Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of State and Local	)	WT Docket No. 19-250
Governments Obligation to Approve Certain	)	RM-11849
Wireless Facility Modification Requests Under	)	
Section 6409(a) of the Spectrum Act of 2012	)	
	)	
Accelerating Wireline Broadband Deployment	)	WC Docket No. 17-84
by Removing Barriers to Infrastructure	)	
Investment	)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile")[1] respectfully submits these reply comments concerning the record developed in response to the petitions for declaratory ruling filed by CTIA and the Wireless Infrastructure Association ("WIA") requesting that the Federal Communications Commission ("FCC" or "Commission") clarify its rules implementing Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") and Section 224 of the Communications Act (the "Act").[2]

[1] T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

[2] *See Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling, and CTIA Petition for Declaratory Ruling,* Public Notice, DA 19-913 (WTB/WCB rel. Sept. 13, 2019) ("*Public Notice*"); *Order,* DA 19-978 (WTB/WCB rel. Sept. 30, 2019) (extending comment and reply deadlines); *see also* WIA, Petition for Declaratory Ruling, WT Docket No. 19-250 (filed Aug. 27, 2019) ("WIA Petition"); CTIA, Petition for Declaratory Ruling, WT Docket No. 19-250, WC Docket No. 17-84 (filed Sept. 6, 2019) ("CTIA Petition").

INTRODUCTION AND SUMMARY

T-Mobile applauds the FCC for its continued commitment to removing barriers to deployment, and for recognizing in this proceeding that effective and timely deployment of upgrades to existing sites, both macro sites and small cells, will be a key part of the race to 5G.[3] The robust record includes numerous examples of continuing barriers to both the expansion and modification of existing macro sites and to small cell collocations. In particular, the record shows broad support for the targeted actions sought by CTIA and WIA in their petitions – and that the FCC has ample authority to address these continuing deployment barriers.[4]

Below we provide several recent examples of the barriers to deployment that T-Mobile is facing with regard to the review and processing of eligible facilities requests ("EFRs") entitled to the protections of Section 6409(a). These examples demonstrate that the Commission should: (i) clarify that the 60-day shot clock for EFRs applies to all permits required by the locality, and that

[3] *See, e.g.*, Michael O'Rielly, Commissioner, FCC, Remarks Before the Mobile World Congress Americas 2019 Everything Policy Track, at 3 (Oct. 23, 2019) ("[The CTIA and WIA] petitions provide a great starting point for a notice on ways to facilitate the construction and modification of macro towers, along with providing additional relief for small cells…. Macro towers will continue to be the primary means for providing service to many Americans, especially with the emphasis on mid band spectrum."), https://docs.fcc.gov/public/attachments/DOC-360382A1.pdf.

[4] *See generally* Comments of ACA Connects – America's Communications Association (Oct. 29, 2019); Comments of ACT | The App Association (Oct. 29, 2019); Comments of American Tower Corporation (Oct. 29, 2019) ("AMT Comments"); Comments of AT&T (Oct. 29, 2019) ("AT&T Comments"); Comments of Competitive Carriers Association (Oct. 29, 2019) ("CCA Comments"); Comments of Crown Castle International Corp. (Oct. 29, 2019) ("Crown Comments"); Comments of CTIA (Oct. 29, 2019) ("CTIA Comments"); Comments of ExteNet Systems, Inc. (Oct. 29, 2019) ("ExteNet Comments"); Comments of the Free State Foundation (Oct. 29, 2019); Comments of Nokia (Oct. 29, 2019) ("Nokia Comments"); Comments of T-Mobile USA, Inc. (Oct. 29, 2019) ("T-Mobile Comments"); Comments of Verizon (Oct. 29, 2019) ("Verizon Comments"); Comments of Wireless Infrastructure Association (Oct. 29, 2019) ("WIA Comments"); Comments of the Wireless Internet Service Providers Association (Oct. 29, 2019). Unless otherwise stated, citations herein to comments refer to those filed in WT Docket No. 19-250, WC Docket No. 17-84 and/or RM-11849 in response to the *Public Notice*.

failure to timely issue all such approvals results in a deemed grant that allows the applicant to construct; (ii) clarify the term "equipment cabinet" to make clear that it includes only enclosures placed on the ground or elsewhere on the premises and does not include individual pieces of transmission equipment; and (iii) clarify the term "concealment element" to make clear that equipment size is not itself a concealment element, and that after-the-fact stealthing requirements and overbroad definitions of concealment violate the rule and statute.

