

MM97-182



MaryAnn E. Black
Chairman
615 Orindo Drive
Durham, NC 27713

Ellen W. Reckhow
Vice-Chairman
11 Pine Top Place
Durham, NC 27705

**COUNTY OF DURHAM
BOARD OF COMMISSIONERS**

William V. Bell
1003 Huntsman Drive
Durham, NC 27713

Joe W. Bowser
9 Druid Place
Durham, NC 27707

Becky M. Heron
4425 Kerley Road
Durham, NC 27705

DOCKET FILE COPY ORIGINAL October 27, 1997

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OCT 31 1997

FCC FILE

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

RE: MM Docket 97-182
FCC 97-296

To Whom It May Concern:

The purpose of this letter is to respond to the FCC's request for comments on the Preemption of Local Zoning for Broadcast Towers.

Local elected officials and governmental staff seek to achieve a balance between the needs of the business community and the needs of the neighborhoods in planning for the future. It is our belief that local legislation is a fair method of maintaining an equitable balance between these competing needs.

Over the past several years, many federal regulations have been abandoned. Local legislation has sought to fill the void. Communities have begun to plan for telecommunications facilities as they do for other public facilities.

The proposed revisions to the FCC regulations concerning digital television transmission (DTV) would put local governments in a situation where there is neither federal nor local control. Since local governments are in the closest position to weigh the needs of businesses, the needs of users, and the needs of those impacted by the potential towers, it is essential that local governmental units become involved in the siting of towers.

Durham would like to offer the following responses to the FCC's Request for Comments items listed in the Notice of Proposed Rule Making which was released on August 19, 1997:

a. Proposal for preemption:

For the reasons stated above, it is essential for local government representing local residents, consumers, and businesses to be involved in the siting of broadcast towers.

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b. Issues related to tower siting:

In Durham, tower siting issues relate to potential for co-location, mitigation of visual impacts, and protection of historic features. Approval procedures require approximately 90 days. State laws under which counties and municipalities must operate require a notification period of between 10 and 25 days. Therefore, the FCC proposal for a 21-25-day approval period is totally inappropriate. That time frame makes it impossible to study proposals, schedule and notify public hearings, and hold the hearing, given the state imposed advertising requirements. In addition, the short time frame clearly limits a locality's bargaining ability.

c. Potential to impede digital TV build-out:

Durham's regulations concerning communication towers were formulated in partnership with representatives of the communication industry. Continued collaboration with industry representatives can be expected. The public desire for digital TV reception will influence local leaders in making regulatory decisions allowing for such uses, but doing so in a way that minimizes impacts to nearby property owners.

d. Scope of preemption powers:

It is our belief that no preemptive powers over local regulations should be permitted. Local regulations are able to adjust to the changes in industry. Local regulations fill a void left by federal deregulation of the communications industry.

e. Reasonableness of time frames:

The time frames for preemption of local regulations proposed in the FCC ruling seem to be woefully short and clearly favor the communications industry. No meaningful dialog between the tower applicants and the local jurisdiction can be carried out within such short time frames. In addition, State regulations often mandate that local government decisions occur over longer time frames than those proposed by the FCC. A 90-day time frame is the minimum time frame within which most local governments can operate.

In conclusion, it is our opinion that local governments can deal fairly and equitably with businesses seeking to locate towers within the community. To usurp local control constitutes an unjustifiable preference to the communications tower providers.

Sincerely,



MaryAnn E. Black, Chairman
Board of County Commissioners

MEB:VCS

cc: Durham Board of County Commissioners
Deborah Craig-Ray

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STATE OF VERMONT
SENATE CHAMBER
115 STATE STREET
MONTPELIER, VT
05633-5201

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OCT 31 1997

FCC MAIL ROOM

October 25, 1997

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Dear FCC:

These comments are being filed on the matter of the proposed rule making RM-8577 Second Memorandum and NOPR dated August 25, 1997 and MM Docket 97-182 Television NOPR dated August 18, 1997.

As a Vermont State Senator I am opposed to the idea of federal preemption of local land use laws and the proposed rules which would institute that preemption. Vermont's economy is heavily dependent on the quality of its environment and landscape. Loss of local control over the siting of television and cellular transmission towers would have serious implications for the state's economy and the quality of life of it's citizens.

Vermont now uses a 25 year old land use law (Act 250) to review siting proposals. This law meets all four of the criteria the FCC has set out for such reviews. Act 250 does not discriminate among providers. It does not prohibit the provision of wireless services. Decisions are rendered in a reasonable period of time. All decisions are in writing and supported by substantial evidence. Act 250- decisions are appealable to our supreme court by virtue of the law itself and in this instance would be appealable to a competent federal court.

