

## **H.110 Section 248a Sunset. Comments from Vermonters for a Clean Environment.**

Annette Smith, Executive Director, Feb. 1, 2023

### **Comments on Gregg Faber's testimony:**

Generators: Note that most towers have very large fossil fuel generators, 20 to 30 kW.

Some applicants are now claiming that based on some legal decisions outside of Vermont, a 150 day shot clock should be followed, not the 180 day shot clock in Section 248a. To date, the PUC has not accepted the 150 day shot clock but moves projects along and attempts to make decisions within 180 days. However, in contested cases, it can and should take longer.

He speaks about using "the public good". The statutory language is "general good of the state."

### **Comments Arising from Jim Porter's testimony:**

Towers are being proposed taller, closer to village centers and residences, and are seeing more opposition because of the siting choices.

PUC process for antennas is rubber stamp. No public process. If an antenna meets the criteria for *de minimus*, the PUC must approve it.

DPS experts on Radio Frequency and Aesthetics – short supply and often work for industry. DPS is using a New York firm for aesthetics that rarely, if ever, has found an undue adverse aesthetic impact. DPS RF expert for Granville was discredited by an expert found by neighbors during the Advance Notice phase.

Intervenors challenged to find experts, as RF experts almost all work for industry and neighbors cannot get standing on RF at the PUC anyway, while aesthetics experts are extremely scarce, and if they can be found, are very expensive.

Notification – why VCE is pursuing Right to Know. Sometimes adjoining landowners do not get notice for antennas on poles outside their homes. Notification seems to be different depending on, not sure what. DPS, landowner and town get notice. It is typical for towns to do nothing in response to receipt of a telecom notification. Some towns have adopted Right to Know ordinances that require public notice when a town receives notice of a tower or antenna application.

Advance Notice information varies depending on company. One company provides simulations and coverage maps. Other companies do not file either, making it impossible for interested parties to evaluate, especially towns.

Town Select Boards and Planning Commissions do not understand their roles, or that they even have roles to play. The most common comment I hear boards say is "the state decides, nothing we can do about it."

Some towns have telecom ordinances, some do not. Confusion about the role telecom ordinances play because they are “zoning” and the PUC does not consider zoning in Section 248. However, telecom ordinances are part of Section 248a. It is surprisingly difficult for town boards to understand why their Land Use Development Regulations, when they contain a telecom bylaw, apply in the PUC’s Section 248a process.

The PUC has used “societal benefit” in tower cases to overrule the “substantial deference” standard when an undue adverse aesthetic impact is found. Ask Chris Campany what he thinks about “substantial deference” for cell towers.

Neighbor intervenors cannot get standing on RadioFrequency coverage. Towns can, but rarely have the budget to intervene at the PUC, as it can be very expensive (ask the town of Calais, for instance). Town boards are challenged due to the conflicting opinions of the public.

The top topic that is coming up (aside from aesthetics) from the public is increasing exposure to RF emissions generally, and the impact on health and environment. This topic is shut down by the 1996 Telecommunications Act, such that environmental and health effects cannot be used in regulating towers. However, **towns and the state can set standards for siting**. The NH Commission on 5G has recommended a statutory distance from inhabited structures of 500 meters or 1640 feet.

Many antennas and wifi have been put on schools and in town centers without any regulatory process whatsoever.

Act 250 loophole enables a tower or pole less than 50 feet tall to be erected with antennas, without any regulatory process. Most cell tower companies choose to use Section 248a, but some still do go through Act 250. In Marlboro, a utility pole was heavily loaded with telecom equipment and after outreach to the PUC, WRC and Act 250 it was confirmed it was done without any permit. In other states, telecommunications facilities are sited via local zoning. The local zoning and Act 250 processes are more accessible to the Vermont public, while the PUC process is like a foreign language that nobody understands. I give webinars on the Section 248a process to towns and community members. It is not a role I should have to be playing.

The social dynamic plays out on the ground in Vermont the same in every town I’ve worked in – some people say “we want more cell service” and some people say “not there, too close, too ugly” and sometimes ANR will oppose a tower due to forest fragmentation, which happened in a case around Stowe and is currently happening in Granville.

Cell Tower siting is a formula for community divisiveness. H.70’s proposal is a reasonable start to attempt to address the problem. And some people think that towers are going to be obsolete very soon.

Active cases being opposed: Ira, Enosburgh, Granville, Warren (the company has not notified anyone that the tower has been withdrawn as far as I know).

