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

I. INTRODUCTION

PCIA-The Wireless Infrastructure Association[1] ("PCIA") and The DAS Forum, a membership section of PCIA[2] ("The DAS Forum"), submit these reply comments on the Commission's *Public Notice* in the above-captioned proceeding.

PCIA and The DAS Forum submitted comments previously in this docket[3] encouraging the Commission to act in order to facilitate the deployment of wireless infrastructure necessary to provide the full complement of services that wireless communications currently offer. The comments filed in this docket show that the local zoning process is a key component of efficient and responsible deployment of wireless infrastructure. Unfortunately the comments also underscore the fact that many jurisdictions are not acting upon applications for wireless

[1] 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, broadcasting and telecommunications services.
[2] 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.
[3] Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum, WT Dkt. 08-165 (Sept. 29, 2008) (PCIA/DAS Forum Comments).

infrastructure deployment in a timely manner, which in turn prevents Americans from taking full advantage of the wireless future.

II. THE RECORD DEMONSTRATES THAT THE COMMISSION SHOULD ACT QUICKLY TO RESOLVE UNNCESSARY DELAYS IN THE SITING PROCESS

The comments filed in this proceeding confirm the *Petition*'s assertions that the Commission must take action in order to allow the full benefits of wireless service. As numerous commenters have noted, wireless infrastructure is the lynchpin for the nation's wireless future that the Commission has been tasked with promoting to the benefits of all Americans.[4]

Yet it appears that some jurisdictions still do not understand the importance of wireless services in their community, as they are still attempting to draw differences between coverage "needs" and "desires."[5] These artificial distinctions too often try to assess the business decisions of wireless siting applicants, which is not appropriate in a land-use decision.[6] The modern wireless services which are crucial to America's broadband future are based upon effective wireless infrastructure. As TIA notes, wireless "facilities are vital to the commercial and federal regulatory efforts to rapidly deploy wireless broadband service that will spur the economy and

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[4] *See, e.g.*, Comments of Sprint Nextel Corp., WT Dkt. 08-165 (Sept. 29, 2008) at 1 ("The ability to deploy wireless service facilities and upgrade existing wireless infrastructure in a timely manner is crucial to spur the roll-out of advanced wireless services.") ("Sprint Nextel Comments"); Comments of T-Mobile USA, Inc., WT Dkt. 08-165 (Sept. 29, 2008) at 2 ("Congress amended the Communications Act of 1934 . . . to ensure the roll out of new technologies and services without delay . . . . In the Advanced Wireless Service auction in 2006 alone, T-Mobile paid more than four billion dollars to acquire the licenses necessary to deliver broadband service to consumers.") ("T-Mobile Comments"); Comments of AT&T Inc., WT Dkt. 08-165 (Sept. 29, 2008) at 2 ("AT&T shares the Commission's goal of deploying innovative communications services to all Americans. By ensuring that wireless facility siting processes are reasonable and predictable, the Commission can further this goal.") ("AT&T Comments").

[5] Comments of Bryan Steen, Stokes County (NC) Manager, WT Dkt. 08-165 (Sept. 30, 2008) at 1.

[6] North Carolina law, for example, specifically prohibits jurisdictions from inquiring into the business decisions of wireless facility applicants. N.C. GEN. STAT. § 153A-349.52(c) (2008) ("In reviewing an application, the county may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site.").

provide for public safety.[7] The National Emergency Number Association ("NENA") further underscores this point by commenting that Commission action to reduce siting delays "would ensure the accomplishment of important Commission policy goals related to the deployment of public safety networks and the improvement of wireless 9-1-1 services."[8] The 260 million Americans using wireless do not "desire" reliable emergency service—they need it.

