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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
Washington, D.C. 20554

MAY 28 1998

EX PARTE OR LATE FILED

Philip Carubia
P.O. Box 82
Trumansburg, New York 14886

Dear Mr. Carubia:

Thank you for your letter, which was forwarded to us from the office of Senator Daniel Patrick Moynihan, 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 raises issues being examined 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, 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,

Ardie Cohen

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

Copy to: The Honorable Daniel Patrick Moynihan

cc: CWD
Dockets (2)
John Conwell
j:\congress\9800919

DANIEL P. MOYNIHAN
NEW YORK

United States Senate
WASHINGTON, DC 20510-3201

WTB
97-182
9291

January 15, 1998

Congressional Liaison
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Sir or Madam:

I am referring the enclosed inquiries from some of my constituents regarding local zoning of cellular, radio and TV towers to your office.

I thank you for your attention to this matter.

My constituents would appreciate your careful consideration of these remarks, and your thoughts on what remedies there are for this situation. Please respond directly to them and send a copy to me.

I thank you for your attention to this matter.

Sincerely,

Daniel Patrick Moynihan

Enclosures

Printed on recycled paper

Marvin Stamm
130 Titicus Road
North Salem, N.Y.10560
Nov. 7, 1997

Sen. Daniel Moynihan
464 Russell Senate Office Bldg.
Washinton, D.C. 20510

Dear Senator Moynihan,

Recently attending a Telecommunication Tower Public Hearing in our town of North Salem, N.Y. I was led to believe that local zoning measures were given to us by the 1996 Federal Telecommunications Act, thereby providing local zoning the opportunity to consider aesthetic or environmental concerns.

Our Town Supervisor notified us that the Federal Communications Commission is attempting to pre-empt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. I think our town and all local municipalities should have a say in the sites, etc. chosen for these aforementioned towers for obvious reasons.

Therefore, I'm asking you to please contact the FCC to tell it to stop these efforts which violate the intent of Congress and the Constitution.

Thank you.

Sincerely,

Mr. Marvin Stamm

12/10/97

TOWN OF MARCELLUS

24 East Main Street
Marcellus, New York 13108

315/673-3209

December 10, 1997

Senator Daniel Moynihan
189 Main Street
Oneonta, NY 13820

Dear Senator Moynihan.

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

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 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, 202-626-3104; 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

Senator Conrad Burns
187 SDOB
Washington, DC 20510-2603

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

Senator Slade Gorton
730 SHOB
Washington, DC 20510-4701

Senator Dianne Feinstein
331 SHOB
Washington, DC 20510-0504

Representative Tom Bliley
2409 RHOB
Washington, DC 20515-4607

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

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

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

Representative Bob Goodlatte
123 CHOB
Washington, DC 20515-4606

Representative James Moran
1214 LHOB
Washington, DC 20515-4608

Representative Bart Stupak
1410 LHOB
Washington, DC 20515-2201

Representative Joe Barton
2264 RHOB
Washington, DC 20515-4306

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

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

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

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

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

Nancy Stamm
130 Titicus Road
North Salem, N.Y.
10560

November 7, 1997

Senator Daniel P. Moynihan
464 Russell Senate Office Bldg
Washington, D.C. 20510

Dear Senator Moynihan,

Having attended a Telecommunication Tower Public Hearing recently in our town of North Salem, N.Y. I was led to believe that local zoning measures were given to us by the 1996 Federal Telecommunications Act, thereby providing local zoning the opportunity to consider aesthetic or environmental concerns.

Our Town Supervisor notified us that the Federal Communications Commission is attempting to pre-empt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. I think our town and all local municipalities should have a say in the sites, etc. chosen for these aforementioned towers for obvious reasons.

Therefore, I'm asking you to please contact the FCC to tell it to stop these efforts which violate the intent of Congress and the Constitution.

Thank you.

Sincerely,

Nancy Stamm

Mrs. Nancy Stamm

7904 County Road 131
Ovid, NY 14521-9515
December 20, 1997

Senator Daniel Patrick Moynihan
464 Russell Senate Office Building
Washington, D.C. 20510-3201

Dear Senator Moynihan:

We would like you to support Senate Bill 1350, introduced by Senator Leahy (D), and endorsed by the Senator Jeffords (R) both of Vermont.

