



## FCC INTERGOVERNMENTAL ADVISORY COMMITTEE

---

In the Matter of 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 Proposal as Requiring a Variance

WT Docket No. 08-165

---

---

Comments of the Federal Communications Intergovernmental Advisory Panel Members

Chairman Martin:

The Intergovernmental Advisory Committee (IAC) was appointed to the FCC to provide feedback on various issues coming before the FCC. Thank you for the opportunity for the IAC to provide your office with input on the issue of timely review of wireless tower siting in relation to state and local zoning ordinances.

We urge the FCC to deny the petition filed by the CITA (“The Wireless Association”) to preempt local zoning authority for the siting of cellular towers and withdraw the related FCC proposal. The need for federal intervention in this matter is not apparent. The FCC’s proposed action based on the CTIA’s petition is counter to the Telecommunications Act of 1996 that preserved local zoning authority for cell towers. State and local governments act on cellular tower siting requests daily and new and modified towers are approved every day.

Current local zoning, permit and variance rules and regulations protect the public health, safety and welfare. The FCC preemption of local rules is unwarranted, and is a major threat to local control. The CTIA proposal allows out of state applicants to circumvent state and local rules, and would be detrimental to the public good, which is contrary to FCC goals. The wireless industry is asking for an exemption to local process when it is the industry that often drives the timing of the local process.

WT Docket 08-165 proposes to implement a forty-five day (45) and seventy-five (75) timeframe for local governments to approve zoning requests for cell towers. The CTIA

proposes that a final zoning or permit decision must be concluded within 75 days for new towers and 45 days for modifications to existing towers. If the local government fails to act within those periods of time, the application for siting or modifying a tower will be deemed to be automatically granted.

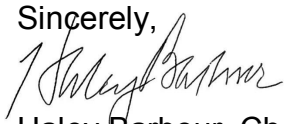
In the 1996 Telecommunications Act, Congress made clear in legislative language that the time for local governments to act on cellular zoning requests are “the generally applicable time frames for zoning decisions.” Congress stated that the timeliness of the decisions needed to take into account “the nature and scope of each request” and not provide preferential treatment to the cellular industry. It appears the FCC proposal and the CTIA request would cause the FCC to act beyond its authority by requiring a fixed period of time and imposing a remedy for violation of requirements. Congress intended a more flexible process and recognized the variety of issues that must be considered in making local zoning determinations.

Local zoning procedures generally require that area residents be notified, local government meetings be properly noticed, zoning authority meetings be scheduled and appeal procedures be available and followed. The FCC proposal does not reflect an understanding of the wide variation in zoning procedures in the 35,000 municipalities, counties and Tribal communities nationwide, and the uniqueness in the siting of each cell tower zoning. Complex or contentious applications may take more than 75 days to resolve. This is particularly the case for cell towers in residential areas where it takes time to conduct the engineering studies necessary to see whether there is a gap in service that needs to be filled, how tall a tower must be to fill the gap, what alternative solutions are available, and whether a tower needs to be camouflaged in a sign or as a tree to preserve the character of the neighborhood. The preemption of the local variance process simply shifts the burden of due diligence from the wireless carrier to local government. Further, the most problematic cell tower applications take the most time to process, thus providing an incentive to the industry to site in the most egregious areas over local concern.

Zoning is uniquely a local concern. The FCC should not become the local zoning authority for cell towers nationwide. Congress recognized this when in 1996 it preserved local zoning of cell towers and directed the FCC not to get into the cell tower zoning business.

We recommend that the FCC deny the petition and with any proposed rule making regarding timing for the review of cellular tower siting.

Sincerely,



Haley Barbour, Chairman  
FCC Intergovernmental Advisory Committee