



**Surry County**  
County Administrator's Office  
P.O. Box 65  
45 School Street  
Surry, Virginia 23883

DOCKET FILE COPY ORIGINAL

"The Countrie it selfe, I must  
confesse is a very pleasant land,  
rich in commodities;  
and fertile in soyle . . ."  
-Samuel Argall, ca. 1609

October 29, 1997

TERRY D. LEWIS  
County Administrator  
Telephone: (757) 294-5271  
Fax: (757) 294-5204

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 Chairman 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 principles of Federalism.

Congress and 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.

*"Surry is Something Special"*

Page two

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, and this includes moratoria.

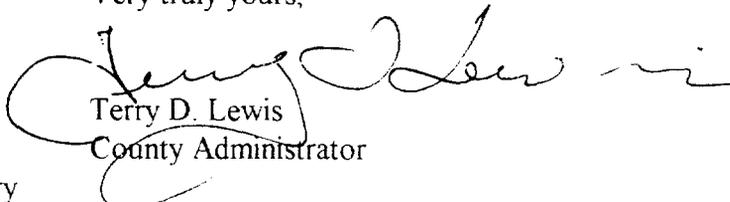
Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high -- they are some of the tallest structures known to man. It is therefore astounding that you would propose that municipalities can't consider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

And 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. And 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.

Very truly yours,

  
Terry D. Lewis  
County Administrator

cc: Mr. William F. Caton, Acting Secretary  
Federal Communications Commission

## List of Copies

Commissioner Designate Harold Furchtgott-Roth  
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Washington, DC 20554

Commissioner Designate Michael Powell  
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Commissioner Designate Gloria Tristani  
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Commissioner Susan Ness  
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Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
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Washington, DC 20554

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Assistant Bureau Chief for Engineering  
Policy & Rules Division  
Mass Media Bureau  
Federal Communications Commission  
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Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street  
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Mr. Dan Phythyon  
Acting Chief  
Wireless Telecommunications Bureau  
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Mr. Roy J. Stewart  
Chief  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street  
Washington, DC 20554

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Legislative Counsel  
National League of Cities  
1301 Pennsylvania Ave, NW  
6th Floor  
Washington, DC 20004

Ms. Eileen Huggard  
Executive Director, NATOA  
1650 Tysons Boulevard, Suite 200  
McLean, VA 22102-3915

Mr. Robert Fogel  
Associate Legislative Director  
National Association of Counties  
440 First Street, NW, 8th Floor  
Washington, DC 20001

Mr. Kevin McCarty  
Assistant Executive Director  
U.S. Conference of Mayors  
1620 Eye Street, 4th Floor  
Washington, DC 20006

Ms. Cheryl Maynard  
Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
Washington, DC 20036

Clayton H. Fowler

1435 Bedford Street

P.O. Box 3287 R/S

Stamford, Connecticut 06905

~~328-2401~~

203 708-8500

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OCT 30 1997

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FILE ROOM

97-182

Oct 29, 1997

FCC - MSB.  
Washington, D.C.

Dear Sir,

I am a builder/developer and your request or your consideration of greater power for the telecommunication industry is highly disturbing. They already have unprecedented power and this is already creating dramatic negative reactions. Americans are not accustomed to the astounding arrogance evinced by the telecommunications lawyer with whom I have had contact.

As a developer I have worked extensively with town boards. I am fully aware that the zoning regulations ultimately protect my investments. The banks I work with are also dependent on zoning to stabilize land values over the years required to complete a project. Towns in carefully chosen locations are acceptable. However, if you are going to look facts in the face, we <sup>all</sup> know that towns in locations which are chosen only from one point of view - the telecommunication industry's - can devastate property values and could bankrupt a job. The building industry is sufficiently risky. We do not need

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another risk factor. The potential ensuing unpredictability of land values will damage the building industry - homebuilding in particular, and discourage investment. Americans have a right to develop the type of environment in which they wish to live and to factor in the considerations of the majority which zoning regulations reflect.

