SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

AMERICAN TOWERS, INC.,
116 Huntington Avenue
Boston, Massachusetts 02116

Plaintiff,

v.

THE DISTRICT OF COLUMBIA

SERVE: Gladys Herring
Office of the Secretary
1350 Pennsylvania Ave.
Room 411
Washington, D.C. 20004

Darlene Fields
Office of Corporation Counsel
441 4th Street, N.W.
6th Floor, South
Washington, DC 20001

Defendant.

02-0000218

Civil Action No. _____

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COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

Prefatory Statement

This suit involves the revocation by Defendant of a building permit issued to Plaintiff for the construction of a state-of-the-art wireless communication and broadcast tower. Defendant revoked the permit seven months after Plaintiff began construction on the tower and after construction was nearly half completed.

BZA
Case No. 16990
Exhibit No. 27
Board of Zoning Adjustment
District of Columbia
CASE NO. 16990
EXHIBIT NO. 27

As a result of the revocation of the permit, Plaintiff has suffered tremendous and ongoing losses and damages.

If the District of Columbia properly issued the permit under the Height Act, D.C. Code § 6-601.01, et. seq. and/or other statutes, then Defendant's revocation of the permit, after Plaintiff had spent millions of dollars in reliance on the permit, violated Plaintiff's vested rights. If the District of Columbia issued the permit improperly, that unlawful action caused Plaintiff to incur millions of dollars of expenses because of Plaintiff's good faith and reasonable reliance on the lawfulness of the District of Columbia's action.

Accordingly, regardless of whether the District of Columbia issued the building permit properly or improperly in the first place, Plaintiff is entitled to be compensated for the tremendous damage it sustained as a result of Defendant's actions. Furthermore, Plaintiff is entitled to recover damages for Defendant's intentional interference with Plaintiff's contracts and prospective contracts with tenants for its tower.

In addition, Defendant's actions violated the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq.

Jurisdiction and Venue

1. This action is filed under the common law, and the Fifth and Fourteenth Amendments of the Constitution. The jurisdiction of this Court is based upon D.C. Code § 11-921 (2001 ed.).

2. Venue is appropriate in the District of Columbia as each of Plaintiff's claims arose in this judicial district.

Parties

3. Plaintiff American Towers, Inc. ("American Tower") is a Delaware corporation with a principal place of business at 116 Huntington Avenue, Boston, Massachusetts 02116. Formerly named American Tower Systems, Inc., American Tower is authorized to do business in the District of Columbia.

American Tower and the Broadcasting Industry

4. American Tower is in the business of providing telecommunications facilities for television broadcasting, radio broadcasting, and wireless communications of all kinds, including, but not limited to, cellular telecommunications devices, digital communications devices, and internet-enabled communications devices.

5. American Tower owns, constructs, and maintains towers all across the United States that are used by broadcasting and telecommunications companies and systems as an essential link in creating and maintaining broadcast systems and wireless communications of all kinds.

American Tower's Identification of a Tower Site in Tenleytown

6. In the District of Columbia, broadcasting towers and transmission facilities are permitted as a matter of right on commercially-zoned property. See 11 D.C.M.R. §§ 701.6(g), 721.2.

7. When a particular use is permitted as a matter of right under District of Columbia law, landowners may obtain permits and other approvals from the District of Columbia for the construction of that use without public hearings and without seeking or obtaining the consent of neighboring property owners.

8. The Federal Communication Commission has established a 2002 deadline for commercial broadcasters (and 2003 for non-commercial broadcasters) to begin operating digital television ("DTV") broadcasting signals and related

technology which is intended to replace the currently-used analog television broadcasting signals. In seeking to meet that deadline for potential and existing broadcasting customers, American Tower conducted an extensive review and investigation of possible sites that would meet the technical requirements of DTV broadcasts in the Washington, D.C. area. Based on this investigation, American Tower identified a site in the Tenleytown area of Northwest, D.C. as the best location for a single, new, state-of-the-art tower to provide for DTV and radio broadcasts and wireless communications transmissions, because of Tenleytown's height and central location among several other broadcast towers. Because of the number of telecommunications towers at this location, this area is known as "Broadcast Hill."

