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

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JUN 10 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	WT 02-100
Federal Preemption of Anne Arundel	)	
County Ordinance	)	

COMMENTS
OF
ANNE ARUNDEL COUNTY

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June 10, 2002

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SUMMARY

Before Anne Arundel County, Maryland can begin a $15 million upgrade of its aging 800 MHz public safety radio system licensed at 800 MHz, the County must mitigate serious, dangerous interference to the existing network by personal wireless service providers while minimizing future degradation of any new system. To that end, the County has worked with individual providers identified as interference sources and amended its zoning ordinance to improve the general approach to placement, construction and modification of wireless facilities.

After the amendments were adopted, the County created a Review Committee composed of County staff and wireless carrier representatives to discuss further revisions to the zoning ordinance. It continues to work with Nextel Communications on a possible exchange of frequencies to ameliorate the most serious interference. However, the carrier second to Nextel as a source of interference, Cingular Wireless, has asked the FCC to preempt the amended ordinance as an unlawful local regulation of radio frequency interference.

The Communications Act reserves to the courts exclusive jurisdiction over zoning actions affecting the placement, construction and modification of personal wireless service facilities. Accordingly, the FCC is without jurisdiction to resolve the Cingular petition. The County's Motion to Dismiss the petition was filed May 24, 2002 and is incorporated by reference in these further comments on the merits of the Cingular request.

To date, the County has taken no action on specific carrier applications under the revised ordinance. The new zoning regulations remain a work in progress. Discussions in the Review Committee are affecting the County's decisions on implementation of the amendments. As in most such documents, the County is provided a measure of discretion in enforcement of the ordinance. Although the FCC has opened a rulemaking to seek broader solutions to the

interference problems at 800 MHz, the decision will not come soon and its implementation will be protracted. Local mitigation of commercial interference to public safety radio will remain at a premium. For all these reasons, the FCC should exercise its lawful discretion and decline or defer any ruling on the Cingular petition.

In any event, unless dismissed for want of jurisdiction, the petition should be denied. On two counts, the challenge is simply unsupported. On a third, the petition misreads a lawful radio frequency radiation safeguard as an intrusive interference regulation. Finally, the petition cites two federal appellate decisions, not controlling in Maryland or the Fourth Circuit, for the proposition that federal authority has occupied the field of radio frequency interference. This flies in the face of the Communications Act's unqualified reservation of local power to determine placement, construction and modification of personal wireless facilities.

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Anne Arundel County, Maryland ("County") hereby opposes the Petition for Declaratory Ruling ("Petition") filed by Cingular Wireless LLC ("Cingular") April 23, 2002 and supplemented April 29th.[1] Cingular challenges certain wireless siting amendments to the County's zoning ordinance for commercial telecommunications facilities.[2] County moved May 24, 2002 to dismiss the Petition for lack of FCC jurisdiction. That Motion is incorporated here by reference. For the reasons discussed below, the Petition is without merit and should be denied, if not dismissed.

Background. The County plans to upgrade its existing 800 MHz public safety radio system. It has hired an engineering consulting company to design the system. The first stage of the design process involved a survey of the performance of the current system. The survey demonstrated degradation or blackout of public safety communications in areas near commercial mobile radio service ("CMRS") antennas.

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[1] By Public Notice, DA 02-1044, of May 7, 2002, corrected by Public Notice the following day, the Commission invited public comment on the Cingular Petition by June 10th, replies by June 25th.

[2] The amendments were contained in Bill 93-01, attached to the Cingular Petition.

In a Final Report in mid-2001 on its interference study, the County's engineering consultant identified Nextel, Cingular and Verizon as the sources of what it called "receiver degradation." Early partial documentation of the impairment had been given to the FCC more than three years ago.[3]

At a public hearing December 10, 2001, the first of several open meetings to consider Bill 93-01, Chief of Police Thomas Shanahan testified that the eight "dead spots" identified in the partial survey two years ago had multiplied more than five times, to a total of 41 such communication failure zones at the end of 2001. He said some of the zones of blacked-out communication were as large as one-quarter mile in radius. Chief Shanahan attributed the increases to the addition of cellular-type CMRS antennas during the interval. He described the development as a "crisis in public safety and an emergency for the County."[4]

At the same hearing the County's Central Services Officer, Spurgeon Eismeier, warned the County Council that if the 800 MHz system upgrade were to justify the $15 million anticipated investment, there must be a mechanism for allowing the County to mitigate existing disruptions and control interference from future telecommunications facility placements. *Id.* Fire Administrator Roger Simmons echoed Chief Shanahan's concerns for citizen and emergency responder safety. Today's spreading patchwork of dead spots, he said, puts police officers, firefighters and paramedics in difficult and unsafe situations.[5] Ultimately, citizens are endangered.

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[3] Exhibit A hereto, discussed *infra*.

[4] Minutes, 12/10/01, 14,637, Exhibit B hereto.

[5] Minutes at 14,638.

Several wireless carriers appeared at the December 10th hearing and spoke in opposition to Bill 93-01. Among these were Nextel Communications, reportedly engaged in frequency-swapping negotiations with the County aimed at ameliorating interference from that CMRS provider. Also represented were AT&T Wireless, Cingular, Verizon and VoiceStream. *Id.* As captured in tape recordings of the meeting, the carriers' presentations dealt with virtually all aspects of the proposed legislation, covering setbacks, tower heights and bonding requirements, for example, as well as RF issues.

On December 17, 2001, at a call of bills for final reading and vote, Bill 93-01 underwent five amendments, all adopted unanimously except for the last, which drew one negative vote. On January 22, 2002, a public hearing was held on the bill as amended December 17th. Two additional amendments were voted down. The roll call on final adoption was 6-1 in favor. Nevertheless, Assistant Planning and Zoning Officer James Cannelli informed the Council that tower companies and wireless carriers were continuing to work with the County Administration on the public safety and other issues. If required, a new bill could be introduced as early as March or April of 2002.[6]

Cingular Wireless again spoke in opposition to the measure, as did representatives of VoiceStream and Nextel. As in the December 10th hearing, their testimony ranged over all aspects of the proposed zoning amendments. Asked what would happen if Nextel were found to be interfering with public safety radio, one of the carrier's representatives, David Plott, declined to speculate on Nextel's response to any future suspension of operations or shutting down of facilities.[7] However, both Plott and Karl Nelson, another carrier lawyer, agreed that the courts,

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[6] Minutes, 1/22/02, 14,684-686, Exhibit C hereto.

[7] Minutes, 1/22/02, 14,680.

preferably federal court, would be the place to challenge such a County action. The chief basis for the challenge, they agreed, would be federal preemption of the County's authority to suspend their clients' operations.[8]

Bill 93-01 became effective March 8, 2002, 45 days after its adoption. Under Section 332(c)(7)(B)(v) of the Communications Act, any facial challenge to the ordinance should have been filed in federal or state court no later than April 8, 2002.[9]

County interaction with carriers. Around the time of the engineering consultant's Final Report on the interference study a year ago, the County began to solicit -- with varying success -- the cooperation of the interfering wireless providers. From an earlier defense of "we're operating legally," the carriers moved toward recognition of the broad scope of the interference problem and the importance of their help in resolving it. At a meeting in July of 2001 which included Motorola as the supplier of the existing 800 MHz public safety radio system, the County explained its need for carrier system site location and operating data. Nextel and Verizon supplied the information, but Cingular demurred, citing business sensitivity.

