

1 H.76

2 Introduced by Representative Shand of Weathersfield

3 Referred to Committee on

4 Date:

5 Subject: Telecommunications; regulation; state; local

6 Statement of purpose: This bill proposes to allow certain large
7 telecommunications carriers to avail themselves of a statutory exemption from
8 state regulatory requirements that is presently available only to small carriers;
9 to amend local land-use bylaws to require municipalities to allow, as permitted
10 uses, certain ancillary improvements to telecommunications facilities; and to
11 allow municipalities to waive dimensional requirements for those
12 improvements.

13 An act relating to the regulation of telecommunications carriers

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 * * * Telecommunications Carriers; Exemption from

16 Regulatory Requirements * * *

17 Sec. 1. FINDINGS

18 The general assembly finds as follows:

19 (1) There are ten incumbent local telephone companies in Vermont.

20 FairPoint Communications (FairPoint) is the largest, serving about 85 percent

1 of the state. The nine smaller independent telephone companies serve the
2 remaining 15 percent.

3 (2) Traditionally, local telephone companies held a monopoly over the
4 telephone services in their respective service areas, and the state developed a
5 regulatory system based on that reality to ensure that rates were fair and
6 customers were adequately protected.

7 (3) Over time, other telecommunications carriers entered the market.
8 Many of these carriers, wireless and cable companies, are subject to little or no
9 state regulation as a result of federal laws requiring preemption of state laws.

10 (4) In response to the changing market, Vermont permitted the small
11 independent telephone companies to exempt themselves from certain
12 regulatory requirements, permitting greater flexibility with respect to the
13 setting of rates, for example. This was based on the theory that competition in
14 the marketplace would be sufficient regulation.

15 (5) FairPoint (or, rather, its predecessor, Verizon) was not given a
16 similar exemption. Instead, it entered into an alternate regulatory plan with the
17 state whereby some regulatory constraints were lessened in return for the
18 company's provision of increased access to broadband services. That plan is
19 set to expire in March of 2011.

1 shall be required for placement of antennae used to transmit, receive, or
2 transmit and receive communications signals on that property owner's
3 premises if the aggregate area of the largest faces of the antennae is not more
4 than eight square feet, and if the antennae and any mast support does not
5 extend more than 12 feet above the roof of that portion of the building to which
6 the mast is attached.

7 (B) If an antenna structure is less than 20 feet in height and its
8 primary function is to transmit or receive communication signals for
9 commercial, industrial, institutional, nonprofit or public purposes, it shall not
10 be regulated under this chapter if it is located on a structure located within the
11 boundaries of a downhill ski area and permitted under this chapter. For the
12 purposes of this subdivision, "downhill ski area" means an area with trails for
13 downhill skiing served by one or more ski lifts and any other areas within the
14 boundaries of the ski area and open to the public for winter sports.

15 (C) The regulation of a telecommunications facility, as defined in
16 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter
17 when and to the extent jurisdiction is assumed by the public service board
18 according to the provisions of that section.

19 (D) Whether or not the public service board has assumed jurisdiction
20 under 30 V.S.A. § 248a, no bylaw under this chapter shall have the effect of
21 excluding, as a permitted use, an ancillary improvement that constitutes a

1 telecommunications facility within the meaning of that section and that does
2 not exceed a footprint of 200 square feet and a height of 10 feet.

3 (E) A municipality may regulate communications towers, antennae
4 and related facilities in its bylaws provided that such regulations do not have
5 the purpose or effect of being inconsistent with subdivisions (A) through ~~(C)~~
6 (D) of this subdivision (8).

7 Sec. 4. 24 V.S.A. § 4414(8) is amended to read:

8 (8) Waivers.

9 (A) A bylaw may allow a municipality to grant waivers to reduce
10 dimensional requirements contained in the bylaw, in accordance with specific
11 standards that shall be in conformance with the plan and the goals set forth in
12 section 4302 of this title. These standards may:

13 (i) Allow mitigation through design, screening, or other remedy;

14 (ii) Allow waivers for structures providing for disability
15 accessibility, fire safety, and other requirements of law; ~~and~~

16 (iii) Allow waivers for an improvement described in subdivision
17 4412(8)(D) of this title; and

18 (iv) Provide for energy conservation and renewable energy
19 structures.

20 * * *

- 1 Sec. 5. EFFECTIVE DATE
- 2 This act shall take effect on passage.