MM97-182

Frederick A. Peralta, *Mayor*

Councilmembers:

Bobby F. Duran
Frank J. Cruz
Erlinda S. Gonzales
Meliton Struck

Gustavo Cordova, *Town Manager*

Taos Municipal Building
400 Camino de la Placita

Taos, New Mexico 87571

(505) 751-2000
Fax: (505) 751-2026

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October 28, 1997

Honorable Pete Domenici
US Senator
Hart Office Building, SH-328
2nd and C Streets, NE
Washington, DC 20510

Dear Senator Domenici:

As you may be aware, the Federal Communications Commission in late August issued two new rules where it is proposing to preempt local zoning over cellular, radio, and television towers. The proposed rules would make the FCC the federal zoning commission for all cellular and broadcast towers.

These new rules represent an unprecedented attack on local zoning authority by the FCC. The 1996 Telecommunications Act reaffirmed the local zoning authority over cellular towers. Despite the clear intent of Congress, the FCC is proposing to change this through the rulemaking process.

It is my understanding that William Kennard, Chairman of the FCC is supporting this rule change. We need your support to contact the commission that the preemption of local zoning authority is strongly opposed by local governments.

We also need to appeal to New Mexico's own, Gloria Tristani, who was recently appointed to serve on the commission.

Respectfully submitted,

Frederick A. Peralta
MAYOR

Cc: Town Council members
Executive Director, NMML
Director of Planning
Mr. William F. Caton, Acting Secretary
Federal Communications Commission

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H0197-182

P.O. Box 61242

Arizona Pilots Association
ORGANIZED IN 1978

Phoenix, Arizona 85082-1242

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October 24, 1997

Federal Communications Commission
FCC Docket 97-296
FCC Dockets Branch, Room 239
1919 M Street NW
Washington, D.C.

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Subject: NPRM FCC 97-296

The Arizona Pilots Association, representing general aviation pilots and aircraft owners in the state of Arizona, is strongly opposed to this NPRM. If enacted, we believe it would infringe on the rights of property owners, local and state governments. Even more serious is the impact we see on safety and economic issues that would affect all segments of aviation. Our greatest concern are those issues affecting the safety of aircraft, passengers and those on the ground.

Establishing the FCC's right to override local zoning and building requirements, which are based almost entirely on safety issues, appears completely inappropriate. Considering these proposed changes preempt these safety issues in favor of accelerating improved television service is sadly short-sighted and would reflect poorly on the FCC.

The Arizona Pilots Association is frankly not satisfied with the current NPRM system in which notices frequently arrive late or not at all, and as a result demand unreasonably short response times. Groups like ours, including AOPA, ALPA, EAA and others, are single-minded when it comes to safety issues. Our collective experience and talents represents a resource to the government available through no other channels. We believe the FCC and other government agencies should be developing methods to improve this notification and comment system and not developing procedures to avoid it completely. Arizona's 16,000 active pilots offer a unique perspective that should not be muted.

Respectfully,

James D. Timm
President

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MM97-182

CITY OF LIVERMORE

'Wine Country Since 1849'

October 22, 1997

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Administration Building
1052 S. Livermore Avenue
Livermore, CA 94550-4899
(510) 373-5100
Fax (510) 373-5135

Mayor / Council
(510) 373-5149

City Manager
(510) 373-5140

City Attorney
(510) 373-5120
Fax (510) 373-5125

City Clerk
(510) 373-5130

Community Development
Building Division
(510) 373-5180
Fax (510) 373-5183
Engineering Division
(510) 373-5240
Fax (510) 373-5267
Planning Division
(510) 373-5200
Fax (510) 373-5135

Economic Development
(510) 373-5095

Finance Department
(510) 373-5150

Fire Department
4550 East Avenue
(510) 454-2361
Fax (510) 454-2367

Library
1000 S. Livermore Avenue
(510) 373-5500

Personnel
(510) 373-5110
Fax (510) 373-5035

Police Department
1110 S. Livermore Avenue
(510) 371-4900
Fax (510) 371-4950

Public Services
(510) 373-5270
Fax (510) 373-5317

Federal Communications Commission (FCC)
1919 "M" Street, NW
Washington, D.C 20037

Re: FCC's Proposed Rule on the Preemption of Local Ordinances Concerning DTV Service

To Whom It May Concern:

At their regular public meeting of October 13, 1997, the City of Livermore Airport Commission unanimously voiced opposition to the FCC's proposal to preempt local ordinances concerning DTV service. The Commission believes the siting of TV towers near airports or along normal flight paths is a safety hazard to air navigation. Local authorities must retain control over land uses in their jurisdictions in order to assure that safety hazards are not created by an outside agency for other interests.