Members of the wireless industry acknowledge that many jurisdictions are reasonable in processing local zoning applications for wireless infrastructure,[9] yet despite the protestations of some, the record is now replete with examples of local jurisdictions failing to act within any reasonable timeframe. The Coalition for Local Zoning asserts that "The petition's assertion of uneven growth in personal wireless services attributable to unreasonable behavior by local zoning officials remains almost entirely undocumented."[10] Similarly, NATOA, the National League of Cities and the United States Conference of Mayors state that "[t]he Petition is completely devoid of actual evidence that local governments have failed to act on wireless facility applications."[11] Whatever concerns, however precarious they may be, that the *Petition* failed to enumerate real-world difficulties in the siting process have been more than atoned for by the subsequent record in this docket. The major wireless service providers and others have provided specific examples of how delays in the local zoning process have impacted the full deployment of wireless infrastructure.

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[7] Comments of the Telecommunications Industry Association, WT Dkt. 08-165 (Sept. 29, 2008) at 5-6.
[8] Comments of NENA, WT Dkt. 08-165 (Sept. 29, 2008) at 3.
[9] *See, e.g.,* PCIA/DAS Forum Comments at 4 ("In many communities with reasonable policies, local government regulation of wireless infrastructure development through the zoning process results in efficient and predictable deployment."); AT&T Comments at 2;
[10] Opposition of City of Los Angeles, County of Los Angeles, County of San Diego, CA; Town of Palm Beach, FL; City of Atlanta, GA; City of Dubuque, IA; Anne Arundel County and Montgomery County, MD; Town of Southampton and City of White Plains, NY; City of Portland, OR; Henrico County and City of Virginia Beach, VA, WT Dkt. 08-165 (Sept. 29, 2008) at 13 ("Local Zoning Coalition Comments").
[11] Comments of National Association of Telecommunications Officers and Advisors, National League of Cities, and United States Conference of Mayors, WT Dkt. 08-165 (Sept. 29, 2008) at 22.

For example Sprint Nextel has provided examples of siting applications pending for three years or more nationwide based upon the experiences of its site development managers.[12] Similarly, T-Mobile has provided signed declarations of its Regional Development Directors that specifically detail numerous problems that T-Mobile has faced nationwide it deploying its wireless infrastructure.[13] PCIA and the DAS Forum have also provided a list of specific instances where the local zoning process has impeded the deployment process.[14]

There can be no further doubt local process delays have had a serious impact upon the wireless infrastructure siting process, particularly in the face of evidence such as that provided by T-Mobile that "*nearly 1/3* of the approximately 706 T-Mobile collocation requests pending before local government planning authorities have been pending for more than one year. Even more alarming, approximately 114 of these requests have been pending for *more than three years*."[15] One commenter noted that "The Petition is asking for a broad and draconian remedy to address the purportedly untenable actions of a few."[16] Yet the T-Mobile declaration provides solid record evidence that it is not "a few" jurisdictions delaying the collocation siting process, it is many jurisdictions. It is for these reasons that PCIA and the DAS Forum urge the Commission to act to provide that applications for collocations must be acted on within 45 days.

As PCIA and The DAS Forum explained in its Comments:

> 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.[17]

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[12] *See* Sprint-Nextel Comments at 5.
[13] T-Mobile Comments at Declarations.
[14] PCIA/DAS Forum Comments at 8.
[15] T-Mobile Comments at 7.
[16] Comments of Broadcast Signal Lab, LLP, WT Dkt. 08-165 (Sept. 29, 2008) at 8 ("Broadcast Signal Lab Comments").
[17] PCIA/DAS Forum Comments at 7.

Collocations are largely preferred by both industry and local communities as they make use of existing structures—no new structures need be added to the community and the industry can rapidly deploy its networks without having to wait for the completion of new builds. One commenter "caution[s] that granting collocation applications preference over others is not prudent, as there is no true distinction between collocation applications and other applications for wireless facilities . . . ."[18] Such an assertion flies in the face of both industry practice and hundreds of jurisdictions nationwide that have specifically enumerated streamlined processes for collocations because of its simplicity and the benefits it provides to the community.

