

(Michie 1996 Cum. Supp.) provides the standard for local land use planning, stating that land use authority should:

improve the public health, safety and convenience and welfare of its citizens and to plan for the future development of communities to the end that ...new community centers be developed with adequate ... utility [and] health ... facilities; ... that residential areas be provided with healthy surroundings for family life ... and that the growth of the community be consonant with the efficient and economical use of public funds.

Va. Code Section 15.1-427.<sup>7</sup>

Virginia's state code is similar to state codes throughout the country that give local jurisdictions the right to regulate land use. One reason for giving regulatory power to local communities is simple -- local residents must live with the consequences. The County, like many other jurisdictions, regulates radio and television towers in its zoning ordinance.<sup>8</sup>

With the rapid growth in wireless communications, localities' ability to ensure that these facilities harmonize with their surroundings has become more critical. Television towers are not only collocated with FM radio stations, but with satellite dishes, microwave, pager, cellular and PCS

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<sup>7</sup> Va. Code Section 15.1-427 will be recodified as Va. Code Section 15.2-2200, effective December 1, 1997 (1997 Va. Acts, Ch. 587).

<sup>8</sup> Fairfax County Zoning Ordinance, Ch. 112, Sec. 9-006, 101-104 (1997).

transmitters, and possibly wireless Internet transmitters and receivers. Inefficient proliferation of broadcast towers is not in the public interest.

## 2. Local Control is Not a Significant Obstacle to DTV Conversion

The County has no incentive or desire to delay DTV implementation -- quite the contrary. Land use planning and zoning are not designed to pit the locality against the property owner. Instead, planning and zoning should be and are a collaborative process between the developer, local officials and citizens. This process protects the general welfare.

Land use regulations normally ensure that, for example:

- facilities are safe and structurally sound;
- certain types of structures or businesses are not too close to elementary or secondary schools;
- proposed development does not create unnecessary traffic congestion or negatively affect the appropriate development of neighboring parcels;
- residential areas "be provided with healthy surroundings for family life"<sup>9</sup>; and
- when possible, development is in harmony with the community's aesthetic concerns, which of course, translates directly into maintaining or enhancing property values.

Collaborative processes between broadcasters and local officials can prevent problems before they occur, even under relatively short timelines. To our knowledge, there is no legitimate reason set forth as to why broadcasters and localities cannot reach mutually agreeable solutions well within even the May 1999 deadline.

Where local authorities delay the process or fail to approve a requested application, it may well be because such delay or denial is necessary to preserve health and safety and to ensure that the project meets legitimate and lawful concerns. Virginia law presumes that officials will act lawfully.<sup>10</sup> If a question should arise in this regard in a specific situation, local remedies exist, such as mandamus.<sup>11</sup>

The National Association of Broadcasters' ("NAB") petition seeks federal preemption not only of planning and zoning regulations, but also of all local regulation including building codes and local radio frequency exposure standards.<sup>12</sup> This would allow a broadcast tower to be placed, for example, adjacent to an elementary school, which is particularly dangerous. If federal preemption prevents local building inspectors from ensuring the tower's safety and guaranteeing that non-employees will not be able to access the tower site, that is even more cause for concern.

Moreover, the broadcasters are seeking federal preemption

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<sup>9</sup> See Va. Code 15.1-427, supra.

<sup>10</sup> Ours Properties v. Ley, 198 Va. 848, 851, 96 S.E.2d 754, 756 (1951).

<sup>11</sup> Va. Code. Section 8.01-644 et seq. (Michie 1992).

<sup>12</sup> NPRM at Par. 7.

from local regulation, not just for towers, but for all transmission-related facilities -- which could conceivably include production studios and even management offices. As little justification as there is for exempting radio towers from zoning and building codes, there is even less reason to permit studios and offices to use the excuse of digital television to receive a blanket exemption from all local regulations.

C. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO PREEMPT STATE AND LOCAL LAND USE AND ZONING POLICY

The Commission, in seeking to create a federal policy for digital television, asks whether its involvement in local planning and zoning disputes is appropriate. The County's answer is absolutely not. The Commission states that generally it has tended to stay out of disputes between localities and telecommunications services providers unless there is a clear demonstration that Congress intended state and local law to be superseded.<sup>13</sup>

Historically, the Commission's involvement in Mass Media policy has been primarily in two areas. First, the Commission has been charged since 1934 with the duty to ensure the orderly allocation of channels.<sup>14</sup> Secondly, it has been charged by Congress to make sure that the public interest is served by television programming that reflects a broad range of interests

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<sup>13</sup> NPRM at Par. 15.

<sup>14</sup> Telecommunications Act of 1934, 47 U.S.C. Sec. 303

and serves public needs.<sup>15</sup> Even given the plenary nature of the power of the Commission,<sup>16</sup> its statutory authority over the mass media is not unlimited,<sup>17</sup> particularly where a proposed rule would create an unnecessary statutory conflict.<sup>18</sup> County land use regulations are not facially or otherwise in conflict with the issuance of DTV licenses, nor with the Commission's recommended rollout schedule. The Commission should neither presume nor create a conflict where there is none.

