Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of State and Local Governments Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012	)	WT Docket No. 19-250 RM-11849
	)	
Accelerating Wireline Broadband Deployment By Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	
Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79

COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE UNITED STATES CONFERENCE OF MAYORS AND THE NATIONAL ASSOCIATION OF COUNTIES

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October 29, 2019

SUMMARY

The National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors and the National Association of Counties submit these Comments in the above-referenced dockets, which seek to revise the rules related to modifications to certain wireless support structures local governments are mandated to approve on an expedited basis. The proposals in the Petitions for Declaratory Ruling and Petition for Rulemaking are contrary to the statutes the rules implement, would significantly intrude on local land use processes and pose serious public safety risks. Among other things, the proposals would (i) mandate approval of wireless deployments on sites that have never been reviewed or approved for wireless facilities and (ii) deem necessary health and safety approvals to be granted without regard to the hazards the deployments may pose. For these reasons, as more fully set forth in these Comments, we request that the Commission decline to take action on these Petitions.

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COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE UNITED STATES CONFERENCE OF MAYORS AND THE NATIONAL ASSOCIATION OF COUNTIES

A. INTRODUCTION

The National Association of Telecommunications Officers and Advisors ("NATOA"),[1] the United States Conference of Mayors ("USCM")[2] and the National Association of Counties ("NACo")[3] (together, the "Municipal Organizations") submit these comments in response to the Public Notice requesting comments on a Petition for Rulemaking filed by the Wireless

[1] NATOA's membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer communications policy and the provision of such services for the nation's local governments.
[2] USCM is the official nonpartisan organization of cities with populations of 30,000 or more, which includes 1,192 such cities in the country today.
[3] NACo represents county governments, and provides essential services to the nation's 3,069 counties.

Infrastructure Association (WIA), a Petition for Declaratory Ruling filed by WIA, and a Petition for Declaratory Ruling filed by CTIA,[4] seeking changes to the FCC's rules implementing Section 6409(a) of the 2012 Spectrum Act[5] ("Rules") and Section 224 of the Telecommunications Act.[6]

The Municipal Organizations dispute the need for the far-reaching changes to the Rules requested in the Petitions. Neither the text of Sections 6409 and 224 nor the vague allegations against mostly unnamed jurisdictions asserted in the Petitions support the argument that the current rules are insufficient. The suggested "clarifications" are in fact significant changes that would permit deployments that are in no way insubstantial modifications, including:

- Allowing applicants to deploy facilities in locations never reviewed or approved for wireless facilities;
- Commanding that local governments issue electrical, structural and building permits on the sixty-first day after an applicant believes they made a "good faith attempt" to submit the application, regardless of whether the application raises serious public safety issues;
- Disregarding long-standing concealment requirements imposed prior to enactment of Section 6409, when it was impossible for local governments to know that these conditions would have to be "specifically identified as concealment elements" to remain enforceable;

[4] Petition for Rulemaking, RM-11849 (filed Aug. 27, 2019) ("WIA Rulemaking Petition"); Petition for Declaratory Ruling filed by the Wireless Infrastructure Association, WT Docket No. 17-79 (filed Aug. 27, 2019) ("WIA Petition"); Petition for Declaratory Rulemaking filed by CTIA, WT Docket No. 17-79, WC Docket No. 17-84 (filed Sep. 6, 2019) ("CTIA Petition") (collectively, "Petitions").
[5] 47 U.S.C. § 1455(a) ("Section 6409").
[6] 47 U.S.C. § 224.

- Capping fees and mandating that local governments issue permits regardless of whether the applicant has paid applicable permit fees; and
- Mandating that street light poles be available for attachments without regard for the public safety implications and contractual obligations that distinguish street lights from typical utility poles.

These and other changes requested in the Petitions are beyond the scope of the statutes and would significantly undermine local land use protections. As the Commission noted in the *2014 Order*, Congress intended to ensure that "deployments subject to Section 6409(a) will not pose a threat of harm to local land use values."[7] The changes requested in the Petitions significantly intrude upon local land use values and thus are contrary to this intent.