To the extent that jurisdictions are concerned that the timelines are concerned that incomplete applications would prevent the jurisdiction from having its full amount of allotted time under the *Petition*,[19] PCIA and The DAS Forum believe that this concern can be easily remedied. PCIA has developed its own model ordinance[20] to assist jurisdictions seeking to enact an ordinance that balances local siting concerns with a recognized desire to provide full wireless coverage to its citizens. The South Dakota Public Utilities Commission has evaluated this model and will recommend and distribute it to all jurisdictions in the state later this year. The PCIA model ordinance accounts for this very scenario in the application process.

The PCIA model ordinance adopts the following procedure:

> (2) Procedure.
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> (a) Within ten (10) business days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) schedule an Administrative Review meeting with

[18] Broadcast Signal Lab Comments at 3.
[19] *See, e.g.*, Comments of Michigan Municipalities and Other Concerned Communities, WT Dkt. 08-165 (Sept. 29, 2008) at 19-20 ("Michigan Municipalities").
[20] PCIA's model ordinance is attached as an appendix to this document.

the Applicant within thirty (30) days of the receipt of a complete application. This meeting is not a public hearing.

(b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.[21]

Under the language of the PCIA Model Ordinance, the jurisdiction would have 10 days in which to review an application and return it for deficiencies, which the applicant has 60 days to correct. Under this formulation, the "shot clock" would not begin running until the applicant has submitted a complete application, which should alleviate jurisdictions' concerns over applicant-based delays affecting the overall decision-making process. This approach is fair to all parties and provides certainty of process at all phases of review.

III. THE COMMISSION SHOULD INTERPRET AMBIGUOUS PROVISIONS OF THE ACT IN ORDER TO ALLOW FOR THE RAPID DEPLOYMENT OF WIRELESS INFRASTRUCTURE

In order to allow for the rapid deployment of wireless services via collocations, it must resolve a statutory ambiguity, interpreting what a "failure to act" means under the Communications Act.[22] Comments that the phrase is unambiguous cannot sustain scrutiny. For example SCAN NATOA states that the provision is unambiguous for the following reason:

> "Failure to act" is not an ambiguous phrase so the Commission lacks authority to interpret the phrase here. . . . "Failure" means the "omission of an expected action, occurrence, or performance;" the word "act" means "the process of doing or performing." Taken together, the phrase "failure to act" means to omit the performance of an activity. Contrary to CTIA's assertion, there is nothing vague or ambiguous about this statutory language which would entitle the Commission to issue a declaratory ruling on this topic.[23]

[21] PCIA Model Ordinance, § IV(E)(2)(a-b).
[22] 47 U.S.C. § 332(c)(7)(B)(iv).
[23] Comments of SCAN NATOA, Inc., WT Dkt. 08-165 (Sept. 29, 2008) at 6-7.

The obvious flaw with SCAN NATOA's logic is that there is no way for an applicant to determine when an "omission" has occurred, the same way there are no guidelines associated with "failure." Taken to its logical extreme, an application could sit before a jurisdiction indefinitely because any future action by the jurisdiction could negate their "omission." This exercise in semantics is ultimately one of futility. Further, the fact that jurisdictions themselves interpret their timeframe for action on collocation applications in such a disparate manner (some act within days while others take years) is further proof that there is ambiguity in the phrase; if the phrase were unambiguous all jurisdictions would be acting within the same timeframes. Accordingly, the Commission has full authority to interpret the statute under the *Chevron* test.[24]

IV. RECENT COURT DECISIONS UNDERSCORE THE NEED FOR A DEFINITIVE TIMEFRAME AFTER WHICH A JURISDICTION CAN CHALLENGE A JURISDICTION'S FAILURE TO ACT

