

Wireless Communication Facilities – 248a Cases

This is a summary of the procedural steps and opportunities for public participation when the Commission reviews a proposed telecommunications facility, which is regulated under [30 V.S.A. § 248a](#) (referred to as “Section 248a”). *This document is a general guide for the public. It should not be relied upon for reviewing the applicable statutory and regulatory requirements for such projects. Every project is unique, and this general guide cannot anticipate or explain all issues that may arise in a case. For specific guidance, please refer to the applicable statutes, rules, legal precedent, and legal advice. Please feel free to contact the [Clerk of the Commission](#) if you have questions about the information in this document.*

Telecommunication facilities regulated under Section 248a are communications facilities that transmit and receive wireless signals for two-way communications. This includes cell phone service providers, personal communication service (PCS), mobile radio and paging service, wireless data service, and radio dispatch service.

Section 248a applies to installation or modification of telecommunication facilities and structures, such as cell towers, antennas, support structures, and other communication system equipment that may be installed on proposed or existing towers, structures, or buildings.

Cable television service providers are regulated under a different statute; for more information, please see the [cable service providers page](#).

248a Process

Detailed information on the Commission’s current 248a procedures can be found in [Section 248a Standards and Procedures re Telecommunications Facilities Pursuant to 30 V.S.A. §248a](#).

What follows is a summary of the procedural steps for Section 248a cases. Underlined text will link you to more information about that step in the glossary or to an external website.

There are three categories of 248a projects:

- “*de minimis* modification” of existing structures,
- projects of “limited size and scope,” and
- larger projects.

A different review process is followed depending on whether a project is determined to be a *de minimis* modification, or of limited size and scope or a larger project.

De Minimis Modification

Section 248a defines “*de minimis* modifications” as the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on existing facilities, or reconstruction of existing facilities and support structures, provided there are only minor changes in the overall dimensions of the facility and/or structures.

There is no [advance notification](#) requirement for *de minimis* modifications.

Typical Procedural Steps for De Minimis Modifications



Filing. When applicants [file](#) an application with the Commission, they are required to provide notice to the town in which the project is located, the landowner of the property on which the project will be located, and the Vermont Department of Public Service. The application must include information about the location of the project, the host landowner, existing permits, site plans depicting the proposed facilities, and a project narrative.

Public Comments. [Public comments](#) should be about whether the project qualifies as a *de minimis* modification, and must be [filed with the Commission](#) within 21 calendar days of the date the application is filed.

Determination of De Minimis Modification. The Commission will determine on its own or based on information received during the comment period whether the proposed project fits with the classification of a *de minimis* modification.

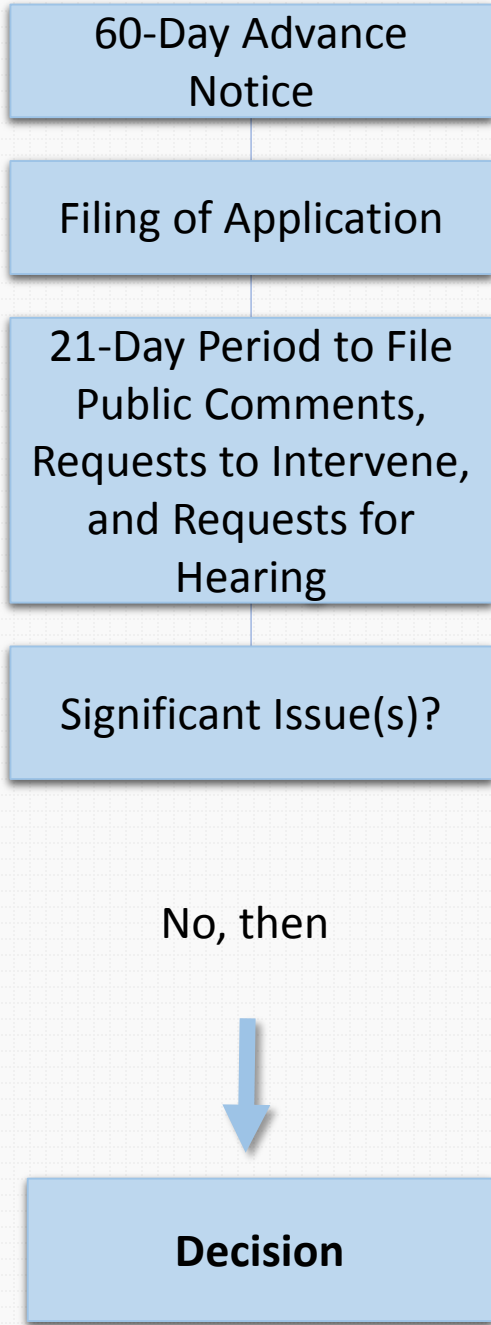
If the Commission determines that the project does not meet the *de minimis* classification, the applicant would be required to initiate the procedures required for the applicable project category, which start with a 60-day advance notice (*see the next page for procedures for projects of limited size and scope and larger projects*).

Decision. For proposed projects that meet the classification as a *de minimis* modification, the Commission will issue a [decision](#) following the 21-day comment period.