In October, the County started system-wide testing for interference -- still without the Cingular data. On October 19, 2001, County Executive Janet Owens wrote to Cingular Chief Executive Officer Stephen Carter, identifying "at least 10 locations within Anne Arundel County where emergency communications are negatively impacted by signals transmitted by Cingular

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[8] Audio tape # 2, 1/22/02 public hearing. Cingular asserts (Opposition, 6) that its challenge is in the nature of *ultra vires* and thus differs from the court challenge hypothesized by its other counsel at the January 22nd hearing. This is a distinction without a difference. The issue is the same: County authority to adopt a section in the zoning ordinance. The proper forum, as stated by Cingular counsel at the hearing, is a court.

[9] Arguably, the 30-day window for judicial review closed on February 21st, but the point need not be debated here since no challenge was lodged between February 21st and April 8th. Cingular's Petition to the FCC is dated April 23rd. The Petition may be nothing more than the default product of a missed court deadline.

Wireless." Ms. Owens requested Mr. Carter to "assign someone from your staff with decision-making authority to assist Anne Arundel County, Maryland in remediating the ongoing interference problem."[10]

Three weeks later, Cingular responded and agreed to provide the system data needed for a complete County-wide interference test. The last of the requisite Cingular information was provided in early December and the system-wide tests were then completed. From these tests emerged the 41 dead spots referred to by Police Chief Shanahan at the first public hearing on amending the wireless zoning ordinance. Significantly, half the zones exhibited this degradation even when a receiver (XTS) far superior to the County's STX handset was used.

Prompted by a concern that there were no easy fixes to the interference problem, and that degradation would increase unless the County could address the situation through zoning, the County Council adopted the amendments in Bill 93-01. The County and the carriers continued to talk.

Eight days after adoption of the legislation, counsel for Cingular wrote to the County Executive "to begin a dialogue about the ramifications of the recently passed Bill 93-01 and the potentially disruptive consequences of that Bill on Anne Arundel County and the local telecommunications industry." The County Attorney replied that the County was "amenable to establishing a Review Committee as suggested in your letter . . .to discuss potential amendments to Commercial Telecommunications Facilities, Bill #93-01."[11] Shortly thereafter, a list of participants and an opening agenda for the Review Committee were developed.

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[10] Exhibit D hereto.

[11] Exhibit E hereto.

Wireless provider representatives met with County attorneys and planners on March 21, 2002. Besides the carriers appearing at the earlier public hearings, Sprint PCS attended. A summary prepared April 9th by counsel for two of the carriers indicates that the discussion in the Review Committee was as wide-ranging as the presentations at the legislative hearings, including "RFI/RFE issues" along with what the industry called "pure zoning" matters -- setbacks, scope of search for alternate sites, notice to nearby property owners and the need for "pre-filing" of carrier siting plans.

Although the author of the summary concluded that the carriers and the County would have to "agree to disagree" about whether commercial interference to public safety communications could be a basis for County decisions on the placement, construction and modification of personal wireless facilities, the summary indicates that the Review Committee discussed ways "to make the existing ordinance practicable in its application." The discussion covered each of the ordinance amendments later challenged by Cingular's Petition to the FCC. Suggestions for changes included the zoning certificate of use at Section 10-125(J), notably the insertion of a "cure" period prior to any County decision to revoke. Also discussed were the RFE requirements at Section 10-125(K). Again, proposals were offered to rewrite the section rather than remove it. Often, these drew upon language in the ordinances of neighboring jurisdictions.

As late as April 19th, four days before Cingular filed its Petition at the FCC, the carrier counsel who prepared the Review Committee meeting summary wrote the County Attorney as follows:

> The next logical step is probably for the County to draft some language, based upon our discussions, which reflects the County's position. We can then move the discussions forward.

On April 23rd, the day Cingular filed its Petition, one of the carriers on the Review Committee sought a waiver of the County's new requirement of a "certificate of non-interference," basing the request in part on understandings reached in the Review Committee.

County appeals to the FCC. In late 1998, the County's Chief of Telecommunications, Bill Taylor, wrote the FCC about interference to the County's 800 MHz communications system. The federal agency sent technical representatives to on-site tests conducted in January of 1999. A follow-up FCC letter in February of that year acknowledged that the interference existed, as to which "from the beginning, it appeared that the affected receivers were at fault and not the cellular transmitters." The letter advised:

> A filter correcting the problem could be placed on the police vehicles, but would typically be too large to fit on individual hand-held radios. Another solution would be to replace the portable transceivers with units having better adjacent channel rejection specifications.[12]

Motorola concluded otherwise, saying that the FCC's suggestion to install RF filters between the antenna jack and the antenna of the STX portable was "impractical" and that "degradation levels are somehow related to the level of cellular telephone traffic at specific times of the day." The County was left without a remedy for the interference. A year later, Police Chief Shanahan wrote to FCC Chairman William Kennard and other Commissioners asking for practical assistance. Reciting the earlier FCC staff recommendation that the County purchase radios that could better reject adjacent channel signals, the Chief said: "Motorola does not currently manufacture such a portable transceiver. We continue to be at a loss for a means to resolve this issue."[13]

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[12] Exhibit A hereto.

[13] Exhibit F hereto.

These, then, are the antecedents of the challenged ordinance: (1) Early identification of interference to County public safety radios; (2) for which FCC and carrier help was sought; (3) without useful results; (4) until the County a year ago hired its own technical consultant and undertook to survey the totality of the problem system-wide; (5) by which time the FCC and the carriers had begun to acknowledge the reality of commercial interference that could not be eliminated simply by changing handsets.

DISCUSSION

Effectively thrown back on its own resources to protect public safety communications, Anne Arundel County has taken reasonable steps in keeping with the FCC's support for local mitigation efforts. The County has surveyed and documented the causes of the commercial interference to its 800 MHz radio system and is working with the responsible carriers to mitigate or eliminate the dangerous dead zones produced by the interference. The County has adopted an ordinance which may not have been welcomed by the wireless carriers, but nonetheless has become a basis for cooperation that was sorely lacking until legislative drafting began a year ago.

Now is not the time to issue the requested declaratory ruling. County/carrier discussions on possible revision of the ordinance have been useful. The Commission has discretion to decline to rule. Even if it chooses to rule, it can provide guidance short of preemption. In any event, the Petition is without merit and should either be dismissed for want of jurisdiction or denied.

I. THE COMMISSION SHOULD DECLINE TO RULE AT THIS TIME.

The Commission has implemented by rule, at Section 1.2, the statutory authority to issue a declaratory ruling.[14] In its sound discretion, the FCC need not respond affirmatively to every request for a declaratory ruling,[15] so long as it explains any decision not to rule.[16] Apart from the Commission's lack of jurisdiction incorporated here in the County's earlier Motion to Dismiss, there are several good reasons not to rule at this time.

First, as indicated above, the ordinance is a work in progress and a ruling now might well disrupt the current cooperation between carriers and County toward possible revision of the new zoning regulations. Any ruling favoring one side or the other could well cause the favored party to leave the table, so to speak.

Second, Cingular's challenge appears to be to the ordinance on its face, not to any unlawful application of the local legislation:

> Cingular's Petition does not allege that the County violated any of the provisions enumerated in Section 332(c)(7)(B), nor does Cingular challenge a final zoning decision.[17]

The Commission was confronted with a similar situation when the Minnesota Department of Transportation asked for a declaratory ruling that it could enter into an exclusive lease with a developer for the purpose of exploiting commercially the value of highway rights-of-way in

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[14] Administrative Procedure Act, 5 U.S.C.§554(e), which provides: "The agency . . .in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."

[15] *Yale Broadcasting v. FCC*, 478 F.2d 594, 602 (D.C. Cir 1973), cert. den. 414 U.S. 914.

[16] *Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 747 (D.C. Cir 1986).

