

Cellular Communication Advisory Committee
Discussion Ground Rules
January 25, 2011

1. Treat one another with respect. Each person deserves to be heard.
2. Recognize that reasonable people can and do disagree. On some topics, you can agree to disagree.
3. Engage in active listening. Listen to understand rather than listening to find points with which you can disagree.
4. Focus on ideas, not people.
5. Emphasize dialogue over debate: dialogue is a mutual collaboration to make communication successful (debate emphasizes opposition—it only works if someone else judges who is right or wrong).
6. Take turns when speaking; preferably, take short turns. Allow others to finish their points; avoid side conversations.
7. Follow normal business meeting protocols, e.g., turn off or put cell phones on vibrate. etc.

Cellular Communications Advisory Committee

Possible “ground rules” for Committee Procedures

Facilitators’ recommendations:

- Conducting meetings with “soft” version of Robert Rules of Order: Relying on Robt.’s rules when needed to make process decisions
- No quorum needed to conduct committee work: quorum of 2/3 members required to endorse final “recommendations to the County Administrator.”
- Communication between Committee members and outside resources (Wade-Trim, Cty. Attorney, Cty. Administrator) be channeled through facilitators.

Other possible groundrules:

- Members should not discuss committee work with media until final recommendations are made.
- Observers may not make comments until the end of meetings and only when time permits/Committee agrees to hear comments. (We invite input from representatives from Wade-Trim; County Attorney’s office; County Administrator’s office when it will be helpful to the Committee).

CELLULAR COMMUNICATIONS ADVISORY COMMITTEE

MEMBERSHIP LIST

NAME	AFFILIATION	PERSPECTIVE
Stephanie Agliano	Tampa Electric	Affect of Government Regulation on Utility Provider
Bill Cook	Private Citizen	Impact of Towers
Laura Belflower	Private Attorney	Previous Zoning Administrator & Hearing Officer, Attorney Rep. for Cell Towers
Will Bissitt	Real Estate Broker/Developer	Affect of Cell Towers on Property Marketability
Michael Brooks	Private Attorney	Real Estate, Land Use and Citizen Interests
Richard E. Davis	Private Attorney	Real Estate and Land Use Attorney, Special Hearing Master for Several Local Governments
Carrie Grimail	Citizen Advocacy	Impact of Towers on Neighborhood Aesthetics and Children
Lisa Williams	Responsible Tower Placement of Tampa	Impact of Towers on Neighborhood Aesthetics
Manny Perotin	Private Citizen	Impact of Towers on Neighborhood Aesthetics & Children
David Smith	Private Attorney	Previous Tampa City Attorney, now represents Airport Authority with need to protect air space
Jim Porter	Private Attorney	Represents Clients with Interest in Siting Cell Towers, including School Board
Michael Rothenberg	Private Citizen	Impact of Towers
Lee Vaughan	Private Citizen	Impact of Towers on Neighborhood Aesthetics & Children
Denise Verril	Private Citizen	Impact of Towers on Neighborhood Aesthetics & Children
Dr. Tom Weller	USF	Director of Center for Wireless & Microwave Information Systems
Dr. Tom Mason	USF	Environmental & Occupational Health

CELL TOWER SITE LOCATIONS

SITE LOCATION	CARRIER #1	CARRIER #2	CARRIER #3	CARRIER #4
BELLE WITTER	METRO PCS	SPRINT	CLEARWIRE	
BENITO	VERIZON	T-MOBILE	METRO PCS	
CANNELLA	T-MOBILE	METRO PCS	CLEARWIRE	
CIMINO	T-MOBILE			
CHIARAMONTE	RIDAN			
CLAYWELL	CLEARWIRE			
GAITHER	VERIZON			
LETO	METRO PCS	T-MOBILE	CLEARWIRE	
MANN (end of Feb. 2011)	CLEARWIRE			
MC KITRICK	VERIZON			
MIDDLETON	METRO PCS	CLEARWIRE		
MILES	SPRINT	VERIZON	CLEARWIRE	
MINTZ	VERIZON	CLEARWIRE	T-MOBILE	
OAK GROVE	CLEARWIRE			
OAK PARK	CROWN CASTLE			
PRIDE	T-MOBILE	VERIZON	CLEARWIRE	
ROBLES	METRO PCS	CLEARWIRE		
ROSSAC	CLEARWIRE			
WIMAUMA	METRO PCS			

