

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petition for Rulemaking to Accelerate Wireless) File No. RM-_____
Broadband Deployment by Amending the)
Rules Implementing Section 6409 of the)
Spectrum Act)

To: The Commission

PETITION FOR RULEMAKING

Jonathan Adelstein
President and CEO

Matt Mandel
Head of Government Affairs

John A. Howes, Jr.
Government Affairs Counsel
WIA – The Wireless Infrastructure Association
2111 Wilson Blvd., Suite 210
Arlington, VA 22201
(703) 535-7407

August 27, 2019

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	3
I. THE FCC SHOULD FURTHER STREAMLINE INFRASTRUCTURE DEPLOYMENT BY TAKING A TARGETED STEP TO AMEND ITS SECTION 6409(a) RULES.	4
A. Deployers Continue to Face an Unnecessary Regulatory Hurdle When Applying for Eligible Facilities Requests Under the Section 6409(a) Rules.	7
B. Modernizing the FCC Definition of Compound Expansion to Track the NPA Will Remove a Lingering Barrier to Collocating on Existing Infrastructure.	9
II. THE COMMISSION SHOULD AMEND ITS RULES TO REQUIRE THAT FEES FOR PROCESSING EFRs MUST BE COST-BASED.	11
CONCLUSION.....	13
APPENDIX	

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petition for Rulemaking to Accelerate Wireless) File No. RM-_____
Broadband Deployment by Amending the)
Rules Implementing Section 6409 of the)
Spectrum Act)

To: The Commission

PETITION FOR RULEMAKING

The Wireless Infrastructure Association (“WIA”),¹ pursuant to Section 1.401 of the rules of the Federal Communications Commission (“FCC” or “Commission”),² hereby requests that the Commission initiate a targeted rulemaking to further accelerate wireless broadband deployment. Specifically, the Commission should update its rules to: (i) ensure that collocations requiring limited compound expansions – excavation within 30 feet of a tower site – qualify for relief under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”)³ and the FCC’s implementing regulations; and (ii) require that fees associated with Eligible Facilities Requests (“EFRs”) for the provision of telecommunications services must be cost-based. Such carefully defined action will be consistent with the purposes of Section 6409(a) – to facilitate broadband deployment by eliminating barriers to collocating new transmission equipment on existing wireless towers,⁴ and Section 706 of the

¹ WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. Its members include infrastructure providers, telecommunications carrier, and professional services firms.

² 47 C.F.R. § 1.401.

³ Section 6409(a) of the Spectrum Act is codified at 47 U.S.C. § 1455(a). An eligible facilities request, as that term is used in the statute, includes the collocation of new transmission equipment, as well as the replacement or removal of existing transmission equipment. *See id.* at § 1455(a)(2).

⁴ *See Accelerating Wireless Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12931 (2014) (“2014 Order”) (recognizing that a primary goal of the Spectrum Act, as

Telecommunications Act of 1996⁵ – to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”

WIA is separately filing a Petition for Declaratory Ruling, urging the Commission to clarify the rules implementing Section 6409(a). Specifically, WIA requests that the Commission clarify that (i) Section 6409(a) and the implementing regulations apply to all state and local authorizations required to deploy new or replacement transmission equipment on existing wireless towers or base stations; (ii) the Section 6409(a) shot clock begins to run when an applicant makes a good faith attempt to request local approval; (iii) the substantial change criteria in Section 1.6100(b)(7) of the Commission’s rules should be narrowly interpreted; (iv) “conditional” approvals of eligible facilities requests (“EFRs”) violate Section 6409(a); and (v) localities may not establish processes or impose conditions that effectively defeat or reduce the protections afforded under Section 6409(a).

These discrete steps – along with the narrow rule changes proposed in this petition – will build on the Commission’s successful and continuing efforts to remove barriers to infrastructure deployment, accelerate the expansion of next generation wireless services to consumers, and ensure continued U.S. leadership in all things wireless.

embodied in Section 6409(a), was “to facilitate collocation in order to advance the deployment of . . . broadband services” which would “promot[e] billions of dollars in private investment, and creat[e] tens of thousands of jobs”).

⁵ Section 706 is codified at 47 U.S.C. § 1302.