Limited Size and Scope and Larger Projects

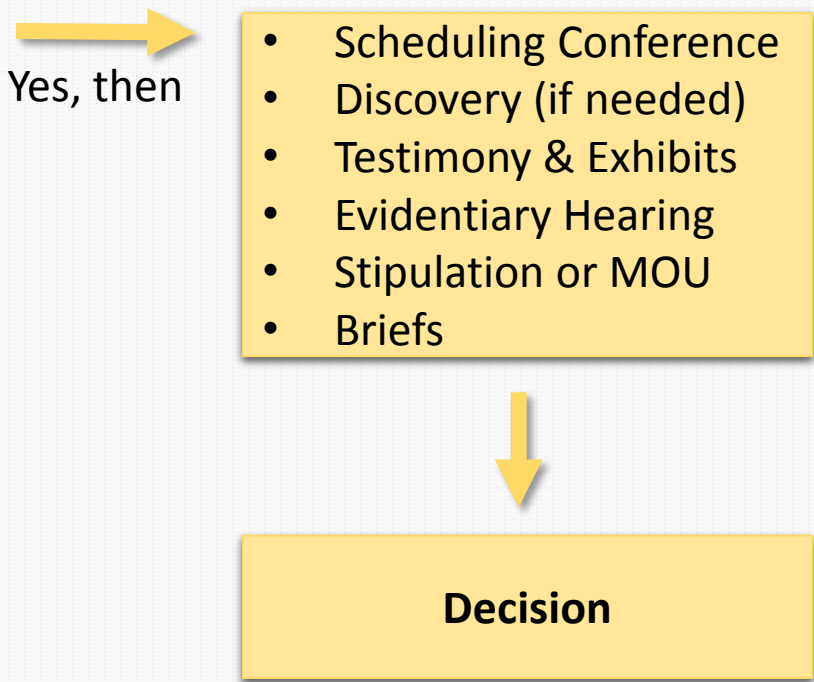
Section 248a defines projects of limited size and scope as a new facility that does not exceed 140 feet in height, or modification of existing facilities or support structures that would result in a total height of less than 200 feet, would not increase the width of support structures by more than 20 feet, and for either new or modified facilities, would not disturb more than 10,000 square feet of earth.

Typical Procedural Steps for Limited Size and Scope and Larger Projects



Larger projects are new facilities and structures or modifications to existing facilities and structures that do not meet the requirements of *de minimis* modifications or projects of limited size and scope.

The procedures for limited size and scope and larger projects are similar; the only difference is the environmental review criteria, which are more extensive for larger projects.



The flowchart above applies for projects of limited size and scope and larger projects. Not all steps in the flow chart will be conducted in every case. The order of steps can vary depending on the specific case.

Advance Notice. Applicants are required to provide [advance notice](#) 60 days prior to submitting an application to the Commission. Advance notice must be sent to:

- the legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- state agencies: the Department of Public Service, the Agency of Natural Resources, the Division for Historic Preservation, the Natural Resources Board if the facility was previously permitted under [10 V.S.A. Chapter 151](#), and the Agency of Transportation; and
- adjoining landowners.

Advance notice must include:

- the location and a description of the project,
- a description of any clearing required, and
- enough detail about the project for the recipients of the notice to understand the impacts of the project.

Applicants may request a waiver of the advance notice requirements, which may be granted by the Commission if it determines that the entities normally entitled to receive notice will not be affected by the project.

Recipients of an advance notice filing who have concerns about the project are encouraged to contact the applicant during the 60-day period. The purpose of the advance notice is to provide the opportunity for the applicant to resolve such concerns before the application is filed with the Commission.

Filing an Application. When applicants [file](#) their application with the Commission, they are required to provide notice to:

- the legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- state agencies: the Department of Public Service, the Agency of Natural Resources, the Division for Historic Preservation, and the Natural Resources Board if the facility was previously permitted under [10 V.S.A. Chapter 151](#); and
- adjoining landowners.

The application must include:

- the location of the project,
- the host landowner,
- any existing permits,
- site plans and elevation drawings depicting the proposed facilities,
- a project narrative,
- signal propagation study results and signal coverage maps, and
- an evaluation of the impacts of the project on environmental criteria.

For projects of limited size and scope, the environmental criteria include:

- floodways,
- aesthetics,
- historic sites,
- rare and irreplaceable natural areas,
- endangered species, and
- necessary wildlife habitat.

For larger projects, the environmental criteria include those topics listed above, plus:

- air and water pollution,
- water supplies and water conservation,
- headwaters,
- waste disposal,
- streams, shorelines, and wetlands,
- soil erosion,
- transportation,
- educational and municipal services,
- public investments, and
- outstanding resource waters.

Applicants may request a waiver of the application notice requirements, which may be granted by the Commission if it determines that the entities normally entitled to receive notice will not be affected by the project.

Public Comments. Members of the public can [file comments](#) in Section 248a proceedings before the Commission. [Public comments](#) on the application must be filed with the Commission within the 21-day comment period. A member of the public can also request to be a party to the case (called “intervention”), and can request an evidentiary hearing on the project, provided that a showing is made that the application raises a significant issue regarding one or more of the relevant criteria listed above.