Hillsborough County Land Development Code

Sec. 6.11.29. - Communication Facilities, Wireless

- A. Wireless Communication Antenna (WCA). To encourage collocation and to minimize the number of Wireless Communication Support Structures (WCSS), Wireless Communication Antenna (WCA) shall be evaluated as an accessory use on or attached to any structure, including existing WCSSs, without additional zoning review.
- B. Wireless facilities that are concealed within a legally permitted structure and are not visible or discernable as a wireless communication facility shall be exempt from the requirements of this Section.
- C. Except as provided above, wireless communication facilities shall be permitted in Planned Development (PD) districts approved after October 1, 2005 only if expressly allowed as a specifically identified use by the conditions of approval. In such cases, the location of the facility, height of the antenna support structure and design and/or camouflage requirements shall be addressed by the PD site plan and conditions.
- D. Wireless Communication Support Structures (WCSS) General Criteria.
1. The WCSS may be located on a zoning lot containing other principal uses. The facility may be located within an area smaller than the minimum lot size of the applicable zoning district provided the zoning lot on which it is located complies with the applicable minimum lot size or, in non-residential and non-agricultural districts, is a legal nonconforming lot. Required yards and setbacks shall be measured from the boundary of the zoning lot. The area within which the WCSS is located (WCSS Area) shall be the area subject to all other the requirements of this section, unless otherwise provided herein.
 2. WCSS facilities shall at a minimum, meet the same required yards as those for principal structures in the various districts as set forth in 6.01.01. However, if a greater separation is achieved through a setback, where the zoning lot on which the WCSS is:
 - a. Adjacent to the rear or side yard of residentially zoned property which is developed or developable for residential use, the minimum setback from the property line abutting said residential property shall be one foot for every three feet of structure height;
 - b. Zoned industrially and is adjacent to industrially zoned property, there shall be no additional setback; or
 - c. Adjacent to other type of property, the minimum setback from that property line shall be 20 percent of the structure height,Unless the applicant can demonstrate, to the satisfaction of the reviewing entity, that one or more of the following mitigating factors justifies a reduction in the setback. The reduced setback, if approved, shall not be less than the required yards for principal structures in the applicable zoning district.
 - a. The locating of the WCSS area in compliance with the setbacks would result in the removal of trees which could be saved by reducing the setback;

- b. The line of sight of the base of the WCSS is obscured from the primary vehicular and pedestrian movements on the adjacent properties by intervening buildings, trees, landscaping, or other such screen;
- c. An intervening use or activity, such as a wetland, retention area, etc., exists on the adjacent property;
- d. Compliance with the additional setback would prevent the collocation of additional WCA on the WCSS.
- e. The owner of the tower commits, in writing, to the reduction of the height of the tower within three years of its construction to a height which complies with the additional setback; or
- f. Other such mitigating factor.

3.

WCSS Design Requirements and Permitting Procedures

The following design criteria and permitting procedures shall apply to all WCSS as defined by this Code.

a.

Design Criteria

All new WCSS, with the exception of those proposed to be located in the AM, AI, CI and M zoning districts, and PD and IPD districts which generally permit the AM, AI, CI or M use categories, shall be camouflaged as defined by this Code. WCSS located in the AM, AI, CI and M zoning districts, or PD and IPD districts which generally permit the AM, AI, CI or M use categories, may be of a monopole, lattice or camouflage design.

Examples of camouflaged towers are contained in the Wireless Communication Support Structure Technical Manual. Except as provided in 3.b.2 below, the applicant shall select the proposed structure type and shall demonstrate how the selection is of a nature or structure type that would be expected or anticipated to occur or be constructed in the general area of the proposed tower location.

b.

Review Process

1.

