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

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| In the Matter of |) | |
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| Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) Communications Act of 1934 |) | WT Docket No. 97-192 ¹ |
| |) | |
| Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation |) | ET Docket No. 93-62 |
| |) | |
| Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Amendment of the Commission's Rules to Preempt State and Local Regulation of Commercial Mobile Radio Service Transmitting Facilities |) | RM-8577 |
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To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION
OF AMERITECH MOBILE COMMUNICATIONS, INC.**

Ameritech Mobile Communications, Inc. (Ameritech), by its attorneys and pursuant to Rule Section 1.429, hereby requests partial reconsideration and/or clarification of certain aspects of the Commission's rulings in its Second Memorandum Opinion and Order and Notice of Proposed Rulemaking (Second MO&O) in the above captioned proceeding, FCC 97-303, released August 25, 1997. As discussed below, Ameritech applauds the Commission's effort to clarify its RF radiation exposure rules in response to public and industry concerns. The

¹ The Second Memorandum Opinion and Order and Notice of Proposed Rulemaking released on August 25, 1997 under Mimeo No. FCC 97-303 listed the Docket Number for the rulemaking concerning relief from State and Local regulations as "WT Docket No. 97-197." However, the August 25, 1997 News Release concerning this proceeding and the September 12, 1997 Federal Register listed the docket as "WT Docket No. 97-192." Because the Federal Register is deemed by rule to be the official notice, the latter docket number is being used.

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rulings contained in the Second MO&O, and the procedures described in the simultaneously released OET Bulletin No. 65, provide a great deal of additional guidance to Commission licensees on how to comply with the new RF standards. A number of specific questions raised by Ameritech and others were answered in a way that provides more certainty in complying with these standards. However, certain aspects of the RF regulations require further clarification or revision, in the wake of the Second MO&O.

I. The Commission Should Revise or Clarify its Policy Concerning State and Local Information Requests, to Allow Categorically Excluded Licensees to Interim Certify Compliance, or to Merely Recite the Factors Creating Exclusion.

As part of the Notice of Proposed Rulemaking contained in the Second MO&O, the Commission adopted as an interim policy one of two alternative proposals for allowing state and local governments to ascertain whether a Commission licensee is in compliance with the RF regulations. The Commission chose its second proposed alternative, which requires categorically exempt licensees to demonstrate that the maximum permissible exposure (MPE) limits applicable to their facilities will not be exceeded, "by calculational methods, by computer simulations, by actual field measurements, etc." Second MO&O at para. 146. In this regard, the Commission will require that "actual values for predicted exposure should be provided to further support the statement." *Id.* In its October 9, 1997 Comments on the proposed new rules governing state and local actions, Ameritech has expressed its concern that the above language could be construed to require categorically exempt licensees to make burdensome informational showings during zoning proceedings. Ameritech Comments at pp. 5-9.

Under the Commission's current rules, categorically exempt licensees need not perform calculations, measurements or computer simulations. Instead, they are exempt from these routine environmental evaluation methods because the power, antenna height or other aspects of their operation have allowed the Commission to determine in advance that the facilities are

not likely to pose an RF hazard. The public interest benefit of having a categorical exemption will be lost if such licensees must perform detailed analyses for state and local governments that they need not perform for the Commission. Therefore, Ameritech has requested in its Comments that the Commission adopt its first proposed alternative (requiring only a certification of compliance); or that the Commission clarify the second alternative, to indicate that categorically exempt licensees need only state the grounds for their exemption (e.g., effective radiated power below 1000 watts or antenna height above 10 meters). Ameritech hereby formally requests that the Commission likewise change or clarify its interim policy adopted in the Second MO&O, on reconsideration. Because it may be several months before the Commission adopts final rules based on the record in WT Docket No. 97-192, the ambiguities in the interim policy could create entry barriers for new licensees, as well as operational disruptions for existing licensees, in hundreds or thousands of jurisdictions across the country. This result would be contrary to the public interest and the open entry policy evidenced in the Telecommunications Act of 1996.

The Commission should also clarify that it remains the sole arbiter of whether the informational showings provided by Commission licensees or applicants are adequate to demonstrate compliance with the Commission's rules. This is especially true for applicants that are subject to routine environmental evaluation, and therefore must make the more detailed showing (through calculations, computer modeling or actual measurements) discussed in the Commission's second alternative. Otherwise, licensees will face numerous conflicting interpretations of Commission standard by states and municipalities.

II. The Commission Should Prescribe a Detailed Cost-Sharing Formula for Bringing a Site into Compliance, Which Licensees Could Vary by Mutual Consent.