Additionally, there is no indication within the legislative history of the 1996 Telecommunications Act ("1996 Act") that Congress intended a rollout of digital television so rapid that it would necessarily need preemption of all state and local land use law. It is important to note that Congress did not even require the Commission to implement advanced television in the 1996 Act.<sup>19</sup> Clearly, if Congress had meant this federal law to attempt to preempt state and local zoning and land use law to implement DTV, it could have done so expressly, as it did elsewhere in the 1996 Act.<sup>20</sup> But Congress did not make the

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<sup>15</sup> 47 U.S.C. Section 151 (1934).

<sup>16</sup> *Id.* (Purpose of 1934 Act is to make available "a rapid, efficient, Nation-wide and world-wide radio communication service with adequate facilities").

<sup>17</sup> See Louisiana Public Service Commission v. F.C.C., 476 U.S. 355, 368, 90 L.Ed.2d 369, 381-82 (1986) (critical question is whether Congress intended that federal regulation supersede state law).

<sup>18</sup> *Id.*, 476 U.S. at 370, 90 L.Ed. 2d at 383 (construction of statutes should not be read so as to create a conflict).

<sup>19</sup> See Telecommunications Act of 1996, P.L. 104-104 (Feb. 8, 1996), Section 201(codified at 47 U.S.C. 336(a) ("...If the Commission determines to issue licenses for advanced television services ...") (emphasis added).

<sup>20</sup> See, e.g., 1996 Act, Section 704 (codified at 47 U.S.C. 332(c)(7) (regulation of personal wireless service facilities by

issuance of DTV licenses mandatory, and the Commission cannot, and should not, assume an overriding congressional intent where none exists.

Finally, as the Commission itself notes, it has generally not felt it necessary to become involved in local zoning issues.<sup>21</sup> The Commission is only permitted to issue regulations that are "reasonably ancillary to the effective performance of [its] various responsibilities for the regulation of television broadcasting."<sup>22</sup> The Commission has not previously considered land use regulation "reasonably ancillary"; there has been no indication in the 1996 Act that Congress desired new involvement in land use where generally there has heretofore been none. Without some clear expression of congressional intent, the Commission may not preempt valid state law, if then.<sup>23</sup> The regulation proposed by the broadcasting industry is not within the ambit of the Commission's statutory authorization, much less its expertise on the unknown consequences of such drastic action.

The County believes that it is clearly inappropriate for the Commission to surpass its authority by adjudicating disputes between local government entities and broadcasters. The Commission should therefore recognize that any disputes that arise with regard to DTV implementation should be adjudicated in a court of competent jurisdiction. These courts, not the

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state and local governments limited by federal requirements)).

<sup>21</sup> NPRM at Par. 15.

<sup>22</sup> F.C.C. v. Midwest Video Corp., 440 U.S. 689, 708, 59 L.Ed.2d 692, 707 (1979) (citing United States v. Southwestern Cable, 392 U.S. 157, 178, 20 L.Ed.2d 1001 (1972)).

<sup>23</sup> City of New York v. F.C.C., 486 U.S. 57, 64 (1988); See also United States v. Commonwealth of Virginia, Civ. No. 97-39-A, 1997

Commission, have the experience and are the proper places to resolve issues of statutory interpretation. In such disputes, the burden of proof should be placed on the broadcaster to demonstrate why compliance with state and local law is illegal.

D. ACROSS-THE-BOARD PREEMPTION FOR ALL BROADCAST SERVICES HAS NO RATIONAL BASIS

Even assuming arguendo that preemption of the local land use review process for DTV broadcasters is found by the Commission to be necessary and within its power, no similar balance can be struck for all broadcast entities, analog or digital, radio or television. In the case of non-collocated FM radio stations, LPTV stations, AM stations and public/educational television stations, there simply is not the putative time concern as expressed for DTV. As noted above, educational and public television stations have at least until 2003 to convert to digital, and the Commission has already stated in its Fifth Report and Order that it intends to be lenient on stations that miss the deadline.<sup>24</sup>

As for radio stations, particularly those that do not have to relocate due to DTV implementation, there is no clear rationale for exempting them from local land use regulations with which every other occupant of local land must comply. There is no public interest to be served by exempting these entities from laws of general applicability. The County recommends that the

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U.S. Dist. Lexis 10774 (July 22, 1997), Slip. Op. At 10-12.

Commission not extend this preemption to any entity -- and certainly not to entities that are under no compelling time constraint.

### III. CONCLUSION

The County has a right under the United States Constitution and Virginia law to protect its citizens by promulgating and enforcing public safety regulations. These rights have traditionally been held by the states and delegated to localities.

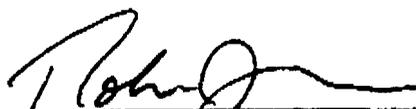
By the same token, the Commission does not have any explicit statutory authority to preempt the police powers of the states merely by virtue of the fact that it regulates an industry that does business in those states. While Congress may have attempted to grant preemptive authority to the Commission with respect to satellite dishes, Congress did not attempt to give the Commission the same kind of explicit authority to expedite the rollout of DTV. In the absence of a record demonstrating substantial and

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<sup>24</sup> Fifth Report and Order at Par. 104.

significant interference with federal telecommunications policy,  
the Commission cannot use its limited powers to invalidate state  
and local laws of general applicability.

