

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:)
)
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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Ying Hua Bennis, ("Ms. Bennis"), President of Station WFLI, Inc., licensee of WFLI-TV, Cleveland, Tennessee, by her attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits comments in response to the Notice of Proposed Rulemaking, FCC 97-296, released August 19, 1997 (the "NPRM"), in the above-captioned rulemaking proceeding. In the NPRM, the Commission proposes to give state and local governments a fixed period of time during which they must respond to requests for broadcast tower siting, placement, construction or modification, and provides for Commission preemption of state and local governments' decisions on these requests.

Ms. Bennis requests that the Commission adopt a modified version of the proposal contained in the petition filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television (hereinafter collectively referred to as "Petitioners"), to allow for Commission preemption of state and local regulation of broadcast transmission tower siting, placement, construction or modification. Alternatively, Ms. Bennis

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supports the Petitioners' petition and requests that the Commission adopt its proposed rule. In support of her request, Ms. Bennis states as follows:

1. Preempting state and local governments' authority over broadcast tower siting, placement, construction and modification will allow the Commission to implement Congress's directive to rapidly implement digital television ("DTV").¹ However, cumbersome state and local procedures for handling requests for approval of the placement, construction or modification of broadcast towers often hinder the approval of such requests. Such regulations vary between localities requiring broadcasters to adhere to diverse local regulations and procedures. These myriad local regulations may delay or deny construction, the result of which is to undermine the Commission's twin goals of fostering local broadcasting competition and rapidly implementing DTV.

2. As a local broadcaster with fifteen years of experience, Ms. Bennis has first-hand knowledge of the detrimental impact that such local regulations can have. In response to the Commission's request for comments in this proceeding to provide information about experiences with zoning and land use approval regulations,² the following chronicles the delay encountered by Ms. Bennis in requesting permission from a local government to build a television tower.

3. In 1994, Ms. Bennis sought to expand the coverage area of Channel 39 which included construction of a new television tower. In March 1994, the Federal Aviation Administration ("FAA") approved the proposed tower construction, finding that it would not obstruct or present a hazard to air navigation and requiring no tower marking. (See FAA Form

¹ See Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat 251 (1997) (establishing statutory target dates starting in 1999 for the return of the analog spectrum and the implementation of digital television).

² See NPRM ¶ 19.

7460-1 attached hereto). However, in October 1994, the Hamilton County Board of Zoning Appeals (the "Zoning Board"), citing only aesthetic reasons, denied Ms. Bennis' application for permission to erect the tower. Yet Ms. Bennis had chosen the tower site carefully; the site selected was surrounded by tracts of land on which six pre-existing towers were located. Mindful of the pre-existing towers, Ms. Bennis proposed to position her tower so as not to interfere with other towers' broadcasting space and so as to minimize any aesthetic impact the new tower might have. While Ms. Bennis knew of the county regulations that conditioned permits for construction of television broadcast towers on the approval of the Zoning Board,³ she did not anticipate an "aesthetic" problem with her tower site due to the presence of the pre-existing towers. Ms. Bennis was forced to find an alternate, and ultimately inferior site on which to locate her tower. Therefore, the Zoning Board's denial of Ms. Bennis' application prevented Channel 39 from serving a wider market.

4. Given the foregoing experience of Ms. Bennis, the Commission should preempt state and local governments from imposing local regulations that will interfere with the rapid construction of DTV and other broadcast facilities, where the broadcaster has otherwise satisfied federal obligations. The "not in my backyard" philosophy has become an all-too-familiar impediment to constructing transmission facilities, thereby hindering the objectives of Congress. In other areas where local regulators have impeded construction of communications facilities, one solution has been to limit state and local regulators' ability to block construction otherwise in compliance with Commission rules. For example, as part of the Telecommunications Act of 1996, Congress revised Section 332(c) of the Communications Act of 1934 to prohibit state and local governments from regulating the placement, construction, or modification of wireless

³ See Hamilton County Code Provision 201.3.

communications services' towers on the basis of environmental effects of radio frequency emissions which comply with the Commission's standards. 47 USC Sec. 332(c). Section 332(c) also prohibits state and local regulations that prohibit or have the effect of prohibiting the provision of wireless service.

5. Broadcasters attempting to roll out DTV face impediments similar to those faced by wireless providers. State and local regulators have tremendous power to impede and/or prohibit DTV implementation. The discretionary decisions of local regulators may derail broadcasters' construction plans even after the plans have met the approval of federal agencies. Such decisions add an element of unpredictability to the process that will deter potential market entrants, the result of which will be to significantly delay DTV implementation and to impair the broadcast market.

