

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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In the Matter of)
)
Amendment of the Commission's)
Rules To Preempt State and Local)
Regulation of Tower Siting For)
Commercial Mobile Services Providers)

RM -

To: The Commission

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**CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION'S
PETITION FOR RULE MAKING**

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SUMMARY

In revising § 332 of the Communications Act, Congress charged the Commission with ensuring the development of a competitive, efficient mobile services infrastructure subject to uniform, federal regulation. In furtherance of its statutory obligations, the Commission must now act to preempt state and local tower site regulations which contravene Congress' vision.

By this petition, CTIA seeks federal preemption of tower site regulation as authorized by sections 332 and 2(b) of the Communications Act. Under revised § 332, state and local governments are expressly prohibited from regulating entry into mobile services. By this amendment, Congress intended to prohibit state entry barriers, whether direct or indirect, which have the purpose or effect of barring commercial mobile radio services.

Absent preemption, the Commission ensures at best additional delay and added costs in the rollout of PCS and other mobile services as 38,000 different local jurisdictions condition and otherwise interfere with the build out of CMRS infrastructure. And the uneconomic costs imposed by such unnecessary, disparate state regulation will ultimately be borne by the consumer in the form of higher rates and delayed services, no doubt contrary to the public interest.

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**CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION'S
PETITION FOR RULE MAKING**

The Cellular Telecommunications Industry Association ("CTIA"),¹ pursuant to § 1.401 of the Commission's rules,² hereby submits a Petition for Rule Making ("petition") requesting the Commission to issue a Notice of Proposed Rule Making proposing to exercise its authority under § 2(b) and § 332 of the Communications Act of 1934, as amended, ("Act"),³ to preempt state and local governments from enforcing zoning and other

¹ CTIA was established in 1984 as the trade association of the cellular industry. Today, CTIA represents the wireless industry, with membership open to all members who provide commercial mobile radio services. CTIA's members include over 95 percent of the licensees providing cellular service to the United States, Canada, and Mexico, as well as the nation's largest providers of enhanced specialized mobile radio ("ESMR") service. CTIA's membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the wireless industry.

² 47 C.F.R. § 1.401.

³ 47 U.S.C. §§ 152(b), 332.

similar regulations⁴ which have the purpose or effect of barring or impeding commercial mobile radio service ("CMRS") providers from locating and constructing new towers.

To fully realize the increased opportunities for new output and increased consumer choice emanating from the historic auctioning of PCS spectrum, the Commission, consistent with congressional mandate and its own policies, must prohibit states from thwarting such developments. Preemption of CMRS tower site regulations is required to ensure the availability of an ubiquitous, competitive, efficient, federally-regulated mobile services infrastructure consistent with the public interest. In the absence of preemption, the Commission guarantees additional delay and added costs in the rollout of PCS and other mobile services as 38,000 different local jurisdictions limit, condition and otherwise interfere with the build out of CMRS facilities.

INTRODUCTION

The Supremacy Clause empowers Congress to preempt state and local law, and Congress may confer its power upon federal agencies. Preemption by federal statute can occur in several ways: (1) by a clear expression of intent to preempt; (2) when the state and federal laws directly conflict; (3) where compliance with both state and federal law is physically impossible; (4) where there is an implicit barrier to state

⁴ This petition does not encompass RF issues, as the Electromagnetic Energy Alliance has filed a separate request for rule making on that subject. See Petition for Further Notice of Proposed Rulemaking in ET Docket 93-62, filed by the Electromagnetic Energy Alliance, December 22, 1994.

regulation; (5) when Congress occupies the field, i.e., it has legislated comprehensively and there is no room for supplemental state law; or (6) when the state law stands as an obstacle toward accomplishing the full objectives of Congress.⁵

As demonstrated below, under § 332 of the Act, states are expressly prohibited from regulating entry into mobile services. Thus, any entry barriers erected, whether entirely or merely partially effective, whether direct or indirect, should be prohibited. Moreover, a § 2(b) analysis which incorporates a "physical impossibility" test, as well as Commission precedent to preempt state regulation of satellite dishes and amateur antenna towers, support preemption of tower site regulation.

