



# SIGN-IN SHEET

ST M / W V

Citizen Advisory Board:

Date of Meeting:

9/11/14

Name

Mailing or Email Address

Bill Naylor

naylorhome@charter.net

Racey KC

raceykc@forestry.nv.gov

Timothy Simpson

tsimpson@washoe-county.nv.gov

Please PRINT legibly and use the proper case for email address.

# Washoe County Citizen Advisory Boards CAB Member Worksheet



Citizen Advisory Board: STM/WV

Meeting Date (if applicable): 9/11/2014

Topic or Project Name (include Case No. if applicable): Variance Case Number VA14-005 (Dolan)

Please check the appropriate box:

My comments  were (or)  were not discussed during the meeting.

Identified issues and concerns:

*Process is not clear. It appears the project is not controversial, however, I do not understand why it appears to be not supported by planning staff. Without this understanding I cannot support this project.*

Suggested alternatives and/or recommendations:

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\_\_\_\_\_

Name Tom Judy Date: 9/21/2014  
(Please Print)

Signature: \_\_\_\_\_

This worksheet may be used as a tool to help you take notes during the public testimony and discussion on this topic/project. Your comments during the meeting will become part of the public record through the minutes and the CAB action memorandum. Your comments, and comments from other CAB members, will and shall not collectively constitute a position of the CAB as a whole.

If you would like this worksheet forwarded to your Commissioner, please include his/her name.

Commissioner's Name: David Hamke

Use additional pages, if necessary.

Please provide in person, mail, fax or email completed worksheets to the Administrative Recorder for your CAB.



**REQUEST TO SPEAK and/or  
SUBMIT COMMENTS FOR THE RECORD**

Agenda Item: 3. Public Comment Date: 9/11/14

Name: BU NAYLOR

Address (optional): \_\_\_\_\_

Phone (optional): \_\_\_\_\_

E-mail (optional): \_\_\_\_\_

In Favor       In Opposition       I am officially representing a group of citizens  
(Please provide name of group below.)

I wish to speak.       I do not wish to speak.  
(Please include my written comments in the public record.)

UPDATE AND MATERIALS ON VERIZON  
WIRELESS. WASHOE VALLEY ALLIANCE

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## September West Truckee Meadows Citizen Advisory Board Update

September 5, 2014

September is National Preparedness Month: September is National Preparedness Month and Washoe County's Office of Emergency Management and Homeland Security is reminding residents what to do to prepare for disasters and emergencies. The 2014 National Preparedness Month theme is *Be Disaster Aware, Take Action to Prepare*. Visit [www.readywashoe.com](http://www.readywashoe.com) to learn more about what you can do to prepare ahead for the unexpected and help to keep your family safe.

### Board of County Commissioners

Animal Ordinance: Washoe County Regional Animal Services is seeking input from the community on proposed changes to the animal control ordinance, Washoe County Code (WCC) Chapter 55. The existing ordinances were last updated in 2005. Changes to animal laws within the state have been made during the past two legislative sessions and the County is required to amend WCC Chapter 55 with those changes. The public input process will lead to initial updated regulations being presented to the Board of County Commissioners for review in fall 2014.

Two public workshops were held in August to review proposed changes. Additional workshops are scheduled to discuss nuisance issues and other topic areas. Those events are planned for Monday, Sept. 29 and Wednesday, Oct. 1 with the location being finalized. Additional workshops will be scheduled as needed.

Those looking for more information or want to share their thoughts about animal code changes are encouraged to visit [Animal Services website \(www.washoecounty.us/animal\)](http://www.washoecounty.us/animal) or [Open Washoe \(www.washoecounty.us/openwashoe\)](http://www.washoecounty.us/openwashoe), an online community forum. To receive additional information on animal issues, please sign up for our automated County email (cMail) at [www.washoecounty.us/cMail](http://www.washoecounty.us/cMail).

Sign Code Update: In November 2013, the County Commission initiated a review of possible changes to Washoe County billboard and sign code regulations (Washoe County Code Chapter 110, Article 502 and Article 504). County staff is hosting working groups to prepare a draft amendment to the sign code for public review. A community workshop is planned. The proposed amendment is expected to be reviewed by the Planning Commission and the County Commission by the end of this year. For additional information on this project, please review the most recent update to the County Commission in the August 26, 2014 staff report at [www.washoecounty.us/large\\_files/agendas/082614/19.pdf](http://www.washoecounty.us/large_files/agendas/082614/19.pdf) or contact Washoe County Senior Planner, Trevor Lloyd at (775) 328-3617.

Medical Marijuana Establishment (MME) Licenses: Washoe County diligently has been working on the MME license process for unincorporated Washoe County. Since spring, updates have been scheduled for Board of County Commissioners regularly scheduled meetings and will continue throughout the process. At the August meeting, staff reported that 104 applications for dispensaries, cultivation and production facilities were received by the state by the August 18 deadline. The approval process for the establishments is managed by the State of Nevada. Next steps for Washoe County include reviewing permitting fees. For additional information on this issue, please visit [www.washoecounty.us/comdev/medical\\_marijuana.htm](http://www.washoecounty.us/comdev/medical_marijuana.htm)



OFFICE OF THE

# COUNTY MANAGER

CONSTITUENT SERVICES PROGRAM



Regional Park Improvements: The Capital Improvement Projects (CIP) was approved for 2014 budget year and included \$397,000 for park improvements; however, current known needs for improvements are \$2.4 million. Parks staff is working to prioritize needs at all regional parks to make best use of available funds.

