

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 WATERFORD, MI IN SUPPORT OF NATOA ET AL
PETITION FOR RECONSIDERATION

The Charter Township of Waterford, MI 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 “toll” the 90 day or 150 day deadlines established by the Order to take final action on a

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).

wireless facilities siting application.² The Petition cites both legal and practical problems that require reconsideration of the 30 day deadline.

The Charter Township of Waterford 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 Waterford Township in practice.

II. EXAMPLE OF PRACTICAL PROBLEMS WITH 30 DAY INCOMPLETENESS DEADLINE

The Charter Township of Waterford finds a major practical problem with the 30 day incompleteness deadline when cell tower companies intend to locate a wireless communications facility on residential-zoned property instead of in more suitable zoning districts identified in the Township's zoning ordinance. There are additional practical problems presented if a proposed wireless communications facility requires variances for a proposed location. The timeframe for public hearing notifications also generally require a timeframe greater than 30 days. The best way to illustrate these issues is through the Township's most recent wireless communications facility siting proposal.

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").

- **March 2008:** SBA Communications Corporation submitted a request to locate a 150 ft. wireless communications facility on a single-family residentially zoned property. In accordance with the Township's zoning ordinance, a wireless communications facility applicant is required to provide documentation to demonstrate that there is no reasonable difference of opinion that a wireless communication facility may not reasonably be established upon a property within a zoning district where such facilities are a permitted use as a special approval use in a permitted district. The applicant did not submit documentation to explain why the proposed facility could not be located on adjacent state park land zoned for public recreation or adjacent property zoned for commercial recreation, zoning districts where such facilities are a permitted use after special approval.
- **April – September 2008:** After months of staff attempting to obtain the necessary documentation and revised site plans, not only did the applicant fail to submit all required documentation, the applicant also insisted to be placed on the Planning Commission agenda. In accordance with the applicant's request, their case was placed on the October 28, 2008 Planning Commission meeting agenda.
- **October 28, 2008:** At the meeting, the Planning Commission, upon the advice of the Township Attorney, tabled the request until such time as an amended site plan could be submitted with all supporting studies.
- **November – February 2009:** After this tabling, the applicant then revised their request to propose locating the wireless communication facility on the adjacent property zoned commercial recreation.
- **March 24, 2009:** The revised request was considered by the Planning Commission. At this meeting, the case was tabled to allow the applicant to request dimensional variances from the Zoning Board of Appeals (ZBA).

- **April - May 2009:** The ZBA considered the applicant's variance request at its April 7, 2009 and May 5, 2009 meetings; at the latter meeting the ZBA approved the requested variances.
- **May-June 2009:** The applicant's request was then brought back before the Planning Commission at their May 12, 2009 and June 23, 2009 meetings, at which time the Planning Commission issued a conditional approval for a 99 ft. wireless communication facility to be located on the commercial recreation zoned property, providing for the Planning Commission to increase the height of the tower to 139 ft. at the time of site plan approval. Additional site plan related conditions were also placed on the special approval.
- **July - September 2009:** The applicant prepared the final site plan based on the special approval conditions established by the Planning Commission.
- **October 27, 2009:** The Planning Commission approved a final site plan for a 134 ft. wireless communication facility.

This example exhibits the core issues where the 30 day deadline will result in practical problems for our community. Applicants will have no incentive to seriously review their options to find suitably zoned properties on which to locate wireless communication facilities. Residential neighborhoods will be negatively impacted by applicants who will select single-family residential properties and then run out the clock while they dribble out required documentation to the municipality. For applicants who are acting in good faith in communities where available locations are all challenging locations, substantial amounts of time are required for both the applicants and the municipalities to work out details before final approvals are received. Additionally, the statutory requirements for a special approval review process mandates a formal public hearing and public notice requirements before a hearing can be held, all of which will require more than 30 days.

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,

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