[17] Opposition, 6. In the initial Petition, Cingular had asserted without support a general claim of harm. (Petition, 9, n.33) We respectfully submit Petitioner cannot have it both ways. If Cingular is harmed by a zoning decision unlawful for any reason, the remedy lies in court. If not harmed, the request for relief is premature.

communications uses.[18] The Commission was troubled by aspects of the arrangement and declined to issue the ruling. Preferring to wait for the actual implementation of the scheme to see if there were anti-competitive effects actionable under 47 U.S.C.§253, the Commission said that "depending on how the agreement is implemented, the potential competitive effects that fuel our concerns may be largely or wholly ameliorated." 14 FCC Rcd at 21700.

So here, the Commission is entitled to await application of the challenged provisions of the County ordinance. Outcomes will not be long in emerging. On April 23rd, AT&T Wireless sought to be excused from non-interference certification to install certain 1900 MHz equipment at each of its County sites, and asked for expedited consideration of its request.

The enforcement language in the sections primarily challenged by Cingular, 10-125(J)(2) and (K)(2) is, of course, in keeping with the lawful discretion available to the County.[19] For violation of conditions in conditional uses, certificates "may" be revoked. The contingent status of these clauses is further evidenced by the discussions in the Review Committee on the possible insertion of a "cure period" prior to any enforcement action.

Another reason to decline or defer any affirmative response to the Cingular Petition is the existence of the complex rulemaking[20] now exploring broader solutions to the 800 MHz interference issues than have been possible under the local mitigation approach previously endorsed by the Commission. Multiple re-banding proposals for the 800 MHz have been offered to date, and more can be expected. A rapid conclusion to the rulemaking is not likely. In the

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[18] Memorandum Opinion and Order, CC Docket 98-1, FCC 99-402, released December 23, 1999, 14 FCC Rcd 21697.

[19] At the public hearing of January 22, 2002, Nextel counsel David Plott stated that "enforcement is discretionary on the County's part." Exhibit C, Minutes, 14,680.

[20] Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, FCC 02-81, released March 15, 2002.

long interim, carriers and local zoning authorities will need to continue to work together in the mitigation mode. Now is not the time to skew that negotiation process to one side or the other.[21]

II. THE CINGULAR PETITION SHOULD BE DENIED, IF NOT DISMISSED.

Cingular asks for two different forms of relief, neither of which is justified. In the original Petition, the wireless carrier asks for preemption of the entire County ordinance. (Petition, 9)[22] In the Opposition to the County's Motion to Dismiss, Cingular asks for preemption of the ordinance "insofar as it regulates RFI." The revised prayer was necessary, of course, because Cingular has provided neither evidence nor reasons for overturning the bulk of the legislation. But the revision does not help Cingular's case because the challenged portions of the ordinance either are clearly lawful or have not yet been adjudicated unlawful by courts of competent jurisdiction.

A. Definition of Commercial Telecommunications Facility.

Cingular finds the definition at Section 1-101(14B) unlawful but never says why. The challenge is utterly without foundation and must be denied.

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[21] As indicated by the Minnesota proceeding discussed above, the Commission can provide guidance short of a preemptive declaration.

[22] However, we would agree with the overly broad initial prayer, insofar as it recognizes that the ordinance is a unitary zoning act that should be adjudicated in the single forum of a court. It makes no sense -- here or in later zoning cases -- for the FCC to rule on alleged interference regulations while the courts must deal with an undefined quantum the carriers call "pure zoning." Watch for commercial providers in search of a single forum to attempt to transform every act of zoning into an interference regulation that can be tried at the FCC. The Commission is at risk of inviting more zoning jurisdiction than it ever wanted or Congress ever intended it to have.

B. Zoning Certificate of Use.

Section 1-128(a) calls for a certificate whenever a commercial telecommunications facility ("CTF") is altered. Alteration is defined to include "change in configuration, transmit frequency or power level." Again, Cingular does not say much except that similar terms are found in a Connecticut town ordinance invalidated by the FCC in 1987. Apparently, Petitioner takes the terms to represent an effort to regulate radio frequency interference ("RFI").

In fact, the collection and verification of this kind of information, through the certification process, is not a direct regulation of RFI. Section 1-128 contains no mechanism for the County to order the carrier to change its chosen new configuration, transmit frequency or power level. Instead, the certification helps to assure the collection and updating of reliable information essential to local efforts to mitigate commercial interference to 800 MHz public safety radio systems.[23] To that extent, the ordinance provision hardly conflicts, but actually is consistent, with FCC endorsement of local interference mitigation efforts.

Subsection (c) of Section 1-128 also is included on Cingular's blacklist but no reason for this is given. No part of the challenge to the section is justified and the challenge must be denied.

C. Compliance with Radio Frequency Radiation Safeguards.

Cingular treats Section 10-125(K) as an interference regulation, but that is not its purpose. The subject is radio frequency radiation ("RFR"), and represents the County's perfectly lawful effort to assure itself that a carrier is complying with the FCC standards set forth at

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[23] The point is discussed above at some length, under the caption "County interaction with carriers." Nextel and Verizon readily supplied their system databases for the interference survey work, and even Cingular belatedly agreed to do so.

Section 1.1310 of the agency's rules, 47 C.F.R.§1.1310. Section 332(c)(7)(B)(iv) only precludes local governments from regulating beyond the federal RFR guidelines.

It is worth noting that the debate in the joint County/carrier Review Committee was not about whether the County was entitled to ask for compliance with the federal RFR standards but whether self-certification would be sufficient without the need for site-by-site testing.[24] The County's reach in subsection (K)(2) was never intended to be greater than the reliance on federal standards in (K)(1). That is, a carrier's cure of any non-compliance with federal standards -- which, of course, is mandatory -- could be expected to save the carrier from local revocation of its zoning certificate of use. Petitioner's challenge to 10-125(K) should be denied.[25]

D. Non-Interference to Public Safety Communications.

Cingular cites the *Johnson County* and *Burlington Broadcasters* decisions in the federal appellate Tenth and Second Circuits for the proposition that "field preemption" -- that is, Congressional intent that the FCC occupy the entire field of RFI -- renders unlawful Section 10-125(J) of the County ordinance.[26] The County respectfully disagrees. Although the Fourth Circuit, which is home to Anne Arundel, has not addressed the precise questions answered in

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[24] See discussion beginning at note 11, *supra*. Courts recently have placed some useful gloss on Section 332(c)(7)(B)(iv). In *New York SMSA Limited Partnership and Crown Atlantic Company v. Town of Clarkstown*, 99 F.Supp.2d 382, 392 (SDNY 2000), it was found acceptable for the Town to choose one site over another on the basis of superior RF hazard protection because no carrier was prohibited from providing service by that choice. *Sprint Spectrum v. Mills*, 283 F.3d 404, 416-21 (2d Cir. 2002), held that when local governments act in a "proprietary" fashion -- that is, as owners in a marketplace -- they can restrict RFR from antennas sited on their land more narrowly than the federal safeguards.

[25] The challenge could also be dismissed because it is founded on RFI rather than RFR regulation, but either way Petitioner's case fails.