The proposed changes also pose a threat to public safety. WIA has discussed the public safety implications of its Petitions, implying that expanding the scope of Section 6409 is needed to enable public safety deployments.[8] Local governments do not need the threat of shot clocks and deemed granted remedies to work diligently to deploy public safety communications facilities. And nothing in the Petitions supports the assertion that deployments would be denied under a non-Section 6409 approval process. Any public safety implications dictate caution—not haste and the proposed mandatory, condition-free approvals—to ensure that these deployments, to the extent possible, function as expected during emergencies and disasters. Any foreseeable issues with the

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[7] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 at ¶ 174 (2014) ("*2014 Order*"), *aff'd Montgomery County v. FCC*, 811 F.3 121 (4th Cir. 2015).

[8] *See, e.g.*, WIA Rulemaking Petition at 7-9; WIA *Ex Parte* letters dated October 2nd and October 7th, Notice of *Ex Parte* Presentations, Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling, and CTIA Petition for Declaratory Ruling, WT Docket No. 19-250, RM11849; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84.

location or placement of equipment that could hinder functionality need to be recognized and addressed at the permit application stage, yet the Petitions significantly curtail the ability of local governments to be involved in this most critical stage of deployment, jeopardizing the carriers' ability to provide service and, ultimately, public safety.

Because the Petitions' proposals are contrary to the statutes, are a significant intrusion on local land use processes and would pose public safety risks, we request that the Commission not take action on these Petitions. If the Commission finds that changes are needed to the rules related to either Section 6409 or Section 224, we support the suggestion of the Broadband Deployment Advisory Committee, of which NATOA is a member, that this issue be referred to a balanced working group of all stakeholders to review and recommend changes, if any, that may be needed to ensure the rules address Congress's intent in enacting these statutes.

B. THE PETITIONS FOR DECLARATORY RULING REQUEST SIGNIFICANT CHANGES TO THE RULES THAT EXCEED THE SCOPE OF THE STATUTES

In issuing the *2014 Order,* the Commission felt it had struck the appropriate balance that was "consistent with the purposes of Section 6409(a) to facilitate deployments that are unlikely to conflict with local land use policies and preserve State and local authority to review proposals that may have impacts."[9] The proposed clarifications to the Rules are, in fact, significant changes that undermine any balance struck in the *2014 Order* and effectively put land use planning for wireless facility modifications in the hands of the wireless industry and private landlords without regard for the impacts to neighboring properties, the larger community or public safety.

[9] *2014 Order* at ¶ 174.

1. Expanding the Scope of Approvals Subject to Section 6409 is Beyond the Scope of the Statute and Dangerous.

Both WIA and CTIA propose that the Commission "clarify" the Rules to apply to authorizations that may be required in addition to the siting application.[10] This change in the Rules would put not only a shot clock but also a deemed granted remedy on non-siting permits that are outside the scope of Section 6409.[11] As WIA notes, the authorizations they seek to require local governments to approve within 60 days include those that fall under "building, structural, electrical and safety codes[.]"[12] Nothing in Section 6409 implies that Congress intended to interfere with these critical public safety review processes and mandate local governments allow any eligible facilities request ("EFR"), regardless of how dangerous the deployment may be. This is a clear, significant and dangerous intrusion on local public safety responsibilities.

The attempt to portray this change as consistent with the Commission's *2018 Small Cell Order*,[13] which expanded the Section 332(c)(7) shot clocks to approvals beyond the siting application, fails. While the Municipal Organizations dispute the Commission's read of Section 332(c)(7) in the *2018 Small Cell Order*—which is the subject of a pending appeal in the 9th Circuit—that questionable reading has no place in Section 6409 applications, where public safety approvals would be deemed granted even where there is a clear danger to the public. This is

[10] *See* WIA Petition at 5-7; CTIA Petition at 19.
[11] It is not clear from the Petitions if Petitioners are suggesting that the "must approve" provision of Section 6409 also would apply to approvals under these health and safety codes. This extreme position would mean municipalities would be precluded from denying an EFR even where they review the application within the shot clock period and find a violation of an applicable health or safety code. This is not what Congress intended in Section 6409.
[12] WIA Petition at 5.
[13] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (2018) ("*2018 Small Cell Order*").

substantially different from the outcome under Section 332(c)(7) and is not one this Commission should support as a matter of law or sound public policy.

In fact, in the *2014 Order*, the Commission made clear that "even as to applications covered by Section 6409(a), State and local governments may continue to enforce and condition approval on compliance with non-discretionary codes reasonably related to health and safety, including building and structural codes."[14] Redefining the EFR application to include building, structural and other safety code approvals precludes municipalities from effectively enforcing these codes because of the deemed granted remedy that applies to the EFR application. Missing the shot clock deadline would have potentially dangerous consequences because necessary health and safety reviews will not have happened and permits will be deemed granted regardless of serious heath and safety consequences.

