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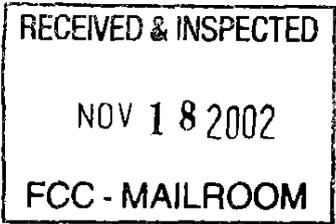
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November 14, 2002



Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: WT Docket 02-100; In the Matter of Federal Preemption of Anne Arundel County Ordinance Regulating Radio Frequency Interference; Comments in Support of Arundel County on Behalf of the City of Irvine, California

Dear Ms. Dortch:

This firm represents the City of Irvine, California (the "City") in relation to, among other things, telecommunication matters. These letter comments are filed on behalf of the City in support of Anne Arundel County's (the "County") Opposition to the Petition for Declaratory Ruling filed by Cingular Wireless LLC ("Cingular") in this matter and in support of the County's Motion to Dismiss.<sup>1</sup>

A state of the art 800 Mhz Communications System was recently constructed and activated by the Orange County Sheriffs Department Communications Division ("OCSD"), a department of Orange County responsible for providing law enforcement services within the

<sup>1</sup> Although the comments contained herein are being filed exclusively on behalf of the City, it should be noted that this firm has also represented the City of Laguna Niguel, California ("Laguna Niguel") and the City of Newport Beach, California ("Newport Beach") in relation to the development and adoption of ordinances and other regulatory pronouncements which relate to, or touch upon, the issue of radio frequency interference ("RFI") with the 800 Mhz public safety communications system (the "800 Mhz System") recently constructed and activated by the County of Orange ("Orange County"). In the case of Laguna Niguel and Newport Beach, serious issues relating to potential or actual interference between cellular providers and the 800 Mhz System were raised and discussed. In general, the concerns set forth by the City in these comments were also expressed by Staff or representatives of the 800 Mhz System in regulatory proceedings before Laguna Niguel and Newport Beach.

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unincorporated areas of Orange County, as well as to certain incorporated cities therein., OCSD also provides overall law enforcement communications services to law enforcement agencies operating within Orange County. Over the past several years, the OCSD has identified numerous examples of cellular interference to the 800 Mhz System. Although most of the interference problems relate to situations where the cellular facility is located within 200 feet of the 800 Mhz transceiver, examples of interference as far as a quarter of a mile have been identified.

The City, as well as all other cities located in Orange County, rely upon the 800 Mhz System as the communications lifeblood for its law enforcement agency. As is intuitively apparent, interference with essential police communications can result in life threatening situations to both law enforcement officers and the public.

The issue of RFI interference in Orange County is both pervasive and alarming. Over the past twenty-four months, the OCSD has spent literally hundreds of engineering hours attempting to isolate and identify causes of cellular interference with the 800 Mhz System. In some cases, it has been able to achieve cooperative solutions with members of the cellular industry. Unfortunately, in other cases, the results have been less encouraging.

Ultimately, the City believes that the Federal Communications Commission's (the "Commission") current regulatory regime relating to RFI is, and must be given the practical realities, predicated upon mutual coordination and cooperation between local government and the cellular industry. As the Commission well knows, the Association of Public Safety Communications Officials International, Inc., the Cellular Telecommunications and Internet Association, Motorola, Inc., Nextel Communications, Inc., the Public Safety Workers Network, and the Commission have jointly developed the "Best Practices Guide for Avoiding Interference Between Public Safety and Commercial Wireless 800 Mhz Communications System" (the "Best Practices Guide") to assist government and private industry in identifying and alleviating RF interference through a pre-interference cooperative and coordinated approach.

The Best Practices Guide clearly envisions pre-construction planning and coordination between the cellular industry and local government so that potential RFI problems can be identified, isolated, and solved before they lead to human carnage. The Best Practices Guide was specifically developed to "offer[s] guidance for future system deployments that can prevent such interference through frequency planning, co-location or strategic location of public safety and CMRS base stations, system design improvements for either CMRS or public safety networks or both, equipment upgrades . . ." (Best Practices Guide, Press Release, February 9, 2001, p.1; Best Practices Guide, pps. 3-4).

The touchstone of RFI minimization is pre-construction/transmission planning and coordination. As the Best Practices Guide states:

“In these cases, the close cooperation of both public safety and commercial operators is critical to identifying, evaluating and taking steps to mitigate such interference. . . .” (Best Practices Guide, p. 10).

