



House Committee on Commerce and Economic Development H.693 Telecommunications Facilities – Municipal Preemption

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The Vermont Planners Association strongly objects to H.693 as an unnecessary and unfounded pre-emption of municipal authority to regulate telecommunications facilities as provided for –and limited by– the Federal Telecommunications Act of 1996.

Vermont municipalities retained the authority through 2009 to regulate telecommunications facilities under locally adopted zoning bylaws or ordinances, pursuant to the Federal Telecommunications Act (47 USC § 332(c)(7)). As stated in the federal act, “Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities. Under federal law, state or local government:

- may not prohibit or effectively prohibit the provision of wireless telecommunications services;
- may not unreasonably discriminate against functionally equivalent services;
- must act on an application within a reasonable period of time;
- must make its decision in writing;
- must support its decision with regard to siting of the facility with substantial evidence; and
- may not regulate the placement, construction, and modification of personal wireless facilities on the basis of the environmental effects of radio frequency emissions, to the extent that such facilities comply with FCC regulations concerning such emissions.

Many municipalities adopted bylaws or ordinances based on a VLCT model developed with input from industry representatives, the Public Service Department and the planning community.

Municipal jurisdiction was joined in 2007 by that of the PSB to regulate applications for “multiple, interconnected” telecommunications facilities, only as necessary to “advance broadband and wireless communications infrastructure throughout the state.” PSB jurisdiction was initially scheduled to expire in 2010, following the statewide deployment of broadband and wireless infrastructure (A.79). This was amended in 2009 to allow for PSB review of individual facilities, thereby preempting local review, to facilitate statewide deployment. Municipal bylaws and ordinances, however, could serve as the basis for municipal recommendations to the PSB. PSB jurisdiction and the accompanying municipal pre-emption were then scheduled to expire in 2011 (A.54). Given the delays in system implementation, PSB jurisdiction was once again clarified and temporarily extended through 2014 (A.53).

With each renewal, the legislature clearly intended that, with the deployment of statewide infrastructure, jurisdiction over individual facilities would revert to municipalities. According to the Vermont Telecommunications Authority, Vermont has now effectively achieved basic, statewide broad coverage. Cellular coverage issues remain but, as noted in the 2013 VTA Annual Report, given changing market needs and technological advances, cell tower development is no longer the only or necessarily preferred option to extend basic wireless coverage.

Jurisdiction over the siting of telecom facilities should be returned to municipalities as intended.

Vermont is the only state of which we are aware that completely preempts municipal jurisdiction over telecommunications facilities as otherwise protected under federal law. At the state level this preemption has always intended to be temporary, only as necessary to achieve statewide coverage. There is no longer any policy basis for permanently preempting local regulation of facilities that have a demonstrated impact on neighborhoods, public facilities and key natural, historic and scenic and resources that are important to the community.