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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF CONCERNED COMMUNITIES AND ORGANIZATIONS CONSISTING OF:

U.S. Conference of Mayors, Michigan Townships Association, National Association of Counties, Texas Coalition of Cities on Franchised Utilities Issues

AZ: Town of Paradise Valley

CO: City and County of Denver, City of Lakewood, Greater Metro Telecommunications Consortium consisting of 24 other Colorado local governments

FL: City of Coconut Creek, City of Deerfield Beach, City of Fort Lauderdale

IL: City of Breese, City of Naperville, City of Rockford, City of St. Charles, Village of Western Springs, Village of Lisle, and the Illinois Chapter of NATOA consisting of the City of Chicago, Cook County, and approximately 50 other Illinois municipalities

MI: City of Grand Rapids, City of Detroit and 26 other Michigan municipalities

MN: City of Albert Lea, City of Crookston, City of Edina, City of Lilydale, City of North Oaks

MO: City of Gladstone, City of Springfield

NC: Piedmont Triad Council of Governments consisting of 24 North Carolina local governments and Town of Chapel Hill

NJ: Bridgewater Township

NV: City of Las Vegas, City of Sparks

OH: City of Canton, City of Eastlake

TX: City of Dallas, City of Fort Worth, and 20 other Texas municipalities

UT: City of Provo

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COMMENTS OF CONCERNED COMMUNITIES AND ORGANIZATIONS

I. INTRODUCTION AND SUMMARY

A. Introduction: Concerned Communities and Organizations (“CCO”)¹, by their

¹The Concerned Communities consist of the following local governments and organizations:

U.S. Conference of Mayors is a nonprofit national organization representing mayors of cities with populations over 30,000. Its membership includes more than 1,400 cities and 49 state-municipal organizations. **Michigan Townships Association** is a nonprofit corporation which provides education, exchange of information and guidance to and among township officials and its current membership consists of 1,242 Michigan Townships. **National Association of Counties** is the only national organization representing county government in the United States. **Texas Coalition of Cities on Franchised Utilities Issues (TCCFUI)** consists of 90 member municipalities.

Arizona: Town of Paradise Valley

Colorado: City and County of Denver, City of Lakewood, and Greater Metro Telecommunications Consortium consisting of Adams County, City of Arvada, City of Aurora, City of Brighton, City of Castle Rock, City of Cherry Hills Village, City of Commerce City, Douglas County, City of Englewood, City of Edgewater, City of Glendale, City of Golden, City of Greenwood Village, City of Lafayette, City of Lakewood, City of Littleton, City of Northglenn, City of Parker, City of Sheridan, Town of Superior, City of Thornton, City of Westminster, City of Wheat Ridge

Florida: City of Coconut Creek, City of Deerfield Beach, City of Fort Lauderdale

Illinois: City of Breese, City of Naperville, City of Rockford, City of St. Charles, Village of Lisle, Village of Western Springs and the Illinois Chapter of NATOA consisting of the City of Chicago, Cook County, and approximately 50 other Illinois municipalities

Michigan: City of Detroit, City of Grand Rapids, Ada Township, Bloomfield Township, Byron Township, Canton Charter Township, City of Birmingham, City of Cadillac, City of Eaton Rapids, City of Huntington, City of Kentwood, City of Livonia, City of Marquette, City of Rockford, City of Walker, City of Wyoming, Elk Rapids

attorneys, hereby file comments in the above-captioned proceeding pursuant to the Notice of Proposed Rulemaking, FCC 97-296 (released August 19, 1997) (“NPR”).