I. SECTION 332 OF THE ACT SUPPORTS FEDERAL PREEMPTION OF TOWER SITE REGULATIONS.

Section 332 of the Act, as revised by the Omnibus Budget Reconciliation Act of 1993, represents the culmination of congressional efforts to foster the competitive development of mobile services. By its revision, Congress refined federal regulatory policy governing mobile services to ensure the development of an efficient, federally-regulated, competitive mobile services marketplace. It did so by enacting provisions to ensure regulatory parity among all CMRS providers and minimal federal and state regulation. The limited jurisdictional reservation afforded the states should not now be used to interfere with the congressional mandate, either directly or

⁵ See Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 368-369 (1986).

indirectly, through zoning and other regulation. Any state or local regulation that has the purpose or effect of barring entry -- including zoning of tower sites -- should be preempted.

A. States And Localities Should Not Be Permitted To Thwart Congress' Vision Of An Efficient, Competitive CMRS Infrastructure.

Section 332, on its face, severely limits a state's ability to regulate mobile services. Specifically, § 332 dictates that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service."⁶ States retain a very narrow reservation of authority, that is, the regulation of "other terms and conditions."⁷ Therefore, states may not directly or indirectly impede entry, either entirely or partially (e.g., through added cost or delay) by their regulation of "other terms and conditions."⁸

⁶ 47 U.S.C. § 332(c)(3)(A) (emphasis added). It is instructive to note that while the prohibition against state regulation of rates is not absolute, i.e., states may, under certain conditions, petition to re-regulate CMRS rates, no such reservation attaches to the prohibition against state regulation of entry by CMRS providers.

⁷ Id.

⁸ Congress' action to preempt entry regulation for mobile services represents a fundamental shift in policy under § 2(b) so that states no longer "retain jurisdiction over purely intrastate calls notwithstanding the economic effect such State jurisdiction might have on the interstate market." See Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 746 F.2d 1492, 1500 (D.C. Cir. 1984) (Bork, J.).

Moreover, § 332(a) requires that the Commission, in managing mobile services, consider consistent with § 1 of the Act⁹ a number of policy objectives including: (1) whether its actions will "improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;" and (2) whether it will "encourage competition and provide services to the largest feasible number of users."¹⁰ State and local zoning actions which thwart these goals, then, are at odds with the statutory mandate.

An examination of the legislative history confirms a very narrow reservation of state authority. Both the House and Conference Reports detail the numerous policy objectives precipitating § 332's revision, all of which presuppose minimal state (and federal) regulation of CMRS.¹¹

⁹ 47 U.S.C. § 151. Among other things, § 1 of the Act admonishes the Commission "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges." Id. (emphasis added).

¹⁰ See 47 U.S.C. § 332(a)(2), (a)(3) (emphasis added). While this subsection is framed with reference solely to "private mobile services," the determinations required to be made by the Commission necessarily include consideration of all mobile services including CMRS. As the House and Conference Reports are silent on this point, one can logically infer that the retention of the word "private" in the 1993 amendments to § 332(a) was due to inadvertence.

¹¹ In at least one instance, the legislative history alludes to the need for only minimal state regulation. See 139 Cong. Rec. H3287 (daily ed. May 27, 1993) (statement of Rep. Markey).

Specifically, in revising § 332, Congress sought to ensure regulatory parity among CMRS providers because "the disparities in the current regulatory scheme [e.g., private mobile carriers are exempted from state and federal regulation of rates and entry while common carrier mobile services are not] could impede the continued growth and development of commercial mobile services."¹² In addition, it intended that all CMRS providers be subject to "uniform rules . . . to ensure that all carriers providing such services are treated as common carriers" under Title II of the Act.¹³ Moreover, by permitting regulatory forbearance of Title II provisions, Congress intended "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."¹⁴

¹² See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993) ("House Report"). See also H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 494 (1993) ("in considering the scope, duration or limitation of any State regulation [the Commission] shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public interest, similar services are accorded similar regulatory treatment.") (emphasis added) ("Conference Report").

¹³ House Report at 259.

