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Phil Boyer
President

April 13, 1998

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

Re: [MM Docket 97-182; DA No. 98-458]

The Aircraft Owners and Pilots Association (AOPA) representing over 340,000 aircraft owners and pilots nationwide is submitting comments to the Federal Communications Commission (FCC) Supplemental Notice of Proposed Rule Making (SNPRM); *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Transmission Facilities*, published in the Federal Register, Volume 63, Number 541, page 13610 and dated March 20, 1998.

AOPA strongly opposes the proposal on the grounds that preemption of aviation and airport related state and local zoning laws, ordinances, and regulations will result in new hazards to aerial operations, aircraft, and passengers in the United States.

In addition, AOPA is very concerned with the fact that the SNPRM shows that the FCC has agreed with the proponents of DTV on the need to preempt state and local zoning. The FCC failed to provide independent data, instead relying on the proponents data in reaching such determinations.

The impact the proposal has on FM stations is very serious indeed, showing that the forces driving DTV are not really concerned with public service if FM stations are so greatly impacted.

The proposal, by using DTV implementation, is being used as a vehicle to achieve the goal of preempting state and local zoning not only for DTV, but also for other TV and radio transmission facilities as well.

Finally, we believe the proponents and the FCC have overstepped the authority provided by Congress in the 1996 Telecommunications Act. Further congressional guidance is required.

The 1996 Telecommunications Act and associated 47 U.S.C. 151 do not justify, mandate or even insinuate that state and local zoning is to be ignored. "To make available, so far as possible..." should not include or be attempted at the expense of aviation safety. Again, 47 U.S.C. 151 states "It shall be the policy of the United States to encourage the provision of new technologies and services to the public" certainly does not intend to achieve it at the expense of state and local zoning, especially when it relates to airport and aviation safety. The Telecommunications Act of 1996 relates to DTV implementation, not to all radio and TV towers.

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Airports are endangered by constant encroachment of the approach and departure slopes by towers or other vertical obstructions which are impediments to airport safety clearances. Obstructions can be caused by terrain, buildings, towers, and trees or any object that penetrates what can be defined as navigable airspace. Penetrations to navigable airspace may cause unsafe conditions at an airport and may have to be removed, lowered or reconstructed. In many cases, this cannot be accomplished without local and state intervention and guidance, hence the impact of the proponent's request.

Relocating or constructing towers near airports can have a devastating impact upon the usefulness of an airport. Without due consideration of airport concerns, a tower could be placed in the approach/departure path of a runway, rendering it dangerous, and restricting its usefulness. Reduced capacity will have a detrimental economic effect on federal, state, and local investments in that airport.

By examining the statutes relative to the Federal Aviation Administration (FAA), we can confirm that there is no specific authorization for federal regulations which would limit structure heights, prohibit construction or even require structures to be obstruction marked and lighted. Congress chose to withhold such authority because since it would have created federal zoning regulations and due process actions, including the taking of property and the paying of compensation, **the matter was best left with the state and the local authorities.** This federal void is filled by state and local authorities. State and local governments have the responsibility of enacting and enforcing airport-compatible land use.

The FCC NPRM undermines state and local government ability to protect their airports and citizens. We believe that the safety and welfare of persons above and on the ground in the vicinity of airports should be a matter of coordinated federal, state, and local concern. The federal government established the standards and recommendations, where the state and local governments enforce them.

The fact that historically the FCC has sought to avoid becoming unnecessarily involved in local zoning disputes regarding tower placement is illustrative of not only common sense, but also mirrors previous congressional policy.

According to the supplemental notice, in addition to the large number of towers over 1,000' required by DTV alone, rapid deployment of DTV will have a snowball effect on the proliferation of tall towers because, as mentioned in the SNPRM, the antennas of many FM radio stations will need to be displaced from existing towers to enable them to support new DTV antenna arrays. These FM stations will have to build new towers to enable them to continue to serve the public.

Siting for these new towers will likely use the same requested preemption of this supplemental notice. This fact alone makes it imperative that the Commission uphold and preserve the ability of local authorities to prevent the construction of towers at sites which are a hazard to air traffic. While the accelerated deployment of DTV may be the goal of the Commission, it should not be done at the expense of aviation safety, utility, and capacity by preempting state and local airport zoning.

