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Virginia Local Government Law

FCC Approves Telecomm Tower Siting "Shot Clock"

By: Andrew McRoberts. ***This was posted Tuesday, November 24th, 2009***

This week, the FCC approved, on a 5-0 vote, an order setting presumptive deadlines for localities to resolve applications for siting of telecommunications facilities. Here is the FCC's ruling.

Under the ruling, localities will have 90 days to consider applications for co-located facilities and 150 days for new tower locations. This ruling interprets the Communications Act section 332(c)(7)(B)(iii) (*see* U.S. Code, Title 47, Section 332 here), which has always required localities to act within "a reasonable period of time." A failure to act on an application within those time frames means that the locality is rebuttably presumed to have NOT acted within the Act's "reasonable period of time," and the applicant can go to court for relief. In court, the locality can defend by proving that the time taken was reasonable, but this exposure to litigation and its defense costs likely will be all the incentive localities will need to comply.

Localities, NATOA, and others are rightfully asking, what makes these particular applicants so important that a special "shot clock" has to be adopted, and force localities to defend their decision to act deliberately on tower siting applications?

Many Virginia localities already have routinely been resolving tower siting applications within the 150-day period set by the new FCC ruling, and many allow co-locations administratively or by another expedited process. However, localities now have less flexibility in difficult, complex or evolving applications (although the ruling does allow for agreed extensions). As we all know, the legislative process is often not speedy and some cases may well call for a longer time frame for review of these applications. But if so, localities will hear the "tick, tick, tick" of the "shot clock" in the background, and now have to face litigation to take all the time required.

On the day of the decision, FCC Commissioner Robert M. McDowell called it a "win-win" in his official statement, but it doesn't really feel like one to many localities.

"Win-win" or not, the FCC's action was better than it could have been.

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The original petition from wireless industry trade association, CTIA, asked for absolute limits of 45 days for applications for siting by co-location and 75 days for applications for new tower siting. As originally requested, a failure to act within those time frames would have meant that the application would be "deemed granted." CTIA came to the FCC armed, allegedly, with 760 examples of new tower applications pending over a year, and 180 still pending after three years. True or not, these examples got the attention of the FCC, concerned with rollout of 4G technology for mobile broadband, which will require many more facilities over the next few years.

Localities, get ready to play a more up-tempo game with wireless service providers.

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