



# **Local Government Review of Collocations –**

## **The Legal Framework**

### **FCC/NATOA Collocation Workshop**

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## Overview of Governing Law

- **47 U.S.C. § 332(c)(7)**
- **Declaratory Ruling, 24 FCC Rcd 13994 (2009)**  
**(“Shot Clock”)**
- **Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96**



## **47 U.S.C. § 332(c)(7)**

- **Governs all personal wireless service facilities siting (new towers and collocations)**
- **Generally preserves state and local authority, subject to specific limitations**
- **Does not address allocation of authority between state and local governments**
- **Disputed cases resolved by courts, not FCC**
  - **Exception for decisions based on radio frequency emissions**



## **Section 332(c)(7)–Limits on State/Local Authority**

- **May not unreasonably discriminate among providers of functionally equivalent services**
- **May not prohibit or have the effect of prohibiting the provision of services**
- **Must act within a reasonable period of time**
- **Denial must be in writing and supported by substantial evidence in a written record**
- **May not regulate based on effect of RF emissions to the extent they comply with FCC regulations**



## **Shot Clock Decision**

- **Interprets “reasonable period of time” and “failure to act” in Section 332(c)(7)**
- **Addresses new towers and collocations**
- **Also interprets “effect of prohibiting”**
  - **May not deny application solely because one or more carriers serve a geographic market**



## **Shot Clock Holding**

- **Presumptively reasonable period of time is 90 days for collocations, 150 days for other applications**
  - **Collocations are unlikely to have significant impacts on the community**
- **If period is exceeded, aggrieved party may file suit within 30 days**
  - **Applicant and government may agree to toll the period**
- **Presumption of reasonable period of time may be rebutted in court**
- **Court decides appropriate relief if it finds a violation**



## **Middle Class Tax Relief and Job Creation Act**

**3 sets of provisions relevant to collocations:**

- **Section 6409(a) [47 U.S.C. § 1455(a)] – local review of tower modification requests**
- **Section 6409(b),(c) [47 U.S.C. § 1455(b),(c)] – federal easements, rights-of-way, and buildings**
- **Section 6206 [47 U.S.C. § 1428] – use of existing infrastructure for National Public Safety Broadband Network**



## **Public Safety Collocations**

- **Statute establishes First Network Responder Authority (FirstNet) within Department of Commerce as nationwide licensee**
- **FirstNet shall use existing infrastructure to the maximum extent economically desirable (Section 6206(b)(1)(C),(c)(3))**
- **FirstNet shall use partnerships with commercial providers to the maximum extent economically desirable (Section 6206(b)(3))**
- **FirstNet shall consult with state and local jurisdictions on facilities placement (Section 6206(c)(2))**



## **Section 6409(a)**

- **State or local government “may not deny, and shall approve” any application covered by section**
- **Applies to collocation, removal, or modification of equipment on wireless tower or base station**
  - **Does not apply to collocation on a structure that is not a wireless tower or base station**
- **Does not apply if action substantially changes the physical dimensions of a tower or base station**



## **Substantial Change in Physical Dimensions**

- **Statute does not define**
- **FCC previously defined “substantial increase in size” in the Nationwide Collocation Agreement, 47 C.F.R. Part 1, App. B**
  - **NCA excludes most collocations that do not involve a substantial increase in size from National Historic Preservation Act Section 106 review**
  - **FCC also used to define what it is a collocation for purposes of shot clock**
- **May be useful as guidance in applying Section 6409**



## **“Substantial Increase in Size”**

**Under the NCA, substantial increase in size means:**

- **Increase in tower height by more than 10% or height of additional antenna array plus 20 feet, whichever is greater**
- **More than 4 new equipment cabinets or 1 new shelter**
- **Protrusion of more than 20 feet or width of tower, whichever is greater**
- **Excavation outside existing leased or owned property and current easements**



## **Administration of Section 6409(a)**

- **Takes precedence over Section 332(c)(7) in the event of any conflict**
- **Coexists with Section 332(c)(7) in the absence of conflict**
- **Does not affect FCC's responsibilities under NHPA and NEPA**



## Conclusion

- **Collocations on structures other than wireless towers and base stations remain subject solely to prior law**
- **Collocations on wireless towers and base stations are subject to new requirement to approve and not deny**
- **Governments and industry are encouraged to work together on procedures that meet the statutory requirements and satisfy both community and industry needs**



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