Towns where VCE has been contacted for assistance: Chelsea (relocated), Hardwick (withdrawn), Mendon (reduced in height and built), Worcester (landowner declined to renew lease), Stockbridge (initial location withdrawn due to ANR, new location permitted, not yet erected at the northwest corner of the intersection of Route 100 and Route 107).

Towers we have observed were challenged: Thetford (moved further from village center to town land), East Montpelier (landowner bought out by neighbors).

Tower we have observed that we expected would be challenged where there was no comment: The Ripton tower next to the Wilderness. I saw that project in my regular review of “New Cases” in ePUC and realized that it was likely hardly anyone knew about it. When nobody intervenes, the PUC issues the CPG fairly quickly.

#### **Comments on Karen Horn’s Testimony:**

The Warren FAQ was created by the Planning Commission in violation of the Open Meeting Law, as all the work was done via email, and funds were spent to run an ad in the local paper, all outside of any public meeting. This was confirmed after receipt of a Public Records Act request. Question 19 is offensive to neighbors who never said what is stated was said. A Select Board member made the comment that the telecom bylaw was “gutted”. In fact, the update of Warren’s LUDR that goes to public hearing this month eliminates several protections that were in the existing telecom bylaw, including limits on height and other important siting guidelines. It has come to light that the LUDR update was outsourced and a boilerplate telecom bylaw is being used in Warren, Londonderry and Dorset, all of which reduce siting guidelines to make them less protective.

#### **Comments on Owen Smith’s Testimony:**

Not all companies will do a balloon test upon request. One company new to Vermont is doing balloon tests to prepare their applications, with no notice to anyone, and then refuse to conduct a balloon test when asked by intervenors. The PUC has not required a balloon test to enable intervenors to evaluate the location and aesthetic impact.

Please do not make Section 248a permanent. The industry asked for that three years ago when the two year sunset was increased to three years. **This update and review would not be happening if the legislature had declined to make it permanent.**

#### **No Comments on Stephanie Lee’s Testimony**

#### **Map Resources:**

Public Service Department tower map through the end of 2016

<https://vtpsd.maps.arcgis.com/apps/webappviewer/index.html?id=2a430c55a7c247dc841f1b592ed75eb2>

In 2017, ePUC took over. The above map has not been updated.

Public Service Department map of wireless antennas erected outside of any regulatory process  
<https://vtpsd.maps.arcgis.com/apps/webappviewer/index.html?id=c926d155167d4a5586e8e1aca1701cfa>

**Other Resources:**

Act 250 cases can be found by searching the NRB Database  
<https://anrweb.vt.gov/ANR/Act250/default.aspx>

10 V.S.A. § 6030 requires the Natural Resources Board to maintain a map that shows the location of all wireless telecommunications facilities in the State: <https://legislature.vermont.gov/statutes/section/10/151/06030>. This statute was effective April 15, 1998. I recently wrote to the NRB General Counsel asking if the map was ever created and received no response.

There is no statewide database showing all towers and antennas and no way to track the activity of a tower erected through Act 250 and then antennas added through the PUC's Section 248a process. **The legislature needs to authorize funds to create one database that enables tracking all telecom facilities from inception to current time.**

**General Comment:**

Not everyone wants cell coverage, and Vermont's topography makes universal coverage unrealistic. VCE regularly hear from people who want to know where there is no cell service. We have talked about creating "safe zone" where people can live without cell service. Electromagnetic Health Sensitivity (EHS) is a growing and recognized problem. The problem is cumulative, with the use of wifi, cell service, and satellites all contributing to a highly concerning health and environmental effect, including effects on birds and bees. There are now many peer reviewed studies showing serious health issues, including reducing sperm count, breaking DNA, increasing diabetes and much more. Personally I get a headache if I use wifi for an hour. Everything in my home office is hard wired and I live where there is no cell service and don't want any. My situation is reflective of what many other Vermonters report.

Currently on the federal level that has been litigation over the standards set by the FCC, which has not been updated since it went into effect in 1996. The US standards allow magnitudes greater exposure than many other countries. The DC District Court of Appeals has directed the FCC to conduct a proper review and consider changed circumstances that include health studies and all the new devices that, cumulatively, are resulting in much greater RF exposure. This is a major public health problem that will be increasing.

Annette Smith  
Executive Director  
Vermonters for a Clean Environment  
789 Baker Brook Road  
Danby, VT 05739  
(802) 446-2094

vce@vce.org