



02/02/2010

EX PARTE

VIA ELECTRONIC FILING

P. Michele Ellison, Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: WT Docket No. 10-4
Case Nos. EB-09-DT-0375 and EB-09-MA-0195

Dear Ms. Ellison:

AT&T Inc. (“AT&T”) submits this *ex parte* in opposition to a letter filed with the Enforcement Bureau of the Federal Communications Commission (“FCC” or “Commission”) by Wilson Electronics, Inc. (“Wilson”)¹ regarding the above-captioned enforcement matters and the use of “signal boosters.”² As detailed below, the Communications Act, FCC rules, and FCC precedent clearly prohibit the use of signal boosters without a license or licensee consent. Consistent with these authorities, the Commission took enforcement action in the above-captioned matters involving unauthorized operation of signal boosters.

Wilson objects to the Commission’s action – although it is not a party to either proceeding – because it is a signal booster manufacturer and at least one of the enforcement actions involves a Wilson signal booster. Wilson makes several outrageous claims in an attempt to inject uncertainty into this long settled area of law. But Wilson’s construction of the applicable authorities lacks any merit. Moreover, Wilson’s construction would undermine the Commission’s exclusive-use licensing regime and, with it, the ability of consumers to use and

¹ Letter from Russell Lukas, Counsel to Wilson Electronics, Inc., to P. Michele Ellison, Chief, Enforcement Bureau, WT Docket No. 10-4, at 3 (filed Jan. 13, 2010) (“Wilson Letter”).

² For purposes of this letter, AT&T follows the Commission’s decision to define the term “signal booster” to “include all manner of amplifiers, repeaters, boosters, distributed antenna systems, and in-building radiation systems that serve to amplify CMRS device signals, Part 90 device signals, or extend the coverage area of CMRS providers or Part 90 service licensees.” *Petitions Regarding the Use of Signal Boosters and Other Signal Amplification Techniques Used with Wireless Services*, Public Notice, DA 10-14, WT Docket No. 10-4, n.1 (Jan. 6, 2010) (“2010 Boosters Public Notice”).

enjoy high quality wireless services in favor of an uncontrolled environment in which an individual can improve the quality of his or her call by blocking or impairing thousands of other calls by consumers.³ Such a result runs counter to longstanding Commission policy and the Commission's core mission of maximizing efficient use of the nation's shared spectrum resources to benefit all Americans.

I. SETTLED COMMISSION LAW PROHIBITS THE OPERATION OF SIGNAL BOOSTERS BY END USERS WITHOUT A LICENSE OR LICENSEE CONSENT.

A. Signal Boosters Are Transmitters That May Not Be Operated Without a License Under Section 301 of the Communications Act and Must Be Under Licensee Control.

Signal boosters are transmitters that may not be operated without a license or licensee consent under Section 301 of the Communications Act. Section 301 broadly prohibits any person from using or operating an RF transmitting device at any location within the United States "except under and in accordance with . . . a license."⁴ In implementing Section 301, the Commission has promulgated regulations that: (1) give a CMRS licensee exclusive use of its licensed frequencies; (2) make a CMRS provider the licensee of all transmitting devices on its spectrum; and (3) require a CMRS licensee to maintain control over all devices operating on its network.

Specifically, the Commission's rules require an FCC license or other authorization to operate a station within the cellular and PCS services. 47 C.F.R. § 1.903(a) ("Stations in the Wireless Radio Services must be used and operated only . . . with a valid authorization granted by the Commission."); 47 C.F.R. § 22.3 ("Stations in the Public Mobile Services must be used and operated only in accordance with the rules in this part and with a valid authorization granted by the FCC under the provisions of this part"). The Commission's rules also make a CMRS provider the licensee of all transmitting devices operating within its spectrum, including all devices used by end user customers. Indeed, a subscriber's authority to operate a device stems directly from the "authorization held by the licensee providing service to them." 47 C.F.R. § 1.903(c); 47 C.F.R. § 22.3(b) (same). And while the FCC rules give CMRS licensees "blanket" authority to operate a variety of transmitters in their spectrum – including signal

³ CMRS providers and their customers have fallen victim to a large number of harmful interference events caused by boosters. The following example illustrates the damage that CMRS boosters have caused since AT&T started recording incidents in 2007: from March 23, 2009 through March 27, 2009, a single CMRS booster aboard the yacht "Miss Penny" caused severe harmful interference that adversely affected three AT&T cell sites with a peak interfering signal level of -69 dBm measured. Specifically, the CMRS booster on the ship caused interference to three sites, resulting in approximately 3,055 blocked calls over a four-day period.

⁴ See 47 U.S.C. § 301; see also *U.S. v. Neset*, 235 F.3d 415 (8th Cir. 2000) (recognizing that, under Section 301, "it is unlawful to transmit radio signals within the United States without a license").

boosters – the rules exclude end-user subscribers from this authorization. 47 C.F.R. § 22.165 (“A licensee may operate additional transmitters at additional locations on the same channel or channel block as its existing system without obtaining prior Commission approval.”); 47 C.F.R. § 24.11(b) (“Blanket licenses are granted for each market and frequency block.”).⁵ Issuance of a CMRS license also imposes spectrum stewardship obligations on the license holder. Commission rules obligate licensees to prevent network interference caused by devices on their networks: “Station licensees are responsible for the proper operation and maintenance of their stations, and for compliance with FCC rules.” 47 C.F.R. § 22.305.

By these licensing and licensee-control requirements, the Commission discharges its core duty under the Communications Act to prevent interference and manage the airwaves in the public interest. The period before the federal government undertook centralized, coordinated regulation of radio spectrum “has been described as one in which chaos rode the air waves, pandemonium filled every loud-speaker and the twentieth century Tower of Babel was made in the image of the antenna towers of some thousand broadcasters who, like the Kilkenny cats, were about to eat each other up.”⁶ For this reason, Congress adopted Section 301, directing the FCC to “maintain the control of the United States over *all* channels of radio transmission” and providing for the use of the radio spectrum only with proper FCC authorization. The requirement that transmitters on CMRS spectrum – including signal boosters – be operated with a license or under licensee control ensures that, consistent with the original Congressional vision, the airwaves efficiently may be shared by millions of wireless users rather than devolving into a “Tower of Babel.”

B. In an Unbroken Line of Precedent, the FCC Consistently Has Enforced the Prohibition on End User Operation of Signal Boosters Without a License or Carrier Authorization.

FCC enforcement of the Commission’s prohibition on end user operation of a signal booster without a license or consent of the licensee did not begin with the December 8th Warning Letter that prompted Wilson’s concern. Rather, the FCC has been enforcing the prohibition – embodied in rules adopted by notice and comment rulemaking, as detailed in Section I.A, *supra* – for years. AT&T has identified six instances, dating back to 2008, in which the FCC has issued nearly identical Warning Letters related to unauthorized signal booster operation by end

⁵ See also *Amendment of Part 22 of the Commission’s Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service*, 9 FCC Rcd 6513, ¶ 60 (1994) (prohibiting the alteration of cellular phones to emulate Electronic Serial Numbers of other phones – without receiving the permission of the relevant cellular licensee – because such altered phones are not authorized by the carrier and “would therefore not fall within the licensee’s blanket license, and thus would be unlicensed transmitters in violation of Section 301 of the Act”).