A request for a hearing must be supported by more than general or speculative statements. For example, it is not enough to state only that an application “violates Section 248(b)(5).” Instead, specific information is needed to persuasively show that a hearing should be held. For example: “The application raises an issue under the aesthetics criterion under Section 248(b)(5) because the applicant has not proposed adequate mitigation to screen the western portion of the project from Maple Street.”

Intervention. A request to be a party to a 248a case, also referred to as [intervention](#), must be filed with the Commission within 21 days of the date the application is filed with the Commission. A request to intervene must comply with standard procedures for filing a motion to intervene; for more information about these procedures, please see the explanation under [intervention](#) in the glossary.

Determination of Significant Issue(s). If the Commission determines that the application does not raise any significant issues, it will issue a final [decision](#) following the 21-day comment period.

If the Commission determines, on its own or based on information filed during the 21-day comment period, that the application raises any significant issues with respect to one or more of the review criteria, the Commission will hold an [evidentiary hearing](#), which includes holding a scheduling conference, possibly scheduling a site visit, and conducting some or all of the steps associated with evidentiary hearings, as summarized below.

Scheduling Conference. The purpose of a [scheduling conference](#) is to discuss procedural details and to set the schedule leading to an evidentiary hearing and briefing in the case. Scheduling conferences are open to the public. After the scheduling conference, the Commission will issue an order summarizing the results of the scheduling conference, which generally includes a schedule for the next steps in the case ([scheduling order](#)).

Discovery. The [discovery](#) process may be used if there is to be an evidentiary hearing on a case. Discovery is the process by which the parties to the case exchange information to get a better understanding of what facts they agree on and disagree about. Information produced in discovery is not evidence, unless the Commission admits it into evidence during the evidentiary hearing. Only the parties to the case are permitted to participate in discovery.

Parties to a case must follow standard procedures for discovery; for more information about these procedures, please see the explanation under [discovery](#) in the glossary.

Testimony and Exhibits. The parties to a case prepare [testimony](#) and [exhibits](#) that support their position on whether the proposed project complies with the relevant review criteria. The applicant includes pre-filed testimony and exhibits with the application. The applicant may also file supplemental pre-filed testimony to address issues that come up before the evidentiary hearing.

Other parties to a case have the opportunity to file testimony and exhibits prior to the evidentiary hearing. If filed, a party must provide a copy to all other parties in the case. The deadline for filing testimony and exhibits is usually set in a [scheduling order](#) issued by the Commission after the scheduling conference.

Evidentiary Hearing. An [evidentiary hearing](#) is convened when the Commission has determined that the application raises a significant issue regarding any of the relevant criteria. While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate in the hearing. Members of the public can become parties to a case by intervening following the process described above.

An evidentiary hearing may be conducted by the full Commission, two Commissioners, or a hearing officer.

Parties to a case must follow the procedures for evidentiary hearings; for more information about these procedures, please see the explanation under [evidentiary hearing](#) in the glossary.

Stipulation or Memorandum of Understanding. Two or more of the parties may agree to a settlement, also called a [stipulation](#) or [memorandum of understanding](#) (MOU) that resolves some or all of the disputed issues in a case. Settlements can be entered into at any point in a case and may be submitted to the Commission before or after the evidentiary hearing.

Briefs. The parties (and friends-of-the-court) will have an opportunity to file [briefs](#) after the evidentiary hearing. A brief is a written document that presents a party's legal and factual arguments for consideration by the Commission.

If you are not a party but would like an opportunity to tell the Commission how you think the evidence and law should be applied in the case, you can make a request to file a [friend-of-the-court](#) brief.

Decision. For projects of limited size and scope, the Commission will issue a final [decision](#) on an application within 45 days of the date the application was filed or was determined by the Commission to be complete. If a substantial issue is raised and an evidentiary hearing is held, the Commission will issue a final decision on the application within 90 days of the date the application was filed or was determined by the Commission to be complete.

For larger projects, the Commission will issue a final decision on an application within 60 days of the date the application was filed or was determined by the Commission to be complete; if a substantial issue is raised and an evidentiary hearing is held, the Commission will issue a final determination on the application within 180 days of the date the application was filed or was determined by the Commission to be complete.

If an evidentiary hearing is held by a hearing officer, a [proposal for decision](#) will be issued by the hearing officer that recommends an outcome to the Commission. The parties to the case will have the opportunity to file written comments on the proposal for decision and ask for an [oral argument](#) before the Commission.

The Commission will consider the hearing officer's proposal for decision, the parties' comments, and any arguments made during the oral argument. The Commission may accept, reject, or modify the proposal for decision. In so doing, the Commission will issue a [final order](#) deciding the case. If the decision is to approve the project, the final order will be accompanied by a [certificate of public good](#).

If the evidentiary hearing is held by the Commission itself, no proposal for decision will be issued. Instead, the Commission will issue a final order following review of the parties' briefs.

Final Commission orders are subject to [motions for reconsideration](#) under the Rules of Civil Procedure. Any final decision by the Commission may be appealed to the Vermont Supreme Court.