

Ryan F. Thomas, Esq. (SBN 230491)
Richard C. O'Hare, Esq. (SBN 167960)
Anthony Bentivegna, Esq. (SBN 129487)
JOHNSTON | THOMAS, Attorneys at Law, PC
1400 N. Dutton Avenue, Suite 21
Santa Rosa, California 95401
Phone (707) 545-6542
Facsimile (707) 545-1522
E-mail: rthomas@johnstonthomas.com
rohare@johnstonthomas.com
abentivegna@johnstonthomas.com

Attorneys for Plaintiff
YOUR TOWN ONLINE, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

YOUR TOWN ONLINE, INC., a California
Corporation,

Plaintiff,

v.

ALL TRIBAL NETWORKS, LLC, a California
limited liability company; SPY EGO MEDIA,
LLC a Nevada limited liability company; JAMES
GUSMAN, an individual; ROUND VALLEY
INDIAN TRIBES, a federally recognized Indian
tribe; MICRONET COMMUNICATIONS, INC.,
a Texas Corporation; and, CMS HOLDINGS, an
Illinois limited liability company dba IntelPath.

Defendants.

Case No.: 21-cv-04442-RMI

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

**Courtroom:
Judge:
Hearing Date:
Time:**

///

///

///

TABLE OF CONTENTS

1		
2	EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO	
3	SHOW CAUSE RE PRELIMINARY INJUNCTION	1
4	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE	
5	APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE	
6	RE PRELIMINARY INJUNCTION	2
7	I. INTRODUCTION	2
8	II. FACTS	2
9	A. Background.	2
10	B. Defendants' Initial Transmissions In the 6 GHz Band of the Spectrum Interfered with Your	
11	Town Online's Ability to Provide Its Internet Service	3
12	C. Your Town Online's FCC License	4
13	D. Failure of the Frequency Coordination System	5
14	E. All Tribal's Transmission Would Interfere with Your Town Online's Transmissions, Even If	
15	Your Town Online's Transmitter and Receiver Were Located at the Coordinates in the	
16	WRBY237 License	7
17	F. All Tribal Network's Interference	7
18	G. All Tribal Network's Communications to Customers	9
19	III. LEGAL STANDARD.....	10
20	IV. ARGUMENT.....	11
21	A. Your Town Online Is Likely to Succeed on the Merits or there Are Serious Questions Going	
22	to the Merits Which Cannot Be Resolved at This Hearing.....	11
23	1. Your Town Online has a Private Right of Action Against All Tribal Networks Under the	
24	Federal Communications Act.	11
25	2. All Tribal Networks is Willfully and Maliciously Interfering with Your Town Online's	
26	Radio Communication.	11
27	3. The 6.212 GHz and 5.960 GHz Frequency Pair Should Not Have Been Licensed in	
28	Close Proximity to Your Town Online's Path.	12

1	4. Round Valley Indian Tribes Did Not and Is Not Cooperating In the Selection and Use of	
2	Assigned Frequencies In Order to Minimize Interference.....	13
3	B. Your Town Online Will Suffer Irreparable Harm If Preliminary Relief Is Not Granted	13
4	C. The Balance of Equities Tips Heavenly in Your Town Online’s Favor	13
5	D. An Injunction Is in The Public Interest.....	14
6	V. CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127, 1132 (9th Cir.2011).....	10
<i>Gilder v. PGA Tour, Inc.</i> , 936 F.2d 417, 422 (9th Cir.1991).....	10
<i>Maydek v. Bonded Credit Co.</i> , (1996), 96 F.3d 1332, 1334	11
<i>MCI Telecomms. Corp. v. Teleconcepts, Inc.</i> (1995) 71 F.3d 1086	11
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7, 22 (2008)	10

Statutes

47 U.S.C. § 153 (11)	11
47 U.S.C. § 333	11
47 U.S.C. §§ 206, 207	11

Regulations

47 CFR § 101.103	5, 12, 13
47 CFR § 101.103(a).....	12

**EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

TO DEFENDANTS ALL TRIBAL NETWORKS, LLC, SPY EGO MEDIA, LLC, AND
JAMES GUZMAN, AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on
_____ or soon thereafter as counsel may be heard in courtroom_____, United
States District Court, Northern District of California, located at 3140 Boeing Avenue,
McKinleyville, California, plaintiff Your Town Online, Inc. will move this court pursuant to Rule
65 the Federal Rules of Civil Procedure and Rule 65-1 of the civil local rules for a temporary
restraining order and/or preliminary injunction enjoining said defendants and their successors,
agents, officers, servants, employees, attorneys and representatives and all persons acting in concert
or participation with them, from interfering with Your Town Online's, microwave transmissions
between the town of Willits and Mount Sanhedrin and from communicating to Your town Online's
customers and/or prospective customers that Your Town Online will not be able to provide internet
service in the future.