[26] Petition, 6-8; *Southwestern Bell Wireless v. Johnson County Board of County Commissioners*, 199 F.3d 1185 (10th Cir. 1999); *Freeman v. Burlington Broadcasters*, 204 F.3d 311 (2d Cir. 2000).

those decisions, it has spoken repeatedly on the sharing of local and federal authority under Section 332(c)(7) of the Communications Act. Addressing the evidentiary value of non-expert opinion in zoning cases, the Court declared:

> Appellees, by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, non-expert citizens; that is, to thwart democracy. The district court dismissed citizen opposition as "generalized concerns." 979 F. Supp. at 430. Congress, *in refusing to abolish local authority over zoning of personal wireless services*, categorically rejected this scornful approach.[27]

To the same effect are the words of Judge Michael Boudin, a former Washington, D.C. communications lawyer, now sitting on the First Circuit:

> The statute's balance of local autonomy subject to federal limitations does not offer a single "cookie cutter" solution for diverse local situations, and it imposes an unusual burden on the courts. But Congress conceived that this course would produce (albeit at some cost and delay for the carriers) individual solutions best adapted to the needs and desires of particular communities. If this refreshing experiment in federalism does not work, Congress can always alter the law.[28]

Congress not only refused to abolish, but strongly affirmed, such local authority. Section 332(c)(7)(A) reads:

> Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless service facilities.

Congress did not qualify this statement with any discussion of reasons or motives for local placement decisions. The face of the statute is clear and unequivocal.

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[27] *AT&T Wireless PCS v. Virginia Beach*, 155 F.3d 423, 431 (4th Cir. 1998), emphasis added.

[28] *Town of Amherst v. Omnipoint Communications*, 173 F.3d 9, 17 (1st Cir. 1999)

Cingular's resort to legislative history (Opposition, 6, n.15) is unavailing. If Congress speaks directly to the issue, that is the end of the inquiry.[29] Moreover, the legislative history is unhelpful because it does not explain what it means by "general authority over radio telecommunications" but simply mentions the "authority to regulate the construction, modification and operation of radio facilities" -- much the same subject matter recited in the pronouncement of exclusive local authority at Section 332(c)(7)(A).[30]

To be sure, *Burlington Broadcasters* opined that:

> In light of the FCC's pervasive regulation of broadcasting technology, this provision is most reasonably understood as permitting localities to exercise zoning power based on matters not directly regulated by the FCC.[31]

But "broadcasting technology" is not our predicate here and we are not dealing with a question of broadcast (or CMRS) interference to home appliances, as was the *Burlington Broadcasters* court. We are dealing with the much more serious matter of interference to public safety radio communications.

Thus, our case greatly resembles *Hillsborough County v. Automated Medical Labs*, 471 U.S. 707 (1985). There, the Supreme Court refused to preempt local regulation because the federal agency in question, the Food and Drug Administration, had expressly declined to do so. There, as here, the subject was one traditionally reserved to state authority -- health in that case,

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[29] *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[30] H.R. Conf. Rep. No. 104-458, 209 (1996). The change is the word "operation." But for reasons discussed throughout, the County is not seeking to control carriers' operations, only their feasibly optional placements of CMRS transmitters.

[31] 204 F.3d at 323.

public safety in ours.[32] While there is no FCC refusal to preempt comparable to the FDA decision, there is the superior election of Congress not to limit the authority of state and local governments over the placement, construction or modification of personal wireless facilities -- for whatever reason.

The *Johnson County* order distinguishes *Hillsborough County* on the ground that the FCC, in the *Mobilecomm* ruling of 1987, stated its intent to preempt local regulations on RFI.[33] In finding field preemption of RFI, however, the Tenth Circuit takes no account of Section 332(c)(7)(A), which reserves unqualified local zoning authority over placement, construction and modification of personal wireless facilities. We respectfully suggest that the 1996 Congressional affirmation of local authority in Section 332(c)(7)(A) is superior to the 1987 declaration of the FCC. Congress has not occupied the field of zoning placement under discussion here.

CONCLUSION

For the reasons discussed in the County's earlier Motion to Dismiss, the Cingular Petition can only be heard in a court. For the reasons discussed above, the Commission should decline to

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[32] *See also*, *Casino Ventures v. Stewart*, 183 F.3d 307, 310 (4th Cir. 1999) (Gambling within state police power commanding "cautious preemption analysis."); *Abbot v. American Cyanamid Co.*, 844 F.2d 1108, 1112 (4th Cir. 1988) (Presumption against preemption "is even stronger with state or local regulation of matters related to health and safety.")

[33] 2 FCC Rcd 5519, discussed briefly in the County's Motion to Dismiss, 5.

issue a ruling, or defer any answer to a more propitious time. On review of the merits, the Petition should be denied.

Respectfully submitted,

ANNE ARUNDEL COUNTY

By _____

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June 10, 2002

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Exh. A

Federal Communications Commission
Compliance and Information Bureau
Columbia Office
9200 Farm House Lane
Columbia, Maryland 21046
301-725-1996

February 9, 1999

Case No:99CF46

Mr. Bill Taylor
Chief of Telecommunications
Anne Arundel County Telecommunications Division
P.O. Box 6675 Mail 9304
Annapolis, MD 21401

Dear Mr. Taylor:

As you are aware, this office has, over the past several months, conducted an investigation concerning interference to the Anne Arundel County Police Department's trunked radio system. This investigation has been very thorough, and has included working with members of Motorola, the manufacturer of the police radio system, Bell Atlantic Mobile, Cellular One, and others associated with the problem. From the beginning, it appeared that the affected receivers were at fault and not the cellular transmitters.

On the evening of January 19, 1999, we were able to duplicate the interference in the area of the intersection of Route 100 and Route 2. It was found that the interference from the Bell Atlantic Cellular radio system produced a degradation in receiver sensitivity of approximately 10 dB. When the Cellular One system was activated, there was approximately 40 dB of degradation to the Anne Arundel County receiver under test. The interference from Cellular One obscured any interference received from Bell Atlantic. A notch filter, provided by Bell Atlantic, was connected to the receiver under test, eliminating all noted interference. This filter provided less than 1 dB loss at the frequencies used by Anne Arundel County and 15 to 20 dB loss at the cellular radio frequencies. No technical deficiencies could be detected in the signals transmitted by the cellular companies.

The FCC has concluded, based on the results of these tests and measurements, that the interference received by the police department mobile radios, while in the vicinity of certain cellular radio sites, is not caused by in band signals produced by the cellular phone transmitters. By this, it is meant that we observed no radio signals on any of the police channels between 856 MHz and 860 MHz that were the source of the police interference. The interference is due solely to the receiver's inability to reject, undesired, adjacent channel signals, an electromagnetic compatibility problem. We further conclude, that the solution to the problem is to protect the affected receivers from adjacent channel signals through the use of external filtering. A filter correcting the problem could be placed in the police vehicles, but would typically be too large to fit on individual hand-held radios. Another solution would be to replace the portable transceivers with units having better adjacent channel rejection specifications.

It is suggested that any transceivers that Anne Arundel County may purchase in the future have adjacent channel rejection specifications at least equal to that of any transceiver which can be demonstrated to function properly (interference free) in the environment in which they will be used.

Sincerely,

Charles Magin
District Director

MOTOROLA

Communications Enterprise
Land Mobile Products Sector

Drive

Eastern FTR Group

Address Reply to
7230 Parkway

Hanover, MD 21076
(410) 712-6200

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Is considered confidential

8 February, 1999

Memo to: **Ben Kristoff**

From: **Dave Lester**

cc: **Leanne Kolman**
Gary Minard
Brian Swann
Tim Gizas
Mike Allen
Bob Bovee
Colleen Chaddock
Mary Brommar
Pat Sturman

SUBJECT: **Trip Report**
Anne Arundel County MD
RFI Tests on 19 January, 1999

OVERVIEW

Beginning in the second half of 1996, Anne Arundel County ("the County") has complained of radio frequency interference (RFI) in two specific localized regions of the County's Eastern District.

