

OUTLINE FOR ORAL ARGUMENT

1. ELD on behalf of amicus T-MOBILE USA, and PCIA, the Wireless Infrastructure Association. T MOBILE is a nationwide provider of wireless services licensed and providing service in 95 % of the United States. PCIA is a trade association, headquartered in Alexandria, Virginia. PCIA members, which include T MOBILE, own and manage over 50,000 telecom towers and antenna installations that support wireless service all over the United States.
2. T MOBILE and PCIA urge the court to **uphold the decision** of the District Court striking down the San Diego wireless telecommunications ordinance (WTO) as it violates the plain meaning of Section 253 of the Telecommunications Act (TCA). T-MOBILE and PCIA briefed the issue, and outlined in our brief the two basic arguments that direct this court to uphold Judge Moskowitz’ decision on this point:
  - Section 253 (a) allows for a facial challenge to a regulatory scheme—be it an ordinance, a franchise or a right-of-way management device, the requirements of which “taken together” would prohibit or may have the effect of prohibiting a carrier from providing telecommunications services. Merely citing to the existence of Section 332, and cases under 332 that proscribe parameters under this section of the TCA does not—cannot—eviscerate the rights granted by the Congress to carriers such as Sprint and T Mobile by Section 253. The County believes this because earlier cases brought under 253 deal only with landline providers and franchise requirements that wireless providers do not have rights under 253. Nothing in the TCA supports this

position, nor do the cases cited by the County . In fact, subsection 253 (e), which contains an express exception that 253 does not affect the applicability of 332(c)(3), which allows the states to regulate wireless service providers, underscores our position that **both** 253 and 332 apply to wireless service providers. See also 253 (f).

- Wireless providers have a critical, ongoing need to be able to challenge ordinances such as the WTO under 253. Countless municipalities adopt ordinances, regulations and requirements that would if allowed to stand would create barriers to entry and prohibitions to service. T Mobile, PCIA and others are vigilant, but with slightly less than 40,000 zoning jurisdictions in the United States, it is impossible to monitor all dockets and legislative calendars. It is also untenable to accept the County's position that the **only** avenue for relief from an ordinance such as the WTO is Section 332. None of the cases cited—not Auburn, not Berkely, not Santa Fe, and not this court's decision in MetroPCS support this position. Simply put, Section 332 allows for a challenge for a wrongful denial based upon a decision and Section 253 allows for a challenge to an ordinance, regulation or other regulatory device. Congress did not intend that a denial be the only way providers can obtain relief under the TCA.

3. In striking down the WTO and enjoining the County from enforcing this regulations, the Court properly identified a number of requirements that are onerous, the scope of which are undefined and unknown. In addition, the Court

criticized the “unfettered discretion” the County sought to leave itself in deciding on applications for wireless installations. On behalf of T MOBILE and PCIA, counsel is often called upon to challenge ordinances that likewise impose unreasonably burdensome filing requirements, allow for endless back-and-forth with staff and often with consultants hired by the city or county, paid for by the applicant. We outlined just two other municipalities, however the list is virtually endless.

From a **public policy** viewpoint, it is clear that challenges to such ordinances or regulations must be allowed to continue under Section 253. As has been briefed in detail by both sides, Section 332, which the County urges is the only avenue available to a carrier such as T MOBILE or Sprint, contains a very short time-frame—30 days from final action. In other words, within one month of passage of the WTO, a wireless service provider would have to (1) become aware of the new ordinance; (2) review and analyze the ordinance and decide that it is prohibitory, or may be as applied; and (3) commence litigation. In California alone, there are 478 incorporated cities and towns.