

Charles M. Culley, Jr.  
County Administrator



Marcia Jones  
Assistant Administrator

**County of Middlesex**  
OFFICE OF THE COUNTY ADMINISTRATOR

October 28, 1997

Mr. William Kennard  
Chairman Designate  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

*Ex Parte Letter Re: Cases WT 97-197, MM Docket 97-182, and DA 96-2140*

Dear Mr. Kennard:

Please terminate all action in the preceding cases. They attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution, and the principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no zoning knowledge or expertise and is not accessible to most citizens.

For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda. This is part of what local government is all about.

Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described we cannot necessarily prevent them from mentioning their concerns to us. The FCC's attempt to use this as a means to seize zoning authority and reverse local decisions violates basic principles of Federalism, Freedom of Speech, and the rights of our citizens to petition their government.

This is particularly true if a municipality expressly says it is not considering such statements (that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

For similar reasons the FCC cannot "second guess" the reasons for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a municipality's true reasons any more than the courts can "second guess" the true reasons for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that for some municipalities moratoria are a well recognized zoning tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning, including moratoria.

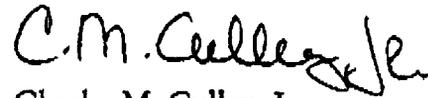
Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high - they are some of the tallest structures known to man. It is therefore astounding that you would propose that municipalities can't consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

Setting artificial time limits for municipalities to act on environmental, zoning, and building permit approvals for such towers serves no useful purpose. It is a violation of the U.S. Constitution, the Communications Act, and Federalism for you to put time limits on municipalities to act on all local approvals and then state that all such applications will be automatically deemed granted if we don't act within this timeframe, even if the application is incomplete or violates state or local law.

The FCC should consider how it would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days; that this rule applied whether or not the application was complete whether or not the applicant was foreign or domestically owned or otherwise qualified; or even whether the frequencies were available. The rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland or in a historic district.

For these reasons the proposed actions all violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed therein.

Sincerely,



Charles M. Culley, Jr.  
County Administrator

cc: Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission (6 copies)  
1919 M Street, NW  
Washington DC 20554



Jeffrey D. Johnson  
County Administrator

**MONTGOMERY COUNTY BOARD OF SUPERVISORS**

1 East Main Street, Suite 325 • Christiansburg, Virginia 24073-3027

October 28, 1997

Joseph V. Gorman, Jr., Chairman  
Henry F. Jablonski, Vice Chairman  
James M. Moore  
Mary W. Biggs

Joe C. Stewart  
Ira D. Long  
Larry N. Rush

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

**RE: FCC RULEMAKING DOCKET 97-182  
Preemption of Local Zoning over Television and Radio Broadcast Towers**

Dear Mr. Caton:

At their meeting of October 27, 1997, the Montgomery County, Virginia, Board of Supervisors passed the enclosed resolution regarding the FCC proposed rulemaking under Docket 97-182. The Board strongly opposes the intent to preempt local zoning for television and radio broadcast towers.

Please incorporate this resolution with the comments received on Rulemaking Docket 97-187.

Sincerely,

Jeffrey D. Johnson  
County Administrator

JDJ

Attachment

AT AN ADJOURNED MEETING OF THE BOARD OF SUPERVISORS OF MONTGOMERY COUNTY, VIRGINIA HELD ON THE 27TH DAY OF OCTOBER, 1997 AT 7:00 P.M. IN THE BOARD CHAMBERS, COUNTY COURTHOUSE, CHRISTIANSBURG, VIRGINIA:

On a motion by Ira D. Long, seconded by Mary W. Biggs and carried unanimously,

WHEREAS, The Federal Communications Commission (FCC) has issued FCC Rule Making Docket 97-182, Preemption of local zoning over television and radio broadcast towers;

WHEREAS, Land use is a function of local government to preserve citizen participation in decisions regarding the use of land within their community;