These two localized regions are:

Region 1. **Maryland Route 100. Specifically, between the overpass intersection of Maryland Route 10 and Route 100 and the intersection of Maryland Route 2 (Ritchie Highway) and Route 100. I refer to the cellular tower that covers this region as the "Marley Tower" due to its proximity to the Marley Station Mall.**

We detected a small but noticeable drop in the receiver degradation when Bell Atlantic finally was off the air. We then asked for the Cellular One system to shut down. When it was off the air, the degradation disappeared.

With the reference 20 dB quieting level still being generated, we asked for Cellular One to come back on the air at the Marley Tower. When it was at full power, we measured the resulting degradation at 40 dB. When Bell Atlantic came back on the air, we measured an additional 10 dB.

INTERIM CONCLUSIONS AND PLAN

Of the four lanes of Maryland Route 100, the westbound lanes are located nearest (within 300 feet) to the Marley Tower. Also, Route 100, where it passes the Marley tower, is an elevated road. I estimate that this section of Route 100 is 40 feet higher than the base of the Marley Tower.

This elevation means that the "Marley" portion of Route 100 is 40 feet closer to the main, concentrated beam of the high-gain cellular antennas that are mounted on the southeast face of the triangular antenna mounting structure.

The two sources of receiver degradation account for the total 50 dB of receiver degradation that was being created on the night of 19 January.

Jim Walker, one of the FCC engineers, recommends the installation of RF filters between the STX antenna jack and the STX antenna, to filter out frequencies above 860.500 MHz. The physical restrictions of such a resolution make the resolution impractical.

The test results are consistent with the same quieting tests that I have conducted over the past 2.5 years. My previous tests have shown that the degradation is worst during the two daily rush hours. It is at its lowest ebb during the three hours after midnight. From 6:30 a.m. to 9:00 a.m. and from 3:30 p.m. to 7:00 p.m., I have measured the degradation level to be 50 dB +/- 5 dB. From 10:00 p.m. to 2:00 a.m., the degradation typically is reduced to 18 dB.

These degradation level shifts are consistent from business day to business day.

It is my opinion that the degradation levels are somehow related to the level of cellular telephone traffic at specific times of the day.

The Marley and Sharonville regions are the only two County localities where officers have reported problems with receiver degradation that appears to be caused by nearby cellular radio transmissions.

Over the past 2.5 years. I have discovered that when rain is falling, there is no detectable degradation in either Region 1 or 2. It is unclear why the degradation would cease when the environment is wet. It is possible that there is an electro-metallic effect taking place on the cellular towers. At any rate, this discovery needs to be investigated further.

When comparing the Motorola MTS-series portable radio to the STX, the MTS portable is affected less by degradation, but the radio is not immune to the noise.

Tests have shown that when the STX portable radio suffers with degradation in regions 1 and 2, the Motorola 800 MHz. SPECTRA mobile is not affected by receiver degradation at all.

Over the next several days, I plan to conduct the same tests at other Cellular One sites where the same style of tower, antennas, and antenna mounts are installed. My purpose will be to determine if similar Cellular One installations radiate the 800 MHz receiver degradation.

Regards,

Dave Lester

the Committee hoped to achieve - it was a vision and a plan for the next 20 for the Edgewater/Mayo Peninsula.

Mr. Josephson also thanked the Committee on the time and effort they put in to preparing the Plan.

Mr. Klocko extended his sincere appreciation to Mr. Edmondo and the Committee.

Mr. Josephson mentioned there were a couple of housekeeping items that needed to be mentioned. He stated some of the Draft Small Area Plans were missing pages 61-72. There should also have been a map between pages 17 and 18. This will require an amendment to include those missing pages back in the Plan. He stated letters were sent out to property owners to notify them of upcoming hearings. There were two letters sent out advising the property owners that the Administration was proposing a change in their zoning, when in fact no changes are planned. He went over the highlights of business revitalization, transportation, environment, community facilities, and some of the major land use changes that are proposed in of the Edgewater/Mayo Plan.

The following persons spoke on Bill No. 92-01:

John Steffey, Annapolis
Fred Hunt, Edgewater
Bill Edmonston, Edgewater
Dee Newman, Edgewater
Peter Quirk, Edgewater
Mike Roblyer, Annapolis
David Simison, Annapolis
John McCann, Edgewater
Dr. Robert Noel, Edgewater
Joan Scott, Edgewater
John Greene, Edgewater
Richard Kozak, Edgewater
Chuck Weinkon, Edgewater
James A. McGuire, Edgewater
Royce Ball, Edgewater
Fred Riedel, Edgewater
Jack Greer, Edgewater
James Davis, Edgewater
Michael Vernon, Annapolis
Samuel Brown, Annapolis
Sandra Davis, Edgewater

There was no one else present who wished to speak, and the hearing was concluded.

BILL NO. 93-01

The Chairman called for the public hearing on Bill No. 93-01, an Ordinance concerning: Zoning - Commercial Telecommunication Facilities - For the purpose of adding certain systems to and removing certain systems from the definition of commercial telecommunication facility; requiring owners and users of commercial telecommunication facilities to obtain zoning

certificates of use; altering certain setback requirements in certain districts for certain commercial telecommunication facilities; requiring applicants for permits and certificates of use for commercial telecommunication facilities to post security for removal of the facilities; requiring applicants for permits for commercial telecommunication facilities to notify property owners in a certain area of the anticipated filing of the application; requiring applicants for certificates of use for commercial telecommunication facilities to provide certification that their use will not degrade or interfere with the County's public safety radio systems; requiring certification regarding radio frequency emissions; requiring mitigation of any adverse visual impact when a commercial telecommunication facility is located within sight of certain property; requiring applicants for special exceptions for commercial telecommunication facilities to show exhaustion of efforts to locate on commercially zoned property and to co-locate on existing facilities; adding additional requirements for special exceptions for commercial telecommunication facilities; and generally relating to commercial telecommunication facilities; and the Administrative Officer read the title.

James Cannelli, Assistant Planning and Zoning Officer, was accompanied by Thomas Shanahan, Police Chief, Roger Simmons, Fire Administrator, Lori Blair, Senior Assistant County Attorney, and Spurgeon Eismeier, Central Services Officer. Mr. Cannelli stated adoption of the legislation would require cellular phone companies to notify neighbors before erecting a cellular tower and revoke permits for towers that interfere with public safety communications systems, county police, and residents in the Edgewater community of Poplar Point.

Mr. Eismeier stated there is a capital project for the upgrading of the county's existing 800 megahertz public radio system, which is used by the Police, Fire, Sheriff, and other county agencies. As part of the capital project the telecommunications division of the Office of Central Services solicited proposals and subsequently hired a consultant engineering company to design the radio system that will serve the present and future needs of public safety and other users in the county. The first phase of the design was to survey the existing system for performance purposes throughout the entire county. There have been several areas in the county where transmission was impeded by interference encountered as a result of the proximity to other telecommunication towers with commercial users antennas located on them. The files were given to the FCC two years ago seeking their assistance with the problem. Records reflect that there was no response from FCC. The extensive survey and testing performed by our consultant and staff have clearly shown that many more areas of interference and degradation exist today which are caused by the transmission of radio waves from cell phone carriers under certain conditions. The Administration will submit the appropriate information on interference to the FCC. However, in order for the design and ultimate construction of our new public safety radio system, there must be control of future telecommunication facilities to ensure they will not increase the interference problem. There must be a mechanism that will allow us to mitigate the existing areas of interference.

Chief Shanahan stated this a crisis in public safety and an emergency for the County. There were eight "dead spots" two years ago in the county. He stated "dead spots" refers to a location in the County where a police officer cannot receive a call into his car or the officer cannot transmit out of the car to police headquarters. He stated there are a total of 41 "dead spots" in the County today. The cause of the dead spots is the installation of cellular towers at those locations.