This motion is made on the grounds that plaintiff will suffer irreparable harm unless the
activities described above are enjoined and that the activities described above violate the
Communications Act of 1934.

DATED: June 21, 2021

JOHNSTON | THOMAS, Attorneys at Law

By: /s/ Richard C. O'Hare
Richard C. O'Hare, Attorneys for Plaintiff
YOUR TOWN ONLINE, INC.

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiff Your Town Online Inc. (“Your Town Online”) seeks an order prohibiting Defendants All Tribal Networks, Spy Ego Media, LLC, and James Gusman from interfering with the microwave transmissions that Your Town Online has been using for more than a decade to provide broadband internet service to over a thousand customers in the rural and tribal areas of Mendocino County. Your Town Online also seeks an order prohibiting these defendants from communicating to Your Town Online’s customers or potential customer’s that Your Town Online will not be able to provide internet service to them in the future.

All Tribal Networks is deliberately interfering Your Town Online’s transmissions to harm Your Town Online’s ability to provide service to its customers. All Tribal Networks is also using its ability to interfere with Your Town Online’s transmissions to entice Your Town Online’s customers to discontinue their subscriptions to Your Town Online’s service and subscribe to All Tribal Networks’ service. If such conduct is not presently enjoined, Your Town Online will suffer irreparable harm.

II. FACTS

A. Background.

Plaintiff Your Town Online is a small wireless and broadband internet service provider. Since 2002, Your Town Online, or its predecessor Willitsonline, LLC, has been providing broadband services to communities in the rural and tribal areas of Mendocino County in Northern California. Your Town Online does business as Willitsonline and may be referred to as Willitsonline in this motion depending on context. Your Town Online, dba Willitsonline, now serves over 1000 business and personal customers. (Declaration of Michael Ireton (“Ireton Decl.”) ¶2)

To provide internet services to its customers in the Round Valley and Covelo areas, Your Town Online utilizes a point-to-point microwave communication system to transmit data between a

transmitter and receiver located in Willits California and a transmitter and receiver located 16 miles away at the top of Sanhedrin Mountain. On October 10, 2007, Plaintiff's predecessor, Willitsonline, LLC, was issued a radio frequency license by the Federal Communications Commission through the Universal Licensing System (ULS), with the call sign of WQH838, authorizing it to transmit as a common carrier, Fixed Point-to-Point, from Mount Sanhedrin to the town of Willits at a frequency of 5.960 GHz and from Willits to Mount Sanhedrin at a frequency of 6.212 GHz. (Ireton Decl. ¶3)

Your Town Online is informed and believes, that in or around 2018, Defendant Gusman, through his company Spy Ego Media, LLC, began marketing computer network design, engineering, and security services to American Indian tribes throughout the country. Your Town Online is further informed and believes that thereafter Spy Ego Media began providing such services for the Round Valley Indian Tribes in Mendocino County. Plaintiff is informed and believes that in 2020, Defendant Gusman caused Spy Ego Media to form Defendant All Tribal Networks to be a provider of cellular and internet services to the rural and tribal areas of Mendocino County and began working with the Round Valley Indian Tribes to put the infrastructure in place for All Tribal Network's cellular and internet services. (Ireton Decl. ¶4)

B. Defendants' Initial Transmissions In the 6 GHz Band of the Spectrum Interfered with Your Town Online's Ability to Provide Its Internet Service

Plaintiff is informed and believes, that in approximately December of 2020, All Tribal Networks and/or the Round Valley Indian Tribe installed transmitters and receivers on Mount Sanhedrin and in the town of Willits. The transmitter and receiver on Mount Sanhedrin were placed on the same tower where Plaintiff's transmitter and receiver are located. All Tribal Network's transmitter and receiver in the town of Willits is located approximately one mile from Plaintiff's transmitter and receiver. (Ireton Decl. ¶5)