WHEREAS, The FCC rule making Docket 97-187, usurps the power and authority of local governments to control land use and zoning in their communities; thereby excluding citizens from the decision-making process in the use of land in their communities;

WHEREAS, Local governments are best positioned to identify the adverse impacts such towers may have on the residences, scenic assets, historic districts and the environment of their local communities;

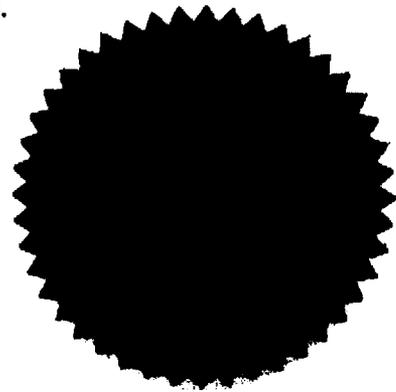
WHEREAS, The Virginia Association of Counties (VACo) and the National Association of Counties (NACO) oppose FCC Rule Making Docket 97-187;

NOW THEREFORE, BE IT RESOLVED, By the Board of Supervisors of Montgomery County, Virginia as follows:

1. The Board strongly opposes FCC Rule Making Docket 97-182, Preemption of local zoning over television and radio broadcast towers.
2. The Board strongly supports the position of NACO and VACo too preserve local zoning authority; and
3. The Board strongly believes it should be the authority of local government to decide the use of land within its communities.

ATTEST:

  
COUNTY ADMINISTRATOR

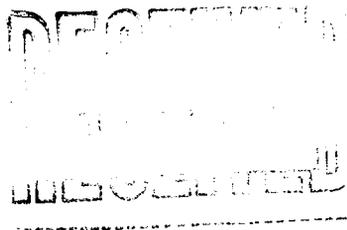




Board of Supervisors of Northampton County  
Fastville, Virginia 23347

Thomas E. Harris  
County Administrator

PHONE: 757-678-0440  
FAX: 757-678-0483



BOARD OF SUPERVISORS  
*John W. White, Sr., Chairman*  
*Oliver H. Bennett, Vice Chairman*  
*Arthur T. Carter*  
*M. E. "Betsy" Mapp*  
*Anthony L. Ruffin*  
*Suzanne S. Wescoat*

**MEMORANDUM**

TO: Office of the Secretary of the FCC

FROM: Thomas E. Harris, County Administrator 

DATE: October 20, 1997

SUBJECT: FCC pre-emption of local zoning

I am writing this letter on behalf of the Northampton County Board of Supervisors who unanimously endorsed a letter of concern regarding the FCC Ruling (Docket #97-182) which would pre-empt local zoning authority over television and radio broadcast towers. Although a small county, Northampton prides itself on its ability to issue permits in a timely manner; however, the stated FCC time frames requiring local governments to act on all zoning and building permit requests for broadcast towers within 21-45 days is unrealistic and in our opinion would show prejudicial treatment to a single client, both of which is unacceptable to Northampton County.

Additionally, Northampton County, as a community that has received enormous national and international attention for its sustainable development strategies including designation by the President's Council on Sustainable Development as one of four national demonstration models for eco-industrial park development, has committed its resources and efforts to evaluate all projects in a manner that reflects the long range vision of our people and our community. Consequently, development concerns are evaluated and predicated on our commitment to environmental protection, social equity, and economic viability. To impose arbitrary requirements that may not meet the high standards identified by our people through our Strategic Plan is not acceptable to the local government and citizens of Northampton County. It is our belief that local governments should fairly and equally evaluate the varied projects that are placed before the governing body and should have the latitude and authority to address them in a manner that reflects the goals, objectives and aesthetics of our community.