In response to Mr. Klosterman's question, Mr. Shanahan stated the $15 million allotted to upgrade our current radio system would improve the situation today. There is no guarantee, however, that without that legislation the new system will not be overwhelmed with the cellular industry down the road.

Mr. Klosterman stated the bill is divided into two pieces; one is the RF interference and the other has to do with zoning setbacks. One Federal law preempts any attempt by local governments from regulating RF interference. He asked if the County Council has the authority to regulate telecommunication which is a federal issue.

Lori Blair, Senior Assistant County Attorney, stated that Federal law 47U.S.C § 332(c)(7) grants a preservation of local zoning authority to the local governments. This is a federal enactment which says that, except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government, or instrument thereof, over decisions regarding the placement, construction, and modification of personal wireless service facilities. She stated there is a provision that indicates that they cannot regulate the placement, construction, and modification of personal wireless facilities on the basis of environmental affects of radio frequency emissions. It does not indicate that it takes away the zoning authority with respect to other types of radio frequency issues.

In response to Mr. Klosterman's question as to whether the bands can be traded to alleviate the problem, Mr. Eismeier stated the frequencies in Nextel are very close and interwoven with the County's. They have agreed to do a channel swap that would move the County to the end the band and move Nextel further away. This is one step towards dealing with the interference and degradation problem. The upgrading of the entire system in accordance with the capital project is the appropriate process to go through. The channel swapping is one issue. In order to design the system there needs to be control for any future interference problems or the County will be designing a system that is subject to future interference from uncontrolled telecommunication structures and facilities being built. This is a major step in finishing designing a system that will not be subject to further interference.

Chief Simmons is concerned about the system today which puts police officers, firefighters, and paramedics in a very difficult and unsafe situation. Also, the County should make advances on a regular technological basis from year to year with the other telecommunication communities.

In response to Mr. Burlison's question, Mr. Eismeier stated Howard County, Queen Anne's County, Calvert County, Montgomery County, and Harford County have upgraded their public safety systems.

Mr. Eismeier spoke on the interference and degradation of the system. He stated this ordinance allows us to go back to the existing known towers or telecommunication facilities which are causing interference. They are obligated under this bill to comply, in order to receive their zoning certificate of use. This ordinance requires them to have the certificate in order to operate in the County.

Mr. Cannelli summarized the changes that are being proposed in the bill.

There was a lengthy discussion on cell towers being installed near residential areas.

The following persons spoke on Bill No. 93-01:

Kim McCoy Burns, Esq., Annapolis, spoke in opposition.
David Plott, Esq., Annapolis, spoke in opposition.

Sean Hughes, Nextel Communications, Bethesda, spoke in opposition.
Winfield Vining, Edgewater, spoke in support.
Capt. Joseph Smith, Edgewater, spoke in support.
Karl Nelson, Severna Park, spoke in opposition.
Holton Shipman, Edgewater, spoke in support.
William Kolb, Edgewater, spoke in support.
Steve Resnick, Annapolis, spoke in opposition.
Keith Wright, Severna Park, spoke in support.
Bret Ballam, Pasadena, spoke in support.
Daniel Ennis, Crofton, spoke in support.
Ed Donohue, spoke in opposition.
James Michael, Washington D.C., spoke in opposition.

ADJOURNMENT

There being no further business, on motion of Mrs. Beidle, seconded by Ms. Vitale, the meeting was adjourned at 11:00 P.M.

Respectfully submitted,

by Terri L. Cosey

for Judy C. Holmes
Administrative Officer

telecommunication facilities to post security for removal of the facilities; requiring applicants for permits for commercial telecommunication facilities to notify property owners in a certain area of the anticipated filing of the application; requiring applicants for certificates of use for commercial telecommunication facilities to provide certification that their use will not degrade or interfere with the County's public safety radio systems; requiring certification regarding radio frequency emissions; requiring mitigation of any adverse visual impact when a commercial telecommunication facility is located within sight of certain property; requiring applicants for special exceptions for commercial telecommunication facilities to show exhaustion of efforts to locate on commercially zoned property and to co-locate on existing facilities; adding additional requirements for special exceptions for commercial telecommunication facilities; and generally relating to commercial telecommunication facilities; and the Administrative Officer read the title.

James Cannelli, Assistant Planning and Zoning Officer, accompanied by Lori Blair, Senior Assistant County Attorney and Spurgeon Eismeier, Central Services Officer, urged the Council to adopt the bill, as amended. The bill addresses the issues that were raised by the citizens and by the public safety officials.

Mr. Eismeier stated the requirement for certification of telecommunication facilities is absolutely critical to the public safety system in Anne Arundel County. He asked for the Council's favorable support of the bill.

The following persons spoke on Bill No. 93-01, as amended:

Carroll Dove, Pasadena, spoke in favor
Capt. Joseph Smith, Edgewater, spoke in support
Edward Wayson, Annapolis, representing Cingular Cell Phones, spoke in opposition
Pat Huber, Annapolis, spoke in favor
Liles Creighton, Annapolis, spoke in favor
Karl Nelson, Severna Park, spoke in opposition
David Plott, Esq., Annapolis, representing Nextel Communications, spoke in opposition
Sean Hughes, Nextel Communications, Bethesda, spoke in opposition
Winfield Vining, Edgewater, spoke in favor

Mr. Klocko questioned what procedures would be involved if the County finds that Nextel Communications is interfering with public safety radio frequencies and they are issued some kind of notice.

Mr. Plott stated that enforcement is discretionary on the County's part. He was not able to give testimony on what response his client would have if the County took action and tried to suspend operation of their facility. He stated this is an issue of preemption since the federal law governing telecommunications has delegated the ability to regulate these communications to the FCC. If the Council should venture into that field in an attempt to regulate these communications at the County level by shutting down a facility which holds a valid federal license, the County is preempted by federal laws. Therefore, in his opinion, the County cannot regulate in that field.

In response to Mr. Klocko's question, Mr. Nelson explained the process of federal litigation.

Winfield Vining, Edgewater, spoke in favor.

There was no one else present who wished to speak, and the hearing was concluded.

BILL NO. 94-01 (As Amended)

The Chairman called for the public hearing on Bill No. 94-01, as amended, an Ordinance concerning: Personnel – Classified Service; Exempt Service – For the purpose of altering certain provisions regarding eligibility lists and related definitions; altering certain leave provisions; altering certain designated work weeks; adding minimum qualifications and class titles; altering pay grades; and adding and deleting class titles for certain classes; and the Administrative Officer read the title.

Mark Atkisson, Personnel Officer, accompanied by Trisha Hopkins, Assistant Personnel Officer, and Julie Sweany, Senior Assistant County Attorney, stated the bill is a proposed change to Article 8 of the Code, which deals with Personnel.

There was no one present who wished to speak, and the hearing was concluded.

BILL NO. 106-01

The Chairman called for the public hearing on Bill No. 106-01, an Ordinance concerning: Capital Budget and Program – Qualified Zone Academy Bonds – Additional Appropriation – For the purpose of amending the Capital Budget by providing an additional appropriation to Qualified Zone Academy Bonds; amending the Capital Budget and Program; and amending the Capital Projects Bond Ordinance; and the Administrative Officer read the title.

Ed Almes, Supervisor of Maintenance, Board of Education, stated the bill is a grant program to address maintenance and repair issues for selected schools.

There was no one present who wished to speak, and the hearing was concluded.

