

November 10, 2009

Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Presentation, WT Docket No. 08-165

Dear Ms. Dortch:

In direct response to the *ex parte* letters filed late in the above-captioned proceeding by the National Association of Telecommunications Officers and Advisors (“NATOA”) and the Coalition for Local Zoning Authority, CTIA files the attached letters and affidavits. These letters and affidavits, along with numerous submissions previously filed in the record, directly rebut claims made by NATOA and the Coalition for Local Zoning Authority, including the following: NATOA argues that “[t]he wireless industry has presented scant and specious claims to support its petition. The claims used to support the petition are few and faulty. The wireless industry has presented supposed ‘horror stories,’ telling only one side of the story and in some cases giving vague or anonymous tales to support their claims.”¹ In addition, the Coalition for Local Zoning Authority claims that “the record does not demonstrate a need to write fixed timelines into the Act, but it does demonstrate the harm of adopting such an approach” and “CTIA’s Petition identified *no* examples of unreasonable behavior by local communities. The survey information cited by the industry is undocumented.”²

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter and attachments are being filed via ECFS with your office. Additionally, we have sent this *ex parte* and attachments directly to counsel for NATOA and the Coalition for Local Zoning Authority. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Christopher Guttman-McCabe

Christopher Guttman-McCabe

cc: Gerard Lavery Lederer

¹ Letter from Gerard Lavery Lederer, Counsel to NATOA, to Marlene Dortch, Secretary, FCC, GN Docket No. 09-51, WT Docket No. 08-165 at 3 (dated Nov. 5, 2009).

² Letter from Gerard Lavery Lederer, Counsel to Coalition for Local Zoning Authority, to Marlene Dortch, Secretary, FCC, WT Docket No. 08-165 at Attachment, 3-4 (dated Nov. 6, 2009) (emphasis in original).

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November 6, 2009

Ms. Marlene Dortch
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 08-165

Dear Ms. Dortch:

I am submitting this letter in support of the pending petition of CTIA - The Wireless Association for a declaratory ruling that the FCC set deadlines for state and local zoning authorities to act on requests for new or modified wireless tower siting applications. As a Massachusetts land use attorney I have represented applicants on well over 100 petitions for local zoning relief needed to construct or modify towers, or collocate or modify antenna installations. In my experience, wireless siting applications typically involve considerably more time for municipal review than is reasonably warranted by the nature, scope, and planning impacts of the proposed facility

For example, a recent application for zoning approval to replace antennas on an existing array on a monopole tower in Lincoln, Massachusetts involved, under that Town's Zoning By-law, a mandatory "pre-application" process involving an appearance before the Planning Board, followed by a formal zoning process that involved an additional two appearances before the Planning Board, followed by a 90 day period (the state statutory maximum) before the decision issued. The total time involved in securing this permit to change antennas was more than six months from application to the filing of the favorable decision. The Lincoln Zoning Bylaw does not require "pre-application" review for uses other than wireless communications.

Moreover, wireless facilities very often require multiple forms of zoning relief from multiple boards, resulting in longer and more costly approval processes than other business uses. As one example, an application to the Planning Board in Natick, Massachusetts for a special permit and site plan review for a new stealth monopole tower took more than seven months (212 days) from filing to decision. This included



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Ms. Marlene Dortch

November 6, 2009

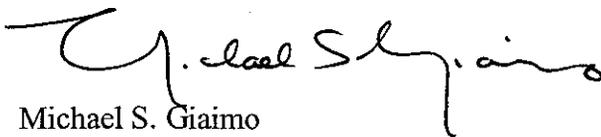
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seven sessions at which the board heard testimony or conducted deliberation. The review process was prolonged by more than two months because the board was unable to field a quorum at three scheduled sessions and declined to proceed in the absence of its consultant at another session. Only after that special permit hearing had concluded favorably to Verizon Wireless, did the Zoning Board of Appeals, a separate municipal authority, conclude its own long-pending review of the applicant's petition for a variance from the 35-foot height limit and other zoning requirements. The additional time for that board's decision extended the approval process by 20 more days.

Certain aspects of wireless facilities also face zoning requirements that other comparable uses do not face. For example, back-up emergency generators installed at wireless facilities are very often regulated as a matter of zoning in Massachusetts jurisdictions that impose no comparable oversight or control over such equipment when used in similar locations for residential or commercial purposes. As another example, wireless carriers in many Massachusetts cities and towns are required to post "removal bonds" ensuring that antennas and equipment, even those that are collocated on a building or existing tower, will be removed when the facility's useful life concludes or the carriers' lease expires. I am not aware of any other type of commercial tenant that encounters a "removal bond" requirement as a condition of zoning approval.