In response to Ameritech's concerns, the Commission declined to prescribe a specific procedure for dividing responsibility among licensees; instead, the Commission "suggests" that

licensees and new applicants "work in a cooperative manner to address these problems." Second MO&O at para. 75. The Commission notes that "one logical suggestion would be to assign compliance costs according to the percentage contributions at the non-complying areas for situations involving no change in transmitter facilities," such as a renewal applicant finding that its existing site violates the RF limits. *Id.* If this solution were mandated, either as a rule or a policy, licensees could take some comfort. However, the Commission's decision to merely suggest this outcome leaves open the possibility that the full compliance burden may fall on whichever party is the first to file an application at the site. While this "total responsibility" approach is suggested for new facility applicants, *id.*, existing high-powered licensees who contribute the lion's share of radiation to a violation situation may try to use this approach to impose the full burden on, e.g., a paging licensee that must file its renewal application next summer. Therefore, the Commission should prescribe a binding policy to govern licensees in these situations. Licensees could vary this policy only by mutual consent.

In response to Ameritech's inquiry about a licensee's failure to cooperate with compliance efforts, the Commission does not establish a specific penalty, but encourages the other licensees at the site to notify "the appropriate Commission licensing bureau," which will "encourage" the offender to cooperate. *Id.* Again, this non-mandatory language would provide greater comfort if backed by a binding policy on licensee responsibility for compliance. Ameritech appreciates the Commission's invitation to bring specific situations to the attention of its staff. It is likely that fewer situations will require staff intervention if a binding policy is in place, thereby preserving Commission resources.

III. The Commission Should Clarify Whether New Applicants Can be Held Responsible for the Entire Cost of Bringing a Site into Compliance, in Light of Seemingly Conflicting Statements on this Issue.

At paragraph 75 of the Second M&O, the Commission notes (with seeming approval)

the suggestion of one commenter to "require an applicant for a new facility to resolve [any RF exposure] problem." (Emphasis added). However, the Commission also states that applicants should notify its licensing bureaus if "they believe that existing licensees are not allowing them reasonable access to a site, or are attempting to place unreasonable financial burdens on them." Id. This language implies that new applicants should not be held responsible for full compliance costs, and confuses the Commission's suggestion that existing licensees can put the complete burden on a new applicant. It is respectfully requested that this ambiguity be clarified. Otherwise, the Commission may find itself inundated with conflicting complaints by existing licensees that newcomers must assume the compliance burden, while the newcomer cry "denial of access" and "undue financial burden."

The Commission also indicates that, if a site is in compliance under the old rules, but a newcomer places a facility there, then the entire site (including existing operators) will have to come under compliance with the new rules. Id. The Commission should clarify that site owners will generally retain the right to refuse access to the site, where the newcomer will cause non-compliance and is not willing to remedy the problem. If an applicant believes that a denial of site access will constitute an entry barrier inconsistent with Section 332(c)(7) of the Communications Act, the Commission should require that such applicant demonstrate that (1) alternative sites are not available and (2) the applicant is prepared to pay the costs of ensuring that the site will comply with the RF rules following construction and operation of the new facility.

IV. The Commission Should Adopt a Reasonable Transition Period for Existing Licensees that are Otherwise Required to Achieve Immediate Compliance Because of an Application or Facility Construction by Another Entity.

Ameritech and others had requested that the compliance deadline for existing operations be extended so that it came due one year after the issuance of OET Bulletin 65. The

Commission decided to grant this request in part, by (1) extending the compliance deadline for new facilities and modifications of existing facilities to October 15, 1997; and (2) extending the compliance deadline for existing facilities to September 1, 2000, or the date on which an application for renewal, modification or new construction at the site is filed by any tenant, or the date on which a facility is constructed on a permissive basis which would cause the site to exceed the maximum limits, **whichever occurs first**. While the three year extension appears quite reasonable, the other triggering events make it unlikely that most facilities will realize the full benefit of this extension. In particular, many paging facilities will be the subject of a renewal application to be filed in June 1998, with the remainder to be renewed in March 1999. This renewal process will require that the licensee verify (and certify to the Commission) that the existing facilities are in compliance. Moreover, the vast majority of antenna sites are likely to experience modifications by other licensees or applicants in the near future, which will trigger an immediate compliance requirement for existing site users. Second MO&O at para. 75.

