To: The Office of the Secretary of the FCC
Attention: Mr. Bill Katon
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Reply comments regarding procedures for Reviewing Requests for Relief from certain State and Local Regulations; — WT Docket No. 97-192

Comments on Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities; — MM Docket No 97-182, ET Docket No. 93-62, RM-8577

COMMENTS FROM THE HARDWICK ACTION COMMITTEE

1. Introduction

We, the members of the Hardwick Action Committee come from a small town in Vermont. We are housewives, teachers, farmers, mechanics, artists, hunters, business people and professionals. We are rural Vermonters, which is to say we are a stubborn lot, a people who choose to live apart from the rest of the world. We are people who want to live in a backward, rural place, disconnected from the rat race, from trends, perhaps even from the wonders of personal wireless services and digital television technology. We are people who live with the old ways and like it. We often use outdated technologies, like typewriters, wood stoves and two-way radios. Yes, our way of life is anachronistic. It is also how we choose to live, literally away from it all.

Most Vermonters have a reverence for the Green Mountains and hills that is almost inexplicable until you realize that for us, the natural world is more than an escape - a view or a vacation - it is the world we live and work in.

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So imagine the dismay of Hardwick residents when a telecommunication company, called RSA Limited Partnership, dba Bell Atlantic Mobile proposed a 163 foot tower practically on the summit of Buffalo Mountain. Maybe BAM didn't do a terrific amount of research, or maybe their classic disregard for the public interest blinded them, but they happened to choose Buffalo Mountain, a mountain that has always, since the town was founded in 1797, served as the scenic backdrop for the village of Hardwick. The mountain is visible from every road that leads into town.

Buffalo Mountain is so symbolic to the people of Hardwick that it was incorporated into the town's logo some years ago. This logo features prominently on the town's welcome signs, the signs for the Hardwick Town House, the Jeudevine Library, the Hardwick Depot, the Hardwick Police Department cruisers and the Hardwick Road Crew's trucks. The coop and a music shop are both named after Buffalo Mountain.

Naturally, many Hardwick area residents are agitated by this tower proposal. Over 380 area residents have signed a petition stating that the proposed tower would have a negative visual and environmental impact on the town and the mountain. Over 25 residents have written letters to the editor of *The Hardwick Gazette* opposing the tower. Close to a hundred people have attended the Hardwick Zoning Board's public hearings for BAM's application for a conditional use permit. The tower is being proposed in all our backyards, on Buffalo Mountain, the most prominent feature of the Hardwick's landscape.

We, the Hardwick Action Committee, have grave concerns about the economic, environmental and aesthetic impact of this tower on our community. We certainly wish Bell Atlantic had been more sensitive about the siting of its proposed tower.

You need to know that BAM's proposed sitein Hardwick is not in an area described by the FCC in Fact Sheet #2 as "compatible with the proposed use". This includes "such as industrial zones, utility rights of way, and pre-existing structures." This proposed site is in an R-1 zone, defined by the Hardwick Zoning Regulations as "an area that should have the lowest intensity of use, having primarily such uses as agriculture and forestry." The regulations also note that the"criteria used in selecting the land areas to be devoted to this use are the lack of roads or road network within the area, the topography of the land, whether steep or swampy area".

A tower on the mountain could lower property tax values, since the mountain, and hence the tower will be highly visible from just about every vantage in town. In many Vermont towns, like Hardwick, landowners with beautiful views of the mountains are assessed a higher property tax value. Three landowners in town testified to the Hardwick Zoning Board that a view of the tower would lower the appraised value of their land. These residents also believe a blight on the landscape, i.e. a tower, could impact resale of their homes. People move to Vermont to get away from cluttered landscapes. They visit Vermont to enjoy its natural beauty. Without its pristine mountains and agricultural landscape, the state would be just like any other overdeveloped part of the country. Tourism is the driving force behind the state of Vermont's economy.