For the reasons stated herein, CCO oppose the Petition for Further Notice of Proposed

Township, Frenchtown Charter Township, Gaines Charter Township, Grand Haven Charter Township, Grand Rapids Charter Township, Handy Township, Harrison Charter Township, Robinson Township, Scio Township, City of Westland, Yankee Springs Township, Zeeland Charter Township

Minnesota: City of Albert Lea, City of Crookston, City of Edina, City of Lilydale, City of North Oaks

Missouri: City of Gladstone, City of Springfield

New Jersey: Bridgewater Township

Nevada: City of Las Vegas, City of Sparks

North Carolina: Piedmont Triad Council of Governments consisting of Alamance County, City of Archdale, City of Asheboro, City of Burlington, Caswell County, Town of Chapel Hill, Davidson County, City of Eden, Town of Elon College, Town of Gibsonville, City of Graham, Guilford County, Town of Haw River, City of High Point, Town of Jamestown, City of Lexington, Town of Liberty, Town of Madison, Town of Mayodan, City of Mebane, City of Randleman, Randolph County, Town of Ramseur, City of Reidsville, Rockingham County, and Town of Yanceyville

Ohio: City of Canton, City of Eastlake

Texas: City of Dallas, City of Grand Prairie, City of Amarillo, City of Arlington, City of Cedar Hill, City of Coppell, City of Crowley, City of DeSoto, City of Fort Worth, City of Haltom City, City of Hurst, City of Irving, City of Kaufman, City of Keller, City of Kennedale, City of Lancaster, City of Laredo, City of Longview, City of Plano, City of University Park, City of Waxahachie, Town of Addison, and TCCFUI (consisting of the Cities of Abernathy, Alamo, Andrews, Arlington, Balcones Heights, Belton, Big Springs, Bowie, Breckenridge, Brenham, Brookside Village, Brownfield, Brownwood, Buffalo, Bunker Hill Village, Burkburnett, Canyon, Carrollton, Center, Cisco, Clear Lake Shores, Cleburne, College Station, Conroe, Corpus Christi, Cottonwood Shores, Crockett, Dallas, Denison, Dickenson, El Lago, Electra, Fredericksburg, Friendswood, Fort Worth, Georgetown, Grand Prairie, Grapevine, Greenville, Gregory, Groves, Harlingen, Henrietta, Hewitt, Irving, Jamaica Beach, Jacinta City, Kilgore, La Grange, Lampasas, League City, Leon Valley, Levelland, Lewisville, Longview, Los Fresnos, McAllen, Mexia, Missouri City, Navasota, Nolanville, Paris, Pearsall, Plainview, Plano, Ralls, Refugio, Reno, Richardson, River Oaks, Rosenberg, San Marcos, San Saba, Seminole, Seymour, Smithville, Snyder, South Padre Isle, Spearman, Stephenville, Sugar Land, Taylor Lake Village, Terrell, The Colony, Thompsons, Timpson, Tyler, University Park, Vernon, Victoria, Waxahachie)

Utah: City of Provo

Rulemaking (“Petition”) filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television (collectively, “NAB” or “Petitioners”) which led to the NPR and proposed rule. This proceeding should be terminated without the adoption of any new rule or policy by this Commission.

B. Summary: Broadcast towers are the highest structures known to man. Forty percent of them are over 1,000 feet tall. Many are in the 2,000 foot range, roughly 50% taller than the tallest buildings in the world. Some towers have collapsed. Those that do can kill people and damage property within a wide radius of the tower (exceeding its height) when they fall. Towers are also a major threat to aviation. However, for most airports in the United States -- approximately 13,000 -- Federal Aviation Administration (“FAA”) rules governing the location and height of towers near airports do not apply. Instead, zoning rules and other State and local regulations are what prevent towers from being placed in unsafe locations or unsafe heights near airports.

Towers have significant environmental effects. This is because they are preferentially located in two of the most sensitive environmental areas -- either in mountainous areas or in wetlands. Planning and zoning ordinances are some of the key legislation which are used to protect such environmentally sensitive areas and are the legislation which this Commission’s proposed rule would preempt. Towers also have major impacts on property values and on aesthetics.

