Recently, a representative of a cell phone service provider told the planning commission that a denial of a request to place a cell phone tower in an existing building would be a violation of the Federal Telecommunications Act. I have researched the Act, and have formed an opinion that the City is well within its rights under the Act to deny such requests under certain circumstances.

The Act provides in pertinent part:

(7) Preservation of local authority

(A) General Authority

Except as provided in this chapter, nothing in this chapter shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A state or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

Courts have observed that Sec. 332(c)(7)(B) is "a deliberate compromise between two competing aims- to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers." U.S. Cellular v. City of Franklin, New Hampshire, 413 F.Supp.2d 21, 29. "Basically, the Act gives local authorities the first say in determining where and how to construct [wireless communication facilities]; if, however, a local authority's actions violate the provisions of [the Act], a court has the authority to order the locality to take such steps as are necessary to grant the relief which the wireless provider had originally requested from the locality."

In our case, the City of Rapid City has zoning requirements that are applied evenly, and are not designed to prohibit, nor do they have the effect of prohibiting, the provision of personal wireless services. The decision to deny such a request by a

provider must be in writing and be supported by substantial evidence. In other words, there must be solid reasons to deny the request. In the case that prompted this research, the reason was that the business form which the provider is leasing space is not in conformity with the landscaping and parking requirements. It is my opinion that there is substantial evidence to deny the request.

As long as the City has an articulated reason to deny a specific request, and the denial does not have the effect of prohibiting the provision of personal wireless service, we are within our rights under the Act. Such a decision must be in writing, and supported by substantial evidence. "Substantial evidence" is not "a large or considerable amount of evidence," and the fact that two different conclusions could have been reached does not mean there is not substantial evidence. T-Mobile South, LLC v. City of Jacksonville, Florida, 564 F.Supp.2d 1337. "The Act's substantial evidence requirement is a procedural safeguard which is centrally directed at whether the local zoning authority's decision is consistent with the applicable local zoning requirements."