



PUBLIC NOTICE

Federal Communications Commission
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DA 08-1913

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**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITION FOR
DECLARATORY RULING BY CTIA – THE WIRELESS ASSOCIATION TO CLARIFY
PROVISIONS OF SECTION 332(C)(7)(B) TO ENSURE TIMELY SITING REVIEW AND TO
PREEMPT UNDER SECTION 253 STATE AND LOCAL ORDINANCES THAT CLASSIFY ALL
WIRELESS SITING PROPOSALS AS REQUIRING A VARIANCE**

WT Docket No. 08-165

Comment Date: September 15, 2008

Reply Date: September 30, 2008

On July 11, 2008, CTIA – The Wireless Association (CTIA) filed a petition requesting that the Federal Communications Commission (“Commission”) issue a Declaratory Ruling clarifying provisions of the Communications Act of 1934, as amended (“Communications Act”) regarding state and local review of wireless facility siting applications.¹ CTIA seeks clarification of provisions in Section 332(c)(7) of the Communications Act that it contends are ambiguous and that it claims have been interpreted in a manner that has allowed certain zoning authorities to impose unreasonable impediments to wireless facility siting and the provision of wireless services. CTIA also requests that the Commission preempt local ordinances and state laws that it states subject wireless facility siting applications to unique, burdensome requirements, in violation of Section 253(a) of the Communications Act, which bars state and local laws that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”²

Specifically, in its petition, CTIA asks the Commission to take four actions relating to the time frames in which zoning authorities must act on siting requests, their power to restrict competitive entry by multiple providers in a given area, and their ability to impose certain procedural requirements on wireless service providers. First, to eliminate an ambiguity that CTIA contends currently exists in Section 332(c)(7)(B)(v) of the Communications Act, CTIA asks the Commission to clarify the time period in which a state or local zoning authority will be deemed to have failed to act on a wireless facility siting application. CTIA states that “the Commission should issue a declaratory ruling explaining that (1) a

¹ In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Declaratory Ruling*, WT Docket No. 08-165, filed July 11, 2008 (Petition).

² 47 U.S.C. § 253(a).

failure to act on a wireless facility siting application only involving collocation occurs if there is no final action within 45 days from submission of the request to the local zoning authority; and (2) a failure to act on any other wireless siting facility application occurs if there is no final action within 75 days from submission of the request to the local zoning authority.”³ Second, citing the requirement in Section 332(c)(7)(B)(ii) of the Communications Act that state and local governments act on wireless facility siting applications within a reasonable time, CTIA asks the Commission to implement procedural steps whereby, if a zoning authority fails to act within the above time frames, the application shall be “deemed granted.” Alternatively, CTIA asks the Commission to establish a presumption that entitles an applicant to a court-ordered injunction granting the application unless the zoning authority can justify the delay. Third, CTIA asks the Commission to clarify that Section 332(c)(7)(B)(i)(II), which forbids state and local decisions that “prohibit or have the effect of prohibiting the provision of personal wireless services,”⁴ bars zoning decisions that have the effect of preventing a specific provider from providing service to a location on the basis of another provider’s presence there. Finally, CTIA requests that the Commission preempt, under Section 253 of the Communications Act, local ordinances and state laws that automatically require a wireless service provider to obtain a variance before siting facilities.

Procedural Matters

Comments on the petition are due **no later than September 15, 2008**. Reply comments are due **no later than September 30, 2008**. All filings should reference the docket number of this proceeding, WT Docket No. 08-165.

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.⁵ Parties making oral *ex parte* presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation’s substance and not merely list the subjects discussed.⁶ More than a one- or two-sentence description of the views and arguments presented is generally required.⁷

The petition is available for public inspection and copying in the Commission's Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554. Copies of the petition also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08-165. Copies of the request are also available from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail FCC@BCPIWEB.com.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an

³ Petition at iii.

⁴ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁵ *See* 47 C.F.R. §§ 1.1200(a), 1.1206.

⁶ *See* Commission Emphasizes the Public’s Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

⁷ *See* 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in Section 1.1206(b). *See* 47 C.F.R. § 1.1206(b).

electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (800) 378-3160, e-mail FCC@BCPIWEB.com.

Comments filed in response to this *Public Notice* will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08-165. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail FCC@BCPIWEB.com.

Alternate formats of this *Public Notice* (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to access@fcc.gov.

Wireless Telecommunications Bureau contact: Michael Rowan at Michael.Rowan@fcc.gov or (202) 418-1883.

Action by the Acting Chief, Wireless Telecommunications Bureau.

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