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Date: April 4, 2006

FAX TO: Howard Melamed
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FROM : Jeffrey A. Sarrow, Esq.
RE: CELLANTENNA v. FCC and THE UNITED
 STATES OF AMERICA,

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Attached please find a copy of the Complaint which was filed today.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-60430 **CIV - HUCK**

CELLANTENNA CORP., a Florida
corporation,
Plaintiff,

vs.

FEDERAL COMMUNICATIONS
COMMISSION and THE UNITED
STATES OF AMERICA,
Defendants.

MAGISTRATE JUDGE
SIMONTON

FILED BY
2006 APR -4 AM 9:40
CLERK OF U.S. DISTRICT COURT
S.D. OF FLA. - FT. L.

COMPLAINT

Plaintiff, CELLANTENNA CORP. hereby sues Defendants, the FEDERAL COMMUNICATIONS COMMISSION (FCC) and THE UNITED STATES OF AMERICA (UNITED STATES) and alleges as follows:

COUNT I - Action for Declaratory Relief

1. This is an action for declaratory relief under authority of 28 U.S.C. §2201.

Parties

2. Plaintiff, CELLANTENNA CORP. (CELLANTENNA) is a Florida corporation having its principal place of business in Broward County, Florida.
3. Defendant, the FEDERAL COMMUNICATIONS COMMISSION is an agency of the United States government. Among other matters, the FCC adopts regulations which govern the interference potential of devices which are capable to emitting sufficient radio frequency energy to

(d) Radio frequency devices for use by the Government of the United States or any agency thereof; Provided, however, that this exception shall not be applicable to any device after it has been disposed of by such Government or agency.”

12. Significantly, although sales of RF jamming devices to the United States Government and its agencies are exempt from the provisions of the Act and the referenced regulations, neither the Act nor the FCC’s rules contain any corresponding exemption for the sale of cellular or RF jamming devices to state and or local governments.

Cellular Jamming Devices and the Public Interest

13. It is well known that radio frequency jamming equipment may be effectively utilized to disarm and disable remotely controlled improvised explosive devices (RCIED). In other words, cellular jamming equipment can disable a bomb designed to be detonated by the use of a remote cellular telephone.

14. Recognizing that the responsible use of cellular jamming devices is an effective tool in the fight against terrorism, several state and local law enforcement agencies have contacted the Plaintiff to explore the purchase of cellular jamming devices for law enforcement purposes.

15. Section 302(a) and (b) and Section 333 of the Act, and the related FCC Rule, 47 C.F.R. §2.803 (a) effectively prohibit the sale of such devices by the Plaintiff to state or local law enforcement agencies.

Conflict With Homeland Security Act of 2002

16. In response to the tragedy of 9-11, and in recognition of the dangers posed by terrorist elements, the United States Congress enacted the Homeland Security Act of 2002, 6 U.S.C. §101 et. seq. (hereafter, the “HSA”).

17. The legislative intent of the Congress, and the legitimate governmental interest and public policy considerations expressed in the HSA, are in stark conflict with the aforesaid provisions of the Communications Act of 1934 and related rules.

18. Whereas the FCC prohibits the sale of radio frequency and cellular jammers to state or local police departments, the HSA consistently and repeatedly directs the Department of Homeland Security to take whatever measures are necessary to **empower** local law enforcement agencies and first responders in the fight against global terrorism. Specifically, but not necessarily by way of limitation, Section 162 of the HSA, 6 U.S.C. §162 sets forth the mission of the Office of Homeland Security and its duties; stating as follows:

“Sec.162 Mission of Office; duties.

(a) Mission

The mission of the Office shall be ..

- (1) to serve as the national focal point for work on law enforcement technology, and
- (2) to carry out programs that, through the provisions of equipment, training and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

.....

(b) Duties:

In carrying out its mission, the office shall have the following duties:

.....

- (4) To establish and maintain program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform the standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113). The program may, at the discretion of the Office, allow for supplier’s declaration of conformity with such standards.

.....

- (6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness,

and efficiency of law enforcement technologies used by Federal State, and local law enforcement agencies, including but not limited to.....

