Questions About the Specifics of the MMA-Industry Bill

1. The title states "An Act Providing a more efficient and uniform process. . ." Each town and city has different interests, size, makeup. Why would a small town want its wireless bylaws to be the same as Cambridge? Why would a town or city, after working to establish a wireless overlay district and bylaws, want this bill?

2. How do I stop my next-door neighbor from siting Nextel antennas on his roof? Under Section b "Allowed Use," see (iii). The definition of "interior wireless telecommunication facility" states that a "minor" facility is ENTIRELY WITHIN a building or structure, but which MAY INCLUDE ANCILLARY EQUIPMENT NOT LOCATED WITHIN THE BUILDING. Under definitions, "Ancillary equipment" is all equipment, i.e., antennas, support structure, shelter, cables, lines, backup power source. Why call it an "interior facility" when antennas are outside?

3. Under the Section b "Allowed Use", see (i) about a "minor wireless facility." Will a building on municipal land have antennas everywhere if this bill becomes law? Will a water tank with existing antennas have unlimited antennas?

4. According to the definition of "Minor facility" any EXISTING cellular tower or pole will be considered a "minor facility" instead of a "major". The bill stipulates that: "To the extent that any tower or pole that was PREVIOUSLY AUTHORIZED is replaced with a tower or pole which is similar or with a one time increase in a height of not more than ten feet, that structure shall be deemed a minor facility." Why does a huge ugly structure that looks major suddenly be considered a "minor facility"? What does this mean for the future?

Impacts of Siting a Minor Wireless Facility

CURRENT SITUATION	IF BILL BECOMES LAW
Special Permit granting authority	Building Inspector
MA Chapter 40A and Municipality bylaws	State Building Code
Time of approval minimum 175 days	Within 30 days
Public hearing	NO public hearing
Abutter notification	NO abutter notification
Site plan review	NO site plan review
Site permitted where zoning allows	Siting in all zoning districts
Redress through federal and state courts	Little redress
Comprehensive technical review	NO technical review

Grassroots Effort to Save Home Rule [508]-358-7209

Massachusetts Municipal Association

Legislative Update

An Act Providing a More Efficient and Uniform Process for Implementing Municipal Authority Over the Placement, Construction and Modification of Wireless Communications Facilities

Final Draft (1/21/00)

Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same as follows:

Section 1. The provisions of section 3 of this act are set forth in order to provide for a more efficient and uniform process for implementing the authority of cities and towns over decisions regarding the placement, construction and modification of wireless telecommunications facilities within Massachusetts in recognition that the provision of reliable modern communications services are beneficial to the public safety and economic well being of the citizens of the Commonwealth and its municipalities, and to encourage co-location of such facilities.

Section 2. Section 3 of chapter 40A of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by inserting at the end of the second paragraph after the words "welfare of the public" the following: -; and provided further that lands and structures may not be exempted from the operation of a zoning ordinance or by-law which applies to the siting of a wireless telecommunications facility, as defined in section nine D, unless the petition for such exemption was filed with the department of telecommunications and energy on or before October first, nineteen hundred and ninety-nine.

Section 3. Chapter 40A of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by adding a new section nine D thereto as follows:

Section 9D. Wireless Telecommunications Facilities - The following provisions shall govern the placement, construction and modification of

wireless telecommunications facilities as hereafter defined.

a. Definitions. As used in this section nine D, the terms described below shall have the following meanings:

"Ancillary equipment," all equipment necessary to the secure and successful operation of a minor or major wireless telecommunications facility, including, but not limited to: a support structure; antennas; transmitting, receiving, and combining equipment; equipment shelter containing radios and electronic equipment; transmission cables; telephone lines; utility lines; and backup power source.

"Interior wireless telecommunications facility," a minor wireless telecommunications facility located entirely within a building or structure that is occupied or used primarily for other purposes, but which may include ancillary equipment not located within the building or structure, provided that such facility and ancillary equipment are not visible from any public way or abutting property.

"Major wireless telecommunication facility," any wireless telecommunications facility that is not a minor wireless telecommunications facility.