Applications for zoning approval of a wireless facility often entail submittal requirements and filing and review fees that are more onerous than those imposed on applicants for other types of uses and that are not reasonably related to any unique attributes of the wireless facility or its impacts. For example wireless carriers proposing facilities on private sites are often required by zoning authorities to submit evidence of property and liability insurance in specified amounts – another requirement that is imposed on no other private business as a matter of zoning law. Among many examples of excessive filing fees imposed uniquely on wireless facilities is the \$5,000 filing fee the Town of Carlisle, Massachusetts imposes for a special permit to collocate antennas on an existing tower. This is far more than the filing fees associated with any other type of special permit application in that town, and is more than twice the special permit filing fee that a 17-unit residential "conservation cluster" development would face.

Sincerely,



Michael S. Giaimo



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November 6, 2009

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: WT Docket No. 08-165

Dear Ms. Dortch:

I am submitting this letter in support of the pending petition of CTIA - The Wireless Association for a declaratory ruling that the FCC set deadlines for state and local zoning authorities to act on requests for new or modified wireless tower siting applications. I have been working on siting of wireless tower sites for over 20 years in the State of New York. During that time, my group and I have worked on over 1000 of these applications in cities, suburbs and rural areas--on municipal land and on private land. In addition to that work, for over 25 years I have been actively engaged in other types of zoning and land use projects for other clients. Such projects have included: industrial facilities; research facilities, including clean labs and laser facilities; large "big box" retail developments; other "LULUs" (locally unwanted land uses) such as housing for the homeless and, after the Mariela invasion of 1980, the settling in urban neighborhoods of persons classified as "anti-social."

In my experience, including that of the group of lawyers and paralegals that work on these projects, wireless siting applications in the vast majority of cases, take considerably longer and entail more expense than comparable zoning applications for new or modified commercial, industrial or research projects. For example, the laser facility, mentioned above, involved a one quadrillion watt tritium laser laboratory in close proximity to residences in a suburban setting. The zoning process for that lasted approximately four months. Many of the "big box" retail facilities that we have worked on, with all of the associated traffic, drainage, noise and light impacts, have taken four-five months to complete the zoning process. In contrast, the "average" wireless tower project takes considerably longer in the zoning process (I've had one that took two years in zoning--before the ensuing litigation. Many others have taken close to a year.) After over two decades quarterbacking over one thousand of these projects, I can say with some confidence that virtually the only impact they might have is a visual/aesthetic one (i.e., the traditional impacts of traffic, drainage, noise, odor, light "pollution", density, etc., are not present with wireless tower projects.) Thus, the disparity in review time is all the more striking.

Ms. Marlene Dortch, Secretary

November 6, 2009

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Thank you for considering this letter.

Very truly yours,

A handwritten signature in blue ink that reads "Tom Greiner". The signature is written in a cursive style with a large initial "T" and a distinct "G".

Thomas C. Greiner Jr.

TCG/las

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November 6, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 08-165

Dear Ms. Dortch:

I am submitting this letter in support of the pending petition of CTIA - The Wireless Association for a declaratory ruling that the FCC set deadlines for state and local zoning authorities to act on requests for new or modified wireless tower siting applications.

I am a New York State licensed attorney with approximately fifteen years of experience practicing in the area of land use and zoning law. I have represented clients in the wireless industry since approximately 1996. Much of my experience with the wireless industry has involved representation before local municipal agencies and boards in connection with land use and zoning applications for new or modified communications facilities. I have also represented developers in connection with numerous large scale commercial developments throughout the State of New York.

In my experience, wireless siting applications generally take considerably longer than comparable zoning applications for new or modified residential or commercial structures. Provided below is a brief summary of some of the extreme examples with which I have been personally involved.

One of the most extreme examples of local municipal delay which I have experienced involves an application that is currently pending before a municipality in Ulster County. As counsel to the wireless carrier, I submitted the initial application to the local Planning Board on August 5, 2005, over four (4) years ago. To this date, the application has yet to be approved. An obvious example of the delay caused by the municipality in this instance is the fact that the Planning Board wasted almost two and one-half years before it decided to retain the services of a radio frequency consultant to review the application materials. To this day, I do not understand, nor have we been provided with, the reason for this unusually long delay in retaining the RF consultant. My client has also suffered significant delay at the hands of the Planning Board's non-RF consultant. This individual has required my client to submit approximately six volumes of supplemental materials, much of which are duplicative and/or of little relevance to the application.