2. The Proposed Standard for Starting the Shot Clock is Ambiguous and Unworkable.

WIA proposes that the 60-day shot clock begin when "an applicant in good faith attempts to seek the necessary local government approvals[.]"[15] This standard is too vague to provide the clarity WIA alleges is needed. In addition, this standard looks at the applicant's "good faith" without regard the reasonableness of the attempt or local governments' reasonable ability to discover the application. If an applicant believes in good faith that an email to a city's public works staff or general information email address stating they would like to collocate an antenna on an existing tower at 123 Main Street is an acceptable attempt, then it would be rendered—by Commission fiat—an application, regardless of whether the city has an official application and clear application process the applicant did not follow. Under the proposed standard, municipalities

[14] *2014 Order* at 214 n. 595.
[15] WIA Petition at 8.

may not know the applicant thought they submitted an application, and thus siting authorities may have no way to even attempt to comply with the shot clocks. If completing reviews within the shot clocks is the goal, the proposed standard misses the mark.

Here, too, the comparison to Commission rules related to Section 332(c)(7) is unfounded. First, the *2018 Small Cell Order* does not adopt a vague "good faith attempt" standard for submitting applications. Second, as the Commission noted in the *2014 Order*, the "deemed grant" remedy of Section 6409 makes it materially different from Section 332(c)(7).[16] Unlike in the context of Section 332(c)(7) applications, where localities can "rebut a claim of failure to act,"[17] the Rules for Section 6409 do not provide such an opportunity, making it even more important that applications are submitted in the appropriate manner so that localities are able to act on them.[18]

3. The Proposed Expansion of the Definition of "Substantial Change" Would Require Approval of Unquestionably Substantial and Potentially Unsafe Modifications.

WIA and CTIA propose several "clarifications" to the Commission's definition of "substantial change" that would mandate local governments approve modifications that would be considered "substantial" under any reasonable understanding of the meaning of that term. In approving the initial placement of a wireless facility, localities must be able to confidently assure residents that the appearance and safety of that structure will not substantially change over time without additional local review and approval. The requests in the Petitions would so change the meaning of "substantial change" that local governments would lose much of their remaining

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[16] *2014 Order* at ¶ 216 ("whereas a municipality may rebut a claim of failure to act under Section 332(c)(7) if it can demonstrate that a longer review period was reasonable, that is not the case under Section 6409(a)").

[17] *Id*.

[18] This is even more critical if the Commission were to deem the shot clock to apply to all required authorizations, as discussed in Subsection B.1. of these Comments.

authority to meet this most basic duty to their residents. Further, the expansion of wireless facilities into areas that have never been reviewed or approved for wireless deployments is well beyond the scope and intent of Section 6409.

Below we address some of the most egregious requests in the Petition. The breadth and lack of clarity of the requested "clarifications" precludes us from addressing all of them in the context of the Public Notice. While we do not believe these changes are necessary or good public policy, if the Commission decides to pursue them, we respectfully suggest the Commission open a rulemaking with more specific proposals to which commenters can more effectively respond.

a. Concealment Elements

WIA and CTIA complain that the requirement that EFRs not defeat concealment elements of the support structure is too broad. They propose a much narrower definition of concealment elements to include only those elements that "render[] the visual and aesthetic appearance of the wireless facility as something fundamentally different than a wireless facility" and that would be "limited to equipment and materials used *specifically* to conceal the visual impact of a wireless facility… ."[19] They also suggest such elements must be "specifically identified as concealment elements when the structure was built to count as concealment elements … ."[20] Both aspects of this request go too far.

The proposed new definition—though billed as a mere clarification—is a substantial change to the Rules that would unreasonably narrow the common meaning of "concealment elements." The assertion that a "concealment element" is only that which makes the wireless facility look like "something fundamentally different" is so narrow that does not clearly include

[19] WIA Petition at 11-12 (emphasis in original).
[20] CTIA Petition at 12.

requirements like fencing that conceals ground equipment (which would still look like ground equipment on the other side of the fence) or paint color, something the Commission acknowledged in the *2014 Order* is a concealment element.[21]

Further, the suggestion that size is not a concealment element is mistaken.[22] Making the "pine tree" tower taller may well defeat the concealment requirements where the original height was designed to ensure the "tree" blended in appropriately with its surroundings. Looking at it another way, modifications that entail larger facilities that will, for example, be visible over the top of a fence or roof structure would undoubtedly defeat the concealment requirements of the initial deployment, which were based on ensuring the size of the fence or roof structure conceal the wireless equipment.

