

November 10, 2009

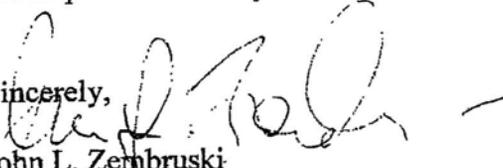
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WT Docket No. 08-165

Ms. Dortch:

Attached please find the Declaration of the undersigned in support of the Tower Shot
Clock petition filed by CTIA in the above-captioned document.

Sincerely,



John L. Zembruski
Corporate Counsel
Network Land Use and Litigation Team
T-Mobile USA, Inc.

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

WT DOCKET NO. 08-165

DECLARATION OF JOHN L. ZEMBRUSKI

I, John L. Zembruski, hereby declare under penalty of perjury that the following is true and correct to the best of my information, knowledge, and belief.

1. I am employed by T-Mobile USA, Inc. ("T-Mobile) as Corporate Counsel, Network Land Use and Litigation Team. My business address is 4 Sylvan Way, Parsippany, NJ 07054. I have prepared this declaration in support of the Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) pending before the Federal Communications Commission in WC Docket No. 08-165.

2. As Corporate Counsel, I supervise outside counsel supporting T-Mobile's cell siting efforts in the Northeast and Central Regions of the United States. In this capacity I routinely manage a case load of about 35 -40 active cases filed in either state or federal courts relating to cell site permit decisions of local governments. Based on personal knowledge as well as information provided to me by T-Mobile Regional personnel and local counsel responsible for T-Mobile's day-to-day tower siting activities, I am familiar with the opportunities and challenges T-Mobile faces in obtaining the necessary local zoning authorizations for siting its facilities.

3. In my experience, the timeliness and efficiency with which siting applications are resolved varies from jurisdiction to jurisdiction. While in many jurisdictions, wireless siting projects proposed by T-Mobile are reviewed expeditiously,

there are many in which T-Mobile projects have been subject to substantial delays. Moreover, these delays are unique to wireless siting and are not associated with other similar projects.

4. It is not unusual for proposed wireless facilities to be treated differently from non-telecommunications projects. Non-telecommunications projects sometimes receive less demanding and more expeditious treatment from local land use authorities. For example, in Cherry Hill, New Jersey, a variance to permit the construction of an 83,400 square foot building on a property was granted in one night but, after 3 years, T-Mobile is still trying to gain authority to construct a small 20'x20' compound and a 130 tower on the same parcel. Indeed, I have received reports from T-Mobile's local counsel in the states of New Jersey and New York indicating that they often find it more difficult to obtain approval for a small wireless siting proposal than to obtain approval for a large retail store. Local counsel also reports that applications for wireless facilities are subject to higher, and in some cases, unique fees.

5. My personal experience navigating the unique hurdles some localities place on carriers seeking approval for wireless facilities bears out these observations. For example, T-Mobile sought to install a new wireless facility at the Redl Salvage Yard in the Town of LaGrange, New York in order to resolve a coverage gap along State Route 55. T-Mobile representatives under my supervision met with the town's Planning, Zoning, and Building Department ("Building Department") in November 2003 to discuss the need for the facility. In December 2003, T-Mobile submitted an application to construct a monopole on a site that already had a variance for the construction of a 200 foot antenna. In April 2004, the Building Department informed T-Mobile representatives

that T-Mobile would need to apply for a new variance or secure written support for the project from every resident within 500 feet of the proposed facility.

6. While this process was pending, the Building Department approved construction of a new tower proposed by the American Tower Company (“ATC”). In May 2005, T-Mobile thus withdrew its proposal and sought approval to collocate on the new ATC tower, the preference for wireless facilities in the Town Zoning Code. The Building Department set a hearing date on the proposal for January 17, 2006.

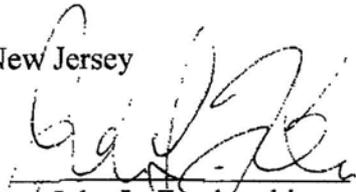
7. On April 3, 2006, the Building Department informed T-Mobile that it would need to apply for a new variance to collocate on the ATC tower. In September 2007, nearly four years after commencing the site approval process, the Building Department encouraged T-Mobile to abandon its ATC proposal and re-start the process for a new facility back at the Redl location.

8. T-Mobile nonetheless sought a variance to collocate on the ATC tower in an attempt to comply with the Town Zoning Code’s clear preference for collocation and Code requirement that collocation opportunities be exhausted before considering a new tower facility. T-Mobile submitted the variance request on September 25, 2007. Meetings and public hearings occurred in November 2007, January 2008, and February 2008. On February 6, 2008, T-Mobile’s request for a variance was denied with no explanation.

9. T-Mobile was therefore forced to seek relief from the courts more than four years after it initially sought approval to close a coverage gap. The court determined that the town had “animosity” towards wireless telecommunications towers and that T-Mobile was “bounced back and forth like a ping pong ball” between various town

departments. *Omnipoint Communications, Inc. v. LaGrange*, 2009 U.S. Dist. LEXIS 81941, *17 (SDNY 2009). The court concluded that “the Town as a whole, through its various Boards and Departments, has engaged in a lengthy and concerted effort to prevent, or at least to delay as long as possible, T-Mobile from eliminating the uncontroverted coverage gap.” *Id.* at *18.

Executed the 10th day of November, 2009 in Parsippany, New Jersey



John L. Zembruski