From an environmental standpoint, legitimate questions about long-term, low-level exposure to radio frequency radiation emissions from personal wireless services facilities and from broadcasting facilities

remian unadresssed. The fact that the public's concerns raised about potential radio frequency radiation emissions from a proposed tower at a local zoning hearing is considered inadmissable evidence by this agency, the FCC, is repugnant. It is essentially a gag order on citizens' right to free speech. Your government agency represent the public's interest, yet it is unwilling to allow state and local authorities to accept evidence of the public's concern about radio frequency radiation. It's no wonder citizens are concerned about these emissions - with the new rules the agency is proposing the industry will become completely self-certified and self-regulated.

Aside from the unknown environmental impacts of radio frequency radiation on the residents of Hardwick, there would be a significant environmental impact on the mountain itself and its wildlife. The road BAM proposes to use to reach the site flooded so badly two years ago that the Federal Emergency Management Agency paid to repair the 12 foot deep ruts in it. A home near the base of the mountain was severely damaged.

The proposed site for BAM's cellular phone tower is a wilderness area. A myriad of wild creatures live here: black bears, grouse, deer, flying squirrels, wild turkeys, moose, porcupines, etc. A cellular phone tower and its accompanying parking lot, trailer and half mile long road would destroy wildlife habitat.

We, as members of the Hardwick Action Committee, believe that the telecommuncations industries already have a high success rate when it comes to siting towers. According to the Enviromental Board's comments on this proposed docket, from January 1990 to December 1995, before the Telecommunications Act of 1996 was passed, personal wireless service deployment didn't seem too difficult for the industry - "of the 66 applications, 58 received permits and only 2 were denied."

The Telecommunications Act of 1996 pre-empts state and local laws too much as it is. Under the current agency rules, if a zoning board does not provide "substantial evidence", the telecommunications industry can appeal the decision to the state Environmental Court. First of all, towns do not have the financial resources to provide the substantial evidence necessary, they do not have the money to hire experts. In the event of an appeal they can not afford to raise local property taxes in order to employ the necessary lawyers.

Contrary to how the FCC describes information exchange and initial site inquiries made by a propspective facilities owner described in FCC Fact Sheet #2, 9/17/96, BAM has used a strategy of smoke and mirrors to confuse, manipulate and intimidate the Town of Hardwick. At the first public hearing in Hardwick, BAM threatened to appeal a denial. At the second hearing, they refused to supply an environmental study to the zoning board. BAM was represented by a lawyer from Washington D.C., a lawyer from Burlington Vermont a real estate developer, an engineer. They also brought along a stenographer. This team of telecommunications experts proceeded to eat up the public hearing session with an extremely lengthy presentation that lasted two hours. When the public was finally allowed to speak, BAM officials interrupted citizens with long explanations, rebuttals and sheer rhetoric. At the third public hearing, BAM admitted that it had neglected to shade in a significant portion of the town in its viewshed analysis.

BAM revised its viewshed analysis after members of the Hardwick Action Committee did its own balloon test.

2. Comment on the Proposed Rules

The Hardwick Action Committee opposes any further preemption of state and local land use laws relative to personal wireless service facilities. Instead of further preemption, the FCC should allocate from the billions of dollars it has received from license feees and auctions additional resources to education and training at the state and local level with regard to personal wireless service facilities.

Vermont's Act 250 has historically proven through the last 25 years that the path to economic prosperity is through balanced environmental protection, not the preemption of such protection. Any further preemption will undermine Act 250 and local environmental protection.

We believe the industry's petition for relief from state or local regulations on the placement, construction or modification of personal wireless service facilities based either directly or indirectly on the environmental effects of RF emissions is a gag order. It violates the rights of citizens to use free speech in a public hearing about proposed personal wireless services and broadcasting facilities. The mere mention of RFR emissions at a public hearing should not disqualify a state or local authority's decision.

Any rule which is adopted by theFCC must not hinder any citizen participation. The FCC should not create barriers to citizen participation, or the participation of the authority whose ruling is being challenged.

