

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Acceleration of Broadband
Deployment Expanding the Reach and Reducing
the Cost of Broadband Deployment by Improving
Policies Regarding Public Rights of Way and
Wireless Facilities Siting

WC Docket No. 11-59

COMMENTS OF THE VILLAGE OF WINNETKA, ILLINOIS

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September 29, 2011

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The Village of Winnetka, Illinois, an Illinois home rule municipality, files these comments in response to the Notice of Inquiry (“NOI”), released by the Federal Communications Commission (“Commission”) on April 7, 2011, in the above-captioned matter.

I. INTRODUCTION

The Village of Winnetka respectfully submits these comments for three reasons: (i) to correct the material misrepresentations in the comments filed with the Commission by AT&T, Inc., and PCIA – The Wireless Infrastructure Association (“PCIA”) regarding the laws and conduct of Winnetka regarding the siting of wireless telecommunications facilities; (ii) to provide the Commission with accurate information regarding the laws, ordinances and practices of the Village of Winnetka (“Winnetka”) regarding the siting of wireless telecommunications facilities in Winnetka; and (iii) to join in and support the Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officer Association, the American Public Works Association, and the International City/County Management Association.

II. THE ASSERTIONS OF AT&T AND PCIA REGARDING WINNETKA'S ZONING RULES AND PRACTICES ARE FALSE.

AT&T claims that the Village of Winnetka has “local zoning rules that broadly restrict wireless installations, and any attempt to obtain a variance is typically hopeless.”¹ Similarly, PCIA claims that collocation applications in the Village of Winnetka require “a variance or special use for each new collocation on a tower.”² Both assertions are false.

For more than 20 years, the Village of Winnetka has worked cooperatively with telecommunications service providers in attempting to identify suitable locations for various forms of wireless facilities, and in facilitating the placement of those facilities on both public and private property within the Village. As a result, wireless installations are permitted uses in several areas scattered throughout the Village. These permitted locations tend to be on the tallest structures in the area, and have proven to be desirable locations for wireless facilities. Where wireless installations are permitted as special uses, all a service provider needs to establish is that the proposed location is necessary to provide coverage, and all other standards for special uses are deemed to have been met. In contrast, all other applicants for a special use are required to make an evidentiary record to support an affirmative finding on each of the general special use standards. Third, and perhaps most important, the Village has never denied an application for zoning relief to allow a wireless telecommunications facility.

All of this is well known to AT&T. Indeed, AT&T and its affiliates or predecessors have had long-term licenses for wireless antennas on the tower of Winnetka's power plant on a bluff overlooking Lake Michigan, and on the communications monopole at Winnetka's Public Safety Building near the central business district, sites where wireless telecommunications facilities are

¹ Comment of AT&T, p.9

² Comment of PCIA, Ex. B, pp.7-8

permitted uses. AT&T also knows that, in 1998, it was granted both a special use permit and variances to allow wireless antennas in a rooftop location in the Hubbard Woods business district at the north end of town, disproving its disingenuous claim of a “hopeless” effort.

The Village of Winnetka is a small, fully developed residential community located along the western shore of Lake Michigan about 17 miles north of downtown Chicago. It is bordered on the north by the Village of Glencoe, on the west and southwest by the Village of Northfield and the Cook County Forest Preserve, and on the south by the Villages of Kenilworth and Wilmette and a portion of unincorporated Cook County. With an area of only 3.82 square miles, and having been built out in its existing configuration decades before the advent of wireless communications,³ Winnetka has nevertheless managed to provide locations for nine wireless facilities. Wireless telecommunications providers quickly occupied the most desirable sites, and continue to do so to this day, as illustrated by the following table.

Address	Property Type	Service Provider(s)	Zoning Relief?
725-735 Tower Road	Village Power Plant	SMSA, Ameritech, Verizon	N/A 1990 contract
725-735 Tower Road	Village Power Plant	Cellular One/SW Bell, Cingular, New Cingular, AT&T	N/A 1989 contract
725-735 Tower Road	Village Power Plant	Nextel	N/A 1994 contract
725-735 Tower Road	Village Power Plant	Primeco, US Cellular	N/A 1996 contract
410 Green Bay Road	Public Safety Monopole	AT & T Wireless, Cingular, New Cingular	N/A 1996 contract

³ See, Winnetka 202: Comprehensive Plan for the Village of Winnetka
<http://www.villageofwinnetka.org/pdf/documents/Winnetka%202020.pdf>

Address	Property Type	Service Provider(s)	Zoning Relief?
874 Green Bay Road	Commercial	AT&T Wireless, Cingular, T-Mobile	Special Uses: M-546-98, M-15-2006
911 Green Bay Road	Commercial	Sprintcom	Special Use & Variance: M-545-98
566 Chestnut	Commercial	VoiceStream	Special Use: M-31-2000

The above table also shows that PCIA’s assertion about collocation is equally unfounded – and misleading – for all four of the collocated facilities at the Power Plant were accomplished by contract, not by a variation or special use.

