Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's	)	RM-8577
Rules to Preempt State and Local	)	
Regulation of Tower Siting For	)	
Commercial Mobile Services	)	DOCKET FILE COPY ORIGINAL
Providers	)	

MOTION TO ACCEPT LATE-FILED COMMENTS

Sprint Corporation, by their undersigned counsel, hereby respectfully request that the Commission accept its Comments filed on February 21, 1995, in the above-captioned matter. Due to difficulties in communicating with our cellular client, the Comments could not be ready in time for filing. Sprint Corporation is concurrently hand delivering a copy of these comments to counsel for CTIA, and thus, no prejudice will be caused.

WHEREFORE, Sprint Corporation respectfully request that the Commission accept its Comments filed simultaneously herein in the above-captioned matter.

Respectfully submitted,

SPRINT CORPORATION

By: Jay C. Keithley

Jay C. Keithley
1850 M Street, NW
Suite 1100
Washington, DC 20036
(202) 857-1030

ITS ATTORNEY

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ORDER

For good cause shown, Sprint Corporation's Motion to Accept Late-Filed (one-day) Comments is hereby GRANTED.

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Before The
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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-8577

DOCKET FILE COPY ORIGINAL

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully files comments in support of the above-captioned "Petition for Rule Making" filed by the Cellular Telecommunications Industry Association ("CTIA").[1]

CTIA's petition requests that the Commission issue a "Notice of Proposed Rule Making proposing to exercise its authority . . . to preempt state and local governments from enforcing zoning and other similar regulations which have the purpose or effect of barring or impeding commercial mobile radio service ('CMRS') providers from locating and constructing new towers." (CTIA Petition at 1-2.)

I. STATEMENT OF INTEREST.

Sprint provides CMRS, specifically cellular service, to more than one million customers in 14 states. It has cellular operations in 42 metropolitan markets, an equity interest in 31 others, and an ownership interest in 79 rural service markets.

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1. See Public Notice, 51679 (January 18, 1995).

In addition, Sprint holds a 40 percent interest in WirelessCo L.P., a joint venture with three cable companies, TCI, Cox and Comcast. WirelessCo has applications on file with the Commission to bid on PCS A and B block broadband PCS licenses in 37 of the 51 MTAs currently being auctioned. At the end of Round 79, completed on February 16, 1995, WirelessCo was the high bidder in 30 markets with bids totaling $1.582 billion. WirelessCo will unquestionably be a major provider of broadband PCS service. Its ultimate geographic and customer base probably will be even larger than that currently served by Sprint Cellular.

Sprint is committed to providing a high standard of service to its customers. The ability to construct new towers, in a timely manner, at sites that effect wide geographic coverage and accommodate the capacity needs of an ever-expanding customer base is an important factor in meeting this commitment.

II. INTRODUCTION.

Sprint has had considerable dealings with myriad local governing bodies in the process of securing approval for sites on which to locate its cellular towers. We acknowledge that local zoning ordinances serve the useful purpose of providing guidelines for orderly development within communities. It has frequently been Sprint's experience, however, that application of strict land use ordinances with respect to cellular towers has had the effect of delaying site approval, tower construction, and, consequently, service to the public. The protracted

approval process also has resulted in considerable cost to Sprint, which ultimately is borne by our customers.

III. DISCUSSION.

When locating a site for a new tower, Sprint carefully surveys the area in question. It is our intent whenever possible to seek approval for a tower at a site where it will harmonize with the surrounding area. Sprint is sensitive to prevalent local concerns regarding the aesthetic aspects and perceived adverse impacts of towers, particularly in residential areas.

Against this backdrop and mindful of specific local tower regulations, Sprint strives to select a site both suitable to the community and adequate for the technological requirements of our cellular system. However, a multitude of strict local ordinances has made this a daunting task in individual localities all across the country.

In Sprint's experience, several types of zoning restrictions either have prevented us from siting towers at advantageous locations, or have precipitated costly, drawn-out approval processes, resulting in delays of several months (or even years) in our providing or improving service to customers. These restrictions include:

- absolute tower prohibitions in certain zones;
- unreasonable setback requirements, fall zones and other limitations;
- scenic overlay requirements;
- lack of uniformity and uneven interpretation.