.....

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices.

.....

(9) To develop, and disseminate to State and local laws enforcement agencies, technical assistance and training material for law enforcement personnel, including prosecution.”

19. Moreover, Section 102 of the HSA directs the Secretary of Homeland Security to coordinate its efforts with state and local governmental agencies. In this regard, 6 U.S.C. §102(c)(1) provides as follows:

“(c) Coordination with Non-Federal Entities: With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801)(including the provision of training and equipment with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by -

(1) coordinating with State and local government personnel, agencies and authorities, and with the private sector, to ensure adequate planning, equipment, training and exercise activities;

20. Additionally, 6 U.S.C. §302 imposes upon the Secretary additional responsibility for the development of countermeasures to terrorist threats in partnership with state and local governments. Section 302 provides in relevant part as follows:

“Sec. 302, Responsibilities and Authorities of the Under Secretary For Science and Technology.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for -

.....

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for identifying priorities, goals, objectives and policies for, and coordinating the Federal Government’s civilian efforts to identify and develop

countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(6) establishing a system for transferring homeland security development or technologies to Federal, State, local government, and private sector entities;"

21. Finally, Section 801 establishes within the Office of the Secretary of Homeland Security an office for state and local government coordination to "oversee and coordinate departmental programs for, and relationships with, state and local governments". 6 U.S.C. 801 (b)

(1). Indeed, the Office is required, pursuant to 6 U.S.C. §801 (b) (2) and (3) to:

"Sec. 801. Office for State and Local Government Coordination.

(b) Responsibilities. - The Office established under subsection (a) shall-

- (1) coordinate the activities of the Department relating to State and local government;
- (2) assess, and advocate for the resources needed by State and local government to implement the national strategy for combating terrorism;
- (3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland."

SECTIONS 302(A) AND 303 OF THE COMMUNICATIONS ACT OF 1934 ARE VIOLATIVE OF SUBSTANTIVE DUE PROCESS AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

22. The primary and overriding government objective of the United State of America, and indeed all sovereign nations, is the protection of its citizenry.

23. In addressing and identifying this paramount governmental interest, and in consideration of the new realities present in the post 9-11 world, Congress enacted the Homeland Security Act of 2002. As previously stated herein, the legislative goal sought to be achieved by the Congress, as set forth in the Mission Statement of the HSA and directives to the Secretary, is to empower ALL governmental agencies, state, local and federal, with the necessary tools to protect the general public. As specifically set forth in the HSA, Congress clearly intended for state and local law enforcement agencies and first responders to have ready access to advanced technical equipment to be used in the defense of the nation against terrorism.

24. The RF and cellular jamming devices offered by the Plaintiff are precisely the type of technology which has been requested by, and is needed by state and local law enforcement agencies to neutralize the killing potential of deadly remote controlled improvised explosive devices. When reviewed in the context of the public policy statements and specific legislative directives which permeate the HSA, it is clear that certain provisions of the depression era Communication Act, 1934, specifically, 47 U.S.C. §302 and 47 U.S.C. §303 are constitutionally infirm.

25. To the extent that they arbitrarily prohibit the sale and distribution of radio frequency interference devices to state and local law enforcement agencies, while permitting the sale of such items to be United States government, 47 U.S.C. §302(a) (b) and (c), 47 U.S.C. §333, and FCC Rule 2.803, 47 C.F.R. §2.803 are unconstitutional on their face, and in their application as being violative of the substantive due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution for the following reasons:

- a. The provisions of the aforesaid Statutes, and Rule 2.803 which effectively prohibit the sale of RF and cellular jamming devices to state and local law enforcement agencies is not rationally related to a legitimate governmental interest.
- b. The provisions of the aforesaid Statutes, and Rule 2.803 which effectively prohibit the sale of RF and cellular jamming devices to state and local law enforcement agencies are, in fact, in conflict with legitimate and critical governmental objectives which seek to provide for the national defense and the public policy expressed by the Congress in the HSA.
- c. The prohibition against the sale of RF and cellular jamming equipment to state and local law enforcement agencies, while exempting the sale of such equipment to the Federal Government is arbitrary and capricious in its implementation and enforcement.
- d. The omission of state and local law enforcement agencies from the classification of those entities exempted from §302 and 333 of The Communications Act of 1934, as contrasted with the inclusion of the Federal Government as an exempt party, is arbitrary, capricious, discriminatory, and without rational basis.

