



**CITY OF GLENDALE CALIFORNIA
REPORT TO CITY COUNCIL**

June 9, 2009

AGENDA ITEM

City Attorney: Consideration Of Resolution Advocating Amendments To The Telecommunications Act Of 1996 To Permit Local Governments To Consider The Health And Environmental Effects Of Radio Frequency Emissions From Wireless Communications Facilities; And To Support Greater Zoning Powers For Local Governments With Regard To The Placement Of Such Facilities And Communicating Same To The President And The U.S. Congress.

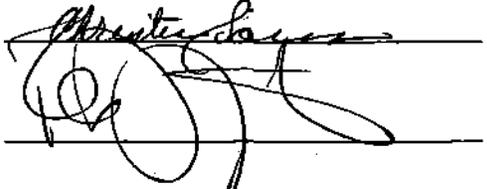
(1) Resolution for Consideration

COUNCIL ACTION

Public Hearing [] Ordinance [] Consent Calendar [] Action Item [**X**] Report Only []
Approved for June 9, 2009 calendar

ADMINISTRATIVE ACTION

Submitted
Scott H. Howard, City Attorney  Signature

Prepared
Christina R. Sansone, General Counsel—Public Works 

Reviewed
James E. Starbird, City Manager.

RECOMMENDATION

It is respectfully recommended that the City Council adopt the proposed resolution declaring that local governments should have the ability to consider the health and environmental effects of radio frequency emissions from wireless communications facilities when deciding whether to approve the construction or modification of such facilities in the City, to support legislation that would give local governments greater zoning powers in favor of less intrusive and more efficient technologies when regulating the placement of such facilities, and directing the City's federal lobbyist to communicate same to the President and Congress.

SUMMARY

On June 2, 2009, the Council approved the submission of comments to the Federal Communications Commission ("FCC") with regard to the FCC's development of a National Broadband Plan. Among many other goals, the FCC stated that it plans to address the issues of maximum utilization of broadband networks, rural broadband strategy, access to poles and rights of way, and wireless tower siting. The City's comments underscore the concern of local jurisdictions that their zoning authority be preserved and that the FCC be mindful that, with the exception of cases involving regulation based on the health effects of radio frequency emissions ("RF Emissions") which are within the FCC authority, the FCC is without authority to act in matters addressing the local regulation of zoning and rights-of-way.

On May 26, 2009, a community group, Glendale Organized Against Cell Towers ("GOACT") requested Council to consider submitting comments to the FCC advocating certain changes in Section 704 of the federal Telecommunications Act of 1996, 47 U.S.C. § 332 ("Act") which preempt local jurisdictions from full control over the placement of cellular antennas in their communities. Section 332 of the Act prevents local governments including the City of Glendale, from opposing the placement of wireless cellular antennas and other personal wireless service facilities on the basis of the environmental or health effects of RF Emissions to the extent that the proposed facilities comply with the FCC regulations concerning such emissions. Section 332 of the Act also limits zoning authority of local jurisdictions by prohibiting the unreasonable discrimination among providers of functionally equivalent services; and mandating that local zoning authorities to refrain from prohibiting or have the effect of prohibiting the provision of personal wireless services.

GOACT's request that the City advocate for a change in the law deserves serious consideration. There is an ongoing worldwide debate within the scientific community and among governing bodies throughout the world regarding how thoroughly the long-term health effects of RF Emissions are understood. In particular, questions have been raised regarding how well the existing regulations established by the Federal Communications Commission protect more vulnerable populations such as school-aged children, and how well they protect against the cumulative effect of RF Emissions on people who live or work in close proximity to multiple cellular facilities. Attached is a comment directed to the FCC as part of its development of the National Broadband Plan which briefly summarizes the concerns regarding a possible increase in potential biological health effects brought on by RF Emissions. As long as questions exist as to the adequacy of these federal regulations, local governments should have the ability to include a consideration of health and environmental effects of these facilities when deciding whether or not to approve their construction, placement or modification.

Two other jurisdictions are directing their legislative advocates to press Congress to loosen the preemption rules over local jurisdictions to control in the placement of cellular antennas and allow local entities to take a greater role in regulating based on the safety concerns from RF Emissions.

The County of Los Angeles Board of Supervisors passed a motion on June 2, 2009 to instruct the County's legislative advocates to actively seek and support federal legislation to repeal limitations on state and local authority imposed by the Act that infringe upon the authority of local governments to regulate telecommunications towers on the basis of the health and environmental effects of these facilities.

Similarly, the Los Angeles Unified School District has directed its lobbyists to press for a revision of the Act's preemption of the local jurisdictions' consideration of the health and environmental

effects of RF Emissions at levels below current FCC standards in decisions involving the placement, construction and modification of wireless facilities.

