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1919 M Street, N.W.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE: MM DOCKET NO. 97-182
WT DOCKET NO. 97-192
ET DOCKET NO. 93-62
RM-8577

FORMAL FILING OF COMMENTS BY THE CABOT, VT SELECTBOARD

The Selectboard -- the municipal governing body -- of Cabot, Vermont, wishes to file the following comments on the above dockets.

The Cabot Selectboard is greatly alarmed that the FCC is contemplating further pre-emption of state and local laws pertaining to personal wireless service facilities and other broadcast facilities and sitings. We request that the FCC decline to extend its jurisdiction and further displace local authority and autonomy.

The Telecommunications Act of 1996 explicitly preserves state and local zoning authority. Section 704(a) states:

> *Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.*

Section 704(a) sets out the limitations referred to above, these being, in paraphrase, that the State or local government or instrumentality thereof:

a) shall not unreasonably discriminate among providers of functionally equivalent services;
b) shall not prohibit or have the effect of prohibiting the provision of personal wireless service services;
c) shall act on requests to locate, construct or modify personal wireless service facilities within a "reasonable period of time;"

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d) shall decide upon such requests in writing and with substantial written evidentiary support;

e) may not regulate such facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with FCC regulations.

Further limitations upon State and local governments -- such as restricting the evidence that state and local regulatory boards may require of applicants for telecommunications facilities permits -- are not authorized by the Act and are indeed explicitly prohibited by the Act.

Section 704(a) leaves no doubt that Congress did not intend to occupy the entire field of regulation that might pertain to wireless telecommunications, but rather defined very closely the limited area in which the FCC, carrying federal law into practice, might pre-empt state and local authority by regulation. The further pre-emptions requested in the above-mentioned dockets, if adopted, would suggest an attack on the doctrine of concurrent powers by asserting, in effect, that state or local sovereignty may be nullified by federal regulatory agencies. Such erosions of local sovereignty as the requests in the above dockets propose would be deeply resented by Cabot landowners, who may consent, by the ballot, to surrender many prerogatives of ownership for the general welfare but will resist being compelled to further surrender such prerogatives for the advantage of private corporations. It is very difficult for us to imagine why the FCC would wish to raise this incendiary issue.

Pre-emption of State and local zoning and land use restrictions in the siting, placement and construction of personal wireless communication service facilities, broadcast station transmission facilities or mobile radio service transmitting facilities would also involve the FCC in rewriting state and local land use and environmental protection laws, an area which lies beyond its jurisdiction. In particular, such pre-emption would undermine Vermont's major environmental and land use law, Act 250. The Town of Cabot, which in its municipal construction projects is bound by the permitting requirements of Act 250, relies on Act 250 as an essential regulatory tool to protect the quality, wholesomeness and beauty of its hills, woods, and streams. Agriculture remains the basis of our local economy, and we have a vital interest in the effectiveness of Act 250, which supports our municipal land use ordinances.

Like other rural municipalities around Vermont, Cabot (population 1,043) creates its local zoning ordinances by slow democratic process. Proposed ordinances originate in a Planning Commission, but citizens may compel planners, by petition, to consider proposals generated at the grass roots. The Planning Commission passes its recommendation to the Selectboard, which decides whether to place proposals before the voters at an annual or special Town Meeting. Municipalities are chartered creations of the Vermont Legislature, hence their authority to enact ordinances is closely described in statute, but, within those limits, the people themselves have the last word. Thus, our land use regulations truly and directly express the popular will. Decisions about how best to preserve our local rural areas and regulate what is local commerce are best made by this local process, not by Washington. To nullify our ordinances without cause or explanation, for no discernible public benefit, to accomplish no great national goal, to fulfill no Constitutional

responsibility, and at the sole behest of private corporations will only seem profoundly disrespectful of our democratic traditions. Some might ask where such nullification might end.

The Cabot Planning Commission is presently considering a zoning ordinance pertaining specifically to personal wireless communications facilities. We are attempting in good faith to balance the needs of a rapidly expanding industry with the desire of our township to retain its agricultural character and scenic beauty. In the process, we are educating ourselves, adapting to the exigencies of a new era, and, at the same time, reaffirming what we most value in our community, in our corner of the world. Democracy lives and breathes in such a process. Why would anyone wish to interrupt it?

The wireless communications industry has the same rights, advantages and privileges as any other commercial entity in Vermont. There is no reason to give them a super-privilege. To do so would completely relieve the industry of all obligations to the local populations in whose midst their facilities would be sited and whom, moreover, they profess to serve by those facilities. The industry, unbridled, has the potential to make a shambles of decades of conscientious planning. The present topic generating controversy in Cabot, the siting of a tower, requires a balance between industry needs and community needs. Many of the innovative and non-intrusive methods of siting broadcast facilities are the result of industry officials and local regulators working together. In the absence of state and local regulation, the industry would be conducting its business without factoring into its cost-benefit analyses the impact of its facilities on the local landscape, economy, environment and population. We can think of no other industry permitted to operate in this fashion.

We cannot understand why the FCC should contemplate further pre-emptions that would exceed its Congressional authorization, damage our environmental protection laws and threaten the integrity of our grass-roots democracy when any such action is clearly unnecessary, in light of the successful deployment of personal wireless service facilities throughout Vermont and in the rest of the country, to which local zoning ordinances have presented an inconvenience, perhaps, but no impediment. The inconvenience notwithstanding, telecommunications providers have succeeded in complying with state and local laws, and state and local officials have succeeded in carrying out their duties within the limits set by existing federal regulations. The pre-emptions requested in the above-named dockets, in particular a rebuttal presumption of compliance, would amount to self-certification by wireless service and other communications providers, ending the role of local regulators and terminating what has hitherto proven to be a productive collaboration between public and private sectors. Why would anyone wish to replace effective co-operation with a peremptory mandate that can only generate suspicion and animosity?

Our State and local zoning, land use and environmental laws have successfully balanced commerce and conservation, enabling private business to prosper and grow while, at the same time, protecting the very features of Vermont life that make the state attractive to new enterprise -- among them the beauty and tranquility of our rural areas. The pre-emptions already provided by the Telecommunications Act of 1996 seem to us sufficient to ensure that personal wireless telecommunications providers will have ample

opportunity to serve our community without undue or unfair hindrance. Further pre-emption, however, would call into question our right to participate in shaping the destiny of our own community. That is not a prospect we can accept without protest and challenge, and we urge the FCC reject requests to further pre-empt state and local laws with respect to personal and other wireless telecommunications service providers.

The Cabot Selectboard

R.D. Eno, chair

Larry Gochey

Mike Cookson