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The protection of airport approaches from dangerous obstructions is a pressing legal problem. Furthermore, AOPA believes that actual implementation of the requested regulatory changes will undoubtedly and literally create hundreds if not thousands of legal conflicts all across the country. This will not result in faster implementation of DTV in the United States.

If the implementation of DTV is dependent on brushing aside state and local zoning, displacing FM radio stations, impacting thousands of businesses, while adversely impacting the safety of aerial navigation in this country, then it is the responsibility of the Commission to seriously review congressional intentions and its own implementation schedule and procedures. Further congressional guidance is needed on this issue because the administrative process is obviously not capable of understanding all the implications of DTV implementation.

We thank you for the opportunity to voice our concerns.

Sincerely,

A handwritten signature in black ink that reads "Phil Boyer". The signature is written in a cursive, slightly slanted style.

Phil Boyer

National Audubon Society



Minnesota Audubon Council

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April 8, 1998

Mr. William Kennard
Chairman, Federal Communications Commission
1919 M Street N.W., Room 814
Washington, D.C. 20554

Re: FCC Docket No. 97-296 and MM Docket No. 97-182

Dear Chairman Kennard,

On behalf of Minnesota's 13,000 members of the National Audubon Society I am submitting comments on your Commission's proposed rule making in the matter of "Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities."

We have three specific comments to make on your proposed rule:

- 1) We oppose your proposal to exempt "broadcast station transmission facilities" (radio and television towers) from state and local zoning and land use restrictions. We urge you to withdraw the proposed rules immediately.
- 2) We believe this proposal if implemented would have significant cumulative effect on the environment, in particular on birds and wetland habitats, therefore;
- 3) We believe an Environmental Impact Statement (EIS) must be prepared if you persist in proposing this rule making.

Our more specific discussion of the above comments follow.

1) Preemption of local zoning: This is a bad idea unjustified by any national communication need. Local and state zoning and siting requirements are designed by communities to protect natural resources and other community values. It is our experience that communications concerns often preferentially propose siting these towers (and associated roads and structures) in wetlands, to increase transmission efficiencies in some instances, and to reduce land costs in others.

Wetlands provide vital habitat for wildlife, and help to store and purify surface and groundwaters. We are proud that in 1991 Minnesota passed a state law requiring avoidance and minimization of wetland impacts, where possible. This law has proven valuable in persuading developers of communications structures in Minnesota to seek sites with fewer environmental impacts. Your proposed rule would preempt this law, as well as other local ordinances, ensuring that future construction of broadcast towers in Minnesota will cause significantly greater environmental impacts than is currently permitted.

2) Significant Environmental Effects: Communications structures cause environmental effects in at least two ways - through the usurpation of existing habitat, and through the creation of potentially lethal hazards to migrating and local birds,

Minnesota Chapters of National Audubon Society:

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Minnesota has lost approximately half of our original wetlands since the time of European settlement in the middle nineteenth century. Development, roads and agricultural drainage continue to impact our existing wetlands, despite significant restoration programs. Rapidly expanding communications facilities, if sited in wetlands, add to our losses.

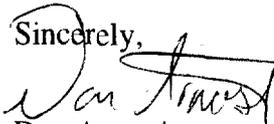
Broadcast towers can reach hundreds and even thousands of feet in the air. The tower and its supporting web of guy wires create collision hazards for local and migrating birds, especially those that move about at night. Many instances of migratory bird flocks running into these hazards have been documented over the past few decades, resulting in millions of bird deaths. Potential siting of broadcast towers in migratory corridors could add to the already significant loss of these birds; many of which are experiencing steep population declines due to a variety of factors.

In Minnesota, Audubon was very concerned about these potential effects in our opposition to a proposal by Minnesota Public Radio several years ago to site three AM transmission towers in a wetland adjacent to the Minnesota River Valley National Wildlife Refuge. Due to these and other concerns, the tower site was moved farther from the refuge and out of the wetland. Removing the opportunity to "fine tune" siting decisions locally like this will certainly result in additional significant environmental effects from these structures.

