

From: KShea@
To: tom.wheeler@fcc.gov
Sent: 6/8/2014 2:46:04 P.M. Central Daylight Time
Subj: FM Antenna Siting and Wisconsin State Law ASR Registration 1263803

Dear Chairman Wheeler:

I am writing to you concerning what I believe is an Owner (Magnum Communication/Dave Magnum) who through his attorney has caused a new statute in Wisconsin to be adopted which amongst other things purports to regulate the safety issues of an FM Broadcast station. This law was adopted to circumvent local regulations concerning zoning matters. I believe the Commission has not taken a position on the siting of FM towers (as it has done on AM Towers, Amateur Radio towers, and cell towers). I also believe that the Commission has reserved for itself all determinations concerning safety of RF emissions from stations it regulates. It appears clear that the siting of FM towers still need local government approval for zoning and that in no way has the Commission pre-empted state law believing such issues are best dealt with at the local level.

Background:

A couple of years ago a commercial radio station owner (FRN 0003776754) petitioned to have land rezoned and the grant of a Conditional Usage Permit to allow the erection of a 500' FM broadcast tower in our profoundly rural township. This is not a new station, the Owner wants to relocate from North of the Baraboo Range to South so he can gain more revenue by reaching Madison Wisconsin. There has been no unit of local government which has indicated that a tower for government or emergency communication is needed in this area. There are no current plans for cell antennas to be on this tower. The fact that the FCC has allowed the broadcaster the option of relocating does not in and of itself over rule local decisions of placement of an FM broadcaster's antenna and tower.

After dozens of hours of public testimony, scores of pages of written documents, numerous hearings at both our Town and County level the petition was **rejected by both local and County government elected bodies**. The owner of this FM station then sued the Township and County government in Wisconsin State (Dane County) Court. The judge ruled that the Town and County were within their rights to deny this petition.

The station owner, thru one of his law firms, directed the drafting of an amendment to the state's budget. It was an Assembly Amendment. I find no record of a public hearing. Nor was there a separate bill incorporated into the budget. The Wisconsin Constitution has a prohibition for certain types of private laws. (<http://legis.wisconsin.gov/lrb/pubs/consthi/01consthi01.html>) I believe this amendment to the budget bill and resulting new statute violates the provisions of the State Constitution. Regardless, it is bad public policy and serves no community or state interests; only the financial interests of one firm. Regardless, there are Federal questions raised by this

state law, i.e., state regulation of safety associated with RF emissions from FCC regulated broadcast stations.

Our Town has information on its website concerning the new petition (by the current owner of the land, Stoughton Farms) that has been filed so it can sell the land to Magnus Communication: <http://www.town.rutland.wi.us/> . In addition, there was an excellent article about this matter which you can read here: <http://www.thedailypage.com/daily/article.php?article=42196> , this article also has links showing the drafting record at the Wisconsin Legislative Reference Bureau.

Request of Commission:

I would urge you to have your staff review the Wisconsin law as in violation of FCC rules. I further urge the Commission to re-review this application for transfer of the antenna structure as being unnecessary and not in the public's interest, the Owner (has had years to complete this relocation, he has failed to do so in a timely matter and the Registration should be voided for lack of action by the Owner.

Respectfully submitted,

Kevin G. Shea, N9JKP

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CC: U.S. Senator Tammy Baldwin (WI); Congressman Mark Pocan (WI); FCC's OGC by fax

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