BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of 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
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

REPLY COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO

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I. INTRODUCTION

The City and County San Francisco ("San Francisco") submits these reply comments in the above-referenced dockets, in which the wireless industry has asked the Commission to revise its rules related to state and local regulation of modifications to permitted wireless facilities. As local governments filing initial comments have noted, among other things the Petitions for Declaratory Ruling and Petition for Rulemaking ask the Federal Communications Commission ("Commission") to clarify the Commission's existing rules[1] implementing Section 6409(a) of the Spectrum Act[2] in a manner that is contrary to the statute.[3]

San Francisco did not file opening comments in these proceedings. San Francisco, however, has reviewed many of the opening comments including those filed by local governments, organizations that support local governments, WIA - The Wireless Infrastructure Association ("WIA"), CTIA - The Wireless Association ("CTIA"), and certain telecommunications carriers. San Francisco submits these reply comments for two purposes. First, San Francisco supports the arguments made in the comments filed by local governments. In particular, San Francisco supports many of the arguments contained in the comments filed by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors and the National Association of Counties ("Municipal Organizations Comments"), the National League Cities, et al. ("NCL Comments"), and the City of San Diego, et al. ("Western Communities Comments"). Second, San Francisco demonstrates below that it is processing applications to modify existing wireless facilities in a manner that is

[1] 47 C.F.R. §1.6100.

[2] 47 U.S.C. § 1455(a).

[3] Petition for Rulemaking, RM-11849 (filed Aug. 27, 2019) ("WIA Rulemaking Petition"); Petition for Declaratory Ruling filed by the Wireless Infrastructure Association, WT Docket No. 17-79 (filed Aug. 27, 2019) ("WIA Petition"); Petition for Declaratory Rulemaking filed by CTIA, WT Docket No. 17-79, WC Docket No. 17-84 (filed Sep. 6, 2019) ("CTIA Petition").

consistent with federal law. As local government commenters have shown, arguments from WIA, CTIA, and telecommunications carriers that Commission action is necessary because local governments are disregarding the requirements of section 6409(a) and the Commission's regulations are neither well founded nor supported by the record.

San Francisco joins in the requests made by other local governments that the Commission deny the WIA and CTIA Petitions as well as the WIA Rulemaking Petition.

II. SAN FRANCISCO IS COMPLYING WITH SECITON 6409(A) WHEN PROCESSING APPLICATIONS TO MODIFY EXISTING WIRELESS FACILITIES EITHER ON PRIVATE PROPERTY OR ON EXISTING POLES IN THE PUBLIC RIGHT-OF-WAY.

A. Permits to Install Wireless Facilities on Private Property

San Francisco's Planning Code establishes permitting requirements for wireless facilities on private property. In parts of San Francisco that are zoned commercial or industrial, the Planning Code generally requires the applicant to obtain only a building permit to install its facility on private property. The building permit process can be as short as 30 days if the initial application is complete.

In parts of San Francisco that are zoned residential or neighborhood-commercial, the Planning Code requires a conditional use authorization ("CUA") to install a wireless facility on private property, in addition to a building permit. If the Planning Commission grants the CUA, the applicant must still submit an application for a building permit so that construction can begin.

San Francisco has developed an expedited process for applications for modifications of existing wireless facilities that complies with section 6409(a) (an "Eligible Facilities Request" or "EFR"), even for locations that initially required a CUA. San Francisco generally approves these EFR applications within 60 days. This does not include the time for the applicant to obtain the required building permit.

As allowed under section 6490(a), San Francisco requires EFR applicants to show that the proposed modifications to their wireless facilities will maintain any existing concealment elements. When issuing initial CUAs, San Francisco often requires the carrier to add concealment elements to its proposed a wireless facility. The types of concealment elements San Francisco requires include: (i) faux vents; (ii) fiberglass reinforced panel screens; (iii) painting to match roof top materials; and (iv) a setback of facility from the roof at the front building wall. San Francisco will not approve an EFR application if the new equipment to be installed would be outside of existing concealment elements or would require the removal of a concealment element.

San Francisco also reviews the EFR application to ensure that a proposed modification of an existing wireless facility would not substantially increase in the size of existing base station and, therefore, is an EFR under section 6409(a). To make this determination, San Francisco looks at the footprint of the existing permitted and legally installed facility as the starting point. San Francisco then evaluates each sector used by the applicant as part of the permitted facility, and the permitted equipment already installed at that sector, to determine whether the proposed modifications contained in the EFR application would comply with expansion limits contained in the Commission's regulations. If it does, San Francisco issues a modification permit.

