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March 20, 1998

Honorable Francis H. Duehay
26 Lowell Street
Cambridge, Massachusetts 02138

Dear Mayor Duehay:

Thank you very much for contacting me concerning the relationship among the Federal Communications Commission (FCC) and states and localities in controlling the siting of telecommunications towers. This is a very important issue for municipalities in Massachusetts because it has such a significant impact on the ability of cities and towns to regulate development and preserve their surroundings.

At the outset, it is important to recognize that the tower siting issue is formed of two separate and distinct legal components: the law governing the siting of wireless communications towers is very different from the law governing the siting of digital television towers.

The siting of towers that supports wireless communications services (such as cellular, PCS and paging) is governed by Section 704 of the Telecommunications Act of 1996. This provision was carefully negotiated over many months, and several groups representing states and localities were intimately involved in the negotiations. At its core, Section 704 seeks to balance two very legitimate yet conflicting interests: (1) the interests of a consumer of wireless communications services who wishes to utilize such services for safety, business and personal convenience purposes on reliable and fully-developed networks; and (2) the interest of a state or a locality to protect the health of its citizens, to control development and to preserve its environment.

These negotiations resulted in a compromise, agreed to by the groups representing states and localities, that grants the FCC only very limited preemption authority. Under Section 704, states and localities retain their sovereign authority to make decisions regarding the placement or construction of wireless

systems towers, provided that such decisions do not discriminate between companies and do not effectively prohibit the provision of wireless communications services. The Act permits an entity wishing to appeal a state or a local decision on such a matter to seek redress in the courts. However, as I expect you are aware, this remedy existed before the 1996 Act. In addition, such an entity can seek to have the FCC preempt a locality's decision, but only in those limited instances where the locality based its decision on the environment effects or radio emissions from the tower in question. Indeed, not only does the statute grant the FCC minimal preemptive authority on matters related to wireless communications services, the FCC to this day has never used the preemption authority that it has been granted.

During a recent meeting in my Washington office, several Massachusetts officials asked me to cosponsor a bill, introduced by Senator Leahy, which would repeal Section 704 of the 1996 Act. After discussing this issue, we concluded that the Leahy bill, though well-intentioned may not address the core problem because it would not affect the aggressive legal tactics of wireless telecommunications carriers. Following this meeting, I have shared this view with Senator Leahy, and we will continue to craft legislation to address this pressing problem.

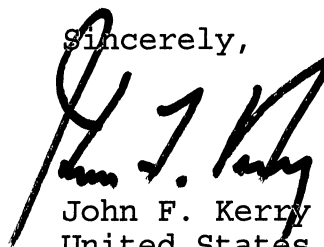
The siting of digital television is quite different, and, in my view, is significantly more threatening to the sovereign authority of cities and towns in Massachusetts. As you may know, the FCC recently proposed a rule whereby it would grant itself broad authority to preempt state and local decisions concerning the construction and placement of digital television towers. Such authority does not follow the balanced approach outlined in the 1996 Act and, instead, tips the balance of power strongly in favor of the FCC. In addition, Congress has never empowered the FCC to grant itself such broad authority over local zoning matters related to digital television towers. For these reasons, the FCC should refrain from adopting the proposed rule and, instead, should proceed with a more balanced approach that accounts for the legitimate needs of states and localities to control their own land use processes.

I do not expect the FCC to adopt its proposed rule and have been assured that the Commission has no present plans to take such action. Nevertheless, my staff is currently examining potential legislative remedies should the FCC move forward with its proposal.

Once again, thank you for contacting me about this important question. As you may know, the FCC proceeding on the siting of digital television towers remains open, and I encourage you to participate in the federal rulemaking process and to share your views with the FCC. If you would like me to do so, I will forward your comments to the FCC with a request that it afford your views strong consideration. If you have any questions or would like to discuss this matter with a member of my staff,

please call Mr. Gregg Rothschild in my Washington office at 202-224-2742.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kerry", written over the printed name.

John F. Kerry
United States Senator

JFK/at

Communication & Rpts. from other
Officers #1

5-274

Communication was received from Mayor Francis H. Duehay, transmitting a letter from U.S. Senator John F. Kerry, in response to the relationship between the FCC and states and localities in controlling the siting of telecommunications towers.

In City Council April 13, 1998

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