Vermonters for a Clean Environment

January 7, 2026

Memo: Sections 248a
To: Senate Finance Committee, House Energy & Digital Infrastructure Committee

Dear Senators and Representatives,

To the committees of jurisdiction over telecommunications as regulated through Section 248a and the Public Utility Commission (PUC), municipal zoning and Act 250, I offer the following insights about how the system is working.

Background: Section 248a came into being in 2007. It is one of Vermont's most prescriptive statutes. https://legislature.vermont.gov/statutes/section/30/005/00248a. Section 248a has gone through a number of revisions since its initial enactment. Prior to 2007, telecommunications facilities were regulated through municipal zoning and Act 250. Section 248a did not eliminate the Act 250 and municipal zoning option. Some telecommunications projects still use Act 250. In 2017, ePUC came into existence, replacing the paper filing system with an electronic filing system. There is no single statewide database to track telecommunications facilities in Vermont.

Section 248a Tower Denials: The PUC has denied only two telecommunications towers. A Verizon tower proposed for Waterbury/Stowe was denied by the PUC in 2017 citing concerns over its impact on a critical wildlife corridor and the tower's inconsistency with local town plans. In 2023, the PUC denied an Industrial Tower and Wireless (ITW) radio tower proposed for Enosburgh citing lack of compliance with the Regional Plan. ITW appealed the denial to Federal District Court and after the Court affirmed the denial, ITW appealed to the 2nd Circuit Court of Appeals which affirmed the denials in November, 2025. A week later, ITW filed a new Advance Notice for a shorter tower in the same location in Enosburgh.

Section 248a Contested Cases: Until recently, there have been few Section 248a contested cases. AT&T proposed a lot of towers as part of its FirstNet contract, but when met with opposition, for the most part the company found alternative sites. However, a controversial AT&T tower in Granville resulted in extensive litigation in Superior Court and at the PUC. Since then, numerous towers have been proposed, many of which are contested by towns and/or neighbors due to inappropriate locations close to village centers, close to residences, and with environmental and aesthetic impacts. In addition to Granville and Enosburgh, towers have been or are being contested in Pownal, Manchester, Tinmouth, Ira, Mendon, Rochester, Washington, Marshfield, and Westmore.

Problems with Section 248a: Now that Section 248a is being implemented through contested case proceedings, problems with the law have become evident. 1. The role of telecom bylaws/ordinances. 2. The role of recommendations, comments and public comments. 3. The challenges of PUC public participation and ePUC.

789 Baker Brook Road • Danby • Vermont • 05739 • 802.446.2094

1. Prior versions of Section 248a apparently eliminated municipal zoning bylaws/ordinances. Long-time planning commissioners believe that municipal ordinances and bylaws play no role in Section 248a cases. Telecommunications attorneys have recently made the claim in legal filings that municipal ordinances/bylaws are not applicable. The statute is clear that that recommendations can be based on those ordinances/bylaws.

> Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located.

2. The PUC has not developed rules for implementing Section 248a. The PUC has a procedure document that does not explain the details of the process and the difference between comments, recommendations, and public comment. Section 248a gives substantial deference to municipal legislative body and planning commission and regional planning commission recommendations.

> Unless there is good cause to find otherwise, substantial deference has been given to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan.
>
> A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

Recommendations: ePUC contains numerous menu items for identifying and submitting documents. There is no menu item for "recommendations" from a municipal legislative body, municipal planning commission or regional planning commission. Therefore, most recommendations are submitted as "public comment". There is no requirement for the entity submitting the recommendation to intervene and become a party to the case. There is no specific guidance about when recommendations should be submitted, or when applicants should respond to recommendations.

Public Comment: Public Comment in Petition cases are not part of the evidentiary record on which the PUC bases its decision. However, because there is no specific menu item for recommendations in Section 248a cases, when filed as Public Comment, those recommendations are part of the evidentiary record on which the PUC bases its decisions. Until recently, the Citizens Guide to Public Participation said that public comment can be submitted at any time throughout the proceeding.

Comments: In Section 248a cases, once the Petition is deemed complete, a 30 day clock starts running. Under the "schedule" tab for a telecommunications tower case, the date of the "comment" deadline will be posted. That 30 day deadline is also for Motions to Intervene and Notices of Intervention, though the scheduling tab usually only says "comments". Comments within the 30 day period are specifically for towns, regional planning commissions and potential intervenors to submit comments that indicate that the project raises substantive issues under the criteria and therefore require a hearing. It is not sufficient to request a hearing. There must be a showing that a hearing is necessary.

The lack of guidance regarding "comments", "public comment" and "recommendations came to light in the Westmore ITW tower case, which is the first case in recent years in which a town planning commission provided "comments" within 30 days, filed as "public comment" and then prior to the deadline for non-petitioner prefiled testimony, the town planning commission submitted comments, via the "public comment" portal, regarding compliance with the town plan and telecommunications bylaw and the town select board then submitted its "recommendation" to deny the tower based on the evaluation done by the planning commission. In response, the applicant moved to strike all "public comment." The PUC then struck all the public comment submitted after the 30 day "comment" deadline, including the "recommendations" of the town's planning commission and select board. The PUC upheld the hearing officer's decision. This issue will now be raised in the neighbor intervenors' appeal to the Vermont Supreme Court.

Based on the Westmore ITW tower experience, the Town of Tinmouth's planning commission and select board held a public hearing, joint meetings and provided comments to the applicant during the Advance Notice phase that the tower did not comply with the town plan and telecom bylaw. After the Petition was filed, the Town filed its "recommendation" to deny the tower due to lack of compliance by the 30th day of the "comment period." The Town also filed a Notice of Intervention, and hired an attorney. Giving "substantial deference" to the town's recommendations, the PUC hearing officer issued a proposal for decision to deny the Tinmouth tower. ITW's attorney vehemently objected, noting there is no procedure for responding to town recommendations. The PUC remanded the case back to the hearing officer for further process.

3. Section 248a is incredibly complicated and confusing. Advance Notice periods are for towns to hold public hearings, review the information, and provide input to the applicant. Based on my experience, hardly anyone understands the purpose of Advance Notices. The PUC does not pay attention to Advance Notices. Once a Petition is filed, any public comments submitted in the Advance Notice Phase must be filed again, directed to the PUC rather than the applicant. Towns and RPCs which often meet only once a month now apparently have only 30 days to review their town plans and by-laws for compliance, which is unrealistic for many of the small towns where towers are proposed. I have given numerous presentations to town boards, neighbors, and must limit how much information I provide at each phase, as it is overwhelming in its extent and complexity. Vermonters who learn about this process are incredulous.

The PUC does not hold public hearings or conduct site visits for telecom towers. The Department of Public Service hires aesthetics experts who are so rare these days it is nearly impossible to find a qualified expert that understands Vermont's scenic natural beauty, the Quechee Analysis, and the need to protect our beautiful state from unduly adverse aesthetic impacts. Participation in the PUC's Section 248a contested case process is most likely to take the better part of a year, after which the tower will be approved. In addition to appealing the Enosburgh denial, ITW has sued the PUC in three cases in Federal District Court claiming they violated the "shot clock".

There is no public process around the siting of small cell antennas. This needs to be addressed.

Section 248a is not in the best interests of Vermont and should sunset.