B. Permits to Install Wireless Facilities on Existing Utility Poles in the Public Right-of Way

Article 25 of the San Francisco Public Works Code authorizes the Department of Public Works to issue permits for wireless facilities on utility poles. Article 25 does not prohibit the installation of wireless facilities in the public right-of-way in any part of San Francisco. Applicants for wireless permits can apply to install wireless facilities in any zoning district and even in sensitive areas such as historic districts and near parks and open space. An applicant for an Article 25 permit does not need to describe the

technology it intends to deploy (i.e. DAS or small cell), the intended use of the facility, whether the facility is needed to fill a significant gap in coverage, or whether the applicant explored other means for filing a purported gap in coverage.

San Francisco has an expedited EFR application process for modifying existing wireless facilities installed on poles. Since April 2019, San Francisco has processed and approved 66 EFR applications in less than 60 days for each. In order to ensure that approval of the EFR applications are required by section 6409(a), because the proposed modifications would not substantially increase the size of the existing base station, San Francisco requires EFR applicants to submit plans for and photosimulations of the proposed modified wireless facility. To protect the public health, safety and welfare, San Francisco requires a structural report indicating that the pole can safely support the additional equipment and a report showing that radio frequency emissions from the modified wireless facility would comply with Commission standards.

III. SAN FRANCISCO SUPPORTS THE COMMENTS FILED BY OTHER CITIES AND MUNICIPAL ORGANIZATIONS THAT ASK THE COMMISSION TO REJECT THE PETITIONS

As local government commenters have mentioned, the WIA and CTIA Petitions improperly ask the Commission to include all local government approvals required for a modification of a wireless facility within its existing regulations imposing a 60-day shot clock for processing EFR applications. Nothing in the statute suggests that Congress intended the Commission to interfere with local government authority over public health, safety, and welfare in this manner.[4] In addition, this Commission has noted that Congress did not intend to prohibit the ability of localities to "enforce and condition approval on compliance with generally applicable building, structural, electrical, and

[4] *See* Municipal Organizations Comments at 5-6.; NCL Comments at 24-28.

safety codes and with other laws codifying objective standards reasonably related to health and safety."[5] For this reason too, San Francisco agrees that the Commission should reject WIA's request that the Commission clarify its regulations to provide that local governments cannot require EFR applicants to demonstrate that there are no existing code violations at the structure where the applicant is seeking to modify an existing wireless facility.[6] Nothing in section 6409(a) prohibits local governments from requiring compliance with local building and other safety codes. Application reviews of this nature are important tools local governments use to ensure compliance with such applicable codes.

San Francisco also agrees that the WIA and CTIA Petitions improperly ask the Commission to expand the definition of the term "substantial change" contained in the Commission's existing regulations to require local governments to approve EFR applications that seek modifications of exiting wireless facilities that would: (a) clearly be "substantial" and, therefore, not required; (b) allow the carriers to defeat existing concealment elements; and (c) improperly expand the meaning of the term "base station" to include entire buildings and other structures.[7] While WIA and CTIA suggest that they are merely asking the Commission to clarify its existing regulations, San Francisco agrees with other commenters that, were the Commission to agree to entertain this proposal, it should open a rulemaking to address amendments to those existing regulations.[8]

The WIA and CTIA Petitions also improperly ask the Commission to expand the scope of the deemed granted remedy already allowed in the Commission's regulations.

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[5] *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12875 (2014).
[6] *See* Municipal Organizations Comments at 10; Western Communities Comments at 45.
[7] *See* Municipal Organizations Comments at 7-13; Western Communities Comments at 30-40; NCL Comments at 10-24.
[8] *See* Municipal Organizations Comments at 8.

Under their proposals, if an EFR application were to be deemed granted under the Commissions' regulations, the applicant would be authorized to immediately commence construction of the facility without a building or other required permit. This would unlawfully preempt local government authority to protect the public health, safety, and welfare.[9]

San Francisco also agrees with local government commenters that the Commission should reject the WIA Petition for Rulemaking to the extent WIA has asked the Commission to impose fee caps on local government review of EFR applications. In so doing, the Commission would exceed its authority under section 6409(a).[10] Nothing in section 6409(a) suggests or implies that the Commission may limit the fees local governments may charge to review EFR applications. In addition, like many other States, California already requires that such permit fees be cost-based. Any federal limitations on EFR application fees are unnecessary and unwarranted.

[9] *See* Western Communities Comments at 13-19; NCL Comments at 29-30.
[10] *See* Municipal Organizations Comments 16; Western Communities Comments at 89-91.

IV. CONCLUSION

For the foregoing reasons, San Francisco joins with those other commenters that have asked the Commission to reject all of the petitions at issue in this proceeding.

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Respectfully submitted,

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