We all should have learned from the example of Eastern Europe what can happen when a free hand is given to industry. Zoning and state law are a basic part of the American philosophy and should not be over-ruled.

Sincerely,

Clay J. Guba

97-182

DOCKET FILE COPY ORIGINAL



H. Wayne Carter, III  
Director of Planning

# Mecklenburg County Board of Supervisors

Post Office Box 307 • Boydton, Virginia 23917



Telephone (804) 738-6191  
Fax (804) 738-6804

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October 29, 1997 **OCT 30 1997**

FCC MAIL ROOM

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

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OCT 28 1997

FCC & ...

County of Cumberland

P. O. BOX 110  
CUMBERLAND, VIRGINIA 23040-0110  
(804) 492- 3625 • FAX (804) 492-9224

97-182

BOARD OF SUPERVISORS  
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JOHN S. BAILEY  
ASSISTANT COUNTY ADMINISTRATOR  
JUDY O. HOLLIFIELD  
COUNTY ATTORNEY  
DARVIN E. SATTERWHITE

October 28, 1997

The Honorable John W. Warner  
The United States Senate  
225 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Warner:

The Cumberland County Board of Supervisors respectfully requests that Congress take immediate steps to reign in the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Congress and the courts have long recognized that zoning is a peculiarly local function. However, the proposed rules by the FCC are in direct contradiction with the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some citizens are concerned about the radiation from cellular towers, and certainly we cannot prevent them from mentioning their concerns during public meetings. However, in its rulemaking,

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the FCC indicates that if any citizen raises this issue, then this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

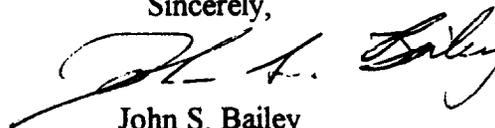
Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, the FCC is seeking to thwart the will of Congress and take zoning authority away from local government.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is also a poor approach. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And, in a unique power grab, all appeals of zoning and permit denials would go to the FCC, not to the local courts.

The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority. I also suggest you speak with Robert Fogel at the National Association of Counties, 202-393-6226.

Sincerely,



John S. Bailey  
County Administrator

cc: William F. Caton, FCC Acting Secretary

# County of Cumberland

P. O. BOX 110  
CUMBERLAND, VIRGINIA 23040-0110  
(804) 492- 3625 • FAX (804) 492-9224

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JOHN S. BAILEY  
ASSISTANT COUNTY ADMINISTRATOR  
JUDY O. HOLLIFIELD  
COUNTY ATTORNEY  
DARVIN E. SATTERWHITE

October 28, 1997

The Honorable Charles S. Robb  
The United States Senate  
493 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Robb:

The Cumberland County Board of Supervisors respectfully requests that Congress take immediate steps to reign in the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Congress and the courts have long recognized that zoning is a peculiarly local function. However, the proposed rules by the FCC are in direct contradiction with the intent of Congress, the Constitution and principles of Federalism.

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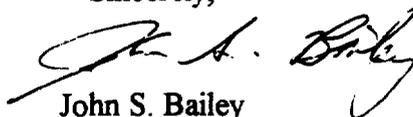
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The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

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Sincerely,



John S. Bailey  
County Administrator

cc: William F. Caton, FCC Acting Secretary

# County of Cumberland

P. O. BOX 110  
CUMBERLAND, VIRGINIA 23040-0110  
(804) 492- 3625 • FAX (804) 492-9224

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JUDY O. HOLLIFIELD  
COUNTY ATTORNEY  
DARVIN E. SATTERWHITE

October 28, 1997

The Honorable Virgil H. Goode, Jr.  
US House of Representatives  
1520 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Goode:

The Cumberland County Board of Supervisors respectfully requests that Congress take immediate steps to reign in the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Congress and the courts have long recognized that zoning is a peculiarly local function. However, the proposed rules by the FCC are in direct contradiction with the intent of Congress, the Constitution and principles of Federalism.

