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## Special Telecom Edition of *Municipalis*

### Important New Deadlines for All Pending and Future Wireless Facility Applications.

#### I. FCC Order—November 18th 2009

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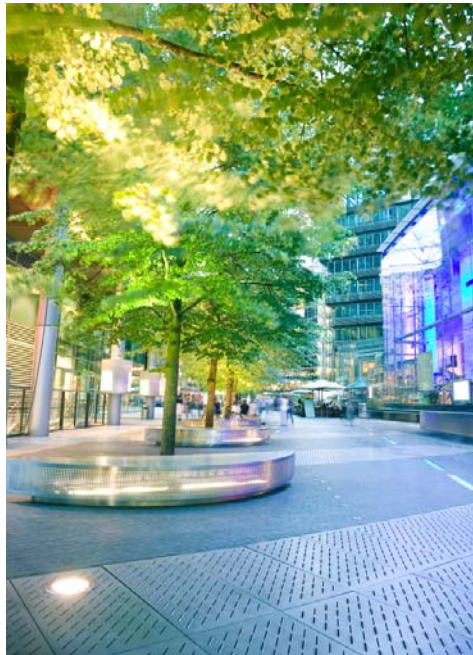
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Municipal officials and planners may have already heard the news: on November 18<sup>th</sup>, the Federal Communications Commission (“FCC”) issued a



Declaratory Ruling in WT Docket No. 08-165, imposing new, and in some cases very short, deadlines for acting on all pending and current applications before local land use boards for siting Personal Wireless Services Facilities (PWSFs) (basically, towers or other facilities for wireless communication). Because the deadlines apply immediately and could fundamentally change how some land use boards do

business, it is very important that Zoning Board of Adjustment members, Planning Board members, local and regional planners, and municipal officials with a role in reviewing such applications become familiar with the new requirements. Failing to observe the requirements of the order could lead to New Hampshire municipalities finding themselves in federal court, in some cases as soon as January 18<sup>th</sup>. For all pending applications, any additional information needed to make a pending application “complete” must be requested by December 18<sup>th</sup> or the time the applicant takes to respond will not be excluded from the new timelines. It is unclear whether land use boards will be able to request additional information after that time, so every effort should be made to review applications and to request additional information promptly.



## II. Executive Summary.

The FCC issued its order in response to a petition brought more than a year ago by the wireless communications industry association, CTIA. The petition alleged that local land use boards were needlessly slowing the deployment of wireless facilities and taking an unreasonable amount of time to review and decide on applications for new facilities, such as towers, and for co-location of new antennae on existing structures, in violation of the 1996 Telecommunications Act. That statute leaves decisions on the siting of wireless facilities to local land use boards, subject to certain federal requirements, including that the boards act on applications “within a reasonable period of time.” The FCC has now created a presumption of what constitutes “a reasonable period of time:” **90 days for applications for collocation and 150 days for other applications**, with some additional, shorter timelines added for applications already pending for those periods before November 18<sup>th</sup> (January 18<sup>th</sup> if applicants provide proper notice). Boards should be aware that “collocation,” generally the attachment of a new antenna to an existing structure, is very broadly defined to include significant increases in the height of structures (up to 10% of the height of the original structure, or 20 feet), and may exceed what is permitted as “collocation” un-

der local ordinances. In addition, the order imposes a deadline for local land use boards to request additional information on applications (30 days from receipt of application, or December 18<sup>th</sup> for applications pending on November 18<sup>th</sup>). If boards miss the new deadlines to act, applicants may file suit in state or federal court within 30 days.



## III. Discussion: The Risks and the Opportunities.

The order requires that local boards and municipalities take immediate steps to address the new timelines. These should include: (A) Prompt review of all pending applications to determine (1) whether additional information is needed, (2) how long each application has been pending, and (3) when action is due on each one; (B) Careful documentation of all timelines, in writing, to be able to track compliance with the new rule, including those periods in which the timelines are tolled due to the applicant needing to provide additional information timely requested by the board; (C) Crafting procedures to review applications prior to acceptance, to ensure that facially incomplete applications are not accepted, and shortly upon receipt by a qualified planner or

other worker, capable of making the determination of whether additional information is needed; and (D) Creating forms or form letters for all of the above, including form agreements to extend the deadlines by mutual agreement when appropriate.

Municipalities should also consider a comprehensive review of their wireless ordinances, board procedures and fee schedules, with particular attention to the application requirements for site review or zoning relief, to address the new requirements. This is a good time to revise, streamline and re-assess. Unfortunately, municipalities that are not pro-active may find themselves either sandbagged (unable to obtain necessary information from applicants because it was not requested in a timely fashion) or in federal court.

## IV. What DTC Can Do to Help.

DTC is developing model materials to address the new requirements, and we would be happy to work with you. In addition, at this time of budget cuts, municipalities should consider whether current staff, or staff as currently assigned, is sufficient to handle the applications for wireless facilities under the new, short timelines. Should fees be increased to allow for additional staff? What



other organizational changes should be made? Is this a good time to revise procedures or zoning ordinances? We would be happy to work with your Boards and/or planners to tailor the best solutions for your community.

### Sidebar - Important Deadlines.

- **November 18, 2009:** FCC Issues Declaratory Ruling in WT Docket No. 08-165, imposing new deadlines on all applications to local land use boards for applications for Personal Wireless Services Facilities.

#### For Pending Applications:

- **December 18, 2009:** New Deadline for local land use boards to notify all applicants for Personal Wireless Services Facilities that the board needs “additional information.”
- **January 18, 2009:** New deadline for decisions on all pending applications for Personal Wireless Services Facilities that were pending for longer than 90 days (for collocation requests) and 150 days (for all other requests) on November 18, 2009 (if the applicant so notifies the local land use board).

#### For All New Applications Received After November 18, 2009:

- **30 days** from date application received to notify applicant that it is not complete and more information is required.
- **90 days** from date application received for local land use board to decide on applications for collocation, which is broadly defined.
- **150 days** from date application received for local land use board to decide on all other applications for Personal Wireless Services Facilities.
- If local land use board fails to act within the 90 or 150 day period, applicant has **30 days** from those deadlines to file an action in court for a violation of the federal Telecommunications Act.

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