9. Other towers in the Tenleytown area and immediate vicinity include: WUSA/WJLA's tower, Channels 9/7, near Brandywine and Wisconsin Avenue (691 feet above ground level ("AGL") and 1,109 feet above mean sea level ("AMSL")); WRC's tower, Channel 4, at 4001 Nebraska Avenue (674 feet AGL and 1,061 feet AMSL); and FOX's tower, Channel 5, at 5151 Wisconsin Avenue (701 feet AGL and 1,047 feet AMSL). See Exhibit 1.

10. For each of these towers, Defendant granted construction permits even though these towers all exceed the 130 foot height restriction contained in the Height Act, D.C. Code § 6-601.01, *et. seq.* On information and belief, Defendant did not give a written waiver of the Height Act to any of these commercial towers other than the construction permit.

American Tower's Development in Tenleytown

11. Based on the technical and geographic factors of the area, American Tower acquired certain real property located in the Broadcast Hill area of Tenleytown at 4621-4623 41st Street (the "41st Street Site"), which was an ideal

site for the construction of a tower that would serve as a personal wireless communications service facility and a DTV and radio broadcasting tower.

12. The 41st Street Site is zoned C-2-B, a zoning classification that permits antenna towers and broadcasting facilities as a matter of right.

13. At the time of American Tower's acquisition of the 41st Street Site, the site held three (3) broadcasting and telecommunications antennae towers, one roof-mounted and two free standing, none of which were high, or sturdy, enough to support DTV broadcast antennae. Accordingly, American Tower purchased the 41st Street Site with the intent to remove the three existing towers and replace them with one state-of-the-art tower (the "41st Street Tower") of sufficient height and strength to provide for DTV broadcasting of adequate and acceptable quality.

14. On May 13, 1998, at the request of American Tower, the District of Columbia Office of Surveyor issued a plat for a building permit for the 41st Street Site, the legal description for which is Square 1769, Lot 22/30. This plat shows a proposed location for a three-legged tower to be constructed by American Tower, along with a broadcasting transmission studio. See Exhibit 2.

15. In order to build a new tower, however, American Tower needed to acquire additional adjacent property. Accordingly, in reliance upon the assurances of employees, agents, and officials of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") that the property was zoned appropriately for American Tower's intended use, American Tower acquired further parcels of land located at 4617-4619 41st Street, N.W. on or about August 19, 1998.

16. American Tower continued developing the 41st Street Site, including these new acquisitions, as permitted by the D.C. zoning regulations, incurring development costs for surveying, architectural, and engineering proposals and drawings, and similar related work.

17. During the course of developing the 41st Street Site, American Tower fully complied with all federal laws and regulations with respect to its plan to construct the 41st Street Tower, including all necessary filings with and approvals from the Federal Communications Commission ("FCC") and the Federal Aviation Administration ("FAA").

18. Where a transmission tower, such as the 41st Street Tower, meets the FCC guidelines, implementing the Telecommunications Act of 1996, 47 U.S.C. § 251 et. seq., with respect to radio frequency transmissions, the tower is conclusively deemed to be appropriate as a matter of law and cannot be blocked by local zoning boards and municipalities.

19. The FAA approved a total height for the 41st Street Tower of 1,149 feet AMSL. It is the FAA's policy to encourage the construction of broadcasting and wireless transmission towers in proximity to other tall towers in order to concentrate those towers geographically, thereby reducing the effect of such towers on aviation traffic.

The District of Columbia Building Permit Approval

20. On March 17, 1999, American Tower submitted an application to the District of Columbia for a permit to construct on the 41st Street Site a 581-foot AGL tower, bearing two 123-foot top-mounted broadcasting and DTV antennae, and associated structures, for a total height of 756 feet AGL and 1,149 feet AMSL. See Exhibits 1 and 3. These heights are comparable to similar commercial broadcasting towers, see paragraph 9, supra, and a tower owned by the District of Columbia (the "D.C. Tower"), located on Georgia Avenue (752 feet AGL and 1,050 feet AMSL). See Exhibit 1.

