

What's Your Wireless Plan? Federal Law, Local Review and Wireless Facilities

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Wireless technology in the United States has experienced an unprecedented period of exponential growth in both its abilities and its number of users over the past two decades.¹ The ability to connect with one

another in a mobile environment has proven essential to our health, safety and welfare. It is well established that wireless communications and wireless services are critical to America's economy and are vital to America's global competitiveness. However, while quickly evolving federal law and policy over the last three-plus years supports and stresses the need for the expeditious build-out of critical wireless infrastructure, local siting regulations have not kept pace. This article examines the recent developments in federal law and policy designed to promote the expeditious deployment of wireless infrastructure and includes some recommendations and suggestions to bring local wireless regulations and processes "up-to-speed" with the current federal regulatory framework.

The critical public need for wireless services is evidenced by the numbers. As of June 2011, there were an estimated 322.9 million wireless subscriber connections in the United States, surpassing the population of the United States and its territories.² At the same time, wireless network data traffic was reported at 341.2 billion megabytes, which represents a 111% increase from the prior year.³ These data came in the form of over an annualized 2.25 trillion minutes of use and 2.12 trillion text messages.⁴ In June 2006, approximately 10.5% of households in the United States were wireless-only.⁵ Five years later, the number of wireless-only American households more than tripled to 31.6%,⁶ a trend that is expected to continue at the same rapid rate. Notably, more than 396,000 wireless 911 and distress calls are made daily.⁷ Economically, the wireless industry is directly or indirectly responsible for the employment of 2.4 million Americans⁸ and it is projected that wireless broadband investment alone will create as many as 205,000 additional jobs by 2015.⁹ U.S. economic productivity from wireless broadband is predicted at \$896 billion for the ten-year period ending in 2016.¹⁰



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Recognizing the importance of wireless services for all Americans, the federal government has continually promoted the provision of wireless communications and services. Beginning with the Telecom-

munications Act of 1996 ("TCA")¹¹ and in subsequent policy initiatives, administrative rulings, case law and additional statutory action, the federal government has created a regulatory framework that supports the expedited and efficient build out of wireless networks and infrastructure. The federal policy supporting the critical nature of wireless infrastructure and its timely deployment is exemplified by Congress' directive to the Federal Communications Commission (FCC) in 2009 to develop a plan for the advancement of broadband technology in the United States to ensure that every American has "access to broadband capability."¹² In *Connecting America: The National Broadband Plan* (the "Plan"),¹³ the FCC notes that

Broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling entire new industries and unlocking vast new possibilities for existing ones. It is changing how we educate children, deliver health care, manage energy, ensure public safety, engage government, and access, organize and disseminate knowledge.¹⁴

Federal policy direction clearly supports expedited deployment of wireless services as essential for America's safety, welfare, economic success and global competitiveness. Now is an opportune time to review and consider revisions to local laws and processes to reflect the recent changes in the federal regulatory and policy framework.

A. Middle Class Tax Relief and Job Creation Act of 2012 and Wireless Siting

One of the direct results of wireless technology's increased importance to American security and

economy was the inclusion of key wireless technology provisions in the recently passed Middle Class Tax Relief and Job Creation Act of 2012 (the "Act").¹⁵ Portions of the law address spectrum management, wireless infrastructure siting on federal land, as well as the location of public emergency technology. As declared by Congressman James Upton of Michigan on the House floor presenting the conference committee report on the Act:

Like the JOBS Act, Title VI, Subtitle D, of the Middle Class Tax Relief and Job Creation Act of 2012 is designed to spur the next generation of wireless investment and innovation, to bring in federal revenue in the form of auction proceeds, and to promote significant new job creation.¹⁶

From a municipal perspective, one of the most significant sections of the Act is the broadening of wireless carrier pre-emption included in Section 6409. Section 6409 provides in relevant part that:

*Notwithstanding Section 704 of the Telecommunications Act of 1996 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.*¹⁷

In essence, Section 6409 creates a new category of modification subject to only a limited scope of review and requires that a jurisdiction get to "yes." Section 6409 effectively creates a two-pronged test which limits the review of an application to modify a wireless facility to the determination: (1) that the proposal is an "eligible facility"; and (2) the modification does not constitute a "substantial change." If an application meets these two criteria, the modification *must* be approved.

