

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION  
AND  
THE DAS FORUM (A MEMBERSHIP SECTION OF PCIA)**

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## **I. INTRODUCTION AND SUMMARY**

PCIA-The Wireless Infrastructure Association (“PCIA”) and The DAS Forum, a membership section of PCIA (“The DAS Forum”), submit these comments on the Commission’s *Public Notice* in the above-captioned proceeding.

PCIA is a non-profit national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate over 120,000 towers, rooftop wireless sites, and other facilities for the provision of all types of wireless services. PCIA advocates an approach to wireless facilities siting that balances the critical need for wireless infrastructure with reasonable standards of land use review. To this end, PCIA promotes policies that enable the most efficient use of existing wireless infrastructure.

The DAS Forum, a membership section of PCIA, is a nation-wide non-profit association dedicated to the development of distributed antenna systems (“DAS”) as a component of our nation’s wireless infrastructure. Distributed antenna systems (“DAS”) are multi-nodal networks that typically rely on fiber optic cable and small, relatively low-power antennas. Small DAS antennas (or “nodes”) are deployed in a variety of settings, including on lamp posts and utility poles in public rights-of-way, to achieve visual or environmental unobtrusiveness, to increase network capacity, or to address terrain or technical constraints that make a multimodal system preferable. DAS networks are also deployed for indoor use, particularly in large buildings like arenas, hotels and large office buildings. DAS networks provide an innovative solution in environments where traditional “macro” sites (like towers) are not feasible. The DAS Forum membership includes virtually every outdoor DAS provider, as well as two commercial mobile radio service providers deploying DAS as part of their wireless networks.

PCIA and The DAS Forum respect the reasonable role of local governments across the country in regulating land uses in their communities. Both organizations work with various national organizations representing municipal officials to offer resources for municipalities to enact workable review standards for wireless facilities. We engage in an active campaign of local outreach, and promote a model wireless facilities zoning ordinance to achieve this balance.

Approximately one out of seven Americans has “cut the cord.” For these users, their wireless devices are their only telephones. As wireless usage expands for broadband data and mobile media, carriers will need to develop additional facilities to meet subscriber demand. More importantly, carriers need to be able to provide a strong, high-quality signal in residential areas so that wireless users can be protected in case of an emergency. E911 is a service activated when a wireless caller dials 911, and allows first responders to identify the caller’s location. This life-saving service requires a robust signal to operate effectively, making comprehensive wireless infrastructure a crucial public safety necessity.

Realization of the Commission’s goals for wireless and broadband services deployment depends on a backbone of robust wireless infrastructure. The Commission recognizes the connection between facilities and service. In its Draft Strategic Plan for 2009-2014, the Commission stated that regulatory policies “must promote technological neutrality, competition, investment, and innovation....”<sup>1</sup> In many communities with reasonable policies, local government regulation of wireless infrastructure development through the zoning process results in efficient and predictable deployment. Unfortunately, the Commission’s goals of communications innovation are hindered in many local jurisdictions that impose unreasonable and even illegal restrictions on wireless infrastructure deployment through the land use review process. In these jurisdictions, communications infrastructure development is stymied by

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<sup>1</sup> FCC Draft Strategic Plan 2009-2014 (released 6/24/08).

arbitrary decision-making, delay, unjustified cost and procedural uncertainty. Sometimes this is aggravated by the delegation of redundant review to “municipal consultants.” In too many locations, these burdens result in insufficient wireless infrastructure to meet all consumer needs at all locations. At a time when Americans depend on wireless services more than ever, this result will disadvantage citizens.

Our members deploy and provide wireless infrastructure to the wireless carriers, who in turn provide wireless services to the American public – now more than 250 million lines in the U.S. The industry, its customers and the public are adversely affected when a jurisdiction fails to uphold its end of the deployment process, review of and action on infrastructure siting applications on a timely, cost-effective and predictable basis. PCIA and The DAS Forum support efforts to make the zoning process more consistent and predictable. This in turn allows Americans to enjoy the full benefits of wireless services.

