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Marin County
Community Development Agency

Mark J. Riesenfeld, AICP, Director

October 30, 1997

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

RE: Notice of Proposed Rule Making
MM Docket No. 97-182

Dear Mr. Caton:

This letter is intended to apprise you of the Marin County Community Development Agency's position on the proposed rule making pending before the Federal Communications Commission (FCC) that would allow the FCC to preempt state and local zoning and land use laws and ordinances as they pertain to deployment of digital television service (DTV).

The County recognizes that the deployment of DTV will benefit County residents by ensuring the availability of free local broadcast service. However, the County also recognizes the need to balance the consumer advantages of the timely deployment of DTV with the public interest in the siting, design, and operation of DTV and other broadcast transmission facilities.

The County is, therefore, very concerned that the time limits for local agency action on DTV permit applications have been limited in the proposed rule so as to effectively prohibit the County and other local government agencies from exercising adequate discretion in reviewing and making decisions on proposals for new or modified DTV projects. The County zoning ordinance and Telecommunications Facilities Policy Plan require discretionary permit review for new or modified telecommunications facilities to ensure they are sited, designed, and operated in a manner that best satisfies the County's planning policies and land use regulations. The California Environmental Quality Act (CEQA) further requires the County to determine whether telecommunications projects will have adverse effects on the environment and lessen such effects through mitigation measures.

Making these determination involves consultation with affected agencies and community advisory groups, the provision of public notice to surrounding property owners who might be affected by the project, in some cases the preparation and circulation of environmental review documents for 20-45 days, the preparation of a written analysis, findings, and conditions of approval, and conduct of one or more public hearings prior to a decision being made on the permit applications. The 21-45 day timelines set forth in the proposed rule would not allow the County to complete all of these necessary steps which are essential to well thought out, informed, and legally defensible environmental and land use decisions.

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Removing DTV projects from the local discretionary review process would ultimately lead to the development of DTV facilities without proper consideration about whether they conform to the County's planning policies and land use regulations. In addition, the short timelines would preclude the County from complying with

3501 Civic Center Drive, #308 - San Rafael, CA 94903-4157 - Telephone (415) 499-6269 - Fax (415) 499-7880

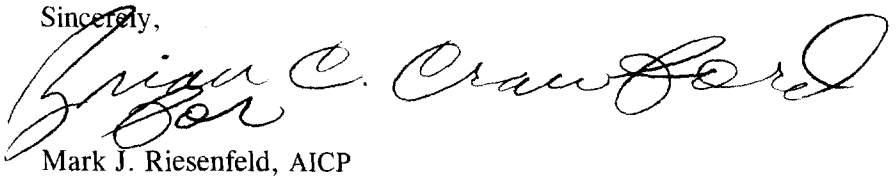
legally mandated due process requirements for environmental review under CEQA, public notice, and rendering decisions on permit applications at public hearings. In view of these inherent problems with the proposed rule, it should be up to the County and other local agencies to determine the appropriate time frames for processing permit applications for DTV projects.

We disagree with the Petitioners assertion that the proposed rule would be a proper use of FCC preemption where it is pursuing an objective within the scope of its Congressionally delegated authority and non-federal regulation stands as an obstacle to the fulfilling that objective. As you aware, the Telecommunications Act of 1996 reserves the rights of local government to regulate telecommunications projects and in doing so requires the local authority to act within a reasonable period of time. The time limits for local government action sought by the Petitioners are in opposition to the Telecommunications Act because they impose a patently unreasonable period of time within which local governments must comply with State and local land use and environmental laws.

It is also our understanding that Congress has decided that the courts are the proper venue for weighing the legality of local agency decisions. In this regard, the proposed rule would impose an unreasonable burden by requiring the County to appeal directly to FCC and appear in Washington rather than in local State or Federal courts.

For these reasons, the Marin County Community Development Agency urges the FCC to deny the proposed rule and abandon its consideration to issue a declaratory ruling which, in establishing preemptive authority for DTV and other broadcast tower facilities, would contravene State and local land use laws and unreasonably infringe upon the rights of local government.

