

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Counties Code is amended by changing
5 Section 5-12001.1 as follows:

6 (55 ILCS 5/5-12001.1)

7 Sec. 5-12001.1. Authority to regulate certain specified
8 facilities of a telecommunications carrier.

9 ~~(a) Notwithstanding any other Section in this Division,~~
10 The county board or board of county commissioners of any
11 county shall have the power to regulate the location of the
12 facilities, as defined in subsection (c), of a
13 telecommunications carrier established outside the corporate
14 limits of cities, villages, and incorporated towns that have
15 municipal zoning ordinances in effect. ~~The power shall only~~
16 ~~be exercised to the extent and in the manner set forth in~~
17 ~~this Section.~~

18 (b) The provisions of this Section shall not abridge any
19 rights created by or authority confirmed in the federal
20 Telecommunications Act of 1996, P.L. 104-104. The county
21 board or board of county commissioners of any county is
22 authorized to regulate the placement, construction, and
23 modification of the facilities of a telecommunications
24 carrier as provided in the federal Telecommunications Act of
25 1996, P.L. 104-104. The county board or board of county
26 commissioners may not unreasonably discriminate among
27 providers of functionally equivalent services and shall not
28 prohibit or have the effect of prohibiting the provision of
29 telecommunications services as provided in the federal
30 Telecommunications Act of 1996, P.L. 104-104.

1 (c) As used in this Section, unless the context
2 otherwise requires:

3 (1) "county jurisdiction area" means those portions
4 of a county that lie outside the corporate limits of
5 cities, villages, and incorporated towns that have
6 municipal zoning ordinances in effect;

7 (2) "county board" means the county board or board
8 of county commissioners of any county;

9 (3) "residential zoning district" means a zoning
10 district that is designated under a county zoning
11 ordinance and is zoned predominantly for residential
12 uses;

13 (4) "non-residential zoning district" means the
14 county jurisdiction area of a county, except for those
15 portions within a residential zoning district;

16 (5) "residentially zoned lot" means a zoning lot in
17 a residential zoning district;

18 (6) "non-residentially zoned lot" means a zoning
19 lot in a non-residential zoning district;

20 (7) "telecommunications carrier" means a
21 telecommunications carrier as defined in the Public
22 Utilities Act as of January 1, 1997;

23 (8) "facility" means that part of the signal
24 distribution system used or operated by a
25 telecommunications carrier under a license from the FCC
26 consisting of a combination of improvements and equipment
27 including (i) one or more antennas, (ii) a supporting
28 structure and the hardware by which antennas are
29 attached; (iii) equipment housing; and (iv) ancillary
30 equipment such as signal transmission cables and
31 miscellaneous hardware;

32 (9) "FAA" means the Federal Aviation Administration
33 of the United States Department of Transportation;

34 (10) "FCC" means the Federal Communications

1 Commission;

2 (11) "antenna" means an antenna device by which
3 radio signals are transmitted, received, or both;

4 (12) "supporting structure" means a structure,
5 whether an antenna tower or another type of structure,
6 that supports one or more antennas as part of a facility;

7 (13) "qualifying structure" means a supporting
8 structure that is (i) an existing structure, if the
9 height of the facility, including the structure, is not
10 more than 15 feet higher than the structure just before
11 the facility is installed, or (ii) a substantially
12 similar, substantially same-location replacement of an
13 existing structure, if the height of the facility,
14 including the replacement structure, is not more than 15
15 feet higher than the height of the existing structure
16 just before the facility is installed;

17 (14) "equipment housing" means a combination of one
18 or more equipment buildings or enclosures housing
19 equipment that operates in conjunction with the antennas
20 of a facility, and the equipment itself;

21 (15) "height" of a facility means the total height
22 of the facility's supporting structure and any antennas
23 that will extend above the top of the supporting
24 structure; however, if the supporting structure's
25 foundation extends more than 3 feet above the uppermost
26 ground level along the perimeter of the foundation, then
27 each full foot in excess of 3 feet shall be counted as an
28 additional foot of facility height. The height of a
29 facility's supporting structure is to be measured from
30 the highest point of the supporting structure's
31 foundation;