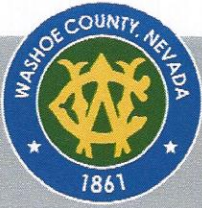
## Road Construction

East Lake Blvd. Reconstruction: Washoe County Community Services Department has contracted with Granite Construction for a full reconstruction of East Lake Blvd. beginning near the southern limits at I-580 and continuing to the north for approximately 4 ¼ miles. Due to weather, the project has been rescheduled to begin the week of September 22 and to continue for approximately 4 weeks. No work at night or on weekends is anticipated. There will be one lane open at all times but traffic control flaggers and pilot cars will cause significant delays of up to 30 minutes. Through traffic is strongly encouraged to seek alternative routes. Sign reader boards are planned for East Lake to help education local and through traffic of upcoming construction.

## Washoe County, CSD - Planning

Development Projects: Washoe County Community Services, Planning received two requests for development projects to date in September. The projects include an amendment of conditions for a Special Use Permit for Reno Christian Fellowship (AC-14007) and a parcel map request on Melarkey Way (PM14-006). Additional information on both of these projects area available online at [http://www.washoecounty.us/comdev/da/da\\_index.htm](http://www.washoecounty.us/comdev/da/da_index.htm)

*If you are looking to stay informed on County issue, visit [www.washoecounty.us/cMail](http://www.washoecounty.us/cMail) to have information about County activities sent directly to you by email. It is an easy way to stay in touch, stay informed and have a say in your community.*



## Hot Topics

**2015 Legislative Session:** The 78<sup>th</sup> Session of the Nevada legislature will begin on February 2, 2014. Throughout the session, a Washoe County team led by the Management Services Division will follow and respond to requests for new or amended regulations that effect Washoe County's ability to provide services to our residents. As with the last two previous sessions, the Washoe County Board of County Commissioners has elected not to host a bill draft request for this session in order to provide more time for the legislators to focus on pressing concerns. Throughout the session, the Washoe County Commissioners will receive updates on the legislative session during their regularly scheduled public meetings. Additional tools for individuals to track proposed bills at the Nevada legislature include a personalized legislative tracking system at <https://www.leg.state.nv.us/App/NELIS/REL/78th2015/Plt>

**2014 Elections:** It is election season. The Washoe County Registrar of Voters manages the election process providing the opportunity for the approximately 221,000 registered voters to cast their ballot in Washoe County. Some important dates to remember include:

- Last day to register to vote by mail is October 4 and in person at the 9<sup>th</sup> Street Registrar of Voters Office is October 14.
- The Last date to put in a written request for an absentee ballot is Tuesday, October 28 at 5 p.m. The Washoe County Registrar's Office encourages you to send in request as early as possible.
- Early Voting is October 18 through October 31.

Additional election information is available online at [www.washoecounty.us/voters](http://www.washoecounty.us/voters) or call (775) 328-3670.

**Hidden Valley Regional Park Dog Leash Area:** On August 28, 2014 Washoe County Regional Parks hosted a community meeting at the Hidden Valley Regional Park to discuss human/dog issues occurring within the park along the hillside. The discussion surround wishes of the community to create a leash free area within the Regional Park outside of the established Link Piazza Dog Park. The community meeting was complemented within an online survey. At the forum and online the community supported the idea of a designated off leash area within the Regional Park. Information gathered from the community was provided to the Washoe County Regional Open Space Commission on September 5, 2014. Next steps include a full report to the Washoe County Regional Open Space Commission on October 7, 2014. You may view the recent Washoe County Regional Park and Open Space meeting online at [http://washoe-nv.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=1494](http://washoe-nv.granicus.com/MediaPlayer.php?view_id=6&clip_id=1494).

## CAB Follow Up

**Verizon Wireless (AX14-003):** A request for a Verizon cell tower in the Pleasant Valley area has been appealed to the Washoe County Commissioners and is tentatively set to be heard on October 28, 2014. This request was denied by the Board of Adjustment at the June 5, 2014 meeting. The appeal application is available online at: [http://www.washoecounty.us/comdev\\_files/bc/bcc\\_2014/ax14-003w.pdf](http://www.washoecounty.us/comdev_files/bc/bcc_2014/ax14-003w.pdf) For additional information on this project, please contact Washoe County staff planner Grace Sannazzaro at (775) 328-3771 or [gsannazzaro@washoecounty.us](mailto:gsannazzaro@washoecounty.us)