⁶ *In the Matter of Deregulation of Radio*, 73 FCC 2d 457, ¶ 6 (1979) (quotation omitted).

users.⁷ These Warning Letters state that a “licensee’s authority to install a [signal booster] does not permit a subscriber to install a [signal booster], unless that subscriber has received explicit authorization from the licensee to do so.”⁸ In these cases, the Commission further warned the end-user subscriber that “operation” of the radio transmitting equipment – such as a signal booster – without a valid radio station authorization constituted a violation of Section 301.⁹ It is AT&T’s belief that many more such warnings have been issued, but the nature of the FCC’s enforcement procedures is such that the letters are not routinely made available to the public in the ordinary course. In false advertising litigation AT&T brought against signal booster manufacturer Digital Antenna in the Federal District Court for the Southern District of Florida, FCC Field Agent Michael Mattern testified that warning letters concerning unauthorized operation of signal boosters are based on a template prepared by FCC legal counsel in Washington and are issued “frequently.”¹⁰ Agent Mattern further testified that he and another FCC Field Agent issued three warning letters relating to unauthorized booster operation at a single boat show in Fort Lauderdale, Florida.¹¹

Where directly challenged on the validity of its rules and its authority to enforce them, the FCC has unequivocally affirmed its enforcement actions. For example, where signal booster manufacturer Digital Antenna took the position, in response to an FCC Letter of Inquiry, that signal boosters may be operated without a license or consent of the licensee, the Commission flatly rejected Digital’s position. In a Notice of Apparent Liability Letter that followed Digital’s LOI response, the Commission affirmed its position that signal boosters “may only be used by licensed cellular/PCS providers or by end user customers with the express authorization of the

⁷ “Warning for Unlicensed Radio Operation,” FCC Case No. EB-09-DT-0375 (Dec. 8, 2009); “Notice of Unlicensed Operation,” FCC Case No. EB-08-NF-0029 (Aug. 20, 2008); “Notice of Unlicensed Operation,” FCC Case No. EB-08-LA-0295 (Oct. 24, 2008); “Warning Notice,” FCC Case No. EB-08-MA-0201 (Nov. 17, 2008); “Warning Notice,” FCC Case No. EB-08-MA-0198 (Nov. 20, 2008); “Notice of Unlicensed Operation,” FCC Case No. EB-09-MA-0195 (Dec. 3, 2009).

⁸ “Warning for Unlicensed Radio Operation,” FCC Case No. EB-09-DT-0375 (Dec. 8, 2009); *see* “Notice of Unlicensed Operation,” FCC Case No. EB-08-NF-0029 (Aug. 20, 2008) (A “licensee’s authority to install a BDA does not, without further authorization from the licensee, permit a subscriber to install a BDA.”); “Notice of Unlicensed Operation,” FCC Case No. EB-08-LA-0295 (Oct. 24, 2008) (same); “Warning Notice,” FCC Case No. EB-08-MA-0201 (Nov. 17, 2008) (same).

⁹ *Id.*

¹⁰ *See* Transcript of Hearing on Motions, Testimony of FCC Field Agent Michael Mattern, at 21, 42, AT&T Mobility, LLC. v. Digital Antenna, Inc., Case No. 09-60639-CV-PAS (Sept. 11, 2009).

¹¹ *See id.*, at 22.

licensed provider.”¹² And most recently, in the Commission’s *Public Notice* seeking comment on several booster-related petitions, a Public Notice which Wilson commends, the Commission again confirmed that “signal boosters are treated as licensed transmitting devices” and that “section 1.903 established that stations in wireless services may only be operated with an FCC authorization (*i.e.*, license).”¹³

II. WILSON’S ARGUMENTS THAT FCC PRECEDENT IN THIS AREA IS UNCERTAIN ARE WITHOUT MERIT.

Given this clear statutory and regulatory precedent, AT&T is baffled by Wilson’s challenges to the FCC’s current authority to enforce Section 301 and the implementing regulations in the instant proceedings. Wilson offers a number of novel constructions of FCC precedent in support of its theory that operation of signal boosters does not require a license or licensee consent. None of these arguments have any legal merit and, as a policy matter, they would expose wireless networks to the very uncontrolled, harmful interference the Communications Act charges the Commission with preventing.

A. The “Blanket Licensing Rule” – Section 22.3 – Does Not Confer Upon Individual Wireless Customers the Same Spectrum Usage Rights as the Licensee.

Wilson arrives at a novel and unsupported construction of Section 22.3 only by wrenching the rule from its context and ignoring its purpose. Wilson reads into Section 22.3 of the FCC’s rules authority for end users to operate any device of their choosing over a licensed carrier’s spectrum – without licensee consent – so long as the end user takes service from the carrier.¹⁴ Wilson’s reading is based on taking these words from Section 22.3(b) in isolation: “Authority for subscribers to operate mobile or fixed stations in Public Mobile Services . . . is included in the authorization held by the licensee providing service to them.”¹⁵ Even taken in isolation, the text of Section 22.3 does not support Wilson’s position because the signal boosters it sells are broadband¹⁶ devices which operate across frequencies, regardless of who is licensed to use them. If the blanket licensing rule authorized a subscriber to operate any equipment of its choosing on its carrier’s network (*e.g.*, AT&T’s network), it still would not allow the subscriber to operate on adjacent frequencies licensed to a competing carrier (*e.g.*, T-Mobile or a public safety entity). But this is precisely how Wilson’s broadband signal boosters operate. Indeed, the

¹² See *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture and Order, DA 08-1093, ¶ 4 (2008) (“*Digital Antenna NAL*”).

¹³ *2010 Boosters Public Notice*, n.2.

¹⁴ Wilson Letter.

¹⁵ 47 C.F.R. § 22.3(b).

¹⁶ For purposes of this letter, the term “broadband” refers to boosters that amplify a range of frequencies, rather than amplifying discrete frequencies licensed to a particular licensee.

interference incident which gave rise to the December 8th Warning Letter that Wilson challenges involved interference to AT&T's network by a signal booster being used to amplify frequencies licensed to a different wireless carrier.¹⁷ Likewise, signal booster interference to public safety licensees is a well documented phenomenon.¹⁸

But Section 22.3 was not adopted in isolation and is properly construed within the context of CMRS exclusive-use licensing and licensee control. Within this framework, CMRS licensees have exclusive use of their licensed frequencies, 47 C.F.R. §§ 1.903(a), 22.3, act as the licensee of all transmitting devices on their spectrum, 47 C.F.R. §§ 1.903(c), 22.3(b), and are required to maintain control over all devices operating on their networks. 47 C.F.R. § 22.305. In this context, Section 22.3 performs a streamlining function. It allows millions of end users to operate mobile stations – principally wireless handsets – without individual licenses because they are authorized under the carrier's license and subject to carrier control.