Sincerely,



Mark J. Riesenfeld, AICP
Community Development Agency Director

i/cur/bc/telecom/fcccorr.doc

KANSAS PILOTS ASSOC.

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A Member-Controlled Non-Profit Organization For All Pilots

October 31, 1997

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: Comments on FCC Proposed Rule Making, MM Docket No. 97-182

The following is in response to a Notice of Proposed Rule Making 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.**

As president of the Kansas Pilots Association, and thus a representative of its members, I must object most forcefully to the FCC Proposed Rule Making for the following reasons:

1. It is contrary to efforts to get local zoning adopted to protect airports. In such cases, it's wrong to shift the burden from a tower proponent demonstrating why a tower is okay to a zoning authority to demonstrate why it is not. By adopting airport zoning a community has already gone through the process, with appropriate public input, to establish the rule that construction of a tower in certain areas is a hazard to aviation, and the burden to allow an exception to that rule should be on the proponent of the tower.
2. It is inevitable that the height and proximity to the airport of some of these towers would combine to endanger aircraft flying under instrument flight rules in instrument conditions, as well as aircraft flying under visual flight rules in marginal visual weather.
3. There should be no question about the authority or preeminence of the FAA to establish requirements to support operational safety concerns for airplanes. These already exist in the FAA Part 77.23(a)(2) standards cited in the **Aeronautical Study of Proposed Construction or Alteration**, which indicate the criteria by which a proposal should be rejected or denied: A tower whose height above ground or airport elevation, whichever is higher, exceeding 200 feet within 3 nautical miles of the airport. These are valid and logical minima which do not warrant exception.

Thank you for your serious and thoughtful consideration of these comments.

Lyle D. Bighley

Lyle D. Bighley
President, Kansas Pilots Association
P.O. Box 15209
Shawnee Mission, Kansas 66285-5209

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CITY OF GULFPORT

"Where [illegible]"

BOB SHORT
Mayor

Jimmie Jenkins
Councilman, Ward One

Richard Rose
Councilman, Ward Two

Ella Holmes-Hines
Councilwoman, Ward Three

Kim B. Savant
Councilman, Ward Four

Ricky Dombrowski
Councilman, Ward Five

Samuel H. "Sam" Albritton
Councilman, Ward Six

Billy Hewes
Councilman, Ward Seven

DEPARTMENT OF
URBAN DEVELOPMENT

BILL HESSELL
Director

Community/Economic
Development Division
601-864-5657
Fax: 601-868-5708

Planning Division
601-868-5710
Fax: 601-868-5708

Building Code Services
601-868-5715
Fax: 601-868-5716

1410 24th Ave.
Gulfport, MS 39501

P.O. Box 59
Gulfport, MS 39502

October 29, 1997

Office of the Secretary
Federal Communications commission
Washington, DC 20554

Dear Sir:

The City of Gulfport, Mississippi **opposes** the proposed rule entitled "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).** As written, the proposed rule usurps the power of state and local authorities and zoning laws and severely limits the ability of the City administration to protect the interests of the citizens of the City by effectively eliminating public hearing and appeals processes. Attached is the resolution adopted by the Mayor and City Council of the City of Gulfport, Mississippi stating our opposition and reasons for protecting the public interest of our citizens.

Sincerely,

Ronald R. Jones

Ronald R. Jones
Planning Administrator

ATTACHMENT

CC: Honorable Trent Lott - U.S. Senate
Honorable Thad Cochran - U.S. Senate
Honorable Gene Taylor - U.S. House of Representatives
Honorable Bennie Thompson - U. S. House of Representatives
Honorable Chip Pickering - U.S. House Of Representatives
Honorable Mike Parker - U.S. House Of Representatives
Honorable Roger Wicker -U.S. House Of Representatives
Honorable Billy Hewes III
Honorable Clyde Woodfield
Honorable Francis Fredericks
Mr. Bruce Frallic - Gulfport-Biloxi Regional Airport Authority

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A RESOLUTION OPPOSING THE PROPOSED RULE MAKING BY THE FEDERAL COMMUNICATIONS COMMISSION PREEMPTING STATE AND LOCAL ZONING AND LAND USE LAWS PERTAINING TO THE SITING, PLACEMENT AND CONSTRUCTION OF BROADCAST STATION TRANSMISSION FACILITIES.