The Livermore Airport Commission strongly urges the FCC to deny the proposal to preempt local control on the siting of antennas and towers. Two thousand foot towers, which would be constructed as a part of the DTV service, are a danger to aviation due to the potential of tower strikes by aircraft. A nearby community or development would also be in danger from falling towers and falling aircraft resulting from the tower strikes.

Thank you for the opportunity to respond to this proposed rule.

Sincerely,

MICHAEL MILLER
Public Services Director

cc: City Manager
Airport Commissioners
Airport Manager

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Michael and Katherine Perkins
3021B Lynn Court, Arlington Heights, IL 60005
Home 847-439-5163
Work 847-679-0900 x311

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October 29, 1997

Office of Secretary
Federal Communications Commission
Washington, DC 20554

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To Whom It May Concern:

I am *opposed* to the FCC proposal MM Docket No. 97-182 Preemption of State and Local Zoning and Land Use Restrictions…etc. This proposal should be killed because it precludes Due Process. In an attempt to hurry-up certain privatized interests, the public and its wishes would be completely ignored.

Respectfully,

Michael C. Perkins

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CITY OF QUINCY

"Building for the Future"

DEPARTMENT OF PUBLIC WORKS
LEON K. KOWALSKI, P.E.
DIRECTOR OF PUBLIC WORKS

October 29, 1997

CITY HALL -- 730 MAINE STREET
QUINCY, ILLINOIS 62301-4048

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

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RE: Comments on Notice of Proposed Rule Making
MM Docket Number 97-182

Dear Mr. Secretary:

The city of Quincy, Adams County, Illinois was recently made aware of a Notice of Proposed Rulemaking being undertaken by the FCC regarding preemption of state and local zoning and land use restrictions on sitting, placement and construction of broadcast station transmission facilities.

As a city with a Municipal Airport, we have grave concern when the FCC wishes to assume preemptive powers over states and local governments with regard to the regulation of communication tower locations and height.

We have been informed that the FAA will not place limits on tower height or placement and it is up to local agencies and the state to regulate these structures.

We do not want to compromise aviation safety.

The demands for safe skies are far louder than the arguments of digital television proponents who wish to place their towers wherever it may be convenient.

Thank you for the opportunity to voice our concerns.

Sincerely yours,

Leon Kowalski

Leon K. Kowalski, P.E.
Director of Public Works

LKK:sa
cc: Mayor Charles W. Scholz
Congressman Lane Evans
Illinois Department of Transportion
Division of Aeronautics
Nat'l Association of State Aviation Officials

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October 30 1997

INTERNATIONAL
COUNCIL OF
AIR SHOWS, INC.

481 N. FREDERICK AVE.
SUITE 405
GAITHERSBURG
MARYLAND 20877

PHONE: 301-519-6800
FAX: 301-519-6869

E-MAIL:
icas@airshows.org
WEB:
www.airshows.org

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

ORIGINAL
NOV 4 1997

Dear Sirs:

We are writing today to take issue with the Federal Communications Commission's proposal to allow the preemption of state and local zoning ordinances to facilitate and expedite the introduction of digital television.

Our members are concerned that 1,000+ DTV towers that are built too close to airports might pose serious safety hazards to pilots and airplanes. And, as you now know, it is precisely these state and local zoning ordinances that prevent towers from being built in areas where they might become a safety hazard.

More specifically, though, our members are concerned about the problems that DTV towers might cause for air shows and the participation of military jet teams at those air shows.

