz) filed with this brief are CHD members who suffer from Radiation Sickness or who have family members with the affliction. They participated below. Michele Hertz [filed independently](#) to the record. Dr. David Hoffman joined CHD's filing.²⁸ They describe their injuries and/or the injuries of their family members in their affidavits. Three of the Petitioners, Dr. Erica Elliot, Ginger Kesler and Angela Tsiang, are also CHD members.

48. Prosecution of Petitions for Review of FCC decisions is very expensive. The individual petitioners and the Affiants would not have been able to pursue this challenge without CHD's assistance.

49. CHD members and CHD have each and all suffered and will suffer concrete and particularized injuries traceable to the FCC's decision. These injuries are

²⁸See his affidavit.

redressable by an order from the court, thereby meeting Hobbs Act and Article III standing requirements.

50. Given the prevalence of Radiation Sickness and other conditions associated with RF exposure, the OTARD amendment will have vast implications on the health and rights of growing segments of the population, including many CHD members and their families.

51. The OTARD amendment will subject the injured to more radiation in closer proximity to their homes and their sick children's bedrooms and take away the little control and due process rights that they currently have. Their health will be destroyed, some may even die. They will have to leave their homes, lose their livelihood, and will have nowhere to go. They will lose the only refuge they have – their home.

52. The Order states that the rule change will enable significant deployment and therefore expand wireless broadband, especially in rural areas. I have no doubt this is true. The problem is that it will increase wireless radiation in the few remaining areas where it is still possible to find refuge. Even in rural areas, a place that is safe one day could easily become unsafe the next.

53. The moment the rule change went into effect, all state and local venues for people to obtain notice of activities that affect them and to provide for participation in local proceedings to allow them to object to the activity or seek an accommodation

were preempted. Substantive and procedural due process rights that many currently use were removed, and a valuable source of vital information was eliminated. Given the scope of claimed preemption of state tort laws, the injured cannot receive any compensation after the fact. No right for redress remains for those affected, other than a potential Tucker Act claim for damages related to any property loss.

(i) Example of Effects on Affiants

54. Especially dangerous is the loss of right to notice. People will not be able to know if their neighbor is about to bathe their property with harmful radiation until they suddenly get sick again. Some may even experience life-threatening symptoms. They will have to immediately abandon their home. This constructive eviction will occur without notice. Affiant Baran, a Chemical Engineer and CHD member, has a son who gets seizures when he is exposed to wireless radiation. Understanding the implications, when the family heard about the proposed OTARD rule amendment, they started looking for an even more isolated property to move to and this month will close on a property. But even this house may become unlivable because of the rule amendment.

55. Similarly, those who purposefully bought property they thought would be relatively free from RF radiation or safer for them, like Affiant Baran, or those who contracted with their neighbors to include deed restrictions relating to antennas and business activity in residential areas, will be stripped of their contractual rights. Dr.

Elliot and Ginger Kesler both joined neighborhood associations with such restrictions. They did so on purpose and paid consideration for this right. These rights were stripped away the moment the rule amendment took effect.

56. Petitioner Mirin and 29 other commenters justly noted that people should not have the right to violate their neighbors' rights and health and warned that this rule will tear apart communities. The situation is the most acute for [those whose sickness](#) will be aggravated by exposure. Dr. Hoffman consulted with me on how to resolve the situation with his parents' neighbor. Apparently, following my conversation with the company, they contacted the neighbors and "warned" them. When Dr. Hoffman went to the neighbors' house to plead with them because his parents' health is deteriorating and his daughter cannot visit her grandparents anymore, the neighbors were rude and refused to talk to him.

57. Our members will not be able to seek help and accommodations from service providers or local or state authorities. Similarly, they lost all access to state courts for state-based claims. Affiant Dr. Hoffman's parents cannot sue their neighbor for nuisance, the loss of the quiet enjoyment of their property or to recover moving costs (Baran's move and shielding costs are estimated at \$100,000) or costs for their damaged health.

58. Our members will not be able to go anywhere OTARD-enabled antennas are used, and since these antennas are everywhere, they essentially have nowhere to go.

