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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Bob Graham
United States Senator
P.O. Box 3050
Tallahassee, FL 32315

DOCKET FILE COPY ORIGINAL

97-192

Dear Senator Graham:

Thank you for your letter of January 22, 1998 on behalf of your constituent, Barry Helfanbein. Mr. Helfanbein raises several issues in regard to the erection of a cellular tower by BellSouth Mobility in the vicinity of SW 18th Street and Camino Del Mar in Boca Del Mar and has asked for your assistance on this matter.

Section 332(c)(7) of the Communications Act governs the rights of local governments with respect to the placement, construction, and modification of facilities used to provide cellular, broadband PCS, and other personal wireless services. Section 332(c)(7) preserves the authority of State and local governments in this area, provided they comply with some basic limitations set forth in the statute. Specifically, a State or local government may not discriminate among providers of functionally equivalent personal wireless services, and it may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services. A State or local government also may not regulate the placement, construction, or modification of these facilities on the basis of the environmental effects of radiofrequency (RF) emissions, to the extent the facilities comply with the Commission's regulations concerning such emissions. In addition, a State or local government must act on a request to place, construct, or modify personal wireless service facilities within a reasonable time, and any denial of a request must be made in writing and supported by substantial evidence contained in a written record.

The majority of Mr. Helfanbein's concerns appear to lie with the method in which his local government handled the siting process. Mr. Helfanbein alleges that the tower was sited through a combination of unfair lobbying practices and abuse of local administrative procedures. These issues lie outside of the Commission's jurisdiction, and Mr. Helfanbein would be better served by having a local government official or attorney advise him on these matters.

Mr. Helfanbein also alleges that BellSouth Mobility provided false documentation to the county to receive permission to erect the tower and to the FCC in order to obtain FCC transmission permits and licensing for the Palm Beach/Boca Raton area. Willful misstatements made on a licensing application are punishable by fine and/or imprisonment (see 18 U.S.C. § 1001), but Mr. Helfanbein does not provide any details beyond the allegation

of misrepresentation. We cannot make a determination based on Mr. Helfanbein's letter whether any misrepresentation has occurred, or determine by this information whether we or another agency should follow up these serious allegations.

Mr. Helfanbein raises a concern about the aesthetic impact of the tower in his community, and about its location near a shed containing hazardous materials. We recognize, as did Congress in enacting section 332(c)(7), that the local zoning and site approval process plays a critical role in ensuring that the development of personal wireless systems occurs in a manner that is consistent with local land use priorities. Concerns about the aesthetic implications and physical safety of towers and other facilities have been preserved for consideration by State and local authorities, provided that they act in a manner consistent with the conditions set out in section 332(c)(7). In some instances, however, it may not be feasible for carriers to provide service without placing facilities in residential areas.

Mr. Helfanbein also expresses concern about the level of monitoring at this facility. In ET Docket No. 93-62, the Commission issued guidelines governing the maximum amount of RF emissions to which a licensee's facilities may cause workers and the general public to be exposed. Under the Commission's rules, some facilities, including many personal wireless service facilities, are "categorically excluded" from routine evaluation for compliance because, due to their low power or their height above the ground, they are so unlikely to cause people to be exposed to emissions exceeding the guidelines that compliance ordinarily can be assured. If the Commission receives specific information suggesting that a particular facility, notwithstanding its categorical exclusion, may expose people to emissions that exceed the guidelines, it may require the operator to demonstrate compliance.

Mr. Helfanbein specifically would like the local government to increase the monitoring of the RF emissions from this facility. In WT Docket No. 97-192, the Commission sought comment regarding the extent to which, consistent with section 332(c)(7) and the Commission's rules, a local government may require a carrier to demonstrate that a facility is in compliance with the appropriate RF guidelines. Because this proceeding is still pending, we cannot comment on the merits of the relationship between section 332(c)(7) and the categorical exclusion of certain transmission facilities at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate, and is actively pursuing discussions between representatives of carriers and local governments that we hope will lead to a sensible resolution of this issue.

The Honorable Bob Graham

3.