On January 12, 2020, All Tribal Networks and/or Round Valley Indian Tribes tested their equipment on Mount Sanhedrin to Willits path using the same 5.960 GHz and 6.212 GHz frequencies utilized by Your Town Online. This testing caused severe interference with Your Town Online's reception of its Sanhedrin to Willits broadcast, causing disruption in service to

1 Your Town Online’s customers. Your Town Online immediately notified All Tribal Networks of
 2 the actual interference that the transmission caused to Your Town Online’s reception at its Willits
 3 receiver. (Ireton Decl. ¶6)

4 On March 29, 2021, these Defendants issued a publication and advertisement entitled
 5 “Illegal Providers Interfering with Services.” (Ireton Decl. ¶7) This publication explained that All
 6 Tribal Networks planned on using frequencies in the 11 GHz band of the electromagnetic spectrum
 7 to provide its services, but would utilize transmissions in the 6 GHz band of the spectrum during
 8 adverse weather events. (See, Ireton Decl. ¶7 and Exhibit A thereto). The publication also
 9 acknowledged the actual interference caused by their equipment on January 12, 2021, when they
 10 transmitted using frequencies in the 6 GHz band. Specifically, the publication provided:

11 The 11 GHz system has more capacity and has more channels which provided an
 12 easier process to design and secure the channels, however due to it having a
 13 frequency that is potentially more impacted by heavy rains and adverse weather, the
 14 design planned to use the 6 GHz microwave spectrum to provide a more reliable
 15 connection during these conditions. One of the issues experienced throughout the
 wireless field is the 6 GHz frequencies being very congested and not a lot of
 channels for organizations to utilize. So, the design process is more challenging, and
 the coordination is critical to make sure that systems do not interfere with each other.
 ...

16 . . . On Tuesday, December (sic) 12th., at approximately 12:00 PST the microwave
 17 systems connecting Covelo to Big Signal Peak and then into Willits was turned up to
 18 test the network path with the assumption that we had the reservation and all
 organizations that use Microwave frequencies were in their legal and respective
 approved locations. After the systems were enabled, the system was able to be
 aligned and worked as anticipated without any abnormal interference on our system.
 19 On the morning of Wednesday January 13th, we were alerted that another carrier was
 having issues with their microwave system due to interference. We immediately
 began working with Micronet to understand if and why our system would have been
 the source of interference with the other carrier. It was discovered that while
 Micronet had the temporary reserved status, **this other carrier was illegally
 operating in [an] area that they were not and are not approved to be
 broadcasting in.** Basically, it was identified that this carrier was using microwave
 22 frequencies in an unauthorized and unapproved/unlicensed location for their
 23 transmitters. . . [emphasis added]

24 A copy of the complete publication is **Exhibit A** to Ireton Decl.

25 C. Your Town Online’s FCC License

26 The carrier referenced in this publication is Your Town Online. Contrary to this
 27 publication, Your Town Online was not “illegally operating” but was instead at all times licensed
 28 to transmit using the 6 GHz frequency pair, as a common carrier, many years prior to the

1 installation of Defendant's transmitters on Mount Sanhedrin. Your Town Online's predecessor,
 2 Willitsonline, LLC, placed its transmitter on Mount Sanhedrin in the location set forth in the
 3 license that was issued in 2007 and assigned the call sign WQH838. (Ireton Decl. ¶8)

4 After the expiration of the WQH838 license, on July 23, 2018, the FCC issued Your
 5 Town Online a radio frequency license by with the call sign of WRBY237, authorizing it to
 6 transmit as a common carrier, Fixed Point-to-Point, from Mount Sanhedrin to Willits on the same
 7 path and the same 5.960 GHz and 6.212 GHz frequency pair as in the WQH838 license. (Ireton
 8 Decl. ¶9)

9 In April 2020, Your Town Online requested that its frequency coordinator, IntelPath,
 10 license additional frequency/channels for a new project involving an as-yet-unconstructed location
 11 approximately 600 yards away from its current transmitter/receiver location on Mount Sanhedrin.
 12 During discussions regarding this new project, Your Town Online also inquired about the
 13 possibility of moving the location of its current 6 GHz equipment to the new location sometime in
 14 the future. IntelPath obtained licenses for new frequency/channels at the proposed location for
 15 Your Town Online's new project but, unbeknownst to Your Town Online, also changed the
 16 coordinates for the existing 6 GHz equipment to the yet unconstructed location. **Exhibit B** to
 17 Ireton Decl. is a Google Earth map depicting the transmitter and receiver locations set forth in
 18 Your Town Online's WRBY237 license after the inadvertent coordinate change and in the Round
 19 Valley Indian Tribes' WRMD895 license. (Ireton Decl. ¶10)

