

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

In the Matter of)	
)	
Petition for Declaratory Ruling to Clarify)	
Provisions of Section 332(c)(7)(B) to Ensure)	WT Docket No. 08-165
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 THE CITY OF LOS ANGELES, CALIFORNIA, IN SUPPORT
OF NATOA, *et al.*, PETITION FOR RECONSIDERATION OR CLARIFICATION**

The City of Los Angeles, California (the “City”), 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 asserts 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 Ruling to take final action on a wireless facilities siting application.²

¹ Petition for Reconsideration or Clarification, WT Docket No. 08-165, filed Dec. 17, 2009 (“Petition”).

² Declaratory Ruling, WT Docket No. 08-165, FCC 09-99 (Nov. 18, 2009) (“Ruling”).

The Petition cites both legal and practical problems that require reconsideration of the 30 day deadline.

The City fully supports the Petition's legal analysis and believes that the Commission exceeded even its own interpretation of its authority under Section 332(c)(7). 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.

II. THE RULING WILL CAUSE PRACTICAL PROBLEMS WITH THE SITING PROCESS IN THE CITY.

The Ruling presents a number of practical problems for the City at a time when City staff is under considerable pressure. The Ruling exacerbates these problems, and thus undermines the City's ability to enforce its ordinances involving public safety and the economic and aesthetic management of the public rights-of-way.

The FCC's requirement that the new 90- and 150-day timelines can only be tolled if the City requests additional information from the applicant within the first 30 days is highly problematic. Ruling at ¶¶ 52-53. In many cases, problems with an application only become evident well after the first 30 days. For example, the City recently had to request an applicant to place a power meter cabinet a slight distance from the originally-proposed location. The applicant took four months — approximately 120 days — to develop such plans. Under the Ruling, however, the City and the applicant would be immediately forced into litigation if they did not agree to extend the timelines.³ Indeed, the Ruling fails to recognize that extensive delays are often caused by the applicants themselves. *Id.* at 7. For example, in the City, any vaults or

³ Moreover, as NATOA has noted, the Ruling gives applicants the incentive to game the system. Petition at 7. The applicant may not agree to extend the timelines when it will cost the applicant time and money. This may severely limit the City's ability to request changes to the wireless installation in line with the City's ordinances, and may force unnecessary and costly litigation.

monopoles that are installed under a utility permit require structural calculations and/or shoring plans approved by the Bureau of Engineering. For three applications currently pending, the City requested this documentation from eight to 12 months ago, and yet the City has still not received all required documentation. Unfortunately, such applicant-caused delays occur frequently. Thus, the City strongly agrees that local authorities must be empowered to toll the 90/150 day shot clock for reasons beyond *initial* application completeness. Petition at 6-7.

The City also notes that the Ruling's treatment of co-location applications is arbitrary and highly burdensome. Such applications typically require identical City review procedures as other applications. Especially in light of the applicant-caused delays discussed above, it is highly burdensome for the Commission to require City action on such applications within 90 days.

III. CONCLUSION

The City supports the Petition and urges the Commission to reconsider or clarify the Ruling.

Respectfully submitted,



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