Factual records show that State and local laws affecting broadcast towers will not delay the rollout of HDTV. Municipalities have not impaired radio and television service

by 14,000 radio and television stations in the U.S. over the past 75 years. Municipalities generally support HDTV due to the competition it will bring in video delivery and in freeing up spectrum for public safety purposes. In many areas, appropriate zoning for broadcast towers is already in place (in many instances towers can be put in certain districts as of right without local zoning approval).

The record is clear that the real cause for any delays will likely be the lack of adequate numbers of skilled construction crews to erect towers or inclement weather (which prevents tower construction). If there is any problem with State and local regulations affecting the switch to HDTV it will, at most, occur with the 26 to 40 television stations that, under the Commission's rules, have to switch to HDTV before the year 2000. Stations that switch in the year 2000 or later should have no problems as they have more than enough time to obtain State and local permits and authorizations.

The Commission's proposed rule -- or any action by the Commission that preempts State and local legislation that has the effect of protecting the environment -- is a major Federal action affecting the environment, requiring that an environmental impact statement ("EIS") be prepared under the National Environmental Policy Act ("NEPA"). The Commission's proposed rule meets this standard and the rule is void unless and until an EIS is prepared.

The Commission's proposed rule violates the First, Fifth, Tenth, and Fourteenth Amendments to the Constitution. Under the Tenth Amendment, zoning is a traditional function of State and local government reserved solely to them. Attempts by the Federal

government to “commandeer” local governments are fundamentally incompatible with our constitutional system of dual sovereignty. It also infringes on the First Amendment rights of citizens and legislators by having a chilling effect on their commenting on RF interference or other aspects of towers. And the proposed rule violates the Fourteenth Amendment to the Constitution by potentially depriving citizens of property without due process of law for which the Federal Treasury and U.S. taxpayers will then be responsible in damages.

Despite the claims of the NAB and this Commission, there is no statutory authority in the Communications Act of 1934, as amended, for the proposed rule.

And the proposed rule is deficient in many respects, such as purporting to limit State and local action only to “health and safety” concerns and posing arbitrary time limits for action which are unreasonably short and proposing the draconian and unheard of remedy of automatically deeming all permissions and requests to have been granted if certain time limits are exceeded (and without regard as to whether the substantive requirements of the State and local government have been met).

For the preceding reasons, the NPR was improvidently issued and proceeding should be terminated without any action by the Commission.

II. BROADCAST TOWERS AND THEIR IMPACT

A. Towers and Buildings: The Commission’s proposal relates to radio and television towers. These towers are some of the tallest structures known to man with heights equal to or greater than such well-known structures as the Empire State Building, Sears Tower or Eiffel Tower.

Such towers are constructed of tons of steel and can be viewed from literally miles away. In many areas they are the dominant feature in the landscape and can be seen from ten, twenty or thirty miles away.

Some broadcast towers are self-supporting, in which case they are quite large at the base and taper at the top. Others are guyed with large guy wires running off in several directions to concrete piers located in the ground.

In addition, towers for AM broadcasting are typically located in or near wetlands and wet areas because wet areas have high ground conductivity which aids signal propagation. To use plain English, if an AM broadcast station is located in a wet area its signal carries farther than if it's located in a dry, rocky area.

To help their signal reach even farther, AM broadcast stations often have an extensive network of large wires buried beneath the ground around the tower. This network of "ground wires" looks like a spider's web with thick radial wires radiating out from the base of the tower and circumferential wires (at varying distances) from the center, running in a circle connecting the various radials together.

Due to their large size and (especially in the case of AM broadcast stations) locations in and near wetlands and streams, broadcast towers can have significant impacts on property values, aesthetics and the environment, each of which are discussed next.

B. Size: The large size of broadcast towers, compared to other structures in the landscape, is best set forth by comparison with the tallest buildings in the world. Attached in this regard as Exhibit A is a listing of the tallest structures in the nation and world from

the 1994 World Almanac.

