



FEDERAL COMMUNICATIONS COMMISSION

September 21, 2012

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Michael G. Fitzpatrick
U.S. House of Representatives
1224 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Fitzpatrick:

Thank you for your letter expressing concerns regarding Distributed Antenna System units on residential properties in your Congressional district. I appreciate your bringing this matter to my attention and have directed the Senior Deputy Chief of the Wireless Telecommunications Bureau to respond. I am pleased to provide the enclosed letter addressing your concerns and to note that the parties appear to have resolved their legal dispute.

If you have any additional questions or need any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to be "J. Genachowski", is written over the word "Sincerely," and extends across the line for the name.

Julius Genachowski

Enclosure



Federal Communications Commission
Washington, D.C. 20554

September 21, 2012

The Honorable Michael Fitzpatrick
United States House of Representatives
1224 Longworth House Office Building
Washington, DC 20515

Dear Representative Fitzpatrick:

Thank you for conveying your concerns about the Distributed Antenna System (DAS) proposed by American Tower Corporation (ATC) on poles on residential properties throughout Northampton Township, in your Congressional district, the 8th District of Pennsylvania. You state that these DAS units, which are mounted at the top of 25 to 50 foot poles for the purpose of providing wireless communications services, are cell towers. Thus, ATC should abide by township regulations regarding the installation of cell towers, which include zoning ordinances that prohibit the placement of cell towers within 300 feet of a private residence.

Pursuant to Section 332(c)(7) of the Communications Act of 1934 (Communications Act), the regulation of the siting and construction of personal wireless service facilities is reserved largely to state and local governments, provided they comply with some basic limitations set forth in the statute. Specifically, regulation of these facilities may not unreasonably discriminate among providers of functionally equivalent services and may not have the effect of prohibiting the provision of service. 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. 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 radio frequency (RF) emissions, to the extent the facilities comply with the Commission's regulations concerning such emissions.

It appears, however, that the legal dispute between ATC, Northampton Township, and other interested parties may involve purported restrictions on local authority imposed under Pennsylvania state law regarding the regulation of the rights of way. The Commission does not generally address issues involving state or local rights of way or the proper interpretation of state and local laws.

We also note that, according to recent public reports, ATC, the township, and other interested parties appear to have resolved their legal dispute, and have agreed that ATC will relocate its DAS system onto public rights-of-way where there are existing utility lines and utility poles instead of placing poles in residential neighborhoods that use all underground utilities.

The Honorable Micahel Fitzpatrick

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I appreciate the opportunity to hear your concerns about this matter. Please let me know if I can be of any further assistance. For more information about other siting issues, please visit the Commission's web site at <http://www.fcc.gov/wtb/siting> or contact Don Johnson at 202-418-7444.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. D. Schlichting", with a large, stylized initial "J" and "D".

James D. Schlichting
Senior Deputy Chief
Wireless Telecommunications Bureau