The FCC confirmed this construction in its *Biennial Review* proceeding. In the *Biennial Review*, the Commission stated that, “[i]n 1980, the Commission abolished licensing of individual mobile units in most public land mobile services. The Commission reasoned that individual land mobile units served by a base station are associated with the blanket authorization of that station, and thus subject to that licensee's exercise of effective operational control.”¹⁹ Accordingly, the Commission affirmed that ensuring licensee control of a device – consistent with FCC rules – was part-and-parcel of taking advantage of blanket licensing. The Commission's 1980 order adopting the blanket licensing rule is even clearer on this point.

¹⁷ One Call Now, the company operating the signal booster that was the subject of December 8, 2009 Warning Letter in Case # EB-09-DT-0375, created interference to the AT&T network in the course of attempting to amplify the signals of a competing carrier using a Wilson broadband signal booster. Amplification was not required to receive AT&T signals at the location in question. For full details regarding the One Call Now incident, *see* Exhibit A.

¹⁸ *See* Transcript of Hearing on Motions, Testimony of Gary Gray, Assistant Telecommunications Manager and Radio Systems Manager for the City of Fort Lauderdale, at 49-52, *AT&T Mobility, LLC. v. Digital Antenna, Inc.*, Case No. 09-60639-CV-PAS (Sept. 11, 2009) (describing interference to public safety radios resulting from a signal booster on the yacht “Pipe Dream”); *see also* Comments of Jason Matthews, Lake County, Florida, Sheriff's Office, WT Docket No. 10-4, at 1 (filed Jan. 15, 2010); Comments of Tracy Roberts, Cobb County, GA, E911 Radio System Manager, WT Docket No. 10-4, at 2 (filed Jan. 19, 2010); Comments of Gregory Bunting, St. Lucie County, FL, Public Safety Department, WT Docket No. 10-4, at 1 (filed Jan. 20, 2010).

¹⁹ *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review - Amendment of Parts 1, 22, and 90 of the Commission's Rules*, Notice of Proposed Rule Making, 18 FCC Rcd 8380, ¶ 26 (2003) (citing *Amendment of Sections of Part 21 (now Part 22) of the Commission's Rules to Modify Individual Radio Licensing Procedures in the Domestic Public Radio Services (now Public Mobile Radio Services)*, FCC 80-153, 77 FCC 2d 84 (1980)).

Adopted at a time when the overall number of CMRS end users was relatively small, the order describes the process by which individual end users might seek to take advantage of blanket licensing. The order provided that, in order to take advantage of blanket licensing, a subscriber must “provide evidence to the carrier that the subscriber’s mobile unit is compatible with the carrier’s mobile system,” “use only those mobile units which the carrier has agreed to serve,” and “furnish the type accepted number to the carrier.”²⁰ Pursuant to this process, the subscriber secured carrier consent to operate its device under blanket licensing by demonstrating that the carrier could control the device, consistent with its obligations as a licensee.

Wilson’s construction of the blanket licensing rule also fails because it is not subject to any limiting principle. Under Wilson’s construction, where the blanket licensing rule allows each individual customer to step into the shoes of the licensee with respect to spectrum usage rights, any customer may not only operate a signal booster but also a cellular base station. A base station is, of course, a “fixed station” as that term is used in Part 22. The problem with such a construction is that it runs counter to the basic tenets of the Commission’s exclusive-use licensing regime. Operating network infrastructure on exclusive-use frequencies is the province of the licensee and a right generally purchased at auction at considerable expense. Moreover, Wilson’s construction would lead to widespread and debilitating interference. The Commission should reject Wilson’s construction as inconsistent with its most basic rules and policies.

B. The “In-Building Radiator Rule” – Section 22.383 – Authorizes Licensees, Not Wireless Customers, to Operate In-Building Radiation Systems Without an Additional License.

Wilson also strips the “in-building radiator rule” from its context in advancing a construction that would allow operation of signal boosters without a license or licensee consent. By its plain terms, Section 22.383 authorizes only “licensees,” not wireless customers, to operate in-building radiator systems without an additional license. Section 22.383 provides that “[l]icensees may install and operate in-building radiation systems without applying for authorization or notifying the FCC”²¹ The Commission confirmed this construction in its *Biennial Review* proceeding, stating that in-building radiation systems “*may only be operated by a licensee or pursuant to the licensee’s permission and control*, unless they fall under the power limits for unlicensed devices under our Part 15 rules.”²² Like the blanket licensing rule, Section

²⁰ *Amendment of Sections of Part 21 (now Part 22) of the Commission’s Rules to Modify Individual Radio Licensing Procedures in the Domestic Public Radio Services (now Public Mobile Radio Services)*, FCC 80-153, 77 FCC 2d 84, ¶ 7 (1980) (emphasis added). The Commission further concluded that “[s]ubscribers who elect to furnish their own mobile units will be responsible for the proper installation and maintenance of their respective mobile units.” *Id.*

²¹ 47 C.F.R. § 22.383 (emphasis added).

²² *In the Matter of Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services; Biennial Regulatory Review – Footnote continues on next page . . .*

22.383 streamlines the process for a licensee to provide service to an end user and reaffirms that CMRS licensees must maintain operational control of devices on their networks. Wilson’s extended argument that language in the *Biennial Review* affirming the plain text of Section 22.383 is an unauthorized policy statement²³ lacks any basis in fact or law.

Construction of Section 22.383 within the licensee control framework is also consistent with the Commission’s interference control objectives, while Wilson’s interpretation exposes networks to interference from uncontrolled sources. Section 22.283 allows a carrier, operating on its licensed frequencies, to install an in-building radiation system without an additional license. If interference to an adjacent frequency occurs, the carrier may readily be identified and prevailed upon to correct it. But for the rule to afford the same authority to an individual operator of a Wilson broadband signal booster, it would have to allow that user to operate an in-building radiation system not only on the spectrum licensed to its carrier, but also on adjacent spectrum licensed to public safety entities and/or competing carriers. Moreover, should interference result, neither the carrier licensed to operate on the frequencies nor adjacent public safety or commercial licensees would have any ability to identify the source of the interference or to quickly remediate it. Such a result is inconsistent with interference control obligations imposed on the Commission by the Communications Act and the public interest.

III. WILSON’S CHALLENGES TO FCC SIGNAL BOOSTER ENFORCEMENT ACTIONS SUFFER FROM MULTIPLE PROCEDURAL INFIRMITIES.

In addition to the shortcomings of its legal theory, Wilson’s challenge to the FCC’s enforcement actions suffers from multiple procedural infirmities. As an initial matter, Wilson has no standing in either of the above-captioned proceedings. Wilson has no cognizable interest in the enforcement action it challenges. The Enforcement Bureau issued the Warning Letters to third-parties that are not affiliated with Wilson. In fact, Wilson’s counsel concedes: “I do not represent Mr. Cagle, One Call Now, or any other [signal booster] operator.”²⁴ One Call Now – the party-in-interest in the *Cagle* proceeding – filed a letter with the Enforcement Bureau on December 11, 2009. In the letter, One Call Now explained that it discontinued use of the signal booster in question, apologized for its conduct, and stated that the FCC would have its full cooperation going forward. At this point, this proceeding should be considered closed.