## **CRS Report for Congress**

# **The Siting of Wireless Communications Facilities: An Overview of Federal, State, and Local Law**

Kathleen Ruane  
Legislative Attorney  
American Law Division

### **Summary**

The siting of wireless communications facilities has been a topic of controversy in communities all over the United States. Telecommunications carriers need to place towers in areas where coverage is insufficient or lacking to provide better service to consumers, while local governing boards and community groups often oppose the siting of towers in residential neighborhoods and scenic areas. The Telecommunications Act of 1996 governs federal, state, and local regulation of the siting of communications towers by placing certain limitations on local zoning authority without totally preempting state and local law. This report provides an overview of the federal, state, and local laws governing the siting of wireless communications facilities.<sup>1</sup>

### **Federal Law Governing the Placement of Wireless Telecommunications Facilities**

Section 704 of the Telecommunications Act of 1996 governs federal, state, and local regulation of the siting of “personal wireless service facilities” or cellular communication towers.<sup>2</sup> Under the 1996 Act, state and local governments are prohibited from unreasonably discriminating among “providers of functionally equivalent services.”<sup>3</sup> This prohibition has been interpreted to provide state and local governments with the “flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even

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<sup>1</sup> This report was originally written by Angie Welborn, formerly a Legislative Attorney, American Law Division.

<sup>2</sup> Codified at 47 U.S.C. 332(c)(7).

<sup>3</sup> 47 U.S.C. 332(c)(7)(B)(i)(I).

if those facilities provide functionally equivalent services.”<sup>4</sup> However, state and local governments cannot adopt policies that prohibit or have the effect of prohibiting the provision of personal wireless services.<sup>5</sup> This provision not only applies to outright bans on tower siting, but also to situations where a state or local government’s “criteria or their administration effectively preclude towers no matter what the carrier does.”<sup>6</sup> In these cases, the carrier must show “not just that this application has been rejected but that further reasonable efforts are so likely to be fruitless that it is a waste of time even to try.”<sup>7</sup>

The act also prescribes certain procedures that a state or local government must follow when reviewing a request to place, construct, or modify personal wireless service facilities. The state or local government must “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.”<sup>8</sup> If the state or local government denies the request, the denial must be in writing and supported by “substantial evidence contained in a written record.”<sup>9</sup> Substantial evidence has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>10</sup>

Courts have found that aesthetics may constitute a valid basis for the denial of a wireless permit so long as there is substantial evidence of the adverse visual impact of the proposed tower.<sup>11</sup> In fact, according to one court, “nothing in the Telecommunications Act forbids local authorities from applying general and nondiscriminatory standards derived from their zoning codes, and ... aesthetic harmony is a prominent goal underlying almost every such code.”<sup>12</sup> Federal courts therefore have routinely upheld the denials of applications to construct wireless towers where the decisions of local entities were in writing and based on evidence that the tower would diminish property values, reduce the ability of property owners in the vicinity of the proposed tower to enjoy their property, or damage the scenic qualities of the proposed location.<sup>13</sup> However, generalized aesthetic

<sup>4</sup> *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630, 639 (2nd Cir. 1999).

<sup>5</sup> 47 U.S.C. 332(c)(7)(B)(i)(II).

<sup>6</sup> *Town of Amherst, New Hampshire v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9, 14 (1<sup>st</sup> Cir. 1999).

<sup>7</sup> *Id.*

<sup>8</sup> 47 U.S.C. 332(c)(7)(B)(ii).

<sup>9</sup> 47 U.S.C. 332(c)(7)(B)(iii).

<sup>10</sup> *Nextel Partners of Upstate New York, Inc. v. Town of Canaan*, 62 F.Supp.2d 691, 695 (N.D. N.Y. 1999), citing *Universal Camera v. NLRB*, 340 U.S. 474, 477 (1951).

<sup>11</sup> See e.g., *Preferred Sites, LLC v. Troup County*, 296 F.3d 1210 (11th Cir. 2002), *Southwestern Bell Mobile Sys. v. Todd*, 244 F.3d 51 (1st Cir. 2001), *Omnipoint Corp. v. Zoning Board*, 181 F.3d 403 (3d Cir. 1999), *AT&T Wireless PCS, Inc. v. Winston-Salem Bd. of Adjustment*, 172 F.3d 307 (4th Cir. 1999).

<sup>12</sup> *Aegerter v. City of Delafield*, 174 F.3d 886, 891 (7th Cir. 1999).

<sup>13</sup> See *USCOC of Greater Iowa, Inc. V. Zoning Bd. of Adjustment*, 465 F.3d 817 (8th Cir. 2006) (upholding the denial of a permit to construct a tower based in part upon the fact that the tower would obstruct the view from the window of nearby residential property), *Omnipoint Commc'n*

(continued...)



concerns will not be considered “substantial evidence” to support the denial of a permit.<sup>14</sup> For example, the Seventh Circuit upheld the reversal of a denial of a petition based on aesthetic concerns where the only evidence that the proposed tower would be unsightly was the testimony of a few residents that they did not like poles in general, and those residents admitted that they had no objection to flagpoles, the proposed disguise for the wireless tower.<sup>15</sup> Blanket opposition to poles could not constitute “substantial evidence,” in the opinion of the court.<sup>16</sup>