As shown therein the Sears Tower (the world largest structure) is 1,454' tall. New York's World Trade Center is 1,368' high and the Empire State Building (including its TV tower) is 1,414' tall. The Eiffel Tower, by comparison comes just under 1,000', at 984'.

The heights of all these buildings pale by comparison with broadcast towers. According to the NAB, 40% of broadcast towers are over 1,000' high -- taller than the Empire State Building and taller than all but a handful of the largest buildings in North America. NAB Petition, at 7.

And broadcast towers can easily be over 2,000' feet high and approach one-half mile in height. This is 50% taller than the world's tallest building, the Sears Tower. Due to their large size broadcast towers can have major impacts on communities, their residents, property values, aesthetics and the environment as discussed below.

C. Safety: Broadcast towers can and do collapse. In 1996 there was a major television tower collapse in the Dallas-Fort Worth area that killed several people. This collapse is partially described in *New York Times*, infra and in an article attached as Exhibit B (Chiles, James "Building Towers to the Sky" *Smithsonian Magazine* (July, 1997) at 44).

There have been other tower collapses since radio stations first went on the air in the 1920's. According to the *New York Times*, seven towers collapsed this spring in Minnesota and North Dakota in a storm. Exhibit C, attached hereto ("Crews are Scarce for TV's High Danger Task" *New York Times*, Section 4, p. 1 (May 4, 1997)).

The recent collapses illustrate the need for a "setback requirement" from adjacent

property lines equal to the height of the tower plus an additional safety factor such that if a tower does fall it will not impact adjacent property owners. Apparently insurance companies now mandate such “setback” or “fall radius” requirements for all new broadcast towers. *Id.* This concern is particularly the case in the event of high winds (such as occur with hurricanes and tornados) when towers can be shifted laterally significant distances when they fall due to the strong wind patterns that occur in such storms. And even in calm weather collapsing towers can eject items further than their height. When a 1,551 foot tower collapsed last year in Texas, one worker was thrown 1,800 feet from the base of the tower “by the enormous stresses of the collapse.” Exhibit B, *Smithsonian Magazine, supra*, at 50.

As is apparent, if such towers are placed in an inappropriate location there is significant potential for harm to life or property from such towers being blown over by strong winds or otherwise collapsing.

D. Airports: Broadcast towers are a threat to aviation, and thus to life and property. As the Commission is aware, when airplanes crash into broadcast towers or their guy wires, three things happen: The airplane crashes and its occupants are killed; people on the ground who are in the way are killed and structures are burned (such as if the airplane crashes into a house or school); and the broadcast tower collapses due to either being hit by the airplane directly or due to the guy wires on one side snapping and the remaining ones immediately pulling it over. This is the reason towers are painted with highly visible colors and typically are illuminated at night.

The Commission should be aware that, as discussed below, only 29% of the airports

in the United States are regulated by the FAA on tower placement. The balance of the airports -- some 12,900 at last count -- are not subject to the jurisdiction of the FAA and, in fact, come under the jurisdiction of both State government (for example, state aeronautic commissions such as the Michigan Aeronautics Commission) and local government, especially the zoning powers of the latter.

This is set forth in the FAA rules applicable to aviation. See, in particular 14 CFR Part 77 - Objects Affecting Navigable Airspace. Subpart C of Part 77 entitled "Obstruction Standards" is the substantive section which "establishes standards for determining obstructions to air navigation". 14 CFR § 77.22(a). It provides that

"The standards in this subpart apply to the effect of [tower and other] construction or alteration proposals upon an airport if at the time of filing of the notice required by Section 77.13(a), that airport is -- (1) Available for public use and is [listed in certain airport directories]." 14 CFR § 77.21(c) (emphasis supplied).