20 As can be seen, despite the change in location, the paths are virtually identical.

21 **D. Failure of the Frequency Coordination System**

22 Frequency coordination in the 6 GHz band of the spectrum is regulated by 47 CFR §
 23 101.103, which provides in part:

24 **(a) Assignment of frequencies will be made only in such a manner as to facilitate**
 25 **the rendition of communication service on an interference-free basis in each**
 26 **service area. Unless otherwise indicated, each frequency available for use by**
 27 **stations in these services will be assigned exclusively to a single applicant in any**
 28 **service area. All applicants for, and licensees of, stations in these services must**
cooperate in the selection and use of the frequencies assigned in order to
minimize interference and thereby obtain the most effective use of the
authorized facilities. In the event harmful interference occurs or appears likely to
 occur between two or more radio systems and such interference cannot be resolved
 between the licensees thereof, the Commission may specify a timesharing

1 arrangement for the stations involved or may, after notice and opportunity for
2 hearing, require the licensees to make such changes in operating techniques or
equipment as it may deem necessary to avoid such interference. . .

3 . . . (e) Where frequency conflicts arise between co-pending applications in the
4 Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-
to-Point Microwave and Local Television Transmission Services, **it is the obligation**
5 **of the later filing applicant to amend his application to remove the conflict,**
unless it can make a showing that the conflict cannot be reasonably eliminated.
6 Where a frequency conflict is not resolved and no showing is submitted as to why
the conflict cannot be resolved, the Commission may grant the first filed application
7 and dismiss the later filed application(s) after giving the later filing applicant(s) 30
days to respond to the proposed action.

8 As stated in the CFR, frequencies may only be assigned in a manner that will not cause
9 interference in a service area. Furthermore, the CFR expressly provides that each frequency
10 available will be assigned exclusively to a single applicant. The CFR further requires any applicant
11 to cooperate in the selection and use of frequencies and provides that it is the obligation of the later
12 filing applicant to remove any conflict.

13 Your Town Online reported the interference caused by All Tribal Network's transmissions
14 to IntelPath, an FCC approved frequency coordinator, so that, IntelPath could work with All Tribal
15 Network's and Round Valley Indian Tribes' frequency coordinator, Micronet, to determine if All
16 Tribal Networks could utilize the 6 GHz frequency pair without interference to Your Town
17 Online's service or whether those frequencies were simply not available for licensing in such close
18 proximity to Your Town Online's path. (Ireton Decl. ¶11) However, despite the actual interference
19 and calculations which predict interference, Micronet did not work to remove the conflict. Instead,
20 Plaintiff is informed and believes that Micronet thereafter represented to the FCC that the use of
21 the same 5.960 GHz and 6.212 GHz frequency pair along the path utilized by All Tribal Networks
22 would not cause interference with any existing licenses and therefore was available for license to
23 the Round Valley Indian Tribe. (Ireton Decl. ¶12)

24 Due to the failure of the coordination process, on or about March 25, 2021, Round Valley
25 Indian Tribes was issued a Private Operational Fixed Point-to-Point, Microwave Public Safety Pool
26 license by the Federal Communications Commission through the Universal Licensing System
27 (ULS), with a call sign of WRMD895, authorizing it to transmit from the vicinity of Mount
28 Sanhedrin to Willits on both a frequency pair in the 11 GHz band and on the 6.212 GHz and

1 5.960 GHz frequency pair utilized by Your Town Online and which, when used by All Tribal
2 Networks, caused the interference. (Ireton Decl. ¶13)

3 **E. All Tribal's Transmission Would Interfere with Your Town Online's Transmissions,**
4 **Even If Your Town Online's Transmitter and Receiver Were Located at the**
5 **Coordinates in the WRBY237 License**