We share Senator Leahy's strong objections to proposed FCC rules that essentially rob states and communities of the authority to decide where unsightly telecommunications towers should be built.

Our son, who is a broadcast engineer and probably the most knowledgable technician on radio frequencies in the state of Vermont, is greatly concerned that the Telecommunications Act of 1996 prohibits localities from having stricter health and safety standards regarding the environmental effects of radio frequency emissions.

We are also supporting the efforts of residents of nearby Town of Ulysses (Trumansburg and Jacksonville) who have been fighting the attempt of Frontier Cellular to erect unwanted and unnecessary towers.

We are afraid that if Senate Bill 1350 and HR 3016 are not passed, with FCC rules standing, states and localities will be deprived of their ability to protect their land from unsightly and unnecessary towers.

Sincerely yours,

Richmond N. Hutchins

(The Rev.) Richmond N. Hutchins

Dorothy S. Hutchins

Mrs. Dorothy S. Hutchins

Senator Daniel Patrick Moynihan
Office of Senator Moynihan
United States Senate
Washington DC 20510-3201

Dear Senator Moynihan:

I would like you to support Senate Bill 1350, introduced by Senator Leahy (D) and endorsed by Senator Jeffords (R) both of Vermont.

Our community is going through a horrific ordeal caused in part by the 1996 Telecommunications Act and its' empowerment of Cellular Communications companies in seeking to construct towers with out regard for the aesthetic values of that community.

Local control over siting of facilities needs to be strengthen. Local boards need to be able to use their best judgment in controlling sensible development in their communities and not be coerced by threats of astronomical lawsuits that they have insufficient resources to deal with.

Sincerely,

Philip Carubia

P. Carubia
Po. box 82
Tuxmansburg NY
14886

Senator Daniel Patrick Moynihan
Office of Senator Moynihan
United States Senate
Washington DC 20510-3201

Dear Senator Moynihan:

I would like you to support Senate Bill 1350, introduced by Senator Leahy (D) and endorsed by Senator Jeffords (R) both of Vermont.

Our community is going through a horrific ordeal caused in part by the 1996 Telecommunications Act and its' empowerment of Cellular Communications companies in seeking to construct towers with out regard for the aesthetic values of that community.

Local control over siting of facilities needs to be strengthen. Local boards need to be able to use their best judgment in controlling sensible development in their communities and not be coerced by threats of astronomical lawsuits that they have insufficient resources to deal with.

Sincerely, Susan Newman
3138 Swamp College Rd.
Trumansburg, N.Y. 14886

Woodlawn Beach Taxpayers
Association, Inc.
3654 Fourth Street
Blasdell, New York 14219
824-6057

97

December 3, 1997

Senator Daniel P. Moynihan
28 Church Street
Suite 203 Guaranty Bldg.
Buffalo, New York 14202

Dear Senator Moynihan:

Our Association would like to go on record in support the Town of Hamburg's decision to oppose the FCC's prepared Federal Rule titled, "Preemption of State and Local Zoning and Land Use Restrictions on the Citing, Placement and Construction of Broadcast Station Transmission Facilities, Docket No. 97-182.

Your immediate support is appreciated. Thank you for your cooperation.

Sincerely,

Woodlawn Beach Taxpayers Association, Inc.

Marianne Tomani

Marianne Tomani
Corresponding Secretary

Southwest Hamburg Taxpayers Association
P.O. BOX 762 HAMBURG, NEW YORK 14075

DEC -5 PM 12:23

November 28, 1997

[illegible] to show and seek support for the Town of [illegible]

Sen. Daniel P. Moynihan
28 Church St.
Suite 203 Guaranty Bldg.
Buffalo, NY 14202

Senator Moynihan:

The SouthWest Hamburg Taxpayers Assoc., Inc. would like to go on record to show and seek support for the Town of Hamburg's decision to oppose the FCC's prepared Federal Rule titled, "Preemption of State and Local Zoning and Land Use Restrictions on the Citing, Placement and Construction of Broadcast Station Transmission Facilities, (Docket No. 97-182).

Your immediate support would be appreciated. Thank you for your consideration.

Sincerely,

Faye M. Staley

Faye M. Staley, Pres.
SouthWest Hamburg Taxpayers Assoc., Inc.
649-0894