

105TH CONGRESS
1ST SESSION

H. R. 3016

To amend section 332 of the Communications Act of 1934 to preserve State and local authority to regulate the placement, construction, and modification of certain telecommunications facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 1997

Mr. SANDERS (for himself, Mr. SHAYS, and Mr. DeFAZIO) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend section 332 of the Communications Act of 1934 to preserve State and local authority to regulate the placement, construction, and modification of certain telecommunications facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—The Congress finds the following:

5 (1) States and localities should be able to exer-
6 cise control over the construction and location of
7 such towers through the use of zoning, planned

1 growth, and other controls relating to the protection
2 of the environment and public health.

3 (2) The placement of commercial telecommuni-
4 cations, radio, or television towers near homes can
5 greatly reduce the value of such homes, destroy the
6 views from such homes, and reduce substantially the
7 desire to live in such homes.

8 (3) There are alternatives to the construction of
9 additional telecommunications towers to effectively
10 provide wireless services, including the collocation of
11 transmitters on existing towers and the use of alter-
12 native technologies, including satellites.

13 (4) The Federal Communications Commission
14 does not consider itself a health agency and turns to
15 health and radiation experts outside the agency for
16 guidance on the issue of health effects due to radio
17 frequency exposure. Additionally, both the Food and
18 Drug Administration and the Environmental Protec-
19 tion Agency agree that the research completed to
20 date is insufficient to determine whether using port-
21 able cellular telephones presents risks to human
22 health. It is therefore in the interest of the Nation
23 for the Congress to authorize a thorough Federal
24 study into the health effects of low-level, prolonged
25 exposure to nonionizing radiation.

1 (5) The rapid proliferation of personal wireless
2 transmitters and the expected rollout of digital tele-
3 vision transmitters mean that the number of sources
4 of nonionizing radiation and the relative strength of
5 these sources will increase dramatically in our Na-
6 tion's communities in the near future. Until inde-
7 pendently funded, conclusive, peer-reviewed studies
8 are completed on this subject, we should exercise
9 caution and give States and local governments full
10 authority to protect the public from radio frequency
11 emissions.

12 (6) The Federal Communications Commission
13 has proposed rules regarding the siting of personal
14 wireless transmitter towers. It is in the interest of
15 the Nation that the second memorandum opinion
16 and order notice of proposed rulemaking of the
17 Commission with respect to application of such ordi-
18 nances to the placement of such towers, WT Docket
19 No. 97-192, ET Docket No. 93-62, and RM-8577,
20 be modified in order to permit State and local gov-
21 ernments to exercise their zoning and land use au-
22 thorities, and their power to protect public health
23 and safety, to regulate the placement of tele-
24 communications towers. Further, the proposed rules
25 should be modified to allow a licensee or applicant

1 to seek relief from an adverse action only after they
2 have exhausted all available administrative or judi-
3 cial remedies at the local or State levels of jurisdic-
4 tion, and, that when petitioning before the Commis-
5 sion for relief from an adverse decision, the appli-
6 cant shall bear the burden of proof relating to the
7 placement of such towers.

8 (7) On August 19, 1997, the Federal Commu-
9 nications Commission issued a proposed rule, MM
10 Docket No. 97–182, which would preempt the appli-
11 cation of State and local zoning and land use ordi-
12 nances regarding the placement of telecommuni-
13 cations towers for digital television services. It is in
14 the interest of the Nation that the Commission not
15 adopt this rule.

16 (b) PURPOSES.—The purposes of this Act are as fol-
17 lows:

18 (1) To repeal the limitations on the exercise of
19 State and local authorities regarding the placement,
20 construction, and modification of personal wireless
21 service facilities that arise under section 332(c)(7) of
22 the Communications Act of 1934 (47 U.S.C.
23 332(c)(7)).

24 (2) To permit State and local governments to
25 regulate the placement, construction, and modifica-

1 tion of such facilities on the basis of the environ-
2 mental effects of the operation of such facilities.

3 (3) To prohibit the Federal Communications
4 Commission from adopting rules which would pre-
5 empt State and local regulation of the placement of
6 such facilities.

7 **SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT,**
8 **CONSTRUCTION, AND MODIFICATION OF CER-**
9 **TAIN TELECOMMUNICATIONS FACILITIES.**

10 (a) REPEAL OF LIMITATIONS.—Section 332(c)(7)(B)
11 of the Communications Act of 1934 (47 U.S.C.
12 332(c)(7)(B)) is amended—

13 (1) in clause (i), by striking “thereof—” and all
14 that follows through the end and inserting “thereof
15 shall not unreasonably discriminate among providers
16 of functionally equivalent services.”;

17 (2) by striking clause (iv);

18 (3) by redesignating clause (v) as clause (iv);

19 and

20 (4) in clause (iv), as so redesignated—

21 (A) in the first sentence, by striking “30
22 days after such action or failure to act” and in-
23 serting “30 days after exhaustion of any admin-
24 istrative remedies with respect to such action or
25 failure to act”; and

1 (B) by striking the third sentence and in-
2 serting the following: “In any such action in
3 which a person seeking to place, construct, or
4 modify a tower facility is a party, such person
5 shall bear the burden of proof.”.

6 (b) PROHIBITION ON ADOPTION OF RULE.—Notwith-
7 standing any other provision of law, the Federal Commu-
8 nications Commission may not adopt as a final rule the
9 proposed rule set forth in “Preemption of State and Local
10 Zoning and Land Use Restrictions on Siting, Placement
11 and Construction of Broadcast Station Transmission Fa-
12 cilities”, MM Docket No. 97–182, released August 19,
13 1997.

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