



April 25, 2012

Via email: fsembach@pasen.gov

Pennsylvania Senate
Attn: Communication and Technology Committee
Room 170 Capitol Building, Senate Box 203048
Harrisburg, Pennsylvania 17120-3048

RE: Public Hearing on Senate Bill 1345 - Procedures for Wireless Communications
Facilities and Wireless Support Structures

To the Members of the Communications and Technology Committee:

On behalf of the Pennsylvania Wireless Association ("PWA"), I am writing to offer written testimony on Senate Bill 1345, introduced by Chairman Folmer et. al. on November 22, 2011. PWA is comprised of members of all sectors of the wireless industry. These individuals are committed to educating customers and public officials about our industry and the critical role it plays in Pennsylvania. Our goal is to cultivate relationships between the various members of the industry and the local communities they serve to help ensure the continued growth and development of our industry.

PWA applauds Chairman Folmer and the fellow bill sponsors for proposing to create regulatory incentives to collocate wireless facilities on existing support structures. In doing so, the bill sponsors clearly recognized that, as discussed below, collocation provides maximum benefit for all stakeholders involved, including zoning authorities, the wireless industry, and the Pennsylvania communities that they serve.

BACKGROUND

As of December 31, 2009, the wireless adoption rate in the Commonwealth of Pennsylvania was 86%, with a total of 10,867,000 wireless subscribers statewide, representing a 37% increase over the number of subscribers in the Commonwealth as of December 2005.¹ This rapid growth in wireless adoption across the Commonwealth is consistent with national trends, where estimates show that by 2014, US wireless networks will carry 40 times the amount of traffic carried in

¹ Source: FCC

2009.² Demand for advanced wireless services is undoubtedly on the rise, and in order to accommodate that demand, more wireless infrastructure will necessarily be deployed within the Commonwealth. It is vitally important that this infrastructure get to market in the timeliest and most efficient manner, while also taking into account the legitimate health, safety, and welfare concerns of each community in which these facilities are located.

Unfortunately, there are numerous jurisdictions nationwide (and in some parts of Pennsylvania) that have failed to maintain a proper balance between ensuring reliable access to state of the art wireless communications services while also preserving the intrinsic aesthetic character of their communities. Local governments have adopted regulations that impose significant height restrictions, severely limit zoning districts in which wireless infrastructure can be located, impose unreasonable conditions, and require conditional use permits for collocation of wireless facilities on previously permitted wireless support structures. At a time when it is especially critical to keep pace with the ever-growing demand for advanced wireless services, the added delays and increased costs of zoning wireless facilities present a formidable challenge to their efficient and timely deployment.

Of particular concern in the present proceeding are local zoning ordinances that subject collocations and modifications to *de novo* discretionary zoning review. When a tower is initially permitted it passes a jurisdiction's health, safety and welfare review with regards to its placement and its use for the provision of wireless service. The collocation of additional antennas should not trigger a full zoning review because: public health issues (i.e. RF emissions) are by statute exclusively within the purview of the FCC; safety issues are addressed through the submission of an engineering report stamped by a licensed engineer at the building permit stage; and welfare issues (typically aesthetics, property value, etc.) are not an issue because the tower itself is essentially unchanged. Simply put, discretionary zoning review of collocation is unnecessary and contrary to the interests of the citizens, businesses, and first-responders who are growing increasingly dependent on advanced wireless services in their daily lives. Creating regulatory incentives to collocate (through, for example, a collocation-by-right mandate) would, however, serve a dual-purpose of allowing the rapid deployment of the facilities necessary to accommodate next-generation mobile broadband services, while at the same time ensuring the preservation of the aesthetic character of the communities in which new wireless facilities are located.

² *Id.*

CURRENT REGULATORY LANDSCAPE

Over the past several years, many state and local jurisdictions have adopted zoning regulations that streamline the collocation process. Florida, Tennessee, North Carolina, Georgia, and New Jersey have all enacted various forms of legislation that provide for streamlined review of collocations and modifications on existing support structures.³ In each case, the state legislatures rightly recognized that collocation on existing wireless infrastructure is in the best interests of all stakeholders involved.