On June 2, 2009, the Council directed staff to return on June 9, 2009 with a resolution to communicate said concerns through the City's federal lobbyist to the President and U.S. Congress. By the adoption of the proposed motion, Council would instruct City staff through its legislative advocates to actively seek and support federal legislation to repeal such limitations on state and local authority based on the urgent need to preserve the local control over siting of wireless communications facilities and to expand the ability of municipalities to regulate such facilities based on the health and environmental effects of RF Emissions from these facilities.

FISCAL IMPACT

There is no foreseeable fiscal impact to the issuance of the proposed resolution.

BACKGROUND

On May 26, 2009, GOACT came before Council in oral communications to inform Council of the FCC's request for comments. GOACT urged Council to submit comments to the appropriate legislative bodies on two issues. First, GOACT urges the City to advocate for the modification of Section 332(c)(7)(B), the text of which is set forth below, which states that municipalities cannot "unreasonably discriminate among providers of functionally equivalent services." GOACT urged that this section should be amended to allow local municipalities to "reasonably discriminate in favor of less intrusive and more efficient technologies."

Second, the Telecommunications Act of 1996 states: "No State or local government may regulate...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." GOACT urged that local jurisdictions should have the ability to regulate the siting of wireless communications facilities on the basis of the public health and safety effects of RF Emissions.

The attached proposed resolution would direct staff to communicate, through the City's federal lobbyist, the aforementioned concerns of the Council and GOACT to the President and the U.S. Congress with regard to the need for modifications to the Telecommunications Act of 1996 in order to protect local public health, safety and welfare.

Section 332(c)(7)(A): Section 332(c)(7)(A) of the Act partially grants authority to local governments to make zoning decisions concerning the placement and construction of wireless service facilities, subject to enumerated limitations in § 332(c)(7)(B). The text of Section 332 is as follows:

"(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No 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 radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."

EXHIBITS

A. Comment on the National Broadband Plan, May 2009, Steen Hviid.

Comment on: A National Broadband Plan for Our Future GN Docket No. 09-51

May 2009

Steen Hviid, engineer (ret.)
5708 Martin Road
Snowflake, AZ 85937

To the FCC,

On April 8, acting chairman Michael Copps asked in his introductory statement for comments on questions and problems that the Notice of Inquiry misses. This comment brings up unintended consequences of the NBP, as framed.

The use of wireless technologies has increased exponentially in the last few decades, much beyond any prior use in the human experience. The biological effects of these technologies, such as Wi-Fi, WiMAX, and Broadband over Powerlines (BPL) have not yet been studied. However, the radiation from cell phones and cell towers is similar, so it is reasonable to consider what has been learned. And since one can expect a Wi-Fi equipped PC to be in use more than a cell phone, stronger effects are plausible.

In the past decade, many independent researchers have found that there are biological effects from cell phones and other wireless devices. They are not benign, as hitherto thought.

One example is the research group around Professor Leif Salford at the University of Lund, Sweden. This group was the first to show that the important blood-brain barrier, that protects the brain, becomes leaky following cell phone usage.

This research has now been verified about two dozen times.

Other noted researchers are Henry Lai at the University of Washington, Leeka Kheifets at UCLA, Ronald Herberman at the University of Pittsburgh and others.

Some research has put plausible links between a range of illnesses that have mushroomed in the last decades – in lockstep with the increasing use of wireless technologies. Diseases such as autism, Alzheimer's, ADD/ADHD and others are some examples.

Many researchers, as well as thousands of doctors, have issued public appeals to reconsider the unbridled use of wireless technologies. The safety of which is based on decades-old assumptions, that are now known to be false.

According to one study, about 65% of medical studies by independent researchers show biological effects. Meanwhile, studies financed by the telecom industry show the opposite. This repeats the pattern of the past, with tobacco, asbestos and various other

EXHIBIT A

dangers to the public health that are now widely accepted, but once too were controversial. This should be kept in mind when considering all relevant studies.

A small subset of the population is directly affected by radiation from cell phones, Wi-Fi transmitters, etc. This emerging disease is still controversial and not yet well understood. It goes under several names; the research community usually refers to it as electromagnetic hypersensitivity, EHS.

This vulnerable population could be directly affected by a wireless build-out. The more severe cases have moved to rural areas to avoid the electrosmog of more populated areas. They could be forced to move again.

Let us not repeat the costly mistakes of the past. Any national broadband plan should fully consider the health consequences of the technologies. These costs should not be externalized, not pushed over on innocent people.

This will probably mean no funding, and hopefully some restrictions, on further deployment of Wi-Fi, WiMAX and other radiating technologies, including Broadband over Powerlines (which incidentally turns powerlines into giant antennas). Instead, safer technologies, such as copper, fiber optic and satellite systems should be promoted.

The smart grid should also be re-evaluated, to avoid placing wireless transmitters in every household.