26. In addition to the foregoing, the aforesaid sections of The Communications Act of 1934 are repugnant to, and in irreconcilable conflict with, The Homeland Security Act of 2002 and have been impliedly repealed by Congress, to the extent such offending provisions prohibit the sale of RF and cellular jamming devices to state and local law enforcement agencies.

27. On August 24, 2005, the FEDERAL COMMUNICATIONS COMMISSION issued a Letter of Inquiry to the Plaintiff regarding a complaint alleging that CELLANTENNA CORP. was marketing to law enforcement and other government agencies within the United States uncertified devices that intentionally caused radio frequency interference in violation of the various sections of The Communications Act referenced herein. As a result, Plaintiff has a reasonable apprehension of enforcement action by the FCC with respect to any sale of such equipment to governmental agencies not specifically exempted.

28. Plaintiff suffers, and will continue to suffer adverse economic impact created by the unreasonable prohibition of the sale of RF and cellular jamming devices to state and local law enforcement agencies.

29. Plaintiff is in doubt as to its rights and liabilities under the aforesaid acts of Congress and Administrative Rules relating to its desire to market and sell radio frequency jamming devices to state and local law enforcement agencies, and seeks a declaration of its rights in connection therewith.

WHEREFORE Plaintiff, CELLANTENNA CORP. hereby requests that this Court enter a declaratory judgment determining that those portions of 47 U.S.C. §302(a)(b) and (c), 47 U.S.C. §333, 47 CFR §2.803 and 47 CFR §2.807 which prohibit the sale of the radio frequency and cellular jamming devices to state and local law enforcement agencies are violative the substantive due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and are therefore are unconstitutional on their face and in their application, or alternatively for a determination that those sections of the aforesaid laws which prohibit the sale of radio frequency jamming devices to state and local governments have been impliedly repealed by the Homeland

Security Act of 2002 and are therefore unenforceable, and such other further relief as the Court deems just and necessary under the circumstances.

COUNT II - Injunctive Relief

30. Plaintiff readopts and realleges paragraphs 2 through 28 of this Complaint as if set forth herein.

31. The enforcement of 47 U.S.C. §302(a)(b) and (c), 47 U.S.C. §333, 47 CFR §2.803 and 47 CFR §2.807, to the extent that they prohibit Plaintiff from selling cellular jamming devices to state and local governments and/or their law enforcement agencies will cause Plaintiff irreparable harm and injury for which it has no adequate remedy at law.

32. The ominous specter of injury to the Plaintiff, and indeed the general public, as a result of the inability of state and local law enforcement agencies and first responders to obtain the necessary technical equipment which is prohibited to them by the application of the referenced portions of the Communication Act and related FCC rules greatly outweigh any threatened harm that an injunction may cause to the Defendants.

33. Plaintiff's claims herein have a likelihood of success on the merits.

34. The grant of injunctive relief, which will prevent the enforcement of any action to prohibit the sale of RF and cellular jamming devices to state and local law enforcement agencies, would greatly serve the public interest and reinforce the intent of the United States Congress and the Homeland Security Act of 2002.

WHEREFORE Plaintiff, CELLANTENNA CORP. hereby requests that this Court issue a preliminary and permanent injunction, enjoining the FEDERAL COMMUNICATIONS

COMMISSION and THE UNITED STATES OF AMERICA from enforcing restrictions of the sale of cellular jamming devices to state and local governments, and their law enforcement agencies, as set forth in 47 U.S.C. §302(a)(b) and (c), 47 U.S.C. §333, 47 CFR §2.803 and 47 CFR §2.807.

Dated April 4, 2006.

Fort Lauderdale, Florida.

Respectfully submitted,



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