**Southwestern Bell** Mobile Systems

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**Bruce E. Beard**
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Via Airborne
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Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Stop Code 1170
Washington, D.C. 20554

**Re: ET Docket No. 93-62; Guidelines for Evaluation the Environmental Effects of Radio Frequency Radiation**

Dear Mr. Caton:

Enclosed for filing in the above-referenced proceeding are the original and four copies of the Reply Comments of Southwestern Bell Mobile Systems, Inc. Please file these Comments among the papers in this proceeding.

Please file-mark and return the extra copy of the Comments to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely,

Bruce E. Beard

Enclosure

P:bruce\letter\doc93-62

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.

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|---|---|---|
| In the Matter of<br>Guidelines for Evaluating the<br>Environmental Effects of<br>Radio Frequency Radiation | )<br>)<br>)<br>) | ET Docket<br>No. 93-62 |

**REPLY COMMENTS OF**
**SOUTHWESTERN BELL MOBILE SYSTEMS, INC.**

Southwestern Bell Mobile Systems, Inc. (SBMS) files this Reply to Comments filed in response to the Notice of Proposed Rulemaking in this docket.[1] Specifically, SBMS supports those commentors advocating FCC preemption of state and local regulation of radiofrequency radiation from FCC regulated facilities. SBMS also supports the position that the manufacturer of any non-exempt portable mobile radio unit should be responsible for demonstrating compliance with the guidelines through the equipment authorization process. SBMS also suggests that the Commission needs to provide guidance on how the definitions of the terms "controlled" and "uncontrolled" are to be interpreted and applied.

[1]In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62 (NPRM released April 8, 1993).

## I. Preemption of State and Local Regulation of FCC Licensed Facilities.

In the NPRM the Commission proposes to amend its guidelines and methods used for evaluating the environmental effects of radiofrequency radiation from FCC regulated facilities by adopting ANSI/IEEE C95.1-1992. As a number of parties recognize, the Commission, in addition to adopting the guidelines, should also expressly preempt state and local municipality regulation of radiofrequency radiation at such facilities.[2]

It is well established that the Commission has the ability to preempt state and local regulation which would frustrate a legitimate exercise of the Commission's jurisdiction.[3] The Commission was created "to make available, so far as possible, to all people of the United States a rapid, efficient, Nation-wide, and world wide wire and radio communication service with adequate facilities at reasonable charges".[4] That fundamental purpose is frustrated when carriers, manufacturers, broadcasters and other licensees are faced with inconsistent regulation from state to state and municipality to municipality. Equipment manufacturers will likely be without a set standard to adhere to because of the

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[2]McCaw Comments, pp. 17-31; Pactel Comments, pp. 3-6; AMSC Subsidiary Corporation Comments, p. 14; Joint Comments of CBS Inc., et al., pp. 45-46; Ericsson Comments, pp. 17-18; Cohen, Dippel and Everist, P.C. Comments, p. 3; New Jersey Broadcasters Association Comments, pp. 1-5.

[3]See, Louisiana Public Service Commission v. Federal Communications Commission, 476 U.S. 355, 368-371, 374-375, 106 S.Ct. 1890, 1898-1901 (1986).

[4]47 USC 151.

differing standards of various states and municipalities. Prime examples of the frustration of the Commission's charge to make available an efficient wire and radio communication network at reasonable charges are illustrated in the experiences detailed by McCaw and Pactel.[5] Without preemption, local municipalities can attempt to prevent the deployment of facilities within the municipality by imposing overly burdensome regulations under the guise of radiofrequency radiation protection. The examples noted by Pactel and McCaw demonstrate that the Commission's previous position of dealing with potential inconsistent regulation on a case by case basis is ineffective and results only in delays or voids in delivering quality service to all customers. The Commission should expressly preempt state and local regulation of radiofrequency radiation at FCC regulated facilities.

## II. Equipment Compliance Should Be Ensured Through the Equipment Authorization Process

The Commission requests comments on whether proof of applicable measurements demonstrating compliance with the standards for non-exempt mobile radio units[6] should be submitted as part of the FCC's equipment authorization process.[7] SBMS agrees with those

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[5]McCaw Comments, pp. 17-22; PacTel Comments, pp. 4-6.

[6]Those with radiating structures within 2.5 cm. of the body. NPRM, para. 17.

[7]Id.

commentors advocating that proof of compliance should be part of the authorization process.[8]

As Telocator notes, linking the requirement of a technical showing to the equipment authorization procedure is preferable to linking it to a licensing procedure because:

> 1. the manufacturer of the unit controls the design--a major determinant of the radiofrequency exposure created by the unit;
>
> 2. it will create a reduction in paperwork because there will be fewer applications for equipment authorization than for licensing;
>
> 3. system operators have limited means for policing the types of CPE used on the system;
>
> 4. it is not in the public interest to have consumers purchase units which do not meet the standards and thus would not be activated even if a system operator could police the type of CPE used on the system.[9]

The public interest and the industry's interests are best served by having the manufacturer of a non-exempt portable radio unit submit, as part of its equipment authorization submission, a technical showing that the unit's operation results in radiofrequency exposure below the limits adopted by the Commission.

For similar reasons, SBMS also agrees that the manufacturer of equipment that only meets the limits for controlled environments should be labeled by the manufacturer with suitable instructions and warnings.[10]

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[8]See i.e., Telocator Comments, p. 9-10; CTIA Comments, p. 6; Motorola, pp. 23-24.

[9]Telocator Comments, pp. 9-11.

[10]See, Telocator Comments, p. 11.

## III. The Definitions of "Controlled" and "Uncontrolled" Should be Clarified

The proposed standards draw a distinction between "controlled" and "uncontrolled" environments.[11] The ANSI/IEEE standard applies more conservative measurement requirements to uncontrolled environments, which are defined in the standard as "locations where there is the exposure of individual's who have no knowledge or control of their exposure."[12] Controlled environments are "locations where there is exposure that may be incurred by persons who are aware of the potential for exposure."[13] The Commission notes that there will be situations where specific determinations need to be made as to which definition will apply.[14] The Comments suggest various ways of interpreting the definitions.[15] SBMS urges the Commission to provide further guidance on how the terms are to be interpreted and applied and suggests the Commission continue working with the IEEE to jointly develop interpretation guidelines that maximize both usefulness and safety.

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[11]ANSI/IEEE C 95.1 - 1992.

[12]Id.

[13]Id.

[14]NPRM, para. 13.

[15]See e.g., Land Mobile Communications Council Comments, pp. 3-7; Du Treil, Lundin & Rackley, Inc. Comments, pp. 1-3; E.F. Johnson Company Comments, pp. 4-6; Association for Maximum Service Television, Inc. and the National Broadcasting Company, Inc. Comments, pp. 2-5.

## CONCLUSION

For the reasons stated herein and in the cited Comments, the Commission should preempt state and local regulation of radiofrequency radiation at FCC regulated facilities and should require equipment manufacturers to demonstrate compliance with the requirements through the equipment authorization process.

**SOUTHWESTERN BELL MOBILE SYSTEMS, INC.**

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April 25, 1994

**CERTIFICATE OF SERVICE**

I, Shauna Ellis, do hereby certify that Southwestern Bell Mobile System's Reply Comments in Docket 92-62 has been served this 22nd day of April, 1994 by first class pre-paid postage to the persons on the attached list.

Shauna Ellis

Shauna Ellis

April 22, 1994

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