To further assist you and Mr. Helfanbein in addressing facilities siting questions, we have enclosed two fact sheets prepared by the Commission's Wireless Facilities Siting Task Force. Additional information on facilities siting issues is available on the Commission's web site at <http://www.fcc.gov/wtb/siting/>. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,



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

Enclosures

cc: CWD
Dockets
j:\congress\9801047

**Federal Communications Commission
COMMERCIAL WIRELESS DIVISION
POLICY AND RULES BRANCH**

DATE	May 26, 1998
TYPE OF ITEM	Congressional Inquiry
SUBJECT	Section 332(c)(7)
DRAFT TO BRANCH BY	
DRAFT TO DIVISION BY	

SUMMARY OF ITEM
General information on section 332(c)(7) for Sen. Graham's home office to answer constituent question regarding siting of cellular tower.

CLEARANCES:

Initiator(s)	Initial/Date	Phone No(s).
Roberto R. Mussenden	RM	418-7180

Reviewer(s)	Initial/Date	Phone No(s).
Tom Conover	TC 5/26	418-7189

FINAL APPROVAL:

5/26/98

Approved
 This is old, but
 never came thru
 me - there are
 changes —
 F

Bob Graham
Florida



WTP
9/7/82
1047

Federal Communications Commission

United States Senate

Washington, D.C.

Date LIZZ 98

Ms. Judith Harris, Director
Federal Communications Commission
Office of Legislative Affairs
1919 M Street, Room 808
Washington, DC 20554

Enclosed is a letter from one of my constituents who has concerns which come under the jurisdiction of your agency.

I would appreciate your reviewing the information that has been presented and providing me with a written response. Please send your reply to the attention of:

Ms. Marcia K. Rivenbark
Office of Senator Bob Graham
P.O. Box 3050
Tallahassee, FL 32315

Phone 850-422-6100
Fax 850-422-0359

Your cooperation and assistance are appreciated.

With kind regards,

Sincerely,

United States Senator

Constituent's Name: BARRY HELFANBEIN

23200 Camino Del Mar - Apt 307

Boca Raton FL 33433

YOUR COMMUNICATION WITH SENATOR GRAHAM WILL BE HANDLED BY HIS STAFF. PLEASE USE CAREFUL LANGUAGE AND BE CLEAR.

January 14, 1998

Dear Senator Graham,

I was one of those who met with you at the West Palm JCC regarding the Cell Tower controversy in PBC. While your support of Senator Leahy's Senate Bill 1350 is critical and your communication with Candy & Gary Brown (FACTS) keeps the safety issue alive, I need to ask you to address this monstrous 110' foot cell tower built within 25 feet of residential units and hazardous materials (in the maintenance shed of the Camino Del Mar County Club - tractors, fertilizers, gasoline, fuel, insecticides, etc.,) in Boca del Mar, Commissioner Mary McCarty's District. She has completely cut me off from all avenues in pursuing this issue regarding Bell South Mobility lying in zoning documents to get this tower up through administrative amendment. In three years, I've written over 140 letters on this tower, spoken before groups, and yet, Commissioner McCarty refuses write to me on this issue.

The facts are that Bell South Mobility (Ellen Smith & Hugo Unruh) lied in their applications to the county, stating that they wanted to relocate an existing 100 foot communications tower by 18 feet and add cellular capabilities. They claimed that the tower also supported television uses.

Adelphia Cable wrote to me that the former tower, a 60 foot ROHN 25G tower had nothing to do with television uses since all the cable is underground in Boca Del Mar. The tower that was replaced was a walkie-talkie tower for the grounds people for the Camino Del Mar County Club (owned by an unreachable Japanese investment group).

I met with Hugo Unruh in Mary's office and again with him and Bell South's attorney Helfman at the Bell south offices where he told me the tower would not be moved because it would set a precedent and threaten future towers and land was difficult to find with many town enacting ordinances against them.

During a 1995 neighborhood meeting attended by McCarty at my building (La Residence), she offered us either a golf cart or \$8,000 for landscaping improvements. I was shocked but never said anything.

The Palm Beach Post reported last month that Mary had recently taken her family and joined Hugo Unruh - a lobbyist for Palm Beach in Tallahassee) on a two week vacation to the Greek Islands. They further reported that when she needed a place for her mother's birthday party, she could only find Hugo's home as the best location.

As the cell tower ordinance battle came to a head last week between highly paid industry lawyers and unpaid concerned citizens, many of the issues were changed between the first and second reading of the ordinance, the worst and most glaring, that the commission struck down the prohibition of cell towers on all school....allowing them to be placed there.

