

108TH CONGRESS  
2D SESSION

# S. 2964

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

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## 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

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## 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 personal wireless services 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 Cel-  
5 lular Towers Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

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

1           (1) The placement, construction, and modifica-  
2           tion of personal wireless services facilities (also  
3           known as wireless facilities) near residential commu-  
4           nities and facilities such as schools can greatly re-  
5           duce the value of residential properties, destroy the  
6           views from properties, produce radio frequency inter-  
7           ference, raise concerns about potential long-term  
8           health effects of such facilities, and reduce substan-  
9           tially the desire to live in the areas of such 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 wireless facilities through the  
14           use of zoning and other land use regulations relating  
15           to the protection of the environment, public health  
16           and safety, and the general welfare of the commu-  
17           nity 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 the  
22           compliance of such activities with a variety of Fed-  
23           eral laws, including the National Environmental Pol-  
24           icy Act of 1969 and the National Historic Preserva-  
25           tion Act, in its decision-making on such activities.

1           (4) Under section 332(c)(7)(A) of the Commu-  
2           nications Act of 1934 (47 U.S.C. 332(c)(7)(A)), the  
3           Commission defers to State and local authorities  
4           that regulate the placement, construction, and modi-  
5           fication of wireless facilities through the use of zon-  
6           ing and other land use regulations.

7           (5) Alternative technologies for the placement,  
8           construction, and modification of wireless facilities  
9           may meet the needs of a wireless services provider  
10          in a less intrusive manner than the technologies pro-  
11          posed by the wireless services provider, including the  
12          use of small towers that do not require blinking air-  
13          craft safety lights, break skylines, or protrude above  
14          tree canopies.

15          (6) It is in the interest of the Nation that the  
16          requirements of the Commission with respect to the  
17          application of State and local ordinances to the  
18          placement, construction and modification of wireless  
19          facilities (for example WT Docket No. 97–192, ET  
20          Docket No. 93–62, RM–8577, and FCC 97–303, 62  
21          FR 47960) be modified so as—

22                 (A) to permit State and local governments  
23                 to exercise their zoning and other land use au-  
24                 thorities to regulate the placement, construc-  
25                 tion, and modification of such facilities; and

1 (B) to place the burden of proof in civil ac-  
2 tions, and in actions before the Commission and  
3 State and local authorities relating to the place-  
4 ment, construction, and modification of such fa-  
5 cilities, on the person that seeks to place, con-  
6 struct, or modify such facilities.

7 (7) PCS-Over-Cable, PCS-Over-Fiber Optic,  
8 and satellite telecommunications systems, including  
9 Low-Earth Orbit satellites, offer a significant oppor-  
10 tunity to provide so-called “911” emergency tele-  
11 phone service throughout much of the United States  
12 without unduly intruding into or effecting the envi-  
13 ronment, public health and safety, and the general  
14 welfare of the community and the public.

15 (8) The Federal Aviation Administration must  
16 rely upon State and local governments to regulate  
17 the placement, construction, and modification of  
18 telecommunications facilities near airports or high-  
19 volume air traffic areas such as corridors of airspace  
20 or commonly used flyways. The proposed rules of the  
21 Commission to preempt State and local zoning and  
22 other land-use regulations for the siting of such fa-  
23 cilities will have a serious negative impact on avia-  
24 tion safety, airport capacity and investment, the effi-  
25 cient use of navigable airspace, public health and

1 safety, and the general welfare of the community  
2 and the public.

3 (9) The telecommunications industry and its ex-  
4 perts should be expected to have access to the best  
5 and most recent technical information and should  
6 therefore be held to the highest standards in terms  
7 of their representations, assertions, and promises to  
8 governmental authorities.

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

11 (1) To repeal certain limitations on State and  
12 local authority regarding the placement, construc-  
13 tion, and modification of personal wireless services  
14 facilities under section 332(c)(7) of the Communica-  
15 tions Act of 1934 (47 U.S.C. 332(c)(7)).

16 (2) To permit State and local governments—  
17 (A) to regulate the placement, construc-  
18 tion, or modification of personal wireless serv-  
19 ices facilities with respect to their impacts on  
20 land use, including radio frequency interference  
21 and radio frequency radiation, in order to pro-  
22 tect the environment, public health and safety,  
23 and the general welfare of the community and  
24 the public;

1 (B) to regulate the placement, construc-  
2 tion, and modification of personal wireless serv-  
3 ices facilities so that they will not interfere with  
4 the safe and efficient use of public airspace or  
5 otherwise compromise or endanger the public  
6 health and safety and the general welfare of the  
7 community and the public; and

8 (C) to hold accountable applicants for per-  
9 mits for the placement, construction, or modi-  
10 fication of personal wireless services facilities,  
11 and providers of services using such facilities,  
12 for the truthfulness and accuracy of representa-  
13 tions and statements placed in the record of  
14 hearings for permits, licenses, or approvals for  
15 such facilities.

