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Office of the City Attorney / City Prosecutor

League of California Cities FCC Wireless Siting Report & Order Webinar

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January 8, 2015





Overview of Report & Order re: Section 332(c)(7) Discussion

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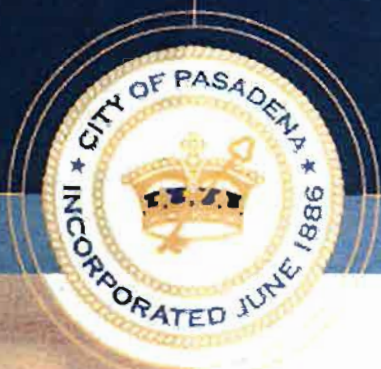
- **Changes/Clarifications**

- Incomplete letters
- Shot clock clarified
- Moratoria

- **No change**

- No deemed granted remedy for shot clock violations
- Municipal property preferences are not *per se* discriminatory

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1996 Telecommunications Act

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- 47 U.S.C. § 332(c)(7) - preserves local authority to regulate wireless facilities, subject to limitations
 - > **No Unreasonable Discrimination**
 - > No Prohibition
 - > **Decide in reasonable time**
 - > Substantial evidence
 - > RF Emissions



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Moratoria to Address the Telecommunications Act

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OK

Medina, Washington (1996)

- City sought time "to deal with expected flurry of applications"

NOT OK

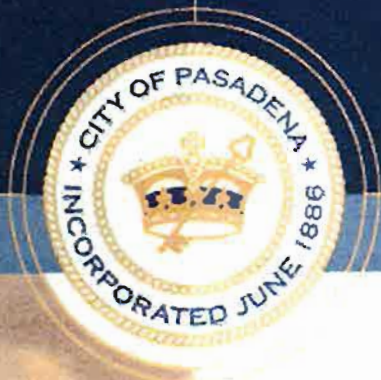
Jefferson County, Alabama (1997)

- County had two prior moratoria, and was not even processing pending applications

West Seneca, New York (1997)

- Moratorium adopted "for reasons that are not clear in the record"

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2008

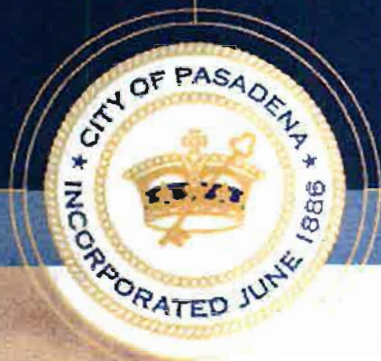
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CTIA – The Wireless Association

- Petition for declaratory ruling with FCC, alleging that local governments
 - Impede placement and construction of wireless facilities
 - Harm consumer access to wireless services



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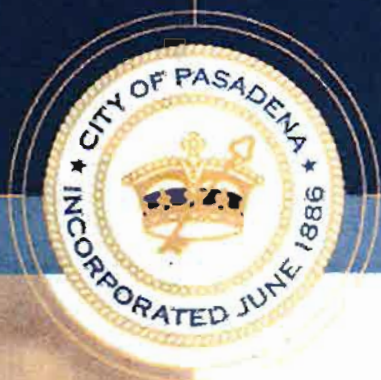
2009 FCC Shot Clock Ruling

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- Co-location applications
 - 90 days from complete application
- Other applications
 - 150 days from complete application
- Shot clock violation presumed to be unreasonable



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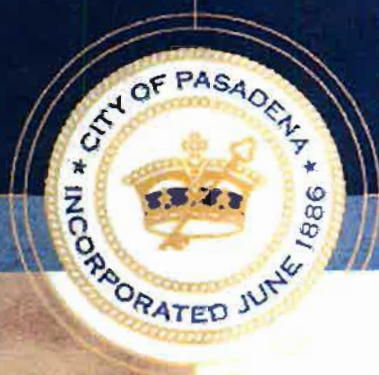
2010

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- NLC, USCM, NaCO, APA, and NATOA sought reconsideration of Shot Clock Ruling
 - > FCC denied



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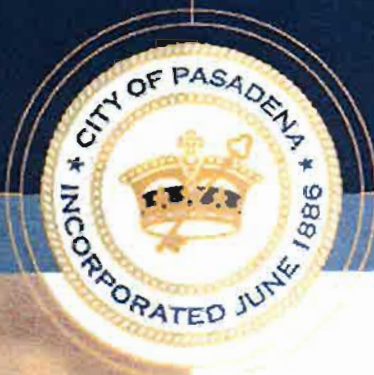
2011 Notice of Inquiry

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- FCC sought to "improv[e] government policies for access to rights of way and wireless facilities siting"