Whether health or safety, these towers should not be on schools.

Monitoring: the industry agreed to 20% random monitoring over 5 years while the citizens wanted 100% monitoring. Car emissions are monitored each year, x-ray machines, swimming pools, elevators, etc., but I assure you that monitoring is most needed several years down the road when parts are likely to be in need of replacement and the industry fought against this and won.

To summarize, Zoning Director Martin Hodgkins denied - in Jan 1995 - Ellen Smith's request to build a tower. Three months later, Ellen resubmitted her request where Roxanne Manning, acting on her own, approved an "administrative amendment," thereby bypassing public hearings, and the tower was quickly erected in this pristine neighborhood. I believe that Bell South Mobility (Hugo Unruh & Ellen Smith - authorized to work for FCC zoning) ~~provided~~ provided document to county zoning to get this tower up and, therefore, lied to the FCC in obtaining proper FCC transmission permits and licenses for the Palm Beach/Boca area. Lying to obtain FCC / FAA licensing should be a federal crime, and as a concerned citizen who has fought this issue for 3 years, I deserve the right to present my side of the issue.

The former walkie-talkie tower never protruded above the 65' Australian pines; I invite you to drive by and get a look at this monstrosity, ~~rising at least 60 feet above the top of the trees....~~ 25 feet from residential units, 20 feet from the golf course maintenance shed that houses hazardous materials, tractors, fertilizers, chemicals, etc., for the maintenance of the golf course.

Commissioner McCarty still refuses to write me any letter; maybe her reported vacation to the Greek Islands with - who else - Mr. Unruh & families, and her close association with him through the years. commission Chair Aaronson has not addressed this issue at all.

Since the Telecom Act doesn't permit health issues, I'll only say that in my building, we've had a high number of cancers only since the tower went up, but owners are afraid that publicity will bring down property values more than they already have with the tower so close.

To view the tower: from Miami: 95 north to Hillsboro West to Military; take a right (north) to the next light (SW 18th ST) and take a left. Take your first right on to Camino Del Mar and you will see the tower in front of you. Please get out and walk the area. My building is on the corner of SW 18th St & Camino Del Mar.

Please note that OSHA REQUIRES all towers to be marked with RF signs and after the ordinance was passed, we asked county attorney Banks about this; he said nothing. He would only address the industry. AND the next day (last Friday), Zoning Director Martin Hodgkins was guest speaker at a \$50 per person FAU seminar on Wireless Siting.

Please Senator Graham, I'm just an honest kid from New England. This tower should not be in this neighborhood. Bell South lied in its applications and Commissioner McCarty is protecting Hugo and Bell South from county authorities and any investigation. This specific tower needs to be investigated and I have plenty of documents and I'd ask the opportunity to work with anyone on your staff to review the facts and proceed to bring Bell South into conformance with the law.

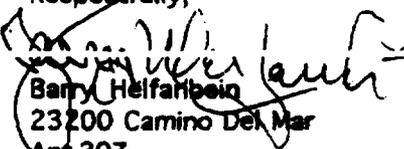
As a concerned citizen spending three years on this issue, I spoke at the final reading of the ordinance and Mary McCarty virtually blasted me for my being responsible for the tower being there. She said "that tower isn't moving one inch." She told me she hadn't written because she "took the folder home but misplaced in in her garage."

Every story has two sides, but I have clear and concise evidence (photos) that the former tower was nothing more than a 60 ft tower with an antenna for walkie-talkie usage.

This tower has ruined our neighborhood and Paul McDermott, president of the Boca Del Mar Improvement Association has done nothing to challenge Bell south. No one can reach the Japanese owners of the Camino Del Mar Country Club and Ellen Smith, an experience and slick Hugo Unruh and Commissioner McCarty are no match for me. CAN YOU HELP?

Thank you.

Respectfully,


Barry Helfand

23200 Camino Del Mar
Apt 307

Boca Raton FL 33433

Tel / Fax: 561-362-9729

E-Mail: Quahoag@aol.com

I'd be happy to meet you here or drive to your Miami office for a meeting on this specific tower, the cell tower issue in general and possible options to bring Bell South into conformance.

Thank you for your time. I look forward to hearing from you.