Moreover, if Wilson wants to repeal or amend the FCC’s longstanding licensing and interference-control rules, the instant enforcement proceedings are not the appropriate procedural vehicle. Substantive rule amendments and the repeal of rules must follow a notice and comment

Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4403, ¶ 133 (2005) (emphasis added).

²³ Wilson Letter at 2-3.

²⁴ *Id.* at 3.

rulemaking pursuant to Section 553 of the Administrative Procedures Act.²⁵ The Commission's recently opened signal booster proceeding – which seeks comment on several petitions, including a petition filed by Wilson – is a more appropriate forum if the relief Wilson seeks is changes to existing law.²⁶

* * *

For the foregoing reasons, AT&T respectfully requests that the Enforcement Bureau disregard Wilson's substantively and procedurally defective letter. The Commission should continue to adhere to the Communications Act, the Commission's rules, and its own precedent as it pursues enforcement action against unauthorized operators of signal boosters.

Sincerely,



M. Robert Sutherland

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cc: Russell Lukas
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Michael D. Saperstein, Jr.
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²⁵ The APA defines “rule making” as “the agency process for formulating, *amending, or repealing* a rule.” 5 U.S.C. § 551(5) (emphasis added); *see also* 5 U.S.C. § 553 (describing the notice and comment rulemaking process).

²⁶ *2010 Boosters Public Notice.*

**DECLARATION OF ROBERT W.
PEEBLES**

Engineer – AT&T

I, Robert W. Peebles, hereby declare as follows:

1. I am an Engineer at AT&T and have personal knowledge of the events that culminated in the issuance of the FCC Warning Letter dated December 8, 2009 regarding unauthorized operation of a signal booster, Case # EB-09-DT-0375.
2. On November 22, 2009, AT&T's network monitoring equipment detected irregularities in a particular sector of cell site #2332 in Troy, Ohio (two of the three sectors at the base station were not affected). Specifically, AT&T was able to monitor its base station (through measurement of the Received Signal Strength Indication ("RSSI") level) which reflected an increase in interference consistent with a signal booster event. Attached to this declaration are snapshots of measurements taken by AT&T personnel during the interference event, including measurements taken when One Call Now turned off the interfering signal booster and a final series of measurements taken when the interfering signal booster was again operating. See Attachment 1. An incident report regarding this interference event is also attached. See Attachment 2.
3. Using direction finding equipment, AT&T localized the source of the interference at 726 Grant Street in Troy, Ohio. This address is the place of business of One Call Now. On November 23, 2009, AT&T Engineer Shawn Roush met with Todd Cagle, the IT manager at One Call Now. Mr. Cagle explained that he had installed a Wilson signal booster with five re-radiating antennas in the building to improve service. Mr. Cagle was not willing to accept that the Wilson signal booster was the source of interference, although he cooperated in a "on/off" test (briefly turning off the signal booster) that confirmed that the One Call Now signal booster was the source of the interference in the gamma sector. See attached measurements, referenced above. Monitoring equipment confirmed that, when the signal booster was turned off, the interference resolved. AT&T requested that Mr. Cagle turn off the booster, but Mr. Cagle refused.
4. An AT&T Sales Department employee, David Jamison, also attempted to get One Call Now to turn off the interfering signal booster. Mr. Jamison called and spoke with Mr. Cagle, who indicated he would only turn off the booster if AT&T would install its own in-building solution at no cost. Mr. Cagle indicated that if his solution was not acceptable, AT&T would have to respond in writing.
5. On December 1, 2009, AT&T filed a "trouble ticket" with the FCC's Enforcement Bureau documenting the interference incident.¹ On the same day, Mr. Peebles, consistent with AT&T policy with respect to AT&T employee interactions with the public where an employee feels physical safety may become an issue, secured a police escort (Officer Jeff Hubbard of the Troy Police Department), and returned to One Call Now to hand deliver to the company president, Ms. Angela Kirchner, a cease-and-desist letter from AT&T. At that time, Mr. Peebles also explained that a case had been

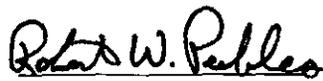
¹ Due to the severity of interference problems resulting from interfering signal boosters, the FCC established an online system for reporting of such interference issues. See <http://www.fcc.gov/eb/CTIX/>.

opened with the FCC. Within thirty minutes of Mr. Peeble's departure, Ms. Kirchner called to indicate that the signal booster was turned off. AT&T's measurements following the removal of the One Call Now signal booster showed that all interference had been resolved.

6. Mr. Peebles subsequently received a telephone call from Mr. Cagle in which he was abusive and demanded to know Mr. Peebles role within AT&T and information about Mr. Peebles discussions with the FCC. Mr. Peebles referred Mr. Cagle to AT&T's legal counsel, identified in the cease-and-desist letter.

7. On December 8, 2009, the FCC issued a Warning Letter in Case EB-09-DT-0375.

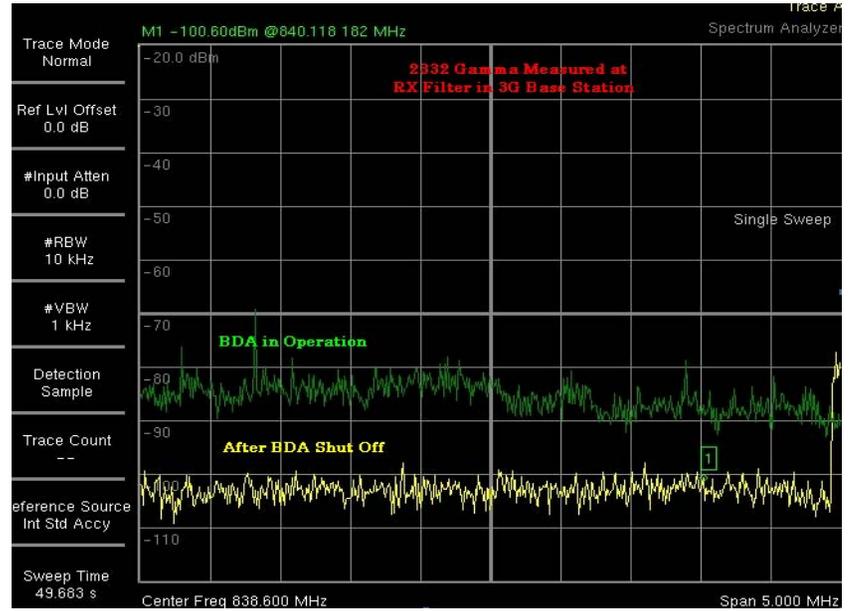
8. I have reviewed the foregoing Declaration and certify under penalty of perjury that the facts contained herein are true and correct.