¹⁴ See Conference Report at 490. See also id. at 480-481. Congress incorporated by reference the findings of both the House bill and the Senate version. Section 402(13) of the Senate version finds that "because commercial mobile services require a Federal license and the Federal Government is attempting to promote competition for such services, and because providers of such services do not exercise market power vis-a-vis telephone exchange services carriers and State regulation can be a barrier to the development of competition in this market, uniform national policy is necessary and in the public interest." (emphasis added).

Congress also specifically found it necessary to "preempt state rate and entry regulation" of CMRS providers to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."¹⁵

As these statements show beyond dispute, Congress intended that the mobile services marketplace function efficiently, competitively, and with a minimum of regulatory intervention. By amending § 332, Congress ensured that neither local nor federal government could harm CMRS competition or impair the continued build out of our nation's wireless communications infrastructure. State and local governments may not lawfully bar entry, create regulatory disparities or introduce significant inefficiencies in the production of CMRS through zoning and other similar regulation.

A careful examination of § 332 and its legislative history demonstrates that Congress intended that the principles of competition, efficiency and regulatory parity outweigh the state's interest in zoning and other regulation.¹⁶ As explicated above, Congress revised § 332 to advance competitive principles.

¹⁵ House Report at 260. Moreover, while § 332 permits states to petition under certain circumstances to re-regulate CMRS provider rates, Congress intended that the Commission, when considering such petitions, should "give the policies embodie[d] in Section 332(c) an adequate opportunity to yield the benefits of increased competition and subscriber choice." Id. at 261.

¹⁶ That is, the House Report specifically references "facilities siting issues (e.g., zoning)" as "terms and conditions" within the state's purview. House Report at 261.

To give full scope to the congressional mandate, it is necessary to construe narrowly Congress' reservation of zoning authority to the states. Simply put, the reservation of state authority over "terms and conditions" is not absolute.¹⁷ For this reason, the Commission is permitted to preempt such zoning regulation of CMRS tower sites to further legitimate federal policy objectives. In this case, states cannot be permitted to thwart directly or indirectly through zoning and other similar regulation the full competitive build out of mobile services.

B. The Commission Is Charged With Eliminating Government Regulation Which Interferes With A Competitive Mobile Services Market.

The Commission, consistent with Congress' forward-looking treatment of mobile services, is charged with a continuing obligation to remove regulatory impediments -- whether state or federal -- to competition and efficiency within the mobile services. Toward that end, the Commission has recently made great strides by adopting a streamlined federal regulatory structure for CMRS. Federal preemption of tower site regulation would serve to further the Commission's obligation to implement Congress' mandate.

¹⁷ The House Report clarifies that "terms and conditions" includes matters "generally understood to fall under" that category. House Report at 261. Therefore, case law relevant to the same reservation of authority granted states under §2(b) becomes instructive. As demonstrated below, state regulation of "terms and conditions" is subject to lawful federal preemption. State regulation of "terms and conditions" should receive similar, subordinate treatment.

In adopting a comprehensive set of rules governing CMRS, the Commission opted for a forward-looking regulatory approach which removed artificial distinctions among substantially similar services and forbore from burdensome, unnecessary Title II obligations. Noting the favorable impact its decision would have on the national economy, namely fostering economic growth, promoting infrastructure investment and enabling access to the information superhighway, the Commission's analysis relied upon efficiency and competitive concerns.¹⁸ The Commission relied upon similar reasoning when it conformed its technical, operational and licensing rules to establish regulatory symmetry among CMRS firms.¹⁹

¹⁸ See Regulatory Treatment of Mobile Services, Second Report and Order in GN Docket 93-252, 9 FCC Rcd 1411, 1418-1422 (1994) 1420 ("Success in the marketplace thus should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs -- and not by strategies in the regulatory arena."); 1421 ("one of our objectives in this proceeding is the creation of a regulatory framework that makes access to the wireless infrastructure available to all Americans, at economically efficient prices").