21. After obtaining zoning approval, see Exhibit 3, the District of Columbia Office of Planning, whose authority is delegated from the Mayor, specifically recommended approval of the 41st Street Tower and associated

structures. See Exhibit 4. In making this recommendation, the Office of Planning specifically noted that American Tower proposed "to construct a new 756-foot high digital television transmission antenna tower at 4623 41st Street, N.W. to replace the three smaller antenna towers on the site . . ." and that "[u]pon completing the new tower, the older towers will be razed . . . and a two-story television studio will be constructed on the site." Exhibit 4. The proposed tower and associated buildings were permitted "as a matter-of-right in a C-1 or less restrictive zone district" and approval was recommended "as being consistent with the intent of subsection 201.6, 701.6, 701.8 and 701.9 of the Zoning Regulations." Exhibit 4.

22. Following continuous discussions with, and revisions to the plans in conformance with the requests of, the various departments and agencies of the District of Columbia responsible for reviewing American Tower's building permit application, which specifically proposed a tower of 756 feet and associated structures to replace three existing towers, see Exhibit 3, the building application was then approved by all necessary District of Columbia regulatory agencies, including the Department of Public Works, the Environmental Regulation Administration, the Water and Sewer Authority, and the various construction and building code officials charged by District of Columbia law with determining compliance of such building permit applications with relevant statutes and codes. See Exhibit 3.

23. Following over 100 meetings and telephone conferences between American Tower and relevant District of Columbia officials, American Tower's building permit was finally issued by the DCRA's Building and Land Regulation Administration, having the authority to do so, on March 13, 2000, nearly one year from the date of the application. See Exhibit 5. On information and belief, this permit was validly and legally issued and endorsed by an appropriate DCRA official in the same manner and with the same effect as other building permits,

including those for all other towers of similar height in and near Tenleytown. See paragraph 9, supra.

24. In reasonable reliance upon this valid permit, and after expending several million dollars for the acquisition and preparation of the 41st Street Site for use as a broadcasting transmission site, American Tower began the very visible and public process of erecting the 41st Street Tower and associated structures in plain view of all of Tenleytown and the heavily-traveled Wisconsin Avenue that passes directly by it.

25. Specifically, in reliance on this validly-issued permit, American Tower spent millions of dollars, and untold hours of executive, officer, and employee time:

- having antennae designed and built,
- having the tower fabricated and shipped to the site,
- employing workers,
- retaining real estate counsel,
- commissioning architectural and engineering designs, drawings, and plans,
- obtaining closures of various right of ways,
- retaining contractors and subcontractors,
- purchasing additional land,
- paying direct and substantial compensation to businesses and property owners near the site,
- marketing and negotiating rental space on the proposed tower,
- acquiring materials,
- coordination with and granting concessions to the Washington Metropolitan Area Transit Authority,
- tearing down existing towers and a building, and
- beginning construction on the 41st Street Tower.

26. In addition to the equipment and materials involved in this heavy construction project, American Tower also commissioned and purchased two broadcasting and DTV antennae specifically manufactured for placement on the 41st Street Tower for use by specific tenants of the tower with whom American Tower was negotiating antenna space and not adaptable for use in another location in the District or any other city or state.

27. At all relevant times, all concerned District of Columbia officials knew of this major construction project. As with any heavy construction project, erection of the 41st Street Tower, with its attendant noise, traffic, workers, etc., could not have been more obvious to District officials and to all local residents.

28. At no time while the construction proceeded to a height of 281 feet, or 28 stories, before being stopped – a height greater and more visible than any commercial building in the area – did any District official ever inform American Tower that there was any question as to the lawfulness or any other aspect of the construction, or indicate and/or inform American Tower before October 5, 2000 that its building permit might be revoked for any reason.

