

December 3, 2021

BY EMAIL

Dan Connolly, Chair
San Jose Airport Commission, California
airportcom2@sanjoseca.gov

Re: Electronic LED Billboards are Discriminatory

Dear Dan Connolly,

“Public transit companies fought against the strict regulations for accessibility, and their lobbying efforts slowed the entire process. In response, a group of individuals with disabilities headed for the Capitol. They tossed aside their wheelchairs, walkers, and crutches and ascended the steps. This event has since become known as the “Capitol Crawl.” By dragging themselves up the stairs, these protesters expressed their daily struggles due to physical barriers. In so doing, they highlighted the need for accessibility. Iconic images of this event spread across the country. The Americans with Disabilities Act ultimately passed in July of 1990 and was signed by President George H.W. Bush.”¹

There was a time when progress was being made in America for the rights of the disability community. In fact, the ADA was further strengthened by Congress with the Americans with Disabilities Act Amendment Act of 2008, broadening the definitions of protections, and making it easier for individuals to establish their disability.² Today, that progress seems to be eroding due to the pace of technological change and the corporate takeover of American institutions. However, the ADA is still a federal law that stands to protect the rights of the disabled to freely move about without barriers to access.

The San Jose Airport Commission has already voted 7-2 against the plan to install LED electronic billboards, but the San Jose City Council has voted to return the proposal back to the Commission for additional study.³ As part of this additional study, the Soft Lights Foundation wishes to ensure that the Commission understands that LED electronic billboards violate basic civil rights and discriminate, in violation of the Americans with Disabilities Act.

The Soft Lights Foundation has notified the City of San Jose multiple times about the requirement that the city investigate and report on how LED electronic billboards create discriminatory barriers to access. Yet, the city has chosen to ignore both our requests and their legal duties under the

¹ https://www.nps.gov/articles/disabilityhistoryrights_movement.htm

² <https://www.eeoc.gov/statutes/americans-disabilities-act-amendments-act-2008>

³ <https://sanjosespotlight.com/controversial-plan-for-billboards-near-san-jose-airport-faces-vote/>

ADA. For example, when we pointed out to the city that LED electronic billboards are discriminatory, we stated, “LED billboards also violate the ADA because they put persons with autism at high risk of injury or death.” Christopher Burton, Director of Planning, Building and Code Enforcement responded with:

No evidence is provided to support that conclusion for this specific project. Therefore, the City concludes that the comment does not provide substantial evidence that the project would result in a significant impact with regard to drivers on U.S. 101.

Mr. Burton misunderstands the nature of the ADA. It is not up to the public to provide evidence of discrimination. It is up to the city to ensure that any new project does not discriminate.

In the report to the city in October 2021, titled US 101 Airport Electronic Signs, Final Initial Study/Addendum Responses to Comments, the city stated:

“The project will comply with applicable ADA requirements.”

Again, the city misunderstands their requirements under the federal ADA law. It is not sufficient to simply state that the project will comply with applicable ADA requirements. There must be investigation and reporting, both by the city and by Clear Channel. The results of the research must be published to the public, and adjustments must be made to ensure that those with migraines, epilepsy, autism, and hundreds of other light-sensitive disabilities⁴ are not discriminated against.

The Soft Lights Foundation has also notified the city’s ADA Coordinator and the City Attorney, and yet neither office has responded to us, nor have they researched the issue, nor have they released a statement about the issue of discrimination as it relates to LED electronic billboards. The total absence of investigation into the impacts of LED radiation devices on LED-reactive persons will make it exceedingly difficult for the city to defend itself from an ADA lawsuit related to LED electronic billboards.

As the proposal for two new LED electronic billboards is for new construction, the city is required by federal ADA law to address the issue of access.⁵ Since LED electronic billboards cause epileptic seizures, migraines, psychological trauma, vision capture and other discriminatory effects, the LED electronic billboards create barriers to access of the surrounding area, including safe access to the roads and the airport. The city has done nothing to investigate this situation, even though we have alerted the city to the issue many times. In a lawsuit against the developer of senior living housing, the US Justice Department settled with the developer to pay \$450,000 in penalties, plus the cost of retrofitting all the houses to be accessible.⁶ We expect this same legal outcome to occur if Clear Channel is allowed to build LED electronic billboards without ensuring safe and non-discriminatory access by the public through the area where the LED radiation is emitted.