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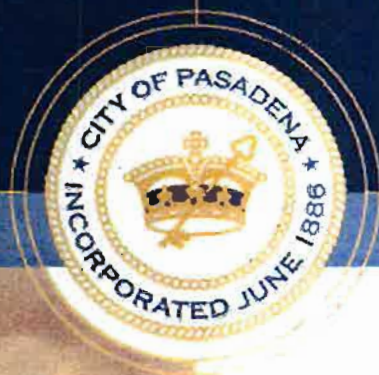
City of Arlington v. FCC 133 S.Ct. 1863 (2013)

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- Challenge to 2009 FCC Shot Clock Ruling
- Cities argued Congress did not authorize the FCC to interpret Section 332(c)(7)
- U.S. Supreme Court disagreed – deference to federal agencies' conclusions whether they have jurisdiction to address an issue



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City of Arlington

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- Why is this case important?
- *Chevron* deference extended to agency's determination of jurisdiction



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2013 FCC Notice of Proposed Rulemaking

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- FCC sought comments following its 2011 Notice of Inquiry
- League, CSAC, and SCAN filed comments and reply comments



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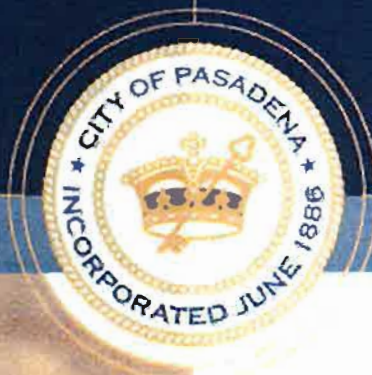
October 2014 FCC Report & Order

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- "Too often, the process to obtain the necessary approvals . . . can be both expensive and time-consuming"
 - Commissioner Mignon L. Clyburn



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October 2014 FCC Report & Order

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"[F]ar too long and in far too many places, a web of . . . regulations has entangled those trying to build infrastructure. Delays, needless paperwork, and moratoria all mean higher costs and accordingly less development."

➤ Commissioner Ajit Pai



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October 2014 FCC Report & Order

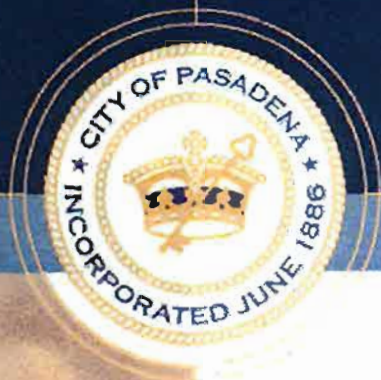
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- "Unfortunately, as soon as the ink was dry on the Telecom Act, some state and local governments went to work to undermine, and in some cases, completely ignore the siting provisions in the statute."
 - Commissioner Michael O'Reilly



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Shot Clock Clarified

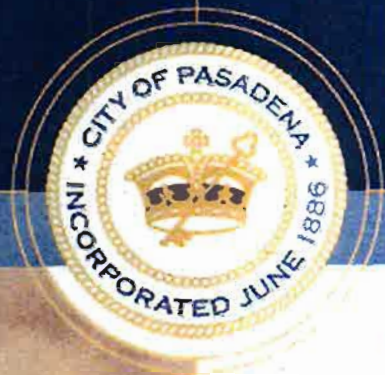
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- Initial application filed

- > 30 days to deem incomplete (stops clock)
- > List what is missing
- > Specify “publicly-stated procedures that require the information to be submitted”
 - Zoning Code, ordinance, resolution, etc.



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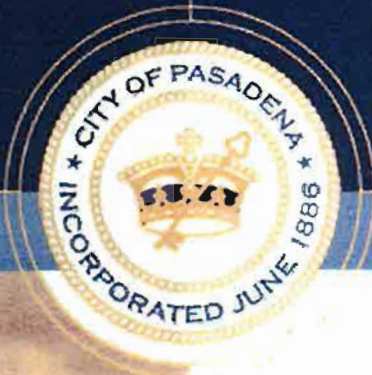
Shot Clock Clarified

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- Supplemental submissions
 - > 10 days to deem incomplete (stops clock)
 - > Cannot add new requirement that was not originally required



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No “Deemed Granted” Remedy

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- FCC rejected “deemed granted” remedy for Section 332(c)(7) shot clock violations in 2009
- FCC again rejected “deemed granted” remedy





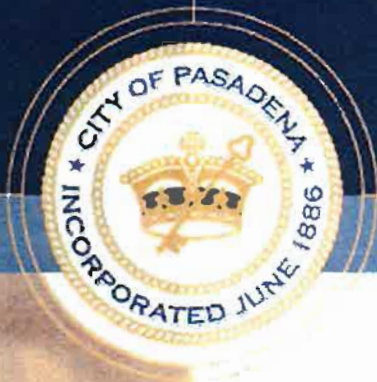
Moratoria

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- Shot clock runs even while moratorium is in place
- Moratoria now extremely difficult to justify



