



CITY OF KIRKLAND

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MEMORANDUM

To: David Ramsay, City Manager

From: Oskar Rey, Assistant City Attorney

Date: August 27, 2008

Subject: Opposition to CTIA—The Wireless Association Petition Submitted to the FCC Regarding Preemption of Local Wireless Regulations

RECOMMENDATION

Staff recommends that the City Council authorize staff to submit a brief to the FCC objecting to a petition filed with the Federal Communications Commission ("FCC") by CTIA—The Wireless Association ("CTIA"). The petition requests that the FCC impose time limits on the processing of applications to site wireless facilities, limit the basis on which such applications may be denied and pre-empt local zoning ordinances that would require wireless carriers to obtain a variance.

POLICY IMPLICATIONS

If the FCC grants the CTIA petition, the ability of local jurisdictions to exercise land use control over cell tower sites and other wireless facilities would be substantially curtailed. Submitting a brief in opposition to the CTIA petition will document the City's opposition to the CTIA's petition before the FCC.

BACKGROUND DISCUSSION

CTIA is an association of wireless providers who have requested that the FCC issue a decision stating that under federal law, local zoning authorities are subject to certain limitations with respect to their zoning authority. Among other things, CTIA requests that the FCC rule that:

- Local zoning authorities in general must act on wireless facility applications within 75 days. Requests involving only collocation on existing facilities would need to be acted on within 45 days.
- In the event of a failure to act within the applicable 45 or 75 day period, the application would be deemed to be granted.
- Local zoning authorities are precluded from denying an application based on a determination that adequate service already exists in the service area.
- Local zoning authorities may not require wireless providers to obtain a variance as a precondition to providing wireless service in the jurisdiction.

The CTIA petition is opposed by the National Association of Telecommunications Officers and Advisors ("NATOA"). NATOA will submit a brief in opposition to the CTIA petition and NATOA has also provided local

jurisdictions with suggested comments to provide to the FCC. The deadline for filing the brief is September 15, 2008.

Procedurally, the 45 day and 75 day requirements for processing wireless applications is unreasonably short, especially in those instances where the application is subject to Process IIA or IIB. More fundamentally, NATOA disputes the notion that wireless providers are having widespread problems in receiving approvals from local zoning authorities. Finally, NATOA questions whether the FCC has the authority to issue the type of decision sought by CTIA. NATOA takes the position that the decision sought by CTIA should be the subject of congressional legislation, not an FCC decision.

Staff recommends that the Council authorize staff to prepare and submit a brief to the FCC opposing the CTIA petition. Staff will use the NATOA suggested comments as a starting point, but tailor the brief to reflect Kirkland's particular concerns. The City's brief would be signed by the Mayor and submitted to the FCC prior to September 15, 2008.