29. During the partial construction of the 41st Street Tower, American Tower also negotiated with various broadcasters, including but not limited to WDCA, WHUT, and WHUR, for the purpose of leasing antenna space on the 41st Street Tower to them once it was completed. American Tower's proposed state-of-the-art tower was greatly desired, provided it was completed by the FCC's DTV broadcasting deadlines. It is through revenue from these contracts that American Tower expected to recoup the costs of the 41st Street Tower's construction and derive future, long-term income and profits.

The September 8, 2000 Stop Work Order

30. Then, beginning in or about September, 2000, a small but very vocal group of political activists staged demonstrations and petitioned the Mayor,

claiming that American Tower's permit should be revoked as a health and environmental hazard. See "Stop the Tower Website," www.marginata.com/tower/ (discussing concerns about health effects and electromagnetic and radiation output).

31. No such health or environmental basis exists to revoke American Tower's permit, and federal law expressly precludes local political bodies from doing so on either or both these bases when, as here, the tower serves as a personal wireless facility. See 47 U.S.C. § 332.

32. Yet, the Mayor and/or his office capitulated to the activists' demand and proceeded to re-review the permit to find or create any possible basis to rescind the permit, despite the fact that the permit had already been validly issued without qualification, that nothing had factually changed since its issuance, that construction was halfway complete, and American Tower had spent millions of dollars on that construction, thereby vesting its rights in the building permit.

33. On September 8, 2000, the District of Columbia issued a Notice of Stop Work Order, a copy of which is attached hereto as Exhibit 6 and incorporated by reference.

34. The Stop Work Order was purportedly issued pursuant to the provisions of 12 D.C.M.R. § 117.1, which provides that a stop work order may be issued "upon notice from the code official that work on any building or structure is being performed contrary to the provisions of the Construction Codes or in an unsafe and dangerous manner . . . ."

35. The Stop Work Order, however, did not allege any code violation or that work on the 41st Street Tower was being performed in an unsafe or dangerous manner. Instead, the Order asserted that it was issued "[as] a preventive measure only, until compliance with all applicable District of Columbia law and regulations, as mandated by the Construction Codes, can be confirmed." See Exhibit 6 at 1.

12 D.C.M.R. § 117.1 does not give the District of Columbia authority to issue a stop work order "as a preventive measure" or to "confirm" compliance with all laws.

36. Because of this Order, however, American Tower stopped construction on the 41st Street Tower, completely disrupting its progress and greatly increasing its costs and loss of time.

37. While the Stop Work Order was in effect and in response to American Tower's appeal of this decision, District officials began an intensive review of American Tower's building permit and the regulatory process in search of grounds – procedural or substantive – to permanently stop construction.

38. American Tower passed this second, intensive review; no grounds – procedural or substantive – were found to stop construction, notwithstanding the District's heightened scrutiny and unusually stringent attempt to do so. Accordingly, by letter dated September 15, 2000, the DCRA rescinded the Stop Work Order. See Exhibit 7.

39. American Tower resumed construction on the 41st Street Tower and associated structures immediately.

Construction of the 41st Street Tower is Again Shut Down

40. Three weeks later, at or about 9:00 p.m. on Thursday, October 5, 2000, the DCRA faxed a letter to American Tower ordering that construction of the 41st Street Tower cease by 5:00 p.m. on Tuesday, October 10, 2000 because the permits issued for the construction of the 41st Street Tower "were erroneously issued and are therefore void ab initio." See Exhibit 8 at 4. According to the letter, the permits were erroneously issued by the District of Columbia because of five purported errors in the District's original permitting process. See Exhibit 8. None of these identified errors alleged Code violations or unsafe or dangerous work conditions required in support of a Stop Work Order. Instead, they involved desperate attempts to invent reasons to overturn a previously-approved, validly-

issued, and acted-on permit for the slightest errors – alleged errors committed by the District in approving the permit – and the reasons given are pretextual and demonstrate the discriminatory purpose imposed on American Tower due to its political unpopularity.

41. First, the DCRA stated that American Tower's permit application proposed an insufficient sideyard. No sideyard for construction of the 41st Street Tower was required, as acknowledged by D.C. officials prior to the filing of American Tower's permit application. See 11 D.C.M.R. § 775.5.