The Best Practices Guide concludes, without equivocation, that advance planning and coordination is essential to the prevention of life threatening RFI. As the Best Practices Guide states:

“The most critical factor to preventing interference between public safety and CMRS systems is comprehensive advanced planning and frequency coordination between commercial providers and public safety communication entities. This applies regardless of whether a CMRS system is first initiating service in an area already served by public safety communications, a CMRS provider is expanding the geographic coverage or user capacity of an existing CMRS system, or is adding or transitioning to a digital modulation technology. It also applies whenever a new public safety radio system is being introduced into an area within incumbent CMRS systems, or when a public safety provider introduces a new voice or data upgrade to its previous communications network or transition to a digital network. In other words, any time either public safety or CMRS providers in a market introduce new service or significantly modify their communications systems is an opportunity for advanced planning and cooperation to prevent or minimize interference. (Emphasis added) (Best Practices Guide, p. 13).

The Best Practices Guide provides specific directions to the cellular industry in terms of advanced planning and coordination:

“CMRS carriers introducing service, expanding coverage or making other major modifications should contact the local public safety agency to examine whether their plans potentially represent an interference risk. In particular, CMRS users of channels that are adjacent to channels allocated for public safety use should ascertain whether such public safety channels are assigned for use in the same geographic area as their proposed CMRS operation. . . . This additional planning should minimize the number of situations in which interference is likely. Advanced coordination among public safety and CMRS providers also provides a means

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through which operators can allocate base station sites. This results in the signal strength of both public safety and CMRS transmission being comparable in the vicinity of the site, thereby reducing the likelihood of interference.”

The City applauds those members of the cellular industry which both locally and nationally have recognized the critical importance of public safety communication and have refrained from elevating financial interests over human interests by working cooperatively with local government to ensure that life threatening RFI situations do not develop. On the other hand, based upon the specific experience in Orange County, not all carriers have proven themselves to be as humanitarian or policy oriented as others. Thus, the City strongly supports the County in its efforts to ensure that cellular providers which choose not to engage in an advanced planning and coordination process aimed at eliminating potential RFI situations are required to do so by way of binding regulatory enactments. Given the proscriptions contained in the Best Practices Guide, which appears to have been at least informally endorsed by the Commission, advanced planning and coordination requirements which do not, at the end of the day, constitute a “prohibition” within the meaning of Section 332(c)(7)(B)(i)(ii), 47 U.S.C. Section 332(c)(7)(B)(ii), must be sustained.

Regardless of the law relating to the federal preemption, or lack thereof, of RFI prior to the adoption of the Telecommunications Act of 1996 (the “TCA”), the TCA either re-entrenched or established local regulatory authority over all aspects of personal wireless service facilities except as expressly provided within the “four squares” of the TCA. The County Ordinance which constitutes the subject of this proceeding is, without a doubt, a regulation relating to the “placement, construction and modification of personal wireless service facilities” within the meaning of Section 332(c)(7).

Whether or not all RF-related decisions relate to the “placement, construction and modification” of personal wireless service facilities within the meaning of Section 332(c)(7)(A), some certainly do. For example, transmitter “placement” can clearly constitute a causative or at least contributing factor to RFI. Pursuant to Section 332(c)(7)(A), the plain language of the statute indicates no intent to limit the purposes, reasons, or motives for which placement decisions are made.

The interests of local government in ensuring the viability of **public safety** communications certainly equals, if not arguably exceeds, its interest in promoting zoning tranquility. To the extent that placement and construction decisions implicate both interference and traditional zoning objectives, the purpose for which the public entity has acted should be irrelevant from both the viewpoint of statutory interpretation and policy analysis. Ultimately, the City urges the Commission to support an approach which allows local government to require recalcitrant operators to participate in a pre-construction planning and coordination process

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which possesses the best chance of prospectively eliminating life threatening public safety RFI. For the Commission to embrace any lesser position would effectively elevate the economic and operational interests of the cellular industry over the interests in all of us of protecting the lives of our brave public safety employees as well as the lives of the citizens they are vowed to protect.

Dated: November 14, 2002

RUTAN & TUCKER, LLP  
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**PROOF OF SERVICE BY FEDEX**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 511 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

On November 14, 2002, I served on the interested parties in said matter with the within:

COMMENTS IN SUPPORT OF ANNE ARUNDEL COUNTY ON BEHALF OF THE CITY OF IRVINE, CALIFORNIA

by depositing in a box or other facility regularly maintained by FedEx, an express service carrier, or delivering to a courier or driver authorized by said express service carrier to receive documents. A true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated on the attached mailing list, with fees for overnight delivery provided for or paid.

Executed on November 14, 2002, at Costa Mesa, California

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Valerie Bloom  
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(Type or print name)

*Valerie Bloom*  
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(Signature)

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