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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Robert Graham
United States Senator
Post Office Box 3050
Tallahassee, FL 75201

Dear Senator Graham:

ORIGINAL

Thank you for your inquiry, on behalf of your constituent, William J. Placko, Hollywood, Florida, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's 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 comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for 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 comments 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 constituent's letters, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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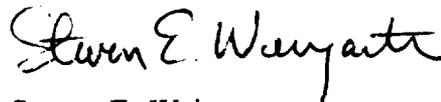
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At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, 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,

A handwritten signature in black ink that reads "Steven E. Weingarten". The signature is written in a cursive style with a large, prominent 'S' at the beginning.

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

cc: CWD
Dockets (2)
John Conwell
j:\congress\9802085

Bob Graham
Florida



United States Senate

Washington, D.C.

Date: 3/14/98

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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 32310

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

Your cooperation and assistance are appreciated.

With kind regards,

Sincerely,

A handwritten signature in cursive script that reads "Bob Graham".

United States Senator

Constituent's Name: WILLIAM PLACKO



CITY of HOLLYWOOD, FLORIDA

GEN. JOSEPH W. WATSON CIRCLE
2600 HOLLYWOOD BLVD.
HOLLYWOOD, FLORIDA
P. O. BOX 229045 • 33022-9045

February 2, 1998

Senator Bob Graham
574 Hart Senate Office Building
Washington, DC 20510

Dear Senator Graham:

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 decisions 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. It immediately reverses the FCC's decision 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

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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.

Sincerely,



William J. Placko
Director, Information Services

Cc: ~~Mara Giullanti, Mayor~~
Kenneth Gottlieb, Vice Mayor
Cathleen A. Anderson, Commissioner
Richard S. Blattner, Commissioner
Eleanor Sobel, Commissioner
Samuel A. Finz, City Manager
Jamie A. Cole, City Attorney
Representative Jack Tobin, Florida House of Representatives
Representative Debbie Wasserman Schultz, Florida House of Representatives
Representative Fred Linnman, Florida House of Representatives
Representative Steven Geller, Florida House of Representatives
Senator Howard Forman, Florida State Senate
Representative Peter Deutsch, United States House of Representatives
Representative Alcee L. Hastings, United States House of Representatives



CITY of HOLLYWOOD, FLORIDA

GEN. JOSEPH W. WATSON CIRCLE
2800 HOLLYWOOD BLVD.
HOLLYWOOD, FLORIDA
P. O. BOX 229045 • 33022-9045

February 2, 1998

Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Ex Parte Letter Re: Cases WT 97-197, MM Docket 97-182, and DA 96-2140

Dear Chairman Kennard:

Please terminate all action in the preceding cases. They attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution and principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no zoning knowledge or expertise and is not accessible to most citizens.

For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda. This is part of what local government is all about.

Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described, we cannot necessarily prevent them from mentioning their concerns to us. The FCC's attempt to use this as a means to seize zoning authority and reverse local decisions violates basic principles of Federalism, Freedom of Speech and the rights of our citizens to petition their government.

This is particularly true if a municipality expressly says it is not considering such statements (that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

For similar reasons, the FCC cannot "second guess" the reasons for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a municipality's true reasons any more than the courts can "second guess" the true reasons for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that for some municipalities moratoria are a well recognized zoning tool, particularly

Mr. William Kennard

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while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning, and this includes moratoria.

Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high - they are some of the tallest structures known to man. It is therefore astounding that you would propose that municipalities can't consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

And setting artificial time limits for municipalities to act on environmental, zoning and building permit approvals for such towers serves no useful purpose. It is a violation of the U.S. Constitution, the Communications Act and Federalism for you to put time limits on municipalities to act on all local approvals and then state that all such applications will be automatically deemed granted if we don't act within this timeframe, even if the application is incomplete or violates state or local law.

The FCC should consider how it would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days; that this rule applied whether or not the application was complete; whether or not the applicant was foreign or domestically owned or otherwise qualified; or whether the frequencies were available. And the rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland or in a historic district.

For these reasons, the proposed actions all violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed therein.

Sincerely,



William J Placko,
Director, Information Services

Cc: Mara Giuliani, Mayor
Kenneth Gottlieb, Vice Mayor
Cathleen A. Anderson, Commissioner
Richard S. Blattner, Commissioner
Eleanor Sobel, Commissioner
Samuel A. Finz, City Manager
Jamie A. Cole, City Attorney
Mr. William F. Caton, FCC
Representative E. Clay Shaw, Jr., United States House of Representatives
Representative Robert Wexler, United States House of Representatives
Senator Connie Mack, United States Senate
Senator Bob Graham, United States Senate
Representative Jack Tobin, Florida House of Representatives
Representative Debbie Wasserman Schultz, Florida House of Representatives
Representative Fred Lippman, Florida House of Representatives
Representative Steven Geller, Florida House of Representatives
Senator Howard Forman, Florida State Senate
Representative Peter Deutsch, United States House of Representatives
Representative Alcee L. Hastings, United States House of Representatives