Local governments have become the gatekeepers of wireless deployment due to their zoning authority. That authority, if exercised reasonably, is appropriate. However, the frequent failure to act on applications for infrastructure deployment in a timely manner has acted as an effective barrier to full wireless services in many areas. Congress addressed this problem when it enacted the Telecommunications Act of 1996 (the “Telecommunications Act”)<sup>2</sup>, which allowed jurisdictions to retain local zoning power so long as their exercise of such power did not impair the rapid deployment of advanced services.<sup>3</sup> Yet the goal of promoting the advancement of wireless services is not limited to the Telecommunications Act. In fact, it is part of the express

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<sup>2</sup> 47 U.S.C. § 101 *et seq.*

<sup>3</sup> *See Petition* at 17-18.

purpose of the Commission as expressed in the Communications Act of 1934.<sup>4</sup> PCIA noted the following in a recent *amicus* filing before the U.S. Court of Appeals for the 10<sup>th</sup> Circuit:

The Communications Act of 1934 was enacted with the overarching policy goals of making available “to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide . . . radio communication service” and “promoting safety of life and property through the use of . . . radio communication.” The Act also provides that the FCC should encourage “new technologies and services to the public,” the “efficiency of spectrum use,” and the “efficient and intensive use of the electromagnetic spectrum.”<sup>5</sup>

Accordingly, any action taken by the Commission to clarify existing statutory language to further achieve its overall goal of promoting new wireless services, as the *Petition* requests,<sup>6</sup> is well within its legal authority, and indeed its Congressional purpose as a federal agency. To that end, the *Petition*’s proposal that the Commission should provide “benchmarks” for what qualifies as a “failure to act” under § 332(c)(7)(B) is entirely appropriate.

We also support the Petitioner’s establishment of a 45-day timeline within which a “failure to act” under Section 332(c)(7)(B)(v) is deemed to occur with respect to a collocation application. As discussed more fully below, this time frame is very reasonable in light of the very limited issues that a collocation request can present, and how collocation applications are processed in many communities. Moreover, we agree that a collocation application should be deemed granted in the event that a “failure-to-act” benchmark is triggered. Finally, we agree that the Commission should preempt local ordinances and state laws that subject wireless siting applications to variances requiring extraordinary relief from the land use review process itself.

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<sup>4</sup> See 47 U.S.C. § 157 (which states that “[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public.”)

<sup>5</sup> Brief for PCIA as Amicus Curiae Supporting Appellee, *T-Mobile Cent., LLC v. Unified Gov’t of Wyandotte County/Kansas City, Kansas*, 4, No. 07-3332 (10th Cir. filed May 6, 2008) (quoting 47 U.S.C. §§ 151; 157; 309(j)(3)(D); 332(a)(2)) . In this brief, PCIA addressed the “one provider rule” that the *Petition* requests the Commission to address. *Petition* at 30-35. PCIA offers to incorporate its *amicus* comments by reference in support of the *Petition*’s goals in this request. This filing is attached as **Appendix A**.

<sup>6</sup> PCIA and The DAS Forum agree with the *Petition*’s arguments in support of the Commission’s jurisdictional ability to provide interpretive clarification to statutory language. See *Petition* at pp.5-6.

## II. THE COMMISSION SHOULD ESTABLISH A TIMELINE FOR ZONING REVIEWS OF COLLOCATIONS

PCIA and The DAS Forum submit that a 45-day timeframe for municipal review of applications for antenna collocations on existing structures (including DAS installations) is reasonable. Many local jurisdictions, especially those that do not engage municipal consultants to review applications, currently review such applications within this timeframe. In these jurisdictions, a wireless infrastructure provider applies for administrative approval or a building permit. This application generally includes plans describing the antennas and accessory equipment, and is reviewed by planners or building code officials. These professionals review the application for conformance with land use regulations regarding accessory uses.

The addition of antennas to existing structures is properly considered to be an accessory to a previously approved structure.<sup>7</sup> Planning staff or a building official can determine whether the proposed addition is in compliance with relevant provisions regarding accessory uses *without the need for public hearings or extraordinary relief from the zoning ordinance*. This determination is made after municipal review of a description of the proposed addition. In this way, collocations are reviewed quickly and efficiently for their compliance with relevant land-use standards.