6 After learning that All Tribal Networks was blaming the interference on the fact that Your
7 Town Online's transmitter and receiver on Mount Sanhedrin were not located precisely at the
8 coordinates specified in its current license, Your Town Online commissioned a third-party
9 frequency coordinator, Comsearch, to conduct an interference case analysis. Comsearch conducted
10 an analysis to determine the interference that would be expected if Your Town Online's transmitter
11 and receiver were located at the precise coordinates specified in their WRBY237 license. This
12 analysis confirmed that even if Your Town Online's Sanhedrin transmitter and receiver were
13 located on at the precise location in their license there would still be substantial interference. Not
14 only does All Tribal Network's transmissions cause interference with Your Town Online's
15 transmissions, but Your Town Online's transmissions are predicted to cause major interference
16 with All Tribal Network's transmissions. (Ireton Decl. ¶14) A copy of Comsearch's Interference
17 Case Analyses report is Exhibit C to Ireton Decl.

18 **F. All Tribal Network's Interference**

19 After Round Valley Indian Tribes received their license from the FCC, All Tribal Networks
20 threatened to "flip the switch" and begin transmitting on the 6.212 GHz and 5.960 GHz frequency
21 pair, knowing that it will disrupt Your Town Online's ability to provide internet service to its
22 customers. In early May, All Tribal Network flipped the switch and began transmitting on this
23 frequency pair for approximately 1 day, interrupting Your Town Online's ability to provide service
24 to its customers. (Ireton Decl. ¶15)

25 Thereafter on May 13, 2021, Defendant James Gusman sent an email to Your Town
26 Online's counsel stating:

27 ///

28 ///

1 Mr. Thomas,

2 After some internal discussions, we are willing to provide a temporary
3 solution until 18 MAY 2021 @ 08:00am whereby we will turn off our
4 radios as we have done as courtesy for the last six (6) months. This will
5 provide enough time for us to work out a contract and agreement and
6 receive payment, otherwise on this day and time we will enable our
7 services which we are legally entitled to.

8 There are a couple of stipulations though;

- 9 1. If our equipment is touched, damaged, hindered, manipulated,
10 or any attempts made, this offer is retracted and legal and
11 criminal actions will be taken.
- 12 2. If attempts are made to hinder, modify, manipulate or impact
13 our services are made, this offer is retracted and legal and
14 criminal actions will be taken.

15 We are also informing internal and legal parties of these actions as well as
16 keeping all parties informed about the threats that have displayed and
17 posted publicly. If these actions continue, we will take further legal action.

18 A true and correct copy of this email is **Exhibit A** to Declaration of Richard C. O'Hare ("O'Hare
19 Decl.").

20 The following day on May 14, 2021, Kristina Reed, counsel for All Tribal Networks sent an
21 email to Your Town Online's counsel stating that All Tribal Networks would begin transmitting
22 again on the 6 GHz channels at issue on May 18, 2021, unless Your Town Online paid All Tribal
23 Networks \$7,000 per month to "share" the spectrum. In relevant part her email read:

24 All Tribal Networks offered to turn off transmissions temporarily only as a
25 courtesy so that Willits Online can solve its issues of transmitting from an
26 unlicensed location. However, there is no obligation on the part of All Tribal
27 Networks to do so and it will not do so long term. All Tribal Networks is
28 amenable to entering into an agreement for All Tribal Networks and Willits
Online to share All Tribal Network's spectrum for a limited duration in exchange
for \$7,000.00/mo payment, paid in advance.

A true and correct copy of this email is **Exhibit B** to O'Hare Decl.

Despite the threat, All Tribal Networks did not begin transmitting again on the 6 GHz
channels on May 18, 2021.

On Thursday June 10, 2021 at approximately 5:30 p.m. All Tribal Networks activated its
6 GHz transmission, bringing Your Town Online's system down temporarily. Less than an hour
later, at around 6:23 p.m. All Tribal Networks ceased its transmissions. The following day

1 however, All Tribal Network's commenced transmitting on the 6 GHz frequencies again, causing
 2 interference with Your Town Online's service to its customers. (Ireton Decl. ¶16)

3 To provide service to its customers since All Tribal Network's interference began on June
 4 11, 2021, Your Town Online has been utilizing a separate wireless transmission system which it
 5 hurriedly installed at considerable cost. This system, however, is significantly inferior to Your
 6 Town Online's 6Ghz microwave system and does not provide the same speed and capacity. Your
 7 Town Online's customers are experiencing greatly reduced performance, higher ping times and
 8 more dropped connections while Your Town Online is forced to use this system. (Ireton Decl. ¶17)

