

CITY OF BEVERLY HILLS

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John A. Mirisch, Mayor

October 7, 2019

Received & Inspected

OCT 17 2019

FCC Mailroom

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12 Street, S.W.

Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Comment on Petition for Rulemaking and a Petition for Declaratory Ruling filed by the Wireless Infrastructure Association (WIA) and a Petition for Declaratory Ruling Filed by the Cellular Telecommunications Industry Association (CTIA) -- RM-11849, WT Docket No. 19-250 and WC Docket 17-84

Dear Secretary Dortch:

On behalf of the City of Beverly Hills, I am writing to file the City's concerns with the wireless industry petitions seeking a Declaratory Ruling clarifying the rules implementing Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 12-96 ("Spectrum Act"). The City of Beverly Hills urges the FCC to reject the cable and telecommunications industry unwarranted petitions to further erode local control over the build-out of 5G deployment.

Under Section 6409 and Sections 1455 and 224 of the Communications Act (47 U.S.C. 1455), the wireless industry is seeking the Commission's assistance to further narrow the practical and reasonable applications of local authority to the point of rendering the whole concept moot. The Wireless Infrastructure Association Petition for Rulemaking asks the Commission to amend its rules to reflect the collocations requiring an expansion of the current site - within 30 feet of a tower site - qualify for relief under Section 6409(a) and to require that fees associated with eligible facilities requests under Section 6409 be cost-based. Specifically, WIA is asking the FCC to clarify: 1) that Section 6409(a) and the Commission's related rules apply to all state and local authorizations; 2) when the time to decide an application begins to run under the "shot clock;" 3) what constitutes a substantial change under Section 6409(a); 4) that "conditional" approvals by localities violate Section 6409(a); and 5) that localities may not establish processes or impose conditions that effectively defeat or reduce the protections afforded under Section 6409(a).

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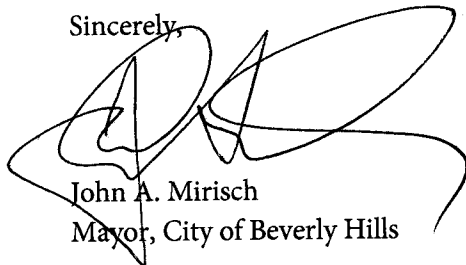
CTIA's Petition for Declaratory Ruling asks the Commission to clarify the terms "concealment element," "equipment cabinet," and "base station" in its rules, and clarify that when an applicant is "deemed granted" under Section 6409, applicants may lawfully construct even if the siting authority has not issued construction permits. With respect to Section 224, CTIA asks the Commission to: 1) determine that the definition of the term "pole" in Section 224 includes light poles; 2) conclude that utilities may not impose blanket prohibitions on access to certain parts of the pole; and 3) clarify that utilities may not ask attachers to accept terms and conditions that are inconsistent with the Commission's rules.

Through a series of recent rulings, the FCC has already imposed significant constraints and burdens on how local governments may best protect the public health, safety and welfare of their residents in relation to the construction, modification or installation of broadcasting facilities on publicly owned property. The wireless industry's latest demands are clearly aimed at further eroding what little is left of local authority in managing how taxpayer funded assets are used by private sector, corporate interests. The City of Beverly Hills, like many of our counterparts across the country, is invested in ensuring the timely buildout of 5G infrastructure. Rather than treat municipalities as adversaries, the wireless industry should deal with us as partners, recognizing that localities have a direct, public interest in determining how this new small cell wireless infrastructure is deployed in our neighborhood streets.

In its drive to facilitate a regulatory environment that promotes wireless infrastructure deployment, the Commission should balance the public's interests, as represented by states and localities, with private interests, represented by the wireless industry. While there is some overlap in common objectives in 5G deployment between public and private stakeholders, their respective interests are not synonymous. Municipalities have a constitutional obligation to serve and protect the public good. The wireless industry has an obligation to its shareholders and bottom line. Cities, moreover, have a solemn responsibility to ensure applicable building, structural, electrical, aesthetic, and safety codes benefit the whole community in a non-discriminatory manner. The wireless industry has no such mandate.

Finally, the "clarifications" demanded by WIA and CTIA, if adopted by the Commission, would represent the wholesale subordination of municipal and utility interests to those of the wireless industry in a manner that may very well harm the public good. Short circuiting local regulatory oversight in the name of 5G deployment is not in the public's interest nor is it in the long-term interests of the wireless industry whose customers, after all, live, work and play in our communities.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Mirisch", with a large, stylized flourish extending from the end of the signature.

John A. Mirisch
Mayor, City of Beverly Hills