In closing, I, on behalf of the Northampton County Board of Supervisors, ask that the FCC ruling on Docket #97-182 be reconsidered so that the autonomy and authority of local governments across the United States will remain fully protected.

cc: Jim Campbell  
Bob Fogle, NACo

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION CENTER ON TUESDAY, OCTOBER 28, 1997**

**RESOLUTION 102897-3 OPPOSING PROPOSED RULING BY THE FEDERAL COMMUNICATIONS COMMISSION TO PRECLUDE LOCAL GOVERNMENT AUTHORITY IN DETERMINING THE LOCATION OF DIGITAL TELEVISION TOWERS**

**BE IT RESOLVED** by the Board of Supervisors of Roanoke County, Virginia as follows:

**WHEREAS**, the Federal Communications Commission (FCC) is proposing a new rule that precludes the ability of local governments to regulate the proliferation of digital television towers, radio towers and other wireless communication towers; and

**WHEREAS**, it preempts local decisions based on zoning, aesthetics, the impact on property value or restrictions placed on natural or historic resources; and

**WHEREAS**, the proposed regulations require that appeals of local zoning or other decisions be sent directly to the FCC, precluding the local courts; and

**WHEREAS**, localities are required to act on tower requests within 21 to 45 days irrespective of local requirements for notice to adjoining landowners, hearing requirements or appeal; and failure to act in these time frames will result in the request automatically being granted; and

**WHEREAS**, Roanoke County is in opposition to this proposed rule for the following reasons:

- 1) The FCC is violating principles of Federalism, especially by allowing the FCC to "second guess" the reasons for

local decisions and reverse decisions that are otherwise acceptable.

- 2) The proposed new rule represents an unprecedented attack on local zoning authority by the FCC.
- 3) The proposed rule applies to the construction of new High Definition Television towers that may be up to 2000 feet high.
- 4) The time limits proposed by the FCC are unrealistic and bear no relation to the procedural requirements of state and local law, requirements of due process, or zoning law.
- 5) The proposed rule totally disregards property values, historic districts, natural resources, aesthetics and the like.

THEREFORE, BE IT RESOLVED that the Board of Supervisors of Roanoke County, Virginia does hereby strongly oppose the new rule proposed by the FCC. It requests that the United States Congress, the Virginia General Assembly, and local elected officials oppose this ruling as an unacceptable violation to the authority (both legally and implied) of local government.

Further, the Clerk to the Board is directed to forward copies of this resolution to the Office of the Secretary of the Federal Communication Commission, members of the United States Congress representing Roanoke County, and the localities participating in the Fifth Planning District Commission.

On motion of Supervisor Eddy to adopt the resolution, and

carried by the following recorded vote:

**AYES:** Supervisors Eddy, Minnix, Harrison, Nickens, Johnson

**NAYS:** None

A COPY TESTE:

*Mary H. Allen*

Mary H. Allen, CMC  
Clerk to the Board of Supervisors

- cc: File
- William F. Caton, Acting Secretary, FCC
  - The Honorable John W. Warner, U. S. Senate
  - The Honorable Charles S. Robb, U. S. Senate
  - The Honorable Robert W. Goodlatte, U. S. Representative
  - The Honorable Rick Boucher, U. S. Representative
  - Wayne Strickland, Executive Director, SPDC
  - Participating localities:
  - Alleghany County Administrator
  - Botetourt County Administrator
  - Clifton Forge City Manager
  - Covington City Manager
  - Craig County Administrator
  - Roanoke City Manager
  - Salem City Manager
  - Vinton Town Manager

# County of Shenandoah

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 DISTRICT 2 - BEVERLEY H. FLEMING 540-477-2181  
 DISTRICT 3 - GILBERT DAVIDSON 540-984-4431  
 DISTRICT 4 - BARRY D. MURPHY 540-459-8484  
 DISTRICT 5 - MARTIN G. EISEWILLER 540-459-4244  
 DISTRICT 6 - DAVID A. NELSON 540-465-8396

P.O. BOX 488  
 WOODSTOCK, VA 22664


**OFFICE OF COUNTY ADMINISTRATION**

VINCENT E. POLING  
 COUNTY ADMINISTRATOR

MARY T. PRICE  
 ASSISTANT COUNTY ADMINISTRATOR

540-459-6165 • FAX 540-459-6168  
 E-Mail: Shenoco@shenotel.net

October 28, 1997

Mr. William Kennard  
 Chairman Designate  
 Federal Communications Commission  
 1919 M Street, NW  
 Washington, DC 20554

*Ex Parte Letter Re: Cases WT 97-197, MM Docket 97-182, and DA 96-2140*

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For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda. This is part of what local government is all about.