Two examples that illustrate a number of the problems that Sprint has encountered are our experiences in obtaining site approvals in Fluvanna County, Virginia and Tallahassee, Florida.

Fluvanna County, Virginia. In the spring of 1992 Sprint (then Centel) embarked on an odyssey to gain approval for (at that time) one site at which to build a cellular tower in Fluvanna County. It was not until November 1994 that the County Board of Supervisors finally approved special use permits for two of the three applications that were direct descendants of the original application.

The intervening two and a half years were replete with multiple public hearings of the Board and Planning Commission, repeated denials, resubmissions based on County recommendations (different sites and tower heights, etc.), subsequent repeated denials, and the County's hiring of an outside consultant whose recommendations, although favoring Sprint's proposals, were dismissed by County authorities.

The final phase began in December 1993 when the Board approved, pending compliance with the County Zoning Ordinance, Sprint's most recent set of three applications for special use permits. This ushered in a new round of applications, denials and resubmissions, culminating in the November 1994 approval of two of the three applications, as referenced above. Sprint subsequently filed a petition for declaratory judgment on the denied application, against the Fluvanna County Board of Supervisors, based, among other things, on the fact that the

denied application was identical to one that had been previously granted. Sprint is holding that suit in suspension pending efforts to locate a third site in the County.

The protracted process that finally resulted in local government approval for two of the three sites and tower configurations that Sprint hopes will be adequate to provide the necessary level of coverage to our customers has cost us a delay that approaches three years in being able to begin offering service in Fluvanna County. The outlay of resources has likewise been substantial. The governing bodies' decisions have been premised on everything from absolute tower prohibitions in certain areas and severe height limitations to a range of aesthetic concerns; in addition, they have been colored with inconsistency and seeming arbitrariness on numerous occasions.

Tallahassee, Florida. Sprint's experience in Tallahassee and Leon County, Florida demonstrates the difficulty encountered in siting and constructing towers when local policies differ or are administered differently from laws on the books.

Beginning in the fall of 1991 Sprint made numerous requests to the City of Tallahassee and Leon County, Florida for Certificates of Land Use Compliance for cellular towers. These requests were routinely granted, based on an interpretation by the Planning Department staff that free-standing towers were classified as "light infrastructure" and thus were exempt from site plan review.

In February 1994, however, the staff changed its interpretation of cellular tower classification from "light infrastructure" to "heavy infrastructure", requiring site plan review. This action effectively placed a moratorium on tower site approvals for Sprint in the City of Tallahassee and Leon County.

Sprint attempted to reconcile the staff's action with both the procedural requirement that such changes be effected not by staff but by the Tallahassee City Commission; and the Zoning Code exemption for any structure requiring a physical plant of 7,500 square feet or less. Months of negotiation finally culminated in mutual agreement between Sprint and the local authorities. The classification was reversed back to "light infrastructure", enabling the process of tower site acquisition to resume, but only after a delay lasting the better part of a year and at considerable expense.

Other. Sprint's experience in Upper Allen Township, Pennsylvania, which began late in 1993, provides another example of the conflicts that sometimes occur between the law and the approval process. After the Zoning Hearing Board granted Sprint the necessary variance for construction of a proposed tower, the Board of Commissioners reviewed our preliminary land use plan which had been recommended for approval by the Planning Commission. The Board voted to reject the plan after which it held an executive session to formulate a legal statement of four points in support of its disapproval. Sprint then appealed the

decision in Court, contending the Board's four-point defense of its decision was not substantiated by the law. In December 1994 the judge ruled in our favor on three of the four counts, and set a hearing date for additional evidence on the fourth count. Before the hearing date, however, the Board of Commissioners informed Sprint that the land use plan would in fact be approved, subject to certain conditions to which Sprint readily agreed. A delay of well over a year in initiating tower construction as well as considerable legal costs were the prices Sprint paid to ensure consistency between the approval process and the law.

In Beaufort County and Charleston County, South Carolina Sprint has experienced a variation of this problem. In both counties, Sprint has secured local approval for tower sites after complex application and additional submission processes to obtain legal approval. On numerous occasions in both counties Sprint has submitted subsequent applications identical to those previously approved. Rather than granting approval based on legal precedent, however, local authorities have instead required the submission of the same auxiliary backup information as in the previous applications, which in due course result in site applications being granted.

