

FCC Regulations on Wireless Infrastructure

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ROADMAP

- **THE SHOT CLOCK DECLARATORY RULING (2009)**
- **THE INFRASTRUCTURE ORDER (2014-15)**

THE SHOT CLOCK

“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 USC § 332(c)(7)(B)(ii)



THE SHOT CLOCK

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THE SHOT CLOCK (2009)

CTIA PETITION FOR DECLARATORY RULING

“CTIA–The Wireless Association® respectfully asks the Commission to interpret ambiguous provisions of Section 332(c)(7) of the Communications Act of 1934 to ensure that the federal goals favoring the deployment of wireless telecommunications networks and competition are not undermined by the state and local zoning authorities charged with taking action on wireless facility siting requests. *Specifically, CTIA asks the Commission to resolve open questions regarding the time frames in which zoning authorities must act on siting requests*, the importance of competitive entry by multiple providers in each market, and the impropriety of unduly burdensome requirements imposed on wireless providers but not on other entities.”



THE SHOT CLOCK (2009)

THE COMMISSION:

1. INTERPRETED “REASONABLE” TIME FOR REVIEW
2. ESTABLISHED TOLLING RULES
3. CRAFTED LEGAL REMEDIES

THE SHOT CLOCK (2009)

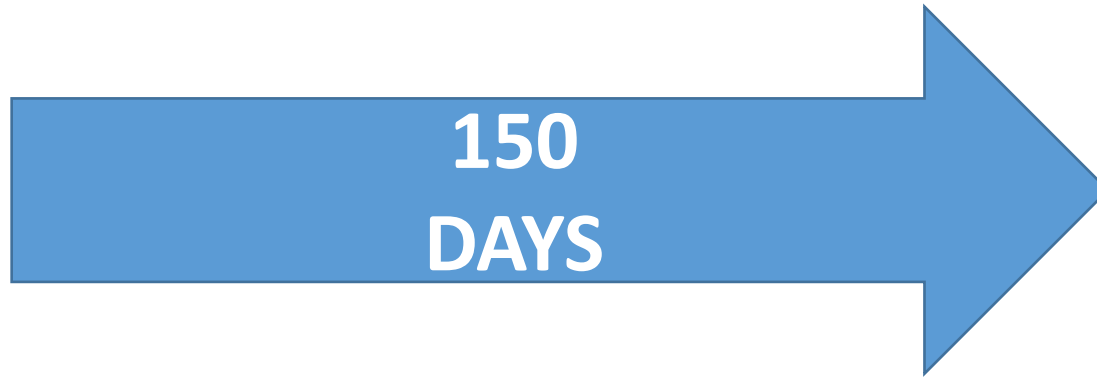
REASONABLE TIME

- **REASONABLE TIME DEPENDS ON KIND OF PROPOSAL**
 - **NEW SITES → 150 DAYS**
 - **COLLOCATIONS → 90 DAYS**

- **SHOT CLOCK DOES NOT RUN UNDER MORATORIUM**

THE SHOT CLOCK (2009) REASONABLE TIME

NEW
SITE



COLO

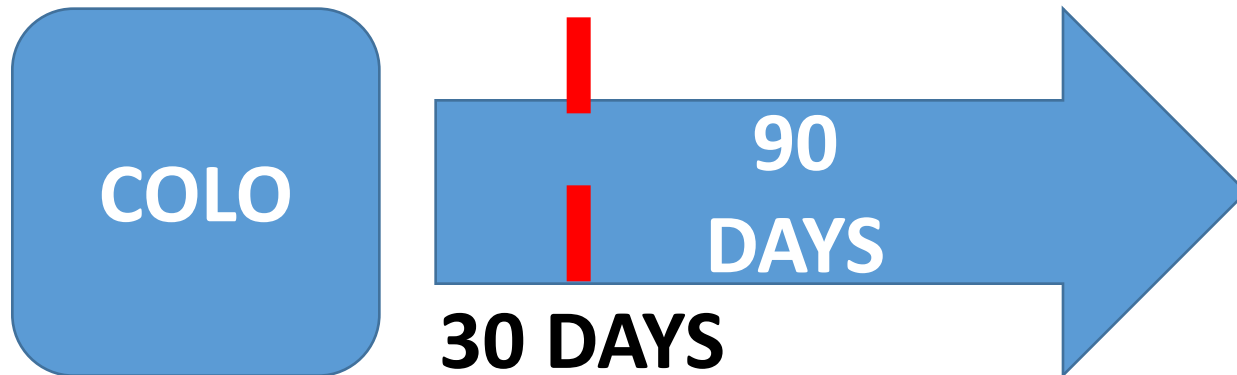
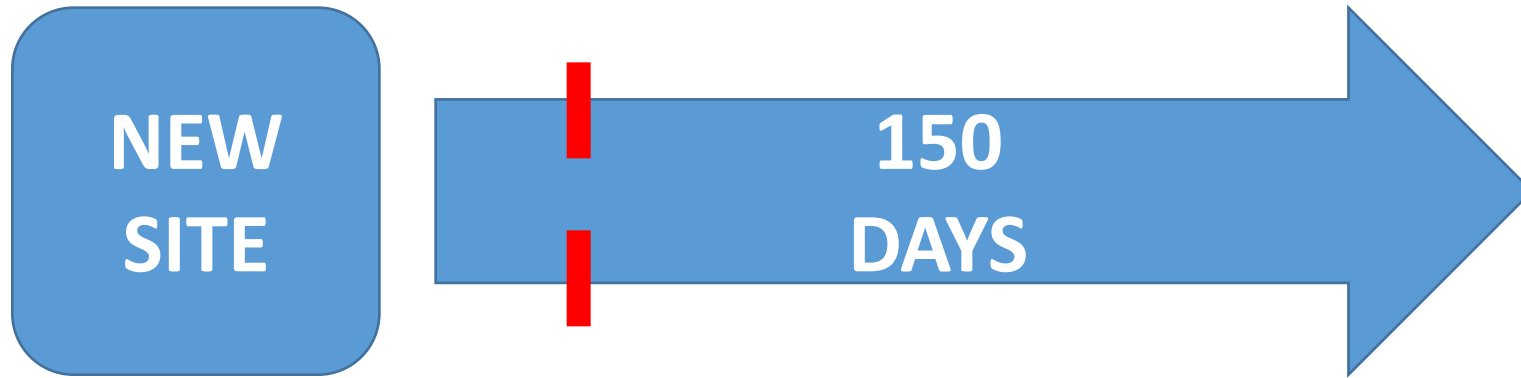


