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Wireless Facilities Siting

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Applications to site cellular telephone antenna and other facilities for personal wireless services have increased as communities in Wisconsin begin to experience the impacts of the federal Telecommunications Act of 1996. The Telecommunications Act of 1996 established new federal policy for the future of all telecommunications. That policy is to promote competition in all sectors of the telecommunications industry by breaking down legal and functional barriers. The Act seeks to promote private investment and assure that telecommunications services are available to everyone.

The intent of Congress is summed up in Section 253 of the Act which reads: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

Wireless telecommunications, which is only one part of the field of telecommunications, is a very dynamic industry. Personal wireless services (cellular telephones, pagers, personal communications services) will respond quickly to customer demands which may result from the construction of new roads and new commercial and residential development. Wireless services are also increasingly important to public safety by providing communication during emergencies resulting from natural disasters or accidents. The number of wireless customers in the United States is growing by over thirty percent annually. Nationally the number of cellular towers is expected to increase from 18,000 to over 100,000 by the year 2000. It is important that communities include telecommunications systems in their planning activities.

Under the Act, "personal wireless facilities" are transmitters, antenna structures and other types of installations used for the provision of personal wireless services. Home satellite services are not considered personal wireless services

In a recent court decision, the Wisconsin Court of Appeals held that the requirements of the Telecommunications Act of 1996 applied to a request to site a cellular tower which was filed prior to the passage of the Act. See *Westel-Milwaukee Co., Inc., v. Walworth County*, 556 N.W.2d 107 (1996).

IMPACT ON LOCAL AUTHORITY

The Act expressly preserves state and local government powers to regulate the placement, construction, and modification of wireless towers and facilities. This provision is contrary to the interests of the cellular industry which lobbied for federal preemption of local regulatory powers. While local government has the authority to deny a request for a tower siting, there are a number of very important conditions which the Act places on local government. These limitations are outlined below:

1. **State and local governments cannot unreasonably discriminate among providers competing to deliver similar wireless services.** This prohibition is to prevent governments from favoring one competitor over another. It does not prevent localities from treating facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning ordinances, even if those facilities provide similar services.

2. **State and local governments cannot directly or indirectly prohibit the provision of wireless services.** This provision prevents such actions as categorical bans and moratoriums of unspecified duration. Local governments are still allowed to impose different aesthetic or safety restrictions in residential and commercial zones. This provision also does not mean that every locality must allow a cellular tower. The number and location of antennae needed to provide adequate personal wireless service signal coverage to a community will vary depending upon such things as topography and density