The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30235 Filed 12–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–379–000]

Just Energy (U.S.) Corp.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 14, 2009.

This is a supplemental notice in the above-referenced proceeding of Just Energy (U.S.) Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 4, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30238 Filed 12–18–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9094–2; Docket ID No. EPA–HQ–ORD–2009–0791]

Draft Toxicological Review of Trichloroethylene: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Listening Session; correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** on December 11, 2009, concerning a listening session to be held during a public comment period for the external review draft document entitled ''Toxicological Review of Trichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS).''

FOR FURTHER INFORMATION CONTACT: Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8592; *facsimile:* 703–347–8689; or *e-mail: ross.christine@epa.gov.*

Correction

In the **Federal Register** of December 11, 2009, in FR Doc. -9091–1, on page 65775, in the first, second, and third columns correct the dates to read:

SUMMARY: EPA is announcing a listening session to be held on January 26, 2010, during the public comment period for the external review draft document entitled, ''Toxicological Review of Trichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/011A).

DATES: The listening session on the draft IRIS health assessment for trichloroethylene will be held on January 26, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time. If you want to make a presentation at the listening session, you should register by January 19, 2010, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. If no speakers have registered by January 19, 2010, the listening session will be cancelled and EPA will notify those registered of the cancellation.

ADDRESSES: To attend the listening session, register by Tuesday, January 19, 2010, via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-tce.htm.*

Dated: December 14, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–30257 Filed 12–18–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 08–165; FCC 09–99]

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

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: In this document, the Commission addresses a Petition for Declaratory Ruling (Petition) filed by CTIA—The Wireless Association® (CTIA) seeking clarification of provisions in Sections 253 and 332(c)(7) of the Communications Act of 1934, as amended (Communications Act), regarding State and local review of

wireless facility siting applications. Because delays in the zoning process have hindered the deployment of new wireless infrastructure, the Commission defines timeframes for State and local action on wireless facilities siting requests, while also preserving the authority of States and localities to make the ultimate determination on local zoning and land use policies. The intended effect of the ruling is to promote the deployment of broadband and other wireless services by reducing delays in the construction and improvement of wireless networks.

DATES: Effective November 18, 2009.

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

FOR FURTHER INFORMATION CONTACT: Angela Kronenberg, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling* (*Ruling*) in WT Docket No. 08–165 released November 18, 2009. The complete text of the *Ruling* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Ruling* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, FCC 09–99. The *Ruling* is also available on the Internet at the Commission's website through its Electronic Document Management System (EDOCS): *http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.*

Paperwork Reduction Act of 1995 Analysis: Document FCC 09–99 does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. *See* 47 U.S.C. 3506(c)(4).

Synopsis

I. Introduction

1. On July 11, 2008, CTIA (Petitioner) filed its Petition requesting that the Commission issue a Declaratory Ruling clarifying provisions in sections 253 and 332(c)(7) of the Communications Act regarding the timeframes in which zoning authorities must act on siting requests for wireless towers or antenna sites, their power to restrict competitive entry by multiple providers in a given area, and their ability to impose certain procedural requirements on wireless service providers. In the *Ruling,* the Commission grants the Petition in part and denies it in part to ensure that both localities and service providers may have an opportunity to make their case in court, as contemplated by section 332(c)(7) of the Act.

II. Discussion

2. In the *Ruling,* the Commission finds it has the authority to interpret section 332(c)(7), and it addresses the three issues raised in the Petition. On the first issue, the Commission concludes that it should define what constitutes a presumptively ''reasonable period of time'' beyond which inaction on a personal wireless service facility siting application will be deemed a ''failure to act.'' The Commission then determines that in the event a State or local government fails to act within the appropriate time period, the applicant is entitled to bring an action in court under section 332(c)(7)(B)(v). At that point, the State or local government will have the opportunity to present to the court arguments to show that additional time would be reasonable, given the nature and scope of the siting application at issue. The Commission next concludes that the record supports setting the time limits at 90 days for State and local governments to process collocation applications, and 150 days for them to process applications other than collocations. On the second issue raised by the Petition, the Commission finds that it is a violation of section 332(c)(7)(B)(i)(II) for a State or local government to deny a personal wireless service facility siting application solely because that service is available from another provider. On the third issue, because the Petitioner has not presented any evidence of a specific controversy, the Commission denies the request that it find that a State or local regulation that explicitly or effectively requires a variance or waiver for every wireless facility siting violates section 253(a). Finally, the Commission addresses other issues raised in the record, including dismissal of a Cross-Petition filed by the EMR Policy Institute (EMRPI) that, *inter alia,* seeks a declaratory ruling relating to the Commission's regulations regarding exposure to radio frequency (RF) emissions.