The Soft Lights Foundation requested studies and documentation from Clear Channel that demonstrate that they have thoroughly studied the Americans with Disabilities Act and that they have thoroughly studied the impacts of LED radiation on people who have disabilities and we have also requested to know if Clear Channel agrees with the mathematics calculations performed by Zeiger

⁴ <http://www.softlights.org/wp-content/uploads/2021/12/Photophobia-Conditions.pdf>

⁵ <https://www.access-board.gov/ada/guides/chapter-2-new-construction/>

⁶ <https://www.justice.gov/opa/pr/justice-department-resolves-lawsuit-alleging-disability-based-discrimination-developer-and>

Engineers. We received the following response from Bruce Qualls, Vice President, Real Estate and Public Affairs at Clear Channel:

Hello Mark,

Thank you for your interest in the project. Please convey your information or requests to San Jose City Planning department.

Bruce Qualls
Vice President, Real Estate and Public Affairs

Clear Channel Outdoor
555 12th Street, Suite 950 Oakland, CA 94607 O 510-446-7215 M 925-890-0559 clearchanneloutdoor.com

We feel that this response from Clear Channel demonstrates a purposeful attempt to ignore their obligations under Title III of the ADA. Title III applies to a private entity that operates a place of public accommodation. We assert that an LED electronic billboard is a place of public accommodation and that the private entity is Clear Channel. While this legal theory may be considered novel by some, we feel that it accurately describes the situation. Clear Channel is a private business, and the public accommodation is the LED electronic billboard. Clear Channel may attempt to claim that an LED electronic billboard is not a place of public accommodation such as a restaurant, but clearly the LED electronic billboard is directed at the public. In fact, the public is forced into the Clear Channel business, whether they want to or not. The Clear Channel advertising will steal the public's thoughts and interfere with their nervous system without permission and without compensation.

The San Jose Airport is owned by the city of San Jose and is thus a public facility.⁷ As such, the airport and the city must comply with Title II of the ADA. The authorization, installation and/or operation of an LED electronic billboard violates Title II requirements because the LED electronic billboard prevents access to the roads and the airport by people with disabilities. The spatial, spectral, and temporal properties of LED radiation are unnatural and interfere with the proper functioning of the human nervous system.

The most obvious effect of LED radiation is epileptic seizures. Even exposure to LED radiation of less than one second can trigger a life-threatening epileptic seizure. A less obvious effect is for a person who suffers migraines. The migraine caused by LED radiation may not appear until several hours after exposure. Another less obvious effect is for people with autism. People with autism can be highly focused, and the intense LED radiation captures their vision, greatly reducing their ability to focus on other tasks such as driving, which endangers both the person with autism, and the drivers of nearby vehicles.

To assist the city and the airport commission with their research, we are providing a few links regarding discrimination and disability rights.

<https://www.northeastada.org/resource/the-ada-and-title-ii-public-entities>

<https://www.justice.gov/crt/disability-rights-section>

https://www.ada.gov/enforce_activities.htm

⁷ <https://www.flysanjose.com/node/6351>

<https://www.justice.gov/opa/pr/justice-department-resolves-lawsuit-alleging-disability-based-discrimination-developer-and>

<https://www.floridabar.org/the-florida-bar-journal/websites-and-mobile-applications-do-they-comply-with-title-iii-of-the-americans-with-disabilities-act/>

<https://dredf.org/news/publications/disability-rights-law-and-policy/what-is-prejudice-as-it-relates-to-disability-anti-discrimination-law/>

https://www.epilepsy.com/sites/core/files/atoms/files/StateGovDiscrADA_updated%2012.2014_0.pdf

<https://www.statnews.com/2018/10/25/epilepsy-discrimination-ada-undue-burden/>

<https://www.hrdive.com/news/golden-coral-pays-31k-after-firing-worker-for-alleged-unwillingness-to-ma/553655/>

https://www.ada.gov/camp_bravo_sa.html

Sincerely,



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