

July 26, 2010

Via Email and U.S. Mail

Sara G. Schnorr
Partner
Edwards Angell Palmer & Dodge LLP
111 Huntington Avenue
Boston, MA 02199-7613**RECEIVED****JUL 28 2010****Town of Acton
Planning Department****Re: Acton RL - MA-BOS7244**

Dear Ms. Schnorr:

This letter provides our analysis of the applicability of 47 U.S.C. Section. 332(c)(7) to Clearwire's installation of facilities at the above-referenced site. As you know, 47 U.S.C. Section 332(c)(7) places limits on local zoning authority with regard to the provision of personal wireless service facilities; specifically, state and local regulation of personal wireless service facilities may not unreasonably discriminate among providers of "functionally equivalent services" and may not prohibit or have the effect of prohibiting such services. "Personal wireless services" is defined to include: (i) commercial mobile services; (ii) unlicensed wireless services; and (iii) common carrier wireless exchange access services.

As discussed below, Clearwire's services are functionally equivalent to, if not identical, to services provided by traditional telecommunications and commercial mobile radio service (CMRS) providers and are used by other companies (i.e., Sprint) to provide CMRS services. Therefore, its facilities are entitled to the protections of Section 332(c)(7) of the Telecommunications Act of 1996.

Discussion

Clearwire is a wireless provider licensed by the FCC to use 2.5 GHz spectrum to provide wireless services, including Broadband Radio Service ("BRS") and Educational Broadband Services ("EBS"). Clearwire operates advanced wireless communications networks and provides FCC-authorized advanced wireless broadband Internet access services, in addition to interconnected Voice over Internet Protocol (VoIP) services. Clearwire's services are functionally equivalent to services provided by traditional CMRS providers.

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Clearwire also operates as a wholesale network service provider to multiple cable and CMRS providers. For example, Clearwire will also support Sprint's 4G services and voice-grade CMRS services.

In this respect, the FCC stated that Section 332(c)(7) applies to wireless service providers that use the same infrastructure to provide "personal wireless services," **and** wireless broadband Internet access services. The FCC stated that "classifying wireline broadband Internet access services as 'information services' will not exclude these services from the section 332(c)(7) framework when a wireless provider's infrastructure is used to provide such services commingled with 'personal wireless service'." See *Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, FCC 07-30, at paras. 63, 65.

In addition, more recently the FCC specifically named Clearwire and its next generation wireless broadband network as the types of facilities that would benefit from the protections of its "shot-clock" timeframes for wireless facility siting procedures under Section 332(c)(7). The FCC stated:

Delays in the processing of personal wireless service facility siting applications are particularly problematic as consumers await the deployment of advanced wireless communications services, including broadband services, in all geographic areas in a timely fashion.[1] Wireless providers currently are in the process of deploying broadband networks which will enable them to compete with the services offered by wireline companies.[2] For example, Clearwire is deploying a next generation broadband wireless network for the 2.5 GHz band using the Worldwide Inter-Operability for Microwave Access (WiMAX) technology.[3] Clearwire asserts that its WiMAX network will "provide a true mobile broadband experience for consumers, small businesses, medium and large enterprises, public safety organizations and educational institutions."

See *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*, FCC 09-99 at para. 35 (1999) (footnotes omitted).

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For these reasons, Clearwire's facilities should be treated in accordance with Section 332(c)(7).
Please contact me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in blue ink that reads "Jane Whang" with a stylized flourish at the end.

Jane J. Whang

cc: Joe Sutton
Ricardo Sousa
Suzanne Toller