FEDERAL COMMUNICATIONS COMMISSION
LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE

Reply to: Kenneth S. Fellman, Esq.
Kissinger & Fellman, P.C.
3773 Cherry Creek N. Drive, Suite 900
Denver, Colorado 80209
303-320-6100 Telephone; 303-320-6613 Facsimile

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Mayor
Arvada, Colorado

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Montgomery County Council
Rockville, Maryland

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Marietta, Pennsylvania

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Juneau, Alaska

October 8, 2002

VIA U.S. MAIL
And ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW-B204
Washington, D.C. 20554

Re: LSGAC Ex Parte Filing
Advisory Recommendation No. 28
WT Docket No. 02-100

Dear Ms. Dortch:

On behalf of the Commission's Local and State Government Advisory Committee, I am hereby submitting an original and two copies of the LSGAC's Ex Parte Filing of Advisory Recommendation Number 29 with respect to WT Docket No. 02-100; Petition by Cingular Wireless to Preempt Zoning Regulations of Anne Arundel County, Maryland which Prohibit Commercial Wireless Service Providers from Interfering with Public Safety Communications.

Very truly yours,

Kenneth S. Fellman
Chairman, LSGAC

KSF/eaj
Enclosure
cc: The Honorable Michael K. Powell, Chairman (w/encl.)
The Honorable Kathleen Q. Abernathy, Commissioner (w/encl.)
The Honorable Michael J. Copps, Commissioner (w/encl.)
The Honorable Kevin J. Martin, Commissioner (w/encl.)
LSGAC Members and Staff (w/encl.; via email)
Kris Monteith (w/encl.; via email)

FEDERAL COMMUNICATIONS COMMISSION
LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE

ADVISORY RECOMMENDATION NO. 28
WT Docket No. 02-100
Petition by Cingular Wireless to Preempt Zoning Regulations Of Anne Arundel County, Maryland which Prohibit Commercial Wireless Service Providers from Interfering with Public Safety Communications

The Local and State Government Advisory Committee (LSGAC) to the Federal Communications Commission (FCC) met on September 27, 2002, and considered the issues relating to the preemption petition filed in WT Docket No. 02-100. The LSGAC additionally received a presentation addressing these issues from Anne Arundel County, Maryland at its meeting on July 26, 2002.

WHEREAS, Congress in 1996 amended the Communications Act, which in part, affirms the primacy of local and state zoning authority in "decisions regarding the placement, construction and modification of personal wireless service facilities," 47 U.S.C.§332(c)(7)(A); and

WHEREAS, potential abuse of this local authority is checked by the requirement that personal wireless service not be "prohibited" or subjected to unreasonable discrimination, §332(c)(7)(B); and

WHEREAS, Anne Arundel County's assertion of such authority to prevent personal wireless service providers from interfering with critical public safety radio communications in the County has been challenged by Cingular Wireless, in WT Docket No. 02-100, as encroaching on the FCC's authority to control radio frequency interference ("RFI"); and

WHEREAS, in its Recommendation # 25 of September 7, 2001, the LSGAC urged "zero tolerance" for interference to public safety communications at 700 MHz; and

WHEREAS, due regard for preserving life, property, and homeland security demands that public safety communications have priority in freedom from RFI by commercial sources;

NOW, THEREFORE, LSGAC HEREBY RECOMMENDS THAT:

So long as the Anne Arundel County ordinance does not operate to prohibit or discriminate unreasonably against personal wireless service in the County, the Commission should refrain from taking any action that would preclude the effective operation of the ordinance. Specifically, the Commission should *not* preempt the ordinance or any other local efforts, undertaken in good faith, to mitigate the dangerous consequences of commercial wireless interference to public safety radio communications. Even if the Commission is inclined to believe that preemption may be appropriate, it

should defer any ruling of preemption until after resolution and implementation of the proposed reassignment of spectrum at 800 MHz.

Dated this 30th day of September, 2002.

LOCAL AND STATE GOVERNMENT
ADVISORY COMMITTEE

Kenneth S. Fellman
Chairman