WHEREAS, the Mayor and City Council of the City of Gulfport, Mississippi, finds and does so determine, based upon the recommendations of the staff of the Gulfport City Planning Division and a review of the proposed rule making by the Federal Communications Commission, does find the proposal to be contrary to the best interests of the citizens and the City of Gulfport.

WHEREAS, the City of Gulfport and the Gulfport-Biloxi Regional Airport have spent hundreds of thousands of dollars developing height/hazard and land use zoning to protect the airport and the City.

WHEREAS, the current review process allows a balance to be achieved between broadcast commerce and compatibility with neighborhood characteristics.

WHEREAS, the proposed rule would place severe constraints on the ability of the City to implement a coordinated planning process.

WHEREAS, the time limit provisions of the proposed rule would short-circuit the sometimes time consuming review process that has been developed to protect the interests of the citizens of the City of Gulfport and place unreasonable demands upon the time of citizen volunteers who comprise the membership of our development review boards, requiring them to be available at the whim of the developer.

WHEREAS, the proposed rule would place the burden of proof upon the citizens of the City of Gulfport and not on the applicant. And effectively limit or eliminate altogether the review, public hearing and appeals processes that have been established by the governing bodies of the state and local governments.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS:

TO-WIT: That the Mayor and the City Council of the City of Gulfport register their strongest opposition to the proposed rule making by the Federal Communications Commission. As written, the proposed rule usurps the power of state and local authorities and zoning laws and severely limits the ability of the administration to protect the interests of the citizens of the City by effectively eliminating public hearing and appeals processes.

The above and foregoing Resolution, after having been first reduced to writing, was introduced by Albritton, seconded by Dombrowski and was adopted by the following roll call votes, to-wit:

Yeas:	Absent:	Nays:
Rose	Jenkins	None
Savant	Holmes-Hines	
Dombrowski		
Albritton		
Hewes		

WHEREUPON, the President declared the motion carried and the Resolution adopted, this the 28th day of October, 1997.

(SEAL:)

ATTEST:

CLERK OF THE COUNCIL

ADOPTED

PRESIDENT

The above and foregoing Resolution, having been submitted and approved by the Mayor, this the 28th day of October, 1997.

Bob Short, Mayor

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Greater Peoria Regional Airport
6100 EM Dirksen Parkway
Peoria, Illinois 61607
309-697-6300

BYERLY AVIATION

October 29, 1997

Federal Communications Commission
FCC Dockets Branch
Room 239
Docket No. 97-296
1919 M. Street NW
Washington, D.C. 20554

I am writing with regards to the Notice of Proposed Rule Making (NPRM) that would allow the FCC to pre-empt state and local zoning ordinances if the FCC determines that suck ordinances interfere with the installation of certain broadcast facilities.

This proposed rule affects of Byerly Aviation, Inc. as this NPRM will grant the FCC authority to pre-empt zoning laws. This proposed rule provides no exception to this authority for ordinances in place to prevent construction of large structures in the vicinity of an airport. This proposed rule empowers the FCC to usurp local and state authorities for permitting or authorizing the location of obstructions into navigable airspace.

As Byerly Aviation, Inc. is located at the Greater Peoria Airport, this NPRM could directly affect our safety. It would also affect scheduled air carriers that additionally use the scheduled air carriers that use the Peoria Airport. Many communities nationwide use zoning laws to prevent construction of tall buildings and other structures near an airport.

Thank you for your attention to this matter.

Sincerely,

Jeff Cousins
General Manager

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Byerly Aviation . . . keeps you flying!