Respectfully submitted,



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Robert J. O'Neill Jr.  
County Executive  
Fairfax County, Virginia

# COUNTY OF FRANKLIN

Board of Supervisors

Office of County Administrator

108 East Court Street  
Rocky Mount, VA 24151



**Macon C. Sammons, Jr.**  
County Administrator  
Phone (540) 483-3030  
FAX (540) 483-3035

October 14, 1997

**W. Wayne Angell**  
Blackwater District  
**Hubert L. Quinn**  
Blue Ridge District  
**John W. Helms**  
Boone District  
**Donald L. Riddle, Sr.**  
Gills Creek District  
**"Gus" G. Forry**  
Rocky Mount District  
**Page A. Matherly**  
Snow Creek District  
**Jerre C. Lumsden**  
Union Hall District

Congressman Virgil Goode  
1520 Longworth House Office Building  
Washington, DC 20515

Dear Virgil:

Please note the attached Legislative Alert which we received late Friday from the National Association of Counties concerning FCC rule making (docket number 97-182) on television and radio broadcast towers. As we understand this decision, it would severely preempt our local authority to make decision in the best interest of our community concerning these towers.

The Franklin County Board of Supervisors has tried hard to balance the communication needs of the community against the esthetic and land-use considerations involved in locating these towers. We see several problems based on what we presently know about the FCC rule.

First, the twenty-one to forty-five day time limit for action would make it difficult to go through the normal process of a Planning Commission public hearing and a Board public hearing and then act on the application. This would be especially true when the location or the proposal is controversial or contentious which is often the case.

Second, the FCC rule apparently would preempt considerations such as esthetics, property values, and environmental considerations entirely and these have merit and standing in local land-use considerations along with health or safety objectives.

Third, while Franklin County, to my knowledge, has never had an appeal of a decision concerning a communications tower, for these to be routed to the FCC could severely limit the Board's authority in these matters.

We appreciate your review and consideration of this matter and would be glad to provide additional information if you so desire.

Sincerely,

Macon C. Sammons, Jr.  
County Administrator  
MCS:ss

✓ bcc: Jim Campbell, VACo – please note, similar letters were sent to Senator Warner, Congressman Goode and Congressman Goodlatte



## LEGISLATIVE ALERT

Staff Contact: Bob Fogel - (202) 942-4217

October 9, 1997

TO: Large Urban County Caucus  
State Association Executives  
Transportation and Telecommunications Steering Committee  
Washington County Representatives  
Telecommunications Group

FROM: Larry E. Naake  
Executive Director

RE: Federal Communications Commission (FCC) Preemption of Local Zoning

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The FCC has issued a rule making (Docket No. 97-182) which would preempt local zoning authority over television and radio broadcast towers. This is being done in connection with the roll out of the new digital television technology which, in some cases, will require towers which are nearly one-half mile high. Counties are urged to submit comments by October 30 to the FCC on this rule making. A full text of this rule making is on the FCC site on the Internet ([www.fcc.gov](http://www.fcc.gov)) or can be obtained from NACo.

The impetus for this proposed rule, which originated with the National Association of Broadcasters, is to aid in the implementation of digital television (DTV) service. More than half of all households are scheduled to have access to DTV by the end of 1999 and the industry claims that an estimated 1000 towers will need to be replaced or upgraded. The industry has requested the FCC, which claims it has the authority, to broadly preempt local zoning and land use authority that would delay or prohibit tower construction.

County governments need to be concerned with this rule because it would severely preempt local zoning authority over the siting and construction of towers. The FCC proposes unrealistic time limits for local action on tower construction requests, preempts local concerns including aesthetics and environmental issues, and sets up the FCC, as opposed to the courts, as the authority for appeals.



## County of Gloucester

6582 Main Street  
P.O. Box 329

COUNTY ADMINISTRATOR  
Gloucester, Virginia  
23061-0329

(804) 693-4042  
FAX (804) 693-6004

October 28, 1997

Mr. William F. Caton, Acting Secretary  
Office of the Secretary, Room 222  
Federal Communications Commission  
1919 M. Street, NW  
Washington, DC 20554

Dear Mr. Caton:

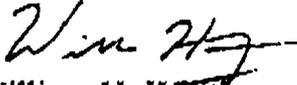
It is my understanding that the Federal Communications Commission is now considering a rule (Docket No. 97-182) that would preempt local zoning authority over television and radio broadcast towers. This rule is apparently being developed because of the new digital television technology that, in some cases, will require towers which are nearly one half mile high. Gloucester County, Virginia is opposed to this important land use decision being made in Washington, rather than in local communities across this nation.

Historically, issues of land use have been decided in the local meeting rooms of governing bodies in this nation. Local governing bodies are certainly best able to make such decisions with input from their constituents. The taking of this basic responsibility of local governments is simply wrong. Our citizens don't realize the impact that this decision could have if such a tower is considered for their neighborhood. Once they realize what could take place, they will feel more alienated from their government than before the decision was made.

On behalf of the Gloucester County Board of Supervisors, I ask that you not enact this rule. Let those of us in local government do what we have been elected and appointed to do; govern our localities.

Thank you for your attention to this letter.