32 (16) "facility lot" means the zoning lot on which a
33 facility is or will be located;

34 (17) "principal residential building" has its

1 common meaning but shall not include any building under
2 the same ownership as the land of the facility lot.
3 "Principal residential building" shall not include any
4 structure that is not designed for human habitation;

5 (18) "horizontal separation distance" means the
6 distance measured from the center of the base of the
7 facility's supporting structure to the point where the
8 ground meets a vertical wall of a principal residential
9 building; and

10 (19) "lot line set back distance" means the
11 distance measured from the center of the base of the
12 facility's supporting structure to the nearest point on
13 the common lot line between the facility lot and the
14 nearest residentially zoned lot. If there is no common
15 lot line, the measurement shall be made to the nearest
16 point on the lot line of the nearest residentially zoned
17 lot without deducting the width of any intervening right
18 of way.

19 (d) In choosing a location for a facility, a
20 telecommunications carrier shall consider the following:

21 (1) A non-residentially zoned lot is the most
22 desirable location.

23 (2) A residentially zoned lot that is not used for
24 residential purposes is the second most desirable
25 location.

26 (3) A residentially zoned lot that is 2 acres or
27 more in size and is used for residential purposes is the
28 third most desirable location.

29 (4) A residentially zoned lot that is less than 2
30 acres in size and is used for residential purposes is the
31 least desirable location.

32 The size of a lot shall be the lot's gross area in square
33 feet without deduction of any unbuildable or unusable land,
34 any roadway, or any other easement.

1 (e) In designing a facility, a telecommunications
2 carrier shall at a minimum abide by ~~consider~~ the following
3 guidelines:

4 (1) No building or tower that is part of a facility
5 will ~~should~~ encroach onto any recorded easement
6 prohibiting the encroachment unless the grantees of the
7 easement have given their approval.

8 (2) Lighting will ~~should~~ be installed for security
9 and safety purposes only. Except with respect to
10 lighting required by the FCC or FAA, all lighting will
11 ~~should~~ be shielded so that no glare extends substantially
12 beyond the boundaries of a facility.

13 (3) No facility will ~~should~~ encroach onto an
14 existing septic field.

15 (4) Any facility located in a special flood hazard
16 area or wetland will ~~should~~ meet the legal requirements
17 for those lands.

18 (5) Existing trees more than 3 inches in diameter
19 will ~~should~~ be preserved if reasonably feasible during
20 construction. If any tree more than 3 inches in diameter
21 is removed during construction a tree 3 inches or more in
22 diameter of the same or a similar species shall be
23 planted as a replacement if reasonably feasible. Tree
24 diameter shall be measured at a point 3 feet above ground
25 level.

26 (6) If any elevation of a facility faces an
27 existing, ~~adjoining~~ residential use or within a
28 residential zoning district, low maintenance landscaping
29 will ~~should~~ be provided on or near the facility lot to
30 provide at least partial screening of the facility. The
31 quantity and type of that landscaping will ~~should~~ be in
32 accordance with any county landscaping regulations of
33 general applicability, except that paragraph (5) of this
34 subsection (e) shall control over any tree-related

1 regulations imposing a greater burden.

2 (7) Fencing will should be installed around a
3 facility. The height and materials of the fencing will
4 should be in accordance with any county fence regulations
5 of general applicability.

6 (8) Any building that is part of a facility located
7 adjacent to a residentially zoned lot will should be
8 designed with exterior materials and colors that are
9 reasonably compatible with the residential character of
10 the area.

11 (9) A monopole supporting structure will be
12 required when a facility is located within 1,000 feet of
13 a principal residential building.

14 (10) All supporting structures will be designed to
15 accommodate 2 additional telecommunications carriers.

