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November 10, 2009

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CTIA Petition for Declaratory Ruling, Docket 08-165  
*Ex parte communication pursuant to Section 1.1206 of the Rules.*

Dear Ms. Dortch:

On November 10, 2009, Christopher Guttman-McCabe, CTIA's Vice President of Regulatory Affairs, filed an ex parte letter with the Commission in which he took exception to what he claims are "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." In addition to his letter, Mr. Guttman-McCabe forwarded a series of letters and affidavits in which allegations against some named and some still anonymous communities were made regarding the timely treatment of cell tower siting applications.

While we are unable to respond in substance to the allegations by the stroke of midnight in this docket, we file this letter to express our dismay and to point out that the CTIA November 10 letter is a teaching moment that should not be missed.

First, Mr. Guttman-McCabe's allegations of late claims are not well founded. In fact, a review of the record reveals that the exact arguments and attachments by the Coalition were

shared with 8<sup>th</sup> floor offices and the Wireless Bureau on November 12, 2008, November 13, 2008, December 8, 2008, December 15, 2008, January 6, 2009, February 11, 2009 and February 9, 2009. CTIA could have responded at any time in the past nine months. Instead, it waited until the allegations could not be answered in the time remaining before the Sunshine Act pause.

Secondly and more importantly, the nature and process of leveling the allegations against local governments contained in the attachments to Mr. Guttman-McCabe's letter are at the very core of local government's complaint with this docket. Some allegations are made anonymously (*e.g.*, Scott Olsen's allegation of delay by "a municipality in Ulster County") while the remainder are made with no service on the accused community. The Commission is ill-served when allegations are made regarding a party that is not notified about those allegations, so that the party might offer the Commission the other side of the story.<sup>1</sup> A review of the CTIA *ex parte* of November 10, 2009 does not indicate that any of the communities named have been provided notice of the claims. With Sunshine Act procedures eliminating the ability of the parties to reply – even had they been served – the last-minute nature of the allegations renders such service meaningless.

In the spirit of fairness and due process, NATOA and the Coalition believe that the Commission has two choices in dealing with the CTIA *ex parte* of November 10. The Commission may choose:

- To strike the letter from the record; or
- To postpone its vote on November 18, 2009, direct CTIA to make service of the allegations on every community named, and inform those communities they have 30 days from date of service to provide the Commission comments on the allegations.

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<sup>1</sup> Fairfax County was so concerned to respond early in the docket that it asked CTIA no fewer than five times if the Petition were directed in any way against the County. CTIA never replied until now, with the Declaration of Ed Donohue, and the County has missed its chance. Comments of Fairfax County, VA, September 29, 2008, note 3.

**Miller & Van Eaton, P.L.L.C.**

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Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office and shared electronically with those FCC offices listed below, and Mr. Guttman-McCabe. Please do not hesitate to contact the undersigned with any questions.

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By

  
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cc: Ruth Milkman  
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