Sincerely,

  
William H. Whitley  
County Administrator

WHW:ss



WILLIAM D. SLEEPER  
County Administrator

## Halifax County Board of Supervisors

P.O. Box 786  
Halifax, Va. 24558-0786  
Telephone (804) 476-3300  
Fax (804) 476-3384

October 29, 1997

### SUPERVISORS

J. C. SATTERFIELD, JR.

Chairman

T. E. WEST

Vice Chairman

R. E. ABBOTT

W. A. ABBOTT, JR.

W. B. COLEMAN

G. B. RICKETTS

R. L. SMART, JR.

E. A. WATTS, SR.

William F. Caton, Acting Secretary  
Office of the Secretary, Room 222  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Mr. Caton and Members of the Commission:

Re: **FCC Rule Making Docket #97-182**  
**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**

The referenced Proposed Rule Making was discussed by the Board of Supervisors, the governing body of Halifax County, Virginia, at a meeting October 20, 1997. At that meeting, by unanimous vote, the Board of Supervisors resolved to oppose this Rule Making.

The Board of Supervisors is very concerned about the preemption of local zoning and land use authority for the siting of digital television facilities, and further, that this could be a first step for similar preemptions on other types of communications facilities.

Item 4 in the Notice of Proposed Rule Making expresses a fear of Petitioners of review processes lasting several months, and with appeals, several years. I believe that localities' histories would show that "several months" processing would be extremely rare, and that most such facilities are addressed within a reasonable time. The 21 day, 30 day, and 45 day time frames set out for various actions in Item 6 of the Proposed Rule Making is unrealistic for local governments and is not conducive to rational decision making. Many local governments meet only once or twice per month, with permitting authority for such facilities generally resting with that local governing body. The proposal fails to take into account meeting schedules, and more importantly, the ability of local land use staff and elected officials to adequately investigate and analyze such proposals. Further, by having a short, finite time frame to act, no flexibility is allowed for negotiation between communications site applicants, local citizenry, and local governments to evaluate suggested alternate sites or alternate facility designs before a positive or negative vote must be taken on the original application. This flexibility has worked very well in Halifax County when original proposed sites or designs were of questionable suitability. In terms of time frames taken by the Halifax County governing body for review of communications facilities (related to Item 19 of the Proposed Rule Making) Halifax County has processed applications for cellular and

William F. Caton, Acting Secretary

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October 29, 1997

resolve, with most being ultimately resolved in favor of the applicant. Petitioner is asking for a maximum 45 day local time frame on an application that Petitioner would spend months preparing.

Petitioners proposal that a local government must demonstrate that a requirement is reasonable in order to meet health and safety objectives omits a fundamental premise of Virginia state law and Virginia local government ordinance. Throughout local and state statutes, language is clear regarding the relationship of a proposal to "health, safety and welfare" objectives (emphasis added). Considerations under this third category address such items as aesthetics, property values, environmental, impact on historic or scenic areas, compatibility with neighborhood character, and anticipated growth patterns, etc. The proposal appears contrary to this historical review and decision making process followed by local governments in Virginia.

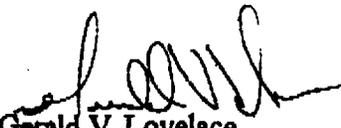
Petitioners proposed rule requires delivery of decisions of denial and supporting evidence within five (5) days of decision, per Item 9. Unless costly, extraordinary means are used, a local government has no way to guarantee that mail delivery would occur within that time frame.

A final comment concerns the appeal avenue requested by Petitioner. Virginia statutes require that appeals of zoning decisions of a local governing body go to a board of zoning appeals or circuit court of local jurisdiction. The Petitioner is requesting that such appeals go directly to the Federal Communications Commission, thus putting a decision of local land use in the hands of a body that has no knowledge of a local community, its character, or local land use goals and objectives. Such a decision should remain in the hands of a body that does reflect local community standards.

In summary, land use decisions are best left in the hands of local leaders. In those rare instances where a local decision making process does not follow statutory and reasonable guidelines, courts are available for resolution. The usurping of local land use authority by a federal agency is contrary to the foundations upon which all levels of governmental authority are based.

Halifax County, Virginia would be pleased to provide additional information and comment if requested.

Sincerely,



Gerald V. Lovelace  
Assistant County Administrator  
or Planning and Operations



**Briefing Documents**

**FCC Rulemaking Concerning the Placement of DTV Towers**

**(FCC Docket No. 97-182)**

**Prepared for**

**Congressman Thomas J. Bliley, Jr.**

*Monday, October 20, 1997  
Henrico County, Virginia*

## ISSUE PAPER

### FCC RULEMAKING CONCERNING PLACEMENT OF DTV TOWERS

(FCC Docket No. 97-182)

County of Henrico, Virginia

The Federal Communications Commission has issued a Notice of Proposed Rule Making (MM Docket No. 97-182) affecting the siting, placement and construction of broadcast station transmission facilities. This proposed rule allows the preemption of state and local zoning and land use restrictions which inhibit or delay the placement of towers and antennas. It was requested by the National Association of Broadcasters and the Association for Maximum Service Television to address an accelerated schedule for construction of digital television ("DTV") transmission facilities. Comments concerning this rule making are due to the FCC by October 30, 1997.

The proposed rule presents a number of serious threats to the orderly development and control of land use in Henrico County. Some of the specific problems for the County and its citizens are identified in this paper.