The docket states that the agency "would presume that personal wireless facilities will comply with our RF emissions guidelines. The state or local government would have the burden of overcoming this presumption by demonstrationg that the facility in question does not or will not, in fact, comply with our RF guidelines". If a personal wireless service facility is sited in Hardwick, the Town lacks the financial and techinical resources to determine whether or not the radiofrequency emissions from a facility would exceed the FCC guidelines..

The agency should not anticipate that state and local land use authorities will fail to reasonably and faithfully carry out their obligations under federal law.

The Hardwick Zoning Board has 60 days after the public hearing process has been completed to submit a written decision on whether or not to grant an applicant a conditional use permit. This is a reasonable length of time.

We oppose the FCC's proposal to extend authority over private entities, like home owner associations and private land covenants, which could impact the Vermont Land Trust and the Nature Conservancy's landholdings.

The telecommunications industry should be required to perform emissions evaluation as a condition of license. Ideally, the FCC would actually regulate the industry. As a government agency, the FCC should not be concerned about minimizing the profits of the telecommunications industry by requiring that the industry

prove that it will meet the FCC's emissions guidelines. The industry should pay for the preparation of the demonstration of compliance, after all it is making a profit.

A tower on the horizon is clearly not in harmony with the rural nature of Vermont, and is, therefore, by definition, "an adverse impact." But is its adverse impact so detrimental to the aesthetics of the area as to be judged an"undue adverse impact"? This answer can only be found at the local and state level. Washington cannot presume to make this kind of judgement.

Submitted by:

Anne Galloway

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Comments on the Proposals:

I must object most strenuously to the proposal for greater preemption of state and local control by parties wishing to site communications towers, as proposed in the above Docket numbers.

My name is Rachel Kane, a resident of Hardwick, Vermont since 1971. I attended high school here, and attained two college degrees from the University of Vermont (B.A. Art History; B.S. Plant and Soil Science). Since 1980 my family and I have operated a retail and mail-order plant nursery, gift shop and tearoom in the village of East Hardwick, Vt. For reasons both of business and environmental preservation, I am opposed to the current proposal of greater independence from local control sought by the Telecommunications industry.

The idea of this sort of decision-making being made in Washington, far away from the realities of the effects, and from those residents who have the fullest knowledge of the impact, is antithetical to the ideas which formed our government and constitution.

As a community, we have recently been made aware of the already sweeping powers granted to what are, after all, private companies in search of profits, by the Federal Communications Act of 1996. I consider the rules in place already biased in favor of "big money" interests, and feel that if our government is going to further promote corporations over the will, intelligence, and even the lives of the populace, then the government is due for a change, for it no longer represents the citizenry.

I live in a town which is made up of people trying to 'get by' in various ways, most people having several jobs or sideline businesses in order to make ends meet. Many of us are employed in tourist related businesses, for tourism is fast becoming the number one employment in our hitherto agricultural and forestry based economy. Those of us in business have recognized the premium which consumers from around the world place on our products, simply because these products come from unspoiled Vermont. I am aware that my own business profits from the Vermont name, as are my fellow members of our Chamber of Commerce. Our major asset in this state is the unspoiled beauty of our natural landscape, and the Vermont name is a valuable resource to us!

Surely it is not to much to ask for us to be allowed the freedom to work with the communications industries in locating the towers in areas which both work for the service provider, and work for us in being placed in what we consider the least obtrusive location.

In our particular case in Hardwick, Vt., a site is currently proposed for Buffalo Mountain. Buffalo Mountain forms the intimate background for the town, and is incorporated into the town logo which decorates everything from police cruisers to town stationery. The mountain has no road, no houses, no power lines. It is a hunting ground of long standing, not only for deer, grouse and squirrels, but for bear and wild turkeys as well. It is not the only mountain in town! Several other potential sites have been put forward by the residents and local Planning Board, but not one of them has been seriously investigated by the company in this case, Bell Atlantic Mobile. Rather they threaten our little community with a law suit if we don't give them exactly what they want. The FCC guidelines themselves set out

procedures on how to work in cooperation with a community on siting these towers, but there has been no evidence of thoughtfulness, understanding or cooperation on their part in this case.

