

May 21, 2015

Re: Local Authority Limited as Office of Management and Budget Approves FCC Rules Regarding Cell Tower Collocation

Dear Mayor:

Please bring this notice to the attention of your municipal attorney, your planning and zoning boards, and your land use planner.

We would like to update you on an important development regarding the FCC's new rules, adopted in October of 2014, regarding the collocation of cell towers. As we last informed you in January, these rules had to be approved by the Federal Office of Management and Budget (OMB) (see Mayor's letter available at <http://www.njslom.org/letters/2015-0114-FCCRule.html>). These rules have been approved by OMB, were published in the federal register and took effect on May 18, 2015. A copy of the notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-18/pdf/2015-11810.pdf>

A word about the substantive nature of these rules. Back in October the FCC adopted a Report and Order "...to promote the deployment of wireless infrastructure ... by eliminating unnecessary reviews, thus reducing the costs and delays associated with facility siting and construction" (The regulation has been posted on our website at <http://www.njslom.org/documents/FCC-14-153A1.pdf>).

The Order clarifies several statutory limitations on state and local government authority to review wireless infrastructure siting applications. Simply speaking, this means local entities will have to be more compliant with efforts from wireless companies seeking to add or improve wireless coverage.

The Report and Order updates and tailors the manner in which the FCC evaluates the impact of proposed deployments on the environment and historic properties. It also adopts rules to clarify and implement statutory limitations on State and local government authority to review infrastructure siting applications—including a "deemed granted" remedy (also known as the "Shot Clock") if a State or local government fails to act on an eligible facilities modification request within 60 days of submission. Finally, it adopts an exemption from the environmental public notification process for "temporary towers" that are in place only for short periods of time.

In addition to the 60 day 'deemed granted' provision, which can be extended by mutual agreement or by a written notice to the applicant specifically delineating all missing documents or information, within 30 days of submission, that the application is incomplete, the new rule provides that:

Communities will not be allowed to establish a local moratorium to get breathing room to write new ordinances.

"Collocation" includes the siting of antennas on existing structures, not necessarily existing structures that currently host wireless antennas - this will open up a huge swath of new potential locations for industry, and impact neighborhoods in every corner of targeted communities, all based on decisions made by the industry using their cost and build-out drivers; States and municipalities may continue to enforce and condition approval on compliance with 'generally applicable' building, structural, electrical and safety codes, "and other laws codifying objective standards reasonably related to health and safety.

Significantly, this rule does not apply to local governmental entities acting in their proprietary capacities, i.e., where such entities enter into lease and license agreements to allow parties to place antennas and other wireless service facilities on local-government property.

The streamlined process of limited local review would apply to proposals for modification of existing towers and base stations, which are **not** deemed, by the rules, to "substantially change" the physical dimensions of a tower or base station. The rules limit the definition of the key term, "substantially change" to the following criteria (and the new "streamlined" process would **not** apply, if):

1. the modification involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
2. the modification entails any excavation or deployment outside the current site of the tower or base station;
3. the modification would defeat the existing concealment elements of the tower or base station;
or
4. the modification does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds.
5. For towers outside of public rights-of way:
 - a. The modification increases the height by more than 20 feet or 10%, whichever is greater;;
 - b. The modification protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;
6. For towers in the rights-of way and for all base stations:
 - a. The modification increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater
 - b. The modification protrudes from the edge of the structure more than six feet;

The National League of Cities has promulgated a model ordinance regarding this new rule. It can be found at <http://www.njslom.org/NLC-Model-Ordinance-033115.pdf>.

If you have any questions regarding this notice please contact Ed Purcell Esq. at 609 695-3481 x. 137.

Very truly yours,

William G. Dressel, Jr. Executive
Director