



Federal Communications Commission  
Washington, D.C. 20554

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JAN 29 1998

97-182

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JAN 29 1998

The Honorable John M. McHugh  
U.S. House of Representatives  
2441 Rayburn House Office Building  
Washington, D.C. 20515

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Congressman McHugh:

Thank you for your letter dated December 16, 1997, on behalf of your constituent, Robert Cantwell, Town Supervisor of Clayton, 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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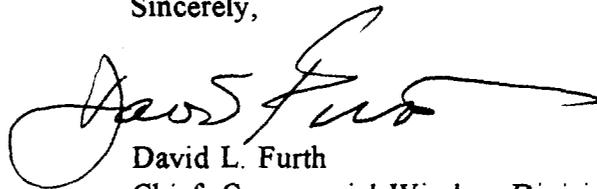
The Honorable John M. McHugh

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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", with a long horizontal flourish extending to the right.

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

JOHN M. McHUGH

241 RAYBURN HOUSE, WASHINGTON, D.C.

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**Congress of the United States**

**House of Representatives**

2441 Rayburn House Office Building  
Washington, DC 20515-3224

December 16, 1997

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WTD  
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The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, S.W.  
Washington, D.C. 20554

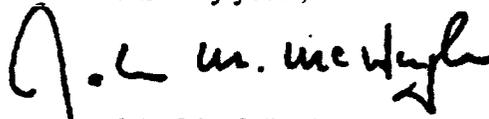
Dear Mr. Chairman:

I am writing with regard to the enclosed correspondence I received from the Mr. Robert W. Cantwell, Jr., Supervisor of the Town of Clayton, New York, concerning several proceedings underway at the Commission relating to preemption of local zoning in the siting of cellular telephone broadcast towers.

Supervisor Cantwell's points are well taken and I certainly understand his concerns about having the federal government preempt state and local governments in matters of this nature. Any information, comments or assistance you may be able to provide concerning these issues would be appreciated.

With best wishes, I am

Sincerely yours,

  
John M. McHugh  
Member of Congress

JMM/jmb  
Enclosure

Town of Clayton  
1000 Islands  
405 Riverside Drive  
Clayton, NY 13624  
Phone - 315-686-3512  
Fax - 315-686-2651

Robert W. Cantwell, Jr., Supervisor  
Bonnie L. Rose, Town Clerk

December 2, 1997

Representative John M. McHugh  
416 Cannon Office Building  
Washington, D.C. 20515

Dear Representative McHugh:

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 the 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.

**Cellular Towers - Moratoria:** Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress.

**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 time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would also prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety

Town Council:  
Vivian F. Black  
Justin A. Taylor  
George E. Kittle  
Donald I. Turcotte

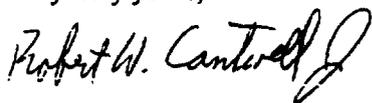
requirements could be overridden by the FCC! Also, all appeals of zoning and permit denials would go to the FCC, not to the local courts.

These actions violate the intent of Congress, the Constitution and the principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise.

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 Tristan!, 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 any questions.

Very truly yours,



Robert W. Cantwell Jr.  
Supervisor

cc:[see attached list]

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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  
NATOA  
1650 Tysons Boulevard, Suite 200  
McLean, VA 22102-3915

Representative Tom Bliley  
2409 RHOB  
Washington, DC 20515-4607

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

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

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