

**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 6409(a) of)	RM-11849
the Spectrum Act of 2012)	
)	WC Docket No. 17-84

**COMMENTS OF
THE CITY OF COSTA MESA, CALIFORNIA**

The City of Costa Mesa, California, supports the position taken by the City of San Diego, California, in opposing the request for clarification and rule-making for the implementation of Section 6409 of the Spectrum Act of 2012. The proposed changes seek to unnecessarily further erode the right of local government to regulate the aesthetics of wireless facilities, despite congressional intent that cities retain the ability to regulate placement, construction and modification of personal wireless service facilities. *See* 47 U.S.C. § 332(c)(7).

Although the Costa Mesa has a myriad of concerns with the particular request, because they are addressed by other commenters, such as the City of San Diego, so as to avoid unnecessarily duplicating the record, Costa Mesa will narrowly focus these additional comments upon timing. Specifically, it is premature for the FCC to consider approving yet more revisions to the existing regulatory framework.

The FCC should allow jurisdictions the time to establish regulations consistent with existing laws and regulations, to then analyze the extent to which existing regulations are sufficient, and the extent to which revisions to those regulations are appropriate.

A. Substantial Regulatory Changes Cost Cities Hundreds of Millions of Dollars and Leads to Uncertainty.

The overwhelming majority of cities in the United States are not large to keep up with the constant drumbeat of constantly changing telecommunications regulations. Most cities lack the staffing levels and the financial resources to be able to keep up, and those that do attempt to keep up are having ever larger and larger portions of their staff time and budgets filled with matters involving wireless regulation – all as a result of the constant revolving door of new telecommunications and regulations. This is wasteful in the extreme.

Of the 19,495 municipalities in the United States, only 87 have populations exceeding 250,000, and only 310 have more than 100,000. Stated differently, easily 19,000 cities in America cannot keep up with the regulations, and those that attempt to do so, are stuck with substantial impacts from attempting to do so.

In this last year alone, the City of Costa Mesa has had multiple Planning Commission and City Council meetings dealing nearly exclusively with wireless telecommunications issues, all in an effort to implement the newly updated Declaratory Ruling and Third Report and Order WT Docket No. 17-79 (FCC 18-333, the “Small Wireless Order”). And that was just one change. Every time the FCC changes a rule, the City is required to amend its zoning code. Under California law, cities may only do so after an absolute minimum of three different meetings, two of which are publicly noticed public hearings. The Planning Commission must vote on the proposed ordinance, and then the City Council must vote to approve the ordinance at two different meetings. And each of the meetings are attended by large members of the public who are legally entitled to speak on the proposals – each meeting takes many hours. Each meeting costs money. The public noticing costs money. Attorneys researching and writing memoranda on the law costs money. Attorneys drafting revised ordinances cost money. Add to this the costs of staff time, the

time and attention of the public, the time of the wireless carriers, and of the attorneys and consultants for the carriers. This all costs money. Even if each law change were to cost each city only \$5,000 in lost time, attorney time, and administrative expense (a wildly small estimate of costs), multiplied over the nearly 20,000 municipalities in the United States, **a single mandate from the FCC costs municipalities across America well more than \$100 million, and possibly many hundreds of millions.** And that doesn't include the direct financial impacts of the ruling itself which limited the ability of a city to receive compensation from carriers to cover the city's costs.

Businesses are often heard complaining that what they want from regulators is certainty. Although they may care what the law is, often, the greatest concern is that the law remain certain. Municipal corporations have the same concerns. *Certainty.* Every time the FCC changes the law, it adds to uncertainty, and imposes substantial costs on every municipality in America. Each FCC new regulation drives up the cost of government.

Here, Section 6409, already largely accomplishes the intent of wireless industries – it allows additional collocating siting opportunities. Although industry commenters believe the rule is imperfect, what the commenters have not show is that such revisions would outweigh the substantial costs of the regulatory changes upon the roughly 20,000 cities across America.

B. The FCC should delay until It is Known What Impact the Small Wireless Order Will Have on the need for new Facilities Under 6409.

Many cities, if not the majority of cities, across the United States have not yet fully implemented the Small Wireless Order. It is only now that many cities are starting to have ministerial procedures designed to fully implement the purposes of the Small Wireless Order.

Given this substantial delay, it is only now that evidence can be started to be gathered to establish whether there is a need to establish yet more revisions to federal regulations to further

erode local control to streamline the deployment of wireless technology. As cities begin fully implementing the Small Wireless Order, the need to change Section 6409 may become non-existent. That is, wireless providers may find that there are now a sufficient number of additional locations available to them via the Small Wireless Order that the claims for the need to further expand federal preemption over Section 6409 may become substantially limited.

In short, there has not yet been enough time to document the effects of existing regulations, and it is premature to consider still more changes. This is simply a petition for an end goal, in search of largely non-existent facts which support the goal.

Conclusion

In short, it is premature at this time for the FCC to consider yet again adding costs to cities by yet again revising applicable regulations.

Scott E. Porter

Deputy City Attorney, City of Costa Mesa