42. Second, the DCRA stated that American Tower failed to obtain a written order approving the 756 foot tower in excess of the Height Act. No statute or regulation requires that such a written order be obtained in addition to the construction permit itself. Moreover, the 41st Street Tower and its height were thoroughly reviewed and approved by the Office of Planning and those officials of the DCRA charged with and having the authority to determine compliance of the permit request with all applicable laws and/or grant exceptions thereto. Furthermore, Defendant routinely approved other towers that exceed the 130 foot restrictions in the Height Act and do not differ from American Tower in any legally material way – including broadcasting towers owned and operated by the other major media companies in or near Tenleytown, see Paragraph 9, supra – using the same approval process used by American Tower to obtain its permit. In fact, on information and belief, the District has not required any commercially-owned tower constructed in excess of 130 feet to obtain a written waiver or follow any procedure other than that employed by American Tower in the last fifty years. Nor, on information or belief, has Defendant ever provided a written waiver to any non-governmental entity.

43. Third, the DCRA's October 5, 2000 letter stated that an Environmental Impact Statement ("EIS") was not performed and that "[n]o permit

should have been issued in the absence of any analysis of the environmental impact of the proposed antenna tower." Exhibit 8 at 3. The 41st Street Tower was approved as a replacement of existing structures, and as such, is exempt from the requirements of the D.C. Environmental Policy Act. Moreover, similarly-situated broadcasting towers were routinely approved without an EIS. District of Columbia officials never determined that an EIS was required before issuing the permit, and no EIS was required unless the District made such a determination. American Tower provided the District with all information related to this issue that the District requested.

44. Finally, the DCRA letter stated that American Tower failed to register as a corporation and failed to register to conduct business in the District, both of which are inaccurate. American Towers, Inc., formerly known as American Towers Systems, Inc., was registered as a Delaware corporation and was "authorized to transact business as a foreign corporation in the District of Columbia" since January 2, 1997. Exhibit 9.

45. Accordingly, on October 10, 2000, American Tower responded to the DCRA's October 5, 2000 letter (after only two business days as Monday, October 9, 2000 was Columbus Day, a federal holiday), refuting the DCRA's findings. Within hours that same evening, the DCRA responded with another letter reiterating its conclusion that the 41st Street Tower permit "was issued in error and is *void ab initio*." Exhibit 10 at 2. DCRA's October 10, 2000 letter ordered American Tower to cease all work on the 41st Street Tower by 7:00 p.m. on October 12, 2000.

46. The DCRA's October 5, 2000 letter retroactively imposed upon American Tower requirements that have never been applied by Defendant to the construction of any other non-governmental broadcasting tower and without allowing American Tower an opportunity for a hearing or an appeal. The only opportunity American Tower was given to respond to the DCRA's October 5, 2000

letter was an illusory sham, as the outcome had been predetermined by Defendant as evidenced by the DCRA's immediate, negative response to American Tower's October 10, 2000 letter and subsequently passed legislation described in paragraph 48, infra.

47. Defendant, without any basis in law or in fact, illegally revoked American Tower's permit for the 41st Street Tower. Defendant's revocation of American Tower's building permit was not in conformance with D.C. law, was willful and intentional, constitutes a reckless abuse of governmental power with regard to American Tower's property, constitutional, and other rights, offends notions of fair play and decency, was taken for a discriminatory purpose, and was arbitrary and caprious.

48. On the same day as the DCRA's October 5, 2000 letter challenging American Tower's permit, the Mayor signed legislation that "prohibit[ed], on an emergency basis, the issuance of permits allowing the construction or expansion of any telecommunications towers which will reach a height above 200 feet . . . ." D.C. Legis. 13-442 (2000) (slip copy). This legislation named American Tower's 41st Street Tower specifically as a tower that was "inconsistent with the intent of subsections 201.6, 701.8 and 2510.1 of the D.C. Zoning Regulations" despite the Office of Planning's earlier findings to the contrary. The legislation expressly referred to many of the same spurious allegations that had been cited by the DCRA, such as American Tower's failure to obtain an "express[] exempt[ion]" from the 130 foot height restrictions in the Height Act and to obtain an EIS. This emergency legislation was renewed on December 22, 2000 (D.C. Legis. 13-525 (2000) (slip copy)). Identical temporary legislation labeled "Moratorium on the Construction of Certain Telecommunications Towers Temporary Amendment Act of 2000" was approved on October 30, 2000 and went into effect on April 3, 2001. See D.C. Legis. 13-218 (2000) (slip copy). New emergency legislation which