Robert W. Peebles
Engineer
AT&T

February 2, 2010

ATTACHMENT 1.a
UL RSSI Measurements

DAY	130773 OHDAU2332
DATE	RSSI_UL-BH-UMTS
12/10/2009	-102.73
12/9/2009	-102.85
12/8/2009	-103.1
12/7/2009	-102.5
12/6/2009	-103.58
12/5/2009	-103.53
12/4/2009	-103.3
12/3/2009	-102.95
12/2/2009	-103.18
12/1/2009	-86.9
11/30/2009	-87
11/29/2009	-86.83
11/28/2009	-85.93
11/27/2009	-86.95
11/26/2009	-86.55
11/25/2009	-85.83
11/24/2009	-86.9
11/23/2009	-87.33
11/22/2009	-94.5
11/21/2009	-94.63
11/20/2009	-94.48
11/19/2009	-93.95
11/18/2009	-94.03
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11/15/2009	-94.9
11/14/2009	-94.68
11/13/2009	-93.9



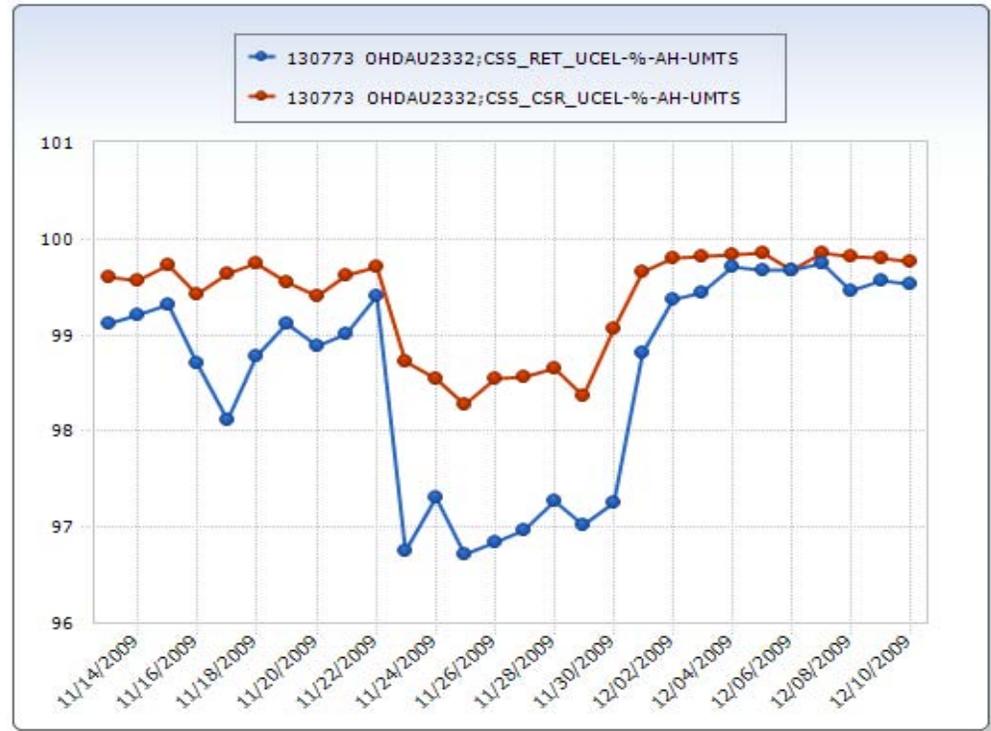
Date/Hour	Rcvd Tot Wide Pwr > -90dBm	Average Received Wideband Power dBm
12/1/2009 10:00	7897.25	-87.675
12/1/2009 11:00	7771.25	-87.175
12/1/2009 12:00	1092.75	-101.125
12/1/2009 13:00	27.75	-103.775
12/1/2009 14:00	16	-103.525
12/1/2009 15:00	19.25	-103.075
12/1/2009 16:00	17.5	-103.025
12/1/2009 17:00	24.75	-103.575
12/1/2009 18:00	19.5	-104.025



ATTACHMENT 1.b

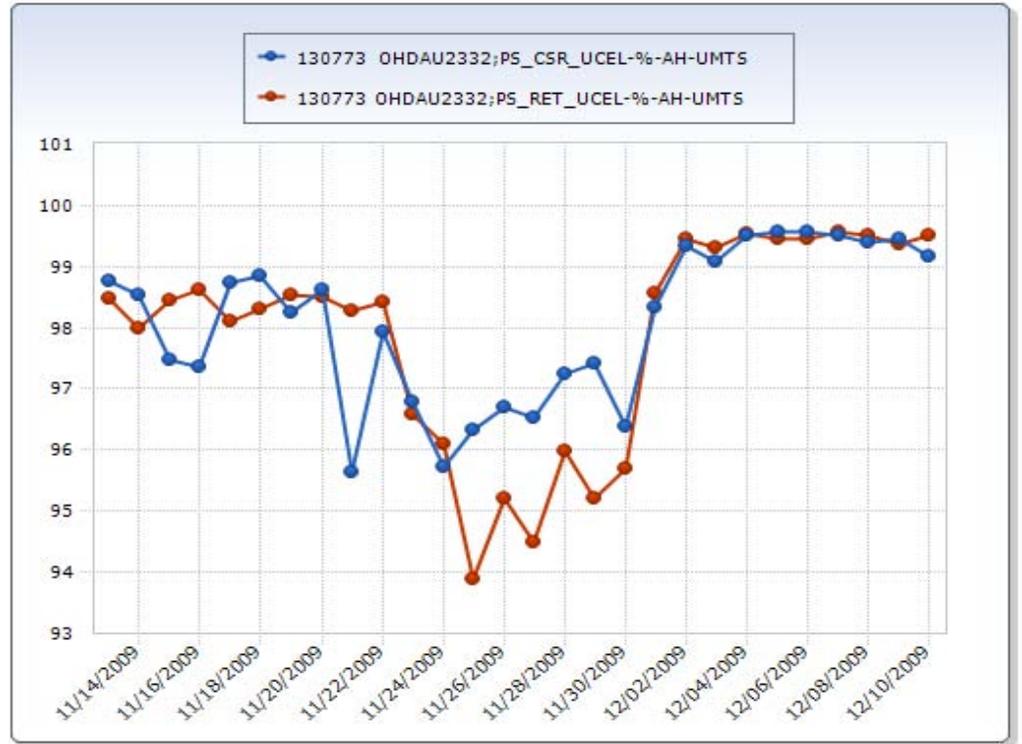
Voice Measurements

DAY	130773 OHDAU2332	
DATE	CSS_RET_UCEL-%-AH-UMTS	CSS_CSR_UCEL-%-AH-UMTS
12/10/2009	99.53	99.77
12/9/2009	99.56	99.8
12/8/2009	99.45	99.81
12/7/2009	99.75	99.86
12/6/2009	99.68	99.68
12/5/2009	99.67	99.85
12/4/2009	99.71	99.84
12/3/2009	99.44	99.81
12/2/2009	99.37	99.8
12/1/2009	98.82	99.66
11/30/2009	97.25	99.06
11/29/2009	97.03	98.37
11/28/2009	97.28	98.66
11/27/2009	96.96	98.57
11/26/2009	96.85	98.54
11/25/2009	96.71	98.27
11/24/2009	97.3	98.55
11/23/2009	96.75	98.72
11/22/2009	99.41	99.71
11/21/2009	99.01	99.62
11/20/2009	98.89	99.41
11/19/2009	99.12	99.54
11/18/2009	98.77	99.74
11/17/2009	98.11	99.63
11/16/2009	98.71	99.43
11/15/2009	99.31	99.72
11/14/2009	99.2	99.56
11/13/2009	99.11	99.61