Another example of unacceptable delay involves an application pending before a municipality in Saratoga County. This community has banned wireless communications facilities from its borders unless a Use Variance is first obtained from the local Zoning Board of Appeals. On behalf of my client I submitted the Use Variance Application on December 4, 2006. The application is still pending. One of the major obstacles presented by the Zoning Board of Appeals with this application is the fact that it, along with its out-of-state wireless consultant, continues to request additional materials beyond those expressly required by the Zoning Law. By doing so, the review process has been significantly delayed and unnecessarily complicated. If the Zoning Board of Appeals strictly complied with legal requirements of the Zoning Law, a decision on the Use Variance Application should have been issued within 60-90 days of submission of the application.

As indicated above, I have also represented various commercial developers throughout the State of New York. Many of the commercial development projects with which I have been involved have been fairly large scale commercial ventures including development and/or expansion of regional shopping centers in environmentally sensitive areas. These projects required extensive supporting application materials including draft and final environmental impact statements. In my experience, I have been able to secure the necessary right to build permits for these large scale projects in less time than it takes to secure the necessary land use permits for new communications tower facilities, such as those described above, which are clearly less complicated.

I hope that this letter aides the FCC in its deliberation of the pending CTIA petition (WT Docket No. 08-165) concerning the request to place reasonable limits on the amount of time state and local zoning authorities have to review a land use and zoning application for wireless communications facilities. Of course, if you require further details, please do not hesitate to contact me.

Thank you for the opportunity to be heard.

Very truly yours,

COOPER ERVING & SAVAGE LLP

By: 
Scott P. Olson, Esq.

SPO/jlr

**IN THE MATTER OF PETITION FOR
DECLARATORY RULING TO CLARIFY
PROVISIONS OF SECTION 332(e)(7)(B)
TO ENSURE TIMELY SITING**

WC DOCKET NO. 08-165

SUBMITTED BY EDWARD L. DONOHUE

BEFORE ME, the undersigned Notary, on this 6th day of November, 2009 personally appeared Edward L. Donohue, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath declares as follows:

1. I, Edward L. Donohue, declarant, serves as counsel in zoning, land use, historic preservation and litigation in connection with deployment of infrastructure necessary to support wireless networks Mr. Donohue is a member of the bar in good standing in Maryland, Virginia and the District of Columbia. He is an active member in the Maryland/District of Columbia State Wireless Association, and serves as General Counsel with the Virginia Wireless Association.

2. In representing wireless declarant has experienced significant delays in staff review, Planning Commission and Board of Zoning Appeals hearings and decision which exceed the norm for similar zoning applications. In Montgomery County, Maryland, each and every application for a wireless facility, whether new construction, collocation on existing infrastructure or upgrades to existing cell sites must be reviewed and heard by three (3) distinct review boards¹, subject to staff review and recommendation and calendaring of hearings which collectively extend the approval process beyond any comparable application. The process has a good deal of redundancy, as each board re-hears and re-evaluates the issues handled by the prior board. In several cases in Montgomery County, this process has taken more than two (2) years.

3. In several jurisdictions in Maryland, outside consultants are used to give technical assistance to guide the decision makers, such as the Board of Appeals and Planning Board. These consultants can add significantly to the time associated with zoning reviews, which is not true of any other comparable zoning application. Declarant is not aware of any other application the review of which is outsourced to non-county employees.

4. In Loudoun and Fairfax County, Virginia, declarant has experienced significant delays and deferrals which extend the application process significantly beyond any comparable matter, sometimes in excess of three (3) years or more. Declarant is aware of similar zoning matters (not wireless) which are staffed reviewed, heard and decided within one year. As a comparison, declarant suggests the treatment of fast food restaurants, whether upgrade to an existing storefront, such as is being done for numerous McDonald's restaurants.

5. In the City of Fairfax, Virginia declarant submitted a zoning application in June 2009, which as of the date of this statement, has not been calendared for hearing or reviewed by staff. Several months delay at the front end of the zoning process ensures this case will not be timely considered or decided. In Vienna, Virginia, declarant submitted an application to collocate antennas on a water tank owned and operated by the Town, and specifically identified in the Town Code and Comprehensive Plan as an "encouraged location" for wireless

¹ The three boards are the Transmission Facilities Coordinating Group, the Montgomery County Planning Board, and the Board of Appeals.

installations. While the Town ultimately approved the application, it took five (5) public hearings over several months; the Town Planning Commission actually recommended denial despite the recommendation of staff and the explicit language in the Comprehensive Plan directing prospective applicants to the Town water tanks.