The FAA reports that as of December 31, 1996 there were 5,389 "public use airports" in the United States and 12,903 "private use airports" for a total of 18,292 "total airports". *1997 FAA Administrators Fact Book - Airports* (as of Dec. 31, 1996) <<http://www.tc.faa.gov/ZTV/FAA/administrator/airports.html#10>>. A copy of this webpage is attached as Exhibit D. Data with essentially the same result (although two years older) from the FAA is set forth in the 1996 Statistical Abstract of the United States at 649 (as of 1994, 5,137 public airports and 13,206 private airports for a total of 18,343).

This Commission thus must recognize that approximately 13,000 airports in the United States are not subject to the FAA's rules on whether, where and how high a tower

may be near an airport. The key is that it is State and local governments -- and often the latter -- who through their zoning powers in particular, and other police powers, regulate the placement of towers near these airports. Such regulation may encompass whether a tower can be built at all near an airport or how high it can be given its distance from the airport and orientation relative to landing patterns.

As one example of how the zoning power is used to regulate the placement and height of towers near private airports, Rives Township, Jackson County, Michigan is a good example: In mid-1996, a cellular tower company proposed to put a 409 foot tower in the Township. The proposed tower would have been located in line with, and near the end of the runway of a private airport in the Township. Because it was a private airport, towers near it were not subject to FAA regulations, but zoning approval from the Township was required.

The airport operator and residents brought airport-related safety concerns to the attention of the Township during the zoning approval process for the tower. These related to the height of the tower and its location in relation to the airport. As a result, the Township, under its zoning powers, approved the tower for a different site and at a lower height (334 feet), specifically due to safety concerns just described. Without the action by the Township the cellular operator would have built the tower in a location and at a height which was a safety hazard to aviation.

E. Environmental Effects: Broadcast towers can have substantial environmental effects.

Many are built in or near streams, wetlands or other protected areas.² As the Commission should be aware, wetlands and streams are generally environmentally protected areas. Streams are protected in part due to their role as sources of water, such as for drinking purposes, their role as fisheries (e.g., bass, trout or salmon streams) and for other reasons. Wetlands and wet areas are protected under many State and local laws (as well as some Federal laws) due to their role in nurturing key plants and animals in the food chain and their role in delaying and filtering runoff from adjacent lands.

As a result, there are strict State and local rules, regulations and permits related to construction in or near streams and wetlands, or which otherwise may impact them. Often a major concern addressed by such laws is the destruction of wetlands and harm to streams (such as erosion or the discharge of silt or sediments -- due to construction or operation near streams -- which can smother fisheries and riveine habitat). Zoning laws may also partially address such concerns by restricting development in and near environmentally sensitive areas.

Many other broadcast towers are located at or near the tops of mountains or on other high ground (apparently so as to gain height and allow their signal to travel farther). Examples include the television transmitters located on top of Mount Washington, New Hampshire and Mount Mansfield, Vermont, which are the highest mountains in those two states. The climate at these elevations is often harsh, with plant and animal life being

² This is particularly true of AM radio stations for the reasons discussed above.

tenuous and fragile and soil cover being thin, sparse and delicate. These conditions are often exacerbated by recent stressors -- such as the change in habitat at higher elevations in the eastern U.S. attributed to acid rain. Particularly in the Southwest such high ground often is an ecological "mountain island" of alpine or tundra habitat left from the last Ice Age and contain plant and animal species which are unique, and often threatened.

Inappropriate location or construction of broadcast towers in such areas can have major environmental impacts on such plants, animals and soils. This is due not only to the tower itself, but due to the all weather access roads and utility lines that have to be built to the site, plus living quarters for manned locations. In addition, access roads, once built, attract additional users, who may further harm the environment.

As a result, many States and local governments have appropriate restrictions on locating facilities in these high areas, and on the construction that can occur there. Some areas have been purchased outright by State or local governments or may be part of State or local parks or wilderness areas. In such areas construction is severely limited, if allowed at all. And where construction is allowed, special permits and construction techniques may be required.

Towers by themselves, if inappropriately situated in major "flyways" for migratory birds can have a major impact on wildlife. As the Commission should be aware, in many areas there are highly localized areas -- often involving high ground such as is preferred for FM and TV stations -- where thousands or millions of birds, including rare or endangered species, migrate through each year.