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This is particularly true if a municipality expressly says it is not considering such statements (that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

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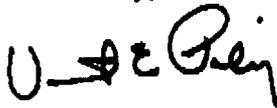
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For these reasons the proposed actions all violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed therein.

Sincerely,



Vincent E. Poling  
County Administrator

cc: Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission (6 copies)  
1919 M Street, NW  
Washington, DC 20054

# Tazewell County Virginia

"Bound For Progress"

Jerry Wood, Vice Chairman  
Wilma Sayers, Supervisor

Donald Payne, Supervisor  
Robert J. Wade, Supervisor

James H. Jones, Chairman  
C. Richard Farthing, County Administrator

October 28, 1997

William F. Caton, Acting Secretary FCC  
Office of the Secretary, Room 222  
Federal Communications Commission  
1919 M. Street, NW  
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Page 2 - Letter to Caton/FCC

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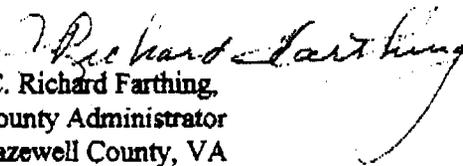
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Very truly yours,

  
C. Richard Farthing,  
County Administrator  
Tazewell County, VA

cc: Mr. William Kennard  
Chairman Designate  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

# Tazewell County Virginia

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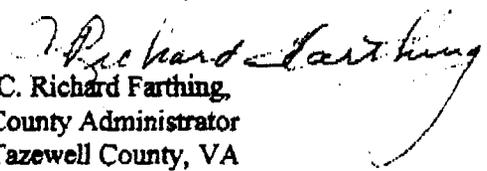
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Very truly yours,

  
C. Richard Farthing,  
County Administrator  
Tazewell County, VA

cc: Mr. William Kennard  
Chairman Designate  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

VIA E-MAIL: rhundt@fcc.gov

October 20, 1997

The Honorable Reed Hundt, Chairman  
Federal Communications Commission  
1919 M. Street, N.W.  
Washington, D.C.

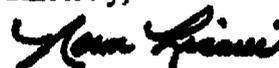
Dear Chairman Hundt:

I am writing at the direction of the Westmoreland County Board of Supervisors, Westmoreland County, Virginia, concerning Docket No. 97-182 which clearly preempts local zoning authority over television and radio broadcast towers. We understand that this is being done in connection with the new digital television technology, which in some instances requires towers that are possibly one-half mile high.

The proposed action by your agency would severely preempt the county's local zoning authority over the siting and construction of such towers. This proposal establishes unrealistic time limits for local action on tower construction requests, preempts local concerns including aesthetics and environmental issues, and designates the FCC rather than the local courts, as the authority for appeals.

This action seems to be contradictory over the fundamental issue of land use regulations in our nation. If this action is approved by the FCC, it would basically give the broadcasters an almost unfettered ability to obtain a favorable outcome. We would encourage the FCC to reject this preemption of local government zoning authority.

