

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

- This proceeding is an opportunity for Commission to clearly restate its exclusive jurisdiction in determining whether its spectrum licensees are compliant with the FCC's operational and technical rules, including the RF emissions standards
- Recent trend in local governments adopting zoning ordinances that infringe upon the FCC's exclusive statutory authority to regulate RF emissions. Unintended consequences of these ordinances are costly, inefficient and in many instances, unlawful requirements that substantially delay the build out of necessary wireless telecommunications infrastructure. *See attached examples.*
- *Cellular Phone Task Force* and *EMR Network* are seminal cases that support the Commission's exclusive jurisdiction regarding interpretation and application of RF emissions rules.<sup>1</sup> Accordingly, any determination of whether a licensee is compliant with the Federal standards for health or environmental effects of radio frequency emissions remains within the exclusive jurisdiction of the FCC, and no other entity may usurp this authority.
- To the extent that an FCC licensee complies with the FCC's RF emissions regulations, localities have no authority to require the licensees to conduct additional verifications or technical demonstrations as a condition of approval. If local officials wish to question a CMRS licensee's compliance with the FCC operational and technical rules, they should raise their concerns with the FCC for further evaluation by the Commission since the FCC has exclusive jurisdiction in determining a licensee's compliance.

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<sup>1</sup> *Cellular Phone Task Force v. FCC*, 205 F.3d 82 (2d Cir. 2000), cert. Denied, 531 U.S. 1070 (2001), (upholding FCC's RF emissions rules and stating FCC alone has authority to determine licensee compliance); *EMR Network v. FCC*, No. 03-1336 (DC Cir. 2004), (affirming an FCC Order, holding FCC has upheld its duty under § 102 of the National Environmental Policy Act.).