

Compare Versions of Federal Telecommunications Act (TCA)

Conclusion: regulation of the **operations** of Wireless Telecommunications Facilities **was never preempted** from local zoning authority.

Penultimate Version of the TCA (HR 1555 from Fall 1995)

In the [penultimate version](#) of the TCA, in Section 107, the words **operate** and **operation** appear throughout.

1995 — SEC. 107. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) National Wireless Telecommunications Siting Policy. — Section 332(c) of the Act (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

(7) Facilities siting policies. —

(A) Within 180 days after enactment of this paragraph, the Commission shall prescribe and make effective a policy regarding State and local regulation of the **placement, construction, modification, or operation** of facilities for the provision of commercial mobile services.

(B) Pursuant to subchapter III of chapter 5, title 5, United States Code, the Commission shall establish a negotiated rulemaking committee to negotiate and develop a proposed policy to comply with the requirements of this paragraph. Such committee shall include representatives from State and local governments, affected industries, and public safety agencies. In negotiating and developing such a policy, the committee shall take into account —

(i) the desirability of enhancing the **coverage** and quality of commercial mobile services and fostering competition in the provision of such services;

(ii) the **legitimate interests of State and local governments** in matters of exclusively local concern;

(iii) the effect of State and local regulation of facilities siting on interstate commerce; and

(iv) the administrative costs to State and local governments of reviewing requests for authorization to locate facilities for the provision of commercial mobile services.

(C) The policy prescribed pursuant to this paragraph shall ensure that —

(i) regulation of the **placement, construction, and modification** of facilities for the provision of commercial mobile services by any State or local government or instrumentality thereof —

(I) is reasonable, nondiscriminatory, and limited to the minimum necessary to accomplish the State or local government's legitimate purposes; and

(II) does not prohibit or have the effect of precluding any commercial mobile service; and

(ii) a State or local government or instrumentality thereof shall act on any request for authorization to **locate, construct, modify, or operate** facilities for the provision of commercial mobile services within a reasonable period of time after the

Ultimate Version of the TCA (S.652 passed in Feb 1996)

In the [ultimate version](#) of the TCA, in Section 704, the words **operate** and **operations** were removed, expressing Congressional intent.

1996 — SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) National Wireless Telecommunications Siting Policy. — Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

(7) Preservation of local zoning authority. —

(A) General authority. — Except as provided in this paragraph, **nothing in this Act 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.