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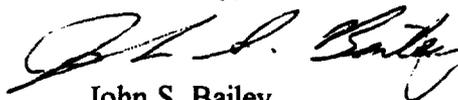
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Sincerely,



John S. Bailey  
County Administrator

cc: William F. Caton, FCC Acting Secretary

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FCC

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October 16, 1997

Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Dear Sir:

I am writing in reference to the proposed petition from the National Association of Broadcasters and the Association for Maximum Service Television that would change the rules to give the Federal Communications Commission the authority to preempt local and state zoning and other land-use regulations; and allow the tower industry to construct towers just about anyplace they want to place them. This proposed petition appears to preempt the authority of the Federal Aviation Administration and would take away their authority to determine whether a potential tower poses a hazard to air navigation, enroute flights, or use of airports.

It is imperative that we protect the authority of the FAA and the state and local officials to legislate and to provide zoning ordinances and land-use regulations that will protect public and private airports and all air navigation. Please do not allow this NPRM to be enacted. Please say NO! to Docket No. 97-182 and/or any other proposed rules or legislation that would take away any authority from the FAA and the local and state governing officials.

Sincerely,



E.C. Schneerer  
Cannon Creek Airpark  
5 Airpark Ln. Rt. 18 Box 584  
Lake City, FL 32025

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**Bishop International Airport Authority**

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Chairman

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AUTHUR O. EVANS  
CLAUDIA F. SHELTON  
JIMMY L. STROUD

JIM PATTON  
Vice-Chairman

MICHAEL A. PELAVIN  
Secretary

JAMES L. RICE II, A.A.E.  
Airport Director

DAN SAIN  
Treasurer

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OCT 30 1997

FCC BUREAU

October 27, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Mr. Secretary:

Subject: Docket No. 97-182

Please accept these comments on behalf of the Bishop International Airport Authority to the proposed rule seeking to allow the Federal Communications Commission to preempt state and local zoning and land use restrictions on the siting, placement and construction of broadcast transmission facilities. Aside from the obvious federalism issues raised in the proposed rule, my comments relate specifically to a concern for the protection of navigable airspace within the exclusive jurisdiction of the Federal Aviation Administration (F.A.A.). The proposed rule, in my opinion, would encroach on the F.A.A.'s jurisdiction as it relates to the safe management of the nations airspace.

In accordance with 14 CFR Part 77, the Federal Aviation Administration conducts studies to determine if a proposed structure (e.g. an antenna) is an obstruction to air navigation. In my experience these studies usually take the F.A.A. between 60 and 90 days to complete. Where there is a question of whether or not the antenna will impact navigable airspace, the local zoning officials in our community will not approve the siting, placement, construction or alteration of any structure until the F.A.A. issues it's determination. The proposed rule as written would require the local zoning official to take action on an existing antenna within 30 days (45 days for all other requests), or by default the request would be deemed granted. The time constraint in the proposed rule is clearly unreasonable and unacceptable in view of the current time required for the F.A.A. to complete the study, and would be contrary to the public interest in having the airspace impacts properly evaluated.

The effect of the proposed rule would be to circumvent an established process within the jurisdiction of the F.A.A. and if adopted, would place the F.A.A. and local government agencies in an extremely reactionary position if antennas are approved and later time found to be hazards to

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G-3425 West Bristol Road, Flint, Michigan 48507-3183

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Page 2  
F.C.C. Notice of Proposed Rulemaking  
Docket No. 97-182

air navigation. The public interest in the rapid implementation of digital television does not outweigh the public interest in a safe air transportation system.

Although the proposed rule is not clear on this specific point, I would also oppose and question the legality of, any attempt by the F.C.C. to preempt the ability of our state or local governmental units to deny the siting, placement and construction of any antenna that is determined to be a hazard to air navigation. Obstructions to air navigation have the ability to place unique operational restrictions on the local airport environment. The decision whether or not to impact the local airport environment is best left to the local political subdivisions or the state aeronautics agency.

Thank you for the opportunity to submit my comments on the proposed rule.