In Federal Housing Act terms, their home, and indeed the entire United States, is now “unavailable” to them for housing. 42 U.S.C. §4601(f)(1).

59. This quote best describes the situation for the injured:

“Electro-sensitive people like myself, who are already unable to live near existing cell towers and antennas because of debilitating physical impacts, will have nowhere to go. Even if we find what we think is a safe place to live, we will not be able to control whether a neighbor installs a 5G antenna right next door. Possibly we will not know it has happened until we become sick. You must not take away community control...”²⁹

(ii) Effects on Me Personally

60. Unfortunately, I can relate to the comments that were filed by our members.

After many years of wireless use, I too developed Radiation Sickness. I know first-hand about the torturing pain, the disabling symptoms, and the harsh reality of suffering sickness from wireless radiation. I have been living in this nightmare for over 10 years. It is increasingly challenging for me to spend time “in the world” and I have had to move many times in search of a safe place to live. The rule amendment will make it practically impossible to find a safer place. This outrageous reality is the drive behind CHD’s work.

²⁹ <https://www.fcc.gov/ecfs/filing/1011037210617>.

Children's Health Defense's Injury

61. In my work, I am contacted daily by people who became sick after antennas were installed near their homes. Many times, whole families are sick. I receive frantic contacts from parents whose children are severely sick from wireless radiation and can no longer go to school. I hear from doctors who are becoming aware of the significant role wireless radiation has in the sicknesses they see in their clinics. A few submitted comments below^{30, 31} Parents seek referrals to doctors that can properly diagnose their child so they can ask for accommodation.

62. I constantly receive contacts from people finding it impossible to remain in their homes because of increased radiation levels in their neighborhoods. Despite their efforts, they cannot find a safe place to live where they will not suffer every minute of their existence and can sleep, think, and function. Very few such places now exist. So quite a few just live in their cars. Many have expressed to me how desperate they feel because of the OTARD rule amendment. Many more will be in this situation and more will seek help from CHD. We will try to assist all we can, but it is becoming overwhelming.

³⁰ <https://www.fcc.gov/ecfs/filing/10617632311295>.

³¹ <https://www.fcc.gov/ecfs/filing/10604142025907>.

63. We have been getting a growing number of communications from people approached by wireless companies. They try to understand whether these offers solicit a site location on their property for installation of base-station antennas. Since the rule amendment preempted state and zoning laws and therefore any notice, these solicitations are the only way anyone can learn that these companies intend to install a nearby base station and antenna. Considering the implications, our members who receive them are justly terrified and more are seeking our help.

64. CHD is essential to the many adults and children who are suffering, feeling anxious and hopeless. Many of our members are sick and there is very little they can do to fight this rule and its devastating effects. They are afraid of the devastating effects and impact the rule amendment will have on their health and lives. We are their voice and hope.

65. The rule amendment has caused harm to CHD's ability to fulfill our mission and our ability to assist our members and the public. These harms go far beyond, and are in addition to, the time and significant resources dedicated to prosecution of this petition for review.

66. A central part of CHD's mission is helping the injured enforce their rights. We support those who need accommodation because of their wireless radiation-related sickness. For example, we recently helped Affiant Michele Hertz when she needed accommodation in her home from exposure caused by a private company.

The OTARD rule amendment creates a direct conflict with our mission, as it preempts state and federal civil rights laws that protect the disabled. We will not be able to support our members' efforts to get accommodation in the place it is most important to protect their rights – their home.

67. Another central part of CHD's mission is to help promote protective legislation. CHD has been active helping communities develop due process mechanisms to protect those who are especially affected by this radiation. CHD drafted a model ordinance, made referrals to attorneys, and has paid for subject-matter experts. We provided information and actively participated in hearings. The OTARD rule amendment makes these efforts ineffective because base stations and antennas can now be installed without regard to state and local zoning and land use regulations. It removes all democratic routes and due process procedures through which people can express and enforce community wishes and concerns. It eliminates *all* regulatory mechanisms.

