

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

Petition for Declaratory Ruling to Clarify )  
Provisions of Section 332(c)(7) to Ensure )  
Timely Siting Review and to Preempt under ) WT Docket 08-165  
Section 253 State and Local Ordinances that )  
Classify All Wireless Siting Proposals )  
As Requiring a Variance )

**MOTION FOR EXTENSION OF TIME**

Pursuant to Section 1.46 of the Rules, Montgomery County, Maryland (“Movant”), respectfully asks for additional time to respond to the captioned petition of CTIA – The Wireless Association® (“CTIA”).

The 30 and 15 days proposed for comment and reply in the Public Notice of August 14, 2008 (the “Notice”)<sup>1</sup> are inadequate. The notice was issued at a time many local governments are not meeting regularly; the Labor Day holiday break falls in the middle of the comment period; and the annual conference of the National Association of Telecommunications Officers and Advisors (NATOA), scheduled over a year in advance, occurs immediately after initial comments would be filed. Many of the conference attendees are involved daily in the zoning processes challenged by the petition. (This is not to mention the upcoming nominating conventions of the national political parties, in which local elected officials may be involved.) The schedule set by the Notice thus would not allow the local governments targeted by this petition to respond appropriately.

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<sup>1</sup> DA 08-1913, posted August 15<sup>th</sup>.

Moreover, some of these governments will need to obtain authorization from their legislative bodies to file responses to CTIA's petition. But in many cases the schedules of decisional meetings at this time of year are such that necessary authorizations to participate in this proceeding would not be possible.

There is a second important reason for extending time in this proceeding. CTIA's petition asks the Commission to consider making changes in the ways Section 332 and Section 253 have been applied for the last twelve years. Setting aside the question of whether the changes proposed are lawful, the initial question before the Commission is whether changes in long-standing processes are necessary. The CTIA Petition rests on the factual presumption that some action is necessary. Given that the petition rests on factual assertions, it is important that local governments have sufficient time to develop information to provide a reasonable response.

Finally, it is worth emphasizing that CTIA's factual statements are by and large not supported. Pages 14-15 and 25-27 of the Petition contain anonymous accusations of local government delays or misbehavior which cannot be answered unless the accused governments are identified. CTIA filed a similarly unsupported petition 11 years ago, asserting that local governments were using "moratoria" to delay action on meritorious wireless siting applications. Then-Chairman Reed Hundt and various FCC staff members sent letters inquiring about these CTIA allegations, and received responses that significantly altered the picture initially painted by CTIA.<sup>2</sup> Subsequently, CTIA entered an agreement with various associations regarding an informal dispute resolution mechanism that could be used to address disputes, and withdrew its petition.

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<sup>2</sup> A convenient summary and set of links can be found at <http://wireless.fcc.gov/siting/local-state-gov.html>.

As in the earlier proceeding on the moratorium petition, the CTIA claims should not be allowed to remain anonymous and unverifiable. As in the earlier proceeding, investigation may make it clear that the FCC action sought in the petition is unnecessary. Movant prefers that the FCC require CTIA to supplement its Petition by identifying the governments or zoning authorities referred to but not named at pages 14-15 and 25-27. The dates for comment and reply would then run from the filing of the CTIA supplement.<sup>3</sup> Under the FCC's rules, CTIA should serve the supplemented petition on each of the named local entities.<sup>4</sup> Comment deadlines would run from the date that service is completed.

Accordingly, Movant asks that the time to file comments be extended from 30 days to 90 days and that the time for reply be extended from 15 days to 45 days after the new deadline for comments.<sup>5</sup>

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<sup>3</sup> While the Commission might simply order CTIA to supply the identifications as an opening comment, this would leave only the interval for reply in which named local governments could defend themselves. The evidence essential to reasoned evaluation should be provided at the beginning of the process, not two-thirds of the way through the proceeding.

<sup>4</sup> Section 1.1206(a), Note 1. If service is not effected, Movant is prepared to seek dismissal of the Petition. Indeed, the Petition is vulnerable to dismissal as it stands because, in the words of Note 1, the actions of certain local authorities "are specifically cited as a basis for requesting preemption."

<sup>5</sup> It is worth noting that in a Notice of Proposed Rulemaking which CTIA claims (Petition, 21) was "directly on point with the Request of this Petition," the time for comment was set at 60 days and the period was further extended by the delay in Federal Register publication. Moreover, the original reply deadline of 30 days was later extended to 44 days. Order, MB Docket 05-311, DA 06-537, released March 7, 2006.

For the reasons discussed above, Movant asks that the comment deadline be extended as indicated above.

Respectfully submitted,

MONTGOMERY COUNTY, MD

By \_\_\_\_\_

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August 22, 2008

ITS ATTORNEYS

**Certificate of Service**

The foregoing Motion for Extension of Time has been served today, by e-mail attachment, upon:

Michael F. Altschul  
Senior Vice President and General Counsel  
CTIA  
1400 16<sup>th</sup> Street N.W., Suite 600  
Washington, D.C. 20036

James D. Schlichting  
Acting Chief, Wireless Telecommunications Bureau  
FCC

Michael Rowan  
Wireless Telecommunications Bureau  
FCC

August 22, 2008

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James R. Hobson