



Federal Communications Commission
Washington, D.C. 20554

EX PARTE OR LATE FILED

AUG 12 1998

RECEIVED

AUG 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Alfonse M. D'Amato
United States Senate
520 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator D'Amato:

Thank you for your inquiry on behalf of your constituent, Mayor Thomas Deinko of Washingtonville, New York, 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 letter refers 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 (CTIA) seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

On August 5, 1998, the Commission's Local and State Government Advisory Committee, CTIA, and other trade associations representing wireless telecommunications carriers entered into an agreement addressing issues relating to moratoria on the siting of wireless telecommunications facilities. This agreement sets out recommended guidelines for local governments and carriers to follow in connection with moratoria, and it establishes a non-binding alternative dispute resolution procedure that either carriers or local governments may invoke. In connection with this agreement, CTIA has stated that it will withdraw its Petition for Declaratory Ruling.

Because the other two 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

No. of Copies rec'd
BRAGG DE

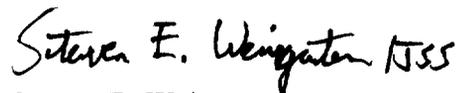
4

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 constituent's 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, similar to the recent agreement on moratoria. 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 radio frequency emissions proceeding, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

Handwritten signature of Steven E. Weingarten in black ink.

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

ALFONSE M. D'AMATO
NEW YORK

LEO O'BRIEN OFFICE BUILDING
Room 470
ALBANY, NY 12207
(518) 472-4343

United States Senate

WASHINGTON, DC 20510-3202

June 5, 1998

WTB
97-182
4516

Federal Communications Commission
Congressional Liaison
2025 M Street, NW, Room 6202
Washington, D.C. 20554

Dear Director:

Because of the desire of this office to be responsive to all inquiries and communications, your consideration of the attached is requested.

PLEASE TRY TO RESPOND WITHIN 4 WEEKS OF YOUR RECEIPT OF THIS REQUEST. YOUR FINDINGS AND VIEWS, IN DUPLICATE, ALONG WITH RETURN OF THIS MEMO PLUS ENCLOSURE, WILL BE APPRECIATED.

Many thanks.

Sincerely,



Alfonse M. D'Amato
United States Senator

AMD:awf
Enclosure:

Care

Village
of
Washingtonville

Mayor
Thomas DeVinko

Box 140 • 29 West Main Street
Washingtonville, New York 10992-0140
FAX (914) 496-1990
Settled 1723 —Incorporated 1895

Trustees
Marge K. Dalnodar
Gary Gladstone
James H. Gillespie
Lynne Leary

Village Clerk
Melanie J. Lanc
496-3221
Sewer and Water
496-7488
Police Department
496-9123
Department of Public Works
496-1032

November 10, 1997

Senator Alphonse D'Amato
Senate Office Building
Washington, D.C. 20510

Dear Senator D'Amato:

The Board of Trustees of the Village of Washingtonville wants to inform you about the Federal Communications Commission and its attempt 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 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 need to violate the rights of municipalities and their residents just to meet an artificial deadline.

Nov. 10, 1997

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:

1. Write the 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.
2. Join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress
3. 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, 702-506-3275; 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,


Thomas Deinko
Mayor