Many community groups also oppose the siting of towers based on health and environmental concerns.<sup>17</sup> However, the Telecommunications Act of 1996 prohibits state and local governments from regulating the placement of personal wireless service facilities on the basis of the effects of radio frequency emissions if the facility in question complies with the Federal Communications Commission’s regulations concerning such emissions.<sup>18</sup> “As written, the purpose of the requirement is to prevent telecommunications siting decisions from being based upon unscientific or irrational fears that emissions from the telecommunications sites may cause undesirable health effects.”<sup>19</sup> Courts have enforced this provision of the act and have noted that “concerns of health risks due to the emissions may not constitute substantial evidence in support of denial.”<sup>20</sup>

The act also provides for the appeal of a state or local government’s denial of a request to place, construct, or modify a facility.<sup>21</sup>

Section 704(c) of the Telecommunications Act provided that within 180 days of the enactment of the act, “the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for

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<sup>13</sup> (...continued)

v. *City of White Plains*, 430 F.3d 529 (2nd Cir. 2005) (concluding that the zoning board was entitled to rely on aesthetic objections raised by members of the community that are familiar with the area); *Voicestream Minneapolis, Inc. v. St. Croix County*, 342 F.3d 818 (7th Cir. 2003) (holding that the county’s denial of a wireless tower permit was supported by substantial evidence that the proposed tower would mar an especially scenic stretch of land).

<sup>14</sup> *New Par v. City of Saginaw*, 301 F.3d 390, 398 (6th Cir. 2002).

<sup>15</sup> *Prime Co Personal Commc’n v. City of Mequon*, 352 F.3d 1147, 1151 (7th Cir. 2003).

<sup>16</sup> *Id.*

<sup>17</sup> Malcolm J. Tuesley, *Not in My Back Yard: The Siting of Wireless Communications Facilities*, 51 Fed. Comm. L. J. 887, 902.

<sup>18</sup> 47 U.S.C. 332(c)(7)(B)(iv). Cellular Phone Task Force challenged the FCC’s RF radiation guidelines. *Cellular Phone Task Force v. FCC*, 205 F.3d 82 (2nd Cir. 2000). The Court upheld the FCC’s radiation guidelines, finding that they were not arbitrary and capricious under the circumstances. *Id.* at 96.

<sup>19</sup> 51 Fed. Comm. L. J. at 902.

<sup>20</sup> *Telespectrum, Inc. v. Public Service Commission of Kentucky*, 227 F.3d 414 (6<sup>th</sup> Cir. 2000). See also *Illinois RSA No. 3, Inc. v. County of Peoria*, 963 F.Supp. 732, 745 (C.D. Ill. 1997).

<sup>21</sup> 47 U.S.C. 332(c)(7)(B)(v).

the placement of new telecommunications services.”<sup>22</sup> President Clinton issued a memorandum on August 10, 1995, directing the Administrator of General Services, “in consultation with the Secretaries of Agriculture, Interior, Defense, and the heads of such other agencies as the Administrator may determine, to develop procedures necessary to facilitate appropriate access to Federal property for the siting of mobile services antennas.”<sup>23</sup> The General Services Administration published procedures for the placement of commercial antennas on federal property in the Federal Register on March 29, 1996.<sup>24</sup> On March 14, 2007, the General Services Administration published updated procedures for the placement of commercial antennas on federal property in the Federal Register.<sup>25</sup> These replacement procedures shall remain in effect indefinitely.<sup>26</sup>

## State Statutory Provisions

Apart from the specific limitations set forth in the Telecommunications Act of 1996, federal law does not appear to affect state or local zoning authority with regard to the placement of wireless communications towers.<sup>27</sup> Most states delegate zoning authority to local bodies. However, some states offer guidance on what factors should be considered by the local entities when considering applications for permits to construct wireless communications facilities. For example, the State of New Hampshire has enacted a law concerning the visual effects of tall wireless antennas.<sup>28</sup> The law does not alter any municipal zoning ordinance or preempt the Telecommunications Act of 1996.<sup>29</sup> It does, however, recognize that the visual effects of tall antennas “may go well beyond the physical borders between municipalities,” and in doing so it encourages local governing bodies to address the issue “so as to require that all affected parties have the opportunity to be heard.”<sup>30</sup> The statute also provides that carriers, wishing to build personal wireless service facilities, should consider commercially available alternatives to the tall towers, such as lower antenna mounts, disguised or camouflaged towers, and custom designed facilities to minimize the visual impact on the surrounding area.<sup>31</sup>

An Illinois law sets forth guidelines for telecommunications carriers to consider when choosing a location for and designing a facility.<sup>32</sup> The law specifically states that it does “not abridge any rights created by or authority confirmed in the federal

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<sup>22</sup> P.L. 104-104, § 704(c).

<sup>23</sup> *Facilitating Access to Federal Property for the Siting of Mobile Services Antennas*, 31 Weekly Comp. Pres. Doc. 1424 (August 10, 1995).

<sup>24</sup> 61 Fed. Reg. 14,100 (1996).

<sup>25</sup> 72 Fed. Reg. 11,881 (2007).

