

January 14, 2015

Re: UPDATE- FCC Rule Published in Federal Register

Dear Mayor,

PLEASE BRING THIS TO THE ATTENTION OF YOUR MUNICIPAL ATTORNEY, YOUR PLANNING AND ZONING BOARDS AND YOUR LAND USE PROFESSIONALS.

On Thursday January 8, 2014 the FCC's final rule was published in the Federal Register. This means that the rule will go into effect after a 60 day period on April 6, 2015. <http://www.gpo.gov/fdsys/pkg/FR-2015-01-08/pdf/2014-28897.pdf>

By way of reminder, this order allows the wireless industry to build onto existing towers, with little or no regard to local planning or zoning codes. The rules also generally require local approval of industry plans to collocate, or append, wireless facilities to utility poles, light poles and road signs. This rule, in effect, usurps the authority of municipalities to effectively regulate many components of the wireless industry.

However, there is still an opportunity for you to help oppose this rule. The Notice from the Federal Office of Management and Budget (OMB) asks the public to weigh in on its review by January 20, 2015. Because the rule includes new information collection requirements, there are components of the rule which will not become effective until they have been approved by OMB. There are three such sections and they delineate:

- 1) The 30 day shot clock which provides that following an application for collocation from the applicant, the state or local government will have 30 days to determine whether the application complies with its requirements, the compliance notification shall be in writing and clearly and specifically delineate all missing documents or information. (47 C.F.R. § 1.40001(c)(3)(i));
- 2) The 10 Day shot clock which provides that following a supplemental submission from the applicant, the State or local government will have 10 days to determine whether the submission complies with its incompleteness notice. Grounds for incompleteness are limited to those delineated in the original notice of incompleteness. (47 C.F.R. § 1.140001(c)(3)(iii)); and
- 3) The "deemed granted" letter which provides that the applicant must file a notice in writing stating that the review period has expired (accounting for any tolling) and that the application has been deemed granted (47 C.F.R. § 1.140001(c)(4)).

Specifically, OMB is asking for comments on:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

2. The accuracy of the Commission's burden estimate. According to the notice, the order will add nationwide 3,535 hours of work, with no total annual cost.
3. Ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and
4. Ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

It is important that you comment on this rule to OMB. The best outcome would be that OMB would reject these rules. More likely, but also importantly, an in depth OMB review may provide a valuable delay in the rule's applicability which would allow municipalities to amend their land use ordinances.

Below is a draft letter which can be sent to the OMB. You can e-mail these comments to PRA@fcc.gov with a copy to Cathy.Williams@fcc.gov. Please cc the League at epurcell@njslom.org.

If you have any questions please contact Ed Purcell Esq. at (609) 695-3481 x 137.

Very Truly Yours,

William G. Dressel, Jr.
Executive Director

MUNICIPAL LETTERHEAD

By E-mail to PRA@fcc.gov with a copy to Cathy.Williams@fcc.gov

DATE

(remember 1/20 is the deadline)

Federal Communications Commission
445 12th Street SW, Washington,
DC 20554.

RE: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies OMB Control Number: 3060-xxxx.

Dear Ms. Williams:

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), new or modified collections of information must be approved by the Office of Management and Budget before they can be made effective. By Federal Register Notice of November 21, 2014, the Federal Communications Commission sought public comment and OMB approval “for new disclosure requirements pertaining to Subpart CC of Part 1 of the Commission's rules.”

The [MUNICIPAL FORM] of _____, [State] (“Community”) submits these comments to request that OMB disapprove the FCC’s proposed collections of information.[1] The first two information-collection requirements (30-day and 10-day incompleteness shot clocks) [2] fail to satisfy 5 C.F.R. § 1320.5. Specifically, under 5 C.F.R. § 1320.5(d)(1), the FCC has failed to demonstrate that it has taken every reasonable step to ensure that the proposed collection of information is the least burdensome necessary for the proper performance of the agency's functions. Moreover, the 10 day notice in 47 C.F.R. § 1.40001(c)(4) fails to meet the standard of 5 C.F.R. § 1320.5(d)(2) because the FCC has not justified requiring local governments “to prepare a written response to a collection of information in fewer than 30 days after receipt.”

(“Community”) further respectfully requests that the time frame established in the proposed order refer to business days. The current rule imposes unnecessary burdens on local governments. For example, if a local government had received a response to an incompleteness notice on December 23, 2014, the rule would give the local government only about 4 working days to review and respond.

With respect to the third information-collection requirement (“deemed granted” letter),[3] the paperwork requirement involved is too ambiguous to have practical utility under 5 C.F.R. § 1320.5(d)(1)(iii). The Commission should establish the components of the letter so that local governments will have a complete record before them, including a copy of the original application and any correspondence

In light of the above, the Federal Communications Commission has failed to meet its burden under the Paperwork Reduction Act. OMB should return this matter to the Commission with instructions to meet those obligations.

[Signature Block]

[1] Specifically, the Commission seeks approval of a:

- A form notice due no later than 30 days following a cell tower collocation request determining the incompleteness of an application and requiring that local government clearly and specifically delineate all missing documents or information. (47 C.F.R. § 1.40001(c)(3)(i))

- A form notice due no later than ten days following a supplemental submission to notify the applicant in writing if the supplemental submission did not provide the information identified in the State or local government's original notice delineating missing information. (47 C.F.R. § 1.140001(c)(3)(iii)).
- Letter notice required to be filed by applicant with the reviewing authority stating that the review period has expired (accounting for any tolling) and that the application has been deemed granted (47 C.F.R. § 1.140001(c)(4)).

[\[2\]](#) 47 C.F.R. § 1.40001(c)(3)(i) and 47 C.F.R. § 1.140001(c)(3)(iii).

[\[3\]](#) 47 C.F.R. § 1.40001(c)(4).