The second aspect of the proposed changes—that the concealment elements must be designated as such in the original approval—is also deeply problematic. It would effectively erase existing land use requirements that the original applicants understood to be concealment requirements simply because the permit did not "specifically identify" them as such. Many towers and collocations on "base stations" were approved long before the enactment of Section 6409 and the Commission's Rules. There was no way for municipalities to know that the conditions of approval would be ignored if they did not use magic words adopted years later. Municipalities may have relied on all kinds of elements of the original siting request—fencing, landscaping, paint

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[21] *2014 Order* at ¶ 200. WIA claims paint color would fall under this criteria because "it serves no purpose other than to enhance the appearance of the [base station]." WIA Petition at p. 11. But the standard WIA suggests does not relate to the appearance of the base station. The question under WIA's proposal is whether the wireless facility looks like "something fundamentally different," and it is at best ambiguous as to whether an antenna that blends in with a rooftop because of paint color actually appears to be something fundamentally different than an antenna.

[22] WIA Petition at p. 13; CTIA Petition at 11.

color, materials, etc.—to conceal the wireless equipment without expressly stating that was the purpose. The proposals would effectively rewrite land use decisions to remove concealment conditions without which the original site would never have been approved.

b. Compliance with Conditions of Siting Approval

WIA requests clarification of Section 1.6100(B)(7)(iv) of the Rules, which is designed to protect land use regulations in the Section 6409 process by ensuring original conditions of land use approvals are undisturbed. WIA's requests for changes to this Section would undermine the most basic land use protections by carving out exemptions for EFRs that would not apply to any other applicant.

WIA asserts that EFR applicants may be held up if the support structure they seek to modify is not in compliance with its original conditions of approval or with applicable laws and regulations. It is difficult to see why this basic and common land use requirement should not apply to wireless deployments in the same manner it applies to all other applicants. Further, WIA's suggested language—that Section 1.6100(b)(7)(iv) apply only if the proposed modification would *cause* the non-compliance[23]—would prevent municipalities from denying applications even where the non-compliance renders the structure, and thus the modification, unsafe. Again, the intent of Section 6409 was to avoid "harm to local land use values,"[24] which cannot be honored where municipalities cannot deny applications to modify sites that do not comply with their original permit conditions.

WIA also requests that the Commission "clarify" that land use conditions limiting the number, size, type and placement of antennas cannot be used to deny an EFR.[25] First, this change

[23] WIA Petition at 15.
[24] *2014 Order* at ¶ 174.
[25] WIA Petition at 15-16.

would require a rewriting of Section 1.6100(b)(7)(iv) of the Rules, not a mere clarification through a declaratory ruling. Second, what WIA seeks amounts to virtually uncontrollable growth of wireless sites through modifications that need not comply with land use laws. This is simply a backdoor way to ask the Commission to enact federal land use regulations, something the Commission disclaimed in the *2014 Order*.[26] New Rules that undermine permit approval conditions not only unreasonably usurp the role of local governments in the land use process, but will also deter the approval of initial sites because localities will have virtually no ability to ensure future modifications will remain within the scope of land use requirements.

c. The "Current Site"

WIA asks the Commission to declare that the "current site" for purposes of Section 1.6100(b)(7)(iv) includes whatever the leased or owned area is at the time of the application, without regard to the "site" originally approved for wireless deployments.[27] This is both contrary to the Rules and a dangerous policy choice.

Under the current rules, to be an eligible support structure, the tower or base station must be "existing" at the time of the application. For a tower (which includes the "site") to be "existing," it must have been "reviewed and approved under the applicable zoning or siting process . . ." unless it was not in a zoned area when it was lawfully built.[28] The new definition of "current" site proposed by WIA would conflict with the definition of "existing" by expanding the site into areas not previously reviewed and approved for these deployments. What WIA characterizes as localities' "creative interpretation" of the "site" is actually the only reasonable way to read the

[26] *2014 Order* at ¶ 228 ("our goal is not to 'operate as a national zoning board'") (internal quotations omitted).
[27] WIA Petition at 18.
[28] 47 C.F.R. § 1.6100(b)(5).

Rules.[29] Moreover, it is the only reasonable interpretation of the terms "modification" and "existing," both of which Congress used in Section 6409.

