



ET Doc. No 13-84
ET Doc. No. 03-137
Accepted/Filed

November 13, 2013

NOV 14 2013

FCC Office of the Secretary

INTERGOVERNMENTAL ADVISORY COMMITTEE (IAC) POLICY RECOMMENDATION 2013-11

REPLY COMMENTS OF THE INTERGOVERNMENTAL ADVISORY COMMITTEE

Re: *In the Matter of Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies and Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*; R&O; Further Notice of Proposed Rulemaking; Reassessment of FCC's Radiofrequency Exposure Limits and Policies, Notice of Inquiry (ET Docket No. 13-84 and ET Docket No. 03-137 (March 29, 2013)).

The Intergovernmental Advisory Committee (IAC) appreciates the opportunity to submit these comments to the Commission. Comprised of 15 representatives from state, local and tribal governments from around the country, the IAC for nearly 20 years has advised the FCC on a range of telecommunications issues for which our non-federal governments share responsibility or administration with the Commission.

INTRODUCTION

These comments follow a letter the IAC submitted to the Commission on January 7, 2013. That letter encouraged the Commission to adopt the *Notice of Inquiry* in this proceeding, the FCC's first major review of its standards for human exposure to radiofrequency (RF) emissions since 1996.¹

The IAC acted because it believed then and still does that this item offers the Commission, with input from the public we all serve as well as other federal agencies such as the Environmental Protection Agency and the Food and Drug Administration "an excellent opportunity to revisit and update FCC standards for RF emissions in light of the national proliferation of wireless facilities and [their] greater proximity to residents."²

The IAC continues to believe that the *Notice of Inquiry* is an especially appropriate document for the Commission to gather the views of local, state, and Tribal government officials. They have long been concerned about RF emissions, especially because of the increased use and availability of wireless services and devices by all of our constituents. Since the FCC last conducted a major review of its standards for RF radiation exposure in 1996 over 15 years ago there has been a tremendous growth in cell telephone towers, cell phones, smart phones, tablets, laptops, and other wireless devices that emit RF radiation.³ At the same time, there has been an ever closer

¹ See Intergovernmental Advisory Committee Policy Recommendation 2013-1, adopted January 7, 2013, <http://transition.fcc.gov/statelocal/recommendation2013-01.pdf> For the FCC's RF radiation standards it adopted in 1996, see *Report and Order* in ET Docket 93-62 (Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation), 11 FCC Rcd 15123 (1996); *Second Memorandum Opinion and Order and Notice of Proposed Rule Making* in ET Docket 93-62, 12 FCC Rcd 13494 (1997), *aff'd sub no*, *Cellular Phone Taskforce v. FCC*, 205 F. 3d 82 (2d Cir. 2000).

² IAC Recommendation 2013-1, *supra*.

³ See, e.g., "Number of wireless devices in use exceeds the entire U.S. population," <http://www.intomobile.com/2011/10/11/number-wireless-devices-us-exceeds-entire-population>, Oct. 11, 2011 (reports annual survey by the Cellular Telecommunications Industry Association (CTIA) finding that for the first time the number of American wireless subscriber connections of 327.6 million exceeded

No. of Copies rec'd

List ABCDE

proximity of wireless transmitters and receivers to millions of American consumers and our constituents.⁴ These consumers and constituents also increasingly voice their concerns about possible human exposure to RF radiation to state, local and tribal government officials.⁵

BACKGROUND

Local Official's Guide to RF Emission Antenna Safety. The IAC's interest in RF radiation exposure dates back to the Commission's last major review of its RF radiation standards in the mid to late 1990s. At that time, the IAC's predecessor, the Local and State Government Advisory Committee, produced in June 2000 a "plain English" guide on RF emissions to assist local community officials and citizens to better understand the FCC rules. The guide is entitled "*A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance.*" ("*Local Official's Guide*").⁶

The *Notice of Inquiry* in this proceeding notes that the *Local Official's Guide* "provides a framework for local and state governments and wireless service providers to cooperate in the determination of compliance with the Commission's RF exposure limits."⁷

In addition to submitting these comments in this proceeding, the current IAC has decided to update the *Local Official's Guide* based on whatever new RF radiation rules the Commission adopts in 2014 or later.⁸ The update will be done by the original author of the 2000 Guide, Jonathan Kramer, Esq. and an RF Engineer based in Los Angeles, CA.

the population of the entire United States and its territories of 315.5 million, equating to a population penetration rate of 103.9%). "Wireless subscriber connections" are defined as "the number of active devices, including smart phones, feature phones, tablets, hotspots, etc." In contrast, in December 1997, CTIA reports there were only 55.3 million wireless subscriber connections with a population penetration rate of 19.8%. See CTIA, "Wireless Quick Facts." www.ctia.org/advocacy/research/index.cfm/aid/10323

⁴ See, e.g., these statistics about mobile device use today in America, e.g., "87% of American adults own a cell phone (the Pew Research Center's Internet & American Life Project recently reported that 91% of U.S. adults own cell phones, "cell phone ownership hits 91% of adults," <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults>), 45% of American adults own a smartphone, and 31% of American adults own a tablet computer. See "13 impressive statistics about mobile device use," Ed Tech Magazine, www.edtechmagazinew.com/higher/article/2013/03/13-impressive-statistics-about-mobile