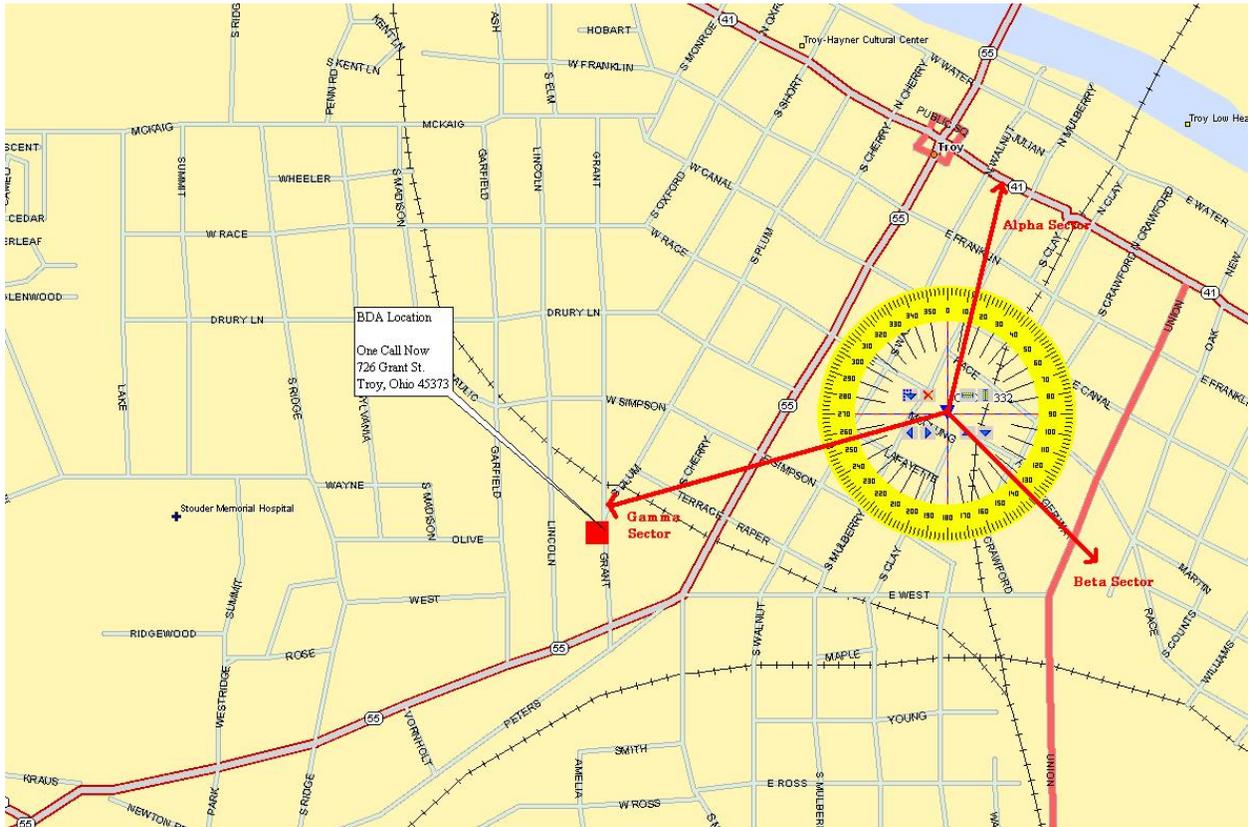
ATTACHMENT 1.c
Data Measurements

DAY	130773 OHDAU2332	
DATE	PS_CSR_UCEL-%-AH-UMTS	PS_RET_UCEL-%-AH-UMTS
12/10/2009	99.16	99.51
12/9/2009	99.45	99.37
12/8/2009	99.4	99.52
12/7/2009	99.5	99.58
12/6/2009	99.58	99.46
12/5/2009	99.56	99.45
12/4/2009	99.51	99.54
12/3/2009	99.08	99.3
12/2/2009	99.34	99.44
12/1/2009	98.32	98.56
11/30/2009	96.37	95.7
11/29/2009	97.42	95.2
11/28/2009	97.24	95.99
11/27/2009	96.54	94.49
11/26/2009	96.7	95.2
11/25/2009	96.33	93.89
11/24/2009	95.73	96.1
11/23/2009	96.78	96.59
11/22/2009	97.93	98.42
11/21/2009	95.64	98.29
11/20/2009	98.62	98.51
11/19/2009	98.25	98.54
11/18/2009	98.86	98.3
11/17/2009	98.74	98.11
11/16/2009	97.36	98.61
11/15/2009	97.48	98.46
11/14/2009	98.53	97.98
11/13/2009	98.77	98.49



ATTACHMENT 2
AT&T Incident Report

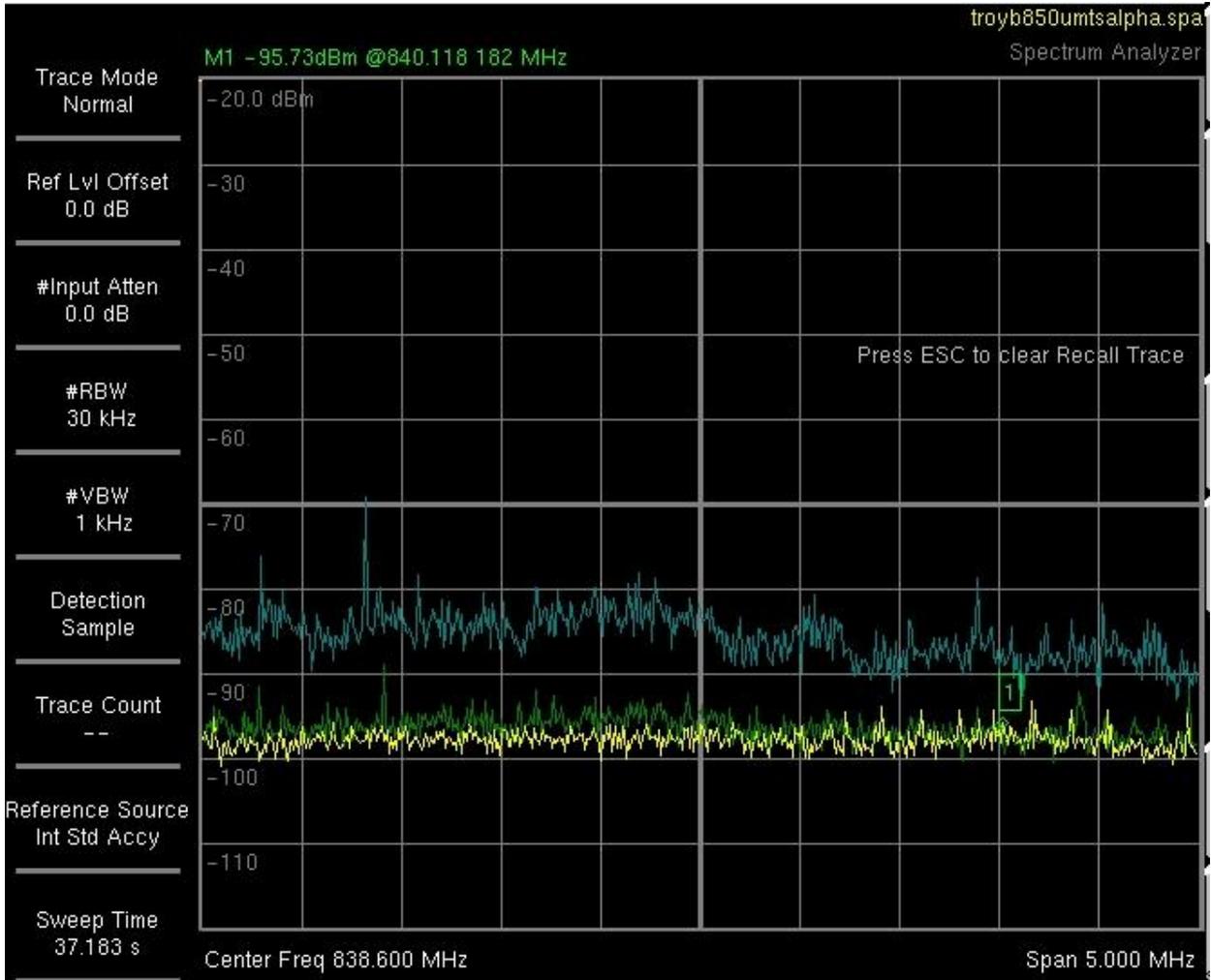
On 11/23/2009, AT&T engineering met with Todd Cagle of One Call Now regarding interference isolated to a BDA at 726 Grant Street in Troy, Ohio. The investigation began after reports of degraded service in the area and the subsequent detection of an increased noise floor in the gamma sector of site 2332. The map below highlights the location of the BDA relative to the AT&T base station:



