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Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

July 22, 1997

RE: **NOTICE – *Ex Parte* Communication** with Ms Rosalind Allen, Deputy Chief, Wireless Telecommunications Bureau -- Discussion: Health and Safety (Docket 93-62); CTIA Petition for Preemption of State and Local Moratoria (DA 96-2140), Taxation and Rate fees (File Unknown); PCIA Petition Preemption of the Discussion of Health and Safety Issues at Zoning Hearings (File Unknown), and Other Preemption Issues

Dear Mr. Caton:

Please place in each of the above FCC files, a copy of this *ex parte* communication at a meeting between myself and Ms Roz Allen in her office on 17 July 1997. The purpose of the meeting was to discuss the referenced FCC intentions, as petitioned by the telecommunications industry.

Clarification of referenced issues became necessary after congressional personnel and Wireless Bureau attorneys (Mr Bobby Brown, his supervisor and another lawyer) informed me they were writing an **Order** to declare Delegated Authority (DA) 96-2140 a law. This was done because FCC deferred the above issues to Congress, hoping for an amendment to the Telecommunications Act of 1996, plus other associated industry complaints such as preempting the right of local and state governments to have a say in the placement of satellite dishes (**Docket 95-59**). Congress returned the preemption package to the Commission, and told FCC to handle the matter. Ms Allen confirmed this. She did not know when the ***blanket* preemption Order** would be finished, and therefore had no date for its enactment and sweeping enforcement. I stated, "Implementation of such an Order would leave local and state governments powerless to manage their affairs. Further, it infringes on 10th Amendment rights, specifically, that *states are self-governing and the federal government must return power to them and the people.*" If the petitions as a whole of CTIA (DA 96-2140), PCIA, and industry are mandated by FCC, local jurisdictions will be prohibited from: declaring a moratorium while establishing policy, allowing citizens to discuss health and safety at zoning hearings, collecting land use taxes and other fees, designating sites for microwave towers and the placement of satellite dishes, and more. Stated another way, industry will get free reign to do as it pleases in state and local jurisdictions while governments and citizens standby mute.

Ms Allen said she had no knowledge of PCIA's petition to preempt the right of citizens to discuss health and safety at zoning hearings. I respectfully suggested that Ms Allen revisit the letter transmitted to her and Michelle Furuqhart (former CTIA attorney and employee who was made

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Chief of FCC's Wireless Bureau). The letter, written by Mr Kitchen (PCIA president) and addressed to the ladies, was transmitted for comment, via Internet, to Allen and Furuqhart and subsequently filed at FCC by PCIA. The final letter, with attachments, bore the signature of Mr Kitchen.

By end of the meeting, Ms Allen indicated that she had no idea when the Order to preempt, as petitioned by industry, would be completed or even if FCC personnel were inclined to move ahead with it. She, as well as the attorneys of the Wireless Branch, refused to divulge the context of the **Preemption Order**. All claimed *such information was **proprietary**.* I said to Ms Allen, "Since DA 96-2140 resulted from a CTIA petition for Declaratory Ruling against moratoria, and citizens were never informed, and the few respondents submitting comments only learned about the petition at the end of the 30-day comment period, FCC should get the media which it oversees to print and broadcast the Commission's current intention to preempt their various rights. With such a public forum, local and state governments and citizens nationwide may submit comments and none can blame FCC for **failure to notify**. Preemption is a super critical issue that affects the quality of life, health and safety, economy, and property of **all** citizens." Ms Allen proffered that FCC has an established method of informing the public; via *Public Notice*. But such Notices are only available in a room at FCC where no one sees them, except industry lobbyists stationed at the Commission. Ms Allen said, "FCC communicates with representatives in Washington of the National League of Cities, Conference of Mayors, and other such bodies. This is tantamount to informing local and state governments and citizens." I said it was a poor assumption; one that leaves those with a right to know, uninformed.

With respect to Health and Safety (**Docket 93-62**), Ms Allen informed me that the deadline for industry compliance with the new radio frequency (RF) power density emission guideline (1mW/cm2) will probably slip from the 1 September 1997 date. She did not elaborate. The new date for compliance is presumed to be one-year from now (1 September 1998), as industry requested. I informed Ms Allen that industry cannot comply with the present public exposure limit (10mW/cm2), nor can it meet the Interagency Health and Safety (EPA, FDA, OSHA, NIOSH) recommended new limit (1mW/cm2), or anything below it. The reason being that microwave antennae transmitters will require greater power, and much higher RF, than existing systems. By 1 September 1998, industry will have built several thousand towers and mounted several million antennas nationwide. How can RF power density go down? Will industry ever be ordered to comply with the limit imposed by the Interagency Health and Safety group?

The meeting closed with Ms Allen urging me to file this *Notice* of *Ex Parte Communication.*

Representing the people,

Bert Dumpe' - CEO

cc: Reed Hundt, Chairman and FCC Commissioners; Senators McCain, Graham; Reps. Tauzin, Wexler; Interagency Group; Distribution