



Wireless
Infrastructure
Association

September 10, 2018

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communication, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

On August 28, 2018, Jonathan Adelstein, and the undersigned of the Wireless Infrastructure Association (WIA)¹, met with Chairman Ajit Pai, his Special Counsel Michael Carowitz, and Commissioner Michael O’Rielly.

In the meetings, consistent with comments in the above-captioned proceedings, WIA thanked Chairman Pai and Commissioner O’Rielly for the Federal Communications Commission’s (FCC or Commission) recent draft Declaratory Ruling and Third Report and Order (Draft Order), which takes significant steps to accelerate 5G deployment.² WIA encouraged the FCC to continue streamlining the wireless broadband siting

¹ The Wireless Infrastructure Association (WIA) is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. WIA’s members include carriers, infrastructure providers, and professional services firms.

² See Comments of WIA, WT Docket No. 17-79, WC Docket No. 17-84 (filed Jun. 15, 2017), *available at* <https://bit.ly/2te5lnl> (WIA Comments); see also Reply Comments of the WIA, WT Docket No. 17-79, WC Docket No. 17-84 (filed Jul. 17, 2017) *available at* <https://bit.ly/2lath1A> (WIA Reply Comments).

process to enhance capacity on 4G networks and spur the deployment of next-generation 5G networks.

Specifically, WIA noted that its members continue to face regulatory hurdles when applying for Eligible Facilities Requests (EFRs) under Section 6409 of the Spectrum Act (Section 6409). Such hurdles include jurisdictions refusing to issue permits (such as building and highway permits for right-of-way work) to construct EFRs that have been “deemed granted,” abusing the exception for concealment modifications, denying the applicability of Section 6409 to their siting process, placing improper conditions on permits, forcing providers to agree to contractual prohibitions against use of EFRs, and using “amortization” requirements³ to evade EFRs.⁴ WIA urged the FCC to act swiftly to correct these misinterpretations of Section 6409 and the Commission’s previous infrastructure streamlining decisions.

For instance, WIA members have reported that certain jurisdictions will not respond to an application before the shot clock runs out, but when the infrastructure provider attempts to proceed with the deemed approved project, they are prevented from obtaining a building permit. These jurisdictions claim Section 6409 does not cover building permits or sometimes even zoning. This effectively eliminates the speed and certainty Section 6409 provides, putting a project in an unlawful state of limbo and in conflict with the intent of the law.⁵ The Draft Order appropriately determined that under

³ Some communities evade Section 6409 with an overreaching “amortization” ordinance requiring all existing wireless facilities within their jurisdiction or certain areas within the jurisdiction be replaced with camouflaged structures. Often under such a regime, a jurisdiction effectively prohibits deployment by refusing to grant new EFR permits for the structure claiming the addition of antennas will “defeat the existing concealment” and therefore not qualify as EFRs. *See* Letter from Kenneth J. Simon & Monica Gambino, Crown Castle International Corp., to Marlene Dortch, Secretary, FCC, WT Docket Nos. 17-79 & 16-421 [filed Aug. 10, 2018] at 11 (Crown Castle Ex Parte).

⁴ *See id.* at 11-19.

⁵ Section 6409 says that a municipality “may not deny, and shall approve” any EFR. A jurisdiction’s decision to withhold relevant permits for otherwise eligible facilities amounts to an effective denial of the siting application. Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), Pub. L. No. 112-96, 126 Stat. 156, 232-33 § 6409(a) (2012) [codified at 47 U.S.C. § 1455(a)].

332(c), *all* authorizations, including permits, are subject to the new shot clocks.⁶ WIA encouraged the FCC to clarify similarly that under Section 6409 all elements of the siting approval process are subject to the shot clock and to define the process by which a shot clock violation results in a deemed approved finding to enable the continuation of a project.⁷

Additionally, some jurisdictions are inappropriately using the height, color, or other characteristics of a permitted facility as a concealment factor. Jurisdictions are using these concealment factors attempting to evade the intent of Section 6409. Some jurisdictions are also counting concealment and aesthetic additions to facilities against volumetric calculations.⁸ WIA urges the Commission to clarify that these elements should not be considered a part of the facility for purposes of size restrictions, nor should these elements prevent otherwise eligible wireless infrastructure from availing itself to the benefits of Section 6409(a) and other streamlining rules.⁹ WIA asked the

⁶ *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, Declaratory Ruling and Third Report and Order, at 62 (rel. Sep. 5, 2018) (*Public Draft*) (Draft Order).

⁷ Others in the record agree that a shot clock imposes a deadline within which jurisdictions must complete all siting review processes. *See, e.g.*, Comments of Crown Castle International, WT Docket No. 17-79, (filed Jun. 15, 2017) at 27-28 (Crown Castle Comments); Letter from Henry Hultquist, AT&T, to Marlene Dortch, Secretary, FCC, WT Docket Nos. 17-79 & 17-84 (filed Aug. 10, 2018) at 2; Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84, WT Docket No. 16-421 (filed Aug. 30, 2018) at 10; Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Jul. 26, 2018).