3) An EIS is required: The National Environmental Policy Act (NEPA) requires the Commission to conduct an EIS for all major federal actions affecting the environment. With the nationwide application of your proposed rule, cumulative effects on wetlands and migratory birds of the sort we have evaluated for Minnesota projects certainly meet this standard. Furthermore, the potential exists for some of these structures to "take" threatened or endangered birds such as the bald eagle through collision, resulting in additional significant effects. Bald eagles are frequent residents of the Minnesota Valley National Wildlife Refuge, near the Minnesota Public Radio proposed tower site.

Thank you for considering our comments. Please keep me informed, on behalf of the Audubon membership in Minnesota, of your further decisions on this matter.

Sincerely,



Don Arnosti
Minnesota Director

cc: Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Susan Ness
✓ Magalie Roman Salas (2 copies)



NATIONAL ASSOCIATION OF STATE AVIATION OFFICIALS

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April 10, 1998

FCC ~~Docket No.~~ 97-296 and MM Docket No. 97-182

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Sir or Madam:

This is NASAO's response to the supplemental proposed rulemaking by the Federal Communications Commission in the matter of *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities*. Our comments on the initial proposed rulemaking on this subject matter have been filed in our previous letters dated October 27, 1997 and November 26, 1997. In addition, this is notification that we concur with FAA Administrator Jane Garvey's letter to the FCC on this docket dated December 5, 1997.

NASAO, the National Association of State Aviation Official, represents the men and women in state government aviation agencies who serve the public interest in all fifty states, Guam and Puerto Rico. State aviation officials are full partners with the federal government in the development and maintenance of the safest and most efficient aviation system in the world. This proposed rule would significantly threaten the states' efforts to preserve the safety of the flying public and, therefore, NASAO is vehemently opposed to its adoption.

The safety of our national aviation system is of paramount concern to the state aviation agencies across the country and adoption of this rule is contrary to the most fundamental principles of aviation safety. This rule proposes to preempt the state and local zoning regulations which limit the erection of additional towers that are hazards to air navigation, further impacting the safety of the flight operations at existing airport facilities. The proposed rule could result in the creation of hazards to aircraft and passengers at airports across the United States, as well as jeopardize safety on the ground. In many cases, state and local zoning laws are the only means to protect the navigable airspace around an airport from the construction of potential hazards. therefore, keeping an unsafe operational condition from occurring. In addition, the construction of these towers will contribute to the degradation of the capacity and accessibility of our nation's system of airports.

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State aviation agencies are heavily involved in implementing the requirements of the National Environmental Policy Act (NEPA) for airport development projects. The adoption of this proposed rule could cause significant impacts across the country in such specific environmental categories as noise and wetlands. The proliferation of tall towers in recent years has already permitted encroachment on the navigable airspace in our nation, thus restricting the approach and departure paths at public airports. The construction of a tall tower in an approach path to an existing airport that causes rerouting of the aircraft traffic pattern could place a significant new noise impact on a currently unaffected local community.

Overall, the states invest about \$450 million annually in planning, infrastructure development, maintenance, and navigational aids at 6,000 airports across the country. The purpose of the existing zoning regulations is to preserve the safe, efficient use of the states' aviation system and to protect the substantial investment of federal, state, and local public funds. Today, over 30 states across the country have tall structures zoning in place. The lack of adequate state and local zoning places an existing airport in danger of encroachment by tower development and puts unnecessary constraints on the expansion of airports to meet the future aviation user needs.

States, FAA, and airports have worked long and hard to put tall structures and zoning regulations in place to protect airports and public safety. State aviation agencies are also committed to assuring that all environmental concerns under NEPA are addressed. Preemption of state regulations by the FCC, with the approval of this proposed rule, would be devastating. It is unacceptable for the FCC to propose preemption of these zoning rules simply to meet the installation schedule that has been placed on the DTV industry. The state aviation agencies do not support the concept of "preemption of the rules" but support the need for continued cooperation between federal, state, and local government agencies to get this task accomplished.

Thank you for the opportunity to comment on this proposed supplemental rulemaking and please call me or NASAO Vice President Lori Lehnerd on (301) 588-0587 if you have any questions about NASAO's concerns.

Sincerely,


Henry M. Ogrodzinski
President and CEO

cc: Senator Patrick Leahy
Rep. Bernard Sanders
DOT Secretary Slater
FAA Administrator Garvey