Boca Raton
JANUARY 1993

On News

3 SECTIONS / 60 PAGES / 25 CENTS

County.
That comment infuriated Commission Chairman Burt Aaronson, who retorted, "If any will, I will defend this commission, the same commission who put forth the moratorium on cellular towers. Anyone who says we aren't concerned with the residents of the Palm Beach County doesn't know what the hell they're talking about," he said.

Still, neither side could argue that the ordinance, which was unanimously approved by the County Commission, is not the ordinance that was drafted last month.

What the ordinance mandates

■ Monopoles, lattice and guy towers must be set back from residential property structures 600 percent of the tower's height.

■ The setback for stealth is 300 percent the tower's height; and 200 percent for camouflage.

■ Camouflage towers in public parks five acres or greater shall be set back from property structures 125 percent of the tower's height, with a distance of at least 75 percent of tower height from property lines. Towers with one provider can be no higher than 100 feet, 125 feet for two and 150 feet for three.

■ Wireless providers can appeal to the County Commission for a waiver if they can prove that they need a tower that does not meet the ordinance requirements.

■ For all applicants who co-locate, the height of monopoles may be increased by 20 percent without regard to required separation or setback requirements.

■ Cellular towers are permitted on public school property.

■ A state-certified engineer will monitor 20 percent of all cellular towers to measure emissions for the first year. If 99 percent of those towers pass the tests, the engineer will only monitor 10 percent of the towers in the second year. If 99 percent of those towers pass the tests, the County Commission will re-evaluate whether towers should still be monitored. □

REGULATIONS

County still in tower turmoil

Commissioners do battle with Boca Raton area residents

By MARGA JAQUAYS
STAFF WRITER

Just last week, the Palm Beach County Board of Commissioners and members from Families for Appropriate Cellular Tower Sitings (FACTS) applauded one another for being examples of how government laws should be drafted.

At Thursday's County Commission meeting, the tone turned angry as an ordinance that governs cellular towers was passed on second reading.

"The rights of the residents of this county have been completely disregarded," said Gary Brown spokesman for FACTS, a Boca Raton-based grass roots political action group. "I am completely disgusted with an ordinance of this type that take into account no consideration whatsoever of the health and welfare of the citizenry of Palm Beach County."

Disfranchised Commission

COUNTY COMMISSION

Cell tower ordinance passes unanimously, with changes

FACTS not happy with law modifications that keep towers at schools

By **Manna Jacques**
STAFF WRITER

After nearly a year of drafting and redrafting, a cellular tower ordinance was passed unanimously Thursday night by the Palm Beach County Board of Commissioners.

But the final version was not approved by all parties.

Initially, all cellular towers were proposed to have a setback of 600 percent of the tower height from a property structure. That was later negotiated by wireless providers to include only monopole, lattice and guy towers.

Although FACTS would have preferred the ordinance to remain at 600 percent, members believed they had won a victory when the commission voted in December to have stealth towers and camouflage towers to have a setback of 300 percent of the tower's height. Stealth towers are designed as clocks and camouflage towers have antennas added to an existing pole such as a light pole at a park.

However, that victory turned into defeat when the County Commission voted Thursday to lower the setback for camouflage towers to 200 percent of the tower height from a property structure.

And the minimum separation between a residential structure and camouflage towers located in public parks that are five acres or greater is 125 percent of the tower height, with a distance of 75 percent of tower height from the property line.

The County Commissioners

'I have worked tirelessly for an entire year to only get this end result. I am disappointed. This commission has turned their backs on the children by allowing a microwave tower on top of their heads.'

**- Shoshana Masory,
Resident**

explained that the change was needed so wireless providers would have an incentive to build their towers in public parks, as opposed to on residential streets.

Co-location for providers

In addition, the commission gave the providers greater latitude in the height of the camouflage tower in order to make way for co-location - 100 feet for one provider, 125 feet for two and 150 for three.

"At the Board of County Commission workshop, we first discussed six times the tower height setbacks," Candace Brown, a suburban Boca Raton resident, said at the meeting. "Then our ordinance went down

to three times to two times tower height. Now a camouflage tower can be built 50 feet from a property line without a public hearing. And your explanation for this is to provide incentive for the industry. How about the homeowner's peace of mind?"

FACTS members were also upset that the County Commission reversed their decision to ban cellular towers from public school grounds, then later removed the stipulation that cellular towers were not permitted at schools that were used as hurricane shelters.