BILL NO. 108-01

The Chairman called for the public hearing on Bill No. 108-01, an Emergency Ordinance concerning: Department of Aging – Additional Appropriations – For the purpose of providing an additional appropriation of grant funds from an unanticipated source to the Department of Aging; and the Administrative Officer read the title.

Virginia Thomas, Director of Aging, accompanied by Levorn Bruce, Financial Administrator, asked for the Council's support of the bill.

Louise Beauregard, spoke in favor

On motion of Mr. Klocko, seconded by Mr. Klosterman, Amendment No. 11 was adopted by the following roll call vote:

Aye - Mr. Klosterman, Mrs. Murphy, Ms. Vitale, Mrs. Samorajczyk, Mr. Klocko, Mr. Burlison
Nay- None

Amendment No. 12

On page 3 of the amended bill, after line 43, add the following:

"Throughout the Plan, in each instance, delete any reference to 'service road(s)' and replace with 'access roads".

On motion of Mr. Klosterman, seconded by Mrs. Murphy, Amendment No. 12 was adopted by the following roll call vote:

Aye - Mr. Klosterman, Mrs. Murphy, Ms. Vitale, Mrs. Samorajczyk, Mr. Klocko, Mr. Burlison
Nay - None

Amendment No. 13

On page 3 of the amended bill, after line 43, add the following:

"On page 60 of the Plan, in paragraph four, after the second complete sentence ending with 'watersheds', insert:

'So long as the Lees and the neighboring communities reach a collaborative agreement embodying the terms of this Plan, the committee supports this use of the Lee property.'"

On motion of Mr. Klosterman, seconded by Mr. Klocko, Amendment No. 13 was adopted by the following roll call vote:

Aye - Mr. Klosterman, Mrs. Murphy, Mrs. Samorajczyk, Mr. Klocko, Mrs. Beidle
Nay - Ms. Vitale, Mr. Burlison

BILL NO. 93-01 (As Amended)

The Chairman called Bill No. 93-01, as amended, - An Ordinance concerning: Zoning - Commercial Telecommunication Facilities; and the Administrative Officer read a portion of the title.

Amendment No. 7

On page 3 of the amended bill, in lines 10 and 32, and in each instance, strike "structure PERMANENTLY LOCATED ON THE GROUND" and substitute "MONOPOLE OR TOWER"; in lines 10, 29, and 30, in each instance, strike the brackets; and in line 29 strike "complies" and substitute "COMPLY".

On page 5, in line 26, strike the brackets and strike "EACH STRUCTURE PERMANENTLY LOCATED ON THE GROUND", in lines 29 and 32, in each instance, strike "structure PERMANENTLY LOCATED ON THE GROUND", in line 29 after "each" insert "ACCESSORY STRUCTURE", and in line 32, after "each" insert "MONOPOLE". On page 6, in lines 5 and 6, strike "STRUCTURE PERMANENTLY LOCATED ON THE GROUND" and substitute "MONOPOLE".

On motion of Mrs. Beidle, seconded by Mr. Klocko, Amendment No. 7 was defeated by the following roll call vote:

Aye - Mr. Klocko
Nay - Mr. Klosterman, Mrs. Murphy, Ms. Vitale, Mrs. Samorajczyk, Mrs. Beidle, Mr. Burlison

Amendment No. 8

On page 2 of the amended bill after line 4, insert:

"BY repealing: Article 28, § 12-215.1(b)
Anne Arundel County Code (1985, as amended)";

after line 7 insert:

"SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland*, That Article 28, §12-215.1(b) of the Anne Arundel County Code (1985, as amended) is hereby repealed.";

and in line 8, strike "1. *Be it enacted by the County Council of Anne Arundel County, Maryland*" and substitute "2. *And, be it further enacted*". On page 5, in line 23, strike "(a)", bracket the "or", after the "or" insert a comma, and in line 24, after "district, " insert "MARITIME GROUP B, MARITIME GROUP C, OR OPEN SPACE DISTRICT".

On motion of Mr Klocko, seconded by Ms. Vitale, Amendment No. 8 was defeated by the following roll call vote:

Aye - Ms. Vitale, Mr. Klocko
Nay - Mr. Klosterman, Mrs. Murphy, Mrs. Samorajczyk, Mrs. Beidle, Mr. Burlison

Mr. Klosterman stated there are a lot of concerns on whether this is good legislation or not, although the intent is certainly good and public safety is a valid concern. He stated the Administration mentioned they would be taking a look at this bill and if they found a need to amend it, the Administration would be down some time before the Council with another bill.

Mr. Cannelli stated a new bill could be introduced within the next couple of months. The cell tower companies are working with the Administration to deal with the public safety issue.

Mr. Klosterman stated, based on Mr. Cannelli's testimony, that the Council could expect to see a bill in March.

Mr. Cannelli stated in a couple of months, March or in the beginning of April.

Mr. Klosterman stated for the record March.

Amendment No. 9 (WITHDRAWN)

On page 4 of the amended bill, strike beginning with " NOT" in line 22 down through the first "APPLICATION," in line 23 and substitute "AT THE TIME OF APPLICATION".

Mrs. Beidle requested that Mr. Cannelli address the screening for the ground boxes.

Bill No. 93-01, as amended, was passed by the following roll call vote:

Aye - Mr. Klosterman, Mrs. Murphy, Ms. Vitale, Mrs. Samorajczyk, Mrs. Beidle, Mr. Burlison
Nay - Mr. Klocko

BILL NO. 94-01 **(As Amended)**

The Chairman called Bill No. 94-01, as amended - An Ordinance concerning: Personnel – Classified Service; Exempt Service; and the Administrative Officer read a portion of the title.

Bill No. 94-01, as amended, passed by the following roll call vote:

Aye - Mr. Klosterman, Mrs. Murphy, Ms. Vitale, Mrs. Samorajczyk, Mr. Klocko, Mrs. Beidle, Mr. Burlison
Nay - None

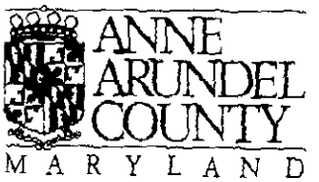
BILL NO. 105-01

The Chairman called Bill No. 105-01 – An Ordinance concerning: Bog Protection Program – For the purpose of amending the Floodplain Management, Sediment Control and Stormwater Management, Subdivision, and Zoning articles of the County Code to provide for a Bog Protection Program; and the Administration Officer read a portion of the title.

Amendment No. 1

On page 1, in line 23, after "Protection" insert "Program". On page 2, in line 4, strike "11-102(b)" and replace with "11-102.1(b)"; and in line 10, after "Subtitle 9" and in line 22, after "§ 5-902," in each instance strike "Natural Resources" and replace with "Environment". On page 8, in line 35, strike "A" and substitute "AN". On page 9, in lines 15 and 28, in each instance strike "26" and replace with "21". On page 12, after line 48, insert "(I) DECKS THAT:". On page 16, in lines 34 and 47, in each instance strike "26 AND 28" and replace with "21 AND 26". On page 14, strike in their entirety lines 1 and 2, inclusive. On page 20, before line 1, insert (F) WITHIN THE CONTRIBUTING DRAINAGE AREA, DISTURBANCES SHALL BE PERMITTED". On page 22, in line 21, after "program" insert "OR A BOG PROTECTION PROGRAM".

