

January 13th, 2014

Federal Communications Commission
445 12th street, SW.
Room TW-A325
Washington D.C. 20554

RE: Proposed rulemaking for 47 CFR Parts 1 and 17 [WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122]

Dear Federal Communications Commission:

The undersigned organizations are deeply concerned that the FCC has proposed a new rule to exempt the expansion of cell towers and other communications towers from all local and state review. This would destroy more than a decade of excellent work done by local and state officials, whose actions and ordinances have in many locations protected New York's most scenic landscapes and most important historic sites from highly visible cell towers and other communications structures.

It would also disenfranchise local citizens, who have a right to provide guidance to their appointed and elected officials as they determine how cell towers and other communications structures should be sited and expanded in their own communities. The FCC can encourage speedy deliberations and deployment of new communications technology without abolishing state and local jurisdiction over modifications to the size and shape of towers.

The proposed rule, for which you are accepting comments through Feb. 3, 2014, would prohibit local planning boards and state regulators from having any input on decisions that will shape the environment and economy of New York's communities. They would not be allowed to consider alternatives or deny requests to increase the height and visibility of any existing cell tower. No exceptions.

Changes in height, construction materials and equipment configuration would be exempt from all local and state review, as long as the modification doesn't "substantially change" the dimensions of the current structure. Further clouding the issue, the term "substantially change" is not clearly defined. In the absence of a definition, the FCC is considering using a 2009 FCC Declaratory Ruling that could require automatic approval of expansions of 10 percent -- or more under certain circumstances.

These proposed rule changes are unwarranted. They threaten the careful, deliberate work done by local and state regulators in protecting the scenic beauty and ecology of New York's natural landscapes and historic communities, including the Adirondack and Catskill parks, the Hudson Valley and historic communities such as Cherry Valley -- to name just a few.

In these locations, a loosening of rules for siting of new towers, expansion of current towers and collocation of additional equipment on existing towers would harm both the scenic beauty and the local economy. In many areas of New York, tourism is the top economic engine. People in

those places have invested enormous time and capital in their zoning and planning efforts to protect the visual appeal of their communities. They should not be subjected to unwanted intrusions from communications towers.

Unfortunately, not many people know about this proposed change in tower-siting rules. It was buried in the text of the Middle Class Tax Relief and Job Creation Act of 2012 [Section 6409(a)]. The Middle Class Tax Relief Act was an inappropriate vehicle for telecommunication changes. Sadly, the proposed rule will neither create jobs, nor offer tax relief. Because it was hidden in an unrelated piece of legislation, this rule change was not vetted by the appropriate congressional committees. Instead, its placement in a tax-relief bill obscured its purpose and avoided a public debate. While Congress's actions are outside the control of the FCC, we hope the commission will take this into consideration when determining how stridently its new rules will carry out this new legislation.

It is instructive that the FCC's own Intergovernmental Advisory Committee (IAC) has expressed concerns about the same parts of this proposal we do. The IAC noted that state and local governments may be best suited to determine what constitutes a substantial change in a tower, especially in scenic and historic areas. We agree.

Specifically, we object to the parts of the proposal that would:

- Force municipal and state governments to accept taller, more visible cell towers and other communications towers, regardless of location;
- Impose a generic, nation-wide definition of what constitutes a "substantial change" to the dimensions of an existing structure; and,
- Allow tower owners to apply more than once for permission to expand the size of a tower without local or state review.

Instead of a generic plan that would apply everywhere but would fit only some of the country's needs, we urge the FCC to:

- Allow states and localities to define "special circumstances" under which state and local ordinances would continue to apply; and,
- Allow state and local governments to define the term "eligible facilities" so they can choose the locations where exemptions from local laws might be appropriate (while continuing to enforce local/state standards where exemptions are not desirable).

This would allow the federal rule to apply everywhere except for those special locations where states and communities established standards to protect scenic and historic resources that allow for timely communications improvements. Both of these remedies are suggested in paragraph 82 of the FCC notice of rulemaking in the Federal Register (Dec. 5, 2013, pg. 73157).

An additional alternative would be to set a deadline for state or local action on permit requests that will not interfere with the existing timetables for state and local permit review. That way -- as the sponsors' justification for this legislation states -- it would prevent unreasonable delays in

the installation of new communications technology, but would not negate vital state and local oversight.

We note that preservation of historic resources, as well as scenic and environmental quality, has been a basis for special consideration by the FCC in the past. We urge you to act accordingly in this case. There is much at stake.

Both inside and outside the Adirondack Park, the FCC should refrain from blanket exemptions from local or state review in cases where tower approvals were conditioned on some modifications or other steps to achieve stealth or screening. Please note that the entire Adirondack Forest Preserve is listed on the National Register of Historic Places, as are hundreds of buildings and sites in New York.

In conclusion, home rule has a long and strong tradition in New York. We don't always agree with the conclusions of local government and state agencies, but it is critical that they do not lose their review authority.

Sincerely,

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