#### Timing

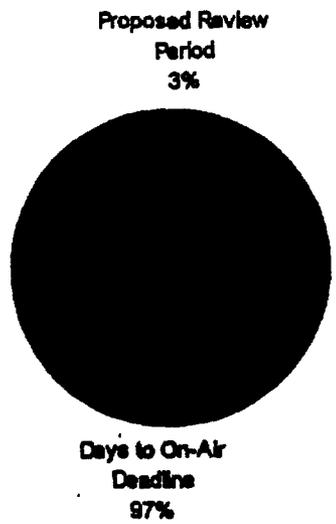
##### *National Schedule*

The rule is proposed to allow the rapid implementation of DTV service throughout the United States and the swift recovery of broadcast spectrum. The schedule calls for the top four networks in the top ten markets to be on the air by May 1, 1999, in the next twenty markets by November 1, 1999, and in the rest of the nation by May 1, 2002. Public television stations have until May 1, 2003 to comply. The top ten markets (those which are under the fast track schedule) account for approximately 30% of the households in the United States. Therefore, the perceived needs of the industry in serving less than one third of the nation are driving the rules which apply to the remaining 70% of the nation. Henrico County and the greater Richmond environs fall into the 70% category. The proposed rule proposes to preempt all local control in our area in order to grant industry control elsewhere.

##### *Richmond Area Schedule*

For the Richmond metropolitan area, the industry has approximately 4-1/2 years to construct DTV broadcast facilities. Under the proposed rule, however, the localities will have a maximum of 45 days to act on a siting request. On requests to relocate a transmission facility within 300 feet of an existing facility the local government response time is reduced to 30 days, and to modify an existing transmission facility the local government response time is reduced to 21 days.

**PROPOSED REVIEW PERIOD AS A % OF TIME TO ON-AIR DEADLINE**



**Top Ten Markets**      **Remaining Commercial Stations (includes Richmond Metropolitan Area)**      **All Non-commercial stations**

Percent of US Households by market segment	30%	23%	47%	
Number of Stations	40	80	1037	365
Percent of Total Stations by Market Segment	2.6%	5.3%	68.1%	24.0%
Total Days to HDTV On-Air Deadline (beginning 10/20/97)	558	742	1654	2019
HDTV On-Air Deadline	1-May-99	1-Nov-99	1-May-02	1-May-03
Proposed Local Governmental Review Period for modification of broadcast facilities.(in days)	21	21	21	21
Proposed Local Government Review Period for action to relocate towers < 300 feet.	30	30	30	30
Proposed Local Government Review Period for action on all other requests.	45	45	45	45
Proposed Local Governmental Review Period as a percentage of Total Days to On-Air Deadline.	8.1%	6.1%	2.7%	2.2%

### *Henrico Approval Process*

Generally speaking, it takes Henrico County approximately 60 to 75 days to act on a zoning request. This includes statutorily mandated notice requirements (to adjacent landowners and to the general public) before both the Planning Commission hearing and the Board of Supervisors hearing as well as site review and other necessary administrative review procedures. Our process is efficient and thorough, and is considered to be a faster turnaround than most localities of our size.

These time lines are further complicated by certain seasonal adjustments in meeting schedules. While the Henrico Board of Supervisors usually meets twice a month, there are at least two months when the Board meets only once. Furthermore, the Board is not allowed by law to meet by conference call or by video conferencing. Therefore, calling an emergency meeting and assuring a quorum during traditional vacation or holiday times when planning commissioners or Board members may be out of state or out of the country is exceedingly difficult.

In addition, short turnaround time frames do not allow reasonable access to public meetings for those landowners, business entities, or other interested citizens to attend meetings and voice their concerns. The public is accustomed to these issues being advertised and heard on a set schedule. The 45-day time limit makes no allowance for these types of circumstances; does not give any consideration for due process concerns; and is not in the best interests of the public.

Should the Henrico County Board of Supervisors deny a siting request for a broadcast tower or facility, the Board then has five days to convey its denial in writing and supported by substantial evidence contained in a written record to the applicant. The applicant, however, has thirty days to respond to the denial. This has the effect of allowing the County only five days to prepare a legally-defensible document which will withstand possible challenge before the FCC while the applicant has six times as much time to prepare his response. This is extremely inequitable.

Finally, the FCC has granted itself the privilege of extending or waiving the deadlines should an applicant experience delays beyond its control. The applicant can request the FCC to extend the deadline should there be any delay as a result of a number of issues, including local siting problems. Thus, the applicant does have recourse to deal with a greater time frame than 45 days, and the arbitrary setting of this deadline is unnecessary and inappropriate. The FCC has not been requested by the broadcast industry to preempt the authority of other federal agencies or practices of the private sector. For example, if the applicant experiences difficulty or delay in acquiring the necessary equipment or FAA approval, there are no sanctions. The applicant may simply apply for an extension in the deadline. Thus, equipment suppliers are under no mandated deadlines to provide services or equipment nor is the Federal Aviation Administration required to change or expedite its review procedures to meet the FCC deadlines.