6. The Telecommunications Act of 1996 assures judicial review on an "expedited basis". In numerous cases submitted for review to local jurisdictions, there is no such treatment, to the disadvantage of wireless carriers and their customers.

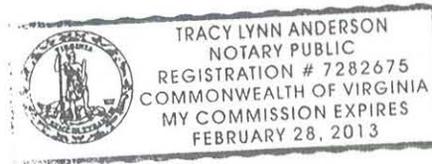
Edward L. Donohue

Edward L. Donohue
Donohue & Blue, PLC
801 North Fairfax Street
Suite 209
Alexandria, VA 22314

Subscribed and sworn to before me this 6th day of November, 2009

Tracy Lynn Anderson

My commission expires February 28, 2013



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November 9, 2009

VIA ELECTRONIC MAIL

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 08-165: California Permit Delay

Dear Ms. Dortch:

We are submitting this letter in support of the pending petition of CTIA - The Wireless Association for a declaratory ruling that the FCC set deadlines for state and local zoning authorities to act on requests for new or modified wireless tower siting applications. Since our firm's inception, in 1991, a substantial part of our practice has involved representing wireless telecommunications carriers with all aspects of system development. Over the last decade, we have specialized in resolving wireless facility siting and land use issues. In that capacity, I have represented most of the major national wireless carriers before local zoning commissions, City Councils, and County Boards throughout California.

In my experience, wireless siting applications generally take considerably longer than allowed under the California Permit Streamlining Act (the "PSA"),¹ which imposes deadlines for completing discretionary review of nearly any kind of construction or development project in California. While the PSA would normally require final action within 90 days of a complete application, action on wireless facilities often takes far longer, from six months up to several years.² In most of these cases, the delay is largely due to irrational fears of radio-frequency radiation among a small but vocal group of project opponents, even though such concerns are expressly preempted by federal law.

Over the years, we have seen many examples of unreasonable delay in local review of wireless siting applications. Some of the more flagrant examples include the following:

¹ Cal. Govt. Code §§ 65920 *et seq.*

² Technical requirements make PSA deadlines difficult to enforce in California.

City of Berkeley:

In late 2006, we began to assist a client with applications for three separate wireless facilities that had long been pending in the City of Berkeley. One application had been pending since 2003 and another since 2005, and in neither case had the City scheduled a hearing or taken any other action.

The third application had been pending for over a year, and had initially been approved by the City's Zoning Adjustments Board ("ZAB"), then appealed to the City Council, which remanded to the ZAB, which then reversed itself to deny the application.

In August 2007, we filed suit in federal court seeking, *inter alia*, injunctive relief for the City's unreasonable delay of all three applications. By that time, two applications had not been heard at all, but the ZAB and the Council had passed the third application back and forth for a total of seven hearings between them, with no final action.

The City eventually approved all three applications, but even under the pressure of a federal lawsuit, this took several more months. It issued the first approval in November 2007 (32 months after the application was filed), the second in August 2008 (three years after the application was filed), and the third in February 2009 (almost *six years* after the application was filed).

San Francisco Right-of-Way Facilities:

In January of 2005, our client applied to the San Francisco Department of Public Works to obtain a Utility Conditions Permit ("UCP") to locate facilities on existing utility poles in the public rights-of-way. In April of 2005, the City rejected our client's application and our client appealed 15 days thereafter. In September, 2005 the San Francisco Board of Appeals rejected our client's appeal, which, by City procedure was re-heard in October 2005. Our client filed suit in Federal Court in October 2005 and won a summary judgment order in February of 2007.

In the interim, San Francisco adopted new codes and regulations that create new requirements for facilities in the rights-of-way. The new ordinance requires not only a Utility Conditions Permit to locate facilities in the City's rights-of-way, but adds the requirement that applicants obtain an additional "Personal Wireless Service Facilities Site Permit" for each utility pole that will hold antennas. Obtaining the required approvals to install facilities under the new ordinance required extensive negotiations with the San Francisco City Attorney's office, and our client did not receive a UCP until April 2008, more than three years after it first applied.