⁸ *See, e.g.*, Crown Castle Ex Parte at 11-12 (describing a jurisdiction that calls every aspect of a project a concealment element causing any proposed increase in size to defeat concealment and therefore disqualify the deployment as an EFR under Section 6409(a)).

⁹ Some states have adopted legislation preventing concealment measures from being considered part of the facility for purposes of the size restrictions in the definition of the facility type. *See generally* H.B. 2651, 29th Haw. State Leg. 2nd Reg. Sess. (Hawaii, 2018); H.R. 1991, 99th Gen. Assemb. 2nd Reg. Sess. (Missouri, 2018); H.B. 478, 132nd Gen. Assemb. 1st Reg. Sess. (Ohio, 2018); S.B. 1388, 56th Okla. Leg. 2nd Reg. Sess. (Oklahoma, 2018).

FCC to clarify the process for local approval of Section 6409(a) EFRs to eliminate misinterpretations of previously-issued Commission rules.

Finally, WIA urged the Commission to harmonize the differing rules that apply to compound expansions. WIA explained that the 2004 Programmatic Agreement excluded from review construction of a replacement structure that did not substantially increase the size of the existing tower and that did not expand the boundaries of the leased or owned property surrounding the tower by more than thirty feet in any direction or involve excavation outside these expanded boundaries. However, any site expansion to accommodate additional equipment associated with the collocation of a new antenna or transmission equipment still requires a full review, even if the expansion is a single foot. Crown Castle Intl. Corp. reports that, “an estimated 95% of all [its] Section 106 reviews performed are triggered by fee or leasehold expansions. And the fees associated with Section 106 reviews can quickly accumulate.”¹⁰ WIA highlighted that this unnecessary review requirement is expensive, time-consuming, and could slow 5G rollout as compound expansions accommodate network infrastructure needs such as building data centers at the edge, adding service provider tenants, and providing backup power shelters.

Consistent with the 2004 Nationwide Programmatic Agreement and similar to rules already adopted in a number of states, the FCC should permit expansion of the compound up to thirty feet to be considered an EFR and reviewed under the same expedited 60-day shot clock.¹¹ Under this framework, compound expansions would not

¹⁰ Crown Castle Comments at 39.

¹¹ See WIA Reply Comments at 37-38; WIA Comments at 72-73; Crown Castle Comments at 39. See, e.g., Letter from Sade Dada, Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Aug. 30, 2018) at 3; Letter from Richard Rossi & Mneesha Nahata, American Tower Corporation, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018) at 5-7 (American Tower Ex Parte); Letter from Rebecca Thompson, Competitive Carriers Association, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Mar. 15, 2018) at 4-5. Comments of PCIA – The Wireless Infrastructure Association & the HetNet Forum, WT

amount to substantial modifications and should therefore receive expedited, 60-day review. Clearly, if an infrastructure provider may construct a complete replacement tower without triggering Section 106, even though excavation occurs up to thirty feet outside of the original site, collocations at existing sites should be similarly exempted. As American Tower Corp. explains, “there is no reasonable policy justification for this divergent treatment between collocations and tower replacements given that the Commission justified allowing compound expansions for replacement towers in order to facilitate additional collocations.”¹² In fact, the FCC in its recent Draft Order encourages collocation over building new structures.¹³ WIA highlighted that providing the same thirty-foot allowance exclusion for compound expansions for collocations as currently exists for replacement towers would have a significant impact in reducing deployment delays and expenses.

Docket No. 13-238 et al., at 38 n.128; *see generally* N.J. STAT. ANN. § 40:55D-46.2; MICH. COMP. LAWS. § 125.3514; N.H. REV. STAT. ANN. § 12-K:2.

¹² American Tower Ex Parte at 6; *See also*, Acceleration of Broadband Deployment by Improving Wireless Siting Policies, Report and Order, 20 FCC Rcd at 1090, ¶ 45 (2014).

¹³ Draft Order at 51 *citing* American Tower Ex Parte at 3 (“The reason to encourage collocation is straightforward, it is faster, cheaper, more environmentally sound, and less disruptive than building new structures.”).

WIA deeply appreciates the FCC's recent infrastructure actions and continuous efforts to find practical, reasonable regulatory structures to speed the deployment of 5G for all Americans and encourages the Commission to use its authority to continue to streamline wireless infrastructure deployment, and enthusiastically supports the Draft Order.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter will be filed via ECFS and provided to each participant. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

/s/Sade Dada

Sade Dada

Government Affairs Counsel

Wireless Infrastructure Association

2111 Wilson Blvd., Suite 210

Arlington, VA 22201

(703) 535-7519

Sade.Dada@wia.org

cc: The Honorable Ajit Pai
The Honorable Michael O'Rielly
Michael Carowitz