"Minor wireless telecommunications facility," any wireless telecommunications facility (a) installed on or in or attached on or to a building or existing wireless telecommunications tower or pole or utility transmission tower, overhead cable, smokestack, steeple, water tank or billboard and ancillary equipment adjacent thereto; (b) composed solely of antennas and ancillary telecommunications equipment which do not extend higher than ten feet above the highest point of the building or structure on which the wireless telecommunications facility is installed; and (c) made of such materials or painted so as to blend in appearance to the extent practicable with the building or structure upon which it is installed. To the extent that any tower or pole that was previously authorized is replaced with a tower or pole which is substantially similar in design and is not greater than the same height, or with a one time increase in height of not more than ten feet, that structure shall be deemed to be a minor wireless telecommunications facility provided that the original tower or pole is removed within a reasonable time after the construction of the replacement.

"Personal wireless services," any wireless telecommunications services and commercial mobile services including cellular telephone services, enhanced special mobile radio services, personal communications services and mobile and radio paging services as defined in the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C)(i).

"Utility transmission tower," any tower that has carried or is capable of carrying lines for the transmission of electricity at a voltage level typically equal to or greater than 69,000 volts.

"Wireless telecommunications facility," any "personal wireless service facility" as defined in the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services.

b. Allowed Use. Upon application for a building permit, a minor wireless telecommunications facility shall be an allowed use in all zoning districts and shall be subject only to the requirements, restrictions and limitations set forth in subsections a and b of section nine D; provided, however, that a minor wireless telecommunications facility shall be an allowed use in a residential zoning district only if it is (i) located on municipally owned land, a water tank, or an existing wireless telecommunications facility or replacement of such facility pursuant to subsection (a) herein; (ii) located on a utility transmission tower only if installation on any such utility transmission tower does not extend greater than five feet above the utility transmission tower; or (iii) is an interior wireless telecommunications facility, provided that if a minor wireless telecommunications facility is also in an historic district, it will be allowed only if such facility is an interior wireless telecommunications facility or otherwise complies with the requirements of such historic district. All other minor wireless telecommunications facilities in a residential zoning district shall be treated as major wireless telecommunications facilities.

An application for a building permit for a proposed minor wireless telecommunications facility shall be submitted to the building inspector who may forward any such application to such other municipal officer or board, if any, as may be designated by the selectmen, mayor or manager to assist in reviewing the application. The application shall contain such plans, specifications and other information as are required to establish the proposed facility's conformance to the state building code and compliance with the requirements of this subsection b. The application shall also contain a description of the proposed maintenance and security for the proposed facility. The building inspector or other reviewing authority may impose as a condition on the building permit for such minor wireless telecommunications facility a requirement for the posting of a bond at a value equivalent to the estimated removal cost for the removal of such facility at such time as it ceases to be used as a wireless telecommunications facility. The application shall be approved or denied in writing within 30 days after receipt of the completed application; provided, however, that if such application is denied, the reasons shall be set forth in writing.

c. Special Permits. A major wireless telecommunications facility may be located in any zoning district upon a grant of a special permit by the special permit granting authority in accordance with the provisions of section nine of this chapter, except as otherwise provided in this section nine D; provided that a municipality may designate in a zoning by-law or ordinance one or more categories of such facilities to be allowed

without a special permit in all or specified zoning districts.

In issuing a special permit under this subsection, the special permit granting authority may waive or otherwise reduce the effect of any requirements or prohibitions of any zoning bylaw or ordinance; provided, however, any zoning bylaw or ordinance limiting the number of permitted uses or structures on a lot shall not apply to a wireless telecommunications facility authorized under subsection b or c.

Any decision to deny a special permit for a major wireless telecommunications facility or minor wireless telecommunications facility shall be in writing and contain the reasons for such denial.

d. Request for Guidance. At any time prior to application for a special permit for a proposed major wireless telecommunications facility, or during the pendency of a hearing on a special permit for such facility, the applicant or prospective applicant may at its discretion request that the special permit granting authority provide it with guidance as to any issues of concern to the special permit granting authority with respect to the proposed or pending application. Upon such request, the special permit granting authority shall provide the applicant with such guidance to assist the applicant in understanding and responding to any such concerns.