Completeness Review

All applications for WCSS are deemed submitted or resubmitted on the date the application is received by the Administrator. If the Administrator fails to notify the applicant in writing that the application is not completed in compliance with this Code within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed complete, properly submitted and review shall continue:

Once an application is corrected either by submission of the additional information, or it is considered complete by the lack of comments from local government agencies that it is incomplete within the 20 business day time frame, then the review moves forward and a decision must be rendered within the normal timeframes of review, as outlined in Sec. 10.02.02.C of this Code.

Failure to grant or deny a properly completed application within the timeframes designated for

review renders the application automatically approved and the applicant may proceed with placement of the new tower without interference or penalty.

2.

New WCSS shall be reviewed as a Special Use pursuant to Section 10.02.00, except that Section 6.11.29.D.3.b.1 above regarding application completeness review shall apply in the following circumstances:

All WCSS proposed to be located in RSC, RDC, RMC and residential PD and IPD zoning districts; and,

All WCSS proposed to be located in CPV, BMS, UAC and TND districts permitting residential uses, excluding parcels developed with office or commercial uses; and,

WCSS 100 to 200 feet in height proposed to be located in the ASC-1 and AS-1 districts; and,

WCSS 100 to 200 feet in height proposed to be located within 250 feet of the ASC-1, AS-1, RSC, RMC, RDC and residential PD and IPD zoning districts; and,

WCSS 100 to 200 feet in height proposed to be located within 250 feet of CPV, BMS, UAC and TND districts permitting residential uses, excluding parcels developed with office or commercial uses.

3.

WCSS and Schools

New WCSS to be located on the campus of a school shall be reviewed as a Special Use pursuant to Section 10.02.00 and Section 6.11.29 D.3.b.1. above regarding completeness review shall apply.

i.

The WCSS must be designed and built as a camouflaged WCSS unless the following additional criteria are met:

a.

The WCSS is smaller than 36 inches in diameter at the narrowest point on the WCSS; and

b.

The WCSS is designed to house at least three wireless carriers; and

c.

The setback from residentially zoned property is at least one (1) foot for every four (4) feet of structure height.

d.

All cables are placed internal to the WCSS but the antennae may be external.

4.

All other proposed WCSS shall be reviewed pursuant to Section 10.01.00, except that Section 6.11.29.D.3.b.1 above regarding application completeness review shall apply. The table below identifies the zoning districts in which specific camouflage structure types are presumed compatible. If an alternative design to those identified below is desired, the request shall be reviewed pursuant to Section 10.02.00 as a Special Use, except that Section 6.11.29.D.3.b.1 above regarding application completeness review shall apply.

Camouflage Structure Type	Location
Flagpoles	<p>BPO, OR, R-BPO, CN & CG districts.</p> <p>PD and IPD districts which generally permit the BPO, OR, CN or CG use categories*.</p> <p>CPV, BMS, UAC and TND districts developed with, or restricted to, non-residential uses.</p> <p>Also A, AR, AS-0.4, AS-1 and ASC-1 zoned properties developed with sports/recreation facilities.</p>
Bell towers, clock towers	<p>A, AR, AS-0.4, AS-1, ASC-1, BPO, OR, R-BPO, CN & CG districts.</p> <p>PD and IPD districts which generally permit the A, AR, AS-0.4, AS-1, ASC-1, BPO, OR, CN and CG use categories*.</p> <p>CPV, BMS, UAC and TND districts developed with, or restricted to, non-residential uses.</p>
Parking lot lights with internal antennas and close mounts, provided the WCSS does not exceed the height of existing light structures by more than 20 feet	<p>BPO, OR, CN & CG districts.</p> <p>PD and IPD districts which generally permit the BPO, OR, CN and CG use categories*.</p> <p>CPV, BMS, UAC and TND districts developed with non-residential uses.</p>
Tree-type camouflaged	<p>A, AR AS-0.4, AS-1, ASC-1, BPO, OR, CN & CG districts.</p> <p>PD and IPD districts which generally permit the A, AR, AS-0.4, AS-1, ASC-1, BPO, OR, CN and CG use categories*.</p> <p>CPV, BMS, UAC and TND districts developed with, or restricted to, non-residential uses.</p>

* Only those PD and IPD districts approved before October 1, 2005
5.

