

FCC Local and State Government Advisory Committee

Advisory Recommendation Number 5

PCIA Letter Concerning Radio Frequency Emissions

1. On March 19, 1997, the Personal Communications Industry Association (PCIA) addressed a letter to the Wireless Telecommunications Bureau suggesting a variety of methods for limiting local authority to ensure that personal wireless services facilities comply with the Commission's radio frequency (RF) emission regulations. The PCIA urged the Commission to act expeditiously by declaratory ruling instead of initiating a rulemaking proceeding. For the reasons discussed below, The LSGAC recommends instead that the Commission work with state and local governments and the industry to recommend a mutually acceptable RF testing and documentation protocol that may be adopted by state and local governments.

2. Section 332(c)(7) of the Communications Act provides that state and local governments may not regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions *to the extent that such facilities comply with the Commission's regulations concerning such emissions*. The Telecommunications Act thus *preserves* the authority of state and local governments to ensure that personal wireless service facilities comply with the Commission's RF emission regulations.

3. As the use of wireless services expands rapidly, local officials are repeatedly called upon to explain the primacy of federal law and federal regulations governing the health effects of RF emissions. When local officials explain that local governments may not make siting decisions based on the health effects of RF emissions, so long as personal wireless service facilities comply with federal RF regulations, it is natural for citizens to inquire, "How do we know that these facilities DO comply with federal regulations?" Local officials must be able to assure their constituents that compliance with the Commission's radio frequency emission regulations will be monitored.

4. The LSGAC understands that it is possible for facilities that have satisfied Commission design specifications to nonetheless be operated in a manner that causes human exposure to RF emissions that exceed the Commission's standards. LSGAC members have been informed that the Commission maintains very few field staff to perform emission testing, and that there is no regular program for monitoring operational facilities for compliance with RF emission standards. Unless the Commission intends to initiate a permanent, broad-based program to monitor the operation of all personal wireless service facilities to ensure that they are operated in compliance with RF emission standards, state and local governments must have authority to ensure such compliance.

5. Given the possibility that a facility may be operated in a manner that leads to human exposure to RF emissions in excess of Commission standards, state and local governments may: 1) require companies to demonstrate that they are in compliance with the Commission's RF emission regulations; 2) investigate complaints that facilities exceed the Commission's RF emission regulations; and 3) undertake inspections to verify compliance with the Commission's RF guidelines. Local taxpayers should not bear the costs of these investigations.

RECOMMENDATION: The Commission should reject the PCIA's request for action by declaratory ruling. Instead, the Commission should work with state and local governments and the industry to establish a mutually acceptable RF testing and documentation mechanism that providers *may* use to demonstrate compliance with the RF radiation guidelines, and state and local governments *may* accept as demonstrating compliance with such guidelines.

Adopted by the LSGAC on June 27, 1997

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