e. Facilitation. At any time during the public hearing process, but prior to the issuance of a final written decision, a special permit granting authority or applicant for a special permit under this section may request that a facilitator be appointed to address any issues in dispute between the special permit granting authority and the applicant that appear unlikely to be resolved to the satisfaction of both by the issuance of a special permit acceptable to the applicant. If both parties agree to facilitation, the parties shall agree on the appointment of an individual, group of individuals or an institution as the facilitator. The parties shall cooperate in good faith with the facilitator and shall share equally the charges and expenses of the facilitator provided that each party shall pay for the costs and expenses incurred by the facilitator, if any, designated by it. The public hearing may be suspended for the time during which such facilitation is taking place, or may proceed as to issues other than the ones being addressed through facilitation. Such facilitation shall be completed within 30 days unless both parties agree in writing to extend the time for completing facilitation.

f. Fees. Fees imposed by a municipality upon an applicant for the placement, construction, or modification of a wireless telecommunications facility shall not exceed the normal and customary building permit application fee or special permit application fee for a commercial use in such municipality. In addition to the foregoing, subject to section fifty-three G of chapter forty-four whether or not any rules regarding fees or appeals are promulgated by the municipality, the special permit granting authority may consult with an expert in

engineering or telecommunications facility siting for assistance in reviewing an application under section nine D to the extent necessary to allow a full and fair evaluation of such application, and the applicant shall upon a request made in accordance with and subject to section fifty-three G of chapter forty-four, pay the reasonable fees.

g. Technical Review. Upon request, applicants shall provide the special permit granting authority with information concerning the technical specifications and design characteristics of a proposed wireless telecommunications facility requiring a special permit provided that any such request for or submission of technical specifications shall not extend the authority of a municipality to regulate, restrict, limit or interpret the technical and operational standards as applied by the Federal Communications Commission to personal wireless services as such term is defined in 47 U.S.C. §332(c)(7)(C)(i).

h. Multiple Applications. The provisions of section sixteen of this chapter shall not apply to any application for special permit under this section. In order to ensure efficient process for determining locations for wireless telecommunications facilities, applications for more than one location, whether for building permits in the case of minor wireless telecommunications facilities or special permits in the case of major wireless telecommunications facilities, may be submitted and outstanding at any one time and shall be reviewed in accordance with the provisions of this section.

i. Reaffirmation of Consistent Local Ordinances and Bylaws. Except to the extent inconsistent with the provisions here in, any existing zoning ordinances in a city or bylaws in a town with respect to such wireless telecommunications facilities shall remain in effect and be enforced in accordance with the provisions herein.

Section 4. No provisions of this act shall be construed either as establishing or not establishing the jurisdiction of the department of telecommunications and energy to grant petitions filed prior to October 1, 1999 for zoning exemptions under section 3 of chapter 40 A for land or structures used or to be used by wireless telecommunications carriers; provided, further, that no action may be brought to invalidate any such exemption granted by said department prior to October 1, 1999.

To: SERSG Board of Directors

From: Catherine Salisbury, Reg. Admin.

Date: March 10, 2000

Re: Proposed MMA cell tower legislation

At the last SERSG Board of Directors meeting I was given a copy of the proposed MMA cell tower legislation and asked to review it and present my comments to the Board. I have read the legislation and do not think that it is in the best interest of local governments. Telecom providers obviously want this legislation because it will all but ensure that they can build towers, antenna, and dishes wherever they wish free of local zoning control. By producing legislation that will appease the telecom industry, MMA has compromised the local zoning authority of all of its member municipalities.

REGULATORY BACKGROUND

Before commenting on the specifics of the legislation, let us review the existing regulatory climate with regard to wireless telecommunications facilities. The Telecommunications Act of 1996 in section 332 states that "...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." Congress recognizes the important and necessary review functions that must take place before towers are built and does not preempt that local authority. In contrast, Congress clearly meant to preempt state authority in the matter of the regulation of commercial mobile services. Section 332 also states: "...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial radio service...". (Commercial mobile radio services are but one example of personal wireless services.) The FCC regulates commercial mobile service providers as common carriers under the Communications Act of 1934 leaving the Mass. Department of Telecommunications and Energy the limited regulatory role of ensuring that companies register to do business in the state and that customer complaints are handled. The Mass. DTE has by its own action enlarged that role by inserting itself in the siting of cellular towers and providing an avenue of appeal for cell tower applicants that are disatisfied with the actions of local zoning boards of appeals.

