



Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

JAN 29 1998

97-182

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JAN 29 1998

The Honorable James T. Walsh  
United States House of Representatives  
P.O. Box 7306  
Syracuse, NY 13261

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Congressman Walsh:

Thank you for your letter dated December 10, 1997, on behalf of your constituent, Frank Wilson, Town Supervisor of Marcellus, New York, 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 issues being considered in 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 and your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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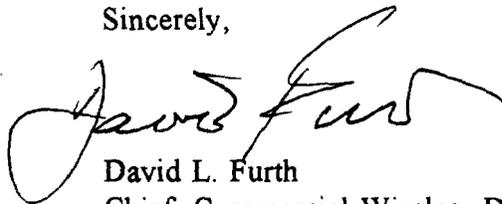
The Honorable James T. Walsh

2.

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,

A handwritten signature in black ink, appearing to read "David L. Furth". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

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

JAMES T. WALSH  
MEMBER OF CONGRESS  
25TH DISTRICT, NEW YORK

ASSISTANT MAJORITY WHIP

CHAIRMAN  
FRIENDS OF IRELAND

## Congress of the United States

House of Representatives

Washington, DC 20515-3225

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WTB  
97-192  
7803

December 10, 1997

Ms. Karen Kornbluh  
Director, Office of Legislative  
and Intergovernmental Affairs  
Federal Communications Commission  
1919 M Street, N.W., Room 808  
Washington, D.C. 20554

Dear Ms. Kornbluh,

I am writing in further regard two previous inquiries dated November 7th and November 19th on the matter of FCC preemption of local zoning laws in respect to the construction of communication towers. The attached letter from Mr. Wilson, Marcellus Town supervisor, outlines his concerns with the "Federal Zoning commission".

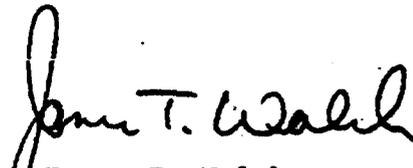
It would be appreciated if you would review the matter and provide me with your recommendations. Please send your reply to the attention of:

Hon. James T. Walsh  
Attn: Kimberly Kemp  
P.O. Box 7306  
Syracuse, N.Y. 13261

If you have any further questions, please call my office at (315) 423-5657.

Thank you for your assistance and expeditious handling of this inquiry.

Sincerely,

  
James T. Walsh  
Member of Congress

# TOWN OF MARCELLUS

24 East Main Street  
Marcellus, New York 13108  
515/673-3269

DEC 10 1997

December 10, 1997

Congressman James T. Walsh  
P.O.Box 7306  
Syracuse NY 13261

Dear Congressman Walsh,

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds such as the impact of the tower on property values or aesthetics.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC. And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

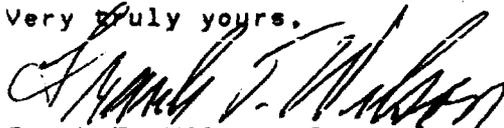
This proposal is astounding when broadcast towers are some of the tallest structures known to man—over 2,000 feet tall; taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given the the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Frank T. Wilson, Supervisor

cc: Attached list

Copy List

Senator John McCain  
241 SROB  
Washington, DC 20510-0303

Representative James Moran  
1214 LHOB  
Washington, DC 20515-4608

Senator Conrad Burns  
187 SDOB  
Washington, DC 20510-2603

Representative Bart Stupak  
1410 LHOB  
Washington, DC 20515-2201

Senator Kay Bailey Hutchison  
283 SROB  
Washington, DC 20510-4304

Representative Joe Barton  
2264 RHOB  
Washington, DC 20515-4306

Senator Slade Gorton  
730 SHOB  
Washington, DC 20510-4701

Ms. Barrie Tabin  
Legislative Counsel  
National League of Cities  
1301 Pennsylvania Ave, NW, 6th Floor  
Washington, DC 20004

Senator Dianne Feinstein  
331 SHOB  
Washington, DC 20510-0504

Ms. Eileen Huggard  
Executive Director  
NATO  
1650 Tysons Boulevard, Suite 200  
McLean, VA 22102-3915

Representative Tom Bliley  
2409 RHOB  
Washington, DC 20515-4607

Representative W. J. Tauzin  
2183 RHOB  
Washington, DC 20515-1803

Mr. Robert Fogel  
Associate Legislative Director  
National Association of Counties  
440 First Street, NW, 8th Floor  
Washington, DC 20001

Representative Edward J. Markey  
2133 RHOB  
Washington, DC 20515-2107

Mr. Kevin McCarty  
Assistant Executive Director  
U.S. Conference of Mayors  
1620 Eye Street, 4th Floor  
Washington, DC 20006

Representative John D. Dingell  
2328 RHOB  
Washington, DC 20515-2216

Representative Bob Goodlatte  
123 CHOB  
Washington, DC 20515-4606

Ms. Cheryl Maynard  
Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
Washington, DC 20036