Testimony of Willliam J. Dodge for Senate Comm. on Finance, 04.13.2023

Good afternoon and thank you for the opportunity to testify in support of H.110. My name is Will Dodge. I am a Director and Deputy Managing Partner at DRM PLLC in Burlington, and have spent most of my legal career working in the wireless telecommunications industry. Since 2009 when Section 248a was first amended, DRM has submitted hundreds of applications to the Public Utilities Commission on behalf of AT&T. The benefit of Section 248a has been a more predictable, manageable, modern, streamlined system to ensure that consumers have reliable, up-to-date wireless service in Vermont. Simply put, it has proven to be more fair, more workable, less onerous than the alternative, which is to require virtually every telecomm project—whether a new tower or a replacement antenna—to obtain both Act 250 and local zoning permits.

With respect to H.70, as I testified previously to the House Committee on Energy and the Environment, the proposed legislation would lead to a host of problems. Virtually every proposed section is problematic for AT&T, and would frustrate Section 248a's goal of improved wireless service throughout the state. To very briefly restate five of the key concerns:

1. NO ROOFTOP / UTILITY POLE FACILITIES. The height limit change to 248a(b)(2)(C) renders small cells on utility poles and new rooftop installations impossible to permit, which is likely to lead to more macro towers than would otherwise be necessary.
2. PRIVATE PARTIES ORGANIZING PUBLIC MEETINGS. The change to 248a(e)(2) requiring the applicant to organize public meetings creates a host of logistical and even jurisdictional problems that do not exist today.
3. NO PRACTICAL ALTERNATIVE. The change to 248a(c)(1) requiring AT&T to show ("no practicable alternative") is vague and is contrary to federal guidance (which uses a "materially inhibit" test), and shifts Act 250 burdens on aesthetics entirely to the applicant.
4. ELONGATING THE PERMITTING PROCESS. The proposed change to 248a(r) would extend what is now a 30-day intervention process under the PUC's procedures order to a 60-day statutory period. Combining the 80-day advance notice proposed for 248a(e) plus 60-day post-filing intervention period means that the process runs to 140 days before the PUC even starts to consider how to address an application. The result: there's little hope of meeting the 90/180 review period in Section 248a(f), or complying with the federal "shot clock" standards in 47 CFR §1.6003. It's destined to slow the process, and to spur litigation.
5. COURT REMEDIES. Section 248a(s) refers to a court remedy for municipalities to recover attorneys' fees and litigation costs from an administrative proceeding – this is misplaced.

Experience tells us that the key to successful legislation is making sure the statute's spirit and key concepts are being implemented responsibly in the real world, not necessarily just adding more words and longer timeframes. AT&T has prided itself on trying to implement the statute in a way that is fair and transparent to those who live, work and recreate throughout Vermont (i.e., the company's current and future customers), and for resolving what can be contentious processes for new tower sites. Over the nearly 14 years that we've been using the statute, AT&T has made countless project changes based on community input and feedback: shifting locations, shortening towers, conserving properties, changing tower design types, altering colors, switcheing generator fuel types, and moving small cells to poles on opposite sides of the street, among many other accommodations. The Section 248a process, when done right, is an iterative process that results in better siting decisions, and ultimately better service for Vermonters.

We understand that there are other applicants who have been less than transparent in how they've approached the siting process, and in some cases behaved in a way that has deeply offended the host communities. AT&T does not want to see the process abused, understanding that going back to the Act 250 / local zoning system at this stage would create a host of legal and logistical problems, in turn imperiling the investments otherwise being made since 2009 in wireless broadband expansion and public safety improvements.

So is there another way to keep the statute intact while addressing perceived shortcomings, particularly for new tower applications? The answer is yes, it's in Section 248a(l). That provision authorizes the Commission to "issue rules or orders implementing and interpreting this section." The Commission's "Standards and Procedures Order" has essentially remained unchanged for over 10 years, including for the advance notice process and submission requirements. While the Commission has held dozens of workshops just since the beginning of the Scott Administration for solar, energy storage, EVs, interconnection, and transmission line projects, the last time the PUC held a workshop on Section 248a was back in 2010 (!) Given that literally hundreds of wireless projects have come before the Commission since that time, and considering how many times the sunset will have been extended if H.110 passes, the Commission can and should convene a workshop with relevant stakeholders – including the affected agencies, VT League of Cities and Towns, the VT Planners Association, and others – to develop fair, workable procedures addressing the concerns that gave rise to H.70, including but not limited to communications and public meetings during the advance notice process, as well as addressing the application submission requirements. A successful workshop would in turn provide a basis for the PUC to update and upgrade its current Standards and Procedures Order.

The one additional item we recommend the Committee members consider is a provision authorizing the PUC to review what are known as "eligible facilities requests" under a federal regulation, 47 CFR § 1.6100, implementing a federal wireless facilities deployment statute passed in 2012. An EFR refers to modifications at wireless sites already in existence, that could include resiliency measures, energy storage, antenna upgrades, and compound expansions, all clearly set out in federal regulation. The statute guarantees that EFRs be approved once a state siting authority determines that a particular modification qualifies, which is very similar to what happens with de minimis modifications under Section 248a. The net effect of EFR is to encourage more changes at, and more collocations on, existing permitted sites, rather than spurring a proliferation of new towers designed to accommodate a single provider. That helps to reduce costs for all, while creating conditions for more competition in wireless service, benefitting your constituents. It also creates a strong incentive for replacing utility poles to accommodate small cells (and which can in many cases reduce the need for new towers).

The PUC has taken the position that it lacks the power to review EFRs without legislative authorization; yet, there's no question that both the PUC and the Department have personnel experienced with wireless project types to carefully review and approve qualifying EFRs. I've produced a chart on the next page to demonstrate how the EFR designation allows expedited approval of certain modifications that would not qualify as de minimis modifications. Enabling language could be as simple as adding "and eligible facilities requests" to 248a(k), so that EFRs are reviewed in the same manner (and using the same timeframes) as de minimis modifications.

Thank you for your consideration, and for all the work you're doing for Vermonters.

WIRELESS FACILITY MODIFICATIONS:
DE MINIMIS (30 V.S.A. §248a(k)) vs. ELIGIBLE FACILITIES REQUESTS (47 CFR §1.6100)
Prepared by DRM, 04/13/2023

Project Description	De Minimis	EFR
Add antennas and equipment to existing tower for new wireless provider, total below 75 sq.ft. in aggregate on tower	☑	☑
Add antennas and equipment to existing tower for new provider, total greater than 75 sq.ft. in aggregate on tower	**X**	☑
Add new landscaping outside of fenced compound to hide equipment.	**X**	☑
Add generator in fenced compound.	☑	☑
Add generator at site with no fenced compound (e.g., adjacent to fire station).	**X**	☑
Add new fence to enclose unfenced equipment area and tower.	**X**	☑
Replace existing diesel generator for electric energy storage unit (i.e., battery).	**X**	☑
Expand compound fence 10’ to install ground equipment cabinet for new wireless provider.	**X**	☑
Create drainage improvements / conduct re-grading immediately outside of compound.	**X**	☑
Replace utility pole with taller pole, with small cell added to top.	**X**	☑
Extend “monopine” tower by 10’ to accommodate antennas for new wireless provider	**X**	☑
Extend “monopine” tower by 10’ for new provider, but without adding camouflaged “canopy” to hide the new antennas	**X**	**X**
Replace communications tower with new tower that is 40’ higher to accommodate collocation.	**X**	**X**

☑ = eligible **X = not eligible**