The U.S. Air Force Thunderbirds and the U.S. Navy Blue Angels require quite a lot of the airports at which they perform. From their ground service requirements to the large areas of empty space that they need, the U.S. military's jet teams make unusual demands because they are a precision aerobatic team performing difficult maneuvers at high speeds. Distractions of any sort are unacceptable. And the jet teams have been known to turn down an air show's invitation to perform because the site includes a potentially dangerous situation....like a 1,000 foot DTV tower that is too close to the area in which they perform.

So, because the introduction of DTV towers into or near the airport environment is a bad idea generally and because they could cause a specific problem for airports that host a U.S. military jet team, we urge the FCC to adhere to all state and local zoning laws enacted to prohibit the construction of these structures near airports.

Sincerely,

John B. Cudahy
President

CC: Eric Doten, Chairman, ICAS
John Ellis, Chairman, ICAS Safety Committee

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MM97-182

STATE OF NEBRASKA

DEPARTMENT OF AERONAUTICS
Kim J. Stevens
Director

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October 27, 1997

E. Benjamin Nelson
Governor

Federal Communications Commission
FCC Docket 97-296
FCC Dockets Branch, Room 239
1919 M Street NW
Washington, D.C. 20037

DOCKET FILE COPY ORIGINAL

Subject: Comments on NPRM (FCC 97-296)
Preemption of State and Local Zoning
47 CFR Part 1

The Nebraska Department of Aeronautics objects to the Federal Communications Commission proposal to preempt state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities. This proposal could threaten aviation safety by permitting TV and radio broadcasting antennas to unduly impact navigable airspace.

The proposed rule affects aviation safety because local zoning ordinances are the only enforceable laws that regulate the construction of a tower or other obstruction to air navigation. Federal Aviation Regulation Part 77 requires that builders of potentially hazardous towers and other obstruction notify the Federal Aviation Administration, but FAA has no authority to enforce obstruction standards and it cannot stop the construction of a tall tower. FAA frequently issues a "Determination of No Hazard" for towers that impact air navigation by raising minimum safe flying altitudes. There have been two occasions in Nebraska in the last five years when a FAA "approved" tower was built and an existing instrument approach procedure became practically unusable due to the increased minimums.

Nebraska statutes allow local zoning for height restriction within three miles of an airport. This statute was enacted because airport hazards endanger the lives and property of the users of an airport and occupants of land in its vicinity. A hazard or obstruction can destroy or impair the utility of an airport and the public investment therein, including the federal investment through FAA grants.

MAIN OFFICE
General Aviation Building
Lincoln Municipal Airport
P.O. Box 82088
Lincoln, Nebraska 68501-2088
(402) 471-2371

NAV-AIDS OFFICE
Kearney Municipal Airport
5065 Airport Road
Kearney, Nebraska 68847
(308) 865-5696

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The Department of Aeronautics frequently councils airport owners and aircraft pilots not to rely of FAR Part 77 to protect them because the FAA has no enforcement powers and because FAA's approvals can still result in an impact to their airport. We advise owners and pilots that their best defense is local zoning. To compromise local zoning and thus aviation safety in favor of a better television picture is absurd.

Local zoning can also protect areas needed for future instrument approaches. With the advent of Global Positioning Satellites, instrument approach procedures are being published that would not have been possible ten years ago. Local zoning in Nebraska has protected these instrument approach areas, resulting in an airport with much greater utility than ever though possible. The return on the public's investment in these airports has increased substantially due to local zoning efforts.

If this rule is adopted, the Department of Aeronautics strongly urges the FCC to limit the extent of this rule to encompass only DTV towers in the top 10-30 markets. The existence of numerous radio and television station licenses indicates that complying with local and state regulations are not all that difficult.

Sincerely,

DEPARTMENT OF AERONAUTICS

Kim J. Stevens
Director

cc: NASAO
AAAE

MM97-182

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NOV 4 1997

October 20, 1997

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FCC Dockets Branch
Room 239
1919 M Street NW
Washington, DC 20037

Re: September 2, 1997 Request for Comments on Proposed Rule of: Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities

Sirs,

I wish to submit the following as a comment on the FCC's proposed rule regarding the siting, placement and construction of transmission towers.