## Scope of Coverage

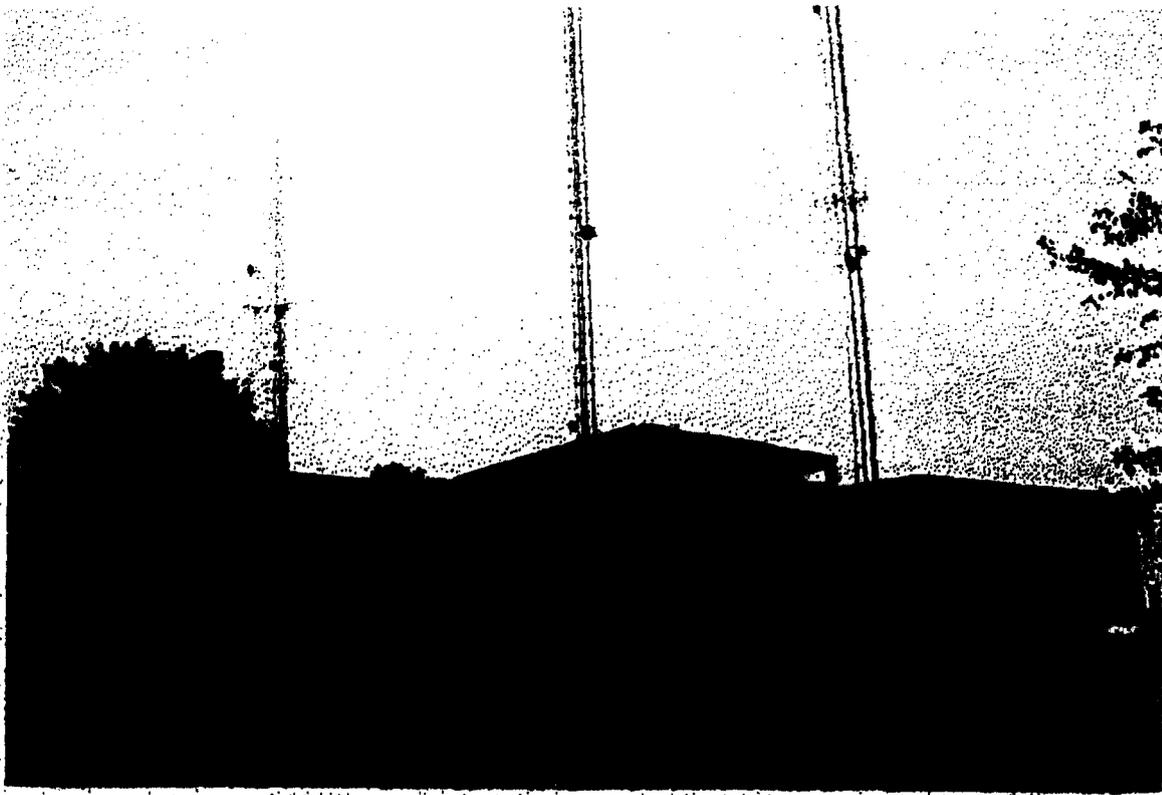
The rule covers the siting, constructing, and modifying of "broadcast transmission facilities," which are defined as towers, broadcast antennas, associated buildings, and all equipment cables and hardware used for the purpose of or in connection with radio or television broadcast transmissions. Within the Richmond metropolitan area, there are four major television network broadcast stations, one public television station, and approximately 20 radio broadcast stations. Under the proposed rule, each of these stations would be entitled to build or modify towers or antennas without regard to any local government zoning laws, land use regulations, building regulations or similar laws except where a clearly defined and expressly stated health or safety objective can be demonstrated.

### *DTV Towers*

Numerous documents currently describe DTV towers that may be as tall as 2,000 feet. Other reports describe these towers in the 700-foot range. By either description, such towers will be very large and have a significant impact on the area in which they are located. Contrary to the siting requirements of cellular telephone towers where grids are relatively small, the area in which a transmission tower may be located is quite large, encompassing much of an entire region. To demand that local government allow the siting of a transmission tower on a single specific site without regard for zoning or other land use regulations is unreasonable. In the Richmond area, it is likely that a maximum of five such towers will be needed. One such tower currently exists in Richmond (the Channel 6-CBS affiliate). The location of the remaining four towers will be determined sometime during the next 4-1/2 years. To suggest that these four towers may be randomly located at the wishes of the broadcasting industry without any consideration of local zoning or land use regulations or the impact on surrounding properties is totally unacceptable and ignores the rights of the citizens to expect reasonable protection for private property rights.

### *Radio Towers*

The proposed rule, however, goes well beyond the need to construct a limited number of DTV towers. It has included within its purview radio towers even though they are not related to the advancement of DTV service. Under the guise that some radio towers may be displaced by the construction of new or modified DTV towers, the rule will apply to all radio towers, both AM and FM. There are approximately 24,000 such towers nationwide. To suggest that the owners of these towers should enjoy an exemption from local regulations not granted to other industries is unnecessary and unwise. In the Richmond metropolitan area, approximately 20 radio stations currently exist and will qualify for the unregulated siting of towers.