These proposed rules should never become final. They are not needed and they could have serious negative impacts on the people and state of Vermont.

Sincerely


Ann E. Cummings
Senator, Washington County

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MM. 97-172

FCC MAIL ROOM

Federal Communications Commission
FCC Dockets Branch
Room 239
Docket # 97-29b
1919 M Street NW
Washington, DC 20554

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October 25, 1997

Reference:

NPRM, 9/2/97 Federal Register

FCC proposal to allow the preemption of state and local zoning ordinances if the Agency determines they would interfere with certain broadcast facilities.

Concerns of the Brandywine Soaring Association (BSA)

BSA is one of many clubs dedicated to the development of soaring in America. We have over 60 members flying gliders out of the New Garden Airport in Toughkenomon, PA. We as one of the many aviation interests in the country have significant concerns with this proposal.

This proposal does not acknowledge that there is a serious safety conflict with placement of tall towers in the vicinity of airports. This proposed rule must take into consideration that some of these state and local zoning ordinances are designed to protect the airspace around our airports. If this hazard is not take into consideration there will be a definite reduction of safety for the flying public. The regulators at the FCC, I believe understand that tall towers near airports is undesirable, but specific wording must be included in the regulation, to assure this. State and local zoning ordinances specifically designed for protection of airport airspace from tower intrusion, should not be included in state and local zoning laws that can be preempted by this proposed regulation.

High emphasis should be given to co-locate these towers where existing tall towers are located. Although less of a concern for enroute aircraft operations, inflight collisions have occurred with single towers away from airports. The review of FAA data would indicate that clustered towers have a significantly lower potential for aircraft collisions which both benefit aircraft safety and the investment/continuity of operation of the Broadcaster.

Richard A. Clapp



Secretary, Brandywine Soaring Association

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Macomb Airport Authority

R.R. 1, Macomb Airport • 16190 E. 1300th Street
Macomb, IL 61455-9280
TELEPHONE 309/833-3324



October 27, 1997

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

OCT 31 1997

FCC MAIL ROOM

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

Dear Mr. Secretary:

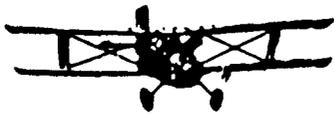
It would be a mistake for the FCC to assume preemptive powers over the states and units of local government with regard to the regulation of communication tower location and height. Not only would you likely face defeat before the federal appellate court if this action were taken, but the FCC could cause serious aviation safety problems. The FAA will not place limits on tower height or placements; so it is up to local and state airport authorities to regulate these structures. The public demands that there be no impediments to aviation safety. These demands are louder and of greater urgency than the arguments of the digital television and other broadcasters that they be allowed to place their towers wherever it may be convenient.

Sincerely,

Donald "Doc" Horine, Chairman
Macomb Airport Authority
16190 E. 1300th Street
Macomb, Illinois 61455

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Muckel's Aerial, Inc.
Box 1107
Grand Island, NE 68802-1107
Res. - 308-381-0135
1-800-245-5895
Airport-402-744-2050

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DOCKET FILE COPY ORIGINAL

October 17, 1997

FCC Dockets Branch
Room #239
1919 M Street NW
Washington, D.C.

Re: FCC 97-296

Dear Sir,

The NATA (Nebraska Aviation Trades Association) opposes any legislation that would allow the FCC to override the ruling of a state or local planning commission when it comes to tower construction. Currently, local planning commissions or zoning boards are the only recourse our members have to fight tower construction near their private use airports. We receive no support from the FAA or the Nebr. State Dept. of Aeronautics. In fact, the guidelines set forth in the Federal Aviation Act of 1958 will not allow the FAA to consider private use airports in their hazard/no hazard study.

In the state of Nebraska and I'm sure nationwide, there are several private use airports where considerable investments have been made to meet federal and state environmental regulations. If tower construction is allowed unchecked, aviation safety will be in jeopardy. Lives will be lost.

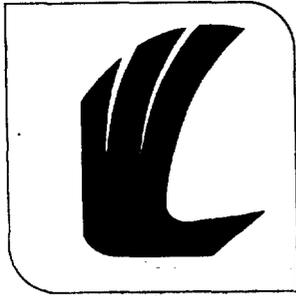
Sincerely,

Roger F. Muckel

Roger F. Muckel
Chairman-NATA Private
Strip Obstruction
Committee

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**LUMANAIR
AVIATION
SERVICES**

MM 97-182

DOCKET FILE COPY ORIGINAL

October 28, 1997

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

Dear: Sirs

Regarding a Notice of Proposed Rule Making listed in the Federal Register on September 2, 1997, this is to express my opposition to the idea of allowing preemption of state and local zoning laws or ordinances by the Federal Communication Commission in order to establish a network of digital television broadcast facilities or anything else for that matter.