⁵ See, e.g., *Comments of the City of Portland, Oregon on the Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, ET Docket No. 13-84, ET Docket No. 03-17, Aug. 28, 2013 (notes that "informational meetings with the public are often required as part of the wireless facility siting process. Citizens are often very emotional at these meetings, expressing strong opposition to wireless facilities arising from perceived health risks from RF Emissions...Portland schools have had to spend \$172,000 fighting a parent's lawsuit over WiFi" and "given the continuing disquiet among substantial portions of the public, the Commission must act to assuage these generalized concerns. Otherwise, this will continue to fester as an aspect of agitation and distrust at the local level." *Id.* at 2-3, nn. 6-7, 6.)

⁶ See "*A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance*," FCC and Local and State Government Advisory Committee, June 2, 2000 ("*Local Official's Guide*") http://transition.fcc.gov/Bureaus/Engineering_Technology/News_Releases/2000/nret0008.html Note that the *Guide* does not address other issues falling generally under the jurisdiction of state and local governments, such as construction, antenna siting, permits, inspections, zoning, environmental review, and placement of antenna facilities within communities." *Id.* at 1,

⁷ See *In the Matter of Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies and Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; R&O; Further Notice of Proposed Rulemaking; Reassessment of FCC's Radiofrequency Exposure Limits and Policies, Notice of Inquiry* (ET Docket No. 13-84 and ET Docket No. 03-137 (March 29, 2013), para. 231, at 84 ("Notice of Inquiry").

⁸ Pursuant to FCC rules, the current IAC expires on December 2, 2013. See 47 CFR § 0.701(a). Therefore, unless and until the Commission reauthorized the IAC for another two-year term the IAC would have had to suspend its plan to update the *Local Official's Guide*. On October 29, 2013, however, the Commission issued a Public Notice to reauthorize the IAC for another two-year term commencing from its first meeting in 2014 and to seek nominations for new members. See Public Notice, "FCC Announces the Reauthorization of the Intergovernmental Advisory Committee and Seeks Nominations," DA 13-2086, released October 29, 2013. Therefore, the current IAC hopes and expects that its successor will also commit to updating the 2000 *Local Official's Guide*.

The 2000 *Local Official's Guide* notes that “state and local governments may wish to verify compliance with the FCC’s exposure limits in order to protect their own citizens.”⁹ The *Guide* further states that state, local and [tribal] officials “can play an important role in ensuring that innovative and beneficial communications services are provided in a manner that is consistent with public health and safety.”¹⁰

The *Guide* further recognizes that “as a practical matter, state and local [and tribal] governments have a role to play in ensuring compliance with the FCC’s [RF radiation] limits,” and “it provides guidance to assist... in effectively fulfilling that role.”¹¹

RECOMMENDATION

Our major concern at this time and the chief reason we submit these comments is to urge the Commission and the federal government to maintain the authority that currently exists for state, local and tribal governments to require information from both broadcasters and wireless telecommunications providers demonstrating their compliance with FCC standards for human exposure to RF radiation. Such authority we acknowledge must be exercised within the limits on non-federal authority regarding the placement of wireless service facilities by Section 332(c)(7) of the Communications Act of 1934, as amended. This provision states that “[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radiofrequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”¹²

At the same time, we note that the Commission itself in its *RF Procedures Report and Order in WT Docket No. 97-192* recognized state and local governments’ “legitimate interest in ascertaining that facilities will comply with the RF exposure limits set forth in [the Commission’s] rules.”¹³

It remains important to local zoning authorities that they have the continued ability to require wireless provider applicants for zoning approvals to demonstrate their compliance with the Commission’s RF emission standards. This capability helps local governments assuage local residents who come to local zoning hearings and complain about alleged RF radiation from proposed wireless facilities. This local government capability also assists the Commission in ensuring that carriers submit required and valid documentation about the RF emission compliance of their proposed facilities.

Approved on this 13th day of November, 2013.

INTERGOVERNMENTAL ADVISORY COMMITTEE

Joyce Dickerson, Chair

⁹ *Local Official's Guide*, *supra* n. 6 at 1.

¹⁰ *Id.*

¹¹ *Id.* at 2. The *Local Official's Guide* provides “guidance to local governments attempting to determine if a radio transmission facility might raise compliance concerns by helping local governments readily recognize sites that do not raise RF exposure compliance concerns (e.g., through the use of effective radiated power and separation distance tables and a checklist to determine categorical exclusions), as well as information for initiating a Commission inquiry in instances where a facilities operator is unable to dispel a local government’s concerns about compliance.” Notice of Inquiry, *supra* n.7, Appendix H, at 291.

¹² See 47 U.S.C. §332(c)(7)(B)(iv).

¹³ See *Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c) (7)(B)(iv) of the Communications Act of 1934*, Report and Order, at 8, 15 FCC Rcd 22821 (2000).

cc: Chairman Thomas Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly