

106TH CONGRESS
1ST SESSION

S. 1538

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

AUGUST 5, 1999

Mr. LEAHY (for himself, Mr. JEFFORDS, Mrs. HUTCHISON, Mr. FEINGOLD, and Mr. MOYNIHAN) 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 telecommunications facili-
7 ties near residential properties can greatly reduce

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

4 (2) States and local governments should be able
5 to exercise control over the placement, construction,
6 and modification of such facilities through the use of
7 zoning, planned growth, and other land use regula-
8 tions relating to the protection of the environment
9 and public health, safety, and welfare of the commu-
10 nity.

11 (3) There are alternatives to the construction of
12 facilities to meet telecommunications and broadcast
13 needs, including, but not limited to, alternative loca-
14 tions, colocation of antennas on existing towers or
15 structures, towerless PCS-Over-Cable or PCS-Over-
16 Fiber telephone service, satellite television systems,
17 low-Earth orbit satellite communication networks,
18 and other alternative technologies.

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

1 (5) On August 19, 1997, the Federal Commu-
2 nications Commission issued a proposed rule, MM
3 Docket No. 97–182, which would preempt the appli-
4 cation of State and local zoning and land use ordi-
5 nances regarding the placement, construction, and
6 modification of broadcast transmission facilities. It
7 is in the interest of the Nation that the Commission
8 not adopt this rule.

9 (6) It is in the interest of the Nation that the
10 memoranda opinions and orders and proposed rules
11 of the Commission with respect to application of cer-
12 tain ordinances to the placement of such towers
13 (WT Docket No. 97–192, ET Docket No. 93–62,
14 RM–8577, and FCC 97–303, 62 F.R. 47960) be
15 modified in order to permit State and local govern-
16 ments to exercise their zoning and land use authori-
17 ties, and their power to protect public health and
18 safety, to regulate the placement of telecommuni-
19 cations or broadcast facilities and to place the bur-
20 den of proof in civil actions, and in actions before
21 the Commission and State and local authorities re-
22 lating to the placement, construction, and modifica-
23 tion of such facilities, on the person or entity that
24 seeks to place, construct, or modify such facilities.

1 (7) PCS-Over-Cable, PCS-Over-Fiber, and sat-
2 ellite telecommunications systems, including low-
3 Earth orbit satellites, offer a significant opportunity
4 to provide so-called “911” emergency telephone serv-
5 ice throughout much of the United States.

6 (8) According to the Comptroller General, the
7 Commission does not consider itself a health agency
8 and turns to health and radiation experts outside
9 the Commission for guidance on the issue of health
10 and safety effects of radio frequency exposure.

11 (9) The Federal Aviation Administration does
12 not have adequate authority to regulate the place-
13 ment, construction, and modification of tele-
14 communications facilities near airports or high-vol-
15 ume air traffic areas such as corridors of airspace
16 or commonly used flyways. The Commission’s pro-
17 posed rules to preempt State and local zoning and
18 land-use regulations for the siting of such facilities
19 will have a serious negative impact on aviation safe-
20 ty, airport capacity and investment, and the efficient
21 use of navigable airspace.

22 (10) The telecommunications industry and its
23 experts should be expected to have access to the best
24 and most recent technical information and should
25 therefore be held to the highest standards in terms

1 of their representations, assertions, and promises to
2 governmental authorities.

3 (11) There has been a substantial effort by the
4 Federal Government to determine the effects of elec-
5 tric and magnetic fields on biological systems, as is
6 evidenced by the Electric and Magnetic Fields Re-
7 search and Public Information Dissemination
8 (RAPID) Program, which was established by section
9 2118 of the Energy Policy Act of 1992 (Public Law
10 102–486; 42 U.S.C. 13478). This five-year program,
11 which was coordinated by the National Institute of
12 Environmental Health Sciences and the Department
13 of Energy, examined the possible effects of electric
14 and magnetic fields on human health. Despite the
15 success of this program, there has been no similar
16 effort by the Federal Government to determine the
17 possible effects on human health of radio frequency
18 emissions associated with telecommunications facili-
19 ties. The RAPID program could serve as the excel-
20 lent model for a Federally-sponsored research
21 project.

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

24 (1) To repeal certain limitations on State and
25 local authority regarding the placement, construc-

1 tion, and modification of personal wireless service fa-
2 cilities and related facilities as such limitations arise
3 under section 332(c)(7) of the Communications Act
4 of 1934 (47 U.S.C. 332(c)(7)).

5 (2) To permit State and local governments—

6 (A) in cases where the placement, con-
7 struction, or modification of telecommunications
8 facilities and other facilities is inconsistent with
9 State and local regulations, laws, or decisions,
10 to require the use of alternative telecommuni-
11 cation or broadcast technologies when such al-
12 ternative technologies are available;

13 (B) to regulate the placement, modifica-
14 tion, and construction of such facilities so that
15 their placement, construction, or modification
16 will not interfere with the safe and efficient use
17 of public airspace or otherwise compromise or
18 endanger public safety; and

19 (C) to hold applicants for permits for the
20 placement, construction, or modification of such
21 telecommunications facilities, and providers of
22 services using such towers and facilities, ac-
23 countable for the truthfulness and accuracy of
24 representations and statements placed in the

1 record of hearings for such permits, licenses, or
 2 approvals.