68. This rule injures CHD's ability to fulfill its mission to protect injured children. The rule amendment's effect on children is especially concerning. Growing numbers of children are becoming sickened by radiation. One major cause is schools' industrial-level wireless broadband networks – the very thing facilitated by the rule amendment.

69. I have had many heartbreaking conversations with members' injured children. Petitioner Angela Tsiang's affidavit contains a letter written by her son. Many children have expressed fears their peers will learn about their condition and mistreat them. Their lives have been ruined and their future has been robbed. They are desperate and often hopeless.

70. Parents of affected children must remove them from school and provide homeschooling (Petitioners Tsiang and Kesler and Affiants Dr. Hoffman and Baran). But the growing forced exposure within people's own homes from outside sources is making it impossible for these children to get better. Their home is their entire world because transmitters have been installed in schools, parks, playgrounds and even churches. The radiation that permeates outside their homes is intolerable to them. Their lives are limited and isolated, and their future looks grim. This rule amendment eliminates the safety of their only refuge and any due process and disability rights that might preserve it.

71. A mother's plea to the FCC:

My children are hurt by wireless radiation exposure. The wireless radiation at school will be the cause of us home-schooling next year. Please let our home be a safe haven!³²

³²ARR-T2-R9

72. The record contains numerous heartbreaking testimonials about children's sickness from radiation sickness and the likely effects of the rule on them. Please see Addendum Record References Table 2 ARR-T2 for a collection of such testimonials from those who joined CHD's submission.

73. Our Child Ambassador project helps these children through support, but the rule amendment will make this far more difficult. Among other things, this project supports and aims to empower sick children by giving them a vehicle to speak up, educate, help create change and support others. One of our members whose twin teenage daughters developed Radiation Sickness contacted CHD for help. I visited their home and helped in various ways. Eventually, the family relocated to a rural area in another state with little radiation. Now the girls are doing much better, and they contacted us wanting to help other children. They were especially interested in our OTARD efforts as they are afraid a system will come near their new home, and they will have to move again. The OTARD amendment will require us to expand this program.

74. This effort is especially important as youth suicidal ideation is increasing. OTARD will aggravate the sick children's psychological damage from being rejected by their peers and by the system. They see every new FCC decision that ignores their existence and treats them as an "obstacle." I have been contacted in the past by children with Radiation Sickness who were contemplating committing

suicide. The threat of losing their home, and possibly actually losing their home, will undoubtedly lead more of them to contemplate committing suicide. CHD will have to invest more efforts to support these children.

75. There is now a desperate need for “white zones”: “clean” areas not saturated with wireless radiation where people who suffer from Radiation Sickness can go and live in dignity.³³ CHD has supported the efforts of several groups and individuals who are working to establish wireless-free communities. However, the rule amendment can undo all these efforts because homeowners’ association by-laws, deed restrictions and all state-law-based contracts are preempted and rendered unenforceable. A “safe” community today can be fully contaminated at any time by one project, and everyone will have to move again. The rule change therefore frustrates all our work and nullifies most of the resources put into these efforts.

76. To address and mitigate the societal harms created or maintained by the FCC’s rule amendment, CHD has had to allocate substantial human and financial resources and has diverted resources from other projects unrelated to wireless matters.

77. CHD is required to invest additional resources toward advocacy, counseling, referrals, education, and other actions related to OTARD. CHD has had to increase

³³ See [Council of Europe 2011 Resolution, section 8.1.4.](#)

the amount of work hours and/or to divert the work of its managerial, professional, and other personnel towards OTARD-related campaigns.

78. CHD had to use its tech support professionals to help maintain and update its website with campaigns, and other professionals to write articles, answer a growing number of emails, phone calls and deal with other requests for assistance with OTARD-related projects.

79. Because of the vast preemptions, OTARD antennas will be deployed quickly and soon. Therefore, my department had to divert our focus and dedicate much of my time on OTARD-related concerns instead of on other projects I had planned and committed to.

80. The rule's preemption of state and zoning laws has harmed our ability to learn about potential antennas via the application process. To slow down the deployment of OTARD-enabled antennas and mitigate the harm to our members, CHD has had to intensify its grassroots efforts and educational efforts.