Sincerely,



Norm Risavi  
County Administrator

pc: Congressman Herb Bateman  
Senator John Warner  
Senator Charles Robb

# COUNTY OF YORK



## VIRGINIA

September 3, 1997

COUNTY ADMINISTRATOR  
Dantel M. Stuck

### BOARD OF SUPERVISORS

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District 4  
Jere M. Mills  
District 5

William F. Caton, Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

**Re: In the Matter of Preemption of State and Local Zoning and Land Use  
Restrictions on the Siting, Placement and Construction of Broadcast  
Transmission Facilities (MM Docket No. 97-182)**

Dear Mr. Caton:

I am writing on behalf of the Board of Supervisors of York County in opposition to the proposed FCC rules identified above that would essentially preempt local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities. As proposed by the National Association of Broadcasters and the Association for Maximum Service Television, the rules would require local action within 21 days with respect to requests to modify existing broadcast transmission facilities, within 30 days with respect to requests to relocate, consolidate or expand the height of existing broadcast facilities, and within 45 days for all other requests. Under the proposal, a locality's failure to act within these time limits would cause the broadcaster's request to be deemed granted.

Even though the FCC suggests that the motivating force behind these proposed rules is the FCC-mandated expedited rollout of digital television, the proposed rules are not restricted to digital television facilities. Rather, they would apply to all broadcast facilities, including not only standard television transmission facilities, but to all FM and AM radio broadcast facilities as well.

The proposed time limits for local government review of broadcast tower sites are unrealistically short, and in many cases would not even permit localities to comply with State advertising and public hearing requirements for zoning reviews. These advertising requirements are intended to give the public notice of land use applications; the FCC proposals would in many cases prevent the public from effectively having notice of or

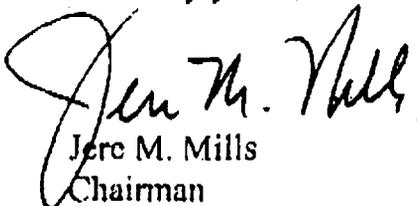
William F. Caton, Acting Secretary  
September 3, 1997  
Page Two

participating in the review process. Land use issues, especially the siting of communications towers, can often be sensitive ones, and the FCC proposal would stifle the public's right to participate in the process. As we understand the proposal, tower applications could be denied only for limited health and safety reasons. Consequently, towers could be erected in or adjacent to historic areas in the County that are vital to our tourist industry, they could be erected in or near residential areas, they could be erected in environmentally sensitive areas - in short, in areas that are now carefully considered and reviewed on a case-by-case basis.

The proposal also provides that the FCC may overturn a local denial of a tower application, without the applicant having to pursue any of the avenues of appeal provided through zoning and other land use laws. We feel that this is unwarranted.

In sum, we oppose the FCC's proposal. We have enclosed nine copies of this letter, as required, so that it may be distributed to the Commission.

Sincerely yours,



Jere M. Mills  
Chairman

swh

Enclosures

cc: The Honorable John W. Warner  
The Honorable Charles S. Robb  
The Honorable Herbert H. Bateman  
The Honorable Owen B. Pickett  
The Honorable Robert C. Scott  
The Honorable Norman Sisisky  
The Honorable L. F. Payne  
The Honorable Robert W. Goodlatte  
The Honorable Thomas J. Bliley, Jr.  
The Honorable James P. Moran  
The Honorable Frederick C. Boucher  
The Honorable Frank R. Wolf  
The Honorable Thomas M. Davis



# NEWS NEWS

October 2, 1997

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## **FCC DIGITAL TV PROPOSAL THREATENS AVIATION SAFETY, SAYS AOPA**

**FREDERICK, MD** - A Federal Communications Commission proposal could threaten aviation safety by permitting a proliferation of TV broadcasting antennas to jut into navigable airspace, according to the Aircraft Owners and Pilots Association. FCC has issued a Notice of Proposed Rulemaking proposing that the agency be able to preempt state and local zoning regulations to accelerate construction of digital TV (DTV) broadcasting facilities.

"This proposal rides roughshod over local zoning that protects the flying public and the value of an airport," said Tom Chapman, AOPA senior vice president for government and technical affairs. "It's not worth sacrificing public safety for additional channels and a better TV picture."

Broadcasters claim that state and local zoning ordinances may stop them from rapidly building new antennas for DTV transmissions. Congress has declared that broadcasters must have DTV signals on the air by next year in the nation's 30 largest TV markets, and by 2002 for the rest of the country. TV station owners asked for the zoning preemption to allow them to meet that schedule.