restricted "the issuance of permits allowing the construction or expansion of any telecommunications tower which will reach a height of 150 feet or more . . ." was approved on April 3, 2000. See D.C. Legis. 14-32 (2001) (slip copy). Identical temporary legislation was signed by the Mayor on April 19, 2001 and became effective July 21, 2001. See D.C. Legis. 14-17 (2001) (slip copy). The District purports to have the authority to extend and re-enact similar legislation and intends to exercise that claimed authority in order to prevent the construction of the 41st Street Tower, notwithstanding American Tower's valid permit. The foregoing legislation and threatened legislation is collectively referred to herein as the "Moratorium Act."

49. The Moratorium Act is discriminatory on its face in that it specifically refers to the 41st Street Tower as a tower whose construction must be halted "because it is inconsistent with the intent of subsections 201.6, 701.8 and 2510.1 of the D.C. Zoning Regulations," despite previous District findings to the contrary and despite the fact that permits have been issued for other similarly-situated commercial towers using the same process employed by American Tower.

50. On October 25, 2000, American Tower filed an appeal to the Board of Appeals and Review requesting that its validly-issued building permit be reinstated. That appeal was subsequently stayed, see, Board of Appeals and Review's January 17, 2001 Order with American Tower's handwritten responses submitted on January 29, 2001, by agreement with the District of Columbia pending the resolution of litigation filed in the U.S. District Court for the District of Columbia and in light of the Moratorium Act.

51. Because of the Moratorium Act, no process or administrative appeal can cure the injury suffered by American Tower as a result of the revocation of its building permit. Attempts by American Tower to exhaust administrative remedies before the Board of Appeals and Review would be futile because, inter alia, the

Moratorium Act would prevent the issuance or restoration of a building permit for the 41st Street Tower regardless of any ruling by the Board of Appeals and Review.

Count I
Equitable Relief

52. The allegations of Paragraphs 1 through 51 are incorporated herein by reference, as if stated fully herein.

53. Through Defendant's actions, American Tower obtained the vested right to the validly-issued building permit and the vested right to construct the 41st Street Tower pursuant to the permit.

54. Because of Defendant's actions in revoking American Tower's permit, American Tower has been irreparably damaged. Accordingly, in order to prevent manifest injustice, Defendant should be directed to re-issue the building permit and permit the construction of the 41st Street Tower without further interference, and should be ordered to pay any and all damages sustained by American Tower as a result of the illegal revocation.

55. The public interest is promoted when persons are able to rely upon building permits that are issued after an extensive review and approval process, particularly those that are reviewed for a second time and deemed valid. Persons rightfully expend substantial capital outlays in reliance upon such permits, and accordingly, enforcement of such permits is critical.

Count II
Damages for Destruction of Vested Rights in Valid Building Permit and Just Compensation for Taking of Property for Public Use

56. The allegations of Paragraphs 1 through 55 are incorporated herein by reference, as if stated fully herein.

57. Through Defendant's actions, American Tower's rights in the building permit validly issued by the District vested in, inter alia, the permit; the 41st Street Site; the half-constructed improvements to that site; and American Tower's present and future commercial, contractual, and economic arrangements, commitments, and ventures in regard to 41st Street Tower.

58. Defendant's actions in rescinding American Tower's valid permit for the 41st Street Tower constitute a temporary and/or permanent taking of American Tower's property subject to a claim brought under 42 U.S.C. § 1983 for which American Tower is entitled to just compensation.

