

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

_____)
In the Matter of)
)
) WT Docket No. 08-165
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)
_____)

COMMENTS OF CITY OF PORTLAND IN SUPPORT OF NATOA, ET AL.'S PETITION FOR RECONSIDERATION

The City of Portland, Oregon (Portland) submits these comments in support of the Petition for Reconsideration or Clarification filed 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.¹

I. BACKGROUND

The Petition asserted that the Federal Communications Commission (“Commission”) should reconsider, or at a minimum clarify, the 30 day deadline imposed on local authorities to review an application for completeness or waive their ability to

¹ 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).

“toll” the 90 day or 150 day deadlines established by the Order to take final action on a wireless facilities siting application.² The Petition cites both legal and practical problems that require reconsideration of the 30 day deadline.

Portland fully supports and agrees with the Petition’s legal analysis and believes that the Commission 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). As such we fully adopt the Petition’s legal arguments against the 30 day deadline.

We submit these comments separately to provide the Commission with examples of how the 30 day deadline will impact local governments, such as Portland, in practice.

II. EXAMPLES OF PRACTICAL PROBLEMS WITH 30 DAY INCOMPLETENESS DEADLINE

Since the adoption of its comprehensive plan in 1980, Portland has devoted significant resources to developing a compact downtown and maintaining liveable neighborhoods in a way that preserves the historic resources and design character of these areas. In those areas of the city with design (“d”) and historic resource (“h”) overlay zones, new development and alterations to existing structures, including collocated and new wireless facilities, must obtain design review approval to ensure their appearance is compatible with surrounding structures. Portland, like other Oregon cities, must conduct

² 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 (Nov. 18, 2009) (“Order”).

its review expeditiously and issue a final design review decision within a statutorily mandated 120-day period.³

By requiring the completeness of a wireless facility application to be determined within the first 30 days after the application is filed and by limiting the opportunity to toll the 90/150-day shot clocks to this 30-day period, the FCC's Order frustrates the local review process and is more likely to result in a denial than an approval of such an application. Many wireless applications, particularly applications for roof mounts, involve significant refinement and negotiation between review staff and the applicant to achieve a design that is approvable under applicable design criteria. These incremental negotiations take time and often require additional information from the applicant to address the applicable criteria, particularly when the wireless facility involves a building with significant architectural features. Frequently, the need for this additional information is not determined until more than 30 days after an application has been filed (and after the design has been revised).

Under the FCC's Order, Portland may ask for the additional information, but the applicable shot clock will not be tolled unless the applicant agrees to extend it. Portland and an applicant are frequently able to successfully negotiate a refined and approvable wireless facility design within the time period prescribed by state law. In general, Staff's goal is to work with the applicant to get to "yes." The constrained timeline articulated in the FCC's order—and particularly the one-time only opportunity to toll the applicable shot clock during the first 30 days—severely limits Portland's ability to work with applicants to ensure their facilities are approvable. If, after the initial 30-day period,

³ Under Oregon law, the 120-day period is measured from the date an application is deemed complete and may only be extended by the applicant for a maximum of 245 days. (ORS 227.178(1), (5)) This timeline has proved to be beneficial to all parties because it gives Portland and an applicant adequate time to revise the design of a wireless facility as necessary to ensure it is approvable under the applicable design review criteria.

Portland cannot obtain necessary and missing information from an applicant to enable approval of a wireless facility within the applicable shot clock, Portland will have no alternative but to deny the application for lack of sufficient information to determine consistency with its approval criteria. This is a result that neither Portland nor an applicant desires and will not facilitate faster approval and deployment of wireless networks.

III. CONCLUSION

In conclusion, we support the Petition and urge the Commission to reconsider or clarify the Order as to the 30 day review for incompleteness deadline.

Respectfully submitted,

CITY OF PORTLAND, OREGON

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