<sup>26</sup> 72 Fed. Reg. 11,881 (2007).

<sup>27</sup> 47 U.S.C. 332(c)(7)(A).

<sup>28</sup> R.S.A. 12-K:1, effective August 7, 2000.

<sup>29</sup> R.S.A. 12-K:1(I) and (VI).

<sup>30</sup> R.S.A. 12-K:1(II).

<sup>31</sup> R.S.A. 12-K:1(III).

<sup>32</sup> 55 ILCS 5/5-12001.1.

Telecommunications Act of 1996.”<sup>33</sup> Rather, the law offers a list of locations - from “most desirable” to “least desirable” - for the siting of telecommunications facilities, with non-residentially zoned lots as the most desirable and residentially zoned lots that are less than 2 acres in size and used for residential purposes as the least desirable.<sup>34</sup> The guidelines set forth for designing a facility include preserving trees in the area or replacing trees removed during construction, landscaping around the facility, and designing facilities that are compatible with the residential character of the area.<sup>35</sup>

In addition to the alternatives listed above, states can encourage the use of existing infrastructure as opposed to the construction of new facilities in order to reduce the total number of towers in an area. For example, in Kentucky, state law allows the local planning commission to require the company applying for the construction permit “to make a reasonable attempt to co-locate” their equipment on existing towers if space is available and the co-location does not interfere with the structural integrity of the tower or require substantial alterations to the tower.<sup>36</sup> The statute gives the planning commission the authority to deny an application for construction based on the company’s unwillingness to attempt to co-locate.<sup>37</sup> Connecticut has also enacted a law which allows local entities to require the sharing of towers whenever it is “technically, legally, environmentally and economically feasible, and whenever such sharing meets public safety concerns.”<sup>38</sup>

### **Local (Municipal or County) Law**

Many local governments, through the use of their zoning authority, attempt to limit the impact cellular towers have on the surrounding environment. One county in Georgia, enacted a “Telecommunications Tower and Antenna Ordinance,” which set up a new permit system for the construction of cellular towers in an effort to encourage construction in nonresidential areas.<sup>39</sup> In commercial or light industrial areas, a wireless service provider can build a tower without review by the County Board of Commissioners as long as a certain set of specifications are met.<sup>40</sup> However, if a service provider wanted to construct a tower in a residential area, a hearing is held on the matter, and construction

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<sup>33</sup> 55 ILCS 5/5-12001.1(b).

<sup>34</sup> 55 ILCS 5/5-12001.1(d).

<sup>35</sup> 55 ILCS 5/5-12001.1(e).

<sup>36</sup> K.R.S. § 100.987(6). Under federal law, utilities are required to provide telecommunications carriers “with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by [the utility].” 47 U.S.C. 224(f)(1).

<sup>37</sup> K.R.S. § 100.987(7).

<sup>38</sup> Conn. Gen. Stat. § 16-50aa.

<sup>39</sup> Robert Long, *Allocating the Aesthetic Costs of Cellular Tower Expansion: A Workable Regulatory Regime*, 19 Stan. Envtl. L. J. 373, 378. The full text of the ordinance is available at [<http://www.winnettcountry.com/departments/planning/pdf/tower.pdf>].

<sup>40</sup> *Id.*

permits are subject to denial if a set of nine criteria are not met.<sup>41</sup> In an effort to reduce the number of facilities in the area, the City of Bloomington, Minnesota, enacted an ordinance that requires wireless facilities to be designed to accommodate multiple users.<sup>42</sup>

In direct response to the limitations set forth in the Telecommunications Act of 1996, several communities enacted moratoria on permits for cellular towers in an effort to prevent or delay the construction of cellular communications towers.<sup>43</sup> Under the act, local governments cannot act to prohibit or have the effect of prohibiting wireless communication services in their communities.<sup>44</sup> Local governments justify the imposition of moratoria by claiming that they need time to study the problems with tower siting and how they should change their zoning ordinances to accommodate construction.<sup>45</sup> Courts have upheld moratoria that have a fixed length, such as six months.<sup>46</sup> However, they are less likely to uphold those that are for long periods of time or indefinite.<sup>47</sup>

## Recent Developments

The FCC's Wireless Telecommunications Bureau is seeking comment on a petition for a declaratory ruling filed by CTIA - The Wireless Association in July of 2008.<sup>48</sup> In its petition, CTIA expressed concerns about the delays many wireless providers face when applying to local and state zoning authorities to site wireless facilities. As a result, CTIA has asked the FCC (1) to clarify the time period in which a state or local zoning authority must act on a wireless facility siting request; (2) to declare that a failure by a state or local zoning authority to act on a siting request within that time shall result in the application being "deemed granted," or, alternatively, that the applicant is entitled to a court-ordered injunction granting the application, unless the zoning authority can justify the delay; (3) to clarify that Section 332(c)(7)(B)(i) prohibits zoning decisions that have the effect of prohibiting additional entrants from offering service in a given area (in other words, to declare that Section 332(c)(7)(B)(i) is not satisfied by the presence of a single wireless provider in an area); and (4) to preempt all ordinances and regulations that automatically require all wireless siting applications to obtain a variance.<sup>49</sup> Comments are due on September 15, 2008.