3. *Time for Acting on Facility Siting Applications.* Section 332(c)(7)(B)(ii) of the Communications Act states that State or local governments must act on requests for personal wireless service facility sitings ''within a reasonable period of time.'' Section 332(c)(7)(B)(v) further provides that ''[a]ny person adversely affected by any final action or failure to act'' by a State or local government on a personal wireless service facility siting application ''may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.''

4. The Commission finds that the evidence in the record demonstrates that personal wireless service providers have often faced lengthy and unreasonable delays in the consideration of their facility siting applications, and that the persistence of such delays is impeding the deployment of advanced and emergency services. To provide guidance, remove uncertainty and encourage the expeditious deployment of wireless broadband services, the Commission therefore determines that it is in the public interest to define the time period after which an aggrieved party can seek judicial redress for a State or local government's inaction on a personal wireless service facility siting application. Specifically, the Commission finds that a ''reasonable period of time'' is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications. Accordingly, if State or local governments do not act upon applications within those timeframes, then a ''failure to act'' has occurred and personal wireless service providers may seek redress in a court of competent jurisdiction within 30 days, as provided in section 332(c)(7)(B)(v). The State or local government, however, will have the opportunity to rebut the presumption of reasonableness.

5. The Commission finds that the record shows that unreasonable delays are occurring in a significant number of cases. For example, the Commission references data that the Petitioner compiled from its members showing certain personal wireless service facility siting applications had been pending final action for more than one year, and some more than 3 years. In addition, the Commission references several wireless providers who supplemented the record

with their individual experiences in the personal wireless service facility siting application process. The Commission states that the record evidence demonstrates that unreasonable delays in the personal wireless service facility siting applications process have obstructed the provision of wireless services. Many wireless providers have faced lengthy and costly processing. The Commission disagrees with State and local government commenters that argue that the Petition fails to provide any credible or probative evidence that any local government is engaged in delay with respect to processing personal wireless service facility siting applications, and that there is insufficient evidence on the record as a whole to justify Commission action. To the contrary, given the extensive statistical evidence provided by the Petitioner and supporting commenters, and the absence of more than isolated anecdotes in rebuttal, the Commission finds that the record amply establishes the occurrence of significant instances of delay.

6. The Commission states that 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. Wireless providers currently are in the process of deploying broadband networks which will enable them to compete with the services offered by wireline companies. State and local practices that unreasonably delay the siting of personal wireless service facilities threaten to undermine achievement of Commission goals and impede the promotion of advanced services and competition deemed critical by Congress. In addition, the Commission states that deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation.

7. Given the evidence of unreasonable delays and the public interest in avoiding such delays, the Commission concludes that it should define the statutory terms ''reasonable period of time'' and ''failure to act'' in order to clarify when an adversely affected service provider may take a dilatory State or local government to court. Specifically, the Commission finds that when a State or local government does not act within a ''reasonable period of time'' under section 332(c)(7)(B)(i)(II), a ''failure to act'' occurs within section 332(c)(7)(B)(v). And because an ''action or failure to act'' is the statutory trigger for seeking judicial relief, the Commission's clarification of these terms will give personal wireless service providers certainty as to when they may seek redress for inaction on an application. The Commission expects that such certainty will enable personal wireless service providers more vigorously to enforce the statutory mandate against unreasonable delay that impedes the deployment of services that benefit the public. At the same time, the Commission's action will provide guidance to State and local governments as to what constitutes a reasonable timeframe in which they are expected to process applications, but recognizes that certain cases may legitimately require more processing time.

8. By defining the period after which personal wireless service providers have a right to seek judicial relief, the Commission both ensures timely State and local government action and preserves incentives for providers to work cooperatively with them to address community needs. Wireless providers will have the incentive to resolve legitimate issues raised by State or local governments within the timeframes defined as reasonable, or they will incur the costs of litigation and may face additional delay if the court determines that additional time was, in fact, reasonable under the circumstances. Similarly, State and local governments will have a strong incentive to resolve each application within the timeframe defined as reasonable, or they will risk issuance of an injunction granting the application. In addition, specific timeframes for State and local government deliberations will allow wireless providers to better plan and allocate resources. The Commission states that this is especially important as providers plan to deploy their new broadband networks.