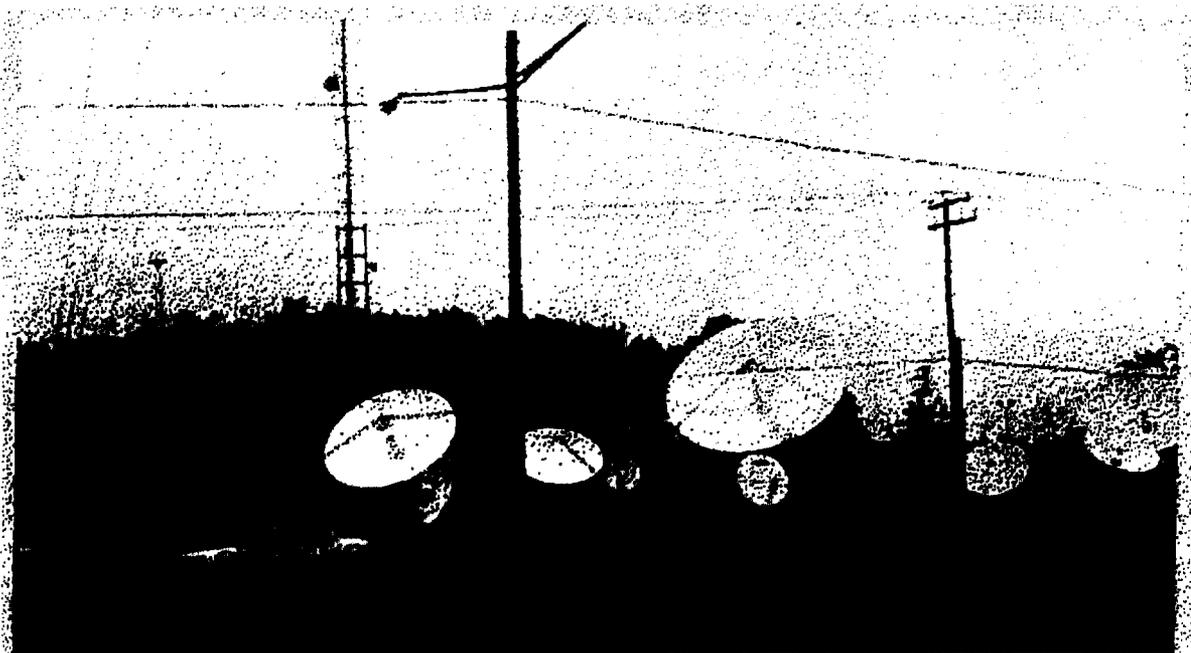


### *Associated Buildings*

The rule also cites within its definition "associated buildings." Under this definition, the owner of a broadcast tower could choose to site a tower within a zoning classification which does not allow commercial entities, and under its exemption privilege, also locate the entire production facility on the same site as "associated buildings . . . used for the purpose of or in connection with radio or television transmissions." In such an instance, the site could then contain one or more large buildings, parking facilities, exterior lighting, etc., all of which would be exempt from local zoning and/or building regulations. There is no ability for the local government to require mitigating actions such as screening, privacy fencing, landscaping, stormwater control, egress to the property, or other generally accepted methods of lessening the impact of the facility on the adjoining landowners and community.

### *Collocation*

The proposed rule specifically cites collocation as a deterrent to siting. The encouragement of collocation is, however, one method of managing the number of such towers necessary in a region and facilitates cooperation among the providers within a region. Henrico County requires that applicants for tower sites certify that they have made reasonable efforts to collocate and were unsuccessful in this initiative. Further, new tower sites are approved on the condition other providers will be allowed collocation on their facility when requested. The lack of local government's ability to require such conditions would serve to discourage collocation and encourage an unnecessary proliferation of towers.



### **Safety and Health Exclusions**

The proposed rule allows local governments to deny a request to site or modify a broadcast transmission facility only upon a clearly defined and expressly stated health or safety objective. This constitutes a narrow exception which does not take into account other legitimate reasons for denial. There is no exception for adjacency to historic sites, residential areas, scenic byways, or land which is being planned for uses which are incompatible with the location of a tower (and associated buildings) site. Similar concerns exist for the location of support cables, electrical transformers, and transmission equipment.

### ***Planned Development***

The Richmond International Airport is located in the eastern portion of the County. Its runways are currently protected by the Airport Overlay District required by the FAA. The airport commission, however, has in its plan several proposed runway extensions and/or additions. These extensions/additions have not yet received final approval or funding from the FAA. It is conceivable, therefore, that a tower could be sited within the flight path of one or more of the options under consideration by the airport commission. The effect of such a siting would be to landlock the airport, creating a major impact on the ability of the region to meet its transportation needs in the future, severely limiting the air travel options of our citizens, and negatively impacting economic development.

Similar problems will exist where there are proposed highways, parks, or other uses which will not constitute a safety or health risk at the exigent moment but the elimination of which could stifle the long range planning ability of the state and local governments. In addition, Henrico County falls under the auspices of the Chesapeake Bay Act. It is uncertain how the ordinances enacted by the County pursuant to the Chesapeake Bay Act will be

viewed. The provisions of the Act may not be viewed by the FCC as constituting a safety or health objective, yet all other construction within the County must comply with the provisions of the Act.

Finally, the loss of local government control would completely negate the provisions of the Comprehensive Plan which is adopted for the orderly development of the County. The Comprehensive Plan is developed with the input and assistance from the community as a whole and is adopted following numerous public hearings by the Board of Supervisors. To allow one segment of the industrial community to enjoy complete immunity from the proper planning and development wishes of the community at large undermines the democratic process established by the state for local government land use decisions.

### Resolution of Disputes

Currently, disputes which occur as a result of disagreement over the siting of a facility are resolved in the courts. This is historically a fair and equitable way of resolving disputes between government and private entities. In its proposed rule, the FCC grants itself exclusive jurisdiction in the resolution of disputes either through the use of alternative dispute resolution or declaratory relief. This preemption of local government authority expressly contradicts the wishes of Congress in the 1996 Telecommunications Act, wherein local governments are granted full control of local land use and zoning decisions. For the FCC to usurp this authority at the request of the broadcasting industry is both inappropriate and unfair.