B. What Is an Eligible Facility?

The Act defines an "eligible facilities request," or this new category of modification, as a request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

1. What Is a Substantial Change?

Previously, the FCC itself defined a substantial increase as:¹⁸

- Increasing the height of a tower by more than 10%, or by the addition of an antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater;¹⁹ or
- The width of the tower will be increased by more than the greater of: (a) 20 feet in any direction from the edge of the tower; or (b) the width of the tower structure at the level of the appurtenance;²⁰ or
- The installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter;²¹ or
- Requiring excavation outside of the existing tower site defined as the boundaries of the leased or owned property surrounding the tower at the time of the proposed collocation and any access or utility easements already related to the site.²²

2. The Implications of Section 6409 for Local Wireless Provisions and Processes

The language of Section 6409 clearly establishes that this new law applies *regardless of any other provision of law*, including local wireless provisions. Many municipalities have no doubt encountered applications by licensed wireless carriers that fit within the Section 6409 two-pronged criteria noted above, including, but not limited to, the addition of antennas on an existing tower with associated equipment at grade. However, some local codes do not treat this scenario differently than an application for an entirely new tower or otherwise require exhaustive site plan and special permit review processes even though such modification does not substantively alter a facility as it exists or was originally evaluated and approved. Section 6409 clearly preempts the use of a discretionary approval process for such "eligible facilities requests" and disallows additive discretionary approvals for an existing facility so that critical wireless infrastructure can be timely deployed. Indeed, in the conference report on the Act, Congressman James Upton of Michigan explained that Section 6409 of the Act "streamlines the process for siting of wireless facilities by *preempting* the ability of State and local authorities to delay collocation of, removal of, and replacement of wireless transmission equipment."²³

Accordingly, in some cases, significant changes to local wireless provisions will be required for compliance with Section 6409, particularly for municipalities that have not reviewed wireless provisions within the last five years. Indeed, for many local jurisdictions, the wireless provisions and processes have remained largely unchanged since adoption, which likely occurred as a reaction to the Telecommunications Act of 1996. In many instances, even jurisdictions that have updated

their Comprehensive Plans within the last few years have not included revised wireless provisions in those updates. Consequently, local jurisdictions will likely need to revisit their wireless provisions and processes now to ensure compliance with Section 6409 and federal policy direction to expedite critical wireless infrastructure deployment.

C. Shot Clock Revisited

The importance of expedited deployment of wireless infrastructure was reinforced by the FCC's Declaratory Ruling of November 9, 2010, which interprets §332(c)(7)(B) of the TCA and establishes specific time limits for decisions on wireless land use and zoning permit applications (the "Shot Clock" ruling). As discussed in detail in last year's article, *Wireless Services, Infrastructure & Zoning: A Time for Local Regulatory Change in New York?*,²⁴ state and local governments have 90 days to act on a complete application to collocate wireless facilities on existing structures.²⁵ The Act, together with the Shot Clock ruling, mean that state and local governments must approve within 90 days any eligible facilities requests for collocation or replacement of transmission equipment on existing towers that do not substantially change the physical dimensions of such tower. Two decisions of interest provide guidance in this area.

1. FCC's Wireless Deployment "Shot Clock" Upheld

The Fifth Circuit recently upheld the validity of the Shot Clock ruling in response to a challenge by the Cities of Arlington and San Antonio, Texas (the "Cities"). In *City of Arlington v. FCC*²⁶ the Cities sought review of the Shot Clock ruling issued in response to a petition for a declaratory ruling by CTIA, a trade association of wireless telephone service providers. The Court considered five claims raised on appeal by the Cities: (1) violation of the Administrative Procedure Act (APA) because the FCC's action was in fact a rulemaking action and required notice and comment; (2) violation of due process because CTIA did not provide notice of the adjudication to state and local governments, CTIA sought to challenge such inaction by adjudication before the FCC; (3) violation of the FCC's statutory authority because the FCC did not have the authority to interpret the text of Section 332; (4) the FCC's interpretation of Section 332(c)(7)(B) is unreasonable; and (5) violation of the APA because the FCC's Declaratory Ruling is arbitrary, capricious and an abuse of discretion. The Cities sought an order from the Court granting its petition for review.

