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To: Secretary FCC

From: Dale and Janet Newton
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Re: Formal filing of comments on MM Docket No. 97-182
ET Docket No. 93-62
Rm-8577

Date: 10/24/97

We are submitting these copies as a formal filing to be a part of the official Commission record. Thank you for your attention to this matter.

Sincerely,

Dale A. Newton

Dale A Newton

Janet L. Newton

Janet L. Newton

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Before the

Federal Communications Commission

Washington, D.C. 20554

In the matter of:

WT Docket No. 97-192

MM Docket No. 97-182

ET Docket No. 93-62

RM-8577

Reply and Comment to Proposed Rulemaking

Dale and Janet Newton

Thistle Hill Neighborhood Alliance

Thistle Hill Road

Marshfield, VT 05658

We are Dale and Janet Newton, life-long residents of Vermont. We are teachers and owners of a diversified agricultural business. We built our farm and home in 1976. Our family has expanded over the years with our adopted children, and our farm has grown with pick-your-own raspberries and blueberries, maple sugaring, apple orchard and raising llamas. Our home and farm sit atop Thistle Hill in Cabot, Vermont. This hill was described in the 1984 fall issue of Vermont Life Magazine as one of the most pristine and grand places in the state, a place that attracts visitors from around the world. Though the comments were inspried by a visit to Thistle Hill Campground, the first privately owned campground in

Vermont, the same tourist and vistor patterns hold true of our farm.

We find ourselves thrust into the issues surrounding towers and communications facilities because we found out in May, 1997, that we were adjoining landowners to a proposed PWSF site. A company called RSA Limited Partnership, dba Bell Atlantic Nynex Mobile (now BAM) has leased a two-acre site from our next-door neighbors, Kenneth and Diana Klingler. This site is at the top of our maple sugaring woods, 400' from our house. The survey markers include guy anchor positions which are less than 50' from our property line. The plan shows that the access road and power lines would at some points be less than 20' from our lawn and perennial gardens on the south side of our house.

We have already been told to remove a substantial number of our maple tap lines from the neighbors' land, trees that have been tapped for over 15 years at their request. The entire site of this proposed facility is currently used as part of our sugaring operation, and would loom above our workplace (our woods) even on our side of the fence line.

Contrary to how the FCC describes information exchange and initial site inquires made by a prospective facilities owner described in FCC Fact Sheet #2, 9/17/96, this company signed a lease with these landowners, did initial studies and drew up simple plans prior to any notification to any adjoining land owners or any Cabot town officials. "...it is helpful for the wireless service provider to supply as much advanced information as possible about the nature of its service offerings and the 'big picture' plan

for service deployment." Our "notification" came when we were cleaning our maple pipeline in late May, 1997. We discovered that a site had been surveyed above our sugarhouse and on our land. Nails were driven into our trees, flagging attached to our lines and stakes driven into the ground. This trespass was done weeks earlier when this company was searching for a site with no prior notification to adjoing land owners. Although they chose our neighbors' site, to this day they have never directly contacted the three other adjoining land owners to this site.

Since June our lives have been dominated by attempting to learn about these facilities and to get a clear picture of the issues surrounding this technology. BAM has followed a course of no information, disinformation or outright bullying. Chris Ciolfi, land manager for BAM, told our group that, "We know there is oposition to our sites, and we take our plans as far as we can in secret." They applied for a zoning permit in Cabot when Cabot zoning required an application for a conditional use permit. When the zoning permit was denied on the same day of application, they did not apply for a CUP. Instead they filed an appeal of the zoning administrator's action, and they incorrectly appealed more than 15 days after the deadline for appeal had passed. Every time they have asked for a hearing before the town boards, they end up asking for a later date. Now they are putting the request for a hearing off to January, 1998.

We now connect these issues to the FCC's proposed rulemaking. At

the same time that BAM's representatives and lawyers have been stating in our town and other towns in the area (Hardwick, Middletown Springs, Williamstown) that Vermonbt towns and citizens are sufficiently represented and protected by current state and local laws and processes, they had already petitioned the FCC to remove state and local control. We now believe that this is the reason that BAM has put off their application and hearings in Cabot until January. Instead of dealing with us in a manner described by your own guidelines, in a manner safeguarded by the 1996 TCA which recognizes the authority of state and local goverments over the siting of PWSF and other types of communications facilities, this and other companies are seeking to take away state and local control.

You need to understand that this particular proposed site is not in and 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 right in the middle of a residential neighborhood, a farm and tourist business, and on top of one of the most beautiful hills in this area, the only hilltop with homes anywhere near the summit. Even at this stage, the proposal has caused Rick Smith, an adjoining land owner and member of our group, to loose the buyers that he had for his home and 160 acres. (His home is west of the site and 400' away) .

This request by the communications companies to further preempt state and local authority over the siting of towers and facilities goes to

the heart of state's rights issues. We believe that the Constitution of the United States never envisioned nor did it provide for a form of Federalsim that would place control over local land use planning and zoning issues in the hands of a federal agency in Washington.

We request that the FCC decline to further preempt state and local laws pertaining to personal wireless services facilities and all other broadcast facilities and sitings.

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.

No further preemption is warranted as evidenced by the successful deployment of personal wireless services in Vermont, and around the country. In a 1995 American Planning Association survey, it is noted that under current regulations 92% of applications for PWSF tower sites are given approval.

Instead of further preemption, the FCC should allocate funds from the billions of dollars it has received from license fees and auctions to additional resources for education and training at the state and local level with regard to personal wireless service facilities.

The FCC should not anticipate that state and local land use authorities will fail to reasonably and faithfully carry out their

obligations under federal law.

Present FCC preemption addresses health concerns by controlling for exposure-not emissions. A licensee might simply be required to post signs or erect fences around a microwave transmission facility to keep the public at a distance. The new NCRP standards, like the ANSI/IEEE standards before, calculate only for thermal exposure. Legitimate questions about long-term, low-level exposure remain unaddressed. Under Act 250 it is the applicant's burden of proof to demonstrate RFR compliance. Documentation includes FCC license, equipment specifications, and testimony by applicant's site technician. Opponents are allowed to come forward with evidence to demonstrate non-compliance. The FCC should not adopt any rules that would undermine Act 250's requirement that an applicant demonstrate that its project complies with guidelines. The FCC provides localities with no mechanism to monitor facilities after their construction and even after future modifications. The FCC must not allow what would amount to a self-certification process.

Any rule which is adopted by the FCC 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.

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 type of judgment.

Dated at Marshfield, Vermont this 23rd day of October, 1997.

Thistle Hill Neighborhood Alliance

By: Dale A. Newton

Dale A. Newton

Janet L. Newton

Janet L. Newton