The noise floor levels averaged over 24 hours as reported by the 3G base station:

Site	Rcvd Tot Wide Pwr > -90dBm	Average Received Wideband Power dBm	Maximum Received Wideband Power dBm
OHDAU2332Alpha	15.17021277	-104.0702128	-60.9
OHDAU2332Beta	16.20212766	-101.9531915	-64.2
OHDAU23323Gamma	5103.265957	-89.17021277	-51.7

The interference is coming from the general direction of the Gamma antennas pointed at 254 degrees. Another view from a spectrum analyzer connected to the receiver sample port on each sector (the blue trace is the elevated Gamma sector noise floor; green and yellow are alpha and beta):

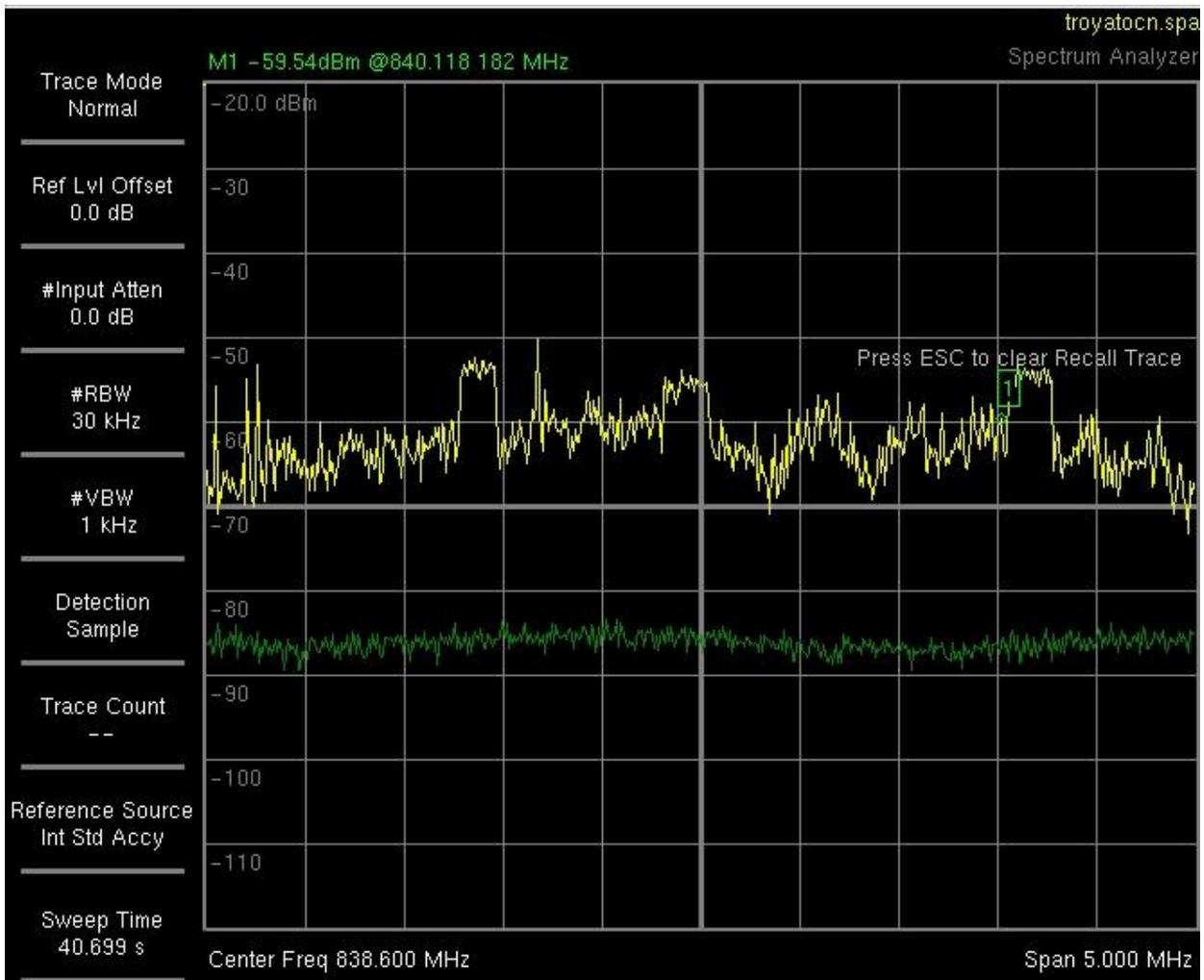


The noise floor rise on the Gamma sector appeared to start on 11/22/2009

Date	Rcvd Tot Wide Pwr > -90dBm	Average Received Wideband Power dBm
11/22/2009	28.84375	-95.7625
11/23/2009	4306.71875	-91.4
11/24/2009	7739.875	-88.21875
11/25/2009	7665.520833	-87.10729167
11/26/2009	6682.697917	-88.36770833
11/27/2009	5704.260417	-89.109375
11/28/2009	7639.427083	-86.95104167
11/29/2009	7423.395833	-88.21041667
11/30/2009	5103.265957	-89.17021277

AT&T met with Todd Cagle at the One Call Now building. Mr. Cagle explained that he installed a Wilson BDA with 5 re-radiating antennas in the building to improve the AT&T signal. Mr. Cagle did not request nor enter into a service enhancement agreement with AT&T. He also was not willing to accept that his BDA could cause interference. AT&T (Shawn Roush) was able to visit the location of the BDA, and Mr. Cagle powered it off long enough to take field and cell site measurements. When AT&T called Mr. Cagle back to report that the interference had cleared up with his BDA powered off, he was asked to send the BDA back to Wilson for repair. Mr. Cagle got more defensive that his BDA is not the source of interference. An attempt was made to explain to that it was clear now, but the problem could come back and AT&T would like for him to leave the BDA offline and send it in for repair. This request was not granted.

