

Gap in Service related to Cell Phone Towers

There is a burden of proof to be met by the telecom applying to the FCC to install a cell phone tower that a truly “significant” gap in coverage actually exists in the location where the applicant proposes to install a wireless facility.

18.42.090 - Exceptions

Evidence for exception. An exception to the standards or requirements of this chapter may be granted if an applicable standard or requirement would prohibit or have the effect of prohibiting the provision of wireless communication services by the applicant. The Review Authority may grant an exception to terms deemed appropriate in cases where approval of the exception is necessary to comply with any state or federal law or regulation and where the applicant shows by clear and convincing evidence that no other location or combination of locations or type of facility can provide comparable wireless communication services.

Written explanation. An applicant seeking an exception shall submit to the Director a written explanation specifying clear and convincing evidence that the location(s) and the design of the proposed facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location(s), or design, that would close a significant gap or to reduce it to less than significant, and that the proposed facility is the least intrusive means to close a significant gap in service coverage or to reduce the gap to less than significant.

https://library.municode.com/ca/east_palo_alto/codes/code_of_ordinances?nodeId=EAPAALDECO2018EDCUORNO425ADNO192019_TIT18DECO_ART3REAPALZO_CH18.42WICOFA_18.42.090EX

Federal law prohibits jurisdictions from denying cell tower permits for wireless providers that need to fill a "significant" gap in coverage. If it is shown that there is no gap in service, then any appeal by a telecom to requests for environmental review, claiming of a gap in coverage should be considered invalid, and that the reasons given for requests for environmental review should not be over-ruled by an appeal to there being a gap in coverage, since there is none.

It can also be reasonably argued that if there be no service gap, an application for installation should be considered unnecessary and therefore not approved.

Based on a conversation with a scientist associated with Scientists for Wired Technology, it is my understanding that different federal district court circuits have different views or precedents regarding interpretation of the FCC's regulation regarding the term 'gap in coverage.'

National Map of Federal District Court Circuits with links to the website of each:

<https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>

Some circuits interpret the term 'gap in coverage' to mean that an applying carrier may be denied permit if there is no gap in coverage, due to already-existing coverage by other carriers.

Whereas other circuits interpret the term 'gap in coverage' to mean that any already-existing coverage by other carriers is not considered when considering an application, and the term 'gap in coverage' would only apply in gaps in the applying telecom's coverage.

Two contrasting principles are both relevant:

- a) the principle of competition (allowing free competition by allowing carriers to transmit, even though their services are not needed in an area) and
- b) the principle that technologies that negatively and significantly impact the human environment should be limited as much as practical.

Both these principles are valid and important, and both should be considered by policymakers.

.