59. As a result of this temporary and/or permanent taking and Defendant's other actions, American Tower has been irreparably damaged in terms of its multi-million dollar investment in the planning and construction of the 41st Street Tower; in terms of American Tower's present and future commercial, contractual, and economic arrangements, commitments, and ventures related to the 41st Street Tower; and in terms of Defendant's denial of all economic use of American Tower's property and/or reducing the 41st Street Site and Tower's value without just compensation. Accordingly, in order to prevent manifest injustice, American Tower should be compensated for the taking of its property and the

damage caused by Defendant's revocation of American Tower's validly-issued building permit.

60. The public interest is promoted when persons are able to rely upon building permits that are issued after an extensive review and approval process, particularly those that are reviewed for a second time and deemed valid. Persons rightfully expend substantial capital outlays in reliance upon such permits, and accordingly, compensation when governments fail to honor those permits is critical.

61. Moreover, Defendant's actions do not promote legitimate social goals, the public welfare, or substantially advance legitimate governmental interests, and frustrate American Tower's reasonable expectation of use for the 41st Street Site.

Count III
Damages for Issuance of Invalid Building Permit

62. The allegations of Paragraphs 1 through 51 are incorporated herein by reference, as if stated fully herein.

63. Pleading in the alternative, even if American Tower's building permit were invalidly issued, that was done by the Defendant through no fault of American Tower and without American Tower's knowledge of its invalidity, American Tower's reasonable and justifiable reliance upon that building permit for seven months vested its rights in, inter alia, the permit; the half-constructed improvements to that site; and American Tower's present and future commercial,

contractual, and economic arrangements, commitments, and ventures in regard to 41st Street Tower.

64. As a result of this reasonable and justifiable reliance upon that building permit, American Tower has been irreparably damaged in terms of its multi-million dollar investment in the planning and construction of the 41st Street Tower; and in terms of American Tower's present and future commercial, contractual, and economic arrangements, commitments, and ventures related to the 41st Street Tower. Accordingly, in order to prevent manifest injustice, American Tower should be compensated for damage caused by its good faith and justifiable reliance thereon.

65. The public interest is promoted when persons are able to rely upon building permits that are issued after an extensive review and approval process, particularly those that are reviewed for a second time and deemed valid. Persons rightfully expend substantial capital outlays in reliance upon such permits, and accordingly, compensation when governments fail to honor those permits is critical.

Count IV
Intentional Interference with Contractual Relations and/or
Prospective Business Advantage

66. The allegations in Paragraphs 1 through 65 are incorporated herein by reference, as if stated fully herein.

67. As a result of its own activity in marketing and renting antenna space on the D.C. Tower located in Northwest, D.C., Defendant knew or had reason to know of the contractual relations, prospective or otherwise, between American

Tower and its potential tower tenants and/or customers, including but not limited to, WDCA, WHUT, and WHUR, and its current and/or former tenants and/or customers, some of whom temporarily relocated to other towers while construction of the 41st Street replacement tower was underway.

68. As a result of the District of Columbia's position as a market participant and direct competitor of American Tower, Defendant knew, or had reason to know, that any delay in the construction of the 41st Street Tower would cause these potential tenants of the new tower to seek another provider of antenna space for their broadcasting needs.

69. Upon information and belief, Defendant has successfully negotiated and/or are currently negotiating leases for antenna space on D.C.'s own tower with broadcasters who, before revocation of American Tower's permit, were negotiating antenna space on the 41st Street Tower.

70. Regardless of whether or not American Tower's building permit was validly or invalidly issued, Defendant revoked that permit knowing that the inevitable result would be that American Tower would lose its economic and human investment, its prospective, current, and/or former tenants, and the income related thereto.

71. Regardless of whether or not American Tower's building permit was validly or invalidly issued, Defendant revoked that permit with the probable and foreseeable result of securing one or more of American Tower's prospective, current, and/or former tenants for its own tower.

72. All of the foregoing was done willfully and with deliberate disregard of American Tower's legal rights.

73. The foregoing has resulted in substantial damage to American Tower in the form of lost revenue and loss of contractual relations, prospective or otherwise, with broadcasters and personal wireless communications providers who, but for the revocation of the 41st Street Tower's permit, would have leased space on the 41st Street Tower.

