



PUBLIC NOTICE
FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 02-1044

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

Released: May 7, 2002

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITION FOR
DECLARATORY RULING THAT AMENDMENTS TO ANNE ARUNDEL COUNTY, MARYLAND ZONING
ORDINANCE ARE PREEMPTED AS IMPERMISSIBLE REGULATION OF RADIO FREQUENCY
INTERFERENCE RESERVED EXCLUSIVELY TO THE FEDERAL COMMUNICATIONS COMMISSION

Comment Date: June 10, 2002

Reply Comment Date: June 25, 2002

On April 23, 2002, Cingular Wireless LLC ("Cingular") filed a Petition for Declaratory Ruling ("Petition") requesting that the Commission, under the Communications Act of 1934, as amended ("the Act"),¹ issue a declaratory ruling preempting recent amendments to the Anne Arundel County, Maryland ("Anne Arundel") zoning ordinance.² On April 29, 2002, Cingular filed a supplement to its Petition.³ Cingular seeks a declaratory ruling that the amendments impermissibly condition the County's zoning approval of communications facilities on the County's satisfaction that the facilities will not degrade or interfere with the County's federally-licensed public safety communications system. Cingular states that, although the amendments purport to regulate land use through zoning, they are, in fact, intended to regulate and have the effect of regulating radio frequency interference ("RFI"). Cingular further states that Congress, under the Act, has established a "pervasive regulatory scheme" that grants the Commission exclusive jurisdiction to regulate RFI, and that the Anne Arundel amendments conflict with the Commission's rules regarding resolution of RFI. Cingular maintains that, in order to prevent significant delays in the provision of wireless services resulting from Anne Arundel's regulation of RFI, the Commission should determine that the amendments are preempted.

This matter shall be treated as a "permit but disclose" proceeding in accordance with the Commission's ex parte rules. 47 C.F.R. §§ 1.1200(a), 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules. 47 C.F.R. § 1.1206(b).

Comments on the petition must be filed on or before June 10, 2002, and reply comments by June 25, 2002. All documents filed in this proceeding should indicate in the caption that this matter is before the Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch and include the DA number of this Public Notice, DA 02-1044.

¹ 47 U.S.C. §§ 151, 301, 302, 303.

² *See* Petition for Declaratory Ruling filed by Cingular, dated April 23, 2002.

³ *See* Supplement to Petition for Declaratory Ruling filed by Cingular on April 29, 2002. The supplement contains a copy of Bill No. 93-01 amending Anne Arundel County's zoning ordinance and a copy of a letter from the Commercial Wireless Division addressing zoning regulations of a different county.

The Petition is available for public inspection and copying in the Commission's Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554. Copies of the Petition are also available from Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at qualexint@aol.com. Copies of the Petition also may be obtained via the Commission's Electronic Comment Filing System (ECFS), which is accessible at <http://www.fcc.gov/e-file/ecfs.html>, by entering the Docket Number of this proceeding, Docket No. WT 02-100.

Under the Commission's current procedures for the submission of filings and other documents,⁴ submissions in this matter may be filed electronically by ECFS or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**⁵ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must also be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); (2) Gary Oshinsky, Commercial Wireless Division, Wireless Telecommunications Bureau, at goshinsk@fcc.gov, or (202) 418-7447 (facsimile).

⁴ See *In the Matter of Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, FCC 01-345 (rel. Nov. 29, 2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001).

⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

For further information contact: Gary Oshinsky, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-7167.

- FCC -