Hardwick has long been considered a hard-luck town, with a high proportion of residents on public assistance, but the one thing we do have going for us is the natural beauty surrounding our town. We don't have much else to sell!

Passing tourists these past few months, when told about the proposal for a cell tower on Buffalo Mountain, where aghast at the idea. All agreed that they would be saddened by the project, and sorry to be living in a time when the government refrains from using its powers for the good of the people, instead favoring the big money interests. Rather than taking the good of all into account, and contemplating the long term picture of what our lives will be in the future, the government seems to be finding it easier to make its decisions within the hothouse atmosphere of the Beltway, so far removed from reality (and the voters) as to be pathetic.

We would reserve the right to have say in these procedures.

Signed and Dated the 24th of October, 1997 Rachel M. Kane

By Rachel M. Kane
P.O.Box 147, East Hardwick, Vermont 05836

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My name is Judith Kane. I am a senior citizen and resident of East Hardwick, Vermont. I own a house and land in the town, and operate a bed and breakfast and a flower and herb nursery on the premises.

I would like to voice my strong opposition to the rail-roading tactics presently being employed by Bell Atlantic/Nynex in their effort to erect a cell communications tower in so many of the towns of Vermont. Bell Atlantic/Nynex, by misleading and misrepresenting the enormity of the impact these towers will have on the Vermont countryside and the health of its citizens, is not allowing individual towns any say in the site choice. This is not right.

Having read a synopsis of the FCC Guidelines to the companies seeking communication towers siting in this state, I can assure you that Bell Atlantic/Nynex is totally ignoring those guidelines.

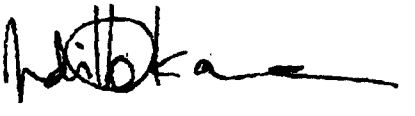
We are farmers but we are not idiots. The foreignness of the jargon is confusing to most, and the time restrictions imposed by the FCC and the sheer suddenness of the impact of Bell Atlantic/Nynex arrival and proposal has left most small towns here

aghast. We have many questions which have not been satisfactorily answered or even addressed.
Who, for instance, gave the FCC authority over our health concerns? We understand the FCC employs no process for measuring emissions, rather they will rely on the industry itself to supply this information. Traditionally, it has been a mistake, and frequently a travesty, when industries are allowed to self-regulate and monitor themselves.

If, as the mad scientist mentality marches inexorably on and we are forced, however unwillingly, to accommodate our lives and our childrens' lives to the known and proven health dangers from the EMF's and the offensive ugliness of the towers, we should, at least, be given a chance to participate in the site choice intelligently and together. A choice to minimize the impact.

Bell Atlantic/Nynex is insisting on a site at the top of Buffalo Mountain, a peak directly above and adjacent to our small town of Hardwick, Vt. The mountain is beautiful, it is the town symbol and is much loved by all of us. Bell Atlantic/Nynex has been offered several alternate sites and, by their own admission, have not bothered to investigate any of them.

I quote Vermont Governor Dean at his news conference recently " The FCC has proposed a rule which would essentially allow them to bypass all our land use rules in the state of Vermont...Towers would be sited at the whim of the folks who want to site the towers, with fairly minimal FCC approval. From the Vermont perspective it is not acceptable"

As I have said, we are not idiots. We are capable of finding information and , as citizens, householders, taxpayers and voters, of using that information. We are aware, for instance, of the vast private network, presently growing, to monitor the very real health hazards of EMF's, excessive radiowaves and microwaves.
As guaranteed by the Constitution, we insist on having our say in these matters.

Dated this 24th of October, 1997, by Judith G. Kane
P.O.Box 128, East Hardwick Vermont 05836