

105TH CONGRESS
2D SESSION

S. 2514

To amend the Communications Act of 1934 to clarify State and local authority to regulate the placement, construction, and modification of broadcast transmission and telecommunications facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 1998

Mr. LEAHY (for himself, Mr. JEFFORDS, Mrs. HUTCHISON, Mr. FEINGOLD, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mr. GREGG, Mr. SARBANES, Mr. CLELAND, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to clarify State and local authority to regulate the placement, construction, and modification of broadcast transmission and 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 siting and modification of such
6 towers through the use of zoning, planned growth,
7 and other controls relating to the protection of the
8 environment and public safety.

9 (3) There are alternatives to the construction of
10 towers to meet telecommunications and broadcast
11 needs, including the co-location of antennae on exist-
12 ing towers or structures, towerless PCS-Over-Cable
13 telephone service, satellite television systems, low-
14 Earth orbit satellite communication networks, and
15 other alternative technologies.

16 (4) There are alternative methods of designing
17 towers to meet telecommunications and broadcast
18 needs, including the use of small towers that do not
19 require blinking aircraft safety lights, break skylines,
20 or protrude above tree canopies and that are camou-
21 flaged or disguised to blend with their surroundings,
22 or both.

23 (5) On August 19, 1997, the Federal Commu-
24 nications Commission issued a proposed rule, MM
25 Docket No. 97–182, which would preempt the appli-

1 cation of State and local zoning and land use ordi-
2 nances regarding the placement of broadcast trans-
3 mission facilities. It is in the interest of the Nation
4 that the Commission not adopt this rule.

5 (6) It is in the interest of the Nation that the
6 memoranda opinions and orders and proposed rules
7 of the Commission with respect to application of cer-
8 tain ordinances to the placement of such towers
9 (WT Docket No. 97-192, ET Docket No. 93-62,
10 RM-8577, and FCC 97-303, 62 F.R. 47960) be
11 modified in order to permit State and local govern-
12 ments to exercise their zoning and land use authori-
13 ties, and their power to protect public health and
14 safety, to regulate the placement of telecommuni-
15 cations or broadcast towers and to place the burden
16 of proof in civil actions, and in actions before the
17 Commission relating to the placement of such tow-
18 ers, on the person or entity that seeks to place, con-
19 struct, or modify such towers.

20 (7) PCS-Over-Cable or satellite telecommuni-
21 cations systems, including low-Earth orbit satellites,
22 offer a significant opportunity to provide so-called
23 “911” emergency telephone service throughout much
24 of the United States.

1 (8) According to the Comptroller General, the
2 Commission does not consider itself a health agency
3 and turns to health and radiation experts outside
4 the Commission for guidance on the issue of health
5 effects of radio frequency exposure.

6 (9) The Federal Aviation Administration does
7 not have the authority to regulate the siting of per-
8 sonal wireless telephone or broadcast transmission
9 towers near airports or high-volume air traffic areas
10 such as corridors of airspace or commonly used
11 flyways. The Commission's proposed rules to pre-
12 empt State and local zoning and land-use restric-
13 tions for the siting of such towers will have a serious
14 negative impact on aviation safety, airport capacity
15 and investment, and the efficient use of navigable
16 airspace.

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

19 (1) To repeal certain limitations on State and
20 local authority regarding the placement, construc-
21 tion, and modification of personal wireless service
22 towers and related facilities as such limitations arise
23 under section 332(c)(7) of the Communications Act
24 of 1934 (47 U.S.C. 332(c)(7)).

25 (2) To permit State and local governments—

(A) in cases where the placement, construction, or modification of personal wireless service telephone and broadcast towers and other facilities is inconsistent with State and local requirements or decisions, to require the use of alternative telecommunication or broadcast technologies when such alternative technologies are available; and

(B) to regulate the placement of such towers so that their location or modification will not interfere with the safe and efficient use of public airspace or otherwise compromise or endanger public safety.

**SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT,
CONSTRUCTION, AND MODIFICATION OF
BROADCAST TRANSMISSION AND OTHER
TELECOMMUNICATIONS FACILITIES.**

(a) REPEAL OF LIMITATIONS ON REGULATION OF PERSONAL WIRELESS FACILITIES.—Section 332(c)(7)(B) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(B)) is amended—

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

1 (2) by striking clause (iv);

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

3 and

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

5 (A) in the first sentence, by striking “30
6 days after such action or failure to act” and in-
7 serting “30 days after exhaustion of any admin-
8 istrative remedies with respect to such action or
9 failure to act”; and

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

15 (b) PROHIBITION ON ADOPTION OF RULE REGARD-
16 ING PREEMPTION OF STATE AND LOCAL AUTHORITY
17 OVER BROADCAST TRANSMISSION FACILITIES.—Notwith-
18 standing any other provision of law, the Federal Commu-
19 nications Commission may not adopt as a final rule the
20 proposed rule set forth in “Preemption of State and Local
21 Zoning and Land Use Restrictions on Siting, Placement
22 and Construction of Broadcast Station Transmission Fa-
23 cilities”, MM Docket No. 97–182, released August 19,
24 1997.

1 (c) AUTHORITY OVER PLACEMENT, CONSTRUCTION,
 2 AND MODIFICATION OF OTHER TRANSMISSION TOW-
 3 ERS.—Part I of title III of the Communications Act of
 4 1934 (47 U.S.C. 301 et seq.) is amended by adding at
 5 the end the following:

6 **“SEC. 337. STATE AND LOCAL AUTHORITY OVER PLACE-**
 7 **MENT, CONSTRUCTION, AND MODIFICATION**
 8 **OF TELECOMMUNICATIONS AND BROADCAST**
 9 **TOWERS.**

10 “(a) IN GENERAL.—Notwithstanding any other pro-
 11 vision of this Act, no provision of this Act may be inter-
 12 preted to authorize any person to place, construct, or mod-
 13 ify a broadcast tower or telecommunications tower in a
 14 manner that is inconsistent with State or local law, or con-
 15 trary to an official decision of the appropriate State or
 16 local government entity having authority to approve, li-
 17 cense, modify, or deny an application to place, construct,
 18 or modify a tower, if alternate technology is capable of
 19 delivering the broadcast or telecommunications signals
 20 without the use of a tower.

21 “(b) AUTHORITY REGARDING PRODUCTION OF SAFE-
 22 TY STUDIES.—No provision of this Act may be interpreted
 23 to prohibit a State or local government from—

24 “(1) requiring a person seeking authority to lo-
 25 cate telecommunications facilities or broadcast

1 transmission facilities within the jurisdiction of such
2 government to produce—

3 “(A) environmental studies, engineering re-
4 ports, or other documentation of the compliance
5 of such facilities with radio frequency exposure
6 limits established by the Commission; and

7 “(B) documentation of the compliance of
8 such facilities with applicable Federal, State,
9 and local aviation safety standards or aviation
10 obstruction standards regarding objects effect-
11 ing navigable airspace; or

12 “(2) refusing to grant authority to such person
13 to locate such facilities within the jurisdiction of
14 such government if such person fails to produce any
15 studies, reports, or documentation required under
16 paragraph (1).”.

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