



**VPA Comments**  
**Re: Wireless Facilities (S.137)**  
**To: Senate Natural Resources & Energy**  
**April 2, 2009**

The Vermont Planners Association, as a nonprofit organization, does not generally offer positions on legislation before committee unless specifically requested. However, as an organization that represents and upholds the practice and principles of sound long-term planning and growth management, we must weigh in – from a public policy perspective – on current proposals in S.137 that would unnecessarily limit or weaken the ability of Vermont municipalities, under the Vermont Planning and Development Act (24 VSA Chapter 117), and the state, under Act 250, to regulate wireless telecommunications facilities.

**Our concerns regarding the “Wireless Permitting” sections of the bill (pp. 56–72) are highlighted as follows:**

- **There is no clear evidence that local regulations, or Act 250, have impeded the development of telecommunications infrastructure in Vermont.** There is more evidence to suggest that Vermont lacks the market (e.g., population densities) necessary to attract private service providers and to economically extend telecommunications infrastructure into more rural parts of the state.
- **The current proposal would preclude municipal and Act 250 regulation of most, if not all, wireless facilities.** Given that all telecommunications facilities are in fact and by definition (as proposed) interconnected, the proposal to exempt “interconnected” telecommunications facilities from Act 250 and local permit requirements effectively exempts all telecommunications facilities – and as proposed all support structures and ancillary improvements – from municipal and state environmental review.
- **The proposed exemption goes far beyond federal limitations on municipal or state regulation of such facilities under the 1996 Telecommunications Act** – federal statutes continue to allow local governments to regulate the location, height and placement of such facilities, including supporting structures and ancillary improvements.
- **Municipalities are already limited in their ability to regulate telecommunications facilities under state law (24 V.S.A. §4412(8)(A),(9)) as most recently amended in 2007.** The need for additional exemptions or limitations has not been established. Model regulations, including those issued by VLCT which have been adopted by many municipalities, include an expedited, administrative permitting process for co-located facilities, and other facilities attached to existing structures.
- **As proposed, only review by the Public Service Board will be required for interconnected facilities – and even this may be waived for facilities deemed “minor” by the board.** The PSB, in its deliberations, is now required only to “give substantial deference to *the land conservation measures* in the plans of affected municipalities” as well as any municipal or regional planning commission recommendations. The board is not required to consider other plan elements, or siting and development standards established over many years that implement a municipal plan and mitigate the impacts of development on the community.

- **As proposed, the PSB may waive notice to adjoining property owners – given “good cause” – which is not defined in statute.** Adequate notice is a basic principle of due process. The reason for any waiver of such a basic principle – which affects the ability and right of adjoining property owners to participate in the review process – should be clearly justified in statute, and not left to arbitrary application or definition by rule.
- **Twenty-one days may not be adequate time for municipal and regional planning commissions to respond to a filing,** given that many municipal and regional planning commissions meet only on a monthly basis.
- **Given that wireless facilities would effectively be exempted from municipal review, there is no need to amend 24 VSA Chapter 117 sections as proposed under Sections 42 through 48 of the current bill.** These proposed amendments appear to be at odds with proposed exemptions and amended statutory definitions. In addition:
  - The language proposed under a new §4455 regarding the revocation of municipal permits may not be necessary given existing enforcement through notices of violation that may be addressed locally or appealed to court. It is also not clear why this provision should specifically reference telecommunications facilities given that they are only one type of development subject to municipal regulation and enforcement – and permit revocation as proposed.
  - Proposed language under §4470a that allows an appropriate municipal panel to “award reasonable attorney’s fees and costs” is not consistent with current requirements that fines and fees be imposed by the court, not the municipality. Attorney’s fees in this context should be awarded by the court, not a local panel.
  - The proposed increase in the number (up to 8 separate antennae) and aggregate antennae area (from 8 to 64 square feet) that are exempt from local review under 24 V.S.A. §4412(8) and §2291(19) is not reasonable, given that this exemption was originally intended for small wireless facilities installed for private, individual use (e.g., satellite dishes).
- **Any exemption of structures located within designated flood hazard areas from municipal regulation – including telecommunications facilities and ancillary structures as proposed – may affect municipal eligibility for participation in the National Flood Insurance Program.** This issue has been raised repeatedly with state agencies with regard to other exemption – e.g., farm structures – but has yet to be adequately resolved.
- **All statutory definitions of “telecommunications facility” as found under Titles 10, 24 and 30 should be consistent** – particularly as they relate to state and municipal permitting processes and associated limitations.

Our apologies for not appearing in person before the committee – we are an organization of volunteers, without paid staff or lobbyists, and as such are at the mercy of our work schedules. This makes it difficult to participate more fully in the legislative process, but we would like to be of service as we may.

If you have any questions, please don’t hesitate to contact us at your convenience:

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