Similarly, on February 22, 2012, the federal government enacted its own collocation-by-right legislation.⁴ § 6409 of the Middle Class Tax Relief and Job Creation Act is as follows:

Sec. 6409. WIRELESS FACILITIES DEPLOYMENT

(a) FACILITY MODIFICATIONS.—

(1) **IN GENERAL.**—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) **ELIGIBLE FACILITIES REQUEST.**—For purposes this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves –

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.**—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

³ See Florida Statutes § 365.172(12); Tennessee Code Annotated § 13-24-305; North Carolina Senate Bill No. 831; Official Code of Georgia Annotated § 36-66B-1 – 36-66B-4; and New Jersey Senate Bill No. 2989.

⁴ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409 (2012).

In addition to the recently enacted federal collocation-by-right legislation, it is also important to note that in 2009 the FCC adopted regulations designed to thwart delays in the wireless siting process by requiring local zoning authorities to act on an application to collocate on existing communications towers within 90 from the date on which the application was received by the jurisdiction.⁵

SENATE BILL 1345

PWA is encouraged by the introduction of Senate Bill 1345; however, given the recent enactment of federal siting legislation described above, PWA asserts that the Commonwealth of Pennsylvania would not be well served by a bill that duplicates – or worse yet – conflicts with currently controlling federal law. Instead, PWA contends that a statewide siting bill in Pennsylvania should augment and clarify applicable federal regulations. With the foregoing in mind, PWA makes the following recommendations:

- **Clarify that the definition of “base station” as used in the federal collocation-by-right legislation includes non-traditional support structures, including rooftops, light standards, utility poles, and other free-standing vertical structures.** As with collocation on traditional wireless towers, streamlined zoning review of collocation on non-traditional vertical infrastructure ensures efficient deployment of advanced wireless facilities while minimizing any potential adverse visual impact.
- **Clarify that any “eligible facilities request” (as such is defined in the federal collocation-by-right legislation) to collocate on a wireless tower located within the Commonwealth of Pennsylvania may only be reviewed by a local zoning and permitting authority for the purpose of determining whether the proposed collocation complies with applicable structural standards.** This regulation will ensure that there are no delays due to: (i) unnecessary verification of compliance with RF emissions regulations (which is solely within the purview of the FCC), (ii) unnecessary review of the business justification for a proposed collocation (since regulation of the technical or operational aspects of a wireless network exceed the scope of a municipality’s land use authority), or (iii) unnecessary design review to verify compatibility with the surrounding visual landscape (since the collocation would involve a lawfully permitted and previously existing wireless tower).
- **Clarify that, in accordance with § 7210.502 of the Pennsylvania Uniform Construction Code, any “eligible facilities request” receiving the streamlined permitting review described above will be granted or denied within 30 business**

⁵ See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(C)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 (2009).

days of the filing date. Timely decision-making focused solely on matters within the jurisdiction of a local zoning and permitting authority will eliminate unnecessary delays in the process.

- **Expand efforts to educate local policy-makers about the wireless industry.** Helping local policy-makers understand the intricacies of mobile broadband technologies and effective wireless siting policy will lead to a more rational and transparent process for all interested parties.

CONCLUSION

As the statewide association for members of all sectors of the wireless industry, PWA appreciates the opportunity to participate in the public hearing on Senate Bill 1345. We applaud the Pennsylvania House of Representatives for introducing legislation aimed at streamlining the process of collocating wireless facilities on existing wireless support structures within the Commonwealth. However, since the time of Senate Bill 1345's introduction, the regulatory landscape has changed significantly, with the notable enactment of § 6409 of the Middle Class Tax Relief and Job Creation Act. PWA therefore urges the Consumer Affairs Committee to reconsider the contents of its siting bill, and further recommends implementing the items outlined above. In this regard, we welcome the opportunity to participate in this process going forward.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nick', followed by a long horizontal stroke.

Nick Limberopoulos
Member, Regulatory and Legislative Committee of the
Pennsylvania Wireless Association