But the proposed rule affects aviation safety because those local zoning ordinances are the only enforceable laws that regulate the construction of a tower or other hazard to air navigation.

Federal law requires that builders of potentially hazardous towers and other obstructions notify the Federal Aviation Administration, but FAA has no authority to enforce obstruction standards and it cannot stop the construction of a tall tower. Congress left that kind of land use regulation to the states.

AOPA has worked with state legislatures to establish laws limiting the construction of tall structures that would be dangerous to aviation. It has also encouraged local governments to adopt ordinances and land use codes that protect navigable airspace, particularly near airports.

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AOPA noted that besides safety concerns, the broadcasters' proposal could also destroy the value of an airport. State and local governments have invested billions of dollars building and maintaining public airports. A tall obstruction built nearby could make an airport nearly unusable.

"Protecting the safety of pilots and passengers should be a matter of coordinated federal, state and local efforts," said Chapman. "The federal government establishes the standards, state and local governments enforce them."

But the proposed rule creates a fundamental conflict of interest within the federal government, according to AOPA. One agency, FAA, establishes obstruction standards to protect the flying public and encourages local governments to enforce those standards through zoning regulations.

But another agency, FCC, proposes a rule that would permit broadcasters to bypass those regulations protecting the nation's airspace.

"The FCC proposal will have serious consequences to aviation," said Chapman. "FCC cannot ignore those entities - federal, state and local - that have the expertise, and the legal right, to define obstructions that affect navigable airspace, especially around their airports."

"AOPA strongly opposes this NPRM because it will result in new hazards to aerial operations, aircraft and passengers in the U.S."

Comments on the proposed rule, NPRM FCC 97-296, are due by Oct. 30 and should be sent to FCC Docket 97-296, FCC Dockets Branch, Room 239, 1919 M Street NW, Washington, D.C. 20037.

The Aircraft Owners and Pilots Association, the world's largest aviation organization, represents general aviation - non-airline, non-military flying for business, commercial, government, personal and training purposes. More than half of the nation's pilots are AOPA members.

-AOPA-

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September 29, 1997

**Office of the Secretary**  
**Federal Communications Commission**  
1919 M Street, NW  
Washington, DC 200554

Attention: Docket No. FCC 97-182

To whom it may concern:

The Aircraft Owners and Pilots Association (AOPA) representing over 340,000 aircraft owners and pilots nationwide is opposed to the Notice of Proposed Rule Making (NPRM); *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Transmission Facilities*. The general aviation community is the largest population of airspace and airport users in the United States and have a significant interest in the safety and efficiency of the National Airspace System (NAS). AOPA strongly opposes this NPRM on the grounds that *preemption of state and local zoning laws, ordinances and regulations will result in new hazards to aerial operations, aircraft, and passengers in the United States.*

Because of an arbitrary and aggressive implementation schedule, the proponents of Digital Television (DTV) consider state and local zoning as obstacles to their artificially imposed time constraints. For this reason, the industry petitioned the Federal Communications Commission (FCC) for the above referenced NPRM that would essentially circumvent well established state and local zoning protection.

Accelerated implementation of DTV should not be accomplished at the expense of the flying public and it would be an oversimplification to state that current state and local zoning unreasonably delay broadcast facilities construction. (II, Background, .4, page 2-3). Federally mandated "time limits" cannot be enforced nor expected to be complied with in a standardized manner all across the country. The principle as described in the NPRM proposes to remove from local consideration regulations based on the environmental or health effects of radio frequencies emissions, interference with other telecommunication signals, and would also remove from local consideration regulations concerning tower marking and lighting provided that the facility complies with applicable Commission or FAA regulations. As provided for in the NPRM, the proposed changes are related to the health and safety of the flying public (II, Background, .4, page 2-3).

