

REPORT TO THE VERMONT LEGISLATURE

Recommendations Regarding Revisions to 30 V.S.A. § 248a Pursuant to Act 25

**Submitted by the Vermont Public Utility Commission to the Senate Committee on
Finance and the House Committee on Energy and Technology**

October 1, 2020

I. Introduction and Statutory Basis

On July 1, 2020, Act 25 (S.301) was enacted into law by the Vermont Legislature. Section two of the Act requires that the Vermont Public Utility Commission (“Commission”) review the criteria for granting a certificate of public good under 30 V.S.A. §248a and report to the Legislature whether “any changes to the statute should be made in light of recent developments in telecommunications technology.” The Commission does not recommend any changes to §248a at this time, as explained below.

In order to prepare the report, the Commission opened this non-contested case proceeding (Case No. 20-1958-INV) and solicited two rounds of written comments with respect to this section of the Act from state agencies, telecom providers, and other interested parties. Specifically, the Commission requested that commenters identify any new technologies currently being deployed in Vermont or new technologies that will begin to be deployed within the next year. The Commission also requested that commenters provide proposed statutory changes, if any, that they believe will be required in relation to the identified technologies, and an explanation of the basis for any proposed changes. Commenters were also asked to ensure that any proposed statutory revisions are consistent with federal laws limiting state siting authority for telecommunications facilities under Section 332(c)(7) of the Communications Act. In response, the Commission received comments from CTIA - The Wireless Association (“CTIA”), the Vermont Department of Public Service (“Department”), Vermonters for a Clean Environment (“VCE”), and nineteen members of the public.

II. Description of Comments

The Department, in its comments, argues that the existing § 248a statute applies to all technologies, including new and developing technologies, and represents a “delicate balance to ensure swift deployment of telecommunications services and provide meaningful opportunity for input from stakeholders . . .”¹ The Department maintains that there remain significant gaps in existing mobile wireless coverage in the state that render the deployment of newer technologies like advanced fourth generation (“4G”) and fifth generation (“5G”) highly unlikely to occur in the near future. The Department also notes that 5G technology because of its limited range will face obstacles to deployment in Vermont given the mountainous terrain and lack of population density. Further, the Department points out that any burdensome technology-specific revisions to § 248a could run afoul of federal preemptions under Section 332 of the Communications Act. The Department concludes that § 248a “adequately accommodates deployed and new technologies for purposes of telecommunications facilities siting consistent with state policy.”² The Department does not propose any statutory changes.

CTIA, in its comments, argues that § 248a has served the wireless industry well and helped facilitate deployment of the existing wireless infrastructure in Vermont. CTIA does not identify any new technologies currently being deployed in the state and does not suggest any statutory changes to § 248a.

VCE’s comments are primarily criticism of the existing process under 30 V.S.A. § 248a. VCE argues that there should be more process and notice with respect to applications under § 248a. VCE also maintains

¹ Department comments at 2.

² Department comments at 9.

that siting authority for some installations should be transferred from the Commission to municipalities. VCE provides a list of statutory changes, including increased notice, moving siting authority to the municipal level, and mandatory radio frequency (“RF”) emission monitoring for all installations, that it believes would improve the existing review process. However, VCE does not identify any new telecommunication technologies that are currently being deployed in Vermont aside from noting that antennas now being deployed in Vermont could be used for 5G installations.

The public comments filed by individuals in general express concerns about the health impacts of RF emissions from existing cell sites and potential 5G installations, and also support the recommendations filed by VCE in this proceeding. The comments do not identify any new technologies currently being deployed in Vermont.

III. Discussion and Conclusion

The Commission’s charge from the Legislature in this report, pursuant to Act 25, is to recommend changes to § 248a in response to the deployment of new wireless technologies in Vermont. Based on the evidence received in this proceeding there are currently no new wireless technologies being deployed in the state, and there are unlikely to be any deployed in the near future. Accordingly, the Commission does not recommend any changes to § 248a at this time.

The only participant suggesting statutory revisions to § 248a in this proceeding is VCE, and these recommendations are echoed and supported by the public commenters. However, these proposed changes are based on perceived shortcomings of the existing statute with respect to current wireless infrastructure deployment and are, therefore, not responsive to this inquiry, which is focused on the deployment of new wireless technologies. As the Department points out in their comments, there are still large gaps in wireless coverage in Vermont with many areas unserved or underserved. The Commission concludes that the recommendations made by VCE and supported by the public commenters would, if implemented, act to slow the deployment of wireless infrastructure across the state and would actually prohibit the deployment of wireless installations in some areas. The Commission finds that slowing the pace of wireless deployment runs counter to the public’s interest in having a robust statewide wireless service network. Further, the primary basis for the concerns expressed in the public commenters’ and VCE’s comments is the health impacts of RF emissions. Adopting statutory revisions based on concerns about RF emissions would likely run afoul of federal preemption of state regulation of wireless spectrum. Therefore, the Commission does not support the adoption of VCE’s recommendations.