Relatively few zoning ordinances address DAS directly. Most jurisdictions take one of two approaches with respect to local regulation of DAS. Some conclude that DAS installations within public rights-of-way are exempt from local zoning based on a common exclusion of

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<sup>7</sup> For example, planners in Arlington County, VA interpret applications for administrative approval of collocations according to compliance with Zoning Ordinance Sec. 31(B)(2)(a) (which excepts “radio towers and similar structures” from district height requirements, so long as they do not extend the structure to which they are mounted by more than 23 feet).

public rights-of-way from zoning review.<sup>8</sup> In these cases, only building or electrical permits are required. Other jurisdictions submit DAS to the collocation review process. Regardless of whether a jurisdiction applies its zoning ordinance to a proposed DAS installation, it is thoroughly reasonable for DAS providers to expect that the reviewing jurisdiction can review applications administratively, without the need for public hearings, within a 45-day timeframe.

#### **A. Collocation Applications Are Sometimes Subject to Needless Delays**

In some jurisdictions, the process for approval of collocations is unreasonably long.

Examples of such jurisdictions include the following:

- One town in Florida takes 120 days to process a building permit for collocations.
- A jurisdiction in Texas requires a full zoning process, including a planning and zoning process and two city council meetings, for all wireless facilities, including collocations.
- A large southern California county routinely takes six to nine months to review applications for collocations.
- Another California jurisdiction takes up to one year to review applications for a DAS installation using existing utility infrastructure in public rights-of-way.

In addition, many siting applications are unnecessarily delayed in jurisdictions that utilize private municipal consultants, whose fees must be paid by the applicant, to process their wireless applications. These consultants offer the jurisdiction a comprehensive ordinance and full review of all applications at no cost to the locality (i.e., with costs to be incurred by applicants). Clearly, these consultants' incentives lie in making the process as prolonged and complicated as possible, and the local jurisdiction's authority is used as a platform to promote the consultant's private business interests. The public's interest and the Commission's policy goals are completely lost in this approach.

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<sup>8</sup> For example, a municipality in the Maryland suburbs of Washington, D.C. determined that a DAS installation in a right-of-way was exempt from municipal zoning.

Some of these consultants extract exorbitant fees for simple reviews of wireless siting applications, including extensive introductory meetings to explain the terms of the relevant ordinance, which must be paid for by the applicant. Most jurisdictions charge reasonable fees that are related to the actual costs of review of the wireless facility application,<sup>9</sup> but the same application process in jurisdictions with a particular consultant-recommended ordinance routinely costs thousands of dollars more. The applicant typically must place about \$8,500 into escrow to cover the consultant's fees. In these situations, neither the locality nor its consultant faces any incentive to provide efficient results, as the consultant is paid an hourly fee by the applicant for his or her review. In jurisdictions where some consultants are used, the application process can take six (6) months or more, even for simple requests for collocation. As such, these consultant reviews can serve as a substantial barrier to entry in violation of the Telecommunications Act, and, at a minimum, serve to decrease investment incentives and quality of service in jurisdictions where consultants delay the process at great cost to the applicant.

## **B. Recognizing the Value of Reasonable Review Frameworks**

It is important to note that many jurisdictions build reasonable timeframes into their code language, such as the ones suggested in the *Petition* for a 45-day and 75-day approvals for collocations and new facilities, respectively. These ordinances prove that the siting process can proceed with certainty and in a reasonable timeframe.

The *Petition's* request for a 45-day processing time for collocations comports with legislation passed in other states designed to establish review timelines. PCIA and The DAS Forum pursue this legislation in targeted states to provide greater certainty in review timelines

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<sup>9</sup> North Carolina enacted statutory limits on excessive fees in the wireless facility siting process. Application fees for wireless facilities must be "based on the costs of the services provided and [must] not exceed what is usual and customary for such services." N.C. GEN. STAT. § 153A-349.52(f) (2008).

and processes. According to the Florida statute, “[a] local government shall grant or deny each properly completed application for collocation . . . within the normal timeframe for a building permit review, and in no cases longer than 45 business days” after the application is deemed complete.<sup>10</sup> This same law also provides for decisions on new facilities within 90 days.<sup>11</sup> Similarly, the North Carolina statute requires that collocation requests be acted upon within 45 days of submission of a completed application.<sup>12</sup>

### **C. Wireless Infrastructure Siting Is Subject to Delays Beyond the Individual Application Process**

While PCIA and The DAS Forum members frequently experience delays in the approval process upon submitting specific applications, it is important for the Commission to realize that those delays are not the only obstacles preventing the rapid deployment of wireless infrastructure. There are other major causes of delays, including moratoria and long-term delays of final decisions on applications, which inhibit the full deployment of wireless services. The Commission should act to address these problems under the Telecommunications Act as well.

