

rebuttable presumption of carrier compliance, in contrast to a “per se” approach, adequately takes into account “the concerns of state and local governments” by allowing local participation in the administrative process.⁵³ The proposed rebuttable presumption lies well within the Commission’s jurisdiction and should be adopted.

C. The Record Supports Adoption of Expeditious Filing and Pleading Timetables and Default Judgment Procedures

The record supports the filing and pleading requirements advocated by PrimeCo, including expeditious filing procedures, self-imposed deadlines and default judgment procedures.⁵⁴ The Vermont Legislature commenters, however, oppose the proposed procedures, contending that “[t]he time frames for review put forward by the petitioners are unreasonably short” due, in part, to Vermont’s judicial appeal procedures. Interestingly, the Vermont Environmental Board supports the proposed procedures.

⁵² (...continued)
27. For example, Jefferson Parish asserts that wireless facilities may cause RF interference to local government emergency facilities. Jefferson Parish Comments at 3. The fact that “public safety” is involved in no way justifies ceding the Commission’s exclusive authority over RFI matters. Similarly, a state or locality’s concern for public health and safety does not limit the Commission’s authority to preempt state and local entry regulation and entry barriers. *See* 47 U.S.C. §§ 253(a), 332(c)(3).

⁵³ As the Commission has noted recently, a rebuttable presumption of preemption can be a means of recognizing “important local interests.” *See Preemption of Local Zoning Regulation of Satellite Earth Stations, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 5809, 5813-5817 (1996). Furthermore, a carrier’s operations are not left unchecked after the siting process is complete. Where a carrier violates the Commission’s RF rules, and an enforcement proceeding is initiated, the carrier would be expected to affirmatively demonstrate compliance to the Commission.

⁵⁴ *See* BellSouth at 6; GTE Comments at 9; Sprint Comments at 16; U S WEST Comments at 21 (generally support filing/pleading requirements); AT&T Comments at 6-7; GTE Comments at 12-13; U S WEST Comments at 22 (supporting default judgment procedures).

More important, however, the Vermont Legislature comments fail to address the statutory requirement that local decisions be subject to Commission review notwithstanding the availability of judicial or local administrative review. As to the concern that “[c]itizens will not have a legitimate amount of time to prepare their presentations,” the Act requires that a local decision have an adequate basis in the record *at the time of the decision* — not after the fact on judicial or Commission review. Thus, there is little that a citizen could present the Commission that it did not already present to the local government, and accordingly, there is no need to allow such unnecessary delay in the Commission review process.

D. The Commission Should Reject the Standing Proposals of New York City and the Cellular Phone Taskforce

New York City and the Cellular Phone Taskforce argue, respectively, that no standing limitations should be imposed and that all members of a community where a facility is sited should have standing.⁵⁵ These proposed “limitations” on standing contravene Congress’ intent that review of local siting decisions be completed expeditiously and would invite frivolous pleadings. As BellSouth has noted, state and local governments represent their constituencies, and private citizens are adequately represented, for the purpose of these proceedings, by their local officials. Furthermore, the Commission has traditionally imposed standing limitations in its adjudicative proceedings,⁵⁶ and such limits are particularly appropriate here as Congress intended that the

⁵⁵ NYC Comments at 5-6; Cellular Phone Taskforce Comments at 7.

⁵⁶ See *Knox Broadcasting, Inc.*, 6 Comm. Reg. (P&F) 1411, 1997 FCC LEXIS 1265, ¶¶ 2-4 (rel. March 11, 1997) (limits imposed on trade association standing), *Clifford Stanton Heinz Trust d/b/a CSH Cellular*, 11 FCC Rcd 5354, 5357-58

Commission's proceedings complement Section 332(c)(7) review in state and federal court.

Assuming *arguendo* that private citizens could demonstrate standing, precedent (and common sense) dictate that limitations be imposed. It is patently ridiculous to suggest, as NYC seems to imply, that any entity from any part of the country should be entitled to participate in an adjudicative proceeding such as this.⁵⁷ Indeed, even "limiting" standing to residents of a particular city or county, as the Taskforce proposes, would prove meaningless.⁵⁸ PrimeCo continues to advocate a flexible approach to standing; in being "flexible," however, the Commission must not abandon precedent, common sense, or Congressional intent.

⁵⁶ (...continued)
(Wir. Tel. Bur. 1996) (standing limits appropriate in adjudicative context);
Edison Cellular Station KNKN 281, 8 FCC Rcd 2736, 2737 (Com. Car. Bur. 1993).

⁵⁷ See NYC Comments at 5-6.

⁵⁸ Cities in PrimeCo's MTAs include Dallas, Houston, and Chicago, each of which has over one million residents.

CONCLUSION

As discussed herein and in its comments, PrimeCo urges the Commission to exercise its broad preemptive authority to 1) adopt procedures for the expeditious review of state and local RF-based facilities siting actions and 2) reject local attempts to regulate RF matters in contravention of Section 332(c)(7)(B)(iv)-(v).

Respectfully submitted,

PRIMECO PERSONAL COMMUNICATIONS, L.P.

By: 
William L. Roughton, Jr.
Associate General Counsel
Suite 320 South
601 13th Street, N.W.
Washington, D.C. 20005
(202) 628-7735

Its Attorney

October 24, 1997

CERTIFICATE OF SERVICE

I, Jo-Ann G. Monroe, do hereby certify that copies of the foregoing "Reply Comments of PrimeCo Personal Communications, L.P." were served this 24th day of October, 1997, by hand, to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

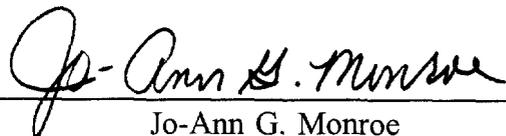
Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 804
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Rosalind K. Allen, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Shaun A. Maher, Esq.
Policy and Rules Branch, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7105
Washington, D.C. 20554


Jo-Ann G. Monroe