The Administrator shall grant or deny each properly completed application for collocation reviewed pursuant to Section 10.01.00, except that Section 6.11.29.D.3.b.1 above regarding application completeness review shall apply, but in no case later than 45 business days after the application is determined to be properly completed.

c.

Camouflage Waiver Requirements

The Land Use Hearing Officer, pursuant to the procedures at 10.02.00 and in accordance with subsection 11.04.02.D, shall have the option to waive or modify the camouflage requirements if the applicant demonstrates that the camouflage designs contained in the Wireless Communication Support Structure Technical Manual would be more visually obtrusive (present a wider profile, attract attention more through color, pattern, movement or other characteristics, or would be more out of character with the area in which the WCSS is to be located) than the proposed design.

4.

The maximum structure height is 200 feet. Any WCSS over 200 feet shall comply with the requirements for a Radio/Television Transmitting or Receiving Facility.

5.

In all residential, AS-1, ASC-1 and C-N districts, any accessory building, such as a small maintenance building, shall be architecturally finished to be compatible with the neighborhood.

6.

As regards buffering and screening, such facilities shall be considered as a Group 5 use (see 6.06.06) in, or adjacent to all residential, AS-1, ASC-1, C-N, C-G and CI districts. Additionally, Wireless Communication Towers shall be considered a Group 6 use in or adjacent to all M districts. In all other districts, such facilities shall be considered as Group 4 uses. In all cases, Wireless Communications Towers shall meet any applicable Natural Resource (4.01.00) and Landscaping (6.06.00) regulations. For purposes of determining which buffering and screening requirement is applicable, the evaluation shall be made at the zoning lot boundary. In most instances, the required screening shall be located along the boundary of the WCSS area. When, however, the zoning lot is adjacent to existing residences or platted residential subdivisions, the Administrator may require the screening to be placed along all or a portion of the zoning lot boundary based upon characteristics of the subject site and of adjacent land uses. Factors to be considered in the Administrator's determination of the location of screening shall include, but not be limited to:

a.

The distance of the WCSS from existing residences.

b.

The amount of existing natural or man-made screening between the WCSS area and adjacent residences or platted residential lots.

c.

The size of the zoning lot containing the WCSS area.

d.

The number and orientation of adjacent residences or platted residential lots.

7.

Section 6.11.29.D.6 shall apply to WCSS on school campuses unless one of the following criteria is met:

a.

The WCSS maintains a setback from ASC-1, AS-1, RSC, RMC, RDC, CPV, BMS, UAC, residential PD and IPD zoning districts and TND districts permitting residential uses, excluding parcels developed with office or commercial uses, of at least one (1) foot for every four (4) feet of structure height; or

b.

There is intervening existing screening, such as but not limited to, landscaping, existing structures, an existing wall or fence, or a berm between the portion of the WCSS immediately facing residentially zoned property and the residentially zoned property. If this criterion cannot be

met, only the portion of the WCSS immediately facing the residentially zoned property shall be subject to Section 6.11.29.D.6.

8. There shall be adequate room on site for a minimum of one maintenance vehicle to park and maneuver. The driveway and parking space do not need to be paved if they are able to be kept dust-free.
9. There shall be no restriction on or interference with air safety and air operations, as per FAA, Hillsborough County Aviation Authority, or MacDill AFB requirements. Additionally, all WCSS and Radio and Television Transmitting and Receiving Facilities shall comply with all FCC permit approvals regarding Historic Properties.

E.

A new WCSS shall not be approved unless it can be documented by the applicant, to the satisfaction of the Administrator, that there is a need for the new WCSS which cannot be met by an existing or approved WCSS, on a public structure, or on some other appropriate structure. Factors that can be considered in this determination will include, but not be limited to one or more of the following:

1. New WCA(s) would exceed the structural capacity of existing and approved WCSS/ other appropriate structures, considering existing and planned use of those WCSS/ structures, and existing and approved towers/structures cannot be reinforced to accommodate new WCA(s) at a reasonable cost.
2. New WCA(s) would cause Radio Frequency (RF) interference which cannot be prevented at a reasonable cost.
3. Existing or approved WCSS's do not have sufficient space on which new WCA's can be placed or are not located so as to allow new WCA's to function effectively and reasonably in parity with other similar equipment in place or approved.
4. Other reasons that make it impracticable to place the equipment planned by the applicant on existing and approved towers or other appropriate structures or the leased property.
Documentation shall be submitted to the Administrator at the time of the permit application and shall contain, at a minimum, if applicable, a signed statement from appropriate accredited experts, including but not limited to a radio frequency engineer and/or a structural engineer, outlining the reasons as to why the proposed WCSS is needed. Appropriate support material, for verification by staff, shall be included.
Reasonable cost shall be defined as the point up to which the cost, including any leasing agreement, of collocation exceeds what would be the cost for the applicant to construct a new WCSS. Construction costs shall not only include costs associated with the actual construction of a new WCSS (including building permits), but also those costs that would be incurred by the applicant in order to secure either a permit, if required for the construction of a new WCSS.

F.

The applicant for a new WCSS shall submit a letter of intent committing the WCSS owner and its successors to allow shared use of the WCSS as per the criteria established above or to allow a replacement tower to be erected within the WCSS Area provided that the replacement is physically and contractually feasible and that the cost of modifying or replacing the WCSS to accommodate the collocated WCA is borne by the collocating company. Said letter of intent shall be filed in the Office of the County Clerk and the Administrator prior to any building permit being issued. Reasonable charges (costs) shall be as outlined in E. above.

G.

In order to provide the opportunity for other telecommunication users to collocate on the WCSS, the applicant shall notice other potential users of the new WCSS offering an opportunity for collocation. If during the permit review period, another potential user requests collocation in writing to the Administrator, the request shall be accommodated, unless it can be documented as outlined in E. above, that collocation is not possible.

H.

The Administrator shall approve requests for collocation of a WCA on an existing and/or permitted facility; a permit will not be required. If the height of the facility increases as a result of collocation, the Administrator may waive any additional setback that would be required per D.2. above. If deemed appropriate and compatible by the Administrator, the Administrator may permit the height of the facility to exceed the maximum structure height, as outlined in D.3. above, by 25 feet in order to allow collocation.

I.

An existing WCSS may be replaced for purposes of accommodating collocation of other WCAs or otherwise, without additional zoning action, provided that:

1.

The replacement WCSS does not exceed 200 feet or as provided in H. above.

2.

The replacement WCSS is located within the same or adjacent zoning lot as the existing WCSS and is located so as to maximize compliance with existing setbacks.

3.

The existing WCSS is removed within 90 days of the completion of the replacement WCSS and the relocation of the WCA(s).

4.

If the location of the replacement WCSS is such that the existing WCSS must be removed before the replacement WCSS is constructed, a temporary portable antennae support facilities may be used, but must be removed within 30 days of the completion of the replacement WCSS and the relocation of the WCA(s).

J.

Any WCSS which is abandoned shall be removed or demolished either by the owner of the tower, or by the property owner, but not at Hillsborough County's expense. For the purposes of this section, abandoned shall mean that no commercial operation of any WCA or other commercial antenna on the WCSS has occurred for a one-year period.

(Ord. No. 98-43, § 2, 7-17-98; Ord. No. 01-30, § 2, 11-15-01; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 02-22, § 2, 11-13-02; Ord. No. 03-9, § 2, 6-5-03; Ord. No. 05-10, § 2, 6-16-05, eff. 10-1-05; Ord. No. 05-22, § 2, 11-17-05; Ord. No. 06-18, § 2, 8-1-06; Ord. No. 08-29, § 2, eff. 2-1-09; Ord. No. 09-52, 6-11-09, eff. 6-18-09)

Comprehensive Plan - Future Land Use Element

Telecommunications Facilities

Objective 46: To ensure that telecommunications facilities are located in a manner that is compatible (as defined in Policy 1.4) with surrounding land uses and compliant with State and Federal law.

Policy 46.1:

Telecommunications facilities and towers should comply with applicable Land Development Code regulations including but not limited to setbacks, buffering, screening and camouflaging.

Policy 46.2:

Hillsborough County shall comply with State and Federal laws relating to the location of telecommunications facilities.

