



## SUMMARY OF FCC'S DECLARATORY RULING ON CTIA'S SHOT CLOCK PETITION

WT Docket No. 08-165; FCC 09-99

Rel. November 18, 2009

### **Shot Clock**

The FCC declared that state and local authorities must review completed applications within 90 days for collocations and 150 days for all other applications. These timeframes are deemed presumptively "reasonable" under section 332(c)(7)(B)(ii).

The *Declaratory Ruling* does not preempt state statutes or local zoning ordinances. Therefore, if a state or local government mandates shorter or longer time limits for application review, these time limits are still effective. When the shorter timeframe runs, the applicant can seek whatever remedy is provided under the state statute or local zoning ordinance. Once the federally mandated timeframe runs, the applicant can seek the federal remedy. Similarly, if a state statute or local zoning ordinance imposes a longer timeframe, an applicant may seek the federal remedy once the federal timeframe runs, and may seek the remedy provided by state statute or local zoning ordinance once the longer timeframe runs.

### ***Trigger***

The shot clock begins once an application is filed. State and local governments have 30 days to review an application for completeness and to request additional information. If a state or local government requests additional information outside of 30 day review period, the time it takes an applicant to respond and the time the authority takes to review the additional material counts towards the 90 day or 150 day timeframe.

### ***Enforcement***

If a state or local government fails to act within the prescribed timeframes, applicants can seek relief from a court of competent jurisdiction. Section 332(c)(7)(B)(v) of the Act requires applicants to seek relief within 30 days of the failure to act. The *Declaratory Ruling* preserves state and local governments' ability, if challenged for a failure to act, to rebut the presumption that the timeframes are reasonable given the circumstances.

### ***Effect on Pending Applications***

The *Declaratory Ruling* is effective upon the date of release, November 18, 2009. If a state or local government has not acted within the prescribed timeframes as of November 18, 2009, an applicant may provide notice to the relevant state or local authority that it is filing suit under section 332(c)(7)(B)(v). If the locality fails to act within 60 days of the notice given, the applicant may file suit for failure to act. For applications currently pending upon release of the *Declaratory Ruling* for a time less than the proscribed timeframes, the state or local authority has 90 or 150 days from the release of the *Declaratory Ruling* to act.

### **Single Provider Rejections**

State and local authorities are prohibited from denying an application *solely* because one or more carriers serve a given geographic market. A locality that denies an application on this ground violates section 332(c)(7)(B)(i)(II) by engaging in unlawful regulation that “prohibits or ha[s] the effect of prohibiting the provision of personal wireless services.” This resolves the existing split among several courts of appeals.

### **Ordinances Requiring Variances**

The Commission declined to preempt local ordinances and state laws that require service providers to obtain a variance regardless of the type of deployment. The record was insufficient to establish a controversy on which the Commission could base its action.

### **Other Issue Addressed**

Several commenters in this docket urged the Commission to deny the *Petition* because of concerns over radio frequency emissions. The Commission reaffirmed that under section 332(c)(7)(B)(iv) state and local authorities are prohibited from denying or delaying action on an application because of “perceived health effects of RF emissions.”