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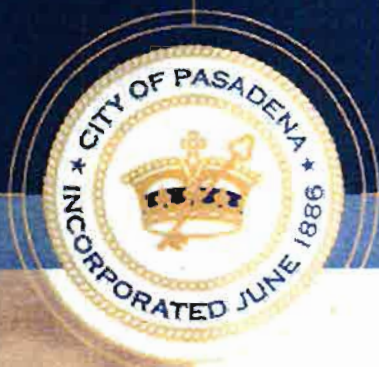
Distributed Antenna Systems

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- Shot clock applies to DAS and small-cell facilities
- Suggestion: process as if traditional wireless facility



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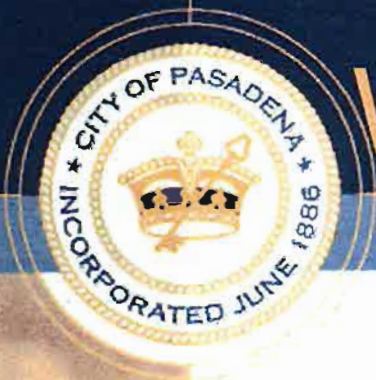


City-Owned Property

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- Industry argued that municipal property preferences were “unreasonably discriminatory”
- FCC found municipal preferences “best suited to resolution on a case-by-case basis” by the courts





Where do we go from here?

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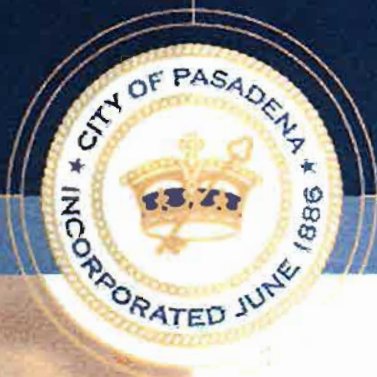
Legal Authority

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- Telecommunications Act
- Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012
- 2009 Shot Clock Ruling
- 2014 Report & Order
- California Public Utilities Code § 7901



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CTIA and PCIA

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Offered to provide

- > **Best practices** used by other cities that are able to swiftly approve applications
- > Provide **education** to cities regarding the application process
- > Provide **assistance in drafting** model ordinance and application for reviewing 6409(a) requests
- > Creating **checklist** for cities to streamline application processes

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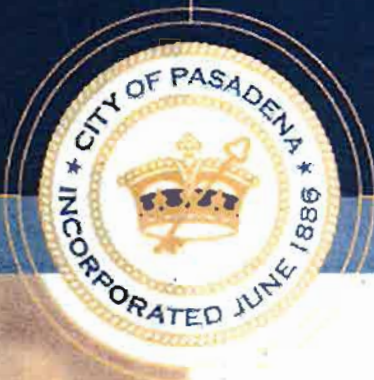
Outcomes

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- More difficult to tailor local ordinances to local needs
- Moratoria difficult to impose with shot clocks running



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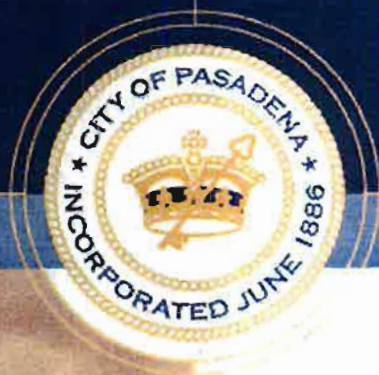
What Next?

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- Don't assume it's out of your hands
- Educate decisionmakers
- Formalize submittal requirements
- Revisit ordinances?
 - > Gap in service
 - > Alternative site analysis
 - > RF emissions
 - > Preferred sites



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What Next? (cont.)

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- Ensure submittals can be decided timely under shot clocks
- Determine which shot clock applies right away
- Schedule required hearings around time of application



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What Next? (cont.)

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- Focus processing of applications with specific staff to ensure consistent approach
- If consultants needed to evaluate application, bring in ASAP
- If revisiting regulations, consider all interests: residents, businesses, visitors, and carriers





What Next (cont.)

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AT&T installs free Wi-Fi along Colorado Boulevard in Pasadena



Visitors to Pasadena's busy Colorado Boulevard can now access free Wi-Fi from AT&T. Jay Vlielandin / Los Angeles Times.

By **ANDREA CHANG**
contact the reporter

DECEMBER 7, 2014 4:15 PM



Questions?

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Thank you!



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