9. The Commission rejects the Petition's proposals that the Commission go farther and either deem an application granted when a State or local government has failed to act within a defined timeframe or adopt a presumption that the court should issue an injunction granting the application. Section 332(c)(7)(B)(v) states that when a failure to act has occurred, aggrieved parties should file with a court of competent jurisdiction within 30 days and that ''[t]he court shall hear and decide such action on an expedited basis.'' The provision indicates Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies. As the Petitioner notes, many courts have issued injunctions granting applications upon finding a violation of section 332(c)(7)(B). However, the case law does not establish that an injunction granting the application is always or presumptively appropriate when a ''failure to act'' occurs. To the contrary, in those cases where courts have issued such injunctions upon finding a failure to act within a reasonable time, they have done so only after examining all the facts in the case. While the Commission agrees that injunctions granting applications may be appropriate in many cases, the proposals in personal wireless service facility siting applications and the surrounding circumstances can vary greatly. It is therefore important for courts to consider the specific facts of individual applications and adopt remedies based on those facts.

10. The Commission also disagrees with commenters that argue that the statutory scheme precludes the Commission from interpreting the terms ''reasonable period of time'' and ''failure to act'' by reference to specific timeframes. Given the opportunities that the Commission has built into the process for ensuring individualized consideration of the nature and scope of each siting request, the Commission finds their arguments unavailing. Congress did not define either ''reasonable period of time'' or ''failure to act'' in the Communications Act. The term ''reasonable'' is ambiguous and courts owe substantial deference to the interpretation that the Commission accords to ambiguous terms. The Commission found in the local cable franchising context that the term ''unreasonably refuse to award'' a local franchise authorization in section 621(a)(1) of the Communications Act is ambiguous and subject to the Commission's interpretation. As in the local franchising context, it is not clear from the Communications Act what is a reasonable period of time to act on an application or when a failure to act occurs. By defining timeframes, the Commission states it will lend clarity to these provisions, giving wireless providers and State and local zoning authorities greater certainty in knowing what period of time is ''reasonable,'' and ensuring that the point at which a State or local authority ''fails to act'' is not left so ambiguous that it risks depriving a wireless siting applicant of its right to redress.

11. The Commission's construction of the statutory terms ''reasonable period of time'' and ''failure to act'' takes into account, on several levels, the section 332(c)(7)(B)(ii) requirement that the ''nature and scope'' of the request be considered and the legislative history's

indication that Congress intended the decisional timeframe to be the ''usual period'' under the circumstances for resolving zoning matters. First, the timeframes the Commission defines are based on actual practice as shown in the record. Most statutes and government processes discussed in the record already conform to the timeframes the Commission defines in the *Ruling.* As such, the timeframes do not require State and local governments to give preferential treatment to personal wireless service providers over other types of land use applications. Second, the Commission considers the nature and scope of the request by defining a shorter timeframe for collocation applications, consistent with record evidence that collocation applications generally are considered at a faster pace than other tower applications. Third, under the regime that the Commission adopts, the State or local authority will have the opportunity, in any given case that comes before a court, to rebut the presumption that the established timeframes are reasonable. Finally, the Commission has provided for further adjustments to the presumptive deadlines in order to ensure that the timeframes accommodate certain contingencies that may arise in individual cases, including where the applicant and the State or local authority agree to extend the time, where the application has already been pending for longer than the presumptive timeframe as of the date of the *Ruling,* and where the application review process has been delayed by the applicant's failure to submit a complete application or to file necessary additional information in a timely manner. For all these reasons, the Commission concludes that the Commission's clarification of the broad terms ''reasonable period of time'' and ''failure to act'' is consistent with the statutory scheme.

12. The Petition proposes a 45-day timeframe for collocation applications and a 75-day timeframe for all other applications. While the Commission recognizes that many applications can and perhaps should be processed within the timeframes proposed by the Petitioner, the Commission is concerned that these timeframes may be insufficiently flexible for general applicability. In particular, some applications may reasonably require additional time to explore collaborative solutions among the governments, wireless providers, and affected communities. Also, State and local governments may sometimes need additional time to prepare a written explanation of their decisions as required by section 332(c)(7)(B)(iii), and the timeframes as proposed may not accommodate reasonable, generally applicable procedural requirements in some communities. Although the reviewing court will have the opportunity to consider such unique circumstances in individual cases, the Commission states that it is important for purposes of certainty and orderly processing that the timeframes for determining when suit may be brought in fact accommodate reasonable processes in most instances.

