

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

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

COMMENTS OF THE CITY OF NEW YORK

INTRODUCTION

The City of New York (the “City” or “NYC”) submits these comments in response to a *Public Notice*¹ issued by the Federal Communications Commission (the “Commission” or “FCC”) in the above-captioned proceedings. Specifically, the *Public Notice* sought comment on issues raised in petitions for rulemaking and declaratory ruling filed by the Wireless Infrastructure Association and in a petition for declaratory ruling filed by the CTIA (collectively, the “Petitions” and the “Petitioners”). While the City has significant concerns regarding the many proposals raised in the Petitions, our comments today focus on the substantial impacts and potentially detrimental, even if unintended, consequences that these proposed rule changes, if adopted, could have on the City’s critical public safety functions. Although there are many examples of critical public safety operations impacted by the proposals, in these comments, the City focuses on fire safety operations. As discussed below, we are concerned that preemption of or shortcuts around the City’s existing permitting processes and procedures unnecessarily—and unacceptably—increase the risks to the City’s first responders and to all New Yorkers.

DISCUSSION

New York City’s urban landscape and environment—from its skyscrapers to old tenement buildings, along with some of the most densely populated geography in the nation—contribute to the dynamic nature and challenge of providing public safety protection to the City’s nearly 8.4 million residents and approximately 65.1 million visitors. Existing local government permitting

¹ See 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, *Public Notice*, WT Docket No. 19-250, RM-11849, and WC Docket No. 17-84 (rel. Sept. 13, 2019) .

and approval processes and procedures for the use of the City's already space-constrained rooftops, poletops, and other structures, serve multiple purposes. The most important of these purposes is to ensure the structural integrity of the public rights of way and infrastructure and to protect against safety hazards resulting from installations (including non-telecommunications equipment). One example of the City's comprehensive safety regulations of rooftops, poletops, and other structures is contained in the New York City Fire Code, which establishes fire safety requirements for buildings and businesses in New York City.² The Fire Code applies to all persons and places in New York City and regulates such matters as emergency preparedness; the prevention and reporting of fires; the manufacture, storage, handling, use and transportation of hazardous materials and combustible materials; the conduct of various businesses and activities that pose fire hazards; and the design, installation, operation and maintenance of the buildings and premises that house such materials, businesses and activities.

Section 6409(a)(1) states that a local government “may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”³ However, the Commission in its implementation rulemaking proceeding noted, rightly, that Congress in Section 6409(a), did not prohibit the ability of localities to “enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.”⁴ Nevertheless, the Petitioners' proposed “clarifications” and “narrow rule changes” have the consequence of inhibiting the application of these important local public safety laws, such as the Fire Code, with potentially disastrous effects.

To be clear, New York City does not resist the deployment of wireless networks. Indeed, the City is a leader among cities in the deployment of innovative wireless technologies and has long demonstrated its support for the availability of reliable and competitive wireless communications services for New Yorkers. The City's current permitting processes and procedures have accommodated the many wireless infrastructure installations on crowded rooftops, poletops, and other structures that can be seen throughout the City now.

However, under the Petitioners' proposed “deemed granted” regime, the City would be in an untenable, and in some cases nearly impossible, position, which would undoubtedly redound to the detriment of the public. The City would have to approve numerous modification or expansion requests to existing wireless facilities—from multiple carriers—with little to no time to adequately review the requests for compliance with the aforementioned local laws, such as the Fire Code. Moreover, wireless providers do not frequently cooperate with each other to file coordinated plans or applications for access to the same rooftop, yet they expect the FCC to compel various City agencies, each tasked with and responsible for more than reviewing wireless infrastructure modification requests, to act within a single, shortened timeclock.

² See NYC Fire Code, available at <https://www1.nyc.gov/site/fdny/about/resources/code-and-rules/nyc-fire-code.page> (last visited Oct. 25, 2019) and the Fire Department of New York (“FDNY”) implementing rules, available at <https://www1.nyc.gov/assets/fdny/downloads/pdf/about/fdny-rules.pdf> (last visited Oct. 25, 2019).

