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## RE: Status of Administrative Auth. for tower

1 message

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**Bob Gashlin** <bgashlin@nbcllc.com>  
To: Jean Fraser <jf@portlandmaine.gov>

Fri, Dec 23, 2016 at 1:22 PM

Hi Jean,

As requested, the following is a recap of our discussion yesterday about radio frequency emissions.

Pursuant to Federal law, i.e. the Telecommunications Act of 1996, municipalities cannot deny applications by personal wireless service facilities (Cell Tower Facilities) based on environmental or health concerns because RF emissions are regulated by the FCC at these sites.

**(IV) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.**

The FCC requires each tower facility to be in compliance with its emission standards on a cumulative basis. If Towerco's facility exceeded the FCC threshold it would be obligated to address compliance regardless of where emissions were coming from including an adjoining tower.

As a practical matter, however, each set of a cellular antenna equipment operates at a very low power that emits only a small fraction of the FCC's maximum permitted exposure ("MPE") so the chance that MPE limits at a particular site would be exceeded are very low. For example, the current industry norm is that each set of cellular antenna equipment typically emits something in the range of .5% - 3%+ of the FCC's MPE.

Thanks,

Bob

**(7) Preservation of local zoning authority****(A) General authority**

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

**(B) Limitations**

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

**(C) Definitions**

For purposes of this paragraph—

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 308(v) of this title).