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<sup>41</sup> *Id.* The ordinance states that towers built in residential areas must comply with certain requirements, such as topography, height, setback, access driveways or easements, parking, fencing, landscaping, and adjacent uses. *Id.* at n. 35.

<sup>42</sup> 51 Fed. Comm. L. J. at 909, citing Bloomington, Mn., Code 19.63.05(a)(1)-(4)(1996).

<sup>43</sup> David W. Hughes, *When NIMBY's Attack: The Heights to Which Communities Will Climb to Prevent the Siting of Wireless Towers*, 23 Iowa J. Corp. L. 469, 488.

<sup>44</sup> 47 U.S.C. 332(c)(7)(B)(i).

<sup>45</sup> 23 Iowa J. Corp. L. at 488.

<sup>46</sup> *See Sprint Spectrum L.P. v. City of Medina*, 924 F. Supp. 1036 (W.D. Wash. 1996).

<sup>47</sup> *See e.g. Spring Spectrum L.P. v. Jefferson County*, 968 F. Supp. 1457 (N.D. Ala. 1997).

<sup>48</sup> Public Notice, Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA, (released August 14, 2008).

<sup>49</sup> *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165, July 11 2008.

(1) The term "interstate commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

(June 19, 1934, ch. 652, title III, § 330, as added Pub. L. 87-529, § 2, July 10, 1962, 76 Stat. 151; amended Pub. L. 101-431, § 4, Oct. 15, 1990, 104 Stat. 961; Pub. L. 104-104, title V, § 551(d), Feb. 8, 1996, 110 Stat. 141; Pub. L. 111-260, title II, § 203(c), Oct. 8, 2010, 124 Stat. 2773.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (d)(2), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-260, in first sentence substituted "303(u) and (z)" for "303(u)", in second sentence substituted "Such rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming, the transmission and delivery of video description services, and the conveyance of emergency information as required by section 303 of this title." for "Such rules shall provide performance and display standards for such built-in decoder circuitry.", and in fourth sentence substituted "closed-captioning service and video description service continue" for "closed-captioning service continues".

1996—Subsec. (c). Pub. L. 104-104, § 551(d)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104-104, § 551(d)(2), in introductory provisions substituted "and sections 303(s), 303(u), and 303(x) of this title" for "section 303(s) of this title, and section 303(u) of this title".

Pub. L. 104-104, § 551(d)(1)(B), redesignated subsec. (c) as (d).

1990—Subsecs. (b), (c). Pub. L. 101-431 added subsec. (b), redesignated former subsec. (b) as (c), and substituted ", section 303(s) of this title, and section 303(u) of this title" for "and section 303(s) of this title".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-431 effective July 1, 1993, see section 5 of Pub. L. 101-431, set out as a note under section 303 of this title.

**§ 331. Very high frequency stations and AM radio stations**

**(a) Very high frequency stations**

It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible. In any case in which licensee of a very high frequency commercial television broadcast station notifies the Commission to the effect that such licensee will

agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time<sup>1</sup> such notification, the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee for that purpose pursuant to such notification for a term of not to exceed 5 years as provided in section 307(d)<sup>2</sup> of this title.

**(b) AM radio stations**

It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible. The Commission shall report to the appropriate committees of Congress within 30 days after December 20, 1991, on how it intends to meet this policy goal.

(June 19, 1934, ch. 652, title III, § 331, as added Pub. L. 97-248, title III, § 355, Sept. 3, 1982, 96 Stat. 641; amended Pub. L. 102-243, § 4, Dec. 20, 1991, 105 Stat. 2402; Pub. L. 103-414, title III, § 303(a)(18), Oct. 25, 1994, 108 Stat. 4295.)

REFERENCES IN TEXT

Subsec. (d) of section 307 of this title, referred to in subsec. (a), was redesignated subsec. (c) of section 307 by Pub. L. 97-259, title I, § 112(a), Sept. 13, 1982, 96 Stat. 1093.

CODIFICATION

December 20, 1991, referred to in subsec. (b), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 102-243, which enacted subsec. (b), to reflect the probable intent of Congress.

Another section 331 of act June 19, 1934 was renumbered section 332 and is classified to section 332 of this title.

PRIOR PROVISIONS

A prior section 331, act June 19, 1934, ch. 652, title III, § 331, as added Sept. 14, 1973, Pub. L. 93-107, § 1, 87 Stat. 350, related to broadcasting of games of professional sports clubs, prior to repeal by Pub. L. 93-107, § 2, Sept. 14, 1973, 87 Stat. 351, effective Dec. 31, 1975.

AMENDMENTS

1994—Pub. L. 103-414 amended section catchline generally.

1991—Pub. L. 102-243 inserted "and AM radio stations" in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

**§ 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, consist-

<sup>1</sup>So in original. Probably should be followed by "of".

<sup>2</sup>See References in Text note below.

ent 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 51.

(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 re-

quest, 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 rule-making 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, except 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 substan-

tial 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. 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C. 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 per-

sonal 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.

