



Federal Communications Commission  
Washington, D.C. 20554  
MAY 27 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable Richard Hastings  
U.S. House of Representatives  
1323 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Hastings:

Thank you for your letter dated January 9, 1998, on behalf of your constituents, Mayor Edna Mauch, Wapato, Washington; Mayor Ron Sloan, Chelan, Washington; and John Townsley, Okanogan, Washington, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their communities. Your constituents' letters refer to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of 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 comment 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, your constituents' letters, and this response will be placed in the record of all three proceedings and will be given full consideration.

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually

The Honorable Richard Hastings

2.

acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

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,



*for* Steven E. Weingarten  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

cc: CWD  
Dockets (2)  
John Conwell  
j:\congress\9800922



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Washington, D.C. 20554  
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Sincerely,



for Steven E. Weingarten  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

cc: CWD  
Dockets (2)  
John Conwell  
j:\congress\9800922

DOC HASTINGS  
4TH DISTRICT, WASHINGTON  
COMMITTEE ON RULES  
SUBCOMMITTEE ON  
LEGISLATIVE AND BUDGET PROCESS



1323 LONGWORTH BUILDING  
WASHINGTON, DC 20515  
(202) 225-5818

2715 ST. ANDREWS LOOP  
SUITE D  
PASCO, WA 99301  
(509) 543-9396

302 E. CHESTNUT  
YAKIMA, WA 98901

WTB  
97-182  
9/20

**Congress of the United States**  
**House of Representatives**

January 9, 1998

Ms. Diane Atkinson  
Office of Congressional and Public Affairs  
Federal Communications Commission  
1919 M Street NW  
Washington, D.C. 20554

Dear Diane:

I recently received numerous inquiries from constituents from the 4th District of Washington regarding the Federal Communications Commission's (FCC) proposed ruling on federal preemption of local zoning authority. I would appreciate your assistance in addressing their concerns. I have enclosed examples of their inquiries for your review.

I look forward to your prompt response to this request. If you have any questions regarding this matter, please don't hesitate to contact Krista Winter of my Washington, D.C. staff.

Sincerely,



Doc Hastings  
Member of Congress

DH:kw

## City of Wapato, Washington

(509) 877-2334

TWO HUNDRED FIVE EAST THIRD STREET  
WAPATO, WASHINGTON 99051

FAX (509) 877-3979

Representative Richard "Doc" Hastings  
730 HSOB  
Washington, DC 20515

NOV 03 1997

Dear Representative Hastings:

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 is "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.

**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 preventing the FCC from becoming a Federal Zoning Commission.

application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities

**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 that 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,



Mayor Edna Mauch



140237

City Hall: P.O. Box 1669  
317 E. Johnson Ave.  
Chelan, Washington 98816  
(509) 682-4037  
Fax (509) 682-3173

NOV 04 1997

October 28, 1997

The Honorable "Doc" Hastings  
United States Representative  
1229 Longworth House Office Building  
Washington, DC 20515

Re: FCC - Preemption of Local Zoning

Dear Mr. Hastings:

It has come to our attention that the Federal Communications Commission has proposed a rule that would preempt local zoning of radio and television towers. In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. Despite this instruction from Congress, we understand that the FCC is now attempting to preempt that local zoning authority.

We would appreciate your assistance in reviewing this issue and helping us to retain authority over local zoning matters.

Ron Sloan  
Mayor

A handwritten signature in cursive script that reads "Ron Sloan".

c: City Council  
City Attorney

140103

OCT 31 1997

John Townsley  
P. O. Box 586

Okanogan, WA 98840

I hope you will oppose efforts by the Federal Communications Commission (FCC) to usurp authority to regulate the construction of towers that affect aviation safety from the Federal Aviation Administration (FAA). I view this proposal with alarm and great concern

I frequently fly for business purposes, and for my personal enjoyment. On some flights when the weather is inclement I fly within 1200 to 2000 feet of the ground to remain below cloud cover or to fly through mountain passes. I may fly at lower elevations on other occasions when performing specialized operations such as aerial photography.

At the present time the FAA regulates towers and other man made structures that pose a hazard to aviation safety. Particularly with TV, radio, and now Cellular Telephone technologies which require tall towers, often with long guy wires, it is critical that the FAA retain responsibility for approval. These towers may be 2,000 feet tall, or even taller. Guy wires often extend as far as 1/4 mile from the tower, and are invisible to aircraft. Wire strikes often cause fatal accidents, particularly during night or reduced visibility situations. It is inconsistent for Congress to insist on greatly improved aviation safety and at the same time permit the FCC the authority to approve significant incursions into navigable airspace. During the past several years the number of aviation related fatalities has declined significantly. Granting the FCC blanket authority to approve towers likely reverse this hard won trend.

Many local communities, such as the City of Okanogan where I reside, have followed the Federal Aviation Administration's guidance and created overlay zoning districts around their airports. The purpose of airport overlay zoning districts is to protect the airspace around the airport to assure aircraft can safely land and take off. Local zoning of this nature is critical to aviation safety. It is also vitally important to assure the safety of persons on the ground. Aircraft striking wires and falling to the ground pose a significant safety hazard to persons living, working, or merely traveling below the towers. Local zoning protects residents from unnecessary exposure to these hazards. Allowing the FCC to usurp local zoning authority will prevent communities, such as the City of Okanogan, from protecting its citizens from known hazards.

Please oppose the FCC's effort to regulate air space. Leave that authority where it belongs, with the FAA. Preserve the ability of local communities to work within FAA guidelines to assure safety at municipal airports by creating appropriate local zoning.

Sincerely,