81. To that end, CHD has invested in developing educational materials including a 5-minute video about OTARD and what people can do to protect themselves and their communities. We invested many hours working on it and paid a company \$1,500 for production. We are now working on flyers.

82. We have been supporting the efforts of organizations around the country to educate their communities about OTARD. For example, we supported a Safe Tech

MN community event and participated in a statewide community call with Arizona for Safe Tech. Most of my recent interviews have been about the OTARD rule amendment.

83. A few months ago CHD hired two community organizers to strengthen its grassroots efforts on other issues. Because of the importance of OTARD and the emergency it creates we have diverted their attention from other projects to focus on OTARD. Their weekly live program on June 28, 2021, will focus on tools to educate communities about the rule. They are working on flyers, an advocacy toolkit and lawn signs.

84. Program to warn communities of upcoming antennas. The rule has created an informational injury for CHD. The rule amendment preempted the requirement for applications, permits and notice. This harmed our ability to learn about a planned system and help communities and those affected use the democratic process to affect change. To address this injury, CHD created a program to track solicitations for the installation of antennas. It will help us to warn communities, at least to some degree. Our program asks people to inform us about solicitations by [filling out a form](#) on the [OTARD page of CHD's website](#). Creating the program and managing it have been resource intensive. Tech support professionals invested considerable time creating the relevant features and an email campaign they sent to our subscribers to inform them about the program. CHD has a paid part-time staff person following up with

people contacting us via web-based form. She has been calling and emailing them to make sure that the solicitations they received are indeed for the installation of systems covered by the rule amendment.

85. The OTARD amendment will increase radiation levels in homes. As a result, it will increase the number of people who approach us for advice on how to shield their homes. Referrals to EMF mitigation specialists is an important part of our work. However, hiring an expert can be expensive and those who are sick often have no financial means, so we must find alternatives. We are in the process of creating more webinars and writing more articles to provide people with advice and guidance on things they can do themselves.

86. To support our many members who are injured by the new rule, CHD plans to budget to hire an additional attorney to help file lawsuits and seek damages under the Tucker Act, the only legal recourse that will stay available to the injured. This is another obvious drain on our resources resulting from the rule.

87. The FCC's OTARD rule amendment will lead to increased wireless exposure and imposes more, higher, and even impossible hurdles to those who have already become sick. In turn, people are coming to us for help in ever-growing numbers. They ask for advice about where they can find a safer place. OTARD will make this problem exponentially worse as many people will be forced out of their homes. We

will have more demand for referrals, more demand for information, more demand for participation in educational events and more requests for mitigation advice.

88. The OTARD order asserts that allowed systems must comply with the Commission's emission rules. But it is very unclear about who is responsible for any violations. It is also unclear about whether the emissions levels for "base stations" or for "user devices" apply to these antennas. Nonetheless, CHD is developing a means to identify OTARD locations and assist with compliance testing so that, if necessary, someone can file enforcement complaints to the Commission. The first task, however, is locating these systems, and the rules make that hard to do since there is no known database and one can no longer go to the local zoning agency to find relevant permit applications. As a result, CHD will have higher program costs, and we suffer an "information" injury.

Summary

89. Every house in the US currently has access to some kind of broadband Internet. Those who want broadband Internet access can obtain fixed wireless for their own personal use for \$60 without harming others. The only advantage the OTARD amendment offers to users is more options. If the order is vacated, these companies will still be able to offer their services. They will have to apply for a permit.

90. The harm that will be caused by the FCC's OTARD amendment is vast and devastating. The rule amendment increases the size of an already enormous, though ignored and suppressed problem. With this rule amendment, the FCC harms those who are the most vulnerable and takes away their right to exist, even in their home. The effects of the FCC rule amendment are egregious, and morally and legally unconscionable.

“The true measure of any society can be found in how it treats its most vulnerable members.” (Gandhi)

91. This concludes my Affidavit.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Executed on June 22, 2021



Dafna Tachover