

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Petition for Declaratory Ruling |) | |
| To Clarify Provisions of Section 332(c)(7)(B) |) | WT Docket 08-165 |
| 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 |) | |

Comments of United States Cellular Corporation

United States Cellular Corporation ("USCC") hereby files its Comments in support of the "Petition for Declaratory Ruling ("Petition") filed by CTIA-The Wireless Association ("CTIA").¹ USCC supports CTIA's proposals, which are designed to ensure that the deployment of wireless communications networks is not undermined by unreasonable delays in approving proposed collocations and new wireless towers on the part of local zoning authorities. USCC currently serves approximately 6.2 million customers and owns over 6,000 wireless facilities including towers and collocated structures. Thus, as both a carrier and tower owner, USCC has a large stake in the outcome of this proceeding. USCC, like CTIA, would also stress the importance of the FCC addressing this issue now, in light of unprecedented demands for new tower construction to improve public safety communications, increase broadband penetration and meet the buildout requirements of the new 700 MHz and AWS wireless allocations.

¹ See, Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Petition For Declaratory Ruling By CTIA 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 08-165, released August 14, 2008.

I. USCC Has Experienced The Type of Unreasonable Delays Described in the Petition.

As described in the Petition,² Congress in 1996 adopted specific revisions of the Communications Act, namely Sections 253(a) and 332(c)(7)(B), in order to facilitate the construction of wireless towers by limiting the power of local zoning authorities. Quoting the 1996 Act and a Supreme Court decision,³ CTIA succinctly states the purposes of the relevant sections:

"... Congress enacted specific provisions in the 1996 Act designed to reduce the impediments imposed by local governments upon the installation of facilities for wireless, communications, such as antenna towers. Section 253 preempts any 'state or local statute or regulation, or any other State or local requirement' that 'prohibit[s] or [has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service,' including wireless service. Section 332(c)(7) imposes specific limitations on the traditional authority of state and local authorities to regulate the location, construction, and modification of the facilities necessary for wireless communications." (footnote omitted.)⁴

However, as is documented by CTIA in the Petition, despite the direction given by the above statutory sections, local zoning authorities have sometimes refused outright to approve the construction of wireless towers and have often unreasonably delayed such approvals.⁵ USCC's experiences have been similar.

USCC has encountered frequent delays and delays of increasing length in the zoning process. For example, obtaining the necessary permits to erect a tower in the City of Chicago now typically takes approximately one year. USCC, a PCS licensee in the Chicago MTA, is attempting to build a competitive wireless system in a market where its competitors include

² Petition, pp. 4-7, 11-19.

³ City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005).

⁴ Petition, pp. 4-5.

⁵ Petition, pp. 14-15.

AT&T Wireless, Verizon Wireless, Sprint Nextel and T-Mobile. Such delays in zoning approvals have anti-competitive effects, and those effects will be intensified when new 700 MHz and AWS licensees seek to establish themselves in the market.

Further, the time needed to obtain zoning approvals has increased continually in recent years, in rural as well as urban areas

Also, approximately one fifth of USCC's wireless siting applications currently before local zoning authorities require USCC to obtain a zoning variance. Of those variance applications, one fifth of them have been pending for more than one year.

In sum, the problem of delay in the local zoning process is real and is increasing in severity. The FCC should focus on it and should use all the regulatory power it has to solve or at least to mitigate it.

II. The Remedies Proposed By CTIA Are Appropriate.

CTIA has recommended a series of remedies through the declaratory ruling mechanism to deal with the problem of zoning delays.⁶ USCC believes that all of CTIA's proposed declaratory rulings would be justified and lawful, though obviously the Commission will have to determine the full extent of its regulatory authority under Sections 253(a) and 332(c)(7).

USCC believes that CTIA has made an entirely persuasive case that the FCC should issue a declaratory ruling interpreting the phrase "failure to act" in Section 332(c)(7)(B)(v) of the Act to mean a failure by a local zoning authority to act on a collocation application within 45 days and a new tower application within 75 days.⁷ Such ruling would be consonant with the purposes of the statute by requiring local zoning authorities to act to grant or deny applications within a reasonable time. USCC would also state that it would not be opposed, as a compromise

⁶ Petition, pp. 17-38.

⁷ Petition, pp. 20-27.

measure, to allowing slightly longer periods of time. The crucial requirement, in our view, is to establish deadlines within which zoning authorities must act. And we agree with CTIA that past FCC orders and recent legal precedents, especially the recent U.S. Court of Appeals decision upholding FCC-imposed deadlines for local video franchising,⁸ provide ample legal authority for the FCC to take the requested action.

We also support CTIA's position that if local zoning authorities fail to act within whatever time period is decided upon, either the wireless zoning application should be deemed granted or the applicant should be presumptively entitled to a court injunction ordering the zoning authority to grant the tower siting request, unless the local zoning authority can demonstrate that the delay was reasonable.⁹

Such a change in the FCC's rules would alter the antenna siting process for the better. In order to keep control of the zoning process local zoning authorities would have to either grant applications within the time allotted, sometimes with modifications, or would have to deny zoning applications, thus providing wireless carriers with an opportunity to take their case to the courts, as the statute intends.

CTIA makes two other requests for declaratory rulings, which would also carry out the Act's purposes and serve the public interest. It urges that the FCC clarify that a zoning decision would violate Section 332(c)(7)(B)(i) if it resulted in a particular wireless carrier not being able to provide service in a given geographic area.¹⁰ If communities are allowed the power to impose de facto local bans on wireless service or to allow local wireless monopolies, it would clearly have the effect of prohibiting the provision of personal wireless services, in contravention of

⁸ Petition, pp. 17-26; Alliance For Community Media v. FCC, Nos. 07-3391 et al. 2008 U.S. App. LEXIS 13628 (6th Cir. June 27, 2008).

⁹ Petition, pp. 29-30.

¹⁰ Petition, pp. 30-35.

Section 332(c)(7)(B)(i)(II) of the statute. Thus, the FCC should clarify that that statutory provision supports requests to provide service in a given locality by wireless carriers even if one wireless carrier has already received authority to provide service. Such a ruling will be increasingly important and beneficial as wireless services become more differentiated through the use of different technologies and different "generations" of service capabilities by different carriers.

Lastly, we also agree with CTIA that it violates Section 253(a) of the Act for local zoning authorities to subject all wireless siting applications to the "variance," i.e. waiver, process.¹¹ Anyone who has even sought a zoning variance will understand that it greatly complicates the zoning approval process and makes it much more difficult and, in some cases, impossible to obtain the approval sought. As noted above, USCC has siting applications in the variance process which have been pending for longer than a year. For a locality to require all wireless applications to go through that process, including applications which pose no conceivable environmental problem, is discriminatory in intent and contrary to the mandate of Section 253(a), which forbids local regulations which "ha[ve] the effect," of prohibiting "any entity" from providing wireless service. The FCC should preempt such "mandatory variance" ordinances. Given the controversy caused by this issue in the courts,¹² the FCC would be rendering a public service in resolving the controversy. Its ruling would no doubt be tested in the courts and we believe it would be sustained.

Conclusion

America's wireless carriers now face an unprecedented challenges to upgrade their networks, provide broadband, assist in the provision of emergency communications, and improve

¹¹ Petition, pp. 35-37.

¹² Ibid., p. 37.

coverage in rural areas. They are ready to meet those challenges, but can do so only if the local zoning process is streamlined in accordance with the intention of the 1996 Act. Accordingly, for the reasons give above and in CTIA's Petition, USCC requests that the requests for declaratory ruling contained in the Petition be granted.

Respectfully submitted,

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