

## FCC Local and State Government Advisory Committee

Advisory Recommendation Number 2:

### Notification to States and Localities Named in Commission Proceedings

1. In several recent instances, the actions of particular states or localities have been cited in a petition for rule making or declaratory ruling that would preempt state or local authority nationwide. In some cases, the jurisdictions cited as an example of a problem the petitioner believes requires federal preemption have had no knowledge of the petition. The LSGAC believes the failure to serve cited local and state governments leads to misunderstanding of local and state interests and interferes with the Commission's ability to act in the public interest to balance local and state interests with the interests of industry petitioners.

2. Two recent examples illustrate the problem that concerns the LSGAC.

A. On December 16, 1996, the Cellular Telecommunications Industry Association (CTIA) filed a Petition for Declaratory Ruling (DA96-2140) seeking to preempt zoning moratoria adopted by a number of local governments. These local governments were individually identified within the petition. The CTIA did not serve this Petition on the cited jurisdictions. Although Chairman Hundt sent a letter of inquiry to some of the cited jurisdictions, others were not contacted and may still be unaware that their actions have been cited as justifying federal preemption of local governments across the nation.

B. On May 30, 1997, The National Association of Broadcasters filed a Petition for Further Notice of Proposed Rule Making seeking to preempt local regulation over the siting and construction of broadcast transmission facilities. Actions by five local governments were described as justifying this request. These jurisdictions were not served with a copy of the Petition. Two of the cited jurisdictions became aware of the Petition only because they have representatives who serve on the LSGAC.

4. Few local and state governments have the resources to practice regularly before the Federal Communications Commission. The Commission is a distant, unfamiliar and costly forum for most local and state governments. In contrast, industry interests are well-represented before the Commission on a daily basis.

5. The failure of industry petitioners to serve petitions seeking to preempt local and state authority on jurisdictions cited in such petitions fosters misunderstanding about the concerns of local and state governments. This failure leads the Commission to rely on factual assertions that may be inaccurate or misleading or that may be contested by the jurisdictions cited. The public interest is not well-served by Commission action that reflects detailed knowledge of only one side of a dispute.

RECOMMENDATION: For the reasons discussed above, the LSGAC recommends that the Commission amend its procedural rules to require that any petition citing the actions of a particular local or state government as a basis for federal preemption be served on each cited jurisdiction.

Adopted by the LSGAC on June 27, 1997

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Chairman, LSGAC