9 **G. All Tribal Network's Communications to Customers**

10 Your Town Online is informed and believes that All Tribal Network's has been using its
 11 threat of interfering with Your Town Online's transmissions to entice customers to discontinue
 12 service with Your Town online and subscribe to All Tribal Network's service. On the days
 13 preceding May 18, 2021, Your Town Online received a number of customer inquires claiming that
 14 they had been informed that Willitsonline would no longer be able to provide service after May 18,
 15 2021. Then, on May 18, 2021, All Tribal Networks published an "update" on Facebook
 16 acknowledging that their transmission would, in fact, interfere with interfere with Your Town
 17 Online's subscriber's internet service. This update provided:

18 UPDATE:

19 Good morning Everyone,

20 This morning, after careful consideration within the team and conversations with
 21 some of the residential, school, and business users on the other service providers
 22 network that will be migrating, we have decided to provide a few extra days prior
 23 to turning on our services. This will allow the extra time to issue out of devices
 24 and signing up subscribers onto their plans. This will help minimize the impact on
 25 schools, residents, and businesses that need more time to sign-up for reliable,
 26 stable, and highspeed services and obtain their devices.

27 We apologize for the delay, but hope it also helps bring some relief to any of the
 28 users that would have been impacted. We look forward to having you all onboard
 ASAP and providing you the online experience you deserve.

Very respectfully,

All Tribal Networks Team

This publication not only evidences that All Tribal Networks knew that transmitting in the 6 GHz
 band would interfere with Your Town Online's service, but that All Tribal Networks was actively

1 soliciting Your Town Online's customers by communicating to these customers that Your Town
 2 Online's service would detrimentally affected once All Tribal Networks began transmitting.
 3 (Ireton Decl. ¶18 and Exhibit D thereto.)

4 Indeed, several days before this publication, All Tribal Network's published a posting on its
 5 Facebook blaming the outage caused by their interference on Your Town Online. While All
 6 Triable Network's does not mention Your Town Online by name in this publication (the call them
 7 "other organization"), it is abundantly clear to Your Town Online's subscribers that they are
 8 referring to Willitsonline (Your Town Online's dba). In this publication, not only does All Tribal
 9 Networks blame the customer's loss of connectivity on Willitsonline but calls Willitsonline hostile
 10 and unprofessional. (Ireton Decl. ¶19 and Exhibit E thereto.)

11 **III. LEGAL STANDARD**

12 A preliminary injunction is a matter of equitable discretion and is "an extraordinary remedy
 13 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v.*
 14 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking preliminary injunctive relief
 15 must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm
 16 in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an
 17 injunction is in the public interest." *Id.* at 20.

18 As an alternative avenue to a preliminary injunction, the Ninth Circuit has held that "serious
 19 questions going to the merits and a hardship balance that tips sharply toward the plaintiff can [also]
 20 support issuance of an injunction, assuming the other two elements of the Winter test are also met."
 21 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir.2011). "Serious questions"
 22 refers to questions "which cannot be resolved one way or the other at the hearing on the injunction
 23 and as to which the court perceives a need to preserve the status quo lest one side prevent resolution
 24 of the questions or execution of any judgment by altering the status quo." *Gilder v. PGA Tour, Inc.*,
 25 936 F.2d 417, 422 (9th Cir.1991).

26 ///

27 ///

28 ///

1 **IV. ARGUMENT**

2 **A. Your Town Online Is Likely to Succeed on the Merits or there Are Serious Questions**
 3 **Going to the Merits Which Cannot Be Resolved at This Hearing**

4 **1. Your Town Online has a Private Right of Action Against All Tribal Networks**
 5 **Under the Federal Communications Act.**

6 The Federal Communications Act of 1934 (the “FCA”) establishes and authorizes a private
 7 right of action against any common carrier. 47 U.S.C. §§ 206, 207. The private right of action has
 8 been broadly construed to encompass not only matters brought against common carriers, but also
 9 those brought on behalf of common carriers, such as Your Town Online. See, e.g., *Maydek v.*
 10 *Bonded Credit Co.*, (1996), 96 F.3d 1332, 1334, citing *MCI Telecomms. Corp. v. Teleconcepts, Inc.*
 11 (1995) 71 F.3d 1086.

