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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Petition for Federal Preemption of	)	WT 02-100
Anne Arundel County Ordinance	)	DA No. 02-1044
Regulating Radio Frequency Interference	)	

To: Wireless Telecommunications Bureau,
Commercial Wireless Division,
Policy and Rules Branch

REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),[1] by counsel, hereby submits these reply comments in response to the Commission's Public Notice inviting comment on a Petition for Declaratory Ruling by Cingular Wireless, LLC ("Cingular") requesting that the Commission preempt amendments to the Anne Arundel County, Maryland ("Anne Arundel") zoning ordinance on the basis that the amendments impermissibly regulate radio frequency ("RF") interference.[2]

The Communications Act of 1934, as amended (the "Act) unambiguously vests in the

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[1] RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

[2] *Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling that Amendments to Anne Arundel County, Maryland Zoning Ordinance are Preempted as Impermissible Regulation of Radio Frequency Interference Reserved Exclusively to the Federal Communications Commission:* Public Notice, DA 02-1044 (rel. May 7, 2002).

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FCC exclusive jurisdiction over RF matters.[3] Furthermore, the Act requires the Commission to preempt the enforcement of local zoning ordinances that impermissibly seek to regulate RF.[4] In its comments, however, Anne Arundel seeks to thwart this statutory mandate by urging the Commission to temporarily refrain from preempting the amendments even if the Commission finds that the proposed amendments impermissibly regulate RF.[5] Anne Arundel argues that preempting the amendments "might well disrupt the current cooperation between carriers and County toward possible revision of the new zoning regulations."[6] Such action is, however, clearly contrary to law and the public interest in promoting the advancement of wireless services. Accordingly, the FCC should act promptly to declare that the Anne Arundel amendments, and similar adopted or proposed provisions in zoning ordinances, are preempted by federal law.

The record demonstrates that, in addition to Anne Arundel, other local zoning authorities impermissibly seek to regulate RF through zoning ordinances. Verizon Wireless notes that it is

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[3] *See, e.g.*, Cingular's Petition at 7 -8 *citing Southwestern Bell Wireless, Inc. v. Johnson County Bd. of County Comm'rs*, 199 F3d 1185, 1193 & 1194 (10th Cir. 1999); Letter from David L. Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, to Roger Kroh, Director of Planning and Development, Johnson County Office of Planning, Development and Codes (July 2, 1997) (citing 47 U.S.C. §§ 152(a), 301, 302(a) and 303 (f) of the Act, case law and the Congressional record as supporting the FCC's exclusive jurisdiction over RF interference matters); Comments of ARRL, the National Association for Amateur Radio at 2.

[4] *See, e.g.*, Comments of United States Cellular Corporation at 5-6; Comments of the Cellular Telecommunications & Internet Association at 3 ("Congress has left no room for local authorities to supplement Federal law governing RF interference"); Comments of the Telecommunications Industry Association ("TIA's Comments") at 4-6 (citing Commission and federal court rulings that have preempted similar local ordinances).

[5] Comments of Anne Arundel at 9.

[6] *Id.* As an alternative to the requested delay, Anne Arundel requests that the FCC provide guidance short of preemption. *Id.* at 8.

aware of similar adopted or proposed measures in other jurisdictions, including Orange County, California; Decatur, Alabama; El Paso, Texas; and Belmont Township in San Mateo County, California.[7] RCA members also have encountered similar impermissible zoning regulations that have hindered their ability to provide wireless service to rural areas. One member reports that a county in the Mid-Atlantic coastal region requires applicants for tower permits to certify that neither the tower nor any antennas will cause interference to area television or radio broadcasts, and provides that the permit can be revoked if an interference problem arises and is not corrected within 60 days.[8] Another member reports that a county zoning authority in the Midwest region has imposed burdensome RF reporting requirements. As demonstrated by commenters in this proceeding, such administratively burdensome RF reporting and certification requirements are in contravention of the Telecommunications Act of 1996 and should be preempted.[9]

To address these impermissible ordinances and prevent the proliferation of litigation over similar provisions, the Commission should rule promptly to grant Cingular's request, and declare that all ordinances that effectively regulate RF are preempted.[10] As noted by one commenter:

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[7] Comments of Verizon Wireless at 5.

[8] The local zoning authority has stated that it would consider any interference to television or radio to be the "fault" of the tower permit holder.

[9] *See* Comments of AT&T Wireless at 10 (noting that the Telecommunications Act of 1996 expressly preempts any local authority from enacting legislation that effectively bars the provision of wireless services and demonstrating that administratively burdensome RF reporting and certification processes essentially renders the provision of CMRS impossible).

[10] *See* Comments of Alltel Communications at 2 ("A consistent and unified federal voice on these issues is needed lest carriers be forced to litigate the matter on a county by county basis and experience both delay and resource drain resulting from repetitive litigation").

> If the FCC fails to act affirmatively and with reasonable speed on the Cingular petition the forces of delay and obstruction will be greatly strengthened. Other communities will suddenly discover that they too have 'interference' concerns and carriers, in addition to the other obstacles to tower siting they now face, will have to deal with hundreds of local interference standards.[11]

Accordingly, the Commission should promptly issue a declaratory ruling confirming that the amendments to the Anne Arundel Ordinance, and similar provisions by other local zoning authorities, are preempted.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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June 25, 2002

[11] Comments of United States Cellular Corporation at 7.

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Cellular Association" was served on this 25th day of June 2002, via hand delivery to the following parties:

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