



**PETITION FOR DECLARATORY
RULING TO “CLARIFY” SECTIONS
332(c)(7) AND 253(a)**

Presentation to Jim Schlichting, Bureau Chief, and
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Background

- The text of 47 U.S.C. § 332(c)(7) clearly preserves local government authority over wireless facility placement, to the exclusion of other code sections.
- 47 U.S.C. § 253 was designed to address other aspects of local government authority over telecommunications services.
- The Conference Report for Section 332(c)(7) anticipated that local governments be able to use their **usual** land use planning procedures and time frames in reviewing wireless facility placement applications.
- The Conference Report states that the intention of Section 332(c)(7)(B)(i)(II) is that *bans or policies*, as opposed to individual decisions, that have the effect of prohibiting personal wireless services or facilities not be allowed.
- The Conference Report specifically contemplated the use of variances, public hearings and other comment processes, stating that “the time period for rendering a decision [in such cases] will be *the usual period* under such circumstances.”
- The Conference Report states that Congress did not intend “to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to *any but the generally applicable time frames for zoning decisions.*”

Section 332(c)(7)'s Clear Language Shows the Petition Should be Denied

- Section 332(c)(7), titled “Preservation of Local Authority,” preserves local government authority “over decisions regarding the placement, construction, and modification of personal wireless service facilities, except to the extent *specifically provided for in § 332(c)(7).*”
- Section 332(c)(7) precludes application of Section 253.
- Section 332 provides that *regulations* cannot prohibit or have the effect of prohibiting the provision of personal wireless services
- Section 332 requires local governments to act on requests for authorization to place, construct, or modify personal wireless service facilities within a *reasonable period of time* after the application is duly filed, *taking into account the nature and scope of such request.*
- Local governments can only deny requests on the basis of *substantial evidence.*
- Denials must be placed in writing.
- Section 332 (c)(7) requires that anyone aggrieved by an action or failure to act to file a court action within 30 days of the event.

No “Delay” in Processing Applications Exists

- Some wireless facility siting applications can be dealt with quickly, while others require more extensive review and input from the affected community.
- Processing applications methodically so that everyone’s rights are protected does not equate with “delay.”
- True “delay,” a factual rarity, can be and has been ably handled by the courts, as Congress envisioned.
- Congress recognized that “one size” does not fit all and legislated accordingly.
- CTIA and its supporters rely on one-sided anecdotes, rarely identifying local governments and using “fear of retribution” as a screen to prevent full investigation of their allegations.
- CTIA claims to understand what a “failure to act” is, but not when it occurs. The two are mutually exclusive positions.

The Effects of the Proposed “Clarifications” Cannot Be Justified

- Many zoning codes require notice and hearings on land use applications to protect the due process rights of both the applicant and nearby property owners.
- In addition, planning and zoning boards are charged with ensuring that development is consistent with neighborhood character and aesthetics, thereby protecting property values and citizens’ investments in their property.
- The time limits and “deemed granted” and judicial inference remedies proposed by CTIA violate the due process considerations at the heart of local zoning processes.
- The consequence of the time limits and remedies is that citizens will not be able to have their voices heard regarding the impact of wireless facilities on their property.
- Public property will also be affected and the proposed remedies may well work a taking of public property when applications are “deemed granted.”
- To suggest that local zoning bodies can avoid the “deemed granted” or judicial inference remedies is no answer, as 332(c)(7) requires “substantial evidence” to support denials, which local governments may not be able to gather in the 45/75 day time limits.

CTIA's Own Petition Shows There Is No Need for FCC Action

- In 1996, there were approximately **22,600** cell sites.
- At the end of 2007, there were **over 213,000**.
- There are approximately 39,000 cities, counties, towns, and villages in the United States, giving each local government in the United States on average 5 wireless facilities.
- CTIA asserts that its members have 760 applications that have been pending for over a year.
- These 760 applications represent at most **.4 percent** of the applications that have been filed since Sec. 332 was enacted.
- CTIA itself terms the growth wireless services and sites “exponential” and recognizes that many local governments act “promptly.”
- There is no need for FCC “clarification” of unambiguous terms.