As an aviation operator in the Chicago area, which is already plagued by aerial obstructions, all of which were constructed in accordance with zoning provisions taking into account aviation requirements and safety concerns, I can not begin to imagine what may come of such a dangerous program as outlined in the NPRM.

It is absolutely imperative that local and state zoning provisions continue to be observed along with input from effected industries and the Federal Aviation Administration, as they apply to protecting against such safety hazards.

Thank you for your astute consideration of my grave concern.

Sincerely,

LUMANAIR AVIATION SERVICES

Mike S. Luman
General Manager

0

TIM BELFORD, CLERK
CINDY KVORKA, DEPUTY CLERK

LARRY SNYDER, MAYOR

W. DEAN NIEBUR, TREASURER

City of Pittsfield

215 North Monroe Street
Pittsfield, Illinois 62363

ALDERMAN

1ST WARD

STEVE SMOTHERS

RICHARD L. ERVIN

2ND WARD

RICHARD PEEBLES

LARRY RUBLE

ALDERMAN

3RD WARD

WILLIAM N. RINEHART

ANDREW BORROWMAN

4TH WARD

GREGORY L. DICKERSON

JAMES HALPIN

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Office of the 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 Mr. Secretary:

It would be a mistake for the FCC to assume preemptive powers over the states and units of local government with regard to the regulation of communication tower location and height. Not only would you likely face defeat before the federal appellate court if this action were taken, but the FCC could cause serious aviation safety problems. The FAA will not place limits on tower height or placement; so, it is up to local and state airport authorities to regulate these structures. The public demands that there be no impediments to aviation safety. These demands are louder and of greater urgency than the arguments of the digital television and other broadcasters that they be allowed to place their towers wherever it may be convenient.

Sincerely,

Mayor Larry Snyder

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**Waukegan Port District • Waukegan Regional Airport
Port of Waukegan**

October 27, 1997

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

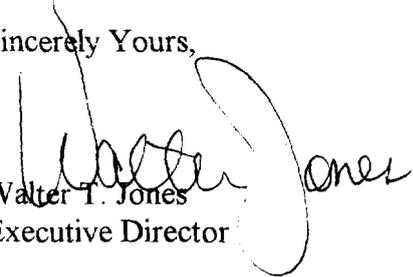
Re: Comments on Notice of Proposed Rule Making; MM Docket No. 97-182

Dear Mr. Secretary:

I represent the Waukegan Port District, a governmental body which owns and operates Waukegan Regional Airport, located about thirty (30) air miles from downtown Chicago, Illinois. We have about 100,000 aircraft operations annually.

We feel strongly that it would be a mistake for the FCC to assume preemptive powers over the states and units of local government with regard to the regulation of communication tower location and height. Not only would such an action likely face defeat before the federal appellate court, by the FCC could cause serious aviation safety problems. The FAA will not place limits on tower height or placement; so, it is up to local and state airport authorities to regulate these structures. The public demands that there be no impediments to aviation safety. These demands are louder and of greater urgency than the arguments for digital television and broadcasters that would be allowed to place their towers wherever it may be convenient.

Sincerely Yours,


Walter T. Jones
Executive Director

WTJ/kw



ACE AVIATION, INC.

P. O. BOX 1457 BELFAST, ME 04915

207-338-2970

OCT 31 1997

FCC MAIL ROOM

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

Dear Sirs:

I operate an Air Charter service in the state of Maine and am adamantly opposed to a commission of individuals charged with regulating the communications industry (FCC) deciding whether a DTV tower will be placed in the flight path of my airplane! I am much more concerned with safe instrument approaches than I am with a sharper TV picture, and I can guarantee my customers feel the same way.

Please **do not** allow the FCC to unilaterally preempt state and local zoning ordinances when siting TV towers.

With regards,

Douglas W. Low
President, Ace Aviation

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

October 29, 1997

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Office of Secretary
Federal Communications Commission
Washington, DC 20554

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FCC MAIL ROOM

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,



Katherine S. Perkins

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OCT 31 1997

Sean M.P. McIntyre
1930 Don Avenue Apt. 4
Santa Clara, CA 95050

FCC MAIL ROOM

Federal Communications Commission
1919 M St. NW
Washington, DC 20055
Attn.: Docket No. 97-182

DOCKET FILE COPY ORIGINAL

October 21, 1997

Dear Sirs:

The proposal to allow television, or any other, company to by-pass local and state zoning regulations when erecting thousand foot high transmission towers poses a serious threat to public safety.

Specifically, if the companies erecting these towers are allowed to place them near airports, airport instrument approach paths, federal airway segments, or any other place where aircraft routinely operate at low altitudes, they pose a serious hazard to air navigation, the safety of pilots and passengers, and the safety of individuals on the ground.

