

CITY OF GREENBELT, MARYLAND

25 CRESCENT ROAD, GREENBELT, MD 20770



June 1, 2020

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications
Commission 445 12th Street, SW
Washington, DC 20554

CITY COUNCIL
Colin A. Byrd, Mayor
Emmett V. Jordan, Mayor Pro Tem
Judith F. Davis
Leta M. Mach
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Edward V.J. Putens
Rodney M. Roberts

RE: *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*

Dear Secretary Dortch:

The City of Greenbelt, Maryland writes to express our opposition to the draft Declaratory Ruling and Notice of Proposed Rulemaking in the above-referenced dockets on the draft agenda for the Commission's meeting on June 9, 2020. In addition to the substantive concerns described below, we ask that the Commission delay action on this item given the unprecedented circumstances related to the global pandemic. A delay will allow local governments more time to provide insights into the practical impacts of the proposals and prevent the unnecessary diversion of scarce resources to adapt to the Commission's new rule clarifications and respond to the NPRM.

With respect to the substance of the proposed Declaratory Ruling,

- *Commencement of Shot Clock Under section 1.6100(c)(2)*: The proposal on when the shot clock will begin to run for 6409(a) applications may require changes to local permitting ordinances and processes.
 - While the draft does not preclude pre-application meetings and similar application requirements, it commences the 60-day shot clock before those meetings take place and thus effectively preempts local processes built around a pre-application meeting or other requirement prior to acceptance of the permit application.
 - Similarly, the changes to the shot clock significantly impact the ability of local governments to apply common zoning and siting rules such as conditional use permits, variances, or similar types of authorizations applicable to other types of uses, including other wireless siting applications.

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- The draft finding that after commencing, the shot clock is not tolled by the time it takes to hold the various meetings or undertake various actions that are required for the permit application is far too broad. The draft appears to suggest that if a locality sets a required meeting for a date certain, and the applicant claims it is inconvenient or otherwise delays the process from continuing on the local government’s schedule, that delay does not toll the shot clock. This would allow an applicant to thwart these processes entirely knowing that the application will inevitably be deemed granted after the 60th day.
- *Equipment Cabinets*: The draft Declaratory Ruling states that the maximum number of equipment cabinets that can be added to an existing wireless site without constituting a substantial change—which is four—is not cumulative. This effectively permits an unlimited number of equipment cabinets to be added to wireless sites so long as the applicant asks for them in increments of four or less. A limitless number of new equipment cabinets surely is a “substantial change” under a reasonable interpretation of that term.
- *Concealment Elements*: The draft Declaratory Ruling undermines local efforts to maintain the character and livability of our communities by drastically limiting what constitutes a “concealment element” for purposes of original tower approvals that are subject to must-approve modifications under Section 6409(a).
 - Local governments use a range of tools to conceal wireless towers, including height limits and set backs. The draft could be read to nullify all but those conditions that require a wireless facility to look like something other than a wireless facility, regardless of how integral height or similar characteristics were to ensuring the approved concealment would be effective.
 - This is a rule change disguised as a mere clarification, which will require many local governments to modify their zoning codes and processes. The draft would establish a new way of reviewing permits and absent documentation that an aesthetic requirement is a stealth component, local governments may have a hard time enforcing such a requirement.
- *Conditions of Siting Approvals*: Similarly, the draft undermines existing local zoning protections—such as conditions of approval related to things like aesthetics and minimizing the visual impacts of wireless facilities—by retroactively requiring express evidence that at the time of approval, “the locality required the feature and conditioned approval upon its continuing existence”
 - Even where this standard can be met, the draft allows a 6409(a) applicant to make modifications that undermine those conditions if retaining the conditions violates some vague reasonableness standard that is mentioned with respect to specific examples but not explained in the text of the Ruling.

- *Limiting Small Cell Growth in Rights-of-way*: The additional cabinets and limitations on concealment and aesthetic requirements described above, when applied to the rights of way, could make it very hard for local governments to control the size of small cell deployments on nongovernmental property (such as utility poles) within the rights of way.

With respect to the Notice of Proposed Rulemaking:

- The NPRM seeks comment on suggested changes to existing FCC rules regarding excavation or deployment outside the boundaries of an existing tower site to effectively allow for wireless deployments outside of the site originally approved for wireless facilities. Such a rule would violate the letter and spirit of 6409(a), which Congress limited to modifications to “existing” wireless towers and base stations. Any area outside the boundaries of the approved wireless site cannot, under any reasonable interpretation, be considered an existing wireless site.
- The draft sets the comment date as 20 days after publication in the Federal Register. Given the significant impact the global pandemic is having on local governments, 20 days is not a reasonable period of time to afford local governments a meaningful opportunity to participate in this proceeding.

The City of Greenbelt requests that you take into consideration the items mentioned above and delay action on this declaratory ruling.

Sincerely,

A handwritten signature in cursive script that reads "Colin Byrd".

Mayor, City of Greenbelt