If omitting wireless technologies is politically impossible, at least instigate the following common sense rules:

- No transmitters within 1000 ft. of a residence
- No transmitters within 1500 ft. of a school, daycare or medical facility
- Allow communities to opt-out, which is currently prohibited by the Telecommunications Act of 1996, Section 704
- Allow people, with a doctor's note, to be free of any smart grid transmitters

One community has already enacted similar policies. Please see City of Arcata Municipal Code, section 9.44.060.A.3 at http://www.cityofarcata.org/images/stories/10-03-08-luc_04.final.10-08.pdf.

References

References with a DOI are available on <http://dx.doi.org>

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Literature Review: ICNIRP Guideline Critique, Dr. Neil Cherry, Lincoln University, New Zealand, October 2, 1999: <http://www.salzburg.gv.at/ICNIRP-Kritik1.pdf>,
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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GLENDALE, ADVOCATING AMENDMENTS TO THE TELECOMMUNICATIONS ACT OF 1996 TO PERMIT LOCAL GOVERNMENTS TO CONSIDER THE HEALTH AND ENVIRONMENTAL EFFECTS OF RADIO FREQUENCY EMISSIONS FROM WIRELESS COMMUNICATIONS FACILITIES; TO SUPPORT GREATER ZONING POWERS FOR LOCAL GOVERNMENTS WITH REGARD TO THE PLACEMENT OF SUCH FACILITIES; AND COMMUNICATING SAME TO THE PRESIDENT AND THE U.S. CONGRESS.

WHEREAS, 47 U.S.C. § 332(c)(7)(B) governs the siting of wireless communications facilities and grants limited local zoning authority with regard to wireless siting zoning considerations and prohibits local jurisdictions from regulating the placement, construction, and modification of such facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations of the Federal Communications Commissions ("FCC") concerning such emissions; and

WHEREAS, on June 2, 2009, the Council approved the submission of comments to the FCC with regard to the FCC's development of a National Broadband Plan which, among many other goals, the FCC stated that it plans to address the issues of maximum utilization of broadband networks, rural broadband strategy, access to poles and rights of way, and wireless tower siting; and

WHEREAS, the City's comments underscore the concern of local jurisdictions that their zoning authority be preserved and request that the FCC be mindful that, with the exception of cases involving regulation based on the health effects of radio frequency emissions which are within the FCC authority, the FCC is without authority to act in matters addressing the local regulation of zoning and rights-of-way; and

WHEREAS, on May 26, 2009, a community group, Glendale Organized Against Cell Towers ("GOACT") requested Council to consider submitting comments to the FCC advocating certain changes in Section 704 of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7) which preempt local jurisdictions from full control over the placement of cellular antennas in their communities; and

WHEREAS, there is an ongoing debate within the scientific community and among governing bodies throughout the world regarding how thoroughly the long-term health effects of low-frequency electromagnetic and radio frequency (RF) emissions are understood including questions raised regarding how well the existing regulations established by the FCC protect more vulnerable populations such as school-aged children, and how well they protect against the cumulative effect of radio frequency

emissions on people who live or work in close proximity to multiple cellular facilities;
and

WHEREAS, the Council desires to expressly communicate to the President and U.S. Congress the urgent need to preserve the local control over siting of wireless communications facilities, to further study the effects of RF emissions of these facilities, and to expand the ability of municipalities to regulate such facilities based on the health and environmental effects of these facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GLENDALE, CALIFORNIA, that the Glendale City Council hereby directs City staff to have its federal legislative advocates communicate to the U.S. Congress, the President and executive branch members to: (1) actively seek and support federal legislation that would give local governments greater flexibility to regulate the placement of wireless communications facilities given the unique aesthetic and safety issues that said facilities raise and to regulate such facilities in favor of less intrusive and more efficient technologies; (2) urge that the federal government engage in a comprehensive study of the effects of Wireless facilities RF emissions to assess the health impacts of these emissions; and (3) to review and revise those provisions of the Telecommunications Act of 1996, including but not limited to Section 332(c)(7)(B), that limit or compromise the rights of local zoning authorities to govern over the placement, construction and modification of wireless communications facilities on the basis of environmental effects of radio frequency emissions, until all environmental exposures are cumulatively considered.

A certified copy of this Resolution shall be delivered to the President, local congressional representative, and United States Senators Diane Feinstein and Barbara Boxer.

The City Clerk shall certify to the Adoption of this Resolution.

Adopted by the Council of the City of Glendale on this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, Ardashes Kassakhian, City Clerk of the City of Glendale, hereby certify that the foregoing Resolution No. _____ was adopted by a majority vote of the Council of the City of Glendale, California, at a regular meeting held on the _____ day of _____, 2009, and that the same was adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

City Clerk

APPROVED AS TO FORM


CITY ATTORNEY
DATE 6-3-09