#### **1. The Commission Should Preempt Local Wireless Facilities Moratoria in Excess of Six Months**

When the Telecommunications Act was first enacted, many jurisdictions imposed moratoria on wireless communications facility siting while they contemplated resolution of the new issues presented by the federal law. Twelve years have now passed since jurisdictions were made aware of the impacts of the new federal law, but wireless infrastructure providers continue to encounter jurisdictions that grind local wireless service improvements to a halt by enacting lengthy moratoria. These moratoria are often enacted even though a jurisdiction may already

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<sup>10</sup> FLA. STAT. § 365.172(12)(d)(1) (2008).

<sup>11</sup> *See id.* at §365.172(12)(d)(2).

<sup>12</sup> *See* N.C. GEN. STAT. § 153A-349.52(e) (2008).

have a valid ordinance for wireless facility siting. For example in August 2008, a Maryland county enacted a ten-month moratorium on wireless facility siting despite having one of the most comprehensive wireless facility siting ordinances in the state. Likewise, in September 2008, a large southern California jurisdiction enacted a one-year moratorium on wireless facility siting, which halts needed infrastructure improvements, despite opposition from some local interests in the technology sector.

The Telecommunications Act specifically prohibits these types of lengthy delays. Section 332(c)(7)(B)(i)(II) notes that local regulation of wireless facilities “shall not prohibit or have the effect of prohibiting the provision of personal wireless service.”<sup>13</sup> Undoubtedly, the inability to conduct any wireless facility siting prohibits wireless service, and many courts have recognized that such moratoria are illegal under the Act and are, in effect, a delaying tactic. As one court has noted, Section 332 of the Telecommunications Act “implement[s] Congress’ intent ‘to stop local authorities from keeping wireless providers tied up in the hearing process’ through invocation of state procedures, moratoria or gimmicks.”<sup>14</sup> While we recognize that a jurisdiction could, in unusual circumstances, have a legitimate interest in temporarily suspending application processing, any moratorium lasting longer than six months is excessive—an idea largely shared by courts considering the issue.<sup>15</sup> Though legal precedent may favor those endeavoring to provide wireless services, litigation is a very time-consuming and costly approach to combat moratoria. A bright-line rule would reduce the need, cost and time for such litigation.

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<sup>13</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II).

<sup>14</sup> *Lucas v. Planning Bd.*, 7 F. Supp. 2d 310, 321-322 (S.D.N.Y. 1998) (internal citations omitted).

<sup>15</sup> See, e.g., *Sprint Spectrum L.P. v. Town of Farmington*, 1997 U.S. Dist. LEXIS 15832 (D. Conn. 1997) (concluding that moratorium equated to an effective prohibition of wireless services in violation of the Telecommunications Act); *Sprint Spectrum L.P. v. Jefferson County*, 968 F. Supp. 1457 (N.D. Ala. 1997) (holding that moratorium failed to comply with procedural requirements of state enabling act and amounted to “unreasonable discrimination” against applicants); *APT Minneapolis, Inc. V. Stillwater Twp.*, 2001 U.S. Dist. LEXIS 24610 (D. Minn. 2001) (rejecting a moratorium as broader than necessary, and invalid even in the face of emerging wireless infrastructure technology).

A moratorium does not merely prevent expansion of crucial wireless services for the duration of the moratorium, but instead creates ripple effects of delays in deploying wireless infrastructure. A moratorium discourages wireless development at a time when the public relies more than ever before on wireless services where they live, work and play. Simply put, wireless service providers have no choice but to concentrate their efforts elsewhere when it becomes apparent that no expansion is possible. The development schedules of infrastructure deployment are such that refusing applications for an extended period of time does not allow for infrastructure investment to return to an area for a period of years once planning, application and build times are factored into the overall timeline. This is critical time lost for the citizens of that jurisdiction who cannot receive wireless advancements during that time.