1. You note under II.4. that local land regulations may un-"unreasonably" delay the DTV roll-out etc. I would submit that to impose a time-frame of 21, 30 or 45 days for action, positive or adverse, by a community is extremely unreasonable.

It is my belief that the proposed time-frame places an extreme burden upon a community to make a judgement as to the environmental impact of these towers. In many small communities where some of the towers might be placed, there is no professional staff or consultants that would be able to advise the local community. I sat for a year on a local zoning board. To act within the time-frame above would be virtually impossible. And yet not to act, as you propose, "would cause the request to be deemed granted."

From the position of being able to act without any type of expertise on such a complex matter would be impossible for most, if not all, local communities. In addition, such a requirement would place an extreme financial burden on that local community as well.

It is my belief, notwithstanding the "urgency" placed upon the communications industry by Congress, that a minimum of six months be allowed for local communities to air fully the issues that accompany these towers and to allow for a full expression by the public as well.

2. Again, recognizing the pre-emption of the Federal Government in the communications field, this proposal to "fast-track" construction or modification of transmission towers without substantial and measured official and public input, strikes at the heart of the relationship of Federal, State and local powers as enunciated by the United States Constitution.

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Powers to the Federal Government should eminate from the people of the United States; at least that is what we learned in school. To force local governments to "fast-track" these towers and then to require that they be approved if the local government takes no action sends a powerful message to the people of the United States.

You state the benefits of a rapid roll-out of DTV. It was the communications and the Congress that required such a rapid roll-out, not the people of the United States. After all of this time, to require a mere three weeks for a local community to act on a proposal is folly.

I appreciate being given the opportunity to submit my comments on this proposal. I only hope that the FCC will listen to the people and not the industry that it governs.

Thank you very much.

Sincerely,

Keith A. Douglass
9574 Wildwood Dr.
Chardon, OH 44024

cc: Hon. Sherrod Brown
Member of Congress
Washington, D.C.

MM 97-182

WILLIAM HAMILTON, Ph.D.

Member, Colorado Aeronautical Board
Mailing address: P.O. Box 3499, Winter Park, Colorado 80482
Overnight package address: 170 Lakeside Lane, County Rd. 634, Granby, CO 80446
INTERNET: BPHamilton@CompuServe.com or INTERNET: bill.hamilton@aopa.org
Phone/fax/message machine: 970.887.2101

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October 18, 1997

Re: Comments on NPRM FCC 97-296

FCC Docket 97-296
FCC Dockets Branch, Room 239
1919 M Street NW
Washington, D.C. 20037

These comments are in opposition to the NPRM FCC 97-296: The right of sub-divisions of local government (towns, cities and counties) to determine how land will be used is an essential element of democracy and self-government which was won in bloody battles with English Kings and descended to us from the English Common Law. The FCC proposal to allow the construction of digital TV towers irrespective of the desires of local zoning authorities is an assault upon the fundamental principles of land-use zoning in America.

Historically, the protection of America's airports from encroachment by incompatible land uses and from invasions of airport airspace by tall towers and other obstructions has been in the hands of a partnership composed of the Federal Aviation Administration (FAA) and local zoning authorities. Billions of dollars have been spent to develop America's system of airports. Allowing the land and the airspace which makes these airports viable to be invaded, willy-nilly, by tall digital TV towers would render the investment of these billions worthless.

A tall tower of any type placed too close to an airport either can make the airport unusable at worst or results in raising the instrument approach minima at best. The former is worse than the latter; however, neither outcome is desirable.

A better alternative to this NPRM is to create antennae farms far removed from airports. By collecting tall towers in antennae farms away from airports, it makes it easier to mark and chart these obstacles to air navigation. Moreover, antennae farms create economies of scale in terms of land acquisition costs, legal fees, access roads and the routing of electrical power to the site.

If there is a need to go to digital TV, it should not be done at the cost of overturning centuries of zoning law

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and at the cost of destroying and/or reducing the value of many of America's airports.

Sincerely,

WAH:ds

WILLIAM HAMILTON, Ph.D.