

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
)  
Proposed Changes in the Commission's ) ET Docket No. 03-137  
Rules Regarding Human Exposure to )  
Radiofrequency Electromagnetic Fields )

To: The Commission

**REPLY COMMENTS OF T-MOBILE USA, INC.**

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T-Mobile USA, Inc. ("T-Mobile") hereby replies to the comments submitted in response to the Notice of Proposed Rulemaking ("RF NPRM") regarding proposed changes to the rules governing human exposure to radiofrequency ("RF") electromagnetic fields.<sup>1</sup>

**I. Introduction and Summary**

T-Mobile notes that 44 comments were filed in response to the Commission's RF NPRM. Commenters included wireless carriers, industry associations, engineering firms, broadcasters, public utilities, electronic equipment manufacturers, satellite licensees and individuals.

In general, commenters support the proposed amendments to the Commission's rules governing routine evaluation and categorical exclusion of transmitters, facilities and operations. T-Mobile reaffirms its support for these proposed amendments because they will increase public confidence regarding agency oversight of RF emissions.

Under the proposed amendments, carriers must verify compliance with the Commission's RF safety guidelines whenever a routine evaluation is required. As noted in its

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<sup>1</sup> *In the Matter of Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, Notice of Proposed Rulemaking, ET Docket No. 03-137, FCC 03-132 (rel. June 26, 2003) ("RF NPRM").

initial comments, T-Mobile believes, and urges the Commission to make clear, that under the proposed rules, carriers may use any reasonable, objective and scientifically valid means (including modeling and empirical measurements) for verifying compliance. T-Mobile also urges the Commission to make clear that these means may include consideration of such things as antenna height above ground, antenna directivity and attenuation from walls or rooftops. This approach will preserve the simplicity and certainty of the Commission's rules without compromising public safety in any way or imposing unduly burdensome compliance and documentation requirements.

Commenters also support the "grandfathering" of existing antennas. In its initial comments, T-Mobile noted that the proposed rules on routine evaluations should be applied prospectively only, and that all existing facilities should enjoy a "grandfathered" status of presumed compliance under the current rules. At least 4 commenters join T-Mobile in its support for "grandfathering" existing facilities and no commenters specifically oppose the proposal.<sup>2</sup> Accordingly, the Commission should ensure that the final rules apply only to newly constructed facilities.

T-Mobile again commends the FCC for its efforts to improve the RF rules, and for seeking to adopt rules consistent with the stated goal of "provid[ing] more efficient, practical and consistent application of compliance procedures."<sup>3</sup> T-Mobile believes that the proposed changes to the Commission's environmental rules will advance these goals. In addition, T-Mobile believes that through thoughtful and careful design, and amendment where necessary, these rules can be implemented in a manner that strengthens public confidence in the Commission's rules governing RF emissions.

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<sup>2</sup> See note 10 *infra*.

<sup>3</sup> RF NPRM ¶ 1.

## II. Discussion

### A. Commenters Generally Support the Adoption of Routine Evaluation Standards Based on Separation Distance and Power Levels

In general, commenters support the proposed amendments to the Commission's rules governing routine evaluation and categorical exclusion of transmitters, facilities and operations.<sup>4</sup> As T-Mobile noted in its initial comments, the proposed amendments to the routine environmental evaluation rules will increase the number of new wireless installations that require such evaluations. Nevertheless, T-Mobile supports the changes. As an initial matter, the increase in the number of routine evaluations of wireless facilities should serve to increase public confidence in the Commission's rules regarding human exposure to RF emissions.

Further, T-Mobile believes that the methods to be employed to accomplish these evaluations are not significantly different or more burdensome than the safety procedures currently employed by T-Mobile and many other wireless carriers. The Commission has noted that "where routine evaluation would be required under our proposals, this evaluation would need to consist of only what is necessary to verify that the RF exposure guidelines will not be exceeded."<sup>5</sup> As T-Mobile and many other carriers currently have the procedures in place to verify that each facility will not exceed the Commission's guidelines, the simple inclusion of additional facilities within new routine evaluation guidelines should not pose a significant problem for T-Mobile.

Several commenters do not join T-Mobile in its support of the Commission's routine evaluation and categorical exclusion scheme, particularly with regard to the Commission's decision not to include height above ground or antenna directivity as factors in determining whether the exclusion applies. CTIA, Cingular Wireless LLC ("Cingular"), Ericsson, Inc. and Sony Ericsson Mobile Communications, Inc. ("Ericsson") and Pinnacle Telecom Group,

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<sup>4</sup> See, e.g., Comments of Cisco Systems, Inc., Comments of Nokia, Inc., Comments of Motorola, Inc.