13. Based on the Commission's review of the record as a whole, it finds 90 days to be a generally reasonable timeframe for processing collocation applications and 150 days to be a generally reasonable timeframe for processing applications other than collocations. Thus, a lack of a decision within these timeframes presumptively constitutes a failure to act under section 332(c)(7)(B)(v). The Commission finds that collocation applications can reasonably be processed within 90 days. Collocation applications are easier to process than other types of applications as they do not implicate the effects upon the community that may result from new construction. In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community. Therefore, many jurisdictions do not require public notice or hearings for collocations. In addition, several State statutes already require application processing for collocations within 90 days. For purposes of this standard, an application is a request for collocation if it does not involve a ''substantial increase in the size of a tower'' as defined in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR part 1, Appendix B. Such a limitation will help to ensure that State and local governments will have a reasonable period of time to review those applications that may require more extensive consideration.

14. The Commission further finds that the record shows that a 150-day processing period for applications other than collocations is a reasonable standard that is consistent with most statutes and local processes. Based on the record, the Commission does not agree that the its imposition of the 90-day and 150-day timeframes will disrupt many of the processes State and local governments already have in place for personal wireless service facility siting applications.

15. Section 332(c)(7)(B)(v) provides that an action for judicial relief must be brought ''within 30 days'' after a State or local government action or failure to act. Thus, if a failure to act occurs 90 days (for a collocation) or 150 days (in other cases) after an application is filed, any court action must be brought by day 120 or 180 on penalty of losing the ability to sue. The Commission concludes that a rigid application of the cutoff to cases where the parties are working cooperatively toward a consensual resolution would be contrary to both the public interest and Congressional intent. Accordingly, the Commission clarifies that a ''reasonable period of time'' may be extended beyond 90 or 150 days by mutual consent of the personal wireless service provider and the State or local government, and that in such instances, the commencement of the 30-day period for filing suit will be tolled.

16. To the extent existing State statutes or local ordinances set different review periods than the Commission does in the *Ruling,* the Commission clarifies that its interpretation of section 332(c)(7) is independent of the operation of these statutes or ordinances. Thus, where the review period in a State statute or local ordinance is shorter than the 90-day or 150-day period, the applicant may pursue any remedies granted under the State or local regulation when the applicable State or local review period has lapsed. However, the applicant must wait until the 90-day or 150-day review period has expired to bring suit for a ''failure to act'' under section 332(c)(7)(B)(v). Conversely, if the review period in the State statute or local ordinance is longer than the 90-day or 150-day review period, the applicant may bring suit under section 332(c)(7)(B)(v) after 90 days or 150 days, subject to the 30-day limitation period on filing, and may consider pursuing any remedies granted under the State or local regulation when that applicable time limit has expired. Of course, the option is also available in these cases to toll the period under section 332(c)(7) by mutual consent.

17. The Commission further concludes that given the ambiguity that has prevailed as to when a failure to act occurs, it is reasonable to give State and local governments an additional period to review currently pending applications before an applicant may file suit. Accordingly, as a general rule, for currently pending applications the Commission deems that a ''failure to act'' will occur 90 days (for collocations) or 150 days (for other applications) after the release of the *Ruling.* The

Commission recognizes, however, that some applications have been pending for a very long period, and that delaying resolution for an additional 90 or 150 days may impose an undue burden on the applicant. Therefore, a party whose application has been pending for the applicable timeframe that the Commission establishes or longer as of the release date of the *Ruling* may, after providing notice to the relevant State or local government, file suit under section 332(c)(7)(B)(v) if the State or local government fails to act within 60 days from the date of such notice. The notice provided to the State or local government shall include a copy of the *Ruling.* The Commission states that this option does not apply to applications that have currently been pending for less than 90 or 150 days, and in these instances the State or local government will have 90 or 150 days from the release of the *Ruling* before it will be considered to have failed to act. The Commission finds that such a transitional regime best balances the interests of applicants in finality with the needs of State and local governments for adequate time to implement the Commission's interpretation of section 332(c)(7).