City of Davis:

In January 2003, our client applied to the City of Davis for permission to install a wireless facility on a light standard at a school athletic field. The Planning Commission denied that application in May 2003, and the City Council upheld the denial in July 2003. Our client then redesigned the facility to address the City's concerns, and submitted a revised application on July 31, 2003. The Planning Commission approved this application on December 17, 2003, but it was appealed to the City Council, which on March 9, 2004, reversed the Planning Commission and once again denied the application. Our client then sued the City in federal court, and eventually settled that suit on terms that led to the approval of a facility at an alternate location owned by the City. Despite moving the facility to a location selected by the City, the Davis Planning Commission did not approve the alternate facility until July 2005, over two years after our client first applied to the City to install the original facility.

City of Santa Monica:

In January 2003, our client applied to install three facilities in the public rights-of-way, but the City of Santa Monica informally rejected the applications on the basis that it had no ordinance that permitted wireless facilities in the rights-of-way. We advised the City that state law allowed telephone companies – including wireless providers such as the client in question – to install poles, wires, and related equipment along any public rights-of-way in California, subject only to reasonable regulation of the time, place, and manner of such installations.³ Despite extensive efforts of our office to resolve the dispute informally, the City continued to stonewall, and we filed a lawsuit against it in April 2004. We eventually settled the lawsuit on terms that allowed the installation of all three facilities. Even under the pressure of a lawsuit, however, it took until March 2005, more than two years after initially applying, to receive the required permits from the City of Santa Monica.

City of Los Altos:

In 2003, after attempting for several years to fill a coverage gap in downtown Los Altos, our client applied to install a facility on property owned by a water utility. The Los Altos City Council granted what appeared to be final approvals in December, 2003, subject to review by planning staff of minor design revisions imposed by the Council. Due to an error in transcribing the hearing minutes, the City required further design review by the Planning *Commission* (rather than planning staff). Despite the fact that the Commission was limited to reviewing the modified design elements, neighbors who objected to the

³ See Cal. Pub. Util. Code Sections 7901 and 7901.1.

Page 4

facility on preempted RF grounds attempted to use the limited design review to reopen the original approval. The Planning Commission approved the modified design, but the neighbors appealed to the Council, which then attempted to impose entirely new conditions to place most of our clients equipment underground, that would have made construction of the facility prohibitively expensive. We then requested reconsideration, and the Council removed the undergrounding condition and issued a final approval in August 2004, approximately eight months after its original “final” approval.

City of Gilroy:

Our client operates a wireless facility in the City of Gilroy that was installed in 1998, when the City required only a building permit. The City changed its zoning code in 2003 to require a conditional use permit (“CUP”) for all wireless facilities, and the new requirement applied to existing facilities after a 5-year grace period. Our client applied for a CUP under protest in February 2008, arguing that the new requirements violated its vested rights in the existing facility. Despite that fact that the facility had operated over 10 years without a single complaint, and was not even visible (due to its placement in a faux vent on the roof of a large building), the City required our client to prove its need for the facility, provide an exhaustive analysis of alternative locations, pay for independent review of that analysis and appear at multiple public hearings before finally granting the CUP in July 2009 (nearly one and one half years after the application was filed).

* * *

Based on experiences such as these, I can personally vouch for the need for the Commission to impose a reasonable deadline for local governments to act on wireless permit applications. One positive sign we have seen over the last several years has been the increasingly vocal support of wireless customers for enhanced wireless service in their communities. We can only hope that the FCC will hear that voice and require local jurisdictions to act more quickly and responsibly in the permitting of wireless facilities.

Very truly yours,



Paul B. Albritton

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November 9, 2009

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: WT Docket No. 08-165

Dear Ms. Dortch:

I am submitting this letter in support of the pending petition of CTIA – The Wireless Association, for a declaratory ruling that the FCC set deadlines for state and local zoning authorities to act on requests for new or modified wireless tower siting applications.

I am an attorney at law licensed to practice in the Commonwealth of Pennsylvania, and the State of New York. I have more than thirty five years experience in zoning and land development applications. I have more than ten years experience in wireless tower siting applications.

In my experience, wireless siting applications generally take considerably longer than comparable zoning applications for residential or commercial developments. In some cases, the siting applications are literally impossible to obtain. Residential and commercial land development applications can be completed in less than two years, and a zoning and land development application can be completed in two to three years.

Ms. Marlene Dortch, Secretary
Federal Communications Commission
November 9, 2009
Page -2-

I have currently pending applications for Cellco Partnership d/b/a Verizon Wireless in a series of suburban Philadelphia municipalities which are not complete despite three or more years of effort to obtain the necessary approvals. One application has been pursued for over ten years without any current possibility of approval.

Thank you for your consideration of the CTIA petition.

Very truly yours,



JOHN W. NILON, JR.

JWN:jg