12 Here, both Your Town Online and All Tribal Networks are common carriers within the
 13 meaning of 47 U.S.C. § 153 (11). At all times herein, Plaintiff has been engaged in providing
 14 internet services in exchange for money. Since December of 2020, or January of 2021, All Tribal
 15 Networks has been engaged as a common carrier for hire within the meaning of 47 U.S.C. § 153
 16 (11) by soliciting Plaintiffs’ customers, including but not limited to the Round Valley School
 17 District, for the purpose of providing internet services in exchange for money and by providing
 18 internet services in exchange for money since the Round Valley Indian Tribes obtained their Public
 19 Service Pool License in March of 2021.

20 **2. All Tribal Networks is Willfully and Maliciously Interfering with Your Town**
 21 **Online’s Radio Communication.**

22 The Federal Communications Act of 1934 (the “FCA”) bars any willful or malicious
 23 interference with radio communications. “No person shall willfully or maliciously interfere with or
 24 cause interference to any radio communications of any station licensed or authorized by or under
 25 this chapter or operated by the United States Government.” 47 U.S.C. § 333.

26 Here, it is abundantly clear that All Tribal Networks is transmitting on the 6 GHz
 27 frequency pair for the sole purpose of interfering with Your Town Online’s radio communications.
 28 In its own publication, All Tribal Networks, stated that it would use the 11 GHz frequencies

1 available to it to conduct its service and would only utilize the 6 GHz frequencies during inclement
2 weather events, to wit: “the design planned to use the 6 GHz microwave spectrum to provide a
3 more reliable connection during [heavy rains and adverse weather].” As the Court will note,
4 Northern California is not experiencing heavy rains or adverse weather, yet All Tribal Networks is
5 transmitting on the 6 GHz frequencies.

6 Making matters worse, All Tribal Networks does not make any effort to excuse its or
7 minimize its interference. Instead it used the threat of its willful interference in an attempt to extort
8 \$7000 per month from Your Town Online.

9 All Tribal Networks willful interference with Your Town Online’s radio communications
10 is causing monetary damages to Your Town Online through the loss of customers and also
11 irreparable damage to the goodwill Your Town Online has built in the community over the last two
12 decades and causing monetary damages.

13 **3. The 6.212 GHz and 5.960 GHz Frequency Pair Should Not Have Been Licensed in**
14 **Close Proximity to Your Town Online’s Path.**

15 Frequencies in the 6 GHz band of the electromagnetic spectrum can only be assigned if
16 they will not interfere with another and any given frequency may only be assigned to a single
17 applicant in any service area. 47 CFR § 101.103(a). (“Assignment of frequencies will be made
18 only in such a manner as to facilitate the rendition of communication service on an interference-
19 free basis in each service area. Unless otherwise indicated, each frequency available for use by
20 stations in these services will be assigned exclusively to a single applicant in any service area.”).
21 Here, Your Town Online has been licensed to transmit from Mount Sanhedrin to Willits using the
22 6.212 GHz and 5.960 GHz frequency since 2008. Despite this long standing use, the same
23 frequency pair was assigned to the Round Valley Indian Tribes for communicating over virtually
24 the same path as Your Town Online, in violation of 47 CFR § 101.103(a)’s prohibitions against
25 assigning frequencies which will cause interference and assigning identical frequencies to more
26 than one applicant in a service area. The 6.212 GHz and 5.960 GHz frequency pair simply should
27 not have been licensed to Round Valley Indian Tribes in such close proximity to Your Town
28 Online’s existing path.

4. Round Valley Indian Tribes Did Not and Is Not Cooperating In the Selection and Use of Assigned Frequencies In Order to Minimize Interference.

Applicants and licensees must cooperate in the selection and use of assigned frequencies in order to minimize interference and obtain the most effective use of the facilities. 47 CFR § 101.103. Here Round Valley Indian Tribes, through All Tribal Networks is deliberately utilizing its system to cause interference with Your Town Online's transmissions, so that Your Town Online cannot provide services to its customers.