Several commenters have noted that the U.S. Court of Appeal for the 9th Circuit's recent self-reversal in *Sprint Telephony, PCS, L.P., v. County of San Diego*[25] heightens the need for the Commission to act to provide clear timelines for a wireless siting applicant to challenge a jurisdiction's failure to act.[26] CalWA makes a cogent argument that now that ordinances can no longer be challenged on their face in the 9th Circuit, applicants can only challenge municipal siting shortfalls on specific applications. CalWA notes that:

> This decision makes the processing and final determination of a zoning application more critical than ever. Without much power to challenge an ordinance on its face, it is essential for zoning to be expeditiously determined so that an applied challenge can be mounted. Setting forth CTIA's proposed timelines for local jurisdictions to act on permit applications, and deeming those permit applications granted for failure to act, will clarify for applicants exactly when enough time has passed to justify a "failure to act" claim.[27]

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[24] Chevron U.S.A., Inc., v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984) ("Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.").
[25] Nos. 05-56076 *et al.*, 2008 U.S. App. LEXIS 19316 (9th Cir. Sept 11, 2008).
[26] *See* Comments of the California Wireless Association, WT Dkt. 08-165 (Sept. 29, 2008) at 4 ("CalWA Comments"); Sprint-Nextel Comments at 13.
[27] CalWA Comments at 4.

PCIA and The DAS Forum agree that without the ability to challenge the ordinance as a whole, being able to challenge specific decisions in a timely manner becomes a crucial part of allowing applicants the relief provided under the 1996 Act.

V. THE COMMISSION SHOULD ENSURE THAT LOCAL ZONING AUTHORITIES DO NOT REGULATE THE NETWORK DESIGN/DEVELOPMENT DECISIONS OF WIRELESS INFRASTRUCTURE PROVIDERS.

Some parties claimed that a timeliness standard for review of zoning applications was infeasible because of the time required for analysis of coverage gaps and technological "alternatives."[28] We respectfully submit that wireless infrastructure providers, who operate, design and develop networks, are the appropriate party[ies] to make network design decisions. We also submit that local governments, acting directly or through a municipal consultant firm, lack access to network design parameters. This limits the usefulness and appropriateness of their review of network design decisions. The Commission should provide for limits on local zoning authorities' review of network design parameters.

VI. THE COMMISSION'S CLARIFICATION OF THE "FAILURE TO ACT" STANDARD WILL HAVE NO EFFECT ON WIRELESS INFRASTRUCTURE PROVIDERS' RESPONSIBILITIES TO ENSURE AIR SAFETY

Numerous parties expressed concern that the Commission's adoption of a "shot clock" on wireless siting applications could have the unintended consequence of endangering the nation's airspace by allowing for sites to be constructed before their effect on air traffic could be fully

[28] *See e.g.*, Comments of Greater Metro Telecommunications Consortium *et al.*, WT Dkt. 08-165 (Sept. 29, 2008) at 21 (asserting that many local governments identify and encourage applicants to fill areas it identifies as having "coverage gaps"); Michigan Municipalities Comments at 20-21 (alleging that applicants must prove why distributed antenna systems ("DAS") is not feasible, and that local authorities must review and confirm validity of applicant's coverage maps).

considered.[29] PCIA and The DAS Forum are fully aware of the importance of the Federal Aviation Administration's ("FAA") Obstruction Evaluation process in determining when a wireless infrastructure site may cause a hazard to aircraft. Members of PCIA and The DAS Forum actively work with the FAA on many of its current endeavors, and look forward to continued engagement with the FAA in the future.

As the FAA itself notes in this docket, "any FCC action in this docket does not in any way alter or amend the FAA's regulatory requirements and process . . . to require notice of structures that may affect aeronautical operations and facilities, evaluate the aeronautical effect of those structures" or issue determinations on their effects and how it the structures should be marked and lit.[30] Wireless infrastructure providers take their obligations before the FAA seriously and do not believe that the Obstruction Evaluation process or Airport Overlay Zones would be affected by Commission action in this document.

