

About the Presenters



Robert C. May III

Partner

Telecom Law Firm, PC

6986 La Jolla Blvd, Ste. 204

La Jolla, CA 92037

Direct: (619) 272-6200

tripp@telecomlawfirm.com

practice focused on representing governments and other landowners in wireless infrastructure regulations and transactions.

co-author of California Local Governments (League of CA Cities, CSAC, and SCAN NATOA) comments and reply comments to FCC in the *2015 Infrastructure Order*

SCAN NATOA member of the year 2014 for *pro bono* advocacy in the *2015 Infrastructure Order*

JD, University of San Diego School of Law

- *Executive Editor, San Diego Law Review*
- *Executive Board, Moot Court*

Basic Shot Clock Rules

- **timeframes for review**

section 332(c)(7)

- collocations → 90 days
- all other requests → 150 days

section 6409(a) → 60 days

- **tolling (pause the clock)**

- incomplete notices
- mutual agreement

- **remedies for failure to act**

section 332(c)(7) → applicant may sue

section 6409(a) → permit “deemed granted”

Incomplete Notices

- **general rule**

jurisdiction must specifically delineate incompleteness in a written notice within the first 30 days

- **publicly-stated rule**

clock does not toll unless notice cites to a “publicly stated” source (but not necessarily a codified requirement)

- **one-bite rule**

subsequent notices do not toll the clock for reasons not cited in the first notice

- **10-day resubmittal review period**

jurisdiction must deem resubmittal incomplete within 10 days or resubmittal deemed sufficient

Cal. Gov't Code § 65964.1. Telecommunications: wireless telecommunications facilities (AB 57)

(a) A collocation or siting application for a wireless telecommunications facility, as defined in Section 65850.6, shall be deemed approved if all of the following occur:

- (1)** The city or county fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions. The reasonable period of time may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and the local government, consistent with applicable FCC decisions.
- (2)** The applicant has provided all public notices regarding the application that the applicant is required to provide under applicable laws consistent with the public notice requirements for the application.
- (3) (A)** The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved pursuant to this section.
(B) Within 30 days of the notice provided pursuant to subparagraph (A), the city or county may seek judicial review of the operation of this section on the application.

(b) This section does not apply to eligible facilities requests.

(c) The Legislature finds and declares that a wireless telecommunications facility has a significant economic impact in California and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but is a matter of statewide concern.

(d) As used in this section, the following terms have the following meanings:

- (1)** "Applicable FCC decisions" means In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009) and In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (2014).
- (2)** "Eligible facilities request" has the same meaning as in Section 1455 of Title 47 of the United States Code.

(e) Except as provided in subdivision (a), nothing in this section limits or affects the authority of a city or county over decisions regarding the placement, construction, and modification of a wireless telecommunications facility.

(f) Due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters, this section does not apply to a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities.

Now, in English, Please.

California state law “**deems approved**” any application for a **new or substantially changed wireless site** when:

1. the LG fails to approve or deny the application within the applicable FCC shot clock timeframe; **and**
2. the applicant has provided all public notices required for the application; **and**
3. the applicant has provided notice to the LG that the application is deemed approved;
... and possibly ...
4. 30 days have passed since the notice date.

“Applicable FCC Decisions” (the Shot Clock)

- **Incorporates Some (but not all) Shot Clock Rules**
 - review periods applicable to § 332(c)(7)
 - 90 days for collocations/modifications
 - 150 days for everything else (new sites)
 - publicly stated rule
 - one-bite rule
 - 10-day resubmittal rule
 - all wireless permit moratoria preempted
 - does not include any Section 6409(a) shot clock rules
- **AB57 Does Not Evolve with Future FCC Decisions**
 - original version incorporated “future” decisions
 - enacted version frozen in time

Some Strategies

- **Manage the Shot Clock**
 - application submittal controls
 - master incomplete notice procedures
 - pre-scheduled public hearings
 - identify the “lead agency”
- **Update Wireless Permit Applications**
 - develop specialized applications for new sites/mods
 - include quantitative and qualitative requirements
 - delegate publication authority to director-level

Some Strategies (cont'd)

- **Adopt Automatic Conditions of Approval**
 - guard against “oops” moments
 - include maintenance, security, term limits, etc.
- **Update Public Notice Requirements**
 - evaluate which projects should require a hearing
 - include advance notice for potentially deemed-approved projects as a prerequisite (similar to PSA)
- **Train Staff Members**
 - workshops, webinars
 - federal and state regulations allow LGs to expand in-house staff or retain outside help to process applications, and often at the applicant’s expense