AIR LINE PILOTS ASSOCIATION, INTERNATIONAL
535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 20172-1169 □ 703-689-2270
888-FLY ALPA (888-359-2572) □ FAX 703-689-4370

September 29, 2008

Commission's Secretary
Office of the Secretary
Federal Communications Commission
236 Massachusetts Avenue
N.E., Suite 110
Washington, DC 20002

Subject: WT Docket No. 08-165

IN OPPOSITION

Dear Sir or Madam:

The Air Line Pilots Association, International (ALPA), represents the safety interests of 53,000 professional airline pilots flying for 37 airlines in the United States and Canada. We appreciate the opportunity to comment on WT Docket No. 08-165, FCC Public Notice DA 08-1913. ALPA's interest in this matter is one of public safety. ALPA submits these comments in opposition in an effort to ensure that the important substantive review of potential hazards to aviation posed by existing and proposed wireless communication towers on or near airports, or at other locations where the towers may intrude into navigable airspace, is not negatively affected due to changes in the procedural rules sought by CTIA. ALPA opposes any change to the existing procedural rules that would reduce or eliminate the consideration of the Federal Aviation Administration (FAA) Obstacle Evaluation (OE) findings in the decision to approve or deny a construction permit.

CTIA – The Wireless Association (CTIA) proposes the Federal Communications Commission (FCC) issue Declaratory Rulings that would eliminate state and local government's authority to approve or disapprove cell phone tower construction, which could include areas affecting aviation. ALPA opposes any decision that could reduce consideration of FAA OE findings.

ALPA supports state and local governments establishing Airport Overlay Zones ("AOZ") to protect the surface movement areas and navigable airspace above and around airports as well as protecting against signal interference. In most cases only state and local zoning authorities hold the power to approve or deny permits for construction, not the Federal Government (e.g. FAA). Those state and local governments with processes in place, such as an AOZ, help to ensure the FAA OE findings are considered before a permit is issued. Under CFR 14 Part 77 ("FAR Part 77"), parties can be required to submit information on proposed structures for FAA use in OE analysis to determine the hazard, if any, to aviation. However, the FAA does not have the authority to prevent construction even if the structure will be a hazard to aviation. ALPA

believes the current CTIA proposal would remove state and local government's authority to consider airport, state aviation authority, and FAA OE findings before a permit is issued.

ALPA has the following comments to CTIA's petition to ensure that aviation safety concerns are adequately addressed.

> "**Action 1**" ALPA believes requests made to the government (including those for permits) should be resolved in an expeditious manner. We understand that permit requests can go for years without resolution, and believe this is far from expeditious. Therefore, ALPA understands CTIA's attempt to establish a fixed number of days for requiring resolution to permit requests. However, ALPA is opposed to wording that removes the local zoning authority from the approval process after CTIA's proposed 45 day and 75 day timeline.
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> "**Action 2**" We adamantly oppose CTIA's proposal that "…if a zoning authority fails to act within the above time frames, the application shall be 'deemed granted". State and local zoning authorities provide an essential part of the permit review process. Removing them from the process due to an arbitrary deadline not being met (i.e.,45/75 days) will have a detrimental effect on aviation safety and/or operations.
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> "**Action 4**" ALPA adamantly opposes CTIA's request that the FCC preempt local ordinances and state laws requiring variances. State and local government regulations and established AOZs are important parts of the permit approval process ensuring substantive opportunity is given to the impacts of proposed structures on aviation operations. It is important that state and local zoning offices are afforded the opportunity to approve variances of these types. These processes help ensure FAA's OE findings are considered before a permit for construction is issued. If "Action 4" were implemented the only authority, local government, that could prevent construction of a hazard to navigable airspace would be removed (after the 45/75 day window). ALPA is strongly opposed to Action 4.

In summary, ALPA's only concern in this matter is for aviation safety and operations. We therefore oppose CTIA's proposals that would remove the current sole authority (i.e., the local government) that can deny a construction permit due to an OE finding of hazard.

Thank you for the opportunity to comment.

Sincerely,

Captain Rory Kay
Executive Air Safety Chairman

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