INTRODUCTION AND SUMMARY

The FCC has broad discretion to streamline or modify its rules “if they no longer serve the public interest in their current form.”⁶ The Commission previously has recognized that its wireless siting rules needed to be updated in light of the need to deploy the wireless infrastructure necessary for next generation wireless services.⁷ The Commission has further recognized the need for rule changes given the significant changes to the types of infrastructure being deployed today versus the infrastructure being deployed at the time many of its siting rules were adopted.⁸ WIA recognizes and appreciates the Commission’s continuing commitment to create a regulatory environment that promotes wireless infrastructure deployment. This petition urges the Commission to build on those efforts by removing persistent barriers to the collocation of communications facilities on existing infrastructure.

First, the Commission should amend its rules to make clear that a substantial change under Section 6409(a) occurs with respect to compound expansions only if excavation would be undertaken more than 30 feet from a tower site boundary. This change is needed to effectuate Congressional intent to facilitate collocations, as reflected in Section 6409(a). Furthermore, it is warranted given industry changes since adoption of the 2001 Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation Agreement”) and Section 1.6100 of the Commission’s rules. Indeed, a current discrepancy in the Commission’s rules creates a counter-intuitive result: collocations that involve minor (less than 30-feet) compound expansions are treated as substantial increases, but new structures that involve ground excavation

⁶ See, e.g., *Biennial Regulatory Review - Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 13900, 13903 (2005) (“*Wireless Radio Services Order*”).

⁷ See *2014 Order*, 29 FCC Rcd at 12866-67.

⁸ See, e.g., *id.*

up to 30 feet outside of the site boundary are not. Therefore, action by the Commission on this discrepancy will help alleviate an unnecessary barrier to the deployment of next generation 5G networks.

Second, the Commission should amend its rules to require expressly that fees for processing EFRs for the provision of telecommunications service must represent a reasonable approximation of actual and direct costs incurred by the government and that the failure to pay disputed fees is not a valid basis for refusing to process (or denial of) an EFR. Such action is necessary to deter the imposition of onerous fees and allow entities to challenge such fees in good faith without fear of retribution.

The proposed narrow, carefully defined changes are needed to remove unnecessary obstacles to collocations, which will advance Congress' goals from Section 6409(a), and to facilitate the deployment of the small cells necessary to deliver 5G services consistent with Section 706.

I. THE FCC SHOULD FURTHER STREAMLINE INFRASTRUCTURE DEPLOYMENT BY TAKING A TARGETED STEP TO AMEND ITS SECTION 6409(a) RULES.

The Commission should amend its rules to make clear that a substantial change under Section 6409(a) occurs with respect to compound expansions only if excavation would be undertaken more than 30 feet from a tower site boundary. This change is needed to effectuate Congressional intent to facilitate collocations, as reflected in Section 6409(a), and it is warranted given industry changes since adoption of the Collocation Agreement and Section 1.6100 of the Commission's rules.

Recognizing the need to reform the siting process and accelerate the use of existing infrastructure, Congress in 2012 adopted Section 6409(a) of the Spectrum Act directing localities to 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.”⁹ Congress did not define what constitutes a substantial change, leaving the Commission to define the phrase to eliminate ambiguity.

Notwithstanding industry recommendations, the Commission at that time decided to use the four-prong substantial change definition set forth in the 2001 Collocation Agreement rather than the comparatively more recent definition in the 2004 Nationwide Programmatic Agreement regarding the Section 106 National Historic Preservation Act Review Process (“NPA”). Under the fourth prong of the Collocation Agreement definition, a substantial change occurs if there would be any excavation outside the site boundary.

The Collocation Agreement was adopted in 2001 when wireless carriers were in the process of deploying 2.5G voice and data services¹⁰ and relying largely on new tower construction to supply the infrastructure necessary to provide these services. In order to combat the “explosive growth” in the amount of new tower construction¹¹ necessary to support increasing demand for wireless services, the Collocation Agreement was crafted to promote collocation.¹² The signatories to the Collocation Agreement all agreed that “the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse” and that “collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties.”¹³ Accordingly, the signatories

⁹ 47 U.S.C. § 1455(a)(1).

¹⁰ See *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, Report and Order, 17 FCC Rcd 18401, 18410 (2002).

