

## FCC Local and State Government Advisory Committee

Advisory Recommendation Number 4:

### CTIA Petition for Declaratory Ruling (DA 96-2140)

1. On December 16, 1996, the Cellular Telecommunications Industry Association (CTIA) filed a petition seeking a blanket preemption of all local zoning moratoria affecting the siting of wireless telecommunications facilities. CTIA asserted that zoning moratoria violate the Communications Act of 1934 by regulating entry into the mobile services market in violation of section 332(c)(3)(A) and constitutes a prohibition on entry in violation of Section 253. For the reasons discussed below, the LSGAC believes that the Commission should deny the CTIA petition.

2. Congress expressed its clear intent to protect state and local authority over the siting of personal wireless service facilities from interference by the Commission.

A. Neither Section 332 (c)(3)(A) nor Section 253 of the Communications Act govern the adoption of siting moratoria by local governments. Section 332(c)(3)(A) deprives state and local governments of authority to regulate the entry into the commercial mobile services market. Siting moratoria are not entry regulations. Section 253 proscribes state or local regulations that would prohibit services. Siting moratoria do not prohibit services. Furthermore, Section 704 of the Telecommunications Act of 1996 by its own terms provides that it is the *only* section of the Act that affects local land use authority over personal wireless service facilities: "*Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government . . . over decisions regarding the placement, construction and modification of personal wireless service facilities.*" The provisions relied on by the CTIA do not limit or control local land use authority.

B. Section 332(c)(7) reserves to courts of competent jurisdiction the settlement of local zoning disputes. By prescribing that any person adversely affected by a local agency's final action may commence an action in court within thirty days, Congress directed case-by-case resolution of disputes, not blanket Commission action. The Commission is given jurisdiction only over issues related to radio frequency emissions.

3. The record before the Commission does not demonstrate that federal government action is warranted. Local governments are developing new guidelines and policies and revising ordinances to govern placement of wireless facilities. Moratoria have permitted communities, *often in close consultation with industry representatives*, to modify out-of-date regulations and facilitate the placement of facilities. In many communities, the adoption of a moratorium has been followed by the adoption of clear siting policies and procedures that properly balance local safety and aesthetic concerns with the desire of many local residents to have access to reliable personal wireless services.

4. Claims regarding local siting and zoning moratoria are best resolved on a case-by-case basis when the particular facts and circumstances and local needs are fully presented and taken into consideration. It is not in the federal interest to seek to assume control over these essentially local matters. No uniform national solution can meet all the varied local circumstances.

5. The LSGAC further expresses its agreement with the position stated by the United States Conference of Mayors in its Resolution Number 10, adopted in June, 1997. A copy of this resolution is attached to this

Advisory Recommendation.

RECOMMENDATION: For the reasons discussed above, the LSGAC recommends that the Commission deny the CTIA petition.

Adopted by the LSGAC on June 27, 1997

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Kenneth S. Fellman  
Chairman, LSGAC