ZONING CONTROL AT LOCAL LEVEL

The Massachusetts General Court has delegated land use responsibility to local governments in Chapter 40A of the Mass. General Laws. Section 3 of the Zoning Enabling Act creates an exemption from local zoning for public utilities. Public utilities such as the telephone, electric and gas companaies are fully regulated by the Mass. DTE in return for which these companies are granted a monopoly to service a particular franchise area. Public utilities are presumed to be afflicted with the public interest. The extensive regulatory scheme has been deemed to be necessary in order to ensure that the public is provided with the safe and efficient distribution of utility services. Personal wireless service providers on the other hand do not enjoy such an exclusive franchise. They are competitive, private profit-making companiês seeking to use public and private lands for their business. With the competition between wired and wireless telephone services as a result of the Telecom Act, the ability to easily site their facilities becomes a valuable asset to telecom providers.

PUBLIC UTILITY EXEMPTION FROM LOCAL ZONING

When the DTE decided in the second Nextel case (DTE 95-80) that commercial mobile radio service providers were public service corporations and thus exempt from local zoning, they interpreted the Zoning Enabling Act broadly to suit their interests and in a manner not clearly authorized by the General Court. By its action, the DTE was showing that it did not trust the federal judicial remedies that were available under the Telecom Act to telecom applicants who were denied a permit to build by a local government. The DTE wanted to eliminate all local opposition to the siting of wireless telecom facilities in the Commonwealth. An executive agency made this decision in the absence of clear statutory authority from the General Court. At the time the decision in DTE 95-80 was rendered, MMA could have assisted all of its member municipalities by financing and prosecuting an appeal of that decision. They chose not to.

LOCAL AUTHORITY OVER WIRELESS FACILITIES

The Mass. Supreme Judicial Court in the Littleton case and the 1st Circuit Court of Appeals in a case involving Amherst, N.H. upheld local zoning authority over cell towers. These cases are consistent with the trend of decisions at the national level as each state encounters telecom suits alleging breach of the Telecom Act. Since the SJC decision clearly over-rules the DTE position in the Nextel case, arguably no legislative action is now needed at all from the General Court. Cities and towns are exercising their zoning authority and adopting zoning by-laws which regulate the siting of telecom facilities. This is the reason that telecom providers are now seeking to achieve at the state level what they failed to achieve from Congress.

LEGISLATIVE ACTION

In order to negate the DTE Nextel decision, Massachusetts cities and towns have sought legislative relief. Rep. William Galvin and Rep. Kathleen Teahan introduced House 961 at SERSG's request. This bill is precisely tailored to oust the DTE from jurisdiction over local zoning affecting cell towers. This legislation if approved would restore the situation to the pre-Nextel decision status. Our legislation returns authority to cities and towns to regulate the "placement, construction and modification of personal wireless service facilities" as allowed by the Telcom Act. Obviously, it does not remove the limitations on that authority which Congress also embodied in section 332 of the Telecom Act. Even if state legislation eliminates this meddling in local zoning, it would not relieve local governments of their obligation to comply with the criteria set out in the federal act. Applicants could and would still appeal to federal court when they felt that a local government was violating the Telecom Act. However, it would restore local land use authority to local governments.

PROPOSED MMA CELL TOWER LEGISLATION

With this background in mind, we now turn to the specific language of the MMA proposed legislation and my specific objections to it.

1. Although billed as the "solution" to the DTE Nextel decision, the MMA legislation does not state that a commercial mobile radio service provider is NOT a public service corporation as defined in Chapter 40A of the Mass. General Laws. Rep. Galvin and Rep. Teahan's bill (H 961) does state that.

2. The MMA draft legislation covers ALL wireless communications facilities and is thus broader than the language contained in DTE's Nextel decision which merely covers one category of wireless telecommunications facilities (commercial mobile radio services). The significance of this fact is illustrated by sub-section (i) which reads: "Except to the extent inconsistent with the provisions here in, any existing zoning ordinance in a city or by-laws in a town with respect to such wireless telecommunications facilities shall remain in effect..." This legislation would preempt all local zoning by-laws regarding wireless facilities whether they related to siting or not. For example, if a town had a fee structure or a special permit condition inconsistent with that contained in the MMA legislation, it would be null and void. To say that this legislation is the "solution" to the Nextel decision is to embrace heartily the concept of throwing the baby out with the bathwater. More "solutions" like that and local governance will be undone.