DISCUSSION

I. LOCALITIES EVADE THE 60-DAY SHOT CLOCK BY WRONGFULLY EXCLUDING REQUIRED AUTHORIZATIONS FROM ITS SCOPE.

The Commission should clarify that the 60-day shot clock for EFRs under Section 6409(a) applies to *all* permits required by the locality, and that failure to timely issue the full set of required approvals results in a deemed grant that allows the applicant to construct.[5] Clarification is needed because many localities assert that the shot clock only applies to land use (*i.e.*, zoning) review of the EFR itself and not to all permits that the locality may require in connection with the EFR. Indeed, some jurisdictions treat the land use or other facility permit as a prerequisite to obtaining building, encroachment, electrical and other needed permits – a bifurcated or sequential structure that frustrates the accelerated Section 6409(a) review process established by the Commission because, as a practical matter, it is rarely completed in 60 days.[6]

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[5] *See, e.g.*, AT&T Comments at 11-14; Crown Comments at 5-6; CTIA Comments at 12-13; ExteNet Comments at 21-22; Nokia Comments at 5; T-Mobile Comments at 11-15; Verizon Comments at 8-9; WIA Petition at 5-7.

[6] *See, e.g.*, Monica Nickelsburg, *As Cities Battle Feds Over 5G Rollout, Tech Leaders Worry Seattle Will Lag Behind in New Wireless Race*, GeekWire (Nov. 15, 2019) (noting that "Seattle has a multi-step permitting process that can take months or even years," and that "[t]ech leaders are concerned that the infamous 'Seattle Process,' could be an obstacle on the path to 5G"), https://www.geekwire.com/2019/cities-battle-feds-5g-rollout-tech-leaders-worry-seattle-will-fall-short-new-digital-divide/.

The FCC should clarify that all permits and approvals necessary for an EFR, even if the process is bifurcated or sequential, must be issued within the 60-day timeframe for review or the application is deemed granted.

Examples of jurisdictions with bifurcated or sequential processes that make it practically impossible to issue all required permits within 60 days – or that disregard the 60-day shot clock altogether – include:

- ***Richmond, CA***. Under city code, an applicant seeking to undertake a modification subject to Section 6409(a) must obtain both a "Section 6409(a) Approval" and a building permit. The former is considered to be a type of administrative land use approval. Under the code, "[a]n applicant must obtain a Section 6409(a) Approval *before* it may apply for permits or other regulatory approvals from other City departments." Richmond, CA, Code § 15.04.614.100(C) (emphasis added); *see also id.* § 15.04.614.100(F)(14) (explicitly stating that a "Section 6409(a) Approval" is a required part of a building permit application). Experience has shown that it is impossible for the city to meet the 60-day shot clock under this structure, especially considering the city's additional requirements that an applicant: (i) schedule and attend a pre-application conference (including to determine if the project qualifies for Section 6409(a) relief), which city staff will "endeavor" to schedule within five business days after a written or email request; and (ii) schedule a separate appointment to actually submit an application. *See id.* § 15.04.614.100(D)(3)-(4).[7]

- ***Torrance, CA***. The city requires a wireless telecommunications facility permit and a building permit. *See* Torrance, CA, Code, § 92.39.020. Applicants also must apply to modify existing wireless telecommunications facility permits based on "changed circumstances," defined broadly to include, among other things, increases in height or size of the facility, increases in size or shape of the antenna or support structure, and changes in color or materials. *See id*., § 92.39.080(a). When changed circumstances occur, which would appear to cover most Section 6409(a) projects, the "operator [must] apply for a modification of the original telecom permit" and then "must obtain … any related building or other permits required by the City." *Id*. As a result, many 6409(a) projects that change the physical dimensions of a site, but fall within the limits established by the FCC, must go through a two-step approval process. The city code requires action on applications for telecom permits within 60 days, *see id*. § 92.39.060(c),

[7] *See also* WIA Petition at 3 (noting that some localities erroneously claim that "the Section 6409(a) shot clock does not commence until numerous hurdles are cleared, including pre-application hurdles"); *id*. at 8 & n.27 (citing examples of jurisdictions that "require pre-application appointments or meetings before they will accept an application"); *id*. at 8-9 (urging the Commission to clarify that the shot clock "starts upon initial written submission in the case where a state or local government requires any type of pre-application submission or meetings").