The presence of large towers with their antenna arrays, large numbers of guy wires and lighting has the potential to be significantly harmful to such migratory flocks.

F. Land Use and Zoning Regulations are Environmental Legislation: This Commission should be aware that land use and zoning regulations are one of the primary State and local regulations protecting the environment, and in particular protecting the mountainous areas or low lying areas that are overwhelmingly preferred for broadcast towers. This is because zoning laws and regulations are directly drafted to reflect the terrain and environment of the community in question. They thus typically have special requirements -- often in addition to regular zoning regulations -- to protect environmentally sensitive areas such as mountainous areas, high areas or wetlands.

For example, it is common in zoning and land use laws in some States to have special so-called "overlay districts" for wetlands, or areas in or near streams which substantially restrict the types of allowable uses from those otherwise allowed to protect the area and the environment. Such overlay districts impose additional setback requirements (beyond those that would otherwise apply) from streams, wet areas and waterways to prevent structures from being located near them and to prevent construction from occurring near such areas.

Mountainous areas can have analogous land use and zoning restrictions as "natural beauty areas" or due to the steep slopes, unstable soils or to protect a "natural view corridor." Again, the zoning restrictions which are applicable to such areas to protect the environment typically are in addition to those that otherwise apply. They, too, appropriately restrict the structures that may be erected in such areas and the types of construction that may be

allowed.

In addition, even where structures are allowed, the additional zoning requirements (overlay districts or otherwise) that are often applicable to mountainous areas or peaks or low lying areas may have significant restrictions on the construction that may be allowed and the steps that must be taken to protect the natural environment. These may take into account, for example, steep slopes, unstable soils, or the silting of streams.

Also, in some areas (particularly in California and the West) there is a high risk of fire danger. In such “high fire” areas construction may be prohibited altogether by land use or zoning laws or only limited to certain relatively wet times of year. As the Commission can appreciate, forest fires sweeping through an area are a major hazard to life, property and the environment.

Finally, this Commission should be aware that many of the land use and zoning restrictions applicable in or near wetlands are imposed at the request or directive of the Federal government. This is particularly true as to flood plain regulations where under the direction of the Federal Emergency Management Administration (FEMA) localities are required to prohibit development in flood plains. If they do not, residents of the area will not be able to obtain Federally subsidized flood insurance.

Similarly, as to wetlands, pursuant to Federal statutes protecting them, States and localities have been directed to adopt wetland protection statutes. Again, these both promote Federal interests as well as local interests. At minimum, they indicate that such State statutes and ordinances having an independent incentive or basis in Federal law cannot be preempted

by this Commission.

G. Aesthetics: Broadcast towers are not things of beauty. Under zoning ordinances they are not appropriate for certain areas, such as parks, residential areas or natural or historic areas. As the Commission should appreciate, towers are particularly inappropriate for high ground that has been designated a wilderness area or is part of a State or local park or is subject to zoning restrictions that have a similar effect.

Zoning ordinances commonly address such matters in a number of ways. For example, some cities limit the height of structures so as not to detract from public monuments or the beauty of an area. Washington D.C. provides a good example of this where, as the Commission is well aware, buildings are specifically limited in height so as to, among other things, not compete with, obscure or detract from major public monuments such as the Washington Monument. These are clearly legitimate goals which the Commission's proposed rule places in jeopardy (without explanation).

Zoning ordinances similarly can address aesthetics by limiting development to less obtrusive structures and, for example, by designating certain areas as "view corridors" where construction cannot inhibit the view of natural objects. Again it appears that the Commission's rule, without explanation, would attempt to preempt such requirements. And as is discussed next, the negative aesthetics of broadcast towers by themselves can depress property values in the area.