3. Section 1 of the MMA draft legislation lists as a purpose "a more efficient and uniform process for implementing" local zoning authority over towers. This premise is wrong. Zoning is the ultimate local authority. Different communities have different geographical, topographical, and historical conditions. They also have differing levels of civic involvement and differing views as to how land should be used. Chapter 40A explicitly recognizes and supports diversity. The Zoning Enabling Act delegates broad authority to cities and towns to adopt and administer diverse zoning codes so long as they are consistent with Chapter 40A. Telecom providers may wish to have efficiency and uniformity in order to ease their way into Mass. cities and towns. Cities and towns should have no obligation to give preferred treatment to telecom providers which is not available to ordinary citizens.

4. I raise the same objection to sub-section (d) entitled "Request for Guidance". Applicants before a permit granting boards always want to know what proposal will meet with local approval. The way in which they can learn that is by examining the by-law and previous decisions of the Board from whom they are seeking a permit. Permit granting Boards must state their reasons for denial in writing. A careful reading of the applicable provisions of the local Zoning Code, a review of denials and an analysis of the projects that have been approved will provide all the guidance that an applicant needs or should receive. The duty of public permit-granting boards is to fully and fairly administer the Zoning Code- not to coddle a class of applicants which is hardly disadvantaged.

5. I raise the same objection yet a third time in the sub section (e) entitled "Facilitation". The special permit process is a public process the purpose of which is to consider legitimate public policies and accept comment from residents. " Facilitation" by its very nature is a corruption of that process. The legislation states that either the town or the applicant can ask for a facilitator if it appears unlikely that an issues will be resolved to the satisfaction of both parties "by the issuance of a special permit acceptable to the applicant." Clearly every time an applicant for a wireless communications facility does not think it will get an acceptable special permit (and that could mean any condition of the special permit that they do not like), it will ask for facilitation. Entering into facilitation then means that the public hearing process is suspended. There can be no clearer evidence of trying to "negotiate a settlement" outside of public view. One can only wonder why MMA would put forth such anti-democratic proposal- one that is clearly designed to make it easier for telecom providers (private profit-seeking companies) to circumvent the standard special permit process set up by the General Court.

6. Allowing major wireless telecommunications facilities in any zone subject to the granting of a special permit takes away the authority of the Town Meeting to establish zoning by-laws in their community. There are legitimate reasons why a city or town would wish to restrict such facilities to business or industrial zones. This legislation would strip authority from the legislative branch of local government and instead delegate it to a

board within the executive branch. By further weakening the public process during the special permit process as outlined above under "Facilitation" and "Guidance", telecom providers will be successful in wresting all local control from the residents of the municipality. It is a neat trick if they can get away with it.

7. Similarly, allowing "minor wireless telecommunications facilities" to be built in any zoning district may not be appropriate. But in any event that is a decision that should be made at the local level by the City Council or Town Meeting. Furthermore, granting the Building Inspector authority to issue building permits for "minor" facilities ensures that the great majority of telecom facilities will be built without any prior review whatsoever.

CONCLUSION

In conclusion, I can think of no reason to support this legislation. It is contrary to the policies that underly the Zoning Enabling Act and will result in the dilution of local control over the siting of all wireless telecommunications facilities. Such control, while arguably a slight burden to telecom providers, is no greater burden than that faced by all other non-exempt applicants who seek to build in a municipality. Such local processes are well established and are necessary if proposals are to be carefully reviewed at the local level. In the Telecommunications Act Congress specifically preserved local zoning authority even while it proclaimed its policy objective of encouraging competition amongst telecommunications providers. Rather than solving the problem created by the DTE in the Nextel case as H 961 does, the MMA proposal will increase the problem tremendously. I urge you to ask your Boards of Selectmen to write to their Representative and Senator and express their disapproval of the MMA proposed legislation and their support for Rep. Galvin and Rep. Teahan's bill numbered H 961.