The basis for the "existing" standard underscores the policy reasons to reject WIA's request. Deployments that creep into areas beyond originally-required land use approvals give rise to untold conflicts and hazards. The fact that a landlord and wireless tenant may be willing to expand the leased area has no bearing on whether the expansion is lawful or safe. Further, WIA's proposal would allow parties to intentionally avoid applicable land use regulations by requesting approval for a limited "site" and then later expanding the leased site into areas that may not have been approved in the initial land use application because of setback restrictions or other important land use considerations.

d. Extending the Meaning of "Base Station"

CTIA suggests that the Commission should "clarify" that the term "base station" includes the entire non-tower structure, that modifications may be located anywhere on that structure and the entire structure must be used in calculating whether a modification is a substantial change.[30] This request is much more than a clarification. It would rewrite the Rules and lead to deployments in areas where no land use review or approval has occurred and where an original application would not have been approved.

Much like the issue with the term "site" discussed above, CTIA's request in many instances will allow modifications beyond the scope of the original approval. This will lead to must-approve applications in locations that would not have been permissible for the original wireless facility deployment. Thus, while the original applicant may have been required to install the wireless

[29] WIA Petition at 18.
[30] CTIA Petition at 16.

facility in a specific location on a building to minimize visibility from the street, for example, a subsequent applicant would be permitted to deploy anywhere on the structure. This not only undermines local land use protections, it also potentially disadvantages the initial applicant who is subject to restrictions that will not apply to subsequent applicants—including competitors—who now have access to locations unavailable to the first entrant. As noted above with respect to the tower "site," this change also would allow applicants to avoid land use requirements by applying for a deployment that complies with land use regulations, then requesting an EFR to expand to locations on the structure that would not have been permitted in the original application.

4. Limits on Application Requirements are Unnecessary.

WIA's ambiguous request for the Commission to limit the documentation that may be submitted with an EFR application is yet another attempt to carve out exceptions for wireless providers from general land use application practices.[31] The complained-of requirements, such as documentation from the property owner that it has authorized the modification, are required of non-wireless site improvements and are necessary to ensure that the municipality is not purporting to authorize modifications to private property to which the property owner did not consent. Other requirements, such as information on existing antennas and equipment at the site, may be necessary to ensure the EFR is in fact an EFR. WIA also lists practices such as "limit[ing] the number of open permits for a property or structure" as "burdensome" obligations the Commission should bar.[32] Again, this is a prudent practice to ensure the modifications are compatible and safe, which is significantly more difficult to do as the number of unconstructed modifications pile up.

[31] WIA Petition at p. 21-23.
[32] WIA Petition at p. 23.

In short, these examples do not support WIA's request that the Commission provide "guidance or examples" on application requirements that should be prohibited. To the contrary, they demonstrate that there is no one-size-fits-all standard for what may be necessary to ensure an application is, in fact, an EFR and that it will comply with applicable building and safety codes.

5. CTIA's Proposed Expansion of Section 224 Should be Rejected.

CTIA's proposal to expand Section 224 to apply to light poles has serious implications not contemplated in its Petition. Briefly, the issues related to placing wireless facilities and providing electricity to these sites are complex and create safety hazards for workers and the public that are different from attachments to standard utility poles. Further, municipalities often have contractual rights related to street lights, including the right to purchase or require removal of any poles, and obligations like maintenance costs and indemnification, that do not apply to standard utility poles.[33] These are just two of many issues with CTIA's proposal that warrant its rejection.

C. THE PETITION FOR RULEMAKING PROPOSES UNWORKABLE EXPANSIONS AND FEE CAPS THAT ARE NOT WITHIN THE SCOPE OF SECTION 6409

1. Expanding Sites Thirty Feet is a Substantial Change with Serious Implications.

WIA's request that wireless providers have the unfettered right to expand their deployments thirty feet outside the previously-approved site should be rejected.[34] This would have far-reaching consequences that undoubtedly would be "substantial" under any definition of the word.

