



April 24, 2009  
Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re:** Petition for Declaratory Ruling 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 Dkt. 08-165

Dear Ms. Dortch,

As the Commission embarks on several new initiatives aimed at developing broadband nationwide,<sup>1</sup> PCIA—The Wireless Infrastructure Association (“PCIA”) would like to reemphasize the important role of wireless service in that effort. Wireless broadband is the most economic and efficient way to deploy broadband in rural, unserved and underserved areas, as it can serve large geographic areas with far lower deployment costs than wire or fiber broadband deployments. Yet efforts to provide competitive wireless service are all too frequently stymied by delays in the local zoning process. *PCIA members indicate that the time and expense associated with local zoning is the biggest barrier to wireless service deployment.*

Local zoning delays on applications for collocating wireless antennas on existing structures are unnecessarily long and impair needed deployment of wireless facilities and services. Collocations benefit both the community and the network provider, as making use of existing facilities has no visual impact on the community and the network provider can deploy

<sup>1</sup> The Commission has been tasked in the 2008 Farm Bill to develop “a comprehensive rural broadband strategy.” Similarly, the American Recovery and Reinvestment Act requires the Commission to develop a national broadband plan and to consult with the National Telecommunications and Information Administration and the Rural Utilities Service to enhance broadband opportunities nationwide. *See* Comment Date Established for Report on Rural Broadband Strategy, *Public Notice*, GN Dkt. 09-29, DA 09-561 (Mar. 10, 2009).

these sites quickly because no new structure is required. The following are representative examples of unreasonable local process regarding siting, but this is by no means an exhaustive list of such delays:

- Based on data compiled in June 2008, *nearly 1/3* of the over 700 T-Mobile collocation requests pending before local government permitting authorities across the country had been pending for more than one year. More than 100 of these requests have been pending for *more than three years*.<sup>2</sup>
- The City of Albuquerque, New Mexico has taken 18 months to process an application seeking approval to collocate on an existing tower.<sup>3</sup>
- In one community in New Jersey, 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 court.<sup>4</sup>
- In another New Jersey community, two carriers spent three years pursuing a joint application to construct a monopole, which the borough denied after 44 hearings. The carriers successfully appealed the denial. The borough conducted 17 more hearings before finally granting the application.<sup>5</sup>
- In one California city, numerous applications seeking approval to flush-mount antennas to buildings have been delayed for years. One application that sought to mount the antenna on a rooftop of a commercial building, screened from view, has been pending for more than four years.<sup>6</sup>
- Alltel experienced a delay of four years and seven months for a decision on collocating an antenna on an existing structure.<sup>7</sup>
- In some California communities, Sprint Nextel has experienced typical processing times for approval of wireless siting applications ranging between 28 to 36 months.<sup>8</sup>

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<sup>2</sup> Comments of T-Mobile USA, Inc., WT Dkt. 08-165 (Sept. 29, 2008) at 7.

<sup>3</sup> *Id.*

<sup>4</sup> CTIA—The Wireless Association, Petition for Declaratory Ruling 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 Dkt. 08-165, 14 (July 11, 2008)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4.

<sup>8</sup> Comments of Sprint Nextel Corp., WT Dkt. 08-165 (Sept. 29, 2008) at 5 (“Sprint Nextel Comments”).

- In a large Southern California city, applicants proposing collocations on existing towers must prove the continued need for the tower itself. As a result, the city uses collocation applications as a method of *de novo* review of its previous approval of the tower.
- A Phoenix-area community has been conducting a review of a proposed distributed antenna system (“DAS”) installation for over one year and has refused to schedule the proposal for final hearing, because some citizens object to *any* above-ground antennas.

Commission action is required because these local actions, inactions and delays thwart the Commission’s national policy objectives for ubiquitous wireless and broadband availability.<sup>9</sup> Wireless network design is extremely complex, requiring analysis of present and future demand and decisions about the best technical and cost effective ways to expand coverage and add capacity.<sup>10</sup> Local authorities often erroneously assume that sites are fungible and if one is not approved there are others that will do equally well. Of course, as the Commission understands, local inaction does not only affect service for local residents--wireless services are predominantly mobile and users reasonably expect seamless wireless coverage regardless of their location.<sup>11</sup> When adequate coverage or capacity is not available because of local inaction, all the users on the network are penalized.

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<sup>9</sup> See, e.g., 47 U.S.C. § 157(a) (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”); *In re: Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, Declaratory Ruling*, WT Dkt. No. 07-53, 22 FCC Rcd 5901, 5911 (“In addition, we find that classifying wireless broadband Internet access service as an information service furthers the goals . . . of the Communications Act and . . . the Telecommunications Act of 1996. As noted above, wireless broadband Internet access technologies continue to evolve at a rapid pace. Through this classification, we provide the regulatory certainty needed to help spur growth and deployment of these services. Particularly, the regulatory certainty we provide through this classification will encourage broadband deployment in rural and underserved areas, where wireless broadband may be the most efficient broadband option.”).

<sup>10</sup> See, e.g., Comments of AT&T Inc., WT Dkt. 08-165, 6 (Sept. 29, 2008) (“Carriers need certainty and predictability in wireless facility siting to plan and deploy network expansions and improvements and provide customers with advanced services.”); Sprint Nextel Comments. at 5-6 (Sept. 29, 2008) (“[D]elay tactics add to the procedural uncertainty associated with the zoning review process and frustrate the ability of wireless carriers to maintain predictable timeframes for the deployment of their facilities.”).

<sup>11</sup> See Reexamination of Roaming Obligations of Commercial Radio Service Providers, *Compliance Guide*, WT Dkt. 05-265, 2008 FCC Lexis 4671 (June 6, 2008) (“The Commission has found that wireless consumers have a reasonable expectation of receiving seamless continuous nationwide commercial mobile telephony services through roaming.”).

Because the collocation-approval process should be simple, with a structure-loading review necessary, there is no justification for the types of delays that are too typical. The docket is replete with local examples showing that 45 days, as proposed in the above-captioned petition, is a sufficient amount of time to conduct the minimal review necessary for a collocation application.<sup>12</sup>

Accordingly, for the reasons contained herein, PCIA urges the Commission to take action to enable future broadband deployment by issuing a declaratory ruling that jurisdictions must act upon complete collocation applications within 45 days of receipt. This action would relieve the local collocation application backlog that is preventing Americans from fully accessing wireless service.

Respectfully submitted,

PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION

By: \_\_\_\_\_/s/\_\_\_\_\_

Michael Fitch, Esq.  
President and CEO  
Jacqueline McCarthy, Esq.  
Director of Government Affairs  
Michael D. Saperstein, Jr.  
Public Policy Analyst  
901 N. Washington St., Suite 600  
Alexandria, VA 22314

Cc: Chairman Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Robert M. McDowell

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<sup>12</sup> See, e.g., Reply Comments of CTIA—The Wireless Association, WT Dkt. 08-165 (Oct. 14, 2008) at 8, Reply Comments of Verizon Wireless, WT Dkt. 08-165 (Oct. 14, 2008) at 9-10.