The Court held that the FCC's Declaratory Ruling (the Shot Clock) did not violate the APA because not only was it a proper adjudication, any error that resulted in the FCC proceeding by adjudication and not rulemaking was harmless error. Ultimately, the Court

found the FCC's notice process adequate and not violative of the appellants' due process rights. The Court held that the FCC is entitled to *Chevron*²⁷ deference in interpreting Section 332(c)(7)(B) and *Chevron* deference applies when agencies determine the extent of their own jurisdiction.

In *dicta* the Court noted that there was a window between a state or local government's violation of the "shot-clock rule" and a "reasonable period of time," as contemplated by Section 332(c)(7)(B)(ii). Indeed, the Court noted that a state or local government which fails to act within the time frames established by the Shot Clock ruling can seek to rebut the presumption of unreasonableness by pointing to reasons why the delay was in fact reasonable.²⁸

Notably, however, issuance of this decision preceded the Act. As the Court ultimately held the FCC's Shot Clock ruling was not arbitrary, capricious, or an abuse of the FCC's discretion, it must then be read together with the new provisions of the Act. Under the terms of the Act, there is no applicable discretionary approval process so long as the facility and the request meet the Section 6409 two-prong test. Where this is the case, the window for any reasonable delay is likely narrowed as contemplated by the Court in *Arlington*.

2. SEQRA May Not Be Used to Circumvent the Shot Clock

A recent Western District of New York case also concerned the Shot Clock and in finding unreasonableness, provided an analysis of State Environmental Quality Review Act ("SEQRA")²⁹ procedure as applied. In *Bell Atlantic Mobile of Rochester, L.P. v. Town of Irondequoit*,³⁰ Plaintiff, Bell Atlantic Mobile of Rochester (doing business as "Verizon"), proposed a 120-foot cell tower to replace an existing 84-foot emergency communications tower located on a fire district site.³¹ The replacement tower was being proposed for Verizon and emergency communications equipment, as well as to provide collocation opportunities for additional wireless carriers in the future. Verizon submitted its special permit application for the proposed replacement facility only after it reviewed a number of alternate locations and found them inadequate for the provision of its service. As part of the required special use permit process, the Planning Board reviewed the application and issued a favorable recommendation in its referral back to the Town Board, which had final approval authority. The Town Board, after a number of hearings on the matter, then issued a positive declaration under SEQRA and suggested a different site be located. Verizon filed suit thereafter claiming two violations of the TCA: unreasonable delay (47 U.S.C. § 332(c)(7)(B)(ii)), and unlawful prohibition of the provision of wireless services (47 U.S.C. § 332(c)(7)(B)(i)(II)).

With respect to the unreasonable delay claim, the Court found that the invocation of a positive declaration under SEQRA was pretextual and constituted an unreasonable delay in contravention of the TCA and the Shot Clock ruling.³² Since SEQRA mandates an initial determination regarding the likelihood of significant impact to the environment as early as possible, and the record was devoid of potential impacts indicating a significant potential impact, the Court held the positive declaration pretextual, dilatory, and without evidentiary support. The Court found that there were no other available sites to provide the needed coverage, that there were no impact or safety concerns and that radio frequency emissions were not within the Town's consideration. The Court found that instead of a "substantial controversy over a potential impact," this was a public controversy which could not justify the invocation of a positive declaration under SEQRA.³³

While this decision relates specifically to a new tower, the Court clearly required a judicious and appropriate application of SEQRA and noted the limitations of local review as related to wireless sites. Indeed, under Section 6409 of the Act, an eligible facility request for modification that does not propose a substantial change should be classified as an action that should be deemed Type II exempt under SEQRA and not be subject to further environmental review as there is no applicable discretionary action.³⁴

D. Expedited and Appropriate Local Review

Federal policy priorities, the provisions of the new Act, the FCC Shot Clock ruling, and recent case law together establish a regulatory framework requiring expedited and appropriate local review for the provision of critical wireless infrastructure. As discussed herein, compliance with this regulatory framework may require updates to local zoning or wireless law requirements and changes in how applications are reviewed and processed on a local level. Included below are some suggestions for balancing legitimate zoning objectives with respect to wireless facility siting in a manner that complies with the regulatory framework of expedited deployment of wireless infrastructure.