First, the portion of the definition of "site" WIA suggests needs to be amended already is quite broad, as it includes "the current boundaries of the leased or owned property surrounding the

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[33] *See, e.g.*, Portland General Electric Tariff Schedule 91, found at https://www.portlandgeneral.com/our-company/regulatory-documents/tariff.
[34] WIA Rulemaking Petition at 4-11.

tower *and any access or utility easements currently related to the site*."[35] An additional thirty feet beyond the site—especially beyond related easements—is, by definition, beyond the area originally reviewed and approved for wireless facilities. The impact of this change would be unpredictable and irrevocable. Thirty feet from easements associated with the site could be dozens or even hundreds of feet from the actual tower site.[36] This would allow modifications that violate setbacks and other zoning restrictions that were not implicated by the original site, resulting in backup generators virtually in residential backyards or dangerously close to waterways. Modifications could end up in a different land use zone than the original approval, resulting in deployments in a residential or historic area when the original tower was in a commercial or industrial zone. By any reasonable standard, such modifications are "substantial."

The thirty feet extension also would mean that often the "site" would include the adjacent public rights-of-way. Thus, the proposed change would appear to classify as an EFR any application to install cabinets and generators in the rights-of-way, for example, even where no wireless facilities exist in the rights-of-way. This would be a significant intrusion on local authority and raises serious questions about if and how the mandated approval and shot clocks related to an EFR would apply to authorizations required to deploy in the rights-of-way.

Second, WIA fails in its attempt to analogize this request with the thirty-foot excavation allowance in the Nationwide Programmatic Agreement related to NHPA review ("NPA"). The NPA in no way replaced local zoning review, nor does it impose a deemed granted remedy, so it is an apples-to-oranges comparison. Whatever considerations informed the thirty-foot expansion

[35] 47 C.F.R. § 1.6100(b)(6) (emphasis added).
[36] As noted above, WIA's request that the "site" include whatever area is included in the lease at the time of application, if enacted, would mean that the thirty feet limit may be considerably outside the scope of the site that originally received land use approval, as the "site" would extend thirty feet beyond the newest iteration of the lease.

provision of the NPA have no bearing on the considerations regarding must-approve local siting permits. The Commission already rejected the NPA as the appropriate analogy[37] and WIA's Rulemaking Petition provides no reasonable justification to revisit this conclusion.

2. Fee Caps are Outside the Scope of Section 6409.

WIA's proposal to cap EFR permit fees is unsupportable by the text of Section 6409. Nothing in that Section in any way addresses permit fees, nor does WIA make any effort to claim otherwise. To the contrary, WIA explicitly relies on the *2018 Small Cell Order* to support its position. That Order is inapposite, as it is based on the Commission's interpretation of Sections Section 253 and 332(c)(7) of the Telecommunications Act, not Section 6409.[38] Nothing in Section 6409 suggests Congress intended to interfere with municipalities' fee structures.

Nor is there support for the request that the Commission mandate municipalities issue permits even where permit fees are not paid.[39] The Petition offers no suggestion of what a "good faith dispute" might be that would warrant the Commission requiring localities to undertake permit review—with the threat of a deemed granted remedy hanging over them—without payment of permit fees. Such a rule would allow EFR applicants, unlike any other land use applicant, to apply for and receive every permit it may need to modify towers or base stations throughout a jurisdiction without paying any fees to cover the municipalities' work in reviewing and approving those applications, and inspecting for compliance. Municipalities would then have to try to recoup those fees, potentially through litigation, compounding the costs with uncertain likelihood of recovery.[40]

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[37] *2014 Order* at ¶ 199.
[38] We note again that the *2018 Small Cell Order* has been appealed, including the Commission's interpretations of these Sections as limiting or preempting municipal fees.
[39] WIA Rulemaking Petition at p. 13.
[40] Further compounding the issue, some have interpreted the cost-based fees established in the *2018 Small Cell Order* as shifting to local governments the burden of demonstrating that their fees meet the Commission's definition. *See* Verizon Petition for Declaratory Ruling that Clark

D. CONCLUSION

For the reasons set forth above, we respectfully request that the Commission reject the proposals made in the Petitions.

Respectfully submitted,

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October 29, 2019

County, Nevada Ordinance No. 4659 Is Unlawful Under Section 253 of the Communications Act as Interpreted by the Federal Communications Commission and Is Preempted, WT Docket No. 19-230, at 20 (filed Aug. 8, 2019). Though erroneous (s*ee* NATOA Reply Comments, Petition for Declaratory Ruling that Clark County, Nevada Ordinance No. 4659 Is Unlawful Under Section 253 of the Communications Act as Interpreted by the Federal Communications Commission and Is Preempted, WT Docket No. 19-230, at 4 (filed Oct. 10, 2019)), this belief, should it persist, will compound the costs local governments must incur to defend their fees.