I strongly urge you to require ALL construction of transmission towers to be subject to state and local zoning regulations. Furthermore I urge you to require any construction of any transmission tower within five miles of any airport to be subject to approval by the Federal Aviation Administration.

Sincerely,


Sean Michael Patrick McIntyre
Commercial Pilot/Certified Flight Instructor

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MM97-182

FAX MESSAGE RECEIVED
TO:

OCT 31 1997



From: Don Herrman, VP Public Relations
ELLIOTT AVIATION INC.

(Formerly: Elliott Flying Service, Inc.)

(A.K.A. Elliott Beechcraft)

QUAD CITY AIRPORT

P O BOX 100

MOLINE IL 61266-0100

Voice (309) 799-3183

FAX 309/799-98 93

[FCC does not accept Faxes,
10/27/97 ... resort to US Mail]

DOCKET FILE COPY ORIGINAL

Attn: FCC Dockets Branch
Room 239 ~ Docket No. 97-296

FAX #1-703/845-90 00 October 21, 1997 prox 11:10aCDT

Re: FCC Proposal to allow preemption of state and local zoning ordinances (. . . bearing on Aviation Safety,) with regard to location and construction of certain broadcast facilities/tall structures/antennas in vicinity of an airport.

While it is understandable that the developers and implementers of digital television (DTV) would desire to locate such facilities at their whim and economic convenience . . . for them to be permitted to do so in hazardous proximity to any airport without consideration to the safety of air travelers is unconscionable . . . and for the FCC to be empowered to usurp local authority for permitting or authorizing the location of such intrusions into navigable airspace . . . to foster such a scheme is patently absurd.

It must be recognized that folks who will be subjected to this potential hazard will be the users of Scheduled Airlines as well as General Aviation users, commercial, corporate and personal. Scheduled airlines, making use of only a minimum number of airports in the USA, (some 500 + or - ,) by comparison, the utilization by General Aviation of these 500 and all other registered airports, (. . . all together, 12,000 + or - ,) the proposal would unwisely subject "lots of folks" to unwarranted hazard. Potentially greater numbers of passengers at risk in each scheduled airliner with the probability of subjecting at least as many additional people to the same hazard, spread amongst the many aircraft of lesser passenger capacity in the General Aviation fleet, operating in and out of the multitude of airports serving the air travelers of the nation.

Certainly, FCC Commissioners, legislators and executives of the DTV companies, as prominent users of the many segments of the air travel industry, will be at no less risk than the rest of us . . . should this wild proposal be enacted.

Let us go back to square one and apply serious consideration to the public risk/hazard concomitant with acceptance of this proposal !

(fccfxtoe.ers) C & EA '97+

Most cordially

(fxforma.97) C & E/A 97+

Beechcraft

Quad-City Airport • P.O. Box 100 • Moline, Illinois 61266-0100 • Phone 309.799.3183 • Fax 309/799-9893
Moline, Illinois • Des Moines, Iowa • Minneapolis, Minnesota • Omaha, Nebraska

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MEMBER OF THE PINNACLE AIR NETWORK

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FCC MAIL ROOM



PENNSYLVANIA AVIATION Inc.
WINGS FIELD
1501 NARCISSA ROAD
BLUE BELL, PA 19422
(215) 646-1800

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October 28, 1997

97-182

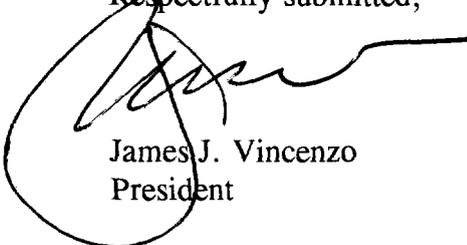
Federal Communications Commission
Docket No. ~~97-296~~
FCC Dockets Branch, Room 239
1919 M Street, NW
Washington, DC 20554

To The Commission:

The Notice of Proposed Rulemaking (NPRM) regarding installation of broadcast facilities, specifically towers, as appears in the *Federal Register* September 2, 1997, is hereby opposed. It is my understanding of the NPRM that the FCC proposal has the effect of removing authority from state and local governments as to any determination of sites suitable for construction of DTV towers. This directly compromises the safety of aviation operations. I further understand the proposed rule requires compliance with FAA lighting requirements, but is absent of any mention of further potential hazards to aviation.

Towers encroach on airspace. The FCC should appreciate this fact and construct proposed rules to take this fact into account and also recognize the validity of state and local zoning ordinances.

Respectfully submitted,



James J. Vincenzo
President

JJV/kjh

cc: Harold G. Johnson
Airport Manager

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