With the interference back, AT&T (Rob Peebles) went back to the area to make another set of measurements to confirm and isolate the source of the interference. The image below was taken on Grant Street on the East side of the building (yellow trace is a Yagi antenna aimed at One Call Now, green trace aimed 180 degrees away).



AT&T through our sales department (David Jamison) and Technical Sales Support engineering (Cheryl Hartzell) attempted to make contact again with One Call Now. David spoke with Mr. Cagle on the phone; Mr. Cagle's response through David was (paraphrasing from an e-mail sent by David) "he is not willing to shut their BDA off. He said if we would like to come in and install our own in building solution at no cost that is fine with him. If not, respond back to him in writing".

Filed FCC case on 12/1/2009:



Cellular Telephone
Interference Report.

An informational letter was hand-delivered to One Call Now (Angela Kirschner, President) on 12/1/2009 by Rob Peebles with an escort (Officer Jeff Hubbard) from the Troy Police department. Explained that a case was opened with the FCC and my phone call with agent Greg Cunningham) (case # CTIX-1259677541) and the next steps if the BDA is not turned off.

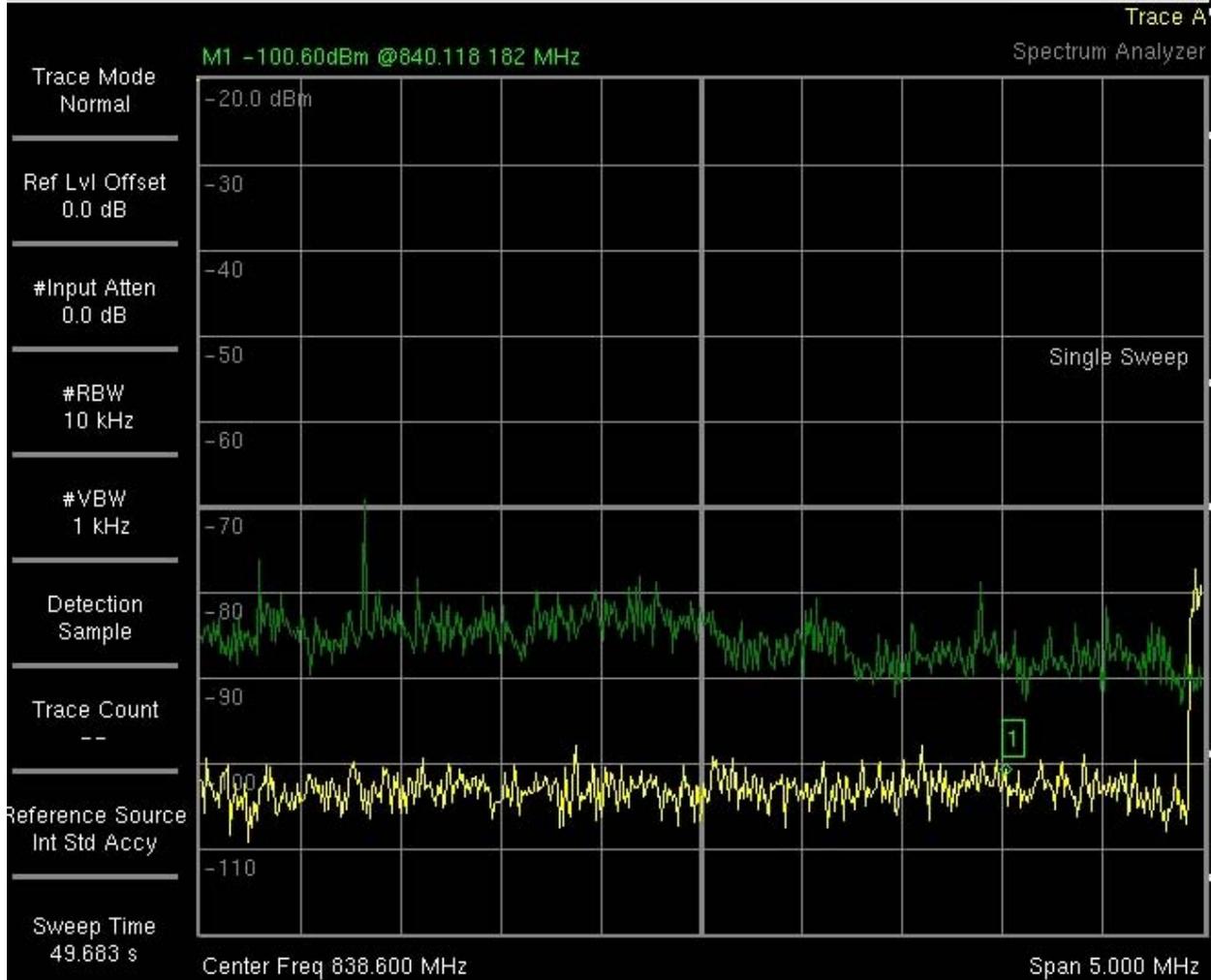


OCN.doc

Within 30 minutes of departure Ms. Kirschner phoned to inform me the BDA was turned off. Verified interference removed with the spectrum analyzer at the cell site. (Service metrics for the noise floor and spectrum analyzer shot below; green = BDA on, yellow = BDA off as measured from a sample port off of the receiver filter in the 3G base station).

Date/Hour	Rcvd Tot Wide Pwr > -90dBm	Average Received Wideband Power dBm	Maximum Received Wideband Power dBm
12/1/2009 10:00	7897.25	-87.675	-66.4
12/1/2009 11:00	7771.25	-87.175	-54.6
12/1/2009 12:00	1092.75	-101.125	-70.9
12/1/2009 13:00	27.75	-103.775	-69.7
12/1/2009 14:00	16	-103.525	-73.3
12/1/2009 15:00	19.25	-103.075	-70.7
12/1/2009 16:00	17.5	-103.025	-72.2
12/1/2009 17:00	24.75	-103.575	-75.3
12/1/2009 18:00	19.5	-104.025	-69.6

12/1/2009 19:00	23.25	-103.9	-71.1
12/1/2009 20:00	17.5	-103.975	-60.7
12/1/2009 21:00	14	-103.875	-71.7
12/1/2009 22:00	15.25	-104.4	-71.9
12/1/2009 23:00	29	-104.625	-66



On my way back to Columbus received a phone call from Todd Cagle (their IT person). He was quite abusive demanding to know among other things the case number, my role within AT&T, exactly what is wrong with their BDA, who my contact is at the FCC, etc. I referred him to the contact information for Adorno & Yoss LLP in the letter that was delivered to Ms. Kirschner.