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THE SHOT CLOCK (2009) TOLLING RULES

- **CERTAIN EVENTS CAN TOLL THE SHOT CLOCK**
- **INCOMPLETE NOTICE**
 - The Shot Clock tolls when the government deems the application incomplete in a written notice within first 30 calendar days.
 - Incomplete notices “pause” the Shot Clock – DOES NOT RESET.
 - Can still deem incomplete after first 30 days, just doesn’ t stop the Shot Clock.
- **MUTUAL AGREEMENT B/W APPLICANT AND GOV’ T**
 - Intended to promote cooperation.
 - Useful tool to solve practical problems outside reasonable control.

THE SHOT CLOCK (2009) REASONABLE TIME



UNLESS TOLLED

TO DEEM INCOMPLETE



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THE SHOT CLOCK (2009) REMEDIES

“Any person adversely affected by any final action or failure to act . . . may, within 30 days . . . commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. [Adversely affected parties] may [also] petition the Commission for relief.”

47 USC § 332(c)(7)(B)(v)

THE SHOT CLOCK (2009) REMEDIES

- **TELECOM ACT PROVIDES TWO REMEDIES**

- File a **cause of action** in federal court; or
- Seek a **declaratory ruling** from the FCC

- **SHOT CLOCK RULING (2009)**

- Indicated preference for judicial rather than administrative relief.
- Requires the applicant to sue within **30 calendar days** after the Shot Clock expires or lose its cause of action for that specific permit (*i.e.*, must refile a new application to get a new cause of action).

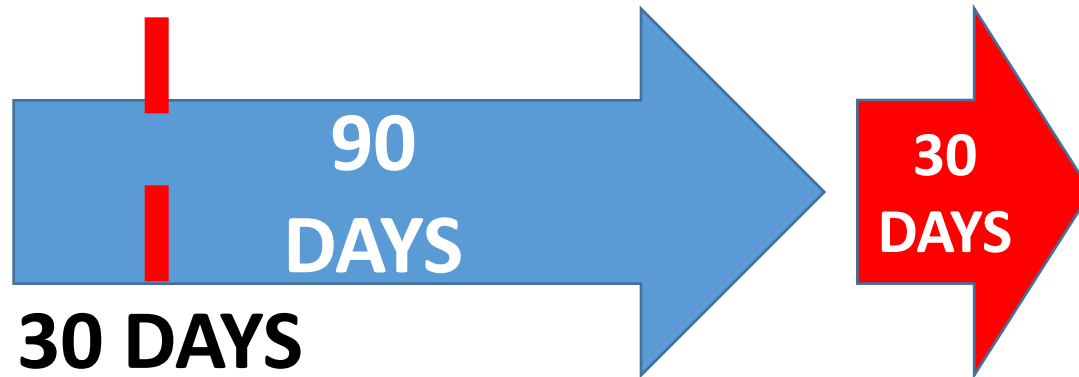
THE SHOT CLOCK (2009) REASONABLE TIME

NEW
SITE



**PRESUMED
UNREASONABLE
UNLESS TOLLED
30 DAYS TO FILE**

COLO



TO DEEM INCOMPLETE



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IS THIS LEGAL??

- *FCC v. City of Arlington, TX*, 133 S. Ct. 1863 (2013)
- FCC did not exceed its ***jurisdiction*** to interpret the term “reasonable” time because (1) it administers the Telecom Act and (2) the presumptively reasonable times it created were not arbitrary and capricious.
- Any limit to FCC authority to create rules??