18. Finally, the Commission states that these timeframes should take into account whether applications are complete. The Commission finds that when applications are incomplete as filed, the timeframes do not include the time that applicants take to respond to State and local governments' requests for additional information. The Commission also finds that reviewing authorities should be bound to notify applicants within a reasonable period of time that their applications are incomplete. It is important that State and local governments obtain complete applications in a timely manner, and such a finding will provide the incentive for wireless providers to file complete applications in a timely fashion. The Commission finds, based on the record, that a review period of 30 days gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants from a last minute decision that applications should be denied as incomplete.

19. Accordingly, the Commission concludes that the time it takes for an applicant to respond to a request for additional information will not count toward the 90 or 150 days only if that State or local government notifies the applicant within the first 30 days that its application is incomplete. The Commission finds that the record shows that the total amount of time, including the review period for application completeness, is generally consistent with those States that specifically include such a review period.

20. *Prohibition of Service by a Single Provider.* The Petitioner asks the Commission to conclude that State or local regulation that effectively prohibits one carrier from providing service because service is available from one or more other carriers violates section 332(c)(7)(B)(i)(II) of the Act. The Commission concludes that a State or local government that denies an application for personal wireless service facilities siting solely because one or more carriers serve a given geographic market has engaged in unlawful regulation that ''prohibits or ha[s] the effect of prohibiting the provision of personal wireless services,'' within the meaning of section 332(c)(7)(B)(i)(II).

21. Section 332(c)(7)(B)(i)(II) provides, as a limitation on the statute's preservation of local zoning authority, that a State or local government regulation of personal wireless facilities ''shall not prohibit or have the effect of prohibiting the provision of personal wireless services.'' The Commission notes that courts of appeals disagree on whether a State or local policy that denies personal wireless service facility siting applications solely because of the presence of another carrier should be treated as a siting regulation that prohibits or has the effect of prohibiting such services. Thus, a controversy exists that is appropriately resolved by declaratory ruling.

22. The Commission agrees with the Petitioner that the fact that another carrier or carriers provide service to an area is an inadequate defense under a claim that a prohibition of service exists, and the Commission concludes that any other interpretation of section 332(c)(7)(B)(i)(II) would be inconsistent with the Telecommunications Act's pro-competitive purpose. While the Commission acknowledges that the provision could be interpreted in the manner endorsed by several courts—as a safeguard against a complete ban on all personal wireless service within the State or local jurisdiction, which would have no further effect if a single provider is permitted to provide its service within the jurisdiction—the Commission concludes that under the better reading of the statute, the limitation of State/local authority applies not just to the first carrier to enter into the market, but also to all subsequent entrants.

23. The Commission reaches such a conclusion for several reasons. First, the Commission's interpretation is consistent with the statutory language referring to the prohibition of ''the provision of personal wireless services'' rather than the singular term ''service.'' Second, an interpretation that would regard the entry of one carrier into the locality as mooting a subsequent examination of whether the locality has improperly blocked personal wireless services ignores the possibility that the first carrier may not provide service to the entire locality, and a zoning approach that subsequently prohibits or effectively prohibits additional carriers therefore may leave segments of the population unserved or underserved. Third, the Commission finds unavailing the concern expressed by the Fourth Circuit (and some other courts) that giving each carrier an individualized right under section 332(c)(7)(B)(i)(II) to contest an adverse zoning decision as an unlawful prohibition of its service ''would effectively nullify local authority by mandating approval of all (or nearly all) applications.'' Rather, the Commission construes the statute to bar State and local authorities from prohibiting the provision of services of individual carriers solely on the basis of the presence of another carrier in the jurisdiction; State and local authority to base zoning regulation on other grounds is left intact by the *Ruling.* Finally, the Commission's construction of the provision achieves a balance that is most consistent with the relevant goals of the Communications Act to improve service quality and lower prices for consumers.