Count V
Violation of the Telecommunications Act of 1996

74. The allegations of Paragraphs 1 through 73 are incorporated herein by reference, as if stated fully herein.

75. Although a similarly denominated claim was dismissed with prejudice as initially brought in the United States District Court for the District of Columbia and without any discovery allowed on the factual issues, an appeal of that dismissal has been brought before the United States Court of Appeals for the District of Columbia Circuit and other aspects of this claim have been and will be developed through further investigation. Accordingly, to the extent that American Tower's federal Telecommunications Act of 1996 claim is reinstated through the appeal currently pending or further investigation provides a factual basis for this claim, Defendant has violated the Telecommunications Act of 1996 by the following, subject to a claim brought under 42 U.S.C. § 1983.

76. The Supremacy Clause of the United States Constitution, Article VI, clause 2, invalidates state or local laws "interfering with, and being contrary to," federal law.

77. The Telecommunications Act of 1996, 47 U.S.C. § 251 et. seq., expressly preempts state and local law contrary to the provisions of the Act. See 47 U.S.C. §§ 332(c)(3)(A) & (c)(7)(B). The Telecommunications Act of 1996 applies to this case because the proposed 41st Street Tower is a personal wireless facility within the meaning of 47 U.S.C. § 332.

78. Defendant's actions unreasonably discriminate against providers of functionally equivalent services, in violation of 47 U.S.C. § 332 and subject to a claim brought under 42 U.S.C. § 1983, as described more fully in paragraphs 1-51, supra.

79. In addition, Defendant's revocation of American Tower's building permit is not supported by substantial evidence as required by 47 U.S.C. § 332(c)(7)(B)(iii).

80. Insofar as Defendant's decision to revoke American Tower's permit is based upon issues related to environmental impact, the decision is in violation of 47 U.S.C. § 332(c)(7)(B)(iv) and subject to a claim brought under 42 U.S.C. § 1983, which prohibits regulation by state or local government of the placement of wireless facilities based upon environmental effects that otherwise comply with federal regulations.

81. Defendant's actions have caused irreparable damage to American Tower in terms of its multi-million dollar investment in the planning and

construction of the 41st Street Tower; in terms of American Tower's present and future commercial, contractual, and economic arrangements, commitments, and ventures related to the 41st Street Tower; and in terms of its custom-made antennae for use on the 41st Street Tower.

Prayer for Relief

WHEREFORE, American Towers requests the following relief from this Court:

1. A declaratory judgment declaring as follows:

a) that the actions of the District of Columbia and its officials in revoking American Tower's permit are without legal force and effect and are in violation of District of Columbia law;

b) that Defendant violated American Tower's constitutionally and/or federally protected rights; and

c) that the permit issued to American Tower is valid and lawful;

2. An injunction directing the defendant to rescind the order that revoked the building permit, reinstate the building permit in full force and effect, and permit the construction on the 41st Street Tower without further interference;

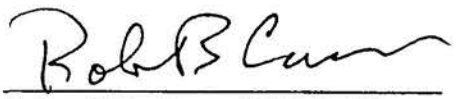
3. Just compensation against Defendant for the temporary and/or permanent taking of plaintiff's property and/or compensatory damages against Defendant in the amount of One Hundred Fifty Million Dollars ($150,000,000.00);

4. In the alternative, compensation against Defendant for American Tower's reasonable reliance on the building permit issued by the District of Columbia in the amount of One Hundred Fifty Million Dollars ($150,000,000.00);

5. American Tower's costs and attorneys' fees associated with bringing this suit; and

6. Such other relief as the Court may deem appropriate.

Respectfully submitted,



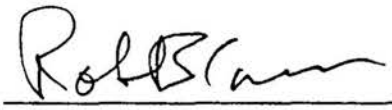
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Counsel for Plaintiff

JURY DEMAND

Plaintiffs respectfully request that the claims in this action be tried to a jury.

Respectfully submitted,



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