¹⁹ See Regulatory Treatment of Mobile Services, Third Report and Order in GN Docket 93-252, PR Docket 93-144, PR Docket 89-553 (rel. Sept. 23, 1994) ¶ 39 ("... the best way to ensure that we create an enduring regulatory system that applies comparable technical and operational rules to similar CMRS licensees, is to anticipate the potential for increasing competition by providing sufficient flexibility to licensees in our rules. This flexibility will enable them to adapt their services to meet customer demands. If the Commission were to ignore the accelerating pace of technology or the ability of CMRS providers to respond to growing and changing consumer demand for mobile radio services, our technical and operational rules might inhibit rather than promote competition and growth in the mobile services marketplace.") ¶ 53 ("Growth and competition are the defining features of the wireless marketplace. Technology, regulatory policies, and explosive growth in consumer demand

(continued...)

Similar action should be taken now with respect to tower siting. Further development of the nation's infrastructure will be significantly hampered if localities are able to inject additional costs and delays into the build out process. Unnecessary and disparate regulation will diminish consumer welfare by adding costs to all participants in the mobile services marketplace.

II. TRADITIONAL § 2(b) PREEMPTION ANALYSIS SUPPORTS TOWER SITE PREEMPTION.

Section 332, while providing the relevant demarcation point for state jurisdiction over rate and entry for mobile services, nonetheless still reserves the Commission's preemption authority under Title II of the Act.²⁰ Section 332 does not accord state and local regulation of "other terms and conditions" any greater

¹⁹(...continued)
continue to propel the expansion of services in the wireless industry. This growth is in part a product of emerging competition in the industry. It will lead to even more competition as various commercial service providers pursue strategies to capture new customers.")

²⁰ Section 332(c)(3)(A) states, "[n]otwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A). As explicated in the House Report, "other terms and conditions" is meant to include "matters generally understood to fall under 'terms and conditions.'" House Report at 261. As § 2(b) reserves with the states jurisdiction over intrastate telecommunications matters, including intrastate terms and conditions, any limitations on state and local jurisdiction arising under a traditional § 2(b) analysis would equally apply with respect to state and local regulation of mobile services "other terms and conditions" under § 332.

standing than it would have under § 2(b). And under § 2(b), zoning and other similar regulations which have the purpose or effect of barring the provision of interstate service are preemptible.

Generally, Title II creates a dual regulatory scheme with respect to telecommunications services, i.e., the Commission retains jurisdiction over interstate matters while intrastate regulation resides with the states.²¹ The Commission, though, possesses authority to preempt state regulation to prevent the negation of legitimate national policy objectives in this case; stated positively, it has the authority to encourage and facilitate the further build-out of a competitive, efficient, uniformly-regulated, interstate mobile services infrastructure. This authority requires that necessarily inconsistent state and local requirements yield.

Louisiana Public Service Commission v. FCC,²² as confirmed by subsequent lower court opinions, provides the Commission with the requisite ability to preempt state regulation over CMRS tower siting. In overturning the Commission's decision to preempt the states' ability to prescribe depreciation rates, the Louisiana Court found section 2(b) to be a "substantive jurisdictional

²¹ Specifically, section 1, 47 U.S.C. § 151, grants the Commission jurisdiction over interstate telecommunications matters. The Act specifically reserves to the states "jurisdiction with respect to . . . charges, classifications, practices, services, facilities [and] regulations for or in connection with intrastate communication service." 47 U.S.C. § 152(b).

²² 476 U.S. 355 (1986).

limitation on the FCC's power."²³ Specifically, in comparing section 1 with section 2(b), the Louisiana Court held that, by its terms, section 2(b):

fences off from FCC reach or regulation intrastate matters -
- indeed, including matters 'in connection with' intrastate service. Moreover, the language with which it does so is certainly as sweeping as the wording of the provision declaring the purpose of the Act and the role of the FCC.²⁴

The Louisiana Court, though, qualified its holding by recognizing that in certain situations it would not be possible to separate out the interstate and intrastate components of the Commission's regulation and therefore federal preemption would be warranted.²⁵

²³ 476 U.S. at 373.

