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## **FCC Examines Siting Policies on Local Wireless Infrastructure.**

The FCC is taking a fresh look at its rules for local governments as they regulate wireless infrastructure siting. On Sept. 26, the FCC released a Notice of Proposed Rulemaking (NPRM) that scrutinizes local government policies and practices on wireless infrastructure collocation, siting and the “shot clock.”

At issue is Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, which states that “... 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.”

In this NPRM, the FCC seeks input from stakeholders on how to define the following:

- transmission equipment
- existing wireless tower or base station
- substantially changing the physical dimensions, and
- collocation.

The NPRM is not seeking to revisit the issue of what constitutes a “reasonable period of time” but rather is examining the real-world effect of the “shot clock” ruling. The shot clock refers to the commission’s interpretation of a “reasonable period of time” for a state or local government to act on a request for placement, construction or modification of personal wireless service facilities.

### **Wireless Infrastructure Notice of Rulemaking**

The FCC determined that a “reasonable period of time” for a local government to act is 90 days for processing collocation applications and 150 days for processing all other siting applications; this interpretation was later affirmed by the U.S. Supreme Court in *FCC v. City of Arlington*. If the local government body fails to act on wireless siting applications within the 90- or 150- day window, the applicant then is able to pursue judicial relief within the next 30 days. However, in the event that a local government entity finds the application “incomplete” (within in the first 30 days), the 90- and 150-day requirement can be adjusted. The FCC now asks whether further clarification is needed as to when to deem a siting application “complete.”

The FCC also seeks comment on local government treatment of technology like distributed antenna systems (DAS). Some jurisdictions have determined that DAS does not fall within the scope of the shot clock because these systems tend to include a large number of sites, densely situated and often with a large presence in public rights of way. The FCC now seeks comment on whether there is any reason to treat DAS differently from other technologies like small cells.

Additionally, the FCC is seeking comment on whether local government ordinances that establish a preference for placing wireless facilities on local government property creates an unfair discriminatory effect against providers of functionally equivalent services.

Regarding wireless communications facilities siting, NACo supports preservation of local authority with minimal limitations and supports nondiscriminatory, timely action. Counties are encouraged to examine their wireless siting practices and policies and ensure that county policies are in accord with existing FCC regulations. Counties that wish to comment on the FCC NPRM should contact Yejin Jang, telecommunication and technology associate legislative director, at [yjang@naco.org](mailto:yjang@naco.org) or 202.942.4239.

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