

Excerpted from *Cell Towers: Wireless Convenience? Or Environmental Hazard*, edited by B. Blake Levitt, medical/science journalist. Safe Goods/New Century Press, 2000.
ISBN: 1-884820-62-X

Used by permission.

Liability:

Liability issues can be significant for municipalities and individual site owners alike. Keep in mind that the industry has been successfully shifting liability away from itself and onto others in numerous ways – including rigged science, controlling the standards-setting committees, buying influence at the political level, co-opting key regulatory agencies, and getting industry-friendly riders through the E-911 bill, to name a few.

Unbeknownst to most people at the local level, this liability has been shifted downward to those making land-use decisions. The federal preemptions against taking the environmental effects of RF into consideration do not necessarily protect local officials who can still be named individually in lawsuits for poor siting decisions. Despite the preemptions, it is still their legal obligation to do everything possible to protect the health, safety, and welfare of the community and its citizens.

The same is true of churches and private landowners that lease space to telecom providers. There is no statute of limitations on health claims for EMF damage. Everyone with a stake in siting decisions can be sued if adverse health effects turn up. With more and more science circling around the problem and coming up with significant data, such siting decisions near populated areas are suits-waiting-to-happen.

Municipalities are increasingly seeing applications from independent tower companies like SBA and American Tower Corporation. These are not service providers but rather companies looking to establish towers wherever they can in order to lease space to RF industries. Towns can legally disallow towers built on speculation. The Telecom Act only preempts for providers of the service, not independent speculators.

Such independent tower companies are invariably set up as limited liability corporations (LLC). High-risk businesses always do this. SBA at least acknowledges in its investment portfolios that RF may turn out to be a risk for investors in company stock. American Tower Corporation has been fined \$212,000 by the FCC for antenna structure violations at various sites around the country. The fines relate to 36 separate violations that include failure to notify the FCC of ownership changes; failure to register towers with the FCC, and failure to properly light towers during construction, among other problems.

With a limited liability company, most of the financial assets are in other holding companies and are therefore out of reach. If a town, or individual gets into trouble

with a LLC, they may end up owning a tower, but not much else. Many service providers are selling their own towers to such companies. It is yet another way of shifting the liability away from themselves. No one wants to be responsible for damage at the local level for property devaluation and for health claims. That puts it squarely on the planners and zoners and citizens.

Something municipalities fail to keep in mind is the basic legal fact that it is up to the providers of a service or product to prove that their wares are safe. It is not up to us to prove that they are unsafe. The telecommunications industry has largely failed to do that. Just because they are within the FCC guidelines for RF emissions, does not prove safety.

No town today should allow itself to be intimidated by telecom service providers or adjunct industries like tower companies. Despite the preemptions, there is still a lot of power reserved to the municipalities, and there is a growing volume of good case law to back up local decisions. But those in decision-making positions need to understand that this form of land use regulation is very different than traditional forms. Telecom regulation needs to be understood from a completely different vantage point. This is NOT just an aesthetic issue. It is a medical one.

Good zoning regulations are still the best protection but this kind of regulation can be complicated. Here are some key provisions that should be included:

- Monitoring for RF emissions is essential, both before an installation goes online, and afterward. It is the only way to determine what was changed in the environment, and to document the date of that change. Pre & post testing will give a community a baseline of data in case problems turn up later. It will also assist with liability issues because it will demonstrate that the town was truly paying attention. Regular, annual monitoring should be instituted by independent RF engineers – not industry engineers. This becomes particularly important as other RF industries co-locate on the same installation. The industries should pay for the monitoring, not the taxpayers. Monitoring protocols should be consistent from year to year, using the same equipment, etc.
- Large setbacks should be established from homes, schools, hospitals, or wherever people congregate – at least 1500 feet. But individual typography counts a great deal. In some circumstances, 1500 feet may not be enough if dwellings on nearby hillsides are on a lateral par with antennas. Also other RF sources need to be factored in. Sometimes different frequencies can couple with each other in ways that engineering computer models cannot predict, creating significant exposures in unexpected places.
- Take metal objects into consideration because they are conductive materials that can create localized hotspots. Things to avoid siting antennas on or near include metal water tanks, roofs, architectural girders, elevator cables, etc.
- Establish by-right zones where facilities can locate but nowhere else.

- Discourage private entrepreneurs and churches from establishing sites. Such people and organizations rarely understand the complexities of the issue or what they are getting into.
- Only allow signal strengths that will provide for adequate coverage and adequate capacity, not blanket coverage. The right to determine signal strength at the local level has been upheld in federal case law in U.S. Sprint v. Willoth, and by the FCC. The FCC only requires approximately 75% coverage of an area – not 100% coverage. It has been understood from the beginning that there would be holes in coverage, especially in hilly topography. If towns have environmentally sensitive areas or historic landmarks to protect, they should acknowledge such sites in their master plans of development as off limits to this technology.
- Towns should require extensive engineering detail in their applications otherwise companies do not have to prove that a facility is really needed. They may be speculating on a site without admitting it.
- Require independent engineering review of all applications and modifications to existing sites. Often applicants are sloppy and rote in their preparations, using cookie-cutter computer models from site-to-site. In requiring such detail, towns are establishing the facts of a case that may be needed after turning an installation down. Engineering detail is critical.
- Require the service provider, the tower owner, and the landowner all to be part of the application. That will discourage towers being built on speculation.
- **Write airtight liability protection into the regulations by all concerned, with proof of insurance annually submitted. This should transfer to any new owners of the facilities or properties. Failure to substantiate proof of liability protection should constitute a revocation of any permit.**