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This proposed rule creates a fundamental conflict of interest within the federal government. The government has established obstruction related standards to ensure public safety on one hand and bypass that same system and its enforceability links with state and local governments on the other, in an attempt to facilitate the implementation of DTV.

The NPRM states that the Commission had the authority to preempt where state or local law stands as an obstacle (III, Discussion, .6, page 3) to the accomplishment and execution of the full objectives of Congress. This creates a conflict of interest when compared to the mandated authority and role that Congress has instituted with the Federal Aviation Administration (FAA) in terms of aviation safety.

The 1996 Telecommunications Act and associated 47 U.S.C. 151 do not justify, mandate or even insinuate that state and local zoning is to be ignored. "To make available, so far as possible..." should not include or be attempted at the expense of aviation safety. Again, 47 U.S.C. 151 "It shall be the policy of the United States to encourage the provision of new technologies and services to the public" certainly does not intend to achieve it at the expense of state and local zoning, especially when it relates to airport and aviation safety. (III, Discussion, .7, page 4). The fact that historically the FCC has sought to avoid becoming unnecessarily involved in local zoning disputes regarding tower placement is illustrative of not only common sense, but also mirrors previous congressional policy (III, Discussion, .8, page 4).

Airports are endangered by constant encroachment of the approach and departure slopes by towers or other vertical obstructions which are impediments to airport safety clearances. Obstructions can be caused by terrain, buildings, towers, and trees or any object that penetrates what can be defined as navigable airspace. Penetrations to navigable airspace may cause unsafe conditions at an airport and may have to be removed, lowered or reconstructed. In many cases, this cannot be accomplished without local and state intervention and guidance, hence the impact of the FCC NPRM.

Since 1928, zoning has been the answer to the problem of airport protection from obstructions. In 1930, the Department of Commerce recommended: "Municipalities and other political subdivisions authorize to do so, exercise the police power in promulgation of properly coordinated zoning ordinances applying equitably to the public airports and intermediate landing fields, and to commercial airports of the public utility class, as well as other land uses."

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This same concern was vividly made public again in 1938 by the Civil Aeronautic Authority (CAA) when it mentioned: "...and, solutions to these problems that have been suggested, there is none as satisfactory, in many respects, as airport zoning." Following federal leadership in this domain, many states since then have adopted legislation authorizing cities and counties to adopt regulations and ordinances limiting the height of structures around airports. By 1941, 31 states had this type of legislation enacted. Many more do today. While things have changed since 1930, they have changed for the better, not for the worse. The federal government position on airport and land use compatibility zoning has been very consistent in the last 60 years.

Today, 49 U.S.C. Section 44718 states, in pertinent part, that "The Secretary of Transportation shall require a person to give adequate public notice...of the construction or alteration, establishment or extension, or the proposed construction, alteration, establishment or expansion, of any structure...when the notice will promote: safety in air commerce, and the efficient use and preservation of the navigable airspace and of airport capacity at public-use airports."

The FAA utilizes Federal Aviation Regulation (FAR) Part 77, CFR 14, "Objects Affecting Navigable Airspace" in an effort to establish standards for determining obstruction to air navigation. In addition to Part 77, the FAA has published documentation of which the purpose is to supplement Part 77. Examples are: Advisory Circular 70/7460-2J "Proposed Construction or Alteration of Objects that May Affect the Navigable Airspace" and Advisory Circular 150/5190-4A, "A Model Zoning Ordinance to Limit Height of Objects Around Airports." These documents are designed to promulgate safety standards.

However, the Federal Aviation Act of 1958, as amended, does not provide specific authority for the FAA to regulate or control how land may be used involving structures or obstructions that may penetrate the navigable airspace. The Federal Aviation Regulations Part 77 only requires "...all persons to give adequate public notice...of construction or alteration...where notice will promote safety in air commerce." The FAA has no power to enforce obstruction standards.

The Advisory Circulars published by the FAA are evidence that the FAA is unable to provide enforcement for situations that arise and have made efforts for the local governments to be informed about the responsibilities they have to establish zoning ordinances.