### Conclusion

Henrico County welcomes the telecommunications industry, with all of its technological advances and benefits, to the community. It does so, however, with the understanding that such industry will serve its citizens without denigrating the authority of the elected government, undermining the citizens' ability to provide input in the decision making process, and unduly impacting other needs and concerns of the community as a whole. The County looks forward to working with the industry in the locating and constructing of towers and associated facilities for the advancement of DTV. The far-reaching restrictions of the proposed FCC rule, however, should be rejected in favor of allowing reasonable and customary decisions at the local level in a timely manner.

**RESOLUTION OF OPPOSITION TO THE PROPOSED PREEMPTION  
BY THE FEDERAL COMMUNICATIONS COMMISSION  
OF LOCAL ZONING AUTHORITY ON THE SITING, PLACEMENT, AND  
CONSTRUCTION OF BROADCAST STATION TRANSMISSION FACILITIES  
(MM Docket No. 97-182)**

WHEREAS, the Federal Communications Commission (FCC) has proposed a preemption of local zoning authority in order to promote the construction of digital television (DTV) in accordance with an accelerated schedule for construction established also by the FCC; and

WHEREAS, the proposed preemption would require local zoning approval within 21 days for existing broadcasting tower sites to 45 days for any new broadcasting tower sites proposed by the DTV broadcasting industry; and

WHEREAS, these proposed time limitations are inconsistent with the normal timetable established for consideration of rezoning petitions and conditional use permits, due to referrals to other agencies and public notice requirements; and

WHEREAS, the proposed preemption would prohibit any action that is not directly related to public health and safety, preventing any action based on community standards, property values, environmental issues, or the policies of the Comprehensive Plan; and

WHEREAS, the proposed preemption would establish the FCC as the entity to which all appeals would be considered rather than the present system of appeals being considered by the court system; and

WHEREAS, the proposed preemption is solely in support of a private commercial venture and intended to support economic gains with no direct benefit to the citizens of Isle of Wight County.

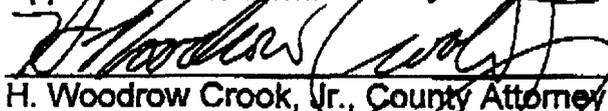
NOW, THEREFORE BE IT RESOLVED that the Isle of Wight Board of Supervisors strongly opposes the adoption of any rules or administrative provisions that would limit the local authority over land use decisions related to broadcasting station facilities and towers.

Adopted this 16th day of October, 1997.

  
W. Douglas Caskey, Clerk

  
Henry H. Bradby, Chairman

Approved as to form:

  
H. Woodrow Crook, Jr., County Attorney



# COUNTY OF LANCASTER

FOUNDED 1651 IN VIRGINIA  
 LANCASTER COURTHOUSE  
 8311 MARY BALL ROAD  
 POST OFFICE BOX 699  
 LANCASTER, VIRGINIA 22503

William H. Pennell, Jr.  
 County Administrator

804-462-5129  
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BOARD OF SUPERVISORS  
 F. W. Jenkins, Jr., 1st District  
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 Lloyd B. Hubbard, Jr., 5th District

October 15, 1997

Federal Communications Commission  
 Max Media Bureau  
 1919 M Street NW  
 Washington, D.C. 20554

Dear Sir or Madam:

I am writing to express my concern over a rule making (Docket #97-182) that will preempt local zoning authority over television and radio broadcast towers.

Although the introduction of digital television technology will require additional towers to be built, there is no reason to usurp a locality's right to control its own land use. The one element of local government that is or should be sacrosanct is a county, city or town's ability to control what type of uses are permitted in which zones.

Any intrusion into this arena by the state or federal government degrades the property values and quality of life of the citizens who live in these various communities.

I ask that you remove the zoning ordinance restrictions contained within this rule making and permit localities to consider the location of broadcast towers in the same fashion as all other uses in their communities.

Sincerely,

William H. Pennell, Jr.  
 County Administrator

cc: Congressman Herbert Bateman  
 Senator Charles Robb  
 Senator John Warner



H. Wayne Carter, III  
Director of Planning

# Mecklenburg County Board of Supervisors

Post Office Box 307 • Haydon, Virginia 23017



Telephone (804) 738-8181  
Fax (804) 738-6804

October 29, 1997

Mr. William F. Caton, Acting Secretary  
Office of the Secretary, Room 222  
Federal Communications Commission  
1919 Main Street, NW  
Washington, DC 20554

Dear Mr. Caton:

I am writing to you regarding the proposed FCC regulations to allow television and radio broadcast towers by right. Mecklenburg County is strongly opposed to the FCC usurping a locality's control of their zoning regulations. We feel that these regulations overlook requirements by the State of Virginia for holding public hearings on zoning issues and local regulations for setback requirements.

Our County has worked with every tower applicant in the past in order to ensure they meet the County requirements. No applicant has had to wait over sixty (60) days from the date of applying to being approved. We feel that this isn't an unreasonable time span for approval. We, also, feel that ninety (90) days could be needed if concerns and questions arise during the application process.

Mecklenburg County feels that a local government can better weigh the needs of tower applicants with area property owner concerns than a broad based formula for sitings through out the United States.

I hope your will consider our concerns in your decision making process.

Sincerely,

H. Wayne Carter  
Planning Director

HWC/ebm