

105TH CONGRESS
1ST SESSION

S. 1350

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 SENATE OF THE UNITED STATES

OCTOBER 30, 1997

Mr. LEAHY (for himself and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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.—Congress makes the following find-
5 ings:

6 (1) The placement of commercial telecommuni-
7 cations, radio, or television towers near homes can

1 greatly reduce the value of such homes, destroy the
2 views from such homes, and reduce substantially the
3 desire to live in such homes.

4 (2) States and localities should be able to exer-
5 cise control over the construction and location of
6 such towers through the use of zoning, planned
7 growth, and other controls relating to the protection
8 of the environment and public safety.

9 (3) There are alternatives to the construction of
10 additional telecommunications towers to meet tele-
11 communications needs, including the co-location of
12 antennae on existing towers and the use of alter-
13 native technologies.

14 (4) On August 19, 1997, the Federal Commu-
15 nications Commission issued a proposed rule, MM
16 Docket No. 97–182, which would preempt the appli-
17 cation of State and local zoning and land use ordi-
18 nances regarding the placement of telecommuni-
19 cations towers. It is in the interest of the Nation
20 that the Commission not adopt this rule.

21 (5) It is in the interest of the Nation that the
22 second memorandum opinion and order and notice
23 of proposed rule making of the Commission with re-
24 spect to application of such ordinances to the place-
25 ment of such towers, WT Docket No. 97–192, ET

1 Docket No. 93–62, and RM–8577, be modified in
2 order to permit State and local governments to exer-
3 cise their zoning and land use authorities, and their
4 power to protect public health and safety, to regu-
5 late the placement of telecommunications towers and
6 to place the burden of proof in civil actions relating
7 to the placement of such towers on the person or en-
8 tity that seeks to place, construct, or modify such
9 towers.

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

12 (1) To repeal the limitations on the exercise of
13 State and local authorities regarding the placement,
14 construction, and modification of personal wireless
15 service facilities that arise under section 332(c)(7) of
16 the Communications Act of 1934 (47 U.S.C.
17 332(c)(7)).

18 (2) To permit State and local governments to
19 regulate the placement, construction, and modifica-
20 tion of such facilities on the basis of the environ-
21 mental effects of the operation of such facilities.

22 (3) To prohibit the Federal Communications
23 Commission from adopting rules which would pre-
24 empt State and local regulation of the placement of
25 such facilities.

1 **SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT,**
 2 **CONSTRUCTION, AND MODIFICATION OF CER-**
 3 **TAIN TELECOMMUNICATIONS FACILITIES.**

4 (a) REPEAL OF LIMITATIONS.—Section 332(c)(7)(B)
 5 of the Communications Act of 1934 (47 U.S.C.
 6 332(c)(7)(B)) is amended—

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

11 (2) by striking clause (iv);

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

13 and

14 (4) in clause (iv), as so redesignated, by strik-
 15 ing the third sentence and inserting the following:
 16 “In any such action in which a person seeking to
 17 place, construct, or modify a tower facility is a
 18 party, such person shall bear the burden of proof.”.

19 (b) PROHIBITION ON ADOPTION OF RULE.—Notwith-
 20 standing any other provision of law, the Federal Commu-
 21 nications Commission may not adopt as a final rule the
 22 proposed rule set forth in “Preemption of State and Local
 23 Zoning and Land Use Restrictions on Siting, Placement
 24 and Construction of Broadcast Station Transmission Fa-

1 cilities”, MM Docket No. 97–182, released August 19,
2 1997.

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