

February 9, 1996
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CITY COUNCIL DOCKET ITEM 330 OF FEBRUARY 13, 1996

Item 330 is a consolidated appeal from twelve decisions of the Planning Commission to approve Conditional Use Permit (CUP) applications for Pacific Bell Mobile Services to install Personal Communication Services antennas at various locations throughout the City. The basis for the appeal is grounded upon a single issue raised by the appellant that the installation of these antennas will further the use of a particular type of radio frequency emission (GSM) which they claim may indirectly cause significant adverse impacts to the health of hearing impaired individuals. The appellant is expected to urge you to refuse to certify the negative declaration that accompanies this action and instead require the applicant to prepare a full Environmental Impact Report (EIR) to analyze the potential indirect adverse impacts of approving these CUPs.

Please be advised that on February 8, 1996 the Telecommunications Act of 1996 ("the Act") was signed into law by President Clinton. The attached provisions of the Act directly relate to the issue before you in Item 330.

In summary, Section 704(a)(7)(B)(iv) of the Act preempts local governments from regulating the placement, construction, and modification of Personal Communication Services facilities on the basis of the environmental effects of radio frequency emissions, provided that such facilities comply with applicable regulations regarding those emissions as promulgated by the Federal Communications Commission.

In addition, Section 225(f) of the Act states that providers of telecommunications service must ensure that the service they offer is accessible to and usable by individuals with disabilities (presumably including the hearing impaired), to the extent that accessibility and usability is readily achievable. This section of the Act further provides that compliance with this disabled access standard is "exclusively" under the jurisdiction of the federal government.

While the Act does not preclude the Council from directing the applicant to prepare an EIR to analyze the potential adverse impacts of GSM, it does appear that the Council would be preempted by the Act from utilizing that information as a basis to condition or deny the issuance of any CUP for a Personal Communication Services antenna.

Respectfully submitted,
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City Attorney

RAD:lc:632(043.1)

Attachments

RC-96-4