EASTON AIRPORT

29137 Newnam Road, Unit One
Easton, Maryland 21601
Phone 410-822-8560
Fax 410-822-8694

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October 30, 1997

Federal Communications Commission
FCC Dockets Branch
FCC Docket No. 97-296
Room 239
1919 M Street, N.W.
Washington, DC 20554

97-182

Re: Preemption of State and Local Zoning
And Land Use Restrictions on the Sitting,
Placement and Construction of Broadcast
Transmission Facilities
FCC Docket No. 97-296

Dear Sir/Madam:

Communities nationwide use zoning laws to prevent construction of tall buildings and other structures near airports. There is no recognition in the proposal that often the only means to prohibit construction of obstacles near airports are the very state and local zoning ordinances the proposal will allow the FCC to preempt.

I am extremely concerned that the FCC proposes to remove the authority for state and local governments to determine what sites are suitable for the construction of 1,000-foot DTV towers. Any proposal to usurp local zoning laws near airports compromises the safety of all aviation operations. Without specific procedures in place to protect the safety of aviation activities near airports, the FCC jeopardizes the FAA's ability to effectively manage traffic at airports. It also deteriorates the ability of the industry and the FAA to provide safe air transportation. I urge the FCC to adhere to all zoning laws enacted to prohibit construction of these structures near airports.

If you have any questions, please feel free to contact me at 410-822-8560.

Sincerely,

J. Marsh

Joe Marsh
Airport Manager

Cc: Talbot County Planning & Zoning

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DOCKET FILE COPY ORIGINAL 97-182

Gainesville Regional Airport

3400 N.E. 39th Ave., Suite A • Gainesville, FL 32609 • (904) 373-0249 • FAX (904) 374-8368

October 28, 1997

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Office of the Secretary:

After having thoroughly reviewed the FCC's Notice of Proposed Rule Making, FCC 97-296, we concur that the democratic process utilized by state, county and city governments may, on occasion, be blamed for delaying a decision that affects its residents. In most all cases, however, that delay is at the insistence of the residents at public meetings so that they, the voters, can be assured the decision being made is the right and proper decision for the local populace.

State and local zoning and land use ordinances have long been a part of orderly, controlled community development. We do not believe this process should have to overcome the obstacle of FCC intervention on behalf of those agencies who will benefit the most financially. Granted we live in a capitalistic society; it is not a society that has grown and flourished by imposing additional Federal Regulations. On the contrary, quite the opposite is true.

And while the FCC is very adept and competent at controlling frequency spectrums, telecommunications signals, radio frequency (RF) emissions and the like, we fail to be informed of any expertise the FCC has for establishing standards for determining obstructions in navigable airspace; for providing aeronautical studies of obstructions to air navigation, to determine their effect on the safe and efficient use of airspace; as for providing for public hearings on the hazardous effect of proposed construction or alteration on air navigation.

Aviation safety requires that only the agency with the ability to determine whether or not a broadcast tower or other construction is an obstacle to aircraft do so. That agency is the Federal Aviation Administration (FAA). The FCC's NPRM, therefore, would encroach on the FAA's jurisdiction as it relates to safe management of the Nation's airspace.

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FCC MAIL ROOM

Also, some of Petitioner's proposed days for requiring action may present an obstacle to the FAA and its ability to conduct an accurate and proper Aeronautical Study in the limited time frame(s) being proposed.

Further, local land use regulations have not been, and should not be, under the purview of either FCC or FAA. Likewise, local governments should not have the authority to prevent the construction of necessary communication infrastructure, but should have the flexibility to determine how this infrastructure is accommodated in the community. For example, local governments should have the flexibility to require that applicants for new towers construct facilities that can host numerous antennas in an effort to limit a proliferation of towers across a community.

