COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

Phil Mendelson
Councilmember At-Large

Office: (202) 724-8064
Fax: (202) 724-8099

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STATEMENT OF PHIL MENDELSON
BZA Application 17211: NBC Tower at 4001 Nebraska Avenue, NW

I am Phil Mendelson and I am testifying as a resident who lives near the antenna tower at issue today, as a former ANC Commissioner who actively opposed the granting of a special exception for this antenna tower ten years ago, and as an At-Large Councilmember in the District of Columbia.

History:

In 1980 the BZA ordered that NBC prepare a master plan for its R-1 zoned site and submit it to the BZA for approval. That master plan was approved by the Board in 1981. It called for a number of improvements including replacement of the existing antenna tower – i.e., the tower before you today.

In 1988 NBC built the replacement tower. Notwithstanding its own master plan and representations to the BZA and the public, NBC did not remove the older tower. It continued to be used, primarily if not exclusively rented out to other companies for their use.

News accounts in 1991 reported that NBC was going to rent the television antenna at the top of the tower to the Urban Broadcasting Corporation – an unrelated broadcasting company – for TV channel 14 (the "Home Shopping Network"). This prompted ANC 3-C to file a complaint with city officials that NBC was violating the BZA's 1981 order. Eventually, NBC filed for a special exception, which was granted by final order issued earlier this year.

The thrust of NBC's argument 10 years ago was that the Federal Communications Commission was changing its rules for television broadcasters. Under the FCC's then-proposed regulations (as represented by NBC), every station would have to build a new transmitting facility for high definition television (HDTV). The loss of the small, older tower would create a difficulty for NBC because it would limit tower space availability at a time when the FCC was purportedly requiring additional antennas for television stations.

BZA
Case No. 17211
Exhibit No. 33

Board of Zoning Adjustment
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EXHIBIT NO. 33

In the intervening 10 years since that argument was made, we have seen that not one other television station in the District has had to build a second tower. Further, that no station, including NBC has had difficulty locating additional antennas for HDTV on their primary tower. Fox TV-5 continues to have one tower. WJLA TV-7 and WUSA TV-9 continue to co-locate on a single tower. NBC has all its antennas, except one unrelated to HDTV, on one tower.

This case is about NBC's greed for commercial advantage: for extra profit from being the only station with an extra tower.

No "Need" For Two Towers

In order to grant a special exception for an antenna tower, the Board must find that there is a need.[1] And yet exhibit D to NBC's June 29th application shows that of nine antenna users on the tower in question, only one is NBC – and that one is relatively low on the tower and could relocate to the other tower. Where is the need?

It is clear from the marketplace that television stations do not "need" two towers for their TV operations. It is clear from NBC that it does not "need" two towers to operate.

Two Towers Violates Public Policy

It is the public policy in the District of Columbia to limit the intrusion of antenna towers into the skyline. This policy is clearly articulated in three binding documents: first, the 1910 Height Act; second, the Comprehensive Plan; third, the Zoning Regulations. In its Order No. 587, the Zoning Commission was clear that its "concern with antennas has been with their visual impact as they are viewed from sites other than the property in which they are located," and that the "thrust of the proposed rules is to prevent antennas from having an adverse impact on the appearance of Washington as the Nation's Capital."

NBC admits it has failed in this regard. Look at the three photos it submitted as attachment G to its June 29th application – carefully sited to minimize or hide the visual impact of two towers. If having two towers complied with the public policy, then NBC would not try to hide them. But look at the view from nearby McLean Gardens. Or travel to Upshur Street, NW as far away as 6th Street and you will see the visual impact.

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[1]Several of the special exception criteria for an antenna tower in an R-1 zone district can be generally categorized as requiring a showing of need: § 211.5: "The proposed height of the tower shall not exceed that which is reasonably *necessary* to render satisfactory service..."; § 211.6: "No transmission equipment [which would include the tower itself] shall be located in a residential district, unless location in the district is *necessary* for technically satisfactory and reasonably economical transmission"; and § 211.10: "The applicant shall have the burden of demonstrating the *need* for the proposed height, and that full compliance with the matter of right standards would be unduly restrictive, prohibitively costly, or unreasonable." (emphasis added)

In BZA Case 14258, the Board denied a 38' antenna tower because "The proposal would be visually intrusive on the residential character of the neighborhood. ... The antenna would constitute an adverse visual impact from all directions."

The Zoning Regulations meant to limit antenna towers. There must be a need, not just a desire. Absent a need, there is no justification for violating the public policy regarding heights.

Second Tower Violates Comprehensive Plan

Also working against approval of NBC having two antenna towers at its R-1 site are two provisions in the Comprehensive Plan. Sections 411 (Environmental Protection Element) and 1403.13(e) (Ward 3 Plan) both require "prudent avoidance" and state, in part, that: "Facilities should be located only when and where necessary, based on the local service needs of property owners..." "Prudent avoidance" is a term of art which was taken from, I believe, regulations of the Wisconsin public utility commission – regulations adopted to limit the proliferation of antennas. The language referring to local service needs of property owners was meant to restrict the construction of tower space to serve rentals – rentals such as, in this case, unaffiliated television stations.

Interestingly, the Applicant ignored these Comprehensive Plan provisions in its application. I assume this is because they are one more reason why having two towers is not justified.

Conclusion

The presence of two towers in the R-1 zone district at NBC has occurred through sleight-of-hand. This Board should not perpetuate it. This application is purely about commercial profits. The Board should not support that. There is no need for two towers, and the public policy, therefore, mandates that you deny the application.