Exh. D
FILE COP



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JANET S. OWENS
County Executive

October 19, 2001

Mr. Stephen M. Carter
Chief Executive Officer
Cingular Wireless
Glenridge Highlands Two
5565 Glenridge Connector
Atlanta, Georgia 30342

Subject: Interference with Police and Fire Communications

Dear Mr. Carter:

In March 2001, Anne Arundel County, Maryland hired RCC Consultants, Inc. to develop a scope of work to replace our existing 800 Mhz Public Safety Communications system. Included in this contract was a requirement to analyze the current environment relating to interference issues. During testing of the existing wireless transmission environment, Anne Arundel County discovered that there is a significant interference problem. Until this problem is mitigated, the design of our proposed new Public Safety Communications system can not proceed. At present, there are at least 10 locations within Anne Arundel County where emergency communications are negatively impacted by signals transmitted by Cingular Wireless.

Among the measures which have been recommended to me is the adoption of a local law which will require any proposed telecommunications facility to provide a certification that it will not interfere with the County's existing Public Safety Communications system. As I understand the current situation, if this local law were to be implemented, Cingular Wireless alone would be the only wireless carrier in Anne Arundel County to be prohibited from operating in the County. This outcome would not be desirable for either of us.

I am requesting that you assign someone from your staff with decision-making authority to assist Anne Arundel County, Maryland in remediating the ongoing interference problem. Mr. Hai Bui, your local RF Engineering Manager, is aware of the interference problem being caused by the signal output from your transmitter sites, but he has not been able to assist the County in resolving this matter.

Thank you for your immediate consideration of my request.

Sincerely,

Janet S. Owens
County Executive

JSO:gl

cingular WIRELESS

Keith Radousky · Exe Director of Engineering & New Tech · Office 404.236.5823 · Fax 404.236.5871

November 9, 2001

The Honorable Janet S. Owens
County Executive
Anne Arundel County
Arundel Center
P.O. Box 2700
Annapolis, MD 21404

Re: Interference with Police and Fire Communication

Dear Ms. Owens:

Your letter of October 19, 2001 addressed to Mr. Carter has been forwarded to me for a response.

I understand that the county's new Public Safety Communications system is experiencing interference problems that the county and/or its consultant have determined involve signals transmitted by Cingular Wireless. Upon receipt of this letter, I conferred with the Regional Director of our Network Engineering, Jay Miller.

I understand from Mr. Miller that various members of his staff have been working for some time with the county during field visits and exchanging information related to our network in an attempt to identify potential solutions for the problem. In fact, as recently as Friday November 2, representatives from Cingular Wireless and Anne Arundel County met to discuss this matter.

My office (National Engineering) has been requested to offer assistance in this matter. I hosted a conference call yesterday with the regional engineers and we discussed the concept of adding a third-party transmit filter that may improve your system's performance.

Our infrastructure equipment provider (Lucent) has transmit filters that comply with FCC requirements. We propose to test these third-party filters over the next two weeks with your participation. At the conclusion of this testing we hope to find that these filters reduce or eliminate the problem.

Mr. Miller will contact the appropriate technical individuals in your organization to schedule this testing. I will be out of the country until November 26, 2001. In my absence, please feel free to contact Mr. Les Wilding in my office if necessary.

I look forward to discussing the results of this test and appropriate action plans with you upon my return.

Sincerely,

Keith H. Radousky
Executive Director of Engineering

Cc: Michael Pietropola/Jay Miller/Michael Cross

Exh. E

JAN 30 2002

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January 30, 2002

The Honorable Janet Owens
County Executive
Anne Arundel County
P.O. Box 2700
Annapolis, Maryland 21401

Re: Anne Arundel County Ordinance
Commercial Telecommunication Facilities Bill # 93-01

Dear County Executive Owens:

We are writing to you today to begin a dialogue about the ramifications of the recently passed Bill 93-01 and the potentially disruptive consequences of that Bill on Anne Arundel County and the local telecommunications industry.

Although the Bill was passed based on a universal desire to provide for effective public safety communications, it suffers from a number of imperfections that do not enhance our public safety communication capabilities. We believe many of these issues could be resolved through the passage of a corrective bill.

Our telecommunication service providers have concerns about Bill 93-01 as passed because of the lack of clarification in the definition of key terms and in the delineation of RF emission measurement standards, of change in signal configuration parameters constituting grounds for certificate revocation and of zoning certificate parameters. It is our hope that many of the public safety communication concerns raised in Bill 93-01 can be addressed through proper application of technology-based practices without resorting to reliance on the chilling effect of revocation of use permits based upon possible interference. Further, Bill 93-01 raises location and setback issues that, if enforced, directly contradict the county's stated policy in favor of co-location.

These concerns can now be discussed in an environment that is not continuously dominated by a County Council Hearing schedule. Based on Mr. Cannelli's commitment to Councilman Klosterman to come back with corrective amendments by April 1, 2002, we respectfully request that you consider setting up and empowering a Review Committee with participants from your administration, the county council and private industry.

Hopefully, this committee could develop a consensus over the next eight weeks concerning the best way to address our mutual desire to enhance public safety communication and answer the several points of concern to our industry.

Sincerely,

Edward O. Wayson, Jr. Esquire

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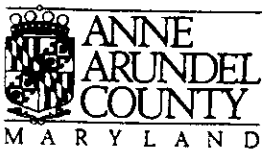

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February 27, 2002

Edward O. Wayson, Jr. Esquire
Cooter, Mangold, Tompert & Wayson, LLC
191 Main Street, Second Floor
Annapolis, Maryland 21401

RE: Commercial Telecommunications Facilities Bill #93-01

Dear Ed:

As always, it was a pleasure to meet with you recently. The County Executive, as you know, is amenable to establishing a Review Committee, as suggested in your letter dated January 30, 2002, to discuss potential amendments to Commercial Telecommunications Facilities, Bill #93-01.

Dennis Canavan and I are awaiting two things from you: the persons from private industry who wish to participate on the Committee, and a listing of the items that private industry believes need to be considered. After I receive that information, I will schedule a meeting.

I look forward to hearing from you.

Very truly yours,

Linda

Linda M. Schuett
County Attorney

LMS/slp

CC: Janet S. Owens, County Executive
Denis D. Canavan, Planning and Zoning Officer
Lori L. Blair, Senior Assistant County Attorney

P. Thomas Shanahan
Chief of Police

ANNE ARUNDEL COUNTY
MARYLAND

Police Department
8495 Veterans Hwy.
Millersville, Md. 21108
410-222-8500
Fax # 410-987-9167

January 5, 2000

Chairman William Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Kennard:

It was a pleasure to meet with your legal advisor, Ari Fitzgerald, on December 9th to discuss radio frequency concerns of the public safety community. It provided an excellent opportunity to discuss a cellular phone interference problem affecting our County's public safety 800 MHz Motorola radio system.

Anne Arundel County comprises an area of approximately 416 square miles and has a population of over 475,000. The County's radio system has been in use since 1989 and, until recently, has been providing excellent coverage throughout our County. Since the recent proliferation of cellular towers in our County, we have started to experience "dead areas" in which public safety personnel can neither transmit nor receive information over their portable radios. This has caused great concern for the safety of emergency personnel and the citizens they serve in these areas.

I have included documents detailing the nature of this interference and steps we have taken to address this issue. FCC District Director Charles Magin has concluded from tests and measurements taken of this interference that we should, "replace the portable transceivers with units having better adjacent channel rejection specification." Motorola does not currently manufacture such a portable transceiver. We continue to be at a loss for a means to resolve this issue.

Any assistance that you can provide in this matter would be greatly appreciated.

Sincerely,

P. Thomas Shanahan

P. Thomas Shanahan
Chief of Police

PTS/gdd
Enclosure

Certificate of Service

I certify that copies of the foregoing "Comments of Anne Arundel County" have been served by regular mail upon:

L. Andrew Tollin
Catherine C. Butcher
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Washington, D.C. 20037

James R. Hobson

June 10, 2002