

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
Petition for Declaratory Ruling to Clarify	)	WT Docket No. 08-165
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	)	
	)	

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**COMMENTS OF THE CITY OF SAN ANTONIO, TEXAS,  
IN SUPPORT OF NATOA *ET AL.* PETITION FOR RECONSIDERATION**

The City of San Antonio, Texas (“San Antonio”), submits these comments in support of the Petition for Reconsideration or Clarification filed in the above-captioned proceeding by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association.<sup>1</sup>

The Petition asks the Commission to reconsider, or at a minimum to clarify, the 30-day deadline imposed by the *CTIA Ruling* on local authorities to review a wireless facilities siting application for completeness in order to “toll” the 90-day or 150-day deadlines established by the *CTIA Ruling* to take final action on a siting application.<sup>2</sup> The Petition cites both legal and practical problems that require reconsideration of the 30-day deadline.

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<sup>1</sup> *In the Matter of 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*, Petition for Reconsideration or Clarification, WT Docket No. 08-165, filed Dec. 17, 2009 (“Petition”).

<sup>2</sup> *In the Matter of 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*, Declaratory Ruling, WT Docket No. 08-165, FCC 09-99 (rel. Nov. 18, 2009) (“*CTIA Ruling*”).

San Antonio supports and agrees with the Petition. The Commission has exceeded even its own interpretation of its authority under Section 332(c)(7). We believe that this internal 30-day deadline is a new limitation placed on local zoning authorities by the Commission and not simply an interpretation of Section 332(c)(7).

More generally, *all* of the *CTIA Ruling*'s interpretations of Sections 332(c)(7)(B)(i), (ii) and (v) exceed the Commission's authority under Sections 332(c)(7)(A) and 332(c)(7)(B)(v), and thus any other provision of the Communications Act as well. San Antonio explained why in its Opposition<sup>3</sup> and Reply Comments<sup>4</sup>, as well as several *ex parte* visits and filings,<sup>5</sup> in this proceeding. San Antonio also pointed out that CTIA's underlying petition in this proceeding was a rulemaking petition in disguise, and thus that the *CTIA Ruling* fails to comply with the Regulatory Flexibility Act.<sup>6</sup> Yet the *CTIA Ruling* did not even mention, much less attempt to refute, any of San Antonio's arguments. Because all of the substantive rulings in the *CTIA Ruling* are unlawful and beyond the Commission's authority, the 30-day deadline challenged by the Petition is as well.

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<sup>3</sup> Opposition of the City of San Antonio, Texas, WT Docket No. 08-165, filed Sept. 29, 2008, at 1-22 ("San Antonio Opposition").

<sup>4</sup> Reply Comments of the City of San Antonio, Texas, WT Docket No. 08-165, filed Oct. 14, 2008, at 1-14.

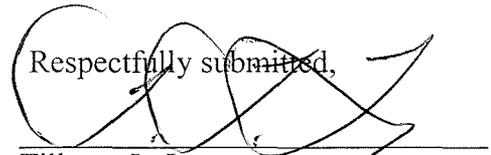
<sup>5</sup> *See, e.g.*, Letters to Marlene Dortch from Tillman L. Lay, WT Docket No. 08-165, filed Oct. 7, 2008, Sept. 24, 2009, and Sept. 25 2009.

<sup>6</sup> San Antonio Opposition at 26-27.

For the foregoing reasons, San Antonio supports the Petition and urges the Commission to reconsider the *CTIA Ruling*.

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Respectfully submitted,



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January 20, 2010