LLC (“Pinnacle”) argue that both height above ground and antenna directivity must be taken into account in predicting RF exposure levels.<sup>6</sup> The Telecommunications Industry Association (“TIA”), the EMR Network (“EMR”) and Sprint Corporation (“Sprint”) argue that antenna directivity should be considered in determining whether further environmental processing is required.<sup>7</sup>

T-Mobile believes that the Commission has struck an appropriate balance in adopting routine evaluation and categorical exclusion standards based on separation distance and power levels. In the RF NPRM, the Commission rejected detailed incremental levels of categorical exclusion, such as height above ground or antenna directivity, in favor of a rule that emphasizes “simplicity and certainty” and leaves the measurement and confirmation of compliance with the agency’s guidelines to the carriers. Although the inclusion of additional factors in the determination of whether a categorical exclusion applies could result in more certain RF exposure level calculations in certain circumstances, it would do so at the expense of regulatory simplicity and flexibility without materially increasing RF safety.

Instead, T-Mobile urges the Commission to make clear that under the new rules carriers' may develop objective standards for verifying compliance with the RF safety guidelines whenever routine evaluation applies. Such standards should certainly take into consideration relevant RF engineering factors, such as antenna height above ground, antenna directivity, and the power attenuating effects from walls or rooftops, as described in OET Bulletin 65.<sup>8</sup> Likewise, under the new rules, carriers would be permitted to take into account such things as the lower power densities produced by antennas using Time Division Multiple

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<sup>5</sup> RF NPRM ¶ 16.

<sup>6</sup> Comments of CTIA at 4, Comments of Cingular at 3-12, Comments of Ericsson at 3 and Comments of Pinnacle at 3.

<sup>7</sup> Comments of TIA at 5, Comments of EMR at 3, and Comments of Sprint at 2.

<sup>8</sup> OET Bulletin 65 at 22.

Access (“TDMA”) or Global System for Mobile Communication (“GSM”) technologies when compared to antennas not using time-division technology.

**B. Commenters Support the “Grandfathering” of Existing Antennas**

In its initial comments, T-Mobile noted that the proposed rules on routine evaluations must be applied prospectively only, and that all existing facilities enjoy a “grandfathered” status of presumed compliance under the current rules. Prospective-only application of the proposed rules on routine evaluations is efficient, fundamentally fair, consistent with the Commission’s RF safety responsibilities and legally required under case law interpreting the National Environmental Policy Act.<sup>9</sup>

CTIA, Sprint, Southern Communications Services Inc. and Southern Company Services, Inc., and Winstar Communications, LLC join T-Mobile in its support for the grandfathering of existing facilities.<sup>10</sup> Indeed, no commenters specifically oppose the grandfathering of existing facilities. As CTIA notes, “[r]etroactive application for any new RF emission rules is patently unfair to licensees who constructed and installed facilities in accordance with the RF emission requirements in effect at the time of such construction.”<sup>11</sup> Likewise, Sprint submits that retroactive rules “should not be imposed absent clear and convincing evidence that the existing standard has resulted in antenna installations that pose an unmitigated and unacceptable risk of non-compliance with the Commission’s RF exposure

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<sup>9</sup> See *Ogunquit Village Corp. v. Davis*, 553 F.2d 243, 246 (1st Cir. 1977); *Richland Park Home Ass’n v. Pierce*, 671 F.2d 935, 941 (5th Cir. 1982), citing *Aertsen v. Landrieu*, 637 F.2d 12, 19 (1st Cir. 1980); see also *Citizens and Landowners v. United States Dept. of Energy*, 683 F.2d 1171 (8th Cir. 1982).

<sup>10</sup> Comments of CTIA at 13-14, Comments of Sprint at 3-4, Southern Communications Services Inc. and Southern Company Services, Inc. at 8-9, and Comments of Winstar Communications, LLC at 2-3.

<sup>11</sup> Comments of CTIA at 13-14.

guidelines.”<sup>12</sup> Accordingly, the Commission should ensure that the final rules apply only to newly constructed facilities.

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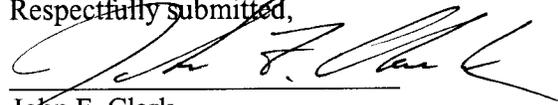
<sup>12</sup> Comments of Sprint at 4.

### III. Conclusion

Although the amendments proposed in the RF NPRM will increase the number of wireless installations that require routine environmental evaluation, T-Mobile supports the changes because they will increase confidence in RF safety for workers and the public, without imposing unnecessarily burdensome requirements on industry. Of course, the final rules in this proceeding must be carefully crafted by the Commission to achieve these objectives within applicable law.

T-Mobile again urges the Commission to incorporate into the final order the proposals discussed herein and in T-Mobile's initial comments.

Respectfully submitted,



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