Policy 1.4:

Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean “the same as.” Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.

APPENDIX B: DEFINITIONS

Compatibility - Compatibility is defined as the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include the following: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean “the same as.” Rather, it refers to the sensitivity of development proposals in maintaining the character of existing development.

Summary of Section 365.172, Florida Statutes – The Emergency Communications Number E911 Act

Section 365.172, Florida Statutes, (the “Act”), prescribes standards in subsection (12) that apply to a local government’s actions, as a regulatory body, in the regulation of the placement, construction or modification of a wireless communications facility.

“Wireless communications facility” is defined to mean any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

“Collocation” is defined to mean the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.

365.172(12)(a) Provides that collocation among wireless providers is encouraged by the state and establishes criteria for collocation that if met subject the collocation of antennae to only building permit review.

365.172(12)(b)1. Local government land development and construction regulations for wireless communications facilities and local government review of applications for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues

365.172(12)(b)1. Local government regulations or review may not require information on or evaluate a wireless provider's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site. This prohibition also applies to information on the evaluation of the wireless provider's designed service unless the information or materials regarding the designed service area are directly related to an identified land development or zoning issue. The prohibitions prescribed by this subsection to not apply if the wireless provider voluntarily offers the information to the local government

The Act provides that information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, or that the proposed height of a new or modified tower or initial antennae placement or collocation is necessary to provide the provider's designed service.

365.172(12)(b)1.&2. Provides that the Act does not limit local governments from reviewing any applicable land development or zoning issue addressed in their adopted regulations that does not conflict with the Act, including, but not limited to, aesthetics, landscaping, land use based location priorities, structural design, and setbacks. However, any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.

365.172(12)(b)3. Allows local governments to exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district.

365.172(12)(b)5. Local governments may impose design requirements, such as requirements for designing towers to support collocation or aesthetic requirements but shall not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those in then Florida Building Code and that apply to all similar types of construction.

365.172(12)(c) Local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

365.172(12)(d) Provides timeframes for the review by local governments of properly completed applications for collocation and wireless communications facilities.

365.172(12)(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.

Summary of Title 47, United States Code, Section 332 – Mobile Services (from the Telecommunications Act of 1996)

47 U.S.C. 332(c)(7) provides that except as provided further in paragraph (7), nothing in Chapter 5. of Title 47 U.S.C. shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

“Personal wireless service facilities” is defined to mean facilities for the provision of personal wireless services.

“Personal wireless services” is defined to mean commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

47 U.S.C. 332(c)(7)(B)(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government or instrumentality thereof

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

47 U.S.C. 332(c)(7)(B)(ii) A state or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

47 U.S.C. 332(c)(7)(B)(iii) Any decision by a state or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

47 U.S.C. 332(c)(7)(B)(iv) No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions.

C**Effective: February 8, 1996**United States Code Annotated Currentness

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication (Refs & Annos)Subchapter III. Special Provisions Relating to Radio (Refs & Annos)Part I. General Provisions

→ § 332. Mobile services

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will--

- (1) promote the safety of life and property;
- (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;
- (3) encourage competition and provide services to the largest feasible number of users; or
- (4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of Title 5 or section 1342 of Title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

- (1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that--

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to August 10, 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, ex-

cept that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C.A. § 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C.A. § 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

- (i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and
- (iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section--

- (1) the term “commercial mobile service” means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;
- (2) the term “interconnected service” means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B) of this section; and
- (3) the term “private mobile service” means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

CREDIT(S)

(June 19, 1934, c. 652, Title III, § 332, formerly § 331, as added Sept. 13, 1982, Pub.L. 97-259, Title I, § 120(a), 96 Stat. 1096; renumbered § 332, Oct. 5, 1992, Pub.L. 102-385, § 25(b), 106 Stat. 1502, and amended Aug. 10, 1993, Pub.L. 103-66, Title VI, § 6002(b)(2)(A), 107 Stat. 393; Feb. 8, 1996, Pub.L. 104-104, § 3(d)(2), Title VII, §§ 704(a), 705, 110 Stat. 61, 151, 153.)