Type of schools

"We cannot put a ban on public schools without treating private schools with the same ban," Commission Chairman Burt Aaronson said. "And I have already had calls from churches asking me not to take away their money. I agree. I don't believe government should restrict churches or synagogues, which both have schools on their property."

County Attorney Bob Banks also reminded the commission that federal law mandates that local government can only base an cellular tower ordinance on aesthetic issues and not health risks, such as radiation.

"I have worked tirelessly for an entire year to only get this end result. I am disappointed," said Shoshana Masory, of suburban Boca Raton. "This commission has turned their backs on the children by allowing a microwave tower on top of their heads." □

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MANY CHANGES BUT WOULD BE A 2ND READING PRESSURE (NON STOP) FROM CELL SECTN / INDUSTRY LOBBYISTS

OPINION PAGE

OUR VIEWS

County's tower vote has something for all

EVERY ONE DOESN'T GET WHAT HE WANTS. EVERYONE GETS SOMETHING. ABSOLUTISM IS ANATHEMA

The issue:

Cell phone compromise.

We suggest:

Not perfect, but workable.

Edmund Burke, the British statesman, said it best. "All government ... is founded on compromise and barter."

A compromise is an agreement that makes no party to it entirely happy. Every side gives a little and, in return, receives a little. Absolutism is anathema

to compromise.

So it was that the Palm Beach County Commission has rendered its decision on the construction of the controversial cellular phone towers in our county.

The ruling is classic compromise. Nobody is very happy about it - not the cellular phone industry, not the citizens who have actively and loudly opposed any concessions to the tower builders.

But credit commissioners with taking the time to hear the various questions, charges, explanations and technical jabber that have become part of the cell tower symphony. And credit commissioners for producing a workable set of limitations on tower construction that served as a template for other governmental entities puzzling over what to do with these ubiquitous structures that typify our insatiable demand for newer and better ways to communicate.



YOU HAVE THE POWER

County Commission Chairman Burt Aaronson listened to pleas from residents and input from cell tower industry representatives, then led the debate toward Thursday's compromise.

WRITE/CALL

Burt Aaronson
County Commission
301 N. Olive Ave.
12th Floor
West Palm Beach, FL 33401

(301) 355-2200
(561) 355-9990 - fax

about the aesthetics of the high-rising monstrosities but also "health hazards," are unhappy

no action was taken to ban the towers from school grounds. That option, however, was not on the table for commissioners to consider; the federal Telecommunications Act of 1996 prohibits local governments from putting restrictions on such towers on the basis of health fears. And besides, there is no scientific evidence to support claims by critics that the cell phone towers are hazardous to the health of children - or anyone else.

Reaction to the commission action from members of the grassroots organization Families for Appropriate Cellular Tower Sitings (FACTS) ranged from dismay to outrage. While the commitment of FACTS members to the pursuit of the issue no doubt persuaded commissioners to fully explore that issue, those citizens should accept the vote. At the same time, however, they would do themselves, and the community at large, a favor by continuing to observe future developments.

The next issue to be resolved in the cell tower wars pits the City of Boca Raton against the Palm Beach County school district. The City claims the school system illegally permits construction of towers on public school grounds within city limits. The schools administration claims the district is immune from local zoning laws and was, therefore, not in violation. A court battle awaits ... costing taxpayers, again, for a legal action that should have been settled through negotiations.

Cellular phone towers are just another mark of the development of the science of communications. When those ugly telephone poles, and their precursors, the telegraph poles, first sprouted from the urban landscape no doubt angry citizens yelled about them.

Was the ordinance unanimously passed by the County Commission ideal? Of course not. But it was a good and satisfactory compromise. □

Boca Raton News

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IT OCCURRED TO US

Give drivers tickets for talking

Anyone who has driven anyplace lately knows that drivers are increasingly being distracted by cellular phones.

Now the National Highway Traffic Safety Administration says that driver inattention is a factor in half of all auto accidents and the risk can only be expected to get worse.

The agency says it's beginning to see crashes "where drivers were using laptop computers while driving, and third-party suppliers are

ing laptop computers adjacent to the driver or, in some cases, right on the steering wheel."

The government won't call for legal restrictions - yet - saying additional information is needed. But the agency said cellular phone use is a "growing factor in crashes."

It would be a wise idea to exercise common sense while behind the wheel of a car, and use all those technological gadgets safely - even if that means not using them at all while driving. □

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