For the same reason that the Commission has the legal authority to interpret the Act to require application decisions within certain timeframes, as discussed above in Section I and in the *Petition*,<sup>16</sup> the Commission can also issue a declaratory ruling on Section 332(c)(7)(B)(i)(II) interpreting it to mean that a moratorium in excess of six months prohibits or has the effect of prohibiting wireless service. Six months provides planning staffs with more than ample time to review any perceived deficiencies in the zoning authorities' existing codes, fully evaluate alternatives, and solicit full and meaningful comment on any proposed changes. This is especially true now that jurisdictions have had over a decade to implement any changes to their codes that may have resulted from the Telecommunications Act. As courts have noted, "administrative lines need not be drawn with mathematical precision..."<sup>17</sup>

## **2. Various Other Factors Impact Wireless Facilities Deployment Timelines**

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<sup>16</sup> See *Petition* at 20-21 (discussing the Commission's authority under 47 U.S.C. §201(b), as explained by both *AT&T v. Iowa Utils. Bd.*, and *Alliance for Community Media v. FCC*, to interpret statutory provisions of the Telecommunications Act).

<sup>17</sup> *Alliance for Community Media v. FCC*, 529 F.3d 763, 780 (6th Cir. 2008) (quoting *Kirk v. Secretary of Health & Human Servs.*, 667 F.2d 524, 532 (6th Cir. 1981)).

Delays occur while infrastructure providers wait for a final decision on submitted applications. In some jurisdictions, applications are repeatedly “tabled” or deemed “incomplete” in an attempt to avoid final decision on proposed facilities. This definitely frustrates Congress’s mandate of the rapid deployment of wireless infrastructure. That is why it is imperative that the Commission affirmatively act to interpret the Communications Act and remove barriers where it can and thereby foster the growth of wireless services nationwide.

### **III. THE COMMISSION SHOULD ESTABLISH CLEAR CONSEQUENCES FOR A JURISDICTION’S FAILURE TO ACT ON A ZONING APPLICATION**

#### **A. The Commission Has Previously Determined in an Analogous Circumstance that Deeming an Application Granted is an Appropriate Remedy for Failing to Act**

The whole purpose of establishing timelines for jurisdictions to act is to establish certainty of process in the siting of wireless facilities. Yet establishing reasonable timelines for acting upon wireless infrastructure applications would be ineffective without providing some form of recourse in the event the reviewing body does not conform to the established timeline. As the *Petition* notes, the Commission has confronted the same dilemma in the directly analogous local franchising context.<sup>18</sup> The Commission reasoned in the local franchising situation that:

In order to encourage franchising authorities to reach a final decision on a competitive application within the applicable time frame set forth in this Order, a failure to abide by the Commission’s deadline must bring with it meaningful consequences. Additionally, we do not believe that a sufficient remedy for an LFA’s inaction on an application is the creation of a remedial process, such as arbitration, that will result in even further delay.<sup>19</sup>

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<sup>18</sup> See *Petition* at pp. 20-21.

<sup>19</sup> *In re* Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, 22 FCC Rcd. 5101, 5139, MB Dkt. No. 05-311 (Mar. 5, 2007).

This rationale is equally valid in the local zoning context. As the court reviewing the Commission’s franchising rationale noted, the purpose of the Cable Act<sup>20</sup> was to “balance two conflicting goals: preserv[ing] the critical role of municipal governments in the franchise process . . . while affirming the FCC’s exclusive jurisdiction over cable service, and overall facilities which relate to such service.”<sup>21</sup> It is difficult to envision a Congressional purpose more comparable to that expressed for wireless development than that of the Cable Act. Given that the Commission has already decided that its established local action timelines are properly enforced by a “deemed granted” provision in the context of the Cable Act, a similar “deemed granted” approach to wireless infrastructure siting is warranted based upon the similarity of the statutes’ end goals.