16 (f) (Blank). ~~The following provisions shall apply to all~~
17 ~~facilities established in any county jurisdiction area after~~
18 ~~the effective date of the amendatory Act of 1997:~~

19 ~~(1) Except as provided in this Section, no yard or~~
20 ~~set back regulations shall apply to or be required for a~~
21 ~~facility.~~

22 ~~(2) A facility may be located on the same zoning~~
23 ~~lot as one or more other structures or uses without~~
24 ~~violating any ordinance or regulation that prohibits or~~
25 ~~limits multiple structures, buildings, or uses on a~~
26 ~~zoning lot.~~

27 ~~(3) No minimum lot area, width, or depth shall be~~
28 ~~required for a facility, and unless the facility is to be~~
29 ~~manned on a regular, daily basis, no off-street parking~~
30 ~~spaces shall be required for a facility. If the facility~~
31 ~~is to be manned on a regular, daily basis, one off-street~~
32 ~~parking space shall be provided for each employee~~
33 ~~regularly at the facility. No loading facilities are~~
34 ~~required.~~

1 (4) -- No portion of a facility's supporting structure
2 or equipment housing shall be less than 15 feet from the
3 front lot line of the facility lot or less than 10 feet
4 from any other lot line.

5 (5) -- No bulk regulations or lot coverage, building
6 coverage, or floor area ratio limitations shall be
7 applied to a facility or to any existing use or structure
8 coincident with the establishment of a facility. Except
9 as provided in this Section, no height limits or
10 restrictions shall apply to a facility.

11 (6) -- A county's review of a building permit
12 application for a facility shall be completed within 30
13 days. If a decision of the county board is required to
14 permit the establishment of a facility, the county's
15 review of the application shall be simultaneous with the
16 process leading to the county board's decision.

17 (7) -- The improvements and equipment comprising the
18 facility may be wholly or partly freestanding or wholly
19 or partly attached to, enclosed in, or installed in or on
20 a structure or structures.

21 (8) -- Any public hearing authorized under this
22 Section shall be conducted in a manner determined by the
23 county board. Notice of any such public hearing shall be
24 published at least 15 days before the hearing in a
25 newspaper of general circulation published in the county.

26 (9) -- Any decision regarding a facility by the county
27 board or a county agency or official shall be supported
28 by written findings of fact. The circuit court shall
29 have jurisdiction to review the reasonableness of any
30 adverse decision and the plaintiff shall bear the burden
31 of proof, but there shall be no presumption of the
32 validity of the decision.

33 (g) The following provisions shall apply to all
34 facilities established after the effective date of this

1 amendatory Act of 1997 in the county jurisdiction area of any
2 county with a population of less than 180,000 that has not
3 adopted an ordinance to exercise the powers granted in
4 Division 5-12 or Division 5-13:

5 (1) A facility is permitted if its supporting
6 structure is a qualifying structure or if both of the
7 following conditions are met:

8 (A) the height of the facility shall not
9 exceed 200 feet, except that if a facility is
10 located more than one and one-half miles from the
11 corporate limits of any municipality with a
12 population of 25,000 or more the height of the
13 facility shall not exceed 350 feet; and

14 (B) the horizontal separation distance to the
15 nearest principal residential building shall not be
16 less than the height of the supporting structure;
17 except that if the supporting structure exceeds 99
18 feet in height, the horizontal separation distance
19 to the nearest principal residential building shall
20 be at least 100 feet or 80% of the height of the
21 supporting structure, whichever is greater.
22 Compliance with this paragraph shall only be
23 evaluated as of the time that a building permit
24 application for the facility is submitted. If the
25 supporting structure is not an antenna tower this
26 paragraph is satisfied.

27 (2) Unless a facility is permitted under paragraph
28 (1) of this subsection (g), a facility can be established
29 only after the county board gives its approval following
30 consideration of the provisions of paragraph (3) of this
31 subsection (g). The county board may give its approval
32 after one public hearing on the proposal, but only by the
33 favorable vote of a majority of the members present at a
34 meeting held no later than 75 days after submission of a

1 complete application by the telecommunications carrier.
2 If the county board fails to act on the application
3 within 75 days after its submission, the application
4 shall be deemed to have been approved. No more than one
5 public hearing shall be required.