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By examining the statutes relative to the FAA, we can confirm that there is no specific authorization for federal regulations which would limit structure heights, prohibit construction or even require structures to be obstruction marked and lighted. Congress chose to withhold such authority. Since it would involve federal zoning regulations and due process actions, including the taking of property and the paying of compensation, the matter was best left with the states and the local authorities. This federal void is filled by state and local authorities. States and local governments have the responsibility of enacting and enforcing airport-compatible land use.

Given the relative ineffectiveness of the current FAR Part 77 and the advisory nature of the other documentation, it is essential that state and local authorities maintain their ability to adequately regulate tall structures. The FCC NPRM discourages the state and local governments from filling in the federal voids to protect their airports and citizens. We believe that the safety and welfare of persons above and on the ground in the vicinity of airports should be a matter of coordinated federal, state, and local concern. The Federal government established the standards and recommendations, the state and local governments enforce them.

AOPA believes that another federal agency (FCC) should not attempt to do what the federal aviation agency cannot in terms of obstruction related aviation matters. The FCC NPRM has serious aviation consequences and therefore cannot ignore those entities (federal, state, and local) that not only have the expertise, but also the legal right to define obstructions that impact on navigable airspace, especially around their airports.

To protect the public by preventing properly located and constructed airports from becoming worthless through construction or growth of hazards or obstructions in and around such airports, state and local governments all point to zoning to limit the location and height of structures. A state, county, city, airport authority, corporation or individual can spend large sums of money for very essential public and private purpose of constructing and maintaining an adequate airport, only to have the airport rendered worthless and dangerous almost overnight by the erection of obstructions despite adequate and safe state and local zoning laws and regulations, and violating a myriad of these in the process.

Throughout the nation, local zoning and ordinances are the only means to enforce and limit the height of obstructions to airspace and aerial navigation near airports. AOPA is and has worked with state legislatures to improve existing laws and to establish new ones to limit the construction of tall structures that would be dangerous to aviation.

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We also encourage local governments to adopt ordinances and land-use codes that protect navigable airspace, especially in the proximity of airports. This has successfully been achieved in some states where, beyond providing specific guidelines for airport land use compatibility and implementation of airport land use regulations, the state requires permits for any penetration to the FAR Part 77 surfaces. The end result is that local political subdivisions are required to adopt zoning to require a variance for any penetration to the Part 77 and to require appropriate lighting/markings as a condition of such variances. Examples like these represent the best, the safest and most efficient coordinated usage of federal standards, state law, and local ordinances.

While the arrangement between the two federal agencies can be considered a "gentleman's agreement," they both have to face the validity of the airport zoning statutes, which incorporate the basic legal principles which sustain the validity of the zoning. These are now firmly established in the legal jurisprudence of the majority of the states in this nation.

It would be inaccurate to believe that because FAA's Part 77 Regulations and associated processes such as notices of proposed constructions and aeronautical studies are not affected nor mentioned in the NPRM, that the NPRM's impact is non-existent in terms of safety of aerial navigation. This NPRM fails to consider that state and local zoning address and safeguard aerial navigation in cases where FAR Part 77 fails to require FAA notification.

The cases where Part 77 Does Not require FAA notification include:

(1) construction or alteration of LESS than 200 feet, (2) proposed construction of a tower less than 200 feet yet in the vicinity of airports privately owned/operated, (3) objects that are shielded by another object (This may lead to a gradual crawl towards an airport. Each tower is built just a little closer and soon there are 20 of them.), and (4) an addition in height of 20 feet or less to an existing antenna structure.

Furthermore, state and local laws and ordinances are the only protection the flying public has when the towers or obstructions in question are not even considered to be an obstruction under FAR Part 77. The cases where FAR Part 77 Does Not Consider to be an Obstacle are: (1) a height of 499 feet or less and (2) a height of 499 feet when right beside a private use airport.