

108TH CONGRESS
2D SESSION

S. 2963

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 2004

Mr. LEAHY (for himself, Mr. JEFFORDS, 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 and reaffirm State and local authority to regulate the placement, construction, and modification of broadcast transmission 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. SHORT TITLE.**

4 This Act may be cited as the “Local Control of
5 Broadcast Towers Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The placement, construction, and modifica-
2 tion of broadcast transmission facilities near residen-
3 tial communities and facilities such as schools can
4 greatly reduce the value of residential properties, de-
5 stroy the views from properties, produce radio fre-
6 quency interference, raise concerns about potential
7 long-term health effects of such facilities, and reduce
8 substantially the desire to live in the areas of such
9 facilities.

10 (2) States and local governments have tradi-
11 tionally regulated development and should be able to
12 exercise control over the placement, construction,
13 and modification of broadcast transmission facilities
14 through the use of zoning and other land use regula-
15 tions relating to the protection of the environment,
16 public health and safety, and the general welfare of
17 the community and the public.

18 (3) The Federal Communications Commission
19 establishes policies to govern interstate and inter-
20 national communications by television, radio, wire,
21 satellite, and cable. The Commission ensures compli-
22 ance of such activities with applicable Federal laws,
23 including the National Environmental Policy Act of
24 1969 and the National Historic Preservation Act, in
25 its decision-making on such activities.

1 (4) The Commission defers to State and local
2 authorities which regulate the placement, construc-
3 tion, and modification of broadcast transmission fa-
4 cilities through the use of zoning, construction and
5 building, and environmental and safety regulations
6 in order to protect the environment and the health,
7 safety, and general welfare of communities and the
8 public.

9 (5) On August 19, 1997, the Commission
10 issued a proposed rule, MM Docket No. 97-182,
11 which would preempt the application of most State
12 and local zoning, environmental, construction and
13 building, and other regulations affecting the place-
14 ment, construction, and modification of broadcast
15 transmission facilities.

16 (6) The telecommunications industry and its ex-
17 perts should be expected to have access to the best
18 and most recent technical information and should
19 therefore be held to the highest standards in terms
20 of their representations, assertions, and promises to
21 governmental authorities.

22 (b) PURPOSE.—The purpose of this Act is to confirm
23 that State and local governments are the appropriate enti-
24 ties—

1 (1) to regulate the placement, construction, and
2 modification of broadcast transmission facilities con-
3 sistent with State and local zoning, construction and
4 building, environmental, and land use regulations;

5 (2) to regulate the placement, construction, and
6 modification of broadcast transmission facilities so
7 that their placement, construction, or modification
8 will not interfere with the safe and efficient use of
9 public airspace or otherwise compromise or endanger
10 the health, safety, and general welfare of the public;
11 and

12 (3) to hold accountable applicants for permits
13 for the placement, construction, or modification of
14 broadcast transmission facilities, and providers of
15 services using such facilities, for the truthfulness
16 and accuracy of representations and statements
17 placed in the record of hearings for such permits, li-
18 censes, or approvals.

19 **SEC. 3. PROHIBITION ON ADOPTION OF RULE REGARDING**
20 **PREEMPTION OF STATE AND LOCAL AUTHOR-**
21 **ITY OVER BROADCAST TRANSMISSION FA-**
22 **CILITIES.**

23 Notwithstanding any other provision of law, the Fed-
24 eral Communications Commission shall not adopt as a
25 final rule or otherwise directly or indirectly implement any

1 portion of the proposed rule set forth in “Preemption of
2 State and Local Zoning and Land Use Restrictions on
3 Siting, Placement and Construction of Broadcast Station
4 Transmission Facilities”, MM Docket No. 97–182, re-
5 leased August 19, 1997.

6 **SEC. 4. AUTHORITY OVER PLACEMENT, CONSTRUCTION,**
7 **AND MODIFICATION OF BROADCAST TRANS-**
8 **MISSION FACILITIES.**

9 Part I of title III of the Communications Act of 1934
10 (47 U.S.C. 301 et seq.) is amended by adding at the end
11 the following:

12 **“SEC. 340. STATE AND LOCAL AUTHORITY OVER PLACE-**
13 **MENT, CONSTRUCTION, AND MODIFICATION**
14 **OF BROADCAST TRANSMISSION FACILITIES.**

15 **“(a) AUTHORITY TO REQUIRE LEAST INTRUSIVE**
16 **FACILITIES.—**

17 **“(1) IN GENERAL.—**A State or local govern-
18 ment may deny an application to place, construct, or
19 modify broadcast transmission facilities on the basis
20 that alternative technologies, delivery systems, or
21 structures are capable of delivering broadcast signals
22 comparable to that proposed to be delivered by such
23 facilities in a manner that is less intrusive to the
24 community concerned than such facilities.

1 “(2) CONSIDERATIONS.—In determining under
2 paragraph (1) the intrusiveness of technologies, de-
3 livery systems, or structures for the transmission of
4 broadcast signals, a State or local government may
5 consider the aesthetics of such technologies, systems,
6 or structures, the environmental impact of such
7 technologies, systems, or structures, and the radio
8 frequency interference or radiation emitted by such
9 technologies, systems, or structures.

10 “(3) BURDEN OF PROOF.—In any hearing for
11 purposes of the exercise of the authority in para-
12 graph (1), the burden shall be on the applicant.

13 “(b) RADIO INTERFERENCE.—A State or local gov-
14 ernment may regulate the location, height, or modification
15 of broadcast transmission facilities in order to address the
16 effects of radio frequency interference caused by such fa-
17 cilities on local communities and the public.

18 “(c) AUTHORITY TO REQUIRE STUDIES AND DOCU-
19 MENTATION.—No provision of this Act may be interpreted
20 to prohibit a State or local government from—

21 “(1) requiring a person seeking authority to
22 place, construct, or modify broadcast transmission
23 facilities to produce—

24 “(A) environmental, biological, and health
25 studies, engineering reports, or other docu-

1 mentation of the compliance of such facilities
2 with radio frequency exposure limits, radio fre-
3 quency interference impacts, and compliance
4 with applicable laws, rules, and regulations gov-
5 erning the effects of such facilities on the envi-
6 ronment, public health and safety, and the gen-
7 eral welfare of the community and the public;
8 and

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

14 “(2) refusing to grant authority to such person
15 to place, construct, or modify such facilities within
16 the jurisdiction of such government if such person
17 fails to produce studies, reports, or documentation
18 required under paragraph (1).

19 “(d) CONSTRUCTION.—Nothing in this section may
20 be construed to prohibit or otherwise limit the authority
21 of a State or local government to ensure compliance with
22 or otherwise enforce any statements, assertions, or rep-
23 resentations filed or submitted by or on behalf of an appli-
24 cant with the State or local government for authority to
25 place, construct, or modify broadcast transmission facili-

1 ties within the jurisdiction of the State or local govern-
2 ment.

3 “(e) BROADCAST TRANSMISSION FACILITY DE-
4 FINED.—In this section, the term ‘broadcast transmission
5 facility’ means the equipment, or any portion thereof, with
6 which a broadcaster transmits and receives the radio-
7 frequency waves that carry the services of the broadcaster,
8 regardless of whether the equipment is sited on one or
9 more towers or other structures owned by a person or enti-
10 ty other than the broadcaster, and includes the location
11 of such equipment.”.

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