24. The Commission's determination also serves the Act's goal of preserving the State and local authorities' ability to reasonably regulate the location of facilities in a manner that operates in harmony with federal policies that promote competition among wireless providers. Nothing the Commission does in the *Ruling* interferes with these authorities' consideration of and action on the issues that traditionally inform local zoning regulation. Thus, where a *bona fide* local zoning concern, rather than the mere presence of other carriers, drives a zoning decision, it should be unaffected by the Commission's *Ruling.* The Commission observes that a decision to deny a personal wireless service facility siting application that is based on the availability of adequate collocation opportunities is not one based solely on the presence of other carriers, and so is unaffected by the Commission's interpretation of the statute in the *Ruling.*

25. The Commission disagrees with the assertion that granting the Petition could have a negative impact on airports by increasing the number of potential obstructions to air navigation. As the

Federal Aviation Administration notes, the Commission's action on the Petition does not alter or amend the Federal Aviation Administration's regulatory requirements and process. The Commission also rejects the assertion that the declaration the Petitioner seeks would violate section 332(c)(7)(A)'s provision that the authority of a State or local government over decisions regarding the placement, construction, and modification of personal wireless service facilities is limited only by the limitations imposed in subparagraph (B). The Commission notes that the denial of a single application may sometimes establish a violation of section 332(c)(7)(B)(ii) if it demonstrates a policy that has the effect of prohibiting the provision of personal wireless services as interpreted herein.

26. *Ordinances Requiring Variances.* The Petitioner requests that the Commission preempt, under section 253(a) of the Act, local ordinances and State laws that effectively require a wireless service provider to obtain a variance, regardless of the type and location of the proposal, before siting facilities. Because the Petitioner does not seek actual preemption of any ordinance by its Petition, nor does it present the Commission with sufficient information or evidence of a specific controversy on which to base such action or ruling, the Commission declines to issue a declaratory ruling that zoning ordinances requiring variances for all wireless siting requests are unlawful and will be struck down if challenged in the context of a section 253 preemption action.

27. *Other Issues.* Numerous parties argue that the Petitioner failed to follow the Commission's service requirements with respect to preemption petitions. 47 CFR 1.1206(a), Note 1, of the Commission's rules requires that a party filing either a petition for declaratory ruling seeking preemption of State or local regulatory authority, or a petition for relief under section 332(c)(7)(B)(v), must serve the original petition on any State or local government whose actions are cited as a basis for requesting preemption. By its terms, the service requirement does not apply to a petition that cites examples of the practices of unidentified jurisdictions to demonstrate the need for a declaratory ruling interpreting provisions of the Communications Act. These parties' principal argument is that the Commission should require the Petitioner to identify the jurisdictions that it references anonymously, which, they assert, would then trigger the service requirement. However, nothing in the rules requires that these jurisdictions be identified.

28. Several commenters argue that the Commission should deny the Petition in order to protect local citizens against the health hazards that these commenters attribute to RF emissions. To the extent commenters argue that State and local governments require flexibility to deny personal wireless service facility siting applications or delay action on such applications based on the perceived health effects of RF emissions, such authority is denied by statute under section 332(c)(7)(B)(iv). The Commission concludes that such arguments are outside the scope of the proceeding.

29. In its Cross-Petition, EMRPI contends that in light of additional data that has been compiled since 1996, the RF safety regulations that the Commission adopted at that time are no longer adequate. The Commission states that EMPRI's request to revisit the regulations is also outside the scope of the current proceeding, and the Commission dismisses EMRPI's Cross-Petition.

III. Conclusion

30. For the reasons discussed in the *Ruling,* the Commission grants in part and denies in part CTIA's Petition for a Declaratory Ruling interpreting provisions of section 332(c)(7) of the Communications Act. By clarifying the statute, the Commission recognizes Congress' dual interests in promoting the rapid and ubiquitous deployment of advanced, innovative, and competitive services, and in preserving the substantial area of authority that Congress reserved to State and local governments to ensure that personal wireless service facility siting occurs in a manner consistent with each community's values.

IV. Ordering Clauses

31. *It is ordered* that, pursuant to sections 4(i), 4(j), 201(b), 253(a), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 201(b), 253(a), 303(r), 332(c)(7), and § 1.2 of the Commission's rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed by CTIA—The Wireless Association *is granted* to the extent specified in the *Ruling* and otherwise *is denied.*

32. *It is further ordered* that, pursuant to sections 4(i), 4(j), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 332(c)(7), and § 1.2 of the Commission's rules, 47 CFR 1.2, the Cross-Petition filed by the EMR Policy Institute *is dismissed.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–30291 Filed 12–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, December 17, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

The following item has been added to the agenda for the above-captioned open meeting:

Rulemaking to Repeal 11 CFR 100.57, 106.6(c) & (f).

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary Dove,

Secretary of the Commission.

[FR Doc. E9–30058 Filed 12–18–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for