

PETITION FILED TO RESTRICT LOCAL ZONING AUTHORITY UNDER TELECOMMUNICATIONS ACT OF 1996

On July 11, 2008, CTIA – The Wireless Association (CTIA), a trade association of the cellular telephone industry, filed a petition requesting that the Federal Communication Commission (FCC) clarify provisions of the Federal Telecommunications Act of 1996 relating to local regulation of wireless telecommunication facilities. In the petition, CTIA asserts that the local zoning approval process is a “substantial impediment to the provision of wireless service in many areas.” The petition asks the FCC to rule as follows:

1. Impose a 45- or 75-day deadline for action on certain wireless facility applications. If the deadline isn’t met, the local zoning board will be in violation of Section 332(c)(7) of the Telecommunications Act, which requires a municipality to act on an application for a wireless facility in a reasonable period of time.
2. If the deadline is met, the wireless carrier’s application will be deemed granted. Alternatively, failure to meet the deadline would establish a presumption that an applicant is entitled to an injunction ordering the municipality to grant the application approval unless it can justify the delay.
3. Clarify that Section 332(c)(7) of the Telecommunications Act bars any local decision that has the effect of prohibiting a new wireless carrier from offering service in an area where another wireless carrier already provides service.
4. Rule that Section 253 of the Telecommunications Act preempts local ordinances that subject wireless siting applications to unique, burdensome requirements, such as treating all wireless siting requests as requiring a variance.

Readers are likely to be aware that Vermont law already imposes 30- and 45-day “shot clocks” on zoning administrator appeals and zoning board decisions. See 24 V.S.A. §§4448(a) and 4464(b)(1). Regardless of the success of CTIA’s petition, these deadlines apply to all zoning applications for wireless telecommunication facilities in Vermont. Therefore, the petition’s first two requests are unlikely to have much effect here. Likewise, with regard to the third request, the Federal District Court for Vermont has previously held that a Vermont zoning board’s denial of a permit on the grounds that a gap in an applicant’s service area that the facility was intended to fill was already covered by the applicant’s competitors had the effect of prohibiting service, which violated the Telecommunications Act. *Independent Wireless One Corp. v. Town of Charlotte*, 242 F. Supp. 2d 409 (D. Vt. 2003).

The most significant potential impact from the petition could come from CTIA’s fourth request. Several municipalities have imposed significant setback requirements on telecommunication facilities – sometimes several hundred feet. These requirements could require telecommunication facility applicants to request a variance in order to receive zoning approval, an action that the petition would seek to prevent. A copy of the petition is available at

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520038471.

- *Jim Barlow, Senior Staff Attorney, VLCT Municipal Assistance Center*

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