¹¹ See *The Wireless Bureau and Mass Media Bureau Announce the Release of a Fact Sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement*, Public Notice, 17 FCC Rcd 508, 511 (2002).

¹² First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 81 Fed. Reg. 59148, 59148 (2016), codified as 47 C.F.R. Pt. 1, App. B (“Collocation Agreement”).

¹³ See *id.*

agreed that the Collocation Agreement “should be interpreted and implemented wherever possible in ways that encourage collocation.”¹⁴

At the time the Collocation Agreement was adopted, the wireless industry was deploying 15-20,000 sites per year to satisfy growing demand for wireless service.¹⁵ It was reasonable to conclude at that time that collocations could be accomplished without the need for compound expansions. At that time, there was ample space on towers for antennas and room in existing cabinets or space available on site for new cabinets.

Moving forward eighteen years from the Collocation Agreement, demand for wireless service is skyrocketing.¹⁶ Ericsson estimates that there will be 1 billion 5G devices worldwide by 2024.¹⁷ The GSMA predicts 100 million 5G connections in the U.S. alone by 2023, with the number growing to 190 million by 2025.¹⁸

To meet this demand, wireless carriers are rapidly deploying 5G technologies, which includes Multi-access Edge Computing (“MEC”) equipment and other processing equipment. These new technologies, along with the introduction of higher frequency spectrum, require wireless network densification and wireless carriers are deploying an unprecedented number of cell sites to do so. Macro cells remain “the backbone” for network densification,¹⁹ but providers

¹⁴ *Id.* at 59149.

¹⁵ *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 13087 (2002) (Table 1, setting forth data from CTIA’s Semi-Annual Mobile Telephone Industry Survey).

¹⁶ *See 2014 Order*, 29 FCC Rcd at 12866.

¹⁷ Ericsson, *Ericsson Mobility Report*, at 6 (June 2019), <https://www.ericsson.com/49d1d9/-assets/local/mobility-report/documents/2019/ericsson-mobility-report-june-2019.pdf>.

¹⁸ GSMA, *The 5G Era in the US*, at 7 (2018), <https://www.gsmainelligence.com/research/?file=4cbbdb475f24b3c5f5a93a2796a4aa28&download>.

¹⁹ *See* Letter from David M. Crawford, Sr. Corporate Counsel, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 19, 2018) (“macro sites are the backbone for adding 5G small cells in urban and suburban areas”); *see also* Letter from Richard Rossi, Senior Vice President, General Counsel-U.S. Tower & Mneesha Nahata, Vice President, Corporate Legal Finance and Risk Management, American Tower Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Aug. 10, 2018) (“American Tower Ex Parte”) (“As the nation moves to 5G networks, the rapid deployment of heterogeneous networks becomes ever more critical. Network deployments will consist of multiple layers – traditional macro

use a combination of deployments to achieve densification. These deployments consist of new towers; macro collocations on towers, buildings, and other non-purpose-built structures; and small wireless facilities, including various types of small cells, distributed antenna systems (DAS), and even Wi-Fi.²⁰

Additionally, densification is being driven by public safety networks (*e.g.*, the FirstNet network) which (i) are being expanded to improve coverage and capacity, and (ii) rely heavily on collocating on existing sites to achieve these objectives. In fact, Congress required FirstNet to collocate on existing infrastructure “to the maximum extent” economically feasible in order “to speed deployment of the network.”²¹

The Commission has recognized that facilitating network densification will require the elimination or mitigation of regulatory barriers that can slow deployment substantially.²² The current definition of a substantial change adopted by the Commission in Section 1.6100(b)(7)(iv) of its Section 6409(a) implementing rules – which tracks the fourth prong of the 2001 Collocation Agreement definition of substantial change – is one such barrier.

A. Deployers Continue to Face an Unnecessary Regulatory Hurdle When Applying for Eligible Facilities Requests Under the Section 6409(a) Rules.

It is becoming increasingly difficult to collocate transmission equipment on existing towers without expanding beyond the current tower site, which affects the deployment of equipment necessary to densify networks for 5G services. Many existing towers were built by wireless carriers and intended only to support the operations of the single carrier building the

towers will continue to provide a blanket of coverage as it does today, while underneath this umbrella, a combination of small cells and an array of other technologies will be deployed to increase network capacity, particularly in dense urban areas.”) (citations omitted).

