

106TH CONGRESS  
1ST SESSION

# H. R. 2834

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.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1999

Mr. SANDERS introduced the following bill; which was referred to the Committee on Commerce

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## 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  
8 the value of such properties, destroy the views from

1 such properties, and reduce substantially the desire  
2 to live in the area.

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

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

18 (4) There are alternative methods of designing  
19 towers to meet telecommunications and broadcast  
20 needs, including the use of small towers that do not  
21 require blinking aircraft safety lights, break skylines,  
22 or protrude above tree canopies and that are camou-  
23 flaged or disguised to blend with their surroundings,  
24 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 (b) PURPOSES.—The purposes of this Act are as fol-  
4 lows:

5 (1) To repeal certain limitations on State and  
6 local authority regarding the placement, construc-  
7 tion, and modification of personal wireless service fa-  
8 cilities and related facilities as such limitations arise  
9 under section 332(c)(7) of the Communications Act  
10 of 1934 (47 U.S.C. 332(c)(7)).

11 (2) To permit State and local governments—

12 (A) in cases where the placement, con-  
13 struction, or modification of telecommunications  
14 facilities and other facilities is inconsistent with  
15 State and local regulations, laws, or decisions,  
16 to require the use of alternative telecommuni-  
17 cation or broadcast technologies when such al-  
18 ternative technologies are available;

19 (B) to regulate the placement, modifica-  
20 tion, and construction of such facilities so that  
21 their placement, construction, or modification  
22 will not interfere with the safe and efficient use  
23 of public airspace or otherwise compromise or  
24 endanger public safety; and

1 (C) to hold applicants for permits for the  
2 placement, construction, or modification of such  
3 telecommunications facilities, and providers of  
4 services using such towers and facilities, ac-  
5 countable for the truthfulness and accuracy of  
6 representations and statements placed in the  
7 record of hearings for such permits, licenses, or  
8 approvals.

9 **SEC. 2. STATE AND LOCAL AUTHORITY OVER PLACEMENT,**  
10 **CONSTRUCTION, AND MODIFICATION OF**  
11 **TELECOMMUNICATIONS FACILITIES.**

12 (a) REPEAL OF LIMITATIONS ON REGULATION OF  
13 PERSONAL WIRELESS FACILITIES.—Section 332(c)(7)(B)  
14 of the Communications Act of 1934 (47 U.S.C.  
15 332(c)(7)(B)) is amended—

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

20 (2) by striking clause (iv);

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

22 and

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

24 (A) in the first sentence, by striking “30  
25 days after such action or failure to act” and in-

1           serting “30 days after exhaustion of any admin-  
2           istrative remedies with respect to such action or  
3           failure to act”; and

4                   (B) by striking the third sentence and in-  
5           serting the following: “In any such action in  
6           which a person seeking to place, construct, or  
7           modify a telecommunications facility is a party,  
8           such person shall bear the burden of proof, re-  
9           gardless of who commences the action.”.

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

20           (c) AUTHORITY OVER PLACEMENT, CONSTRUCTION,  
21   AND MODIFICATION OF OTHER TRANSMISSION FACILI-  
22   TIES.—Part I of title III of the Communications Act of  
23   1934 (47 U.S.C. 301 et seq.) is amended by adding at  
24   the end the following:

1 **“SEC. 338. STATE AND LOCAL AUTHORITY OVER PLACE-**  
2 **MENT, CONSTRUCTION, AND MODIFICATION**  
3 **OF TELECOMMUNICATIONS FACILITIES.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-  
5 vision of this Act, no provision of this Act may be inter-  
6 preted to authorize any person or entity to place, con-  
7 struct, or modify telecommunications facilities in a man-  
8 ner that is inconsistent with State or local law, or contrary  
9 to an official decision of the appropriate State or local gov-  
10 ernment entity having authority to approve, permit, li-  
11 cense, modify, or deny an application to place, construct,  
12 or modify a tower, if alternate technology is capable of  
13 delivering the broadcast or telecommunications signals  
14 without the use of a tower.

15 “(b) AUTHORITY REGARDING PRODUCTION OF SAFE-  
16 TY AND INTERFERENCE STUDIES.—No provision of this  
17 Act may be interpreted to prohibit a State or local govern-  
18 ment from—

19 “(1) requiring a person or entity seeking au-  
20 thority to place, construct, or modify telecommuni-  
21 cations facilities or broadcast transmission facilities  
22 within the jurisdiction of such government to  
23 produce—

24 “(A) environmental studies, engineering re-  
25 ports, or other documentation of the compliance  
26 of such facilities with radio frequency exposure

1 limits established by the Commission and com-  
2 pliance with applicable laws and regulations  
3 governing the effects of the proposed facility on  
4 the health, safety, and welfare of local residents  
5 in the community; and

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

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

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

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