16 **SEC. 3. STATE AND LOCAL AUTHORITY OVER PLACEMENT,**  
17 **CONSTRUCTION, AND MODIFICATION OF PER-**  
18 **SONAL WIRELESS SERVICES FACILITIES.**

19 (a) LIMITATIONS ON STATE AND LOCAL REGULA-  
20 TION OF FACILITIES.—Subparagraph (B) of section  
21 332(c)(7) of the Communications Act of 1934 (47 U.S.C.  
22 332(c)(7)) is amended—

23 (1) by striking clause (iv);

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

25 and

1 (3) in clause (iv), as so redesignated—

2 (A) in the first sentence, by striking “may,  
3 within 30 days” and all that follows through  
4 the end of the sentence and inserting “may  
5 commence an action in any court of competent  
6 jurisdiction. Such action shall be commenced  
7 within 30 days after such action or failure to  
8 act unless the State concerned has established  
9 a different period for the commencement of  
10 such action.”; and

11 (B) by striking the third sentence and in-  
12 serting the following: “In any such action in  
13 which a person seeking to place, construct, or  
14 modify a personal wireless services facility is a  
15 party, such person shall bear the burden of  
16 proof, regardless of who commences such ac-  
17 tion.”.

18 (b) PROHIBITION ON ADOPTION OF RULE REGARD-  
19 ING RELIEF FROM STATE AND LOCAL REGULATION OF  
20 FACILITIES.—Notwithstanding any other provision of law,  
21 the Federal Communications Commission shall not adopt  
22 as a final rule or otherwise directly or indirectly implement  
23 any portion of the proposed rule set forth in “Procedures  
24 for Reviewing Requests for Relief From State and Local  
25 Regulation Pursuant to Section 332(c)(7)(B)(v) of the

1 Communications Act of 1934”, WT Docket No. 97–192,  
2 released August 25, 1997.

3 (c) AUTHORITY OVER PLACEMENT, CONSTRUCTION,  
4 AND MODIFICATION OF FACILITIES.—Such section  
5 332(c)(7) is further amended—

6 (1) by redesignating subparagraph (C) as sub-  
7 paragraph (D); and

8 (2) by inserting after subparagraph (B) the fol-  
9 lowing new subparagraph (C):

10 “(C) ADDITIONAL LIMITATIONS.—

11 “(i) AUTHORITY TO REQUIRE LEAST  
12 INTRUSIVE FACILITIES.—

13 “(I) IN GENERAL.—A State or  
14 local government may deny an appli-  
15 cation to place, construct, or modify  
16 personal wireless services facilities on  
17 the basis that alternative technologies,  
18 delivery systems, or structures are ca-  
19 pable of delivering a personal wireless  
20 services signal comparable to that pro-  
21 posed to be delivered by such facilities  
22 in a manner that is less intrusive to  
23 the community concerned than such  
24 facilities.



1                   “(II) CONSIDERATIONS.—In de-  
2                   termining under subclause (I) the in-  
3                   trusiveness of technologies, delivery  
4                   systems, or structures for personal  
5                   wireless services facilities, a State or  
6                   local government may consider the  
7                   aesthetics of such technologies, sys-  
8                   tems, or structures, the environmental  
9                   impact of such technologies, systems,  
10                  or structures, and the radio frequency  
11                  interference or radiation emitted by  
12                  such technologies, systems, or struc-  
13                  tures.

14                  “(III) BURDEN OF PROOF.—In  
15                  any hearing for purposes of the exer-  
16                  cise of the authority in subclause (I),  
17                  the burden shall be on the applicant.

18                  “(ii) RADIO INTERFERENCE.—A State  
19                  or local government may regulate the loca-  
20                  tion, height, or modification of personal  
21                  wireless services facilities in order to ad-  
22                  dress the effects of radio frequency inter-  
23                  ference caused by such facilities on local  
24                  communities and the public.

1           “(iii) AUTHORITY TO REQUIRE STUD-  
2           IES AND DOCUMENTATION.—No provision  
3           of this Act may be interpreted to prohibit  
4           a State or local government from—

5                   “(I) requiring a person seeking  
6                   authority to place, construct, or mod-  
7                   ify personal wireless services facilities  
8                   to produce—

9                           “(aa) environmental, biologi-  
10                           cal, and health studies, engineer-  
11                           ing reports, or other documenta-  
12                           tion of the compliance of such fa-  
13                           cilities with radio frequency expo-  
14                           sure limits, radio frequency inter-  
15                           ference impacts, and compliance  
16                           with applicable laws, rules, and  
17                           regulations governing the effects  
18                           of such facilities on the environ-  
19                           ment, public health and safety,  
20                           and the general welfare of the  
21                           community and the public; and

22                           “(bb) documentation of the  
23                           compliance of such facilities with  
24                           applicable Federal, State, and  
25                           local aviation safety standards or

1 aviation obstruction standards re-  
2 garding objects effecting navi-  
3 gable airspace; or

4 “(II) refusing to grant authority  
5 to such person to place, construct, or  
6 modify such facilities within the juris-  
7 diction of such government if such  
8 person fails to produce studies, re-  
9 ports, or documentation required  
10 under subclause (I).

11 “(iv) CONSTRUCTION.—Nothing in  
12 this subparagraph may be construed to  
13 prohibit or otherwise limit the authority of  
14 a State or local government to ensure com-  
15 pliance with or otherwise enforce any state-  
16 ments, assertions, or representations filed  
17 or submitted by or on behalf of an appli-  
18 cant with the State or local government for  
19 authority to place, construct, or modify  
20 personal wireless services facilities within  
21 the jurisdiction of the State or local gov-  
22 ernment.”.

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