H. Property Values: Broadcast towers can have a major impact on property values if they are not appropriately situated, such as in accordance with local land use and zoning

controls. The reason for the impact on property values is fairly obvious -- who wants to have their house located next door to a structure 50% taller than the Empire State Building? Although experts can argue that television towers are "safe" and will not kill anybody outside the setback zone (described above) the simple hard fact is that such towers can appreciably harm property values if they are not located in an appropriate area, such as in accordance with municipal land use and zoning controls.

I. Conclusion: The preceding gives a brief description of broadcast towers, their nature and potential impacts. As can be seen, the impacts are substantial, as can be expected from some of the tallest structures known to man. For this reason State and local regulation of them is entirely appropriate -- and absolutely necessary to protect the public health, safety and welfare, and attempts by this Commission to remove such regulation and preempt it is inappropriate.

III. STATE AND LOCAL REGULATION OF TOWERS IS NOT A PROBLEM

A. Introduction: The Petitioners in this matter fail to make any showing that there is a problem requiring Commission action. This is set forth in more detail below.

What is occurring here is simply that the NAB is once again using a Commission proceeding as a pretext for that which it could not get from Congress, namely Federal preemption of State and local zoning and other regulations affecting broadcast towers. The Commission will recall that most recently in 1996, in the over-the-air reception device rulemakings, the NAB asked that the partial preemption of local zoning under consideration

there be extended from ordinary household TV reception antennas to broadcast towers.³ The Commission wisely declined this request. Having failed there and having failed to get Congress to act in the meantime, the NAB has now simply seized on the current rulemaking as a pretext to try to get the same result, but with as little legal and factual basis as it had in the past.

B. Historically No Problem: As the Commission correctly points out in its NPR, there is no evidence of a historical problem with State and local zoning or other regulations impairing the spread of radio and television service. NPR, at ¶16. To recapitulate, this Commission stated in its Notice there are currently slightly over 12,000 radio stations in the U.S. and approximately 1,600 television stations, for a total number of broadcasters (in round numbers) of 14,000. NPR, Appendix A, at footnotes 42 and 52.

Radio broadcasting in the United States dates back 75 years to the early 1920's. Television broadcasting mainly dates from the post-World War II era.

So the historical record is clear. For three quarters of a century -- 75 years -- the State and local regulation of which the NAB now complains has not impaired radio and TV

³NAB, by its own admission, has consistently urged the FCC to exercise "broad authority" to preempt state and local regulation of communications facility siting and use. See NAB Reply Comments In the Matter of Preemption of Local Zoning Regulation of Satellite Earth Stations (DA 91-577), filed August 15, 1995; see also NAB Petition for Declaratory Ruling, filed March 17, 1986; Comments of NAB (DA 91-145), filed March 15, 1991; NAB's participation in the Petition for Rulemaking of the Electromagnetic Energy Association, filed December 22, 1994; NAB Comments in Support of Cellular Telecommunications Industry Association Petition for Rulemaking (RM-8577), filed December 22, 1994.

broadcasting. This is true despite the massive changes that have occurred during this period of time, a world war, two regional conflicts and the expansion of radio and television stations such that 14,000 separate stations are now operating throughout the United States and its possessions.

The historical record thus shows no basis for the Federal preemption which the NAB requests. In fact, the historical record is so massive and overwhelming -- 14,000 stations over three-quarters of a century not impaired in their delivery of service by State or local regulation -- that it effectively settles the matter that there is no problem to be addressed.

C. Municipalities Support HDTV: The Commission should be aware that municipalities in general support the Commission's HDTV proposals. They have strong incentives to see it realized promptly and thus to minimize any unnecessary delay in the zoning, permitting or other processes. These incentives have three major sources.

First, municipalities strongly support competition in video service due to the benefits it will bring to their residents. Municipalities strongly dislike the recent resurgence of rapid increases in cable rates, which are now going up at three times the rate of inflation. As the regulators of basic cable service they are only too aware of such increases and often are blamed by their residents for the increases.

