



Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Michael R. O'Brien, City Attorney
855 Sibley Memorial Highway
Lilydale, MN 55118

Dear Mr. O'Brien:

Thank you for your letter dated December 24, 1997, which was forwarded to us from the office of Senator Paul Wellstone, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter refers to 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.

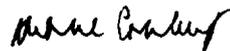
Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all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

Copy to: The Honorable Paul Wellstone

cc: CWD

Dockets (2)

John Conwell

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PAUL D. WELLSTONE
MINNESOTA

MINNESOTA TOLL FREE NUMBER:
1-800-642-6041

United States Senate

WASHINGTON, DC 20510-2303

INTERGOVERNMENTAL AFFAIRS

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LABOR AND HUMAN RESOURCES
SMALL BUSINESS
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VETERANS' AFFAIRS
FOREIGN RELATIONS

January 28, 1998

WDB
97-182
1531

Dan Phythyon
Director, Office of Legislative and
Intergovernmental Affairs
Federal Communications Commission
Rm 808
1919 M Street, N.W.
Washington, D.C. 20554

Dear Director Phythyon:

The attached communication is for your consideration and whatever action, if any, you might deem appropriate. I would appreciate it if you would respond to Michael O'Brien directly regarding this matter. I would also appreciate it if you could send a copy of your response to me.

Thank you very much for your time.

Sincerely,

Paul

Paul David Wellstone
United States Senator

PDW:mw

Enclosure

HART SENATE OFFICE BUILDING
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01/27/98 TUE 17:46 FAX

WELLSTONE DC

002

7518323

City Of Lilydale On The Mississippi

Handwritten initials

STAMP: 570023 11:31 53

December 24, 1997

The Honorable Rod Grams
2013 Second Avenue North
Anoka, MN 55303

The Honorable Paul Wellstone
Room 100 North
2550 University Avenue West
St. Paul, MN 55114

The Honorable Bruce F. Vento
Galtier Plaza, Box 100
175 E. Fifth Street, Room 727
St. Paul, MN 55101

Dear Senators Grams and Wellstone and Representative Vento:

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 ~~preserved~~ ~~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 issues, 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

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The Honorable Rod Grams
The Honorable Paul Wellstone
The Honorable Bruce R. Vento

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December 24, 1997

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.

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. 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 principals 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

01/27/88 TUE 17:47 FAX

The Honorable Rod Grams
The Honorable Paul Wellstone
The Honorable Bruce F. Vento
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December 24, 1997

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.

CITY OF LILYDALE, MINNESOTA

Very truly yours,



Michael R. O'Brien
City Attorney
City of Lilydale, Minnesota

cc: The Honorable Edward Mullarky
Bernard Weitzman, Clerk-Treasurer

PAUL D. WELLSTONE
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February 18, 1998

Dan Phythyon
Director, Office of Legislative and
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Federal Communications Commission
Rm 808
1919 M Street, N.W.
Washington, D.C. 20554

WTB
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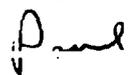
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