# CTIA PETITION FOR DECLARATORY RULING TO ENSURE TIMELY TOWER SITING REVIEW

Presentation to

Office of General Counsel

CTIA – The Wireless Association®

# Background

- Wireless plays a crucial role in advancing key Commission objectives, including broadband deployment, universal service, and public safety.
- The ability to deploy wireless systems and expand wireless service depends on the availability of sites for the construction and placement of towers and transmitters.
- 12 years after the Telecom Act of 1996, lingering ambiguities in several key statutory provisions have been exploited by a subset of zoning authorities, substantially impeding wireless buildout in some areas.
  - In particular, some zoning authorities have refused to resolve zoning applications within a reasonable period of time.

# Section 332(c)(7)(B) "Limitations" on State and Local Regulatory Authority

- In the Telecom Act of 1996, Congress adopted provisions designed to cabin the role of state and local zoning authorities in the tower-siting process to ensure that the zoning process is not a barrier to reasonable deployment of, and competition among, diverse wireless networks.
- In *City of Ranchos Palos Verdes v. Abrams,* the Supreme Court noted these provisions were adopted to reduce "the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers." Among other things, in Section 332(c)(7)(B) Congress:
  - Prohibited state and local zoning authorities from taking unreasonably long periods of time to act on tower-related zoning applications,
  - Barred decisions that would "prohibit or have the effect of prohibiting the provision of personal wireless services."
  - With regard to these requirements and others, permitted applicants to seek judicial review within 30 days of a zoning authority's "action or failure to act."

# Petition for Declaratory Ruling Requests

CTIA The Wireless Association®

- (i) Clarify the time period in which a state or local zoning authority must take action on a wireless facility siting request under Section 332(c)(7)(B)
  - 45 days to collocate on an existing facility; 75 days on any other, non-collocation wireless siting application;
- (ii) Declare that a zoning authority's failure to act within the relevant time frame will give rise to a "deemed grant" of the application, or alternatively will warrant a court-ordered injunction granting the application unless the zoning authority can justify the delay;
- (iii) Clarify that Section 332(c)(7)(B)(i) bars zoning decisions that have the effect of prohibiting a particular provider from offering service in a given area; and
- (iv) Preempt all ordinances and regulations that automatically require all wireless siting applications – regardless of the proposed location or scope of the project – to obtain a special variance.

# Substantial Delays by Localities Have Distorted the Balance Established by Congress

- CTIA members surveyed indicated that they collectively have more than 3,300 wireless siting applications pending before local jurisdictions.
  - Of those, approximately 760 have been pending final action for more than one year.
  - More than 180 such applications have been awaiting final action for *more than 3 years*.
  - Nearly 350 of the 760 applications pending for more than one year are collocation requests, with approximately 135 of these pending for more than 3 years.
- In one New Jersey community, all major carriers agreed to collocate on a single tower that would resolve coverage gaps for each of the carriers. It took three years and 31 hearings for the zoning board to finally act on the application, which it denied. The carriers then spent an additional six years successfully challenging the decision.
- In a Virginia county outside Washington, D.C., wireless facility siting applicants currently face typical processing times of 1-2 years for new towers.