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City of  
Bellevue



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September 15, 2008

FILED/ACCEPTED

SEP 15 2008

Commission's Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

Re: WT Docket No. 08-165

Dear Commission Secretary:

I am writing on behalf of the City of Bellevue, Washington to provide comments on WT Docket No. 08-165 – 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.

The proposals in this petition directly violate the Telecommunications Act Congress passed in 1996 which preserves local zoning of cell towers (and directed the Federal Communications Commission (FCC) to dismiss proceedings that would have restricted local zoning of cell towers).

The proposal would set fixed deadlines for final actions on new towers (75 days) or additions to towers (45 days), with the application deemed approved if the municipality has not acted within the set time frame. In addition, the proposal would preempt zoning ordinances in cases where variances are required for cell towers and prevent municipalities from considering whether there is a "gap" in coverage warranting a new tower.

The mandatory permit review timeframe is precisely the kind of restriction on local zoning authority that the 1996 Telecommunications Act intended to prevent. Control over land use and development is one of the primary roles of local government. In this role, municipalities establish the permitting process that applies to uses, including wireless uses, considering the impacts such uses have on the community. Often times the permitting process includes the opportunity for public notice and comment. In Washington state, once a local jurisdiction determines that a use, like wireless, triggers a publicly-noticed permit, state law imposes uniform noticing and appeal timelines on that process in order to allow for a complete review of an application, appropriate notice to the public, and an appeal period. As a result of these state requirements, the 45 to 75 day time frame proposed by the FCC will be virtually impossible to meet for any wireless application that requires a public permitting process in Bellevue or in any jurisdiction in Washington state. Adopting such a mandatory time frame limits local zoning authority by eliminating the possibility of requiring public process for wireless facilities.

Municipalities must balance the impacts of wireless development against the public's desire for more and more wireless services in more and more places – at home, at work, and on the road. Local

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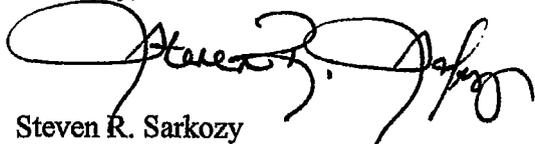
jurisdictions are responding well to that challenge by efficiently and fairly administering the permitting process. For example, in Bellevue the permitting process has been structured to recognize that certain wireless proposals are more sensitive than others. Generally, those applications that involve a new tower or additional of significant height to an existing structure in a residential neighborhood are sensitive, while those that add limited height, or are located in commercial areas are less sensitive, and permitting requirements reflect that. Where a proposed wireless facility in residential areas would involve no added height to a structure, it may be allowed through a building permit only. Certain wireless applications in commercial areas are treated similarly. These permits may meet the 45 to 75 day time frame proposed in the petition, but even then, might require that wireless applications are always given priority by City staff, no matter what other applications had been filed with the City and in what order.

More sensitive wireless applications that add significant height in residential or commercial areas require permits with a public notice and comment period, either as administrative conditional use permits or conditional use permits. Although the state-required noticing periods for these types of permits prevent the City from processing them within the 45 to 75 day time period in most cases, we are meeting our state law processing timelines for these types of permits. In a review of time to issuance for these types of wireless permits issued since January 2004, Bellevue issues these permits in an average of 120 to 179 days (6 months or less). These averages are consistent with the average review times for other, non-wireless, administrative conditional use and conditional use permits.

In 1996, Congress said that the time for municipalities to act on cellular zoning requests are the "generally applicable time frames for zoning decisions," taking into account the "nature and scope of each request," and without giving "preferential treatment" to the cellular industry. Bellevue's practice is fully consistent with the spirit and intent of the 1996 Telecommunications act, and the wireless industry has not shown a pattern of abuse or mistreatment by local jurisdictions that supports taking this highly unusual step of pre-empting local zoning authority.

Zoning is a matter of uniquely local concern. The FCC cannot be the local zoning authority for cell towers nationwide. Congress recognized this when in 1996 when it preserved local zoning of cell towers. The petition before the FCC ignores this Congressional direction. For these reasons, the City respectfully requests that the FCC deny the petition for declaratory ruling.

Sincerely,



Steven R. Sarkozy  
City Manager

cc: Senator Patty Murray  
Senator Maria Cantwell  
Representative Dave Reichert  
Bellevue City Council