1. Administrative Review Provisions

The preemptive effect of Section 6409 of the Act essentially requires an administrative review process for modifications to qualifying proposals. In conjunction with the Shot Clock ruling, Section 6409 of the Act mandates that review of eligible facilities *is not a discretionary act* by a state or local government and any review is subject to a reasonable time frame. A helpful example of a wireless provision that complies with Section 6409 of the Act can be found in the Model Wireless Telecommunications Facility Siting Ordinance (the "Model Ordinance") developed by the

New York State Wireless Association ("NYSWA").³⁵ The Model Ordinance provides unambiguous and specific definitions that can be easily applied to modifications of existing facilities. The administrative review provision of the Model Ordinance provides a non-discretionary review process for the deployment of essential wireless facilities that includes use of existing infrastructure including collocations and minor modifications.

2. Efficient Use of Qualified Municipal Consultants

A commonplace part of many municipal review processes is the use of outside consultants to review a wireless facility application. However, administrative proceedings, which are not subject to SEQRA and are not discretionary, should not require and do not justify the use of an outside consultant. Such collocations and minor modifications to existing wireless facilities should be treated like any other minor modification to an existing development. The review and approval process for the existing facility was likely comprehensive. Therefore, a proposed modification that qualifies with Section 6409's two-prong test should not require the same level of review as an application for a new tower facility. Such minor modifications do not raise any issues that require the review of a wireless consultant and analysis of this two-prong test can be done by existing municipal staff such as the Building Inspector.

For other types of proposed wireless facilities, such as a new tower site, which may warrant the use of a consultant, the scope of work should be crafted such that the consultant's role does not overlap with that of any other consultants or professionals already retained or on staff who are reviewing the same aspects of the application. In other words, the wireless consultant should not be tasked with review of aspects of the application that are typically reviewed by municipal staff, such as building, engineering and/or planning or aspects which are not within the consultant's expertise. Thus, it is important during the hiring process to review a consultant's scope of work and credentials carefully. If a consultant is retained, activities performed on behalf of the municipality must be closely monitored by the municipality.

A cautionary tale regarding wireless consultants is found in *MetroPCS v. Village of East Hills*,³⁶ where a municipal zoning board denied a wireless carrier's application for a special exception permit and variances to install a rooftop wireless facility. Through its consultant, the zoning board required the applicant wireless carrier to provide additional information as to need and emissions and also investigate alternate technologies and screening of the proposed antennas. MetroPCS provided supplemental submissions and hearing testimony from its professional consultants. A licensed architect testified that the municipality

requested screening (which was materially different from approved facilities on the same building) required significant structural changes to the building to accommodate added wind load and was not practicable.³⁷ A planner versed in evaluating aesthetic impacts indicated that the proposed antennas in addition to existing facilities would have a *de minimus* visual impact.³⁸ Additional materials regarding the need for the site as well as testimony of FCC emissions compliance was provided by a radio frequency engineer.³⁹

Despite the evidence provided in support of the application, the board denied the application, relying largely on the testimony of its hired consultant. In overturning the zoning board denial, the Court found that the consultant lacked expertise in the field and was not a licensed architect, engineer, certified appraiser or planner, had not tested the MetroPCS signal in the Village and did not even possess a MetroPCS phone.⁴⁰ The Court held that “a finding which relies on [a consultant’s]...unsupported opinion to the exclusion of all other witnesses is not based on substantial evidence” and the Village was compelled to issue the special permit and variances.⁴¹ The *East Hills* decision reminds communities to retain professionals who are specifically trained or licensed in the discipline for which they were hired.

Further, while the courts have generally held that there is an authority to impose reasonable fees to carry out the planning and zoning laws, this power is subject to the limitation that the fees charged are reasonably necessary to the accomplishment of that aim.⁴² In *MetroPCS, LLC v. City of Mount Vernon*,⁴³ the Court found that the City repeatedly requested unnecessary information and belabored already resolved issues which resulted in delays and significant consultant fees.⁴⁴ The Court noted its concern that there was “no limitation on the amount of consulting fees the applicant could be required to pay” and that the City had “unlimited discretion to charge a wireless carrier prohibitive fees by simply dragging out the process and utilizing consultants for its convenience rather than out of necessity.”⁴⁵ Because the Court held that unfounded demands for additional information led to unacceptable delay, the related assessment of fees was overstated as well.⁴⁶

Municipalities must be educated consumers of consultant services both as to the realm of content and expertise as well as the fees passed through to applicants. A useful guide to help educate municipalities in interviewing potential wireless consultants with questions to ask and answers to look for is available through NYSWA.⁴⁷ The guideline aids the municipal consumer in ensuring that the wireless consultant is not only technically qualified, but also understands the regulatory framework to make certain that the review process complies with all applicable requirements.