Bill will limit local control over wireless

By Marie J. Parente

As I see it

Imagine waking up one morning to find that a cellular antenna had been erected on a water tower, church steeple or municipal building near your home. Then learn that the wireless service provider was able to receive a permit to construct such a facility simply by applying to the local building inspector, without a public hearing process.

If the Massachusetts Municipal Association and the wireless communications industry have their way, such a nightmare scenario would become a reality. A proposal crafted by the MMA and the industry would restrict the authority of local elected officials to regulate the placement and appearance of these wireless facilities.

For nearly two years the MMA conducted closed negotiations with the six major personal wireless service providers (AT&T, Bell Atlantic Mobile, Cellular One, Nextel, Omnipoint and Sprint) and the Conservation Law Foundation in an effort to draft "compromise" legislation. The resulting document strips local cities and towns of their zoning authority over these facilities and relies upon special permitting authorities and local building inspectors for oversight. By establishing uniform criteria, the bill disregards the particular needs and topography of individual cities and towns.

Under this ill-conceived proposal most types of wireless facilities would be allowed in any zoning district. Furthermore, a local special permit granting authority could override the city or town's existing telecommunications bylaws or ordinances.

FREE HAND

The bill would eliminate the role of the Department of Telecommunications and Energy in granting exemptions from local zoning bylaws to personal wireless service providers. However, the industry has agreed to this provision because the MMA bill gives the providers a virtually free hand to expand their wireless networks as quickly as possible.

Cities and towns would be restricted from investigating most technical issues associated with an application for a wireless facility. This essentially places a gag order on municipalities when residents express concerns over the potential impact of a wireless facility, tower or pole.

The decision-making authority of local officials is also undermined by a provision calling for the appointment of a "facilitator" when disputes arise during the review process. The proposal allows public hearings to be suspended while this "facilitation" process is taking place.

The bill invalidates existing zoning ordinances or bylaws that are inconsistent with its provisions. Towns would also be prevented from taking legal action to overturn any zoning exemptions granted by the Department of Telecommunications and Energy prior to Oct. 1, 1999.

Contrary to the MMA's assertion that their giveaway was necessary because municipalities were losing court cases, it is precisely because towns have been winning court cases that the industry is pressing for the MMA proposal.

SJC DECISION

The evidence for this can be found in a May 1999 decision by the Supreme Judicial Court, which affirmed the right of cities and towns to regulate the placement and appearance of cell towers.

In the case of Roberts vs. Southwestern Bell Mobile Systems, the court stated that Congress explicitly protects local autonomy. The court stated that when the Federal Telecommunications Act of 1996 was drafted, Congress established "quick and complete remedies for individuals improperly denied permission to erect a personal wireless communication tower."

The federal act reserved certain rights to state and local governments. Now the MMA has negotiated away rights that were guaranteed by Congress.

To date, the Joint Committee on Local Affairs has been contacted by residents and officials representing nearly 50 cities and towns, who have expressed their opposition to the industry proposal. These residents have been joined by governor's councilors, mayors, selectmen, city councilors and planning or other local board members.

One alternative to the industry proposal is H. 2175, filed by the Joint Committee on Local Affairs to restore local zoning control and address ancillary issues such as the removal of unused facilities and the effect of poles and towers on municipal airports.

Several other bills also deserve support: S. 944 (Sen. Michael Morrissey, D-Quincy), S. 966 (Sen. Martin Walsh, D-Boston) and H. 4038 (Rep. Barry Finegold, D-Andover) also restore and preserve local zoning control. They bar wireless providers from being considered "public service corporations," reversing a 1998 ruling by the DTE, and prevent personal wireless service providers from seeking exemptions to local zoning bylaws and ordinances.

Contact your state legislators today and urge them to vote "no" on the MMA/industry proposal. Don't allow the MMA and the industry to take away your federally guaranteed right to regulate personal wireless facilities.

Rep. Marie J. Parente of Milford is chair of the House Committee on Local Affairs.

TELEGRAM & GAZETTE THURSDAY, MARCH 23, 2000 A19

COMMENTARY

SAVE HOME RULE- OPPOSE NEW BILL!!

Problem: An unnumbered bill is about to be tacked onto another bill and pushed through the state legislature without any public hearing in the very near future.