The FAA also states that for wireless communication collocation applications, the FAA "waives the FAA requirements regarding aeronautical review of these frequencies co-located on a structure previously studied by the FAA."[31] This provides further evidence that collocations are the most expedient way to deploy the wireless infrastructure necessary to provide the advanced wireless services the Commission seeks to promote. As such, the Commission should ensure that collocation applications receive equally rapid treatment by requiring jurisdictions act upon these applications within 45 days.

V. CONCLUSION

[29] *See* Comments of Airline Pilots Association, International, WT Dkt. 08-165 (Sept. 29, 2008) at 1; Comments of Aircraft Owners and Pilots Association, WT Dkt. 08-165 (Sept. 29, 2008) at 1; Comments of National Association of State Aviation Officials, WT Dkt. 08-165 (Sept. 29, 2008) at 1-2.
[30] Comments of the Federal Aviation Administration, WT Dkt. 08-165 (Sept. 29, 2008) at 1.
[31] *Id.* at 2.

For the foregoing reasons PCIA respectfully requests that the Commission grant the relief requested in this petition.

Respectfully submitted,

PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION

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APPENDIX A

MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

December, 2006

MODEL WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents and businesses in [the Municipality] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [the Municipality's] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities. [The Municipality] recognizes that facilitating the development of wireless service technology can be an economic development asset to [the Municipality] and a significant benefit to its residents. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws, and is consistent with [the Municipality's] land use policies, [the Municipality] is adopting a single, comprehensive, wireless telecommunications ordinance.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Municipality's] intent to:

(1) Ensure access to reliable wireless communications services throughout all areas of [the Municipality];

(2) Encourage the use of existing Monopoles, Towers, Utility Poles and other structures for the collocation of Telecommunications Facilities;

(3) Encourage the location of new Monopoles and Towers in non-residential areas;

(4) Minimize the number of new Monopoles and Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;

(5) Encourage the location of Monopoles and Towers, to the extent possible, in areas where the adverse impact on the community will be minimal;

(6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping and construction practices;

(7) Ensure public health, safety, welfare, and convenience; and

(8) Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

II. Definitions.

For the purposes of this Ordinance, the following terms shall be defined as:

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- The procedures established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such a panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips.

Collocation -- The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Collocation also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.

“Carrier on Wheels” or “Cell on Wheels” (“COW”) -- A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification. Major Modifications include, but are not limited to, extending the height of the Support Structure by more than twenty (20) feet or ten percent (10%) of its current height whichever is greater, and the Replacement of the structure.

Minor Modifications -- Improvements to existing Telecommunications Facilities and Support Structures, that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a "substantial" change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than twenty (20) feet or ten percent (10%) of its current height, whichever is greater, and the expansion of the compound area for additional Accessory Equipment.

Monopole --A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height as would be allowed under the definition of Minor Modification to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility -- Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, Utility Poles and other freestanding self- supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) Administrative Review. Telecommunications Facilities located on any existing support structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures that are less than sixty (60) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in

this Ordinance. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(B) Special Permit. Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Zoning Board] in accordance with the standards set forth in this Ordinance.

(C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception ; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within [The Municipality] after a declaration of an emergency or a disaster by the Governor or by the responsible official of [The Municipality]; and (4) television and AM/FM radio broadcast towers and associated facilities.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

A. Telecommunications Facilities Located on Existing Structures

(1) Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing Support Structure in accordance with the requirements of this Part.

(2) Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Part.

(3) Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:

(a) Omnidirectional or whip Antennas shall not exceed twenty (20) feet in length and not exceed seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.

(b) Directional or panel Antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is

identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.

(c) Cylinder-type Antennas shall not exceed ten (10) feet in length and not exceed twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.

(d) Satellite and microwave dishes shall not exceed ten (10) feet in diameter. Dish antennas greater than three (3) feet in diameter shall be screened with an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.

(e) Other Antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.

