DOCKET FILE COPY ORIGINAL

Federal Communications Commission
Washington, D.C. 20554

DEC 2 9 1997

EX PARTE OR LATE FILED

RECEIVED

DEC 2 9 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Alfonse M. D'Amato
United States Senator
Leo O'Brien Office Building
Room 420
Albany, New York 12207

Dear Senator D'Amato:

Thank you for your letter dated December 2, 1997, on behalf of your constituent, Dick Button, which enclosed a letter from Sy Globerman, Supervisor, North Salem, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at http://www.fcc.gov/wtb/siting.

Thank you for your inquiry.

Sincerely,

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD
Dockets (2)
John Conwell
j:\congress\7694

7694
1/13
DF

ALFONSE M. D'AMATO
NEW YORK

LEO O'BRIEN OFFICE BUILDING
ROOM 420
ALBANY, NY 12207
(518) 472-4343

United States Senate

WASHINGTON, DC 20510-3202

WTB
97-182
7688

December 2, 1997

Federal Communications Commission
Congressional Liaison
2025 M Street, NW, Room 6202
Washington, D.C. 20554

Dear Director:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested.

PLEASE TRY TO RESPOND WITHIN 4 WEEKS OF YOUR RECEIPT OF THIS REQUEST. YOUR FINDINGS AND VIEWS, IN DUPLICATE, ALONG WITH RETURN OF THIS MEMO PLUS ENCLOSURE, WILL BE APPRECIATED.

Many thanks.

Sincerely,

Alfonse M. D'Amato
United States Senator

AMD:amr
Enclosure

CANDID PRODUCTIONS INCORPORATED
250 WEST 57TH STREET · SUITE 1818 · NEW YORK, NY 10107 · 212 581 9450 · FAX 212 581 9373 · e-mail: candidprod@aol.com

November 14, 1997

Senator Alfonse M. D'Amato
520 Hart Senate Office Building
Washington, DC 20510

Re: Cases WT 97-197, MM Docket 97-182, and DA96-2140

Dear Senator D'Amato:

The intentions of the Federal Communications Commission and its attempt to undermine local zoning concerns regarding cellular telephone and broadcast towers, deeply concerns me.

The FCC's proposals, as evidenced in the above listed cases, represent an attempt by the FCC to deprive citizens of their rights under the Constitution and violates the intent of Congress.

I have enclosed herewith a copy of a letter to Mr. William Kennard, Chairman Designate, Federal Communications Commission, from Mr. Sy Globerman, the Supervisor of the Town of North Salem, where I live. This letter clearly sets forth our concerns about the intended proposals of the FCC.

May I ask you for help in using your best efforts to defeat the proposed FCC plans in the cases listed above.

Sincerely yours,

Dick Button

Dick Button
DB:bs
Enclosure

TOWN OF NORTH SALEM
DELANCEY HALL
266 TITICUS ROAD
NORTH SALEM, NEW YORK 10560

OFFICE OF THE SUPERVISOR
TELEPHONE (914) 669-5110
FAX: (914) 669-5167

November 3, 1997

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 DA96-2140

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 the 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.

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 will 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 or 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,

SY GLOBERMAN
Supervisor

cc: Mr. William F. Canton
Acting Secretary
Federal Communications Commission (6 copies)
1919 M. Street, NW
Washington, DC 20054

cc: See Attached List