Moreover, consultant contracts should ensure compliance with applicable laws and foster a smooth zoning process by establishing goals and deadlines with an end to a given process in mind. The contract should also account for a consultant liaison with the applicant to encourage the flow of information and keep the process transparent. Provisions should also be included whereby the municipality reviews the process and progress of the consultant review and the application process as a whole. Indeed, municipalities are required by New York State Town Law §§ 118 and 119 to monitor consultant contracts and also require the Town Controller or Clerk to review and, where requested, audit payments under a consultant contract.⁴⁸

Conclusion—Need for Local Code Reform and Model Ordinance

There is no doubt that access to wireless services is vital for America’s health, safety, welfare, economic success, and global competitiveness. The leaps in federal policy and law recognizing the importance of the provision of wireless services mean that many local laws addressing wireless siting are likely out of date. Mandatory review time frames, administrative review for eligible facility modifications and the use of consultants are just a few of the areas which have evolved significantly since many municipalities first adopted wireless provisions fifteen to twenty years ago. Accordingly, updates and revisions of existing local code provisions and review processes may be in order to ensure compliance with the current regulatory framework.

Endnotes

1. History of Wireless Communications, CTIA, http://www.ctia.org/media/industry_info/index.cfm/AID/10392.
2. CTIA’s Wireless Industry Indices: Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Mid-Year 2011 Results [hereinafter *Semi-Annual Data Survey Results*]. See also *Semi-Annual Survey Reveals Historical Wireless Trend*, CTIA, <http://www.ctia.org/media/press/body.cfm/prid/2133>.
3. *Id.*
4. Wireless Quick Facts—Mid-Year Figures (Wireless Quick Facts), CTIA, http://www.ctia.org/media/industry_info/index.cfm/AID/10323.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Semi-Annual Data Survey Results*, *supra* note 2.
9. Robert Crandall and Hal Singer, *The Economic Impact of Broadband Investment*, at 3 (March 2010), available at <http://www.ncta.com/PublicationType/ExpertStudy/The-Economic-Impact-of-Broadband-Investment.aspx>.
10. See CTIA, *Wireless in America*, at 3, available at http://files.ctia.org/pdf/WirelessInAmerica_Jan2011.pdf. See also *Semi-Annual Data Survey Results*, *supra* note 2, and Glen Campbell, *Global Wireless Matrix 4Q10—What’s in store for 2011*, Bank of America Merrill Lynch (2010).
11. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

12. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 § 6001(k)(2)(D), 123 Stat. 115, 516 (2009).
13. Connecting America: The National Broadband Plan, Federal Communications Commission (2010) [*hereinafter National Broadband Plan*], available at <http://www.broadband.gov/plan/>.
14. Executive Summary, *National Broadband Plan*, *supra* note 13, at xi.
15. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §6409 (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3630enr/pdf/BILLS-112hr3630enr.pdf>; see also H.R. Rep. No. 112-399 at 132-33 (2012) (Conf. Rep.), available at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt399/pdf/CRPT-112hrpt399.pdf>.
16. See 158 CONG. REC. E237-239 (daily ed. Feb. 24, 2012) (statement of Rep. Upton), available at <http://www.gpo.gov/fdsys/pkg/CREC-2012-02-24/pdf/CREC-2012-02-24-pt1-PgE237-5.pdf>.
17. Middle Class Tax Relief and Job Creation Act of 2012, § 6409 (2012) (emphasis added).
18. Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B (Collocation Agreement); see also Fact Sheet: Antennas Collocation Programmatic Agreement, Federal Communications Commission Wireless Telecommunications and Mass Media Bureau, January 10, 2002; Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7) (B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling, 24 FCC Rcd 13994, 14021, para. 71 (2009) (“Shot Clock Ruling”), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d*, *City of Arlington, Tex., et al. v. FCC*, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).
19. *Id.* Except that the mounting of the proposed antenna may exceed the size limits set forth if necessary to avoid interference with existing antennas.
20. *Id.* Except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.
21. *Id.*
22. The FCC has also given treatment to the terms “tower” and “base station.” The FCC defines a “tower” as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.” See *Collocation Agreement*, Stipulation I(B). In addition, “base station” is defined as “[a] station at a specified site authorized to communicate with mobile stations”; or “[a] land station in the land mobile service.” See, e.g., 47 CFR 24.5, 90.7.
23. Conference Report on Middle Class Tax Relief and Job Creation Act of 2012, 158 Cong. Rec. E237-04, E239, 2012. (emphasis added).
24. Christopher B. Fisher, Anthony B. Gioffre III, Daniel M. Laub and Troy D. Lipp, *Wireless Services, Infrastructure & Zoning: A Time For Local Regulatory Change in New York?*, 12 N.Y. Zoning L. and Practice Report, July/August 2011 (West Group), available at <http://www.cfwlaw.com/documents/ChrisFisherArticleBWWirelessServicesInfrastructureZoning.pdf>.
25. Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling, 24 FCC Rcd 13994, 14021, para. 71 (2009) (“Shot Clock Ruling”), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012). For a previous review of this ruling included in this publication, see Daniel M. Laub, *Wireless Facilities, Zoning and the FCC’s ‘Shot Clock’ Ruling*, 24 NYSBA/MLRC 1 (Winter 2010). In addition to the 90-day rule, a 150-day rule applies to complete applications for new towers.
26. *City of Arlington*, 668 F.3d 229.
27. See generally *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that if a “statute is silent or ambiguous with respect to [a] specific question, the issue for the court is whether the agency’s answer is based on a permissible construction of the statute.”) *Id.* at 842–843.
28. *City of Arlington*, 668 F.3d 229.
29. 6 NYCRR §§ 617.1-20(2). See also N.Y. ENVTL. CONSERV. LAW §§ 3-0301(1)(b), 3-0301(2)(m) and 8-0113.
30. *Bell Atlantic Mobile of Rochester, L.P. v. Town of Irondequoit*, No. 11-CV-6141-CJS-MWP, 2012 WL 289963 (W.D.N.Y. 2012).
31. *Id.* at 5.
32. *Id.* at 20.
33. *Id.* at 18.
34. This is in keeping with current guidance on wireless matters. See 6 NYCRR § 617.5(c)(7) and NYSDEC guidance in the Department’s SEQRA Handbook indicating that while “[r]adio and microwave transmission towers or other stand-alone facilities constructed specifically for radio or microwave transmission are specifically not included in the exemption for construction of small non-residential structures...if a small dish antenna or repeater box is mounted on an existing structure such as a building, radio tower, or tall silo, the action would be Type II.” NYSDEC SEQRA Handbook, 31–33 (3rd Ed., 2010).
35. NYSWA Model Ordinance, available at http://www.newyorkstatewireless.org/Tools/BroadCaster/Upload/Project124/Docs/Sharp5111_cuddyfeder_com_20120222_120949.pdf.
36. *MetroPCS v. Village of East Hills*, 764 F.Supp.2d 441 (E.D.N.Y. 2011).
37. *Id.* at 450.
38. *Id.* at 450-451.
39. *Id.* at 446.
40. *Id.* at 454.
41. *Id.* at 455.
42. See Opinion of the New York State Comptroller, No. 90-14, citing *Jewish Constructionist Synagogue v. Village of Roslyn*, 40 N.Y.2d 158, 386 N.Y.Supp.2d 198 (1976).
43. *MetroPCS, LLC v. City of Mount Vernon*, 739 F.Supp.2d 409 (S.D.N.Y. 2010).
44. *Id.* at 424.
45. *Id.* at 425–426.
46. *Id.*
47. NYSWA consultant questionnaire, available at http://www.newyorkstatewireless.org/Tools/BroadCaster/Upload/Project124/Docs/consultant_questions.pdf.
48. N.Y. TOWN LAW §§ 118 (Form of Claims) & 119 (Audit of Claims and Issuance of Warrants).

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