



Federal Communications Commission  
Washington, D.C. 20554

AUG 17 1998

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AUG 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable John J. Matheussen  
New Jersey Senate  
Post Office Box 8019  
Suite 2-B Greentree Building  
Greentree Road and Black Horse Pike  
Turnersville, New Jersey 08012

Dear Senator Matheussen:

Thank you for your correspondence earlier this year regarding the siting of cellular, radio, and television towers. You note that several local units of government in New Jersey are concerned that the Commission is overstepping its authority with respect to the placement of telecommunications and other facilities.

Your letter touches on the subject matter of 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 (RF) 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.

With respect to wireless telecommunications services, the Commission does not make final decisions regarding specific sites for these facilities. 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 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. 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.

The Commission has taken steps to work with State and local officials on a broad variety of issues, including the siting of personal wireless service facilities. Since implementation of the 1996 Act, it has been increasingly important for the Commission to understand how our rules impact local and State governments. Congress established a framework in which we all must work together to promote, not impede competition. We at the Commission know that it will take hard work from federal, State and local governments to bring real competition to the communications marketplace. We have established the Local and State Government Advisory Committee (LSGAC) to facilitate intergovernmental communication between local and State governments and the Commission. It provides advice and information to the Commission on key issues that concern local and State governments, including control over public rights-of-way, facilities siting, and removal of barriers to entry, and communicates State and local government policy concerns regarding proposed Commission actions pursuant to the Telecommunications Act of 1996. The LSGAC is comprised of officials of local, State, and tribal governments. More information about the LSGAC, including its membership, can be found on our web site at <http://www.fcc.gov/statelocal/>.

On August 5, 1998, the LSGAC, 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 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 constituents' letters, 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, we are

The Honorable John J. Matheussen

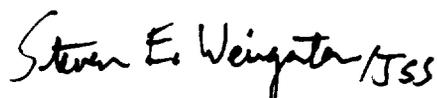
3.

actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary, similar to the recent agreement on moratoria. As Chairman Kennard has stated, preemption of local zoning authority should be a remedy of last resort, and the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Finally, I am enclosing two Fact Sheets developed by the Commission's Facilities Siting Task Force. These documents and other helpful information are available on our web site at <http://www.fcc.gov/wtb/siting>. Should you have any additional questions concerning this matter, please feel free to contact the Wireless Telecommunications Bureau at any time.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink that reads "Steven E. Weingarten /SS". The signature is written in a cursive style.

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

Enclosures

cc: CWD Docket  
MMB Docket 97-182  
j:\congress\wtb1117

NEW JERSEY SENATE

JOHN J. MATHEUSSEN

SENATOR, 4TH DISTRICT

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VICE CHAIRMAN, SENATE HEALTH COMMITTEE  
SENATE JUDICIARY COMMITTEE

FEB 10 11 52 AM '98

February 4, 1998

William Kennard, FCC Chairman  
1919 M Street, 8th Floor  
Washington, D.C. 20554

Re: South Jersey Municipality Concern  
Regarding FCC Cellular Television and TV Tower Zoning

RECEIVED  
FEB 25 1998  
POLICY & RULES DIVISION

Dear Chairman Kennard:

I am writing to voice my concern over the FCC efforts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular television and broadcast towers.

In 1990, Congress acted through the 1996 Telecommunications Act to preserve local zoning authority over cellular towers with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. Several of the municipalities in my Senate district have communicated their serious concerns with what they view as the FCC's recent attempts to preempt local zoning authority in three different rulemakings; Cases WT97-197, MM Docket 97-182 and DA96-2140.

The planning and zoning boards of the South Jersey municipalities in my district and beyond have an unparalleled reputation for their diligence in making the best decisions in this regard for the residents of their respective communities. It is their wish that they be allowed to continue to have the authority to do so as provided through Congressional intent and the Constitution of the United States.

Thank you for your attention to my perspective in this matter. I look forward to hearing from you as to your review of my comments.

Yours truly,

  
Senator John J. Matheussen

JJM:ad  
cc: Dept. of Planning & Zoning, Franklin Township