(June 19, 1934, ch. 652, title III, §332, formerly §331, as added Pub. L. 97-259, title I, §120(a), Sept. 13, 1982, 96 Stat. 1096; renumbered §332, Pub. L. 102-385, §25(b), Oct. 5, 1992, 106 Stat. 1502; amended Pub. L. 103-66, title VI, §6002(b)(2)(A), Aug. 10, 1993, 107 Stat. 392; Pub. L. 104-104, §3(d)(2), title VII, §§704(a), 705, Feb. 8, 1996, 110 Stat. 61, 151, 153.)

### REFERENCES IN TEXT

Provisions of part III of title 5, referred to in subsec. (b)(2), are classified to section 2101 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (b)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

This chapter, referred to in subsec. (c), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

The Communications Satellite Act of 1962, referred to in subsec. (c)(4), is Pub. L. 87-624, Aug. 31, 1962, 76 Stat. 419, as amended. Titles III and IV of the Act are classified generally to subchapters III (§731 et seq.) and IV (§741 et seq.), respectively, of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(6), is Pub. L. 103-66, Aug. 10, 1993, 107 Stat. 312, as amended. For complete classification of this Act to the Code, see Tables.

### CODIFICATION

In subsec. (b)(2), "section 1342 of title 31" substituted for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97-253, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

### AMENDMENTS

1996—Subsec. (c)(7). Pub. L. 104-104, §704(a), added par. (7).

Subsec. (c)(8). Pub. L. 104-104, §705, added par. (8).

Subsec. (d)(1), (3). Pub. L. 104-104, §3(d)(2), substituted "section 153" for "section 153(n)".

1993—Pub. L. 103-66 struck out "Private land" before "mobile services" in section catchline, struck out "land" before "mobile services" wherever appearing in subsecs. (a) and (b), added subsecs. (c) and (d), and struck out former subsec. (c) which related to service provided by specialized mobile radio, multiple licensed radio dispatch systems, and other radio dispatch systems; common carriers; and rate or entry regulations.

### EFFECTIVE DATE OF 1993 AMENDMENT

Section 6002(c) of Pub. L. 103-66 provided that:



"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 152, 153, and 309 of this title] are effective on the date of enactment of this Act [Aug. 10, 1993].

"(2) EFFECTIVE DATES OF MOBILE SERVICE AMENDMENTS.—The amendments made by subsection (b)(2) [amending this section and sections 152 and 153 of this title] shall be effective on the date of enactment of this Act [Aug. 10, 1993], except that—

"(A) section 332(c)(3)(A) of the Communications Act of 1934 [subsec. (c)(3)(A) of this section], as amended by such subsection, shall take effect 1 year after such date of enactment; and

"(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(6) of such Act [subsec. (c)(6) of this section], be treated as a private mobile service until 3 years after such date of enactment."

#### AVAILABILITY OF PROPERTY

Section 704(c) of Pub. L. 104-104 provided that: "Within 180 days of the enactment of this Act [Feb. 8, 1996], the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes."

#### TRANSITIONAL RULEMAKING FOR MOBILE SERVICE PROVIDERS

Section 6002(d)(3) of Pub. L. 103-66 provided that: "Within 1 year after the date of enactment of this Act [Aug. 10, 1993], the Federal Communications Commission—

"(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2) [amending this section and sections 152 and 153 of this title];

"(B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

"(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2); and

"(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition."

#### § 333. Willful or malicious interference

No person shall willfully or maliciously interfere with or cause interference to any radio

communications of any station licensed or authorized by or under this chapter or operated by the United States Government.

(June 19, 1934, ch. 652, title III, § 333, as added Pub. L. 101-396, § 9, Sept. 28, 1990, 104 Stat. 850.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

#### § 334. Limitation on revision of equal employment opportunity regulations

##### (a) Limitation

Except as specifically provided in this section, the Commission shall not revise—

(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

##### (b) Midterm review

The Commission shall revise the regulations described in subsection (a) of this section to require a midterm review of television broadcast station licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review.

##### (c) Authority to make technical revisions

The Commission may revise the regulations described in subsection (a) of this section to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization.

(June 19, 1934, ch. 652, title III, § 334, as added Pub. L. 102-385, § 22(f), Oct. 5, 1992, 106 Stat. 1499.)

#### EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

#### § 335. Direct broadcast satellite service obligations

##### (a) Proceeding required to review DBS responsibilities

The Commission shall, within 180 days after October 5, 1992, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of this title and the use of facilities requirements of section 315 of this title to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service pro-



# South Truckee Meadows/Washoe Valley Citizen Advisory Board Meeting Agenda

September 11, 2014 at 6:00 P.M.

