



December 9, 2009

## NEW RULING AFFECTS WIRELESS TOWER AND ANTENNA APPLICATIONS

On November 18, 2009, the Federal Communications Commission ("FCC") released a Declaratory Ruling ("Ruling") governing cell tower citing in response to a petition filed by CTIA-The Wireless Association ("CTIA"). The Ruling affects how governments process applications for wireless towers and antennas.

1. The FCC established that a reasonable time frame for government action is (1) **90 days for collocation applications**; and (2) **150 days for other applications**. It would be a "failure to act" within Section 332(c)(7) of the Telecommunications Act of 1996, not to grant or to deny an application within these time frames. The application is not deemed granted, however, the applicant may pursue an action in court under Section 332(c)(7)(B)(v). The government will then have the opportunity to present arguments to show that additional time would be reasonable, given the nature and scope of the application.
2. The FCC made clear that it is not preempting shorter State or local time frames and that its Ruling operates independently of such State or local law. Florida law already sets forth the time frames of 45 business days for collocations and 90 business days for other applications (after a review period for application completeness). Fla. Stat. §365.172. [1] Under Florida law, if a local government does not act under such deadline, such application is deemed approved. With the new FCC Ruling, an applicant may pursue remedies under Florida law or pursue an action under federal law for a government's failure to act within the time frame.
3. For current applications pending for 90/150 days or longer as of November 18, 2009, the applicant may provide notice to the government, and file suit if the government fails to act within **60 days** of such notice.
4. Both the FCC and Florida law recognize that the time frames apply after applications are complete. While Florida law requires governments to notify applicants within 20 business days if an application is not complete, the FCC determined that governments must notify the applicant within **30 days** if an application is incomplete.
5. The FCC rejected CTIA's request that local governments may not require a variance for siting wireless facilities. The FCC Ruling further did not preempt application fees or the ability to request additional information that may be needed to process an application.

At least one organization representing governments, NATOA, indicated it will seek a reconsideration of the FCC's Ruling. However, if not stayed, the FCC's Ruling is effective.

[1] GrayRobinson's attorneys were involved in drafting Florida's statute and have drafted code provisions for numerous local governments to implement Florida law governing wireless siting applications. GrayRobinson submitted comments in the FCC proceeding on behalf of states and local governments.