²⁰ See Comments of WIA, WT Docket No. 18-203, at 6 & 9 (July 26, 2018); *see also* American Tower Ex Parte at 2.

²¹ Spectrum Act, § 6206(b)(1)(C).

²² 2014 Order, 29 FCC Rcd at 12869-70.

tower.²³ Further, as the Collocation Agreement recognizes, adding an antenna to an existing tower requires the installation of equipment cabinets somewhere on the facility site.²⁴ Thus, the size of the property acquired for the tower often was limited to the land necessary for the tower itself and one or two equipment sheds needed by the wireless carrier.²⁵

Due in large part to the success of the Collocation Agreement and the Commission's rules recognizing the benefits of collocation,²⁶ many towers no longer support antennas for a single wireless carrier – they now support antennas from multiple wireless carriers (both commercial and public safety). However, the equipment cabinets or shelters originally built at the sites often are full and space no longer exists at the original sites to support the installation of additional equipment cabinets or shelters.²⁷ Tower sites thus must be expanded slightly to permit the deployment of additional enclosures to house the equipment that will be connected to new, collocated antennas.²⁸

Such minor expansions – even as little as one foot outside of the existing compound – would constitute a substantial change under Section 1.6100 because they would require excavation beyond the original tower site. Thus, these collocations would not qualify for treatment under Section 6409(a) of the Spectrum Act²⁹ simply because of the way the FCC chose to define when a compound expansion would be considered a substantial change. As a consequence, the current rule unnecessarily discourages the use of this existing infrastructure

²³ See American Tower Ex Parte at 6.

²⁴ Collocation Agreement, 81 Fed. Reg. 59150 (§ 1.E(2)).

²⁵ American Tower Ex Parte at 6.

²⁶ See, e.g., 47 C.F.R. § 1.1306 note 1 (“The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged.”).

²⁷ See American Tower Ex Parte at 6.

²⁸ *Id.* Examples of these minor compound expansions have already been provided in the record. See Letter from Joshua S. Turner, Counsel to Crown Castle International Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (Aug. 28, 2017). Additional examples are set forth in the attached Appendix.

²⁹ 47 C.F.R. § 1.6100.

that is otherwise able to support additional wireless deployments – deployments that can be used to expand or upgrade existing commercial services, enhance public safety, and/or foster new and beneficial competition.

B. Modernizing the FCC Definition of Compound Expansion to Track the NPA Will Remove a Lingering Barrier to Collocating on Existing Infrastructure.

The purpose of the Collocation Agreement is to promote collocation, but the opposite effect is achieved when applying its outdated definition of a substantial change – especially the prong treating any compound expansion as a substantial, no matter how small – to collocations under Section 6409(a). Consistent with the goal of encouraging collocation wherever feasible,³⁰ as well as the policy recognition that regulatory barriers should be eliminated to facilitate 5G and other advanced infrastructure deployment,³¹ the Commission should modify Section 1.6100 to specify that a substantial change *does not* occur if excavation occurs within 30 feet of the current boundaries of a tower site.³²

Specifically, Section 1.6100(b)(7)(iv) states that a substantial change occurs if a proposal entails any excavation or deployment outside the current site,³³ with Section 1.6100(b)(6) defining a site as follows:

For towers other than towers in the public rights-of-way, [a site is] *the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site*, and, for other eligible support structures, [a site is] further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.³⁴

³⁰ Collocation Agreement, 81 Fed. Reg. 59148.

³¹ 2014 Order, 29 FCC Rcd at 12869-70.

³² Because these expansions may involve the addition of an equipment shelter, the Commission also should amend Section 1.6100(b)(7)(iii) to conform to the Collocation Agreement and exclude the addition of a single shelter from the substantial change definition. See Collocation Agreement, 81 Fed. Reg. at 59150.

³³ 47 C.F.R. § 1.6100(b)(7)(iv).

³⁴ *Id.* § 1.6100(b)(6) (emphasis added). In its companion Petition for Declaratory Ruling, WIA urges the Commission to clarify that “current boundaries” mean the site defined under the current lease terms rather than the boundaries that existed in the initial lease.