3 **SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT,**
 4 **CONSTRUCTION, AND MODIFICATION OF**
 5 **TELECOMMUNICATIONS FACILITIES.**

6 (a) REPEAL OF LIMITATIONS ON REGULATION OF
 7 PERSONAL WIRELESS FACILITIES.—Section 332(c)(7)(B)
 8 of the Communications Act of 1934 (47 U.S.C.
 9 332(c)(7)(B)) is amended—

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

14 (2) by striking clause (iv);

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

16 and

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

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

23 (B) by striking the third sentence and in-
 24 serting the following: “In any such action in
 25 which a person seeking to place, construct, or

1 modify a telecommunications facility is a party,
 2 such person shall bear the burden of proof, re-
 3 gardless of who commences the action.”.

4 (b) PROHIBITION ON ADOPTION OF RULE REGARD-
 5 ING PREEMPTION OF STATE AND LOCAL AUTHORITY
 6 OVER BROADCAST TRANSMISSION FACILITIES.—Notwith-
 7 standing any other provision of law, the Federal Commu-
 8 nications Commission may not adopt as a final rule or
 9 otherwise the proposed rule set forth in “Preemption of
 10 State and Local Zoning and Land Use Restrictions on
 11 Siting, Placement and Construction of Broadcast Station
 12 Transmission Facilities”, MM Docket No. 97–182, re-
 13 leased August 19, 1997.

14 (c) AUTHORITY OVER PLACEMENT, CONSTRUCTION,
 15 AND MODIFICATION OF OTHER TRANSMISSION FACILI-
 16 TIES.—Part I of title III of the Communications Act of
 17 1934 (47 U.S.C. 301 et seq.) is amended by adding at
 18 the end the following:

19 **“SEC. 337. STATE AND LOCAL AUTHORITY OVER PLACE-**
 20 **MENT, CONSTRUCTION, AND MODIFICATION**
 21 **OF TELECOMMUNICATIONS FACILITIES.**

22 “(a) IN GENERAL.—Notwithstanding any other pro-
 23 vision of this Act, no provision of this Act may be inter-
 24 preted to authorize any person or entity to place, con-
 25 struct, or modify telecommunications facilities in a man-

ner that is inconsistent with State or local law, or contrary to an official decision of the appropriate State or local government entity having authority to approve, permit, license, modify, or deny an application to place, construct, or modify a tower, if alternate technology is capable of delivering the broadcast or telecommunications signals without the use of a tower.

“(b) AUTHORITY REGARDING PRODUCTION OF SAFETY AND INTERFERENCE STUDIES.—No provision of this Act may be interpreted to prohibit a State or local government from—

“(1) requiring a person or entity seeking authority to place, construct, or modify telecommunications facilities or broadcast transmission facilities within the jurisdiction of such government to produce—

“(A) environmental studies, engineering reports, or other documentation of the compliance of such facilities with radio frequency exposure limits established by the Commission and compliance with applicable laws and regulations governing the effects of the proposed facility on the health, safety, and welfare of local residents in the community; and

1 “(B) documentation of the compliance of
2 such facilities with applicable Federal, State,
3 and local aviation safety standards or aviation
4 obstruction standards regarding objects effect-
5 ing navigable airspace; or

6 “(2) refusing to grant authority to such person
7 to locate such facilities within the jurisdiction of
8 such government if such person fails to produce any
9 studies, reports, or documentation required under
10 paragraph (1).

11 “(c) CONSTRUCTION.—Nothing in this section may
12 be construed to prohibit or otherwise limit the authority
13 of a State or local government to ensure compliance with
14 or otherwise enforce any statements, assertions, or rep-
15 resentations filed or submitted by or on behalf of an appli-
16 cant with the State or local government for authority to
17 place, construct, or modify telecommunications facilities or
18 broadcast transmission facilities within the jurisdiction of
19 the State or local government.”.

20 **SEC. 3. ASSESSMENT OF RESEARCH ON EFFECTS OF RADIO**
21 **FREQUENCY EMISSIONS ON HUMAN HEALTH.**

22 (a) ASSESSMENT.—The Secretary of Health and
23 Human Services shall carry out an independent assess-
24 ment on the effects of radio frequency emission on human
25 health. The Secretary shall carry out the independent as-

1 assessment through grants to appropriate public and private
2 entities selected by the Secretary for purposes of the inde-
3 pendent assessment.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There
5 are hereby authorized to be appropriated for the Secretary
6 of Health and Human Services for fiscal year 2000,
7 \$10,000,000 for purposes of grants for the independent
8 assessment required by subsection (a). Amounts appro-
9 priated pursuant to the authorization of appropriation in
10 the preceding sentence shall remain available until ex-
11 pended.

12 (c) The Secretary of Health and Human Services
13 shall produce a report on existing research evaluating the
14 biological effects to human health of short term, high-level,
15 as well as long-term, low-level exposures to radio frequency
16 emissions to Congress no later than January 1, 2001.

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