<u>Unreasonable setback requirements</u> also present challenges to locating adequate sites and result in significant expenditures for the purchase or lease of property. While neither Pickens County nor Spartanburg County, South Carolina have zoning area classifications, both have ordinances requiring a 1:1 setback

ratio (meaning the radius on all sides of the tower must be at least the measurement of the tower height). Thus, a 400-foot tower would require a plot of land measuring 800 x 800 feet, or 640,000 square feet. The Land Use Commission of Spartanburg County reluctantly grants variances to this ordinance; there is no such option in Pickens County, however, and Sprint has been forced to purchase large pieces of land in both counties on which to construct towers.

A new governing ordinance for both Greenville County and the City of Greenville, South Carolina prohibits the construction of any tower within 1000 feet of another tower.

Albemarle County, Virginia has enacted an <u>entrance corridor overlay</u> ordinance that governs all construction on property adjoining entrance corridors (which constitute most of the major highways in Albemarle County) or which do not adjoin the entrance corridor but are located within 500 feet thereof. The ordinance is administered by the Architectural Review Board (ARB), which must issue a certificate of appropriateness for any structure controlled by the entrance corridor overlay.

Sprint recently had a tower siting situation subject to the entrance corridor overlay. The ARB staff required a significant amount of visual information, including architectural renderings prepared by professional artists, a balloon test, photographic studies, etc. This substantially delayed approval

and significantly contributed to the cost of the project. Entrance corridor overlay issues will be an ongoing concern, since many cell sites are located within proximity to highways.

Another problem arises from the fact that some of the governing ordinances are inappropriate for the telecommunications facilities to which they are applied. For example, the Zoning Code for Wilmington, North Carolina restricts tower heights to 96 feet in a majority of areas located within the City. Although adequate for broadcasting radio and TV signals, this restriction places severe limitations on coverage for cellular service.[2] This is a good example of the application of an ordinance to a technology that was not contemplated when the ordinance was enacted.

An existing provision of the Wilmington City Code requires a subdivision of all property any time a tower is constructed. This prevents use of small industrial lots that would have been adequate for tower facilities. At the request of Sprint counsel, the City of Wilmington has drafted an exemption for telecommunications towers which would allow them to be treated as an ancillary use and eliminate the subdivision requirement.

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2. Broadcast technology enables radio and TV licenses to locate towers outside the Wilmington City limits, where the 96-foot restriction does not apply. The single tower provides sufficient coverage for broadcast signals. Unfortunately for cellular customers, this solution is not compatible with providing adequate coverage for cellular service.

The problems that Sprint and other CMRS providers have encountered in obtaining approval for its tower sites are sure to multiply in the foreseeable future, as PCS licensees begin to seek similar approvals.

IV. CONCLUSION.

Sprint believes that the legitimate bases of land use regulations must be carefully balanced against the need for cellular and other CMRS providers to locate their towers appropriately in order to provide service to their customers.

Accordingly, Sprint urges the Commission to issue an NPRM, as requested by CTIA, which proposes preemption of state and local zoning and similar regulations regarding CMRS tower siting.

Respectfully submitted,

SPRINT CORPORATION

By: Nancy R. McCabe

Jay C. Keithley
Nancy R. McCabe
1850 M Street, N.W.
Suite 1100
Washington, D.C. 20036
202-857-1030

Kevin C. Gallagher
8725 Higgins Road
Chicago, IL 60631
312-399-2348

February 21, 1995

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 21st day of February, 1995, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" 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 8577, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

Melinda L. Mills

Kathleen Wallman*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Geraldine Matisse*
Acting Chief, Tariff Division
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

Wilbur Thomas*
ITS
1919 M Street, NW, Room 246
Washington, DC 20554

Joel Ader*
Bellcore
2101 L Street, NW, 6th Floor
Washington, DC 20037

Michael F. Altschul*
Randall S. Coleman
Cellular Telecommunications Industry Assoc.
1250 Connecticut Avenue, WN, Suite 200
Washington, DC 20036

Philip Verveer*
Jennifer A. Donaldson
Willkie, Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW, Suite 600
Washington, DC 20036-3384
Counsel to CTIA

* Indicates Hand Delivery