South Valleys Library, 15650A Wedge Parkway, Reno, Nevada

Pursuant to NRS 241.020, this notice has been posted at the Washoe County Administration Building (1001 E. Ninth Street, Bldg. A); Washoe County Courthouse (75 Court Street), Washoe County Central Library (301 S. Center St.), Sparks Justice Court (1675 East Prater Way), South Valleys Library, 15650A Wedge Parkway, notice.nv.gov and online at [www.washoecounty.us/cab](http://www.washoecounty.us/cab). Facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodations or assistance should notify Washoe County at 775.328.2721, two working days prior to the meeting. All number or lettered items on this agenda are hereby designated for possible action as if the words "for possible action" were written next to each, except for items marked with an asterisk (\*). Items on this agenda may be taken out of order, combined with other items, discussed or voted on as a block, removed from the agenda, moved to another agenda of another later meeting as discretion by the Chairman. Support Documentation for the items on the agenda, provided to the CAB is available to members of the public at the County Manager's Office (1001 E. 9th Street, Bldg. A, 2nd Floor, Reno, Nevada), Sarah Tone, Office of the County Manager, 775-328-2721.

**1. \*CALL TO ORDER/ DETERMINATION OF QUORUM**

**2. \*PLEDGE OF ALLEGIANCE – MOMENT OF SILENCE IN HONOR OF SEPTEMBER 11**

**3. \*PUBLIC COMMENT** – Limited to no more than three (3) minutes. Anyone may speak pertaining to any matter either on or off the agenda. Additionally, during action items [those not marked by an asterisk (\*)], public comment will be heard on that particular item before action is taken. The public are requested to submit a "Request to Speak" form to the Board Chairman. Comments are to be addressed to the Board as a whole.

**4. APPROVAL OF AGENDA FOR THE MEETING OF SEPTEMBER 11, 2014.**

**5. APPROVAL OF THE MINUTES FOR THE MEETING OF JULY 10, 2014.**

**6. \* COMMISSIONER UPDATE**

**A. \*Washoe County Commissioner Update** – Commissioner David Humke will provide updated information on discussions and actions by the Board of County Commissioners (BCC). Commissioner Humke may be reached at (775) 328-2005 or [dhumke@washoecounty.us](mailto:dhumke@washoecounty.us).

**7. \* PUBLIC SAFETY AND COMMUNITY REPORTS/UPDATES**

**A. \* Washoe County Sheriff's Office (WCSO)** – A representative of the Washoe County Sheriff's Office may be available (unless on a call for service) to address public safety questions and concerns. For more information call (775) 328-3001 or via the webpage at [www.washoesherriff.com](http://www.washoesherriff.com) (This item is for information only and no action will be taken by the CAB.)

**8. \*NEVADA DIVISION OF FORESTRY (NDF) FUELS REDUCTION PROGRAM** – Ms. Kacey KC, Community Protection with Kacey KC, Community Protection NDF will discuss the community grant application process for Hazardous Fuel Reduction Projects. For additional information please contact Ms. Kacey KC at (775) 684-2511 or [kaceykc@forestry.nv.gov](mailto:kaceykc@forestry.nv.gov).

**9. \*DEVELOPMENT PROJECTS** - The project description is provided below with links to the application or you may visit the Planning and Development Division website and select the Application Submittals page:  
[http://www.washoecounty.us/comdev/da/da\\_index.htm](http://www.washoecounty.us/comdev/da/da_index.htm).

**A. \*Amendment of Conditions Case Number AC14-006 (South Truckee Meadows Water Reclamation Facility)** – To amend Conditions of Approval of Special Use Permit, Case Number SB14-004, for the expansion of the South Truckee Meadows Water Reclamation Facility, a wastewater treatment facility, to include a modified site plan and to reduce required screening of rooftop mechanical equipment for the project. Location: South of Alexander Lake Road, approximately two miles southeast of its intersection with South McCarran Boulevard. APN(s): 165-012-01, 164-022-05, 165-011-05 & 165-011-06. Staff Representative Roger Pelham, MPA, Senior Planner Washoe County Community Services Department Planning and Development Division, 775-328-3622, [rpelham@washoecounty.us](mailto:rpelham@washoecounty.us). This case is tentatively scheduled to be heard by the Board of Adjustment October 2, 2014.

**B. \* Variance Case Number VA14-005 (Dolan)** - To reduce the required front yard setback from thirty (30) feet to five (5) feet two (2) inches to bring two (2) existing non-conforming structures into conformance with current Washoe County Code. Applicant/Property Owner: Christopher & Carolyn Dolan; Location: 1800 Whites Creek Lane, Reno, NV 89511. APN: 142-031-08. Staff Representative: Chad Giesinger, AICP, Senior Planner Washoe County Community Services Department Planning and Development Division, 775-328-3626, [cgiesinger@washoecounty.us](mailto:cgiesinger@washoecounty.us). This case is tentatively scheduled to be heard by the Board of Adjustment October 2, 2014.

**10. \*CHAIRMAN/BOARD MEMBER ITEMS/NEXT AGENDA ITEMS** - This item is limited to announcements by CAB members and topics/issues posed for future workshops/agendas.

**11. \*PUBLIC COMMENT** – Limited to no more than three (3) minutes. Anyone may speak pertaining to any matter either on or off the agenda. The public are requested to submit a “Request to Speak” form to the Board Chairman. Comments are to be addressed to the Board as a whole.

**12. \*ADJOURNMENT**