Seattle
Department of Construction and Land Use

R. F. Krochalis, Director
Norman B. Rice, Mayor

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July 14, 1995

William Caton, Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

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Dear Mr. Caton:

We have reviewed the Notice of Proposed Rulemaking, Preemption of Local Zoning Regulation of Satellite Earth Stations (IB Docket No. 95-59). We would like to reiterate that we continue to believe very strongly that a local government, charged with administering local zoning regulations and public health standards, is in the best position to set and administer standards for telecommunication facilities.

Having said that, we would like to provide you with the following comments on this recent proposal:

Concerns with Section 25.104

1. Subsection (a): More guidance is needed as to when a regulation can be said to "impose substantial costs" on antenna users.

2. Subsection (b): The word "affects" is too broad. We recommend "limits" or "precludes" rather than "affects."

3. Subsection (d): We appreciate the latitude by the federal government to allow local jurisdictions to consider health and safety when setting limitations on radiofrequency radiation. It is essential that this not be pre-empted. Nonetheless, advisory guidance from federal agencies with professional and scientific expertise is vital.

4. Subsection (e)(2): Ninety days is not adequate. If an application triggers environmental review, an application may well still be "pending" in ninety days, which

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(under the proposed rule) would allow an applicant to go to the FCC and assert that the City could potentially condition or deny the project in a way that is costly to the applicant, and that administrative remedies were technically exhausted due to the delay, thereby making the case ripe for FCC review. There is substantial opportunity for nuisance suits, and a substantial chance the FCC could be put in a position to determine whether the regulation in question is preempted, even before it has been applied.

5. Subsection (e)(3): The proposal states that administrative remedies are deemed exhausted, and FCC review is available, when an applicant is advised that local approval "will be conditioned upon the petitioner's expenditure of an amount greater than the aggregate purchase and installation costs of the antenna." This is problematic for several reasons.

First, it is not clear whether the "expenditure" merely includes costs of screening and similar requirements or whether it includes permit fees as well.

Second, there is no valid reason for limiting the cost of screening, etc., to the value of the antenna plus the cost of installation. It is highly conceivable that an antenna might be inexpensive and a real eyesore that can only be remedied by more costly screening. The cost of the conditions will relate more closely to the adverse impacts of the antenna than to the cost of the antenna.

Finally, it is not clear what purpose is served by eliminating administrative review in cases where conditions imposed at the initial decision level are expensive. Under such a circumstance, should the City have to defend itself before the FCC, without benefit of an administrative review to form a record? Rather than making this a jurisdictional issue, under the exhausted remedy section, wouldn't it make more sense to come up with some rule of thumb as to what is a "reasonable" cost for requirements imposed as conditions to address impacts of antennas, and to place that standard in subsection (b)?

General Comments

6. FCC review: Materials do not indicate how FCC review would be conducted. Is there a hearing? Is it conducted locally, or must everyone go to Washington, D.C.? It would be desirable to have most cases handled via mail.

7. Page 24, paragraph 76: The FCC declines to list specific sorts of ordinances that run afoul of the rule, for fear that something will be missed. This begs the question. Surely some examples could be given, along with a statement that the list is not exhaustive. This would be helpful both to local agencies and to industry representatives.

8. Page 24, paragraph 77: The City of Seattle has been meeting with industry representatives, and supports such options and encouragement. However, zoning disputes

over transmitting antennas often involve opponents pointing to scientific studies that cast some doubt on the safety of some antennas. Education, at least at the current state of scientific study, is not a complete answer, although it is a necessary step.

Thank you for the opportunity to review the proposal. I hope these comments will be carefully considered and incorporated into the final recommendation.

Sincerely,

R.F. Krochalis,
Director

cc: Linda Cannon, Office of Intergovernmental Relations

Village Of
Lake Orion
EST. 1859

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July 7, 1995

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Office of the Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

RE: Proposed FCC Rule Change Relating to Satellite Dish Regulation: FCC 95-180 IB Docket No. 95-59 DA 91-577; 45-DSS-MISC-93

Dear Sir or Madam:

This letter is in response to the Federal Communication Commission's (FCC's) request for comments regarding a proposed rule change to preempt, effectively, all local regulation of satellite antennae. Our community strongly opposes the rule change, which would usurp well-established local zoning authority and would undermine or eliminate needed building safety regulations enforced at the local level.

The current FCC rule allows local regulation of satellite dishes, including placement, setback, and screening requirements, so long as the regulations have a reasonable and clearly-defined health, safety, or aesthetic objective and do not impose unreasonable limitations or costs on users or prevent reception. The current rule, passed in 1986 in response to actions by some communities essentially prohibiting satellite dish use, acknowledges the legitimate need of a local community to regulate the use and placement of structures within it, as well as the aesthetic appearance and physical safety of such structures. The need for regulation of these matters has been recognized by countless federal and state courts, and legislatures, as both a community right and an obligation.

The proposed amended rule, however, is closely worded to require a local authority to prove the existence of a federal interest in creating fair and efficient "competition" between communications service providers in order to avoid preemption. It also creates a "presumption" of preemption for dishes under

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two meters in diameter in commercial districts and one meter in residential districts, and authorizes an application to the FCC for a decision whether a local ordinance is preempted, setting up in effect a federal "zoning" commission -- but one without any expertise (or interest) in traditional zoning or land use principles and concepts.

The new rule, in other words, is as a practical matter a total prohibition on all local regulation of satellite dishes. It also represents a complete rejection of the proposition -- implicitly accepted by the FCC under the current rule -- that some "balancing" must be done between the legitimate interests in allowing free speech and the communication of information, on one hand, and a local community's ability to protect both residential and commercial areas from declining property values and visual blight, among other things, on the other.

The current rule is clear enough: local communities can't regulate satellite dishes out of existence, and they can't stop a property owner from having a dish; they can, however, employ reasonable means to further legitimate safety and aesthetic goals. There is no reason to upset this existing balance of interests merely to address the "stray" case of overreaching by a particular municipality.

In sum, we strongly oppose the rule change noticed for comment, and would like our position recorded with those of other opposed communities.

Very truly yours,

John D. Berchtold
Village Manager

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IB 95-59

OFFICE OF THE MAYOR

Woodrow Stanley
MAYOR

July 11, 1995

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Mr. Reed E. Hundt, Chairman
Federal Communications Commission
1919 M. Street
Washington, D.C. 20554

RE: **Proposed Rulemaking Federal Preemption of Satellite Dish Zoning**

Dear Chairman Hundt:

I am writing in opposition to proposed rule which expends the Federal preemption of local zoning of satellite dishes.

The proposed rule will have a detrimental effect on the City of Flint as well as other similarly situated locations.

Local control of satellite zoning should be maintained rather than eliminated. Our ordinance currently permits satellite dishes. The ordinance merely regulates placement to insure the aesthetic, maintains property values, and adequate emergency access. Our ordinance has not been challenged, we have received no complaints or requests for variances, as the current regulatory scheme is not over burdensome. Without adequate local regulation Federal preemption would have a detrimental effect on local communities. The ultimate outcome of the proposed rules would lower property values, increased regulated difficulties, and hamper emergency access.

I urge that the proposed rules not be adopted.

Very truly yours,

Woodrow Stanley
Mayor

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