²⁴ See id. at 370. See also California v. FCC, 798 F.2d 1515, 1519-1520 (D.C. Cir. 1986) (Commission's preemption, designed to further competition, of state entry regulation over use of FM subchannels for intrastate common carrier services violative of the Louisiana principles). Nat'l Assn of Regulatory Util. Commissioners v. FCC, 880 F.2d 422 (D.C. Cir. 1989) (FCC's preemption of state regulation over the installation and maintenance of inside wiring to encourage competition remanded because not narrowly tailored; while FCC demonstrated that it should be permitted to require states to unbundle inside wiring from basic transmission services, it did not meet its burden with respect to other state tariff requirements); California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (FCC's preemption of state public utility regulation of enhanced services, state requirements for structural separation of basic and enhanced services, among other things, impermissible as not narrowly tailored (e.g., FCC's preemption encompassed prohibition against structural separation requirements for purely intrastate services)).

²⁵ Id. at 375, note 4 (citing with approval North Carolina Util. Comm'n v. FCC, 537 F.2d 787 (4th Cir. 1976), cert. denied, 429 U.S. 1027 (1976); North Carolina Util. Comm'n v. FCC, 552 F.2d 1036 (4th Cir. 1976), cert. denied, 434 U.S. 874 (1977) (FCC was within its authority to allow subscribers to provide their own telephones and to preempt state regulation which prohibited connection of such phones under impossibility theory)).

Consistent with Louisiana, the lower courts have recognized an exception to § 2(b), permitting Commission preemption when the states' exercise of authority unavoidably would negate the legitimate exercise of the Commission's own interstate authority. This "impossibility" exception applies here.²⁶

In this case, state regulations which physically delay or prevent the siting and build out of CMRS towers, by excessive costs or otherwise, directly impinge upon interstate communications as well as Congress' decision favoring a competitive, efficient wireless infrastructure subject to uniform, federal regulation. As such, they should be preempted notwithstanding § 2(b) as well.

²⁶ While it remains unclear whether a physical impossibility must exist to permit application of the exception, in this case, physical impossibility arises. See Public Util. Comm'n of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989) (FCC's preemption of PUC's order which prohibited LEC from providing private microwave owner with additional interconnections to the PSTN upheld as private network incapable of separating interstate and intrastate calls); Pub. Service Comm'n of Maryland v. FCC, 909 F.2d 1510 (D.C. Cir. 1990) (FCC's preemption of states' authority to regulate rates that LECs charge to IXCs to disconnect telephone service for nonpayment of the interstate bill upheld as separation of interstate and intrastate access impossible); but see California v. FCC, No. 92-70083 (9th Cir. Oct. 18, 1994) (On review of remand, FCC's limited preemption of state structural separation requirements for jurisdictionally-mixed enhanced services, and of CPNI and network disclosure rules, upheld because narrowly tailored to impossibility exception); Illinois Bell Tel. Co. v. FCC, 883 F.2d 104 (D.C. Cir. 1989) (FCC's preemption of states' Centrex marketing regulations (including structural separation requirements) upheld because interstate and intrastate components of the FCC's regulation could not be separated).

III. COMMISSION PRECEDENT SUPPORTS TOWER SITE PREEMPTION.

Previous preemptive action taken by the Commission with respect to radio services also favors CMRS tower site preemption. Specifically, in adopting rules to limit state regulation of earth stations, amateur radio antennas, as well as multichannel distribution services ("MDS"),²⁷ the Commission served to promote legitimate federal objectives while minimizing the effect upon the state's traditional police powers.

The Commission's policy statement promulgating § 25.104²⁸ to preempt unreasonable, discriminatory state zoning regulations targeted at earth stations provides a useful analogy to the relief requested in this case.²⁹ In reliance upon its § 1³⁰ and

²⁷ In affirming the Commission's right to preempt a state from regulating as a cable television system a master antenna television system ("MATV") which delivered MDS signals, the Second Circuit found that MDS in general was interstate and therefore § 2(b) was not applicable. New York State Comm'n on Cable Television v. FCC, 669 F.2d 58, 65 (2nd Cir. 1982).

²⁸ 47 C.F.R. § 25.104. The courts have relied upon § 25.104 to preempt state and local regulations. See e.g., Kessler v. Town of Niskayuna, 774 F. Supp. 711 (N.D.N.Y. 1991); Neufeld v. City of Baltimore, 820 F. Supp. 963, 968 (D.Md. 1993) ("there is no question about the power of the FCC to preempt local regulations."); see generally James R. Hobson and Jeffrey O. Moreno, Preemption of Local Regulation of Radio Antennas: A Post Deerfield Policy for the FCC, 46 Fed. Comm. L.J. 433 (1994).