(f) Accessory Equipment must comply with Section VI (E).

B. New Support Structures

(1) New Support Structure less than fifty (60) feet in height shall be permitted in all zoning districts in accordance with the requirements of this Part.

(2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.

(3) In the case of a monopoles or replacement poles that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.

(a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.

(b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.

(c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.

(d) Monopoles and the Accessory Equipment associated there with shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.

(e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.

(f) Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to twenty (20) feet above the height of the utility tower.

(4) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

C. Stealth Telecommunications Facilities

(1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:

(a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a causal observer.

(b) The structure utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.

(c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

D. General Standards, Design Requirements, and Miscellaneous Provisions

(1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.

E. Administrative Review Process

(1) All Administrative Review applications must contain the following:

(a) Administrative Review application form signed by applicant.

(b) Copy of lease or letter of authorization from property owner evidencing applicant’s authority to pursue zoning application

(c) Zoning Drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.

(d) In the case of a new Support Structure:

(i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and

(ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.

(iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.

(e) Administrative Review application fee.

(2) Procedure.

(a) Within ten (10) business days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) schedule an Administrative Review meeting with the Applicant within thirty (30) days of the receipt of a complete application. This meeting is not a public hearing.

(b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

(c) The Administrative Review meeting will be conducted to confirm that the proposed application is consistent with this Ordinance. The [Zoning Administrator] must issue a written decision granting or denying the request within fifteen (15) days of the meeting unless an extension of time is agreed to by the Applicant. Failure to issue a written decision within (15) days shall constitute a denial of the application. The applicant may appeal such a denial as provided in this Ordinance or applicable State or Federal Law.

(d) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.

(f) Applicant may appeal any decision of the [Zoning Administrator] approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to [the Local Appeals Board] in accordance with this Ordinance.

V. <u>Telecommunications Facilities and Support Structures Permitted by Special Permit</u>.

A. Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by Special Permit in all Zoning Districts Subject to:

(1) The submission requirements of Section V (B) below; and

(2) The applicable standards of Sections VI and VII below; and

(3) The requirements of the special permit general conditions at Code Section ____. [Insert cross reference to Municipality code section that establishes general conditions applicable to Special Permits.]

B. Submission Requirements for Special Permit Applications

(1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:

(a) Special Permit application form signed by applicant.

(b) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application.

(b) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.

(c) Number and type of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.

(d) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.

(e) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.

(f) A statement justifying why Collocation is not feasible. Such statement shall include:

(i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and

(ii) The applicant shall provide a list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower was listed among the alternatives, applicant must specifically address why the modification of such tower is not a viable option.

(g) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.

(h) If required of other Special Permit applications, a property owner list that includes the name, address, and tax parcel information for each parcel entitled to notification of the application.

(j) Special Permit application fee.

(C) Procedure.

(1) Within ten (10) business days of the receipt of an Application for a Special Permit, the [Zoning Administrator or the Zoning Board's designee] shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.

(2) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

(3) Once an application is deemed complete, a review meeting shall be held within ten (10) days.

(4) At this review meeting, staff shall provide applicant, in writing, a list of additional potential alternative structures, including readily-available identifying information (e.g., address, tax map identification, latitude and longitude) or such other information as will allow the applicant to identify the potential alternative structures. If, after investigation, the applicant concludes that the potential alternative structures identified by municipal staff are not acceptable or feasible, the applicant shall provide an explanation for its decision using technical, physical, or financial information at the hearing on the Special Permit.

(5) A complete application for a Special Permit shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this Ordinance.

(6) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.

(7) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Special Permit application under this Ordinance.

VI. General Standards and Design Requirements.

(A) Design.

(1) Monopoles shall be subject to the following:

(a) Monopoles shall be designed to accommodate at least three (3) telecommunications providers.

(b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for at least three (3) telecommunications providers.

(c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or [the Municipality], Monopoles shall have a galvanized silver or gray finish.

