

February 2, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *In the Matter of Proposed Changes to the Commissions Rules
Regarding Human Exposure to Radiofrequency Fields,***
ET Docket No. 03-137, *Ex Parte* Presentation

Dear Ms. Dortch:

On Wednesday, February 1, 2005, CTIA – The Wireless Association™ represented by Andrea Williams, Assistant General Counsel, along with Patrick Welsh of T-Mobile USA and Rosalind Allen of Holland & Knight and counsel for T-Mobile USA met with Kris Monteith, Deputy Chief, and Leon Jackler, Legal Advisor to the Bureau Chief, FCC Consumer and Governmental Affairs Bureau. At the meeting, CTIA reiterated its concern regarding unlawful attempts by some localities to regulate radio frequency (“RF”) emissions. CTIA and T-Mobile USA also addressed several issues that have been raised recently that are relevant to the proceeding. In particular:

- **FCC has exclusive jurisdiction regarding interpretation and application of RF emissions rules.** 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. CTIA provided examples of zoning ordinances from different localities that impact CMRS licensees throughout the nation. CTIA submitted these examples into the record of the above referenced proceeding on January 27, 2005.
- **Recent case law supports the Commission’s exclusive jurisdiction over RF emissions rules.** *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.¹ 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. CTIA also provided a Ms. Monteith and Mr. Jackler with a copy of the recent decision by Vermont Environmental Board dismissing EMR Networks' claim that the operation of a 195 foot antenna tower in Burlington, Vermont, that had been used for over a decade by a radio broadcast station, a CMRS carrier (Verizon Wireless), and a volunteer fire department for dispatch communications causes adverse health effects. (CTIA already submitted a copy of the Vermont Environmental Board's decision into the record of the above referenced proceeding on January 27, 2005.)

- **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.** Organizations, such as The Center for Municipal Solutions, offer ordinance-drafting services to localities, and advertise that compliance with RF Emissions regulations is a matter for municipalities to control. These ordinances, known as "COMI" ordinances, add burdensome requirements that extend beyond the scope of FCC regulations. On February 2nd, Andrea Williams corresponded with Ms. Monteith and Mr. Jackler citing specific websites offering the COMI ordinance drafting service. *Attached is a copy of that correspondence.*

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CTIA and T-Mobile USA urged the Commission to reaffirm, consistent with interpretations of the Communications Act, Commission Rules and Federal court precedent, that the Commission has exclusive authority in determining whether CMRS licensees are compliant with the FCC's operational and technical rules.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being electronically filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Respectfully Submitted,

Andrea D. Williams

Andrea D. Williams
Assistant General Counsel

¹ *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.).

cc: Kris Monteith
Leon Jackler