A “deemed granted” provision, as introduced in the *Petition*,<sup>22</sup> would provide certainty of process by ensuring a certain level of jurisdictional responsiveness in the siting process that is now missing in many contexts. The industry is not requesting blanket approvals; rather, it seeks only the ability to know as soon as possible whether a wireless infrastructure facility will be approved or denied so it can go about seeking the most effective way to provide wireless services for their customers. Congress gave wireless providers this right in the Telecommunications Act.

An added advantage of deeming an application granted if a jurisdiction fails to act is that it provides an incentive for the jurisdiction to fully and accurately describe their rationales for their decision. A written decision based on substantial evidence is also required by the Telecommunications Act, but the importance of such a decision cannot be overstated. Knowing why a jurisdiction perceives a wireless facility as appropriate is crucial for providers to plan other facilities in that jurisdiction. Wireless infrastructure providers cannot be required to guess

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<sup>20</sup> 47 U.S.C. § 541 *et seq.*

<sup>21</sup> *Alliance for Community Media v. FCC*, 529 F.3d at 768 (6<sup>th</sup> Cir. 2008).

<sup>22</sup> See *Petition* at pg. 27 *et seq.*

as to what a jurisdiction approves as an acceptable location. When an applicant has met all other applicable code provisions, but a jurisdiction decides a site is not appropriate, it is important that the applicant know why in order to make future plans to deliver the services on which their customers rely. The “deemed granted” provision would provide a valuable incentive for jurisdictions to fully explain their decisions, and it would also serve to aid adjudication if there is an appeal lodged.

#### **B. The Alternative Proposal of Shifting Burdens Has Merit**

If the Commission determines that failure to act should not result in grant of an application, PCIA and The DAS Forum also support the *Proposal’s* alternate proposal establishing a rebuttable presumption in favor of the applicant. This proposal is intrinsically fair because the local siting process should operate on a good-faith basis. When a jurisdiction fails to provide a final determination, the applicant who has acted in good faith is unfairly penalized. By shifting the burden for proving the delay is necessary to the jurisdiction, the Commission can remove the local authority’s incentive to delay action on a lawful but disfavored application.

Further, this proposal recognizes that sometimes there are extenuating circumstances that will require the jurisdiction to take more time than usual in processing an application. Generally, the industry is understanding of such situations and is amenable to developing a mutually agreeable timeline in these specific, exceptional cases. Unfortunately, not all jurisdictions fully communicate their problems to applicants. The alternative proposal protects the interests of both sides by providing the industry certainty of process while providing the jurisdiction with a safety valve in extenuating circumstances.

#### **IV. THE COMMISSION SHOULD PREEMPT WIRELESS FACILITIES SITING BY VARIANCE**

The Commission should determine that the Telecommunications Act preempts local zoning ordinances to the extent that they require variances from the relevant land-use provisions for the approval of wireless telecommunications facilities (including new structures). A variance is a departure from the land use regulation, and is only granted because of inherent characteristics of the parcel that lead to a circumstance in which unreasonable hardship occur if the variance was not granted.<sup>23</sup> In most ordinances, variances are granted in extremely rare circumstances, and require a showing that these characteristics lead to a situation in which reasonable use of the property is unavailable when the zoning ordinance is applied to it.<sup>24</sup> It is overwhelmingly difficult for wireless infrastructure providers to make this showing, especially in situations in which the proposed facility shares a parcel with another use. Wireless facilities ordinances should always permit applicants to apply for proposed facilities, giving an opportunity for the infrastructure provider to prove the need for the proposed facility.

The application of this standard often leads to a situation in which the wireless telecommunication is effectively prohibited. PCIA and The DAS Forum submit that policies that require a variance for the approval of wireless telecommunications facilities are tantamount to an effective prohibition of wireless of wireless services in violation of Sections 332(c)(7)(B)(i) and/or 253(a) of the Telecommunications Act.

## **V. CONCLUSION**

For the foregoing reasons PCIA and The DAS Forum respectfully urge the Commission to grant the relief requested in this petition and these comments.

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<sup>23</sup> See Robert R. Wright, *Land Use* 3<sup>rd</sup> Ed. (West Publishing Co. 1994).

<sup>24</sup> See e.g., Fairfax County, VA Art. 18-404(6), which requires a finding that, *inter alia*, “strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property.”

Respectfully submitted,

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