6. Therefore, the Commission should use its preemption authority and present a uniform set of standards intended to reduce delay in bringing DTV service to the public and the expense to broadcasters caused by local regulators' discretionary procedures. Based on the model employed in the wireless industry pursuant to Congressional directive, the Commission should adopt rules to preempt state and local restrictions on broadcasters' ability to rapidly deploy DTV. Alternatively, the Commission should adopt Petitioners' proposed rules and allow a graduated time frame for state and local response to requests for construction permits for broadcast transmission sites. At the very least, this rule will prevent state and local authorities from engaging broadcasters in protracted battles over the scope of local regulations and will require state and local authorities to present defined, articulated reasons as to why construction should be delayed or denied. In Ms. Bennis' case, given the existence of collocated towers, the

reasons presented by the Zoning Board seemed arbitrary. The proposed rule should prevent avoidable delay and encourage the prompt construction of DTV facilities.

7. In sum, Ms. Bennis hereby requests that the Commission adopt a modified version of the Petitioners' proposed rule to allow for preemption of state and local regulations where the petitioner has complied with federal regulations. However, if the Commission disagrees with this approach, Ms. Bennis requests that the Commission adopt the Petitioners' proposal. Such a solution is necessary to facilitate construction of DTV facilities and to fulfill Congressional intent to rapidly implement DTV.

Respectfully submitted,

YING HUA BENNIS

By: 

James Blitz
Rebecca R. Reed

Davis Wright Tremaine LLP
1155 Connecticut Avenue NW
Suite 700
Washington, D.C. 20036
(202) 508-6600

Her Counsel

October 30, 1997

Declaration in Support of Comments

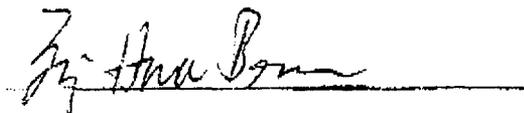
MM Docket No. 97-182

I, Ying Hua Bennis, hereby state as follows:

I am President of WFLI, Inc., licensee of Station WFLI-TV, Cleveland, Tennessee. WFLI, Inc. has operated WFLI-TV for the past ten years and I have been in the broadcasting industry for the past fifteen years.

I have reviewed the foregoing Comments to be submitted in the above-referenced Rulemaking proceeding.

I hereby certify that the statements made in the Comments are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

A handwritten signature in cursive script, appearing to read "Ying Hua Bennis", is written over a solid horizontal line.

Ying Hua Bennis
President, WFLI, Inc.

October 30, 1997



U.S. Department of Transportation
Federal Aviation Administration

Southern Region

P.O. Box 20636
Atlanta, Georgia 30320

ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

CITY	STATE	LATITUDE/LONGITUDE	MSL	AGL	AMSL
CHATTANOOGA	TN	35-00-29.77 085-20-23.54	1560	199	1759

MRS. YING HUA BENNS
103 AVERILL ST.
LOOKOUT MTN, TN 37350

AERONAUTICAL STUDY
No: 94-ASO-0327-OE

Type Structure: ANTENNA TOWER 620.0-626.0 MHz, 5 KW ERP

The Federal Aviation Administration hereby acknowledges receipt of notice dated 02/07/94 concerning the proposed construction or alteration contained herein.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

* The proposed construction would not exceed FAA obstruction standards and would not be a hazard to air navigation.

Obstruction marking and lighting are not necessary.

✓ This determination expires on 09/15/94 unless application is made, (if subject to the licensing authority of the Federal Communications Commission), to the FCC before that date, or it is otherwise extended, revised or terminated.

✓ If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED

SIGNED Kenneth P. Patten Specialist, Systems Management Branch
for Ralph C. Bixby (404) 305-5585.
ISSUED IN: College Park, Georgia ON 03/16/94

* SEE PAGE 2

TV STATION

SPURIOUS EMISSION:

Evaluation of this proposal predicts in-band signals as indicated below for various frequency ranges. The additional attenuation required to reduce in-band spurious signal levels is also tabulated to reduce the maximum allowable level to -104dbm. This level was established and agreed upon by the FCC and FAA in 1981 to eliminate the harmful interference to FAA facilities. The last column shows the total amount by which the spurious radiation must be attenuated below the unmodulated R.F. carrier for the frequency range specified.

Location	Frequency Range (MHz)	Spurious Level	Additional Attenuation Required	Total Attenuation Required Below R.F. Carrier
Chattanooga	118.3 MHz	-91.1 dBm	12.9 dB	72.9 dB

This determination of No Hazard is granted provided the following conditional statement is included in the proponent's construction permit or license to radiate:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operations, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.