Very truly yours,

Tatom A. Fisher
Manager Operations & Maintenance

JACKSONVILLE AIRPORT AUTHORITY
MUNICIPAL AIRPORT JACKSONVILLE, ILLINOIS 62650

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Board of Commissioners
Terry E. Airsman
Reginald Fulks
George L. Murphy
John Oliver
Jon Ware

Officers
Jon Ware, *Chairman*
Reginald Fulks, *Vice Chairman*
Eddie Carpenter, *Secretary*
Robert Hall, *Treasurer*

Counsel
Eddie Carpenter
Attorney at Law
P.O. Box 871
Jacksonville, Illinois 62651
(217) 245-7015

October 29, 1997

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Office of Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20544

RE: Comments on Notice of Proposed Rule Making MM Docket No. 97-182

Dear Secretary:

The Board of Commissioners of the Jacksonville, Illinois, Airport Authority has learned of the proposal now before your Commission, to preempt the powers of state and local units of government, with regard to regulation of location and height of communication towers. Before any such step is taken, serious consideration needs to be given to the effect this would have on aviation. In our own community, a proposal surfaced within the past few months, for construction of a communication tower directly in the flight approach to our airport. It was only after some considerable effort that this proposal was abandoned. Had the Airport Authority and other local governmental units lacked any authority to regulate the placing of a such a tower, it might well have been constructed, with disastrous effects on local general aviation and its safety.

Since the Federal Aviation Administration does not regulate tower height and location, local airport authorities and other governmental entities presently regulate the same. It is, therefore, imperative that these entities not be deprived of their long-held authority in this area. Certainly aviation safety is of greater importance than the convenience of broadcasters wishing to place towers. Leaving matters to stand as they are would insure continued safety considerations, while at the same time certainly not prohibiting construction of towers at appropriate locations.

Very truly yours,

EDDIE CARPENTER
Secretary of the Jacksonville, Illinois
Airport Authority

EC:tlt

C: Jacksonville Airport Authority Commissioners
Greg Hannig
Paul Kramer

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DEPARTMENT OF PUBLIC WORKS

NOV 3 1997

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97-182

Fred L. Eisenhart, Jr.
Director

James W. Schmidt
Administrative Assistant

October 29, 1997

Charles U. Abell
Airport Manager

L. Allen Angelus
Supt. Sewage Collection & Disposal

Russell L. Castle
Supt. Dept. of Parks & Streets

Chad U. Clevis
Golf Course Supt.

Donald J. Frost
Golf Professional

Steven U. Johnson
Supv. Public Parking Facilities

Ronald L. Kline
Supv. Vehicle Maintenance

William B. Luhn
Supt. Water Treatment Facilities

Kimberly S. Miskell
Supv. Purchasing

Curtis W. Cruderoff
Supt. Dept. of Sewer & Water

Gerald T. Palm
Supt. Waste Collection & Disposal

William H. Scheetz
Supt. St. Lighting & Traffic Control

Daniel F. Seal
City Chemist

Mark L. Smith
Facilities Manager

Robert E. Wilkinson
Project Manager

Federal Communications Commission
FCC Dockets Branch
FCC Docket No. 97-296
Room 239
1919 M Street, N.W.
Washington, D.C. 20554

Re: Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities
FCC Docket No. 97-296

Gentlemen,

Communities nationwide use zoning laws to prevent construction of tall buildings and other structures near airports. There is no provision in the proposal, which is often the only means to prohibit construction of obstacles near an airport that are the very state and local zoning ordinances the proposal will allow the FCC to preempt.

I am extremely concerned that the FCC proposes to remove the authority for state and local governments to determine what sites are suitable for the construction of 1,000 foot DTV towers. Any proposal to usurp local zoning laws near airports compromises the safety of all aviation operations. Without specific procedures in place to protect the safety of aviation activities near airports, the FCC jeopardizes the FAA's ability to effectively manage traffic at airports. It also deteriorates the ability of the industry and the FAA to provide safe air transportation. I urge the FCC to adhere to all zoning laws enacted to prohibit construction of these structures near airports.

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111 Airport Drive East • Frederick, Maryland 21701 • (301) 694-1440 • FAX No. 663-5373

If you have any questions, please feel free to contact me at 301-846-2201.

Sincerely,

Charles M. Abell
Airport Manager

CMA/ta

cc: Airport Commission
City Attorney
City Code Management
City Engineer
Director of Public Works
Chairman Frederick County Commissioners