In order to limit such increases and to otherwise increase customer choice in video service, municipalities have strong reasons to support a prompt roll-out of HDTV service while, of course, making sure that the State and local rules and regulations are complied with.

Second, as the Commission is aware, one of the results of the HDTV roll-out will be

the turning over of much of the analog spectrum formerly used by TV broadcaster for public safety uses. State and local governments are one of the major users of public safety spectrum. For this reason alone, municipalities have strong reasons to support a rapid roll-out of HDTV because it will make more radio frequency spectrum available for public safety purposes.

Third, and most importantly, municipalities do not operate in a vacuum. They are far closer to their residents than this Commission. And as the Commission is aware, citizens nationwide would like competition in video service to, among other things, remove the current cable monopoly. This is not the only value which residents support -- for example, in the process they don't want their property values harmed and they want to see the environment protected, among other things. But municipalities reflect the views of their residents which in general are strongly supportive of increased competition in video service, again making sure that other community values (as reflected in State and local rules and regulations) are met.

This appears to be simply a continuation of past views and actions towards broadcasters, where municipalities and their residents supported additional radio and TV stations due to the increased choice and other benefits they provided. This is likely part of the reason that, as noted above, State and local regulation and permitting has not been a problem during the 75-year history of broadcasting in the U.S.

There is thus no basis for concern that municipalities will unnecessarily hinder or delay the granting of zoning or other permits of approval necessary for HDTV. In fact, they

will likely act promptly for the reasons just indicated.

D. Zoning Already In Place: In many municipalities the site or sites desired for broadcast towers are already zoned such that towers are allowed uses -- no additional zoning approval is needed. This is particularly true for areas zoned for industrial or agricultural uses. Petitioners cite only a few anecdotal instances to the contrary out of the 14,000 licensed broadcast stations in the country.

This Commission should be aware that the zoning laws of many municipalities address towers -- of all kinds -- by encouraging their location where they will have the least adverse impact. Thus, in many municipalities there is a phased in increase in the amount of zoning review and approval needed for a tower depending on the sensitivity of the area in question.

In a common zoning approach, towers are generally allowed as of right in industrial areas and in some agricultural areas.⁴ By contrast, a high level of zoning review and approval may be required for a broadcast tower to be constructed in areas zoned for residential use, or with zoning restrictions due to environmental, historical or similar concerns. Towers proposed for intermediate areas may require an intermediate level of zoning approval -- such as only administrative approval.

However, the key for this Commission is that it is presumably in large part the fact that many municipalities allow broadcast towers to be located in some zoning districts

⁴ Subject perhaps to “fall radius” setback requirements from adjacent properties or from any remaining residences in such areas.

without any additional approval that has prevented zoning from impairing broadcasting for the last 75 years. The fact that such zoning continues means that local zoning is unlikely to be an issue for many of the new broadcast towers resulting from HDTV.

This fact -- combined with the fact that other factors are the prime cause for any delays in the construction of broadcast towers -- make clear that there has been no showing sufficient for Commission action that State and local zoning and other approvals will delay the construction of towers for HDTV. In fact, the delays will come from other sources, as is discussed next.

E. Lack of Tower Construction Crews: It appears that the major cause of delays in tower construction will be the fact that there is an extreme shortage of the crews who specialize in their construction. Petitioners cannot and do not deny this, and in fact cite this shortage in their Petition. NAB Petition, at 7-8.

A good summary of the problem was given by the *New York Times* this summer, which said in a lead article:

“The trouble is, across the United States only about a half-dozen crews have the experience and training to put up these towers that can reach nearly a half-mile into the sky.

“Together, all of the nation’s tower building teams may be able to put up as many as 20 towers a year. But each year for the next four or five years, the broadcast industry is going to call on them to build 100 or more. Broadcasters and tower builder’s call it a Sisyphean mission. . . .

“‘I don’t see how we can get it done.’ said J. C. Kline, president of Kline Towers, one of only three companies in the