Because of the possibility that existing licensees may be thrust into an immediate compliance situation because of the actions of another licensee or applicant, the Commission should create a reasonable transition period for these entities. In the case of the installation of a fill-in transmitter or other permissive installation at an existing site, the Commission should give existing licensees 90 days to bring the site into compliance, if it is determined that the site is already out of compliance, or will be out of compliance when the new facility is implemented. In those situations where the new facility must be approved by the Commission pursuant to the filing of an application, the Commission should require that the applicant identify existing users of the proposed site, and serve those users with a copy of the application,

if it appears that the site is or will be out of compliance. This will allow existing licensees to address the situation during the pendency of the application.²

V. The Commission Should Place Certain Limited Responsibilities for Compliance on Site Owners.

Despite the requests of several commenters, the Commission declined to impose liability on site owners, because "many site owners may not have the capability or understanding to make sure that transmitter facilities on their property are in compliance." Second MO&O at para. 73. The Commission instead "urges" site owners to cooperate with licensees performing RF evaluations. *Id.* The Commission also feels that compliance responsibility is best left with licensees and applicants. *id.* Ameritech believes that a reasonable compromise would be for the Commission to impose on site owners an affirmative responsibility to (1) make available to current and prospective site users information about other facilities on the tower or building, and (2) require that future tenants perform an RF compliance evaluation before installing their facilities, in much the same way that most site owners require new tenants to perform an intermodulation interference evaluation. The results of this evaluation should be sent to existing users. Otherwise, current tenants may inspect a site and confirm its compliance, only to have an FCC inspector declare the site to be in violation due to the subsequent installation of a transmitter by a new tenant. Because FCC filings are no longer required for many transmitters, existing licensees may not know about future installations.

² The requirement to serve notice on existing licensees is necessary because it is not practical to expect existing licensees to review all public notices issued for every radio service, to determine whether a facility proposal will affect one of the sites they currently use. While it may be difficult for applicants to identify all existing users, this problem would be remedied if the Commission were to adopt Ameritech's proposal (infra) to require site owners to furnish information about existing site users to all current and prospective tenants.

This proposed compromise would keep overall responsibility for compliance in the hands of licensees and applicants, while at the same time eliminating the information barriers that may otherwise prevent these entities from complying. While the Commission has expressed concern about the sophistication of tower owners, neither of the proposed requirements would be an undue burden on them. The public interest is better served by requiring site owners to ensure compliance by future tenants, so that sites thought to be in compliance by existing users do not become sources of harmful radiation to the public. In any event, tower owners have already been required to gain a greater knowledge of applicable Federal requirements, as a result of their recently mandated liability for tower marking and lighting violations, and the tower registration requirements.

VI. The Commission Should Provide Additional Guidance and Uniformity Concerning the Use of Warning Signs.

An important means of achieving compliance with the new RF regulations is the posting of warning signs in areas of possible exposure. While the Commission has indicated that such signs must provide adequate information to warn persons in the vicinity of any hazard, it has not prescribed specific wording for such signs. It is respectfully submitted that further guidance on this issue is needed. Otherwise, signs may be posted which do not, in the Commission's judgement, meet its requirements. Moreover, antenna sites used by several (or perhaps even dozens) of licensees may end up with dozens of similar (or in some cases conflicting) signs. This situation will only cause confusion for persons accessing the site, and the conflicting messages on various signs may nullify their effectiveness, thereby endangering the public and potentially stripping licensees of the protection from liability that the signs are designed to provide. Therefore, the Commission should prescribe appropriate language for signs under various circumstances commonly encountered in the industry; or the Commission should recognize standards for such signs as may be adopted by organizations such as ANSI/IEEE.

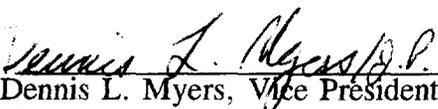
As part of this process, the Commission should assist the industry in developing a Commission-sanctioned protocol for the posting of signs in multiple transmitter situations. This measure could be taken on reconsideration, or as part of the ongoing revision of OET Bulletin No. 65, as discussed in the Second MO&O. Ameritech would be glad to work with the Commission and/or a Commission-recognized industry forum to help develop appropriate warning sign language and posting protocols.

Conclusion

In light of the foregoing, it is respectfully requested that the Commission change and/or clarify its RF exposure rules as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sharmon B. Truesdale, do hereby certify that I have, on this 14th day of October 1997, caused to be served by first class U.S. mail, postage prepaid, a copy of the foregoing Petition to the following:

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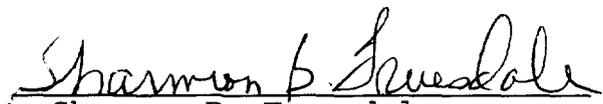
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