(d), but if the project involves changed circumstances and the city takes the full 60 days to issue the modified telecom permit – which in turn is needed to obtain a building permit – as a practical matter the city cannot provide the applicant all necessary approvals within the time limit of the Section 6409(a) shot clock.

- ***Chapel Hill, NC***. Under provisions of the code applicable to wireless communications facilities, a request that qualifies as an EFR is subject to administrative approval within 60 days. *See* Chapel Hill, NC, Code, App. A, Art. 5, § 5.20.9(c)(3). However, the city *then* requires an applicant to obtain a building permit. *See id*., App. A, Art. 5, § 5.20.6. Thus, if the city takes the full 60 days just to issue the EFR approval, the additional time needed to obtain the required building permit pushes the full site approval process well beyond the Section 6409(a) shot clock.

- ***Town of East Hampton, NY***. The town requires a full Special Permit review from its planning board, and the zoning code specifically states that "[c]o-location should be discouraged for all personal wireless service facility applications." *See* East Hampton, NY, Code, § 255-2-46(B). T-Mobile has proposed a qualifying EFR collocation, but the town planning board has openly stated that it will not abide by the 60-day EFR review period.

While some municipal representatives contend that 60 days does not allow sufficient time to complete all required reviews including public safety, or that constructing based on a deemed granted letter raises public safety concerns, neither is true. All applicants, even in a deemed granted scenario, must construct in compliance with lawfully adopted health and safety codes. The CTIA and WIA petitions do not seek an exclusion from those codes, or to limit localities' ability to enforce those codes. Also, in any case, 60 days is a reasonable time period to complete all required reviews, as evidenced by the fact that multiple municipal commenters have asserted that Section 6409(a) applications are routinely processed within the 60-day shot clock.[8] Indeed, some jurisdictions, in an effort to accelerate 5G deployments, have already abandoned a multi-

[8] *See, e.g.*, Comments of the City of San Diego, California, *et al.*, at 4-5 (Oct. 29, 2019) (stating "most cities act within approximately 60 shot-clock days from the initial submittal"); Comments of the National League of Cities, *et al.*, at 26-27 (Oct. 29, 2019) (explaining that Section 6409(a) applications in Montgomery County, Maryland are processed, on average, in 60 calendar days); *see also* Comments of the City of Gaithersburg, Maryland, at 2 (Oct. 28, 2019); Comments of the City of Chino, California, at 2 (Oct. 28, 2019).

step process and exempted EFRs from land use review, focusing instead on a single building permit approval or similar process. For example:

- ***Atlanta, GA***. City code provides that "a special use permit or special administrative permit shall not be required where there is a modification of an existing antenna and/or related equipment which involves collocation of new transmission equipment, or removal or replacement of transmission equipment, that does not substantially change the dimensions of the antenna or tower or base station." *See* Atlanta, GA, Code, § 16-25-002(3)(i)(iv)(k).

- ***Westminster, CO***. The city provides in its code an alternative review procedure for EFRs. That procedure establishes a straightforward administrative review of EFRs by the city manager, pulling them out of the discretionary land use review process. *See* Westminster, CO, Code, § 11-16-6.

- ***St. Paul, MN***. The city code specifies that "[a] conditional use permit is not required for any eligible facility modification allowed" under the FCC's rules implementing Section 6409(a). *See* St. Paul, MN, Code § 65.310(a). While T-Mobile has not always agreed with the city over whether a particular request qualifies as an EFR, qualifying EFRs proceed straight to building permit review.

II. LOCALITIES USE EXCESSIVELY BROAD DEFINITIONS OF THE TERM "EQUIPMENT CABINET" TO WRONGFULLY DENY 6409(a) RELIEF.

The record confirms the need to clarify that the term "equipment cabinet," as used in Section 1.6100