B. Your Town Online Will Suffer Irreparable Harm If Preliminary Relief Is Not Granted

Your Town Online and its predecessor Willitsonline, LLC have been providing internet service to the rural and tribal areas of Mendocino County for nearly two decades. They have built a customer base of over 1000 subscribers and enjoy considerable goodwill in the community. If a preliminary relief is not granted and All Tribal Networks wrongful conduct is not enjoined during the pendency of this litigation, Your Town Online's customers will experience reduced performance, higher ping times and more dropped connections while Your Town Online microwave communications are rendered inoperable by the willful and malicious interference. It is also quite probable that Your Town Online will lose its customers to All Tribal Networks who can provide interference-free service utilizing the frequencies in the 11 GHz spectrum which it has also been assigned.

C. The Balance of Equities Tips Heavily in Your Town Online's Favor

The balance of equities weighs heavily in Your Town Online's favor. Your Town Online and its predecessor Willits Online have been providing internet services to many hundreds of customers in the rural and tribal areas of Mendocino County for nearly twenty years. If an injunction is not issued, Your Town Online will be unable to provide adequate and dependable service to its customers and will lose those customers and the goodwill it has generated over the last two decades. On the other hand, if the Court enjoins Defendants from transmitting on the 6.212 GHz and 5.960 GHz frequency pair during the pendency of this litigation the affect on Defendants will be minimal since All Tribal Networks can provide its service on frequencies in the

1 11 GHz band. Indeed, as Defendants stated in their March 29, 2021, publication, “[t]he 11 GHz
2 system has more capacity and has more channels which provided an easier process to design and
3 secure the channels.”

4 **D. An Injunction Is in The Public Interest**

5 Here the maintenance of the status quo is in the public interest. Your Town Online has
6 more than a thousand customers that rely on its internet service for their personal and business
7 uses. If Defendants All Tribal Networks, Spy Ego Media and James Gusman are not enjoined from
8 transmitting on the 6.212 GHz and 5.960 GHz frequency pair during the pendency of this litigation,
9 these customers will be forced to endure reduced performance, higher ping times and more
10 dropped connections while Your Town Online microwave communications are rendered inoperable
11 by these defendants willful and malicious interference.

12 **V. CONCLUSION**

13 Spy Ego Media, All Tribal Networks and James Gusman’s deliberate, interference with
14 Your Town Online’s transmissions is simply illegal and should be immediately enjoined. The
15 Federal Communications Act of 1934, expressly prohibits such interference. Your Town Online
16 has demonstrated that the interference caused by these defendants is willful and malicious and
17 therefore, Your Town Online has a likelihood of success on the merits. Additionally, Your Town
18 Online has demonstrated that there are serious questions as whether the 6.212 GHz and 5.960 GHz
19 frequency pair should have been made available for license by the Round Valley Indian Tribe in
20 such close proximity to Your Town Online’s long existing path. Furthermore, the equities balance
21 heavily in favor of Your Town Online. The issuance of the requested injunction will not prevent
22 All Tribal Networks from launching its internet service and providing quality internet service in the
23 rural areas of Mendocino County using frequencies in 11GHz band. However, if the injunction
24 does not issue, Your Town Online no longer be able to provide the quality internet service it has
25 provided to its customers for almost two decades and will suffer irreparable harm through the loss
26 of customers and goodwill. Finally, the issuance of the requested injunction is in the public
27 interest, so that many hundreds of customers can continue to rely on their internet service for their
28 personal and business needs during the pendency of this litigation.

1 Your Town Online, therefore, respectfully requests that this Court temporarily restrain
2 Defendants All Tribal Networks, Spy Ego Media and James Gusman from: (i) making or causing
3 to be made any 6.212 GHz or 5.960 GHz electromagnetic transmissions in the vicinity of Your
4 Town Online's current path between Mount Sanhedrin the town of Willits, CA, or any other
5 transmission that interferes with Your Town Online's reception of its transmissions; and, (ii)
6 issuing or causing this issuance of any communications indicating or implying that Your Town
7 Online is or will be unable to provide service to its current or prospective customers. Your Town
8 Online further requests that the Court order these Defendants to show cause why a preliminary
9 injunction should not issue.

10
11 DATED: June 22, 2021

JOHNSTON | THOMAS, Attorneys at Law, PC

12
13 By: /s/ Richard C. O'Hare
14 Richard C. O'Hare, Attorney for Plaintiff
15 YOUR TOWN ONLINE, INC.
16
17
18
19
20
21
22
23
24
25
26
27
28