INFRASTRUCTURE NPRM (2014-15)

- **WIDE AND BROAD SUBJECT MATTER**
- **DISCUSSED HERE**
 - Interpret/implement Section 6409(a) of the middle class tax relief and job creation act of 2012
 - Clarify the Shot Clock Ruling (2009)
- **NOT DISCUSSED HERE**
 - Exclude cell sites from certain environmental/historic preservation review
 - Waive FAA notices for certain temporary cell sites

SECTION 6409(a)

(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 of 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.

SECTION 6409(a)

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ELIGIBLE FACILITIES REQUEST

Collocations and modifications (removals and replacements) of wireless transmission equipment at an existing wireless tower or base station.

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ELIGIBLE FACILITIES REQUEST: *COLLOCATION*

“[T]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”

ELIGIBLE FACILITIES REQUEST: *MODIFICATION*

Not well defined, but at least includes “removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure.”

ELIGIBLE FACILITIES REQUEST

Collocations and modifications of **wireless transmission equipment** at an existing wireless tower or base station.

ELIGIBLE FACILITIES REQUEST: *WIRELESS TRANSMISSION EQUIPMENT*

“[A]ny equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.”

ELIGIBLE FACILITIES REQUEST

Collocations and modifications of wireless transmission equipment at an **existing wireless tower or base station.**

ELIGIBLE FACILITIES REQUEST: *EXISTING WIRELESS TOWER*

“[A]ny structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities”

ELIGIBLE FACILITIES REQUEST: *EXISTING WIRELESS TOWER*



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ELIGIBLE FACILITIES REQUEST: *EXISTING BASE STATION*

- **DEFINED AS:** “[T]he equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network.”
- **IN ENGLISH:** The transmission equipment itself and any non-wireless tower structure that supports transmission equipment under a valid permit for a wireless use.

ELIGIBLE FACILITIES REQUEST: *EXISTING BASE STATION*



both non-tower structures with legally permitted wireless transmission equipment

SECTION 6409(a)

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SUBSTANTIAL CHANGE

- **OBJECTIVE:** based on empirical (more or less) changes to height, width, equipment cabinets, excavation, concealment, and permit compliance
- **DISJUNCTIVE:** must comply with all six elements
- **CUMULATIVE:** the Commission standards effectively create an invisible envelope around all wireless towers and base stations within which carriers can expand and change its transmission equipment

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request increases
the height more than:

- 10% or one additional antenna array not more than 20 feet (whichever is greater) higher for towers on private property, or
- 10% or 10 feet (whichever is greater) for towers in the public rights-of-way and all base stations;

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request increases
the width more than:

- 20 feet or the tower width at the level of the appurtenance (whichever is greater) for towers on private property, or
- six feet for towers in the public rights-of-way and all base stations;

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request involves more than four (4) equipment cabinets



SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request involves
any excavation outside either:

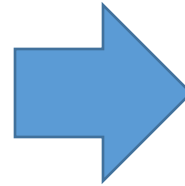
- the lease or license area on private property, or
- the “**proximity**” to the ground-mounted equipment in the ROW; or

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request would defeat the existing concealment elements of the tower or base station;



SUBSTANTIAL CHANGE OCCURS WHEN . . .



SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed collocation would violate a prior condition of approval that does not conflict with the Commission standards for a substantial change

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MAY NOT DENY, and SHALL APPROVE *DEEMED GRANTED REMEDY*

- **PERMIT DEEMED GRANTED** after failure to act within **60 DAYS** after application is submitted
- period tolls by mutual agreement and some incomplete notices
- period does not toll for a moratorium
- applicant must provide written notice before it starts construction
- disputes still resolved by courts, not the Commission

MAY NOT DENY, and SHALL APPROVE: *CONDITIONAL APPROVALS*

- Conditional approval not tantamount to a denial
- Exempt from prior conditions that conflict with thresholds for a substantial change or are subjective
- Probably still valid conditions include drainage, landscaping, maintenance, lighting, fencing, access, indemnification, compliance with all generally applicable laws, etc.

SHOT CLOCK CLARIFICATIONS

- **DAS & SMALL CELLS**
- **INCOMPLETE NOTICES**
- **MORATORIA**
- **SITES ON MUNICIPAL PROPERTY**
- **REMEDIES**

SHOT CLOCK CLARIFICATIONS DAS & SMALL CELLS

- FCC clarified that the Shot Clock (60/90/150) applies to permit applications for distributed antenna systems (“DAS”) and Small Cells.
- Put these facilities through the normal wireless review.

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IS THIS LEGAL??

- Constitutional challenges would attack the *statute* rather than the regulations.
- **COMMERCE CLAUSE**
 - Regulating inactivity. *See Nat'l Fed. of Indep. Bus. v. Sebelius.*
- **TENTH AMENDMENT**
 - Congress cannot force States to administer a federal regulatory program. *See Printz v. United States; United States v. Lopez; New York v. United States.*
 - Congress might violate the Tenth Amendment when a federal law blurs the lines of political accountability. *See New York v. United States; see also Garcia v. San Antonio Metro. Transit Auth.*