Very truly yours,

**BISHOP INTERNATIONAL AIRPORT AUTHORITY**

A handwritten signature in black ink, appearing to read 'William C. Sandifer', with a long horizontal flourish extending to the right.

**William C. Sandifer, A.A.E.**  
**Deputy Airport Director - Operations & Maintenance**

ASSOCIATION OF AIR MEDICAL SERVICES

97.182



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October 30, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Caton:

The Association of Air Medical Services (AAMS) appreciates the opportunity to submit comments to the Federal Communications Commission (FCC) on the proposed rule to preempt state and local authority which may present an obstacle to the implementation of digital television ("DTV") service (62 FR 46241). The association is strongly opposed to the FCC preemption of state and local authority in this case as it could create significant hazards to aviation and emergency medical service systems.

AAMS comprises hospital, public agency and private sector operators of air ambulances and is therefore well qualified to address the important issues raised in the proposed rule. Helicopter and fixed-wing air ambulances now transport more than 175,000 patients annually. The air ambulance system is one of the pioneers of regionalized health care and supports improving access to and reducing costs of emergency medical care. The range, speed and level of care of air medical transport enables communities to avoid investment in redundant facilities, technologies and personnel while providing access to the highest quality patient care. Air medical transportation makes significant contributions to regionalized critical care services through rapid, efficient and safe transport of critically ill and injured patients.

Concern arises as a result of the FCC position that, "accelerated roll-out (siting, placement and construction of broadcast transmission facilities) is essential to the success of over-the-air DTV". The proposed rule goes on to say, "that state and local restrictions stand as an obstacle". Many of these "obstacles" are meant to protect the public. Ignoring the purpose of local ordinances will jeopardize the safety of air ambulances and the patients being transported.

110 N. ROYAL ST.

SUITE 307

ALEXANDRIA, VA

22314-3234

(703) 836-8732

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A typical air ambulance emergency response to a roadside accident consists of a hospital-based helicopter traveling in the most expeditious manner to the scene. After providing emergency medical treatment, the patient is transported back to the hospital in the fastest and safest manner possible. The routes used for arrival and departure, and very often the entire route taken, can take place at low altitude. Many of the roadside landing zones, as well as routes used by the air ambulance, are not pre-determined and must be decided upon in coordination with the local emergency medical services (EMS) system. Providing a broad exemption will jeopardize, for commercial purposes, a system that was specifically designed for the public's safety.

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Further, the FCC is overly concerned by the potential impact on DTV investors. Given the fact that investors were fully aware of the constraints placed on construction of the system

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at the time they made their investments, it would be inappropriate to consider changing the rules at this stage. If the rules are changed it will be driven by concern over the financial welfare of a special interest group instead of the safety of the public.

AAMS recognizes that the construction of DTV towers will take place. The association's concern, however, stems from the preemption of local authority for the purpose of expediting DTV service. The FCC states in the proposed rule that, "the Commission has authority to preempt where state or local law stands as an obstacle to the accomplishment and execution of the full objectives of Congress or where the Commission finds preemption is necessary to achieve its purposes within the scope of its delegated authority." This authority is designed to ensure state laws do not create a patchwork effect on the regulation or development of a communication system. The authority to preempt was not meant to supersede state or local laws designed to ensure the public's safety. Before this issue proceeds any further, it is essential that the FCC provide a legal opinion describing its authority to preempt state and local laws and ordinances.

Without the protection provided by these local ordinances, towers can be constructed with indifference to the public's safety. Since towers can even be constructed with indifference to the location of an airport, whose airspace is regulated by the FAA, imagine the concern that arises when the procedures established by local authority are can be ignored.

Based on the concerns raised in this letter, AAMS is strongly opposed to the preemption of state and local zoning and land use ordinances in order to facilitate the construction of DTV towers. To provide a broad preemption would be a statement that commerce for a few is more important than the safety of many.

Sincerely,

*Connie N. Schneider RN, MS, CCRN*

Connie Schneider  
President