²⁹ Specifically, under § 25.104 states are limited in their ability to enact regulations which discriminate between receive-only earth station antennas and other types of antennas. If the state enacts an earth station-specific regulation, such regulation must have a reasonable, clearly defined health, safety or aesthetic objective and may not operate to impose unreasonable limitations on, or prevent the reception of satellite signals, nor may it impose excessive costs in light of the purchase and installation cost of the earth station equipment. Section 25.104 also preempts receive-transmit earth stations in the same manner

(continued...)

Title III authority,³¹ and in conjunction with a then recent amendment to the Communications Act,³² the Commission found that Congress had established "a federal interest in assuring that the right to construct and use antennas to receive satellite delivered signals is not unreasonably restricted by local regulation."³³ Therefore, the Commission promulgated a preemption policy designed to prohibit states from "arbitrarily favor[ing] one particular communications service over another."³⁴ This reflection of technology neutral principles is highly instructive.³⁵

²⁹ (...continued)

except that state health and safety regulation is not preempted.

³⁰ 47 U.S.C. § 151 (FCC mandated to make communication services available to all within the U.S.).

³¹ Under Title III the Commission has power to establish a unified communications system.

³² 47 U.S.C. § 605 (Congress intended by amendment to create certain rights to receive unscrambled and unmarketed satellite signals). Section 332, with its congressional mandate, among other things, to promote wireless competition to ensure a nationwide communications network, is, if anything, an even stronger statement of a federal interest than the Satellite Home Viewers Act codified at 47 U.S.C. § 605.

³³ See Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations, Report and Order in CC Docket 85-87, ¶ 23 (rel. Feb. 5, 1986).

³⁴ Id. at ¶ 25.

³⁵ Federal preemption of tower site regulation should be based upon technology neutral principles, *i.e.*, the Commission should ensure equal state and local regulatory treatment among all CMRS providers and between CMRS providers and other providers of local access. For example, if a state or local government permits the construction and placement of telephone poles, it must afford similar treatment for equivalent radio facilities.

Section 97.15(e) governs amateur radio towers.³⁶ Although an important service with a long and honored tradition, the economic and broader social importance of amateur radio is dwarfed by the present and prospective significance of CMRS. Nevertheless, the Commission curbs local limitations on amateur radio antennas very substantially. Specifically, the Commission requires that state and local regulations which involve the placement, screening or height of amateur radio towers "must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose."³⁷ The statutory and policy bases for preemption of zoning and other similar regulations that have the purpose or effect of barring CMRS are much stronger.

CONCLUSION

Congress intended that the mobile services marketplace function efficiently, competitively, and with a minimum of regulatory intervention. By amending § 332, Congress ensured that neither local nor federal government could harm CMRS competition or impair the continued build out of our nation's wireless communications infrastructure. State and local governments may not lawfully bar entry, create regulatory

³⁶ 47 C.F.R. § 97.15(e). The courts have relied upon § 97.15(e) to preempt state and local regulations. See, e.g., Pentel v. City of Mendota Heights, 13 F.3d 1261 (8th Cir. 1994).

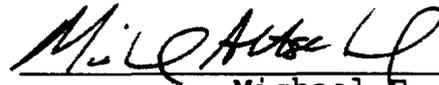
³⁷ See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, PRB-1, 101 FCC 2d 952 ¶ 25 (1985).

disparities or introduce significant inefficiencies in the production of CMRS through zoning and other similar regulation.

It is clear that the Commission may exercise its preemptive authority found in § 332 and § 2(b) to require that all states refrain from interfering with the build out of CMRS infrastructure and the development of a competitive, efficient CMRS marketplace, through zoning and other similar regulations.

For these reasons, CTIA respectfully requests that the Commission issue a Notice of Proposed Rule Making at the earliest possible date proposing to preempt state zoning and other regulations imposed upon CMRS provider tower sites.

Respectfully submitted,



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