Testimony of Willliam J. Dodge for House Comm. on Energy / Environment, 03.15.2023

Good morning 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, Vermont, 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. As the Committee members may be aware, Section 248a provides a telecomm company with a basic choice: bring your new sites and modifications before the PUC using a common set of requirements, or navigate a patchwork of local telecommunications ordinances – many dating to the pre-iPhone era – along with an Act 250 land use permit. 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, while protecting the environment and reducing the burden on municipalities.

This last point about municipal burdens may seem counterintuitive, so let me explain: since 2014, the volume of Section 248a applications to the PUC versus local/Act 250 applications for telecomm projects has grown to at least 20:1. Most are approved; only a handful of issues pop up here and there. To be sure, there are occasions in the last 5 years where, for site specific reasons, AT&T has opted to use the Act 250/local permit route. Yet without exception when we've done so, municipal zoning staff have requested that we run the applications through the PUC using Section 248a. The explanation? We're at the point 14 years after Section 248a was adopted where the Department and the PUC have the expertise in this area in order to review projects and make good decisions. The municipalities still have a role in reviewing projects, particularly when it comes to new towers, but they would prefer to let the PUC and DPS handle the vast bulk of projects that involve modifying an antenna array on an existing tower, adding a generator, and the like. It's also noteworthy that with Act 250, there are no longer telecomm-specific forms in use: every telecomm project is treated in Act 250 like real estate development. All involved recognize this as inefficient and unmanageable.

With respect to H.70, the proposed legislation would eviscerate the statute. Virtually every proposed section is problematic and would frustrate Section 248a's goal of improved wireless service throughout the state.

1. NO ROOFTOP / UTILITY POLE FACILITIES. The height limit change to 248a(b)(2)(C) renders small cells on utility poles and rooftop co-location options impossible to permit. And the new requirement in 248a(c)(3) would mean that detailed collocation analysis is required for small cells, which ends up discouraging those types of installations on utility poles in lieu of the larger more expensive and visible tower sites.

2. MEETINGS LOGISTICS. The change to 248a(e)(2) requiring the applicant (as opposed to the Town) to organize public meetings for new towers creates a host of logistical and potentially jurisdictional problems that do not exist today. AT&T attended dozens of municipally-organized Zoom meetings during the pandemic for new sites, all which the municipality was best able to organize and publicize. This falls under the "don't fix if not broken" category.

3. ALTERNATIVE SITE LOCATIONS. 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). It also shifts the Act 250 burdens (particularly on aesthetics) entirely to the applicant for alternative sites. This is not necessary given the combination of federal standards and PUC decisions on alternatives.

4. ELONGATION OF PERMITTING PROCESS. The proposed change to 248a(r) would extend what is now a 30-day intervention process under the PUC's standards and procedures 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 is at 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 state timeframe in Section 248a, nor similar federal standards. It's setting up the process for failure, and potentially lawsuits.

5. COURT REMEDIES. Section 248a(s) seems out of place, as it refers to a court remedy for municipalities to recover attorneys' fees and litigation costs. The point of 248a is to achieve solutions through an iterative process, not to generate lawsuits.

By contrast to H.70, with H.110, we have a clean extension of Section 248a.

As Owen Smith pointed out, assuming the Committee is not ready to make the statute permanent, AT&T's preference would be to extend the sunset for a 10 year period, so that there is an appropriate length of time to ensure regulatory certainty and predictability. Given that the statute has effectively run for 14 years, an extension of 3 years provides very little time for a company to plan a major expansion of service upgrades. We've also seen with previous 3-year extensions that the PUC gets "cold feet" when it comes to making improvements to its procedures order once we're within the year-and-a-half window prior to the sunset. (The fact that the PUC has not held a workshop on 248a since 2010 underscores that we're overdue for a fine tuning.[1]) Ten years would go a long way towards building upon what has been accomplished, with breathing room to develop additional jurisprudence, and to consider other changes to the program if / when warranted along the way.

If there is one additional item we would request, it is a provision authorizing the PUC to review what are known as "eligible facilities requests" under a federal regulation, 47 CFR § 1.6100. An EFR is basically a defined set of 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. This regulation comes from a 2012 statute that essentially guarantees that EFRs be approved once a siting authority determines that a particular modification qualifies, similar to how de minimis modifications work. The PUC believes it lacks the power to review EFRs, despite its authority to evaluate all siting projects. Our sole request would be to give the PUC the express authority to review and approve EFRs, with the understanding that its authority would sunset alongside 248a itself.

Thank you for your consideration.
21848553.2

[1] [To be sure, the PUC Commissioners have recently indicated in Case No. 22-5512-INV that they're prepared to make some procedural changes to Section 248a if the statute is extended.]