Title: AN ACT PROVIDING A MORE EFFICIENT AND UNIFORM PROCESS FOR IMPLEMENTING MUNICIPAL AUTHORITY OVER THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF WIRELESS COMMUNICATIONS FACILITIES.

Sponsors: The money-beyond-comprehension wireless telecommunications industry, the Mass. Municipal Association, and the Conservation Law Foundation.

Unconstitutional: This bill ignores The Home Rule Amendment, Article 89 of the Articles of Amendment to the Massachusetts Constitution, allowing local communities to determine their own fates. In 1975, the Massachusetts Legislature adopted The Zoning Act under the Home Rule Amendment; it is now codified in Chapter 40A of the General Laws. This bill subverts local zoning and is an unconstitutional violation of the Home Rule Amendment.

Violation: It violates the Telecommunications Act of 1996 (TCA) which clearly specifies:

* LOCAL zoning shall prevail and that disputes to be settled by the courts.
* the importance of free enterprise and unregulated competition.

Public Utility Status: This bill pretends to deny telecommunications companies public utility status, but gives them everything they claimed when they wanted to be a public utility (for example, zoning benefits no one else gets) without any of the obligations that attach to being a public utility, such as rate regulation, service responsibilities, and full financial disclosure.

Court Decisions:

* The Massachusetts Supreme Judicial Court decided in May 1999 that the TCA does NOT pre-empt the Massachusetts Zoning Act.
* The United States Court of Appeals for the First Circuit noted: "The statute's balance of local autonomy subject to federal limitations does not offer a single "cookie cutter" solution for diverse local situations . . . But Congress conceived that this course would produce . . . individual solutions best adapted to the needs and desires of particular communities."

Solution: VOTE NO! This bill is an outrageous takeover of local control by out-of-state big business and an embarrassment to the Mass. Municipal Association.

Grassroots Effort to Save Home Rule

Contacts: Diana Warren [508]-358-2865 Peggy Patton [508]-358-7209

Telephone & Fax: [508]-358-7209
Internet e-mail: mtpatton@aol.com

MARGARET T. PATTON

43 Plain Road

Wayland, Massachusetts 01778
March 27, 2000

Ms. Margaret Drury, City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Ms. Drury:

Thank you for helping me the other day on the telephone. As you requested, I am sending information for the City Council. After working for over two years with the Planning Board in the Town of Wayland to establish wireless telecommunications bylaws to protect property values, I am now one of the many volunteers who is alerting towns and cities about the Massachusetts Municipal Association and Wireless Telecommunications Industry bill which will essentially destroy Home Rule. I am only a concerned citizen, but I am certain that this legislation will eliminate what local authority we have in placement of wireless telecommunications facilities

The unnumbered (it was going to be slipped quietly through the State House until someone found out about it) bill titled "AN ACT PROVIDING A MORE EFFICIENT AND UNIFORM PROCESS FOR IMPLEMENTING MUNICIPAL AUTHORITY OVER THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF WIRELESS COMMUNICATIONS FACILITIES" is in the Government Regulations Committee. It should also be in Local Affairs Committee as it is about local control of wireless facilities.

Crafted by over fifty telecommunications lawyers, the bill essentially renders current lawsuits moot as local bylaws will not be in compliance if it becomes law. I am sending you a copy of the bill, an analysis by the Southeastern Regional Services Group's Administrator Catherine Salisbury, a recent article written by Local Affairs Co-Chair State Representative Marie Parente, a flyer we circulated to the legislators, and a question sheet. The propaganda from the MMA is very crafty and smooth, but after officials read the legislation, then they realize how terrible this bill is. We cannot understand why the MMA is involved with this, and some communities are discussing pulling out of the MMA because of this legislation. Please join us by writing your legislators to vote against this bill.

If I can be of assistance, please contact me. I am working with Representative Parente and community officials throughout the state to stop this outrageous bill. Thank you for your consideration.

Sincerely,

Margaret T. Patton

Consent Communciation #11 765

A communication was received from Margaret T. Patton, relative to the Massachusetts Municipal Association and Wireless Telecommunications Industry Bill.

S-76

In City Council April 3, 2000

PLACED ON FILE