The Commission should amend the definition of a site for towers (other than towers in the public rights-of-way) to specify that a site is “an area no more than 30 feet beyond the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.”³⁵ This approach would be consistent with the NPA which, in the context of replacement towers, does not treat excavation within 30 feet of a site as a substantial change.³⁶

The current treatment of excavation/compound expansion under Section 1.6100(b)(7)(iv) creates unnecessary barriers to deployment and produces a counter-intuitive result. Specifically, collocations that involve minor (less than 30-feet) compound expansions are treated as substantial increases, but new structures that involve ground excavation up to 30 feet outside of the site boundary are not. This result undermines the Commission’s goal of promoting collocation and makes no sense. The excavation associated with a collocation is less intrusive than that required for a replacement tower. Thus, if a replacement tower can be constructed without triggering Section 106 even though excavation is required up to 30-feet outside of the current site, collocations should be treated similarly. While this is not the forum to address amending the Collocation Agreement to conform its outdated treatment of excavation to the approach taken in the NPA, the Commission need not perpetuate the disparity in the context of its rules implementing Section 6409(a). The Commission should seize this opportunity to modernize its view of when a compound expansion is substantial to conform to the more recent NPA approach.

³⁵ The definition of site for other eligible support structures would remain unchanged.

³⁶ Nationwide Programmatic Agreement Regarding the Section 106 NHPA Review Process, 70 Fed. Reg 580, 582 (§ III.B) (2004), codified as 47 C.F.R. Part 1, App. C.

Although the Commission declined to follow the NPA approach back in 2014,³⁷ much has changed in the intervening five years. As discussed above, the success of the Commission’s collocation policies has made it increasingly difficult to add new antennas to existing towers without excavating beyond the existing site boundaries. Moreover, skyrocketing demand is driving the deployment of 5G technology which requires unprecedented network densification. The FCC has ample authority to revisit and modernize its rules based on changed circumstances.³⁸

Importantly, the Commission is not required to treat excavation under Section 6409(a) and its implementing regulations in the same manner as excavation for the National Historic Preservation Act (“NHPA”) review purposes. Section 6409(a) expressly states that it does not impact the Commission’s responsibilities under the NHPA.³⁹ So while the Commission may look to the programmatic agreements implementing the NHPA for guidance in the Section 6409(a) context, it is under no obligation to prioritize the older Collocation Agreement approach over the more recent NPA model. Accordingly, the Commission is fully justified in adopting different standards for evaluating excavation for NHPA and Section 6409(a) purposes.

II. THE COMMISSION SHOULD AMEND ITS RULES TO REQUIRE THAT FEES FOR PROCESSING EFRs MUST BE COST-BASED.

Last fall the Commission concluded that excessive fees and other costs imposed by localities on the deployment of small cells “threatened the widespread deployment” of 5G services and adopted rules requiring that fees – including “one-time application and review fees”

³⁷ See 2014 Order, 29 FCC Rcd at 12949.

³⁸ See *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)); accord *Wireless Radio Services Order*, 20 FCC Rcd at 13903. The Commission’s authority to interpret Section 6409(a), including the definition of what constitutes a substantial change, has been upheld by the U.S. Court of Appeals for the Fourth Circuit. See *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).

³⁹ 47 U.S.C. § 1455(a)(3) (“Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.”).

– be cost-based and non-discriminatory.⁴⁰ The Commission determined that fees that are not cost-based materially inhibit the ability of an entity to compete in violation of Sections 253 or 332(c)(7).⁴¹

Despite this recent pronouncement, WIA members report that some jurisdictions continue to use fees in a manner that inhibits deployment, particularly in localities that utilize third party consultants. For example, some jurisdictions are imposing onerous application fees for EFR applications and, in some cases, establishing escrow fees in connection with such applications. Other jurisdictions are refusing to process EFR applications – or denying such applications – that relate to a structure owned by an entity challenging the reasonableness of prior fees. Such action creates barriers to entry and inhibits the effectiveness of the Commission’s existing rules. For example:

- Martinez, California requires a \$10,000 deposit for planning review.
- Hercules, California requires a \$10,000 deposit for planning and building review.
- The City of Rio Vista, California imposes a \$510 pre-planning application fee, plus a \$5,000 planning application fee.
- Richmond, California imposes a \$6,000 application fee.
- Belmont, California imposes a \$11,000-\$12,000 fee for planning review.
- Freehold, New Jersey requires an applicant to place \$3,000 in escrow, in addition to a \$425 application fee and additional building permit and zoning fees.
- East Hampton, New York imposes a \$6,500 plan review fee plus building permit fees.
- Hempstead, New York requires an applicant to place \$6,000 in escrow, in addition to a \$2,500 application fee, often in addition to other fees at the time of permit issuance.
- Portland, Oregon requires an applicant to pay a \$697.50 pre-application “intake fee” to schedule a meeting, regardless of whether the application is accepted. If the application

⁴⁰ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 30 FCC Rcd 9088, 9089-91, 9110-9130 (2018) (“*Declaratory Ruling and Order*”).

⁴¹ *Id.* at 9112-13.

is rejected for any reason, or if the intake meeting is cancelled or rescheduled less than 48 hours in advance, the applicant must pay another \$697.50.

- In Beaverton, Oregon, if a modification includes a height increase beyond the City’s standards (even if covered by Section 6409), fees can range up to \$7,282.
- Thurston, Washington imposes a \$1,880.49 special use permit fee for every antenna equipment addition or swap. Mercer Island, Washington imposes a similar \$1,680.49 fee.
- Saluda County, South Carolina requires an applicant to place \$8,500 in escrow and to pay a \$2,500 zoning/consultant fee.
- Woodfin, North Carolina imposes a \$10,000 fee for any zoning application regardless of whether it involves a new tower build or a collocation on an existing tower.
- Various Hawaii jurisdictions imposes fees that from range \$300 per application to \$1200 per application depending on scope of work.

To curb these practices, the Commission should amend its rules to state expressly that (i) fees for processing EFRs for the provision of telecommunications service must represent a reasonable approximation of actual and direct costs incurred by the government; (ii) the non-payment of fees subject to a good faith dispute cannot form the basis for delaying action on, or denying, an EFR or issuance of a permit based on a deemed granted notice; and (iii) any escrow or deposit fees may only be used for review that is reasonably related to a determination of whether a request is covered by Section 6409(a). Such an approach would be within the actions taken in the *Declaratory Ruling and Order*.

CONCLUSION

For the foregoing reasons, WIA urges the Commission to commence a rulemaking proceeding to update its rules to: (i) ensure that collocations requiring limited compound expansions – excavation within 30 feet of a tower site – qualify for relief under Section 6409(a) and the FCC’s implementing regulations; and (ii) require that fees associated with EFRs for the

provision of telecommunications services must be cost-based and that good faith disputes over fees cannot be used as a basis for refusing to process (or denying) an EFR.

Respectfully submitted,

/s/ John A. Howes, Jr.
John A. Howes, Jr.
Government Affairs Counsel

Jonathan Adelstein
President and CEO

Matt Mandel
Head of Government Affairs

WIA – The Wireless Infrastructure Association
2111 Wilson Blvd., Suite 210
Arlington, VA 22201
(703) 535-7407
John.howes@wia.org

August 27, 2019

APPENDIX

COMPOUND EXPANSION EXAMPLES

COMPOUND EXPANSION EXAMPLE #1

Before Compound Expansion:



After Compound Expansion:



COMPOUND EXPANSION EXAMPLE #2

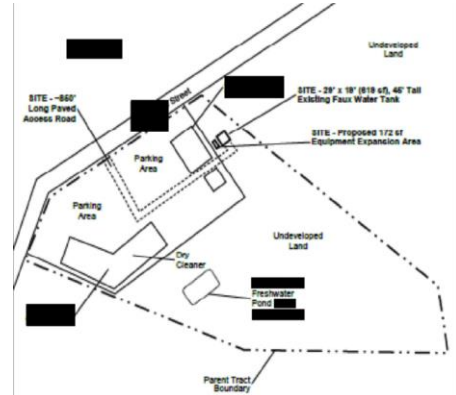
(172 sq. ft.)



Photo 14 - View of proposed telecommunications facility expansion area, facing east.



Photo 5 - Overview of existing faux water tank telecommunications facility, facing south.



COMPOUND EXPANSION EXAMPLE #3

(441 sq. ft.)



COMPOUND EXPANSION EXAMPLE #4

(10' x 12')



Photo 3 - View north-northwest of the proposed compound expansion area south of the western portion of the Site.