6 (3) For purposes of paragraph (2) of this
7 subsection (g), the following siting considerations, but
8 no other matter, shall be considered by the county board
9 or any other body conducting the public hearing:

10 (A) the criteria in subsection (d) of this
11 Section;

12 (B) whether a substantial adverse effect on
13 public safety will result from some aspect of the
14 facility's design or proposed construction, but only
15 if that aspect of design or construction is
16 modifiable by the applicant;

17 (C) the benefits to be derived by the users of
18 the services to be provided or enhanced by the
19 facility and whether public safety and emergency
20 response capabilities would benefit by the
21 establishment of the facility;

22 (D) the existing uses on adjacent and nearby
23 properties; and

24 (E) the extent to which the design of the
25 proposed facility reflects compliance with
26 subsection (e) of this Section.

27 (4) On judicial review of an adverse decision, the
28 issue shall be the reasonableness of the county board's
29 decision in light of the evidence presented on the siting
30 considerations and the well-reasoned recommendations of
31 any other body that conducts the public hearing.

32 (h) The following provisions shall apply to all
33 facilities established after the effective date of this
34 amendatory Act of 1997 in the county jurisdiction area of any

1 county with a population of 180,000 or more that has not
2 adopted an ordinance to exercise the powers granted in
3 Division 5-12 or Division 5-13. A facility is permitted in
4 any zoning district subject to the following:

5 (1) A facility shall not be located on a lot under
6 paragraph (4) of subsection (d) unless a variation is
7 granted by the county board under paragraph (4) of this
8 subsection (h).

9 (2) Unless a height variation is granted by the
10 county board, the height of a facility shall not exceed
11 75 feet if the facility will be located in a residential
12 zoning district or 200 feet if the facility will be
13 located in a non-residential zoning district. However,
14 the height of a facility may exceed the height limit in
15 this paragraph, and no height variation shall be
16 required, if the supporting structure is a qualifying
17 structure.

18 (3) The improvements and equipment of the facility
19 shall be placed to comply with the requirements of this
20 paragraph at the time a building permit application for
21 the facility is submitted. If the supporting structure
22 is an antenna tower other than a qualifying structure
23 then (i) if the facility will be located in a residential
24 zoning district the lot line set back distance to the
25 nearest residentially zoned lot shall be at least 50% of
26 the height of the facility's supporting structure or (ii)
27 if the facility will be located in a non-residential
28 zoning district the horizontal separation distance to the
29 nearest principal residential building shall be at least
30 equal to the height of the facility's supporting
31 structure.

32 (4) The county board may grant variations for any
33 of the regulations, conditions, and restrictions of this
34 subsection (h), after one public hearing on the proposed

1 variations, by a favorable vote of a majority of the
2 members present at a meeting held no later than 75 days
3 after submission of an application by the
4 telecommunications carrier. If the county board fails to
5 act on the application within 75 days after submission,
6 the application shall be deemed to have been approved.
7 In its consideration of an application for variations,
8 the county board, and any other body conducting the
9 public hearing, shall consider the following, and no
10 other matters:

11 (A) whether, but for the granting of a
12 variation, the service that the telecommunications
13 carrier seeks to enhance or provide with the
14 proposed facility will be less available, impaired,
15 or diminished in quality, quantity, or scope of
16 coverage;

17 (B) whether the conditions upon which the
18 application for variations is based are unique in
19 some respect or, if not, whether the strict
20 application of the regulations would result in a
21 hardship on the telecommunications carrier;

22 (C) whether a substantial adverse effect on
23 public safety will result from some aspect of the
24 facility's design or proposed construction, but only
25 if that aspect of design or construction is
26 modifiable by the applicant;

27 (D) whether there are benefits to be derived
28 by the users of the services to be provided or
29 enhanced by the facility and whether public safety
30 and emergency response capabilities would benefit by
31 the establishment of the facility; and

32 (E) the extent to which the design of the
33 proposed facility reflects compliance with
34 subsection (e) of this Section.

1 No more than one public hearing shall be required.

2 (5) On judicial review of an adverse decision, the
3 issue shall be the reasonableness of the county board's
4 decision in light of the evidence presented and the
5 well-reasoned recommendations of any other body that
6 conducted the public hearing.

7 (Source: P.A. 90-522, eff. 1-1-98.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.