³ 47 U.S.C. § 1455. The FCC's associated rules are codified at 47 C.F.R. § 1.6100.

⁴ See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order*, 29 FCC Rcd 12865 (2014).

There are many potential impacts to fire and other public safety operations if wireless infrastructure modifications are “deemed granted” and allowed to proceed without sufficient review for compliance of applicable fire safety rules. Below are a few examples:

Rooftop Access and Clearances

Adequate clearances and access to rooftops are essential for NYC’s firefighters to perform vital life-safety functions in the event of a fire or other emergency event. Impediments to such access would lead to a delay in a firefighter’s ability to adequately respond to the emergency situation. Of the many critical functions that firefighters perform, three are relevant here: perimeter searches, ventilation operations, and rooftop rescues.

Perimeter Searches. Firefighters need to be able to quickly mount and disembark safely from a fire apparatus ladder on to the rooftop to conduct a perimeter search of the rooftop and other critical areas such as the rooftop bulkhead door, fire escape, skylight, hatch, and to search for victims or sources of fire or smoke. These searches allow the firefighter assigned to the rooftop position to transmit vital information to the Incident Commander who guides all firefighter operations during the emergency situation. Obstructions that are not visible from the street level, attachments on building facades, and excessive cable trays, conduits and pipes that are installed along the perimeter can all cause hazardous landing conditions for firefighters. As shown in Figure 1 below, telecommunications equipment can drastically limit a firefighter’s options to access a rooftop in an emergency.



Figure 1 – Telecommunications Installation on a Rooftop with Limited Access

Ventilation. Proper venting can prevent the further spread of a fire, resulting in a reduction of the amount of water used to fight the fire, the amount of water damage caused to a building, and a more efficient firefighting operation. Venting can include cutting a hole or trench in the roof. It is therefore imperative that installations do not impede firefighters' ability to adequately perform necessary venting operations.

Rooftop Rescues. Firefighters may be required to perform rooftop rescue operations, using the lifesaving rope to transport firefighters and imperiled individuals from a roof or upper floor to a position of safety. Impediments to rooftop rescues endanger first responders and the lives they are working to save.

Due Diligence on Risks

The DC Circuit recently held that the FCC needed to justify its "confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risk, particularly given the vast number of proposed deployments" and also noted that the FCC "should address concerns that it was speeding densification 'without completing its investigation of ... low-intensity radiofrequency radiation.'"⁵ We therefore urge the Commission to do its due diligence on any risks posed by small cells, whether religious, cultural, or environmental.

CONCLUSION

The City appreciates the Commission's efforts to promote the rapid and equitable deployment of wireless infrastructure and services, but only to the extent that such efforts, first and foremost, and among other things, do not disrupt critical public safety operations or endanger the ability of first responders to perform their life-saving actions. The Commission is mandated by Congress to consider the implications for public safety that would arise if the proposed rule changes were adopted.⁶ The City therefore urges the Commission to ensure that paramount public safety interests are not sacrificed for the sake of efficiency or to solely benefit the wireless industry's commercial interests.

Respectfully Submitted,

City of New York
October 29, 2019

⁵ *United Keetoowah Band of Cherokee Indians in Oklahoma v. FCC*, 933 F.3d 728 (D.C. Cir. 2019).

⁶ See 47 U.S.C. § 151. See also, *Mozilla Corporation v. FCC*, Nos. 18-1051 et al., 2019 U.S. App. LEXIS 29480 (D.C. Cir. Oct. 1, 2019) (per curiam) (noting that the FCC's "disregard of its duty to analyze the impact of [the FCC Order at issue] on public safety renders its decision arbitrary and capricious in that part and warrants a remand with direction to address the issues raised."). The DC Circuit also noted, for example, that the FCC's "Rorschachian speculation is hardly the focused and specific study of public safety implications that the law requires."