(2) Towers shall be subject to the following:

(a) Towers shall be designed to accommodate at least four (4) telecommunications providers.

(b) A compound area surrounding the Tower must be of sufficient size to accommodate Accessory Equipment for at least four (4) telecommunications providers.

(c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or [the Municipality], Towers shall have a galvanized silver or gray finish.

(3) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the [Zoning Board] or [Zoning Administrator].

(4) Upon request of the Applicant, the [Zoning Board or Zoning Administrator] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks.

(1) Property Lines. Unless otherwise stated herein, Monopoles and Towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other Support Structures shall be governed by the setbacks required by the underlying zoning district.

(2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be setback from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement utility poles shall not be subject to a set back requirement.

(3) Unless otherwise stated herein, all Accessory Equipment shall be setback from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a set back requirement.

(4) The [Zoning Board or Zoning Administrator] shall have the authority to reduce or waive any required setback upon the request of the applicant if the Telecommunications Facility or Support Structure will be less visible as a result of the diminished setback. The [Zoning Board or Zoning Administrator] must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this Ordinance. The structure must still meet the underlying setback requirements of the zone.

(C) Height

(1) In non-residential districts, Support Structures shall not exceed a height of one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(2) In residential districts, Support Structures shall not exceed a height equal of one hundred fifty (150) feet from the base of the structure to the top of

the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.

(3) In all districts, the [Zoning Board] shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the [Zoning Board].

(D) Aesthetics.

(1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).

(2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(3) Landscaping. In all districts, the [Zoning Board or Zoning Administrator] shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The [Zoning Board or Zoning Administrator] may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the [Zoning Board or Zoning Administrator], landscaping is not appropriate or necessary.

(E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

(1) An equipment building, shelter or cabinet must not exceed five hundred sixty (560) square feet and twelve (12) feet in height, including the support structure for the equipment building.

(i) Exception to size restriction. A single equipment building or shelter may exceed five hundred sixty (560) square feet, if it: is located at ground level; is used by more than one telecommunication provider; and does not exceed one thousand five hundred (1500) square feet.

(ii) Exception to height restriction. Upon the Applicant's request, the [Zoning Board or Zoning Administrator] may waive the height restriction to allow for the stacking of equipment on top of each other. The [Zoning Board or Zoning Administrator] must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. [The Zoning Board or Zoning Administrator] may also waive the height restriction where a higher support structure is needed to raise the Equipment above a slope or flood plains.

(2) If the Accessory Equipment is at ground level in a residential zone, the [Zoning Board or Zoning Administrator] may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three (3) feet in height at installation. The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the [Zoning Board or Zoning Administrator].

VII. <u>Miscellaneous Provisions</u>.

(A) Safety.

(1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].

(2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

(B) Abandonment and Removal.

(1) Abandonment. Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.

(2) Removal. The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The [Municipal Authority] shall ensure and enforce removal by means of its existing regulatory authority.

(C) Multiple Uses on a Single Parcel or Lot: Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site.

VIII. <u>Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance</u>.

(A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

(B) Non-Conforming Telecommunications Facility.

(1) Non-conforming Antennas or Accessory Equipment: Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment.

(2) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the [Zoning Administrator].

(3) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of Special Permit approval by the [Zoning Board].

(C) Non-Conforming Support Structures.

(1) Non-conforming Support Structure: Ordinary Maintenance may be performed on a Non-conforming Support Structure.

(2) Collocation of Telecommunications Facilities on an existing non-conforming Support Structure is permitted upon the granting of Administrative Approval by the Zoning Administrator.

(3) Minor Modifications may be made to non-conforming Support Structures to allow for Collocation of Telecommunications Facilities. Such Minor Modifications shall be permitted by Administrative Approval granted by the [Zoning Administrator].

(3) Major Modifications may be made to non-conforming Support Structures only upon the granting of Special Permit approval by the [Zoning Board].