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## FOR IMMEDIATE RELEASE

August 20, 2007

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### Alaska Supreme Court Upholds Award for RF Radiation Injury Below Thermal Exposure Level

The Alaska Supreme Court (Court) upheld the decision of the Alaska Workers' Compensation Board (Board) awarding an AT&T equipment installer 100% disability as a result of his workplace electromagnetic field exposure to radiofrequency (RF) radiation at levels slightly above the FCC RF safety limit. The award was based on the psychological and cognitive effects of RF radiation over-exposure. This decision is significant because the FCC RF limit is designed to keep people from being heated and ignores evidence of other adverse biological effects at much lower levels.

The RF radiation exposure level in question was well below the FCC's recognized level of "thermal" harm. The FCC contends that there are no scientifically established harmful health effects below the thermal threshold. The Board decision agrees with the medical experts who found adverse health effects from this RF radiation exposure which occurred above the FCC safety limit but **below** the thermal threshold. This decision could have a very significant financial impact on the wireless industry going forward.

The Alaska Supreme Court found that:

*Because substantial evidence supports the board's findings and because the board's procedural decisions did not deprive AT&T of due process, we affirm the superior court's judgment that affirmed the board's ruling.*

This precedent-setting case opens the door for any wireless industry or maintenance worker who has been exposed to antenna arrays on the job site that have not been shut off to file disability claims should they suffer similar cognitive and neurological symptoms. US wireless service providers are not required to document compliance with FCC RF safety limits by on-site radiation measurements. Millions of workers occupy worksites on a daily basis where operating antenna arrays are camouflaged and where no workplace RF safety program is carried out.

The complete text of Alaska Supreme Court OPINION No. 6139 – July 6, 2007 is found at:  
[www.emrpolicy.org/litigation/case\\_law/index.htm](http://www.emrpolicy.org/litigation/case_law/index.htm)

## BACKGROUND

AT&T worker John Orchitt suffered a slightly elevated RF exposure while installing new computer equipment at a job site where he believed that the amplifier had been turned off before he and his co-worker entered the job site. When the co-worker's safety meter registered its highest level of RF exposure the two workers realized that there was a

problem. They discovered that the engineer who had provided the specifications for their job had misidentified which amplifier needed to be turned off. Orchitt was exposed to a six gigahertz signal operating at approximately 90 watts.

Immediately after the accident, Orchitt experienced headaches and eye pain. Later he reported complaints of "mental slowing." His neurologist ordered an MRI examination which showed "tiny areas of hypersensitivity in the frontal lobes." The neurologist referred Orchitt to Dr. Marvin Ziskin, professor of radiology and medical physics at Temple University. Dr. Ziskin is also a member of the IEEE'S International Committee on Electromagnetic Safety (ICES). Using information that Orchitt provided, Dr. Ziskin concluded that Orchitt had been overexposed to RF radiation.

Orchitt sought treatment at the Brain Injury Association of Alaska. His care provider there issued an opinion stating that he was suffering from a cognitive disorder due to his RF radiation exposure. She provided him with ongoing rehabilitation therapy to address his continuing complaints of mental slowing and mood changes. She also referred him to Dr. Daniel Amen, psychiatrist, who performed a SPECT scan with measures blood flow in the brain to identify functional changes. Dr. Amen concluded that Orchitt had some decreased brain activity as well as depression, and given the history, attributed these neurological impairments to Orchitt's RF radiation exposure.

Numerous subsequent examinations were carried out by the panel of doctors retained by AT&T and also by independent experts retained by the Board, including computer modeling of Orchitt's RF exposure by Dr. Arthur Guy, professor emeritus of electrical engineering at the University of Washington. Guy has done extensive work in the area of the biological effects of RF radiation. Guy's comprehensive calculations of the "worst case scenario" produced an exposure that was approximately 9.5% over the FCC's exposure limits, but "not enough to cause biological effects."

At the conclusion of the hearing process the Board's decision and order found that Orchitt had been exposed to excessive amounts of RF radiation. The Board decided that Orchitt's mental deficits and depression were the result of the overexposure. He was awarded temporary total disability and medical benefits.

AT&T appealed to the superior court which affirmed the Board's decision, finding that the decision was supported by substantial evidence and that AT&T's due process rights had not been violated.

AT&T appealed the superior court's decision to the Alaska Supreme Court. Along with arguing that it was not accorded its due process, AT&T argued that none of the experts upon which the Board relied had sufficient expertise in RF radiation exposure to be able to connect Orchitt's overexposure to RF radiation.

The Alaska Supreme Court decision cites previous case law and states:

*The board has the sole power to determine witness credibility and assign weight to medical testimony. When medical experts disagree about the cause of an employee's injury, we have held that as a general rule "it is undeniably the province of the Board and not this court to decide who to believe and who to distrust."*

The Court concluded that:

*The board did not abuse its discretion in its procedural rulings; it therefore did not deny AT&T due process. Because substantial evidence exists in the record to support the board's findings, we AFFIRM the superior court judgment that affirmed the board's rulings.*

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