PCIA’s self-serving protestations about Winnetka’s supposedly “obstructionist and problematic” consultants⁴ are equally hollow. Given the erroneous and misleading nature of AT&T’s and PCIA’s claims about the basic process for obtaining siting permission in Winnetka, PCIA’s broad generality, unsupported by any fact, is impossible to respond to and cannot be taken seriously.

III. ZONING DECISIONS AND THE ALLOCATION OF ACCESS TO LOCAL RIGHTS OF WAY ARE PURELY LOCAL MATTERS AND CANNOT PROPERLY BE PREEMPTED BY THE COMMISSION.

The precise location of wireless telecommunications facilities cannot be determined on a one-size-fits-all basis. It is a fundamental land use regulation exercise that requires the balancing of all interests: the property owners who seek the relief, the businesses that may be co-applicants, the neighboring property owners, and the community interest as a whole. The local governments that enact and administer the zoning ordinances and that are responsible for maintaining public rights of way within their own jurisdictions are best quipped to provide a

forum to hear and weigh these competing interests. Congress wisely recognized the need for these decisions to be left to local governments.

As AT&T concedes⁵, finding suitable sites for wireless facilities is not always easy. Yet what AT&T and PCIA would have the Commission do is to protect only their interests by ignoring the balancing of interests the Constitution requires. Not surprisingly, AT&T and PCIA would much prefer a forum that fosters only the business desires of the wireless telecommunication providers. Local zoning hearings allow the Constitutional rights of neighboring property owners to be protected by providing them with a local forum. Addressing those matters by an administrative rule and providing for an administrative forum in Washington D.C. would effectively extinguish those rights, and ignore the will of Congress as expressed in the Telecommunications Act.

Similarly, local rights of way are limited public resources. In making siting decisions, municipalities and other local governments must weigh not only the private interests of those seeking to use them, but also the interests of the public health, safety and welfare. Issues that may arise are as varied as the potential locations. Would the proposed facility be too close to traffic lanes? Would it affect sight lines? Would it interfere with pedestrian traffic? Would a large facility that towers over single family homes change the character of a neighborhood? Is the proposed facility at the proposed location consistent with the trend of development in the area? Would denial deprive a community of access to wireless services? These, too are purely local issues that the Commission does not have either the factual knowledge or the technical expertise to determine without either creating lengthy, costly proceedings or simply disregarding the local concerns and issuing a rule in favor of the telecommunications company.

⁴ Comments of PCIA, Ex. B, pp. 11-12.

It cannot reasonably be argued that the average property owner would be notified of a siting application that affects his property, would retain legal counsel and would participate in an administrative proceeding in a distant forum. It cannot reasonably be argued that cash-strapped local governments could afford to participate in a Commission proceeding in response to a company's request to install a facility on private property or in a local public right of way.⁶ And it cannot reasonably be argued that it is an unreasonable burden for a telecommunications company to participate in a local proceeding in the very community in which it seeks to construct its facilities and provide service.

Nor can it reasonably be argued that the Commission, whose expertise is confined to the communications industry, could provide a meaningful forum for hearing local land use issues. The Commission has no firsthand knowledge of Winnetka or any other local government. It has no first hand knowledge of the issues that confront any particular local government, and can only know what information is placed before it. The unsubstantiated and misleading sweeping generalities in the comments of AT&T and PCIA are proof enough that the Commission should not rely on statements of those self-interested applicants. Motivated only by a desire to maximize profit, they are indifferent to the needs of the public, as evidenced by their failure to provide any notice to Winnetka of the claims they made in their comments. The Commission should not allow the statements and arguments of AT&T and PCIA to carry the day, for to do so would effectively remove any semblance of concern about the impact siting decisions have on local communities and individuals, and would turn every local siting decision into a costly federal matter, something the United States Congress chose not to do.

⁵ Comments of AT&T, p.7

Finally, the Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association provide a thoughtful, detailed articulation of the legal and policy reasons the Commission should not interject itself into local siting decision. As an active participant in several of these associations, Winnetka adopts and joins in their comments.

CONCLUSION

For all of the reasons stated above, the Village of Winnetka respectfully urges the Commission to resist efforts to have it remove local regulatory control over local rights of way and land use decisions from the hands of the local governments in which those powers remain vested.

Respectfully submitted,

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September 30, 2011

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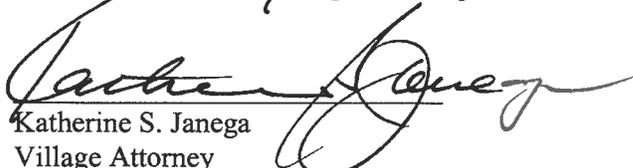
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I, Katherine Janega, certify that I served the foregoing Comments of the Village of Winnetka via electronic filing system available at <http://fjallfoss.fcc.gov/ecfs/> and further certify that I served the above-referenced parties via First Class Mail, with proper postage prepaid, by depositing the same at the U.S. Post Office mailbox located at Chestnut Street, Winnetka, Illinois before 7:00 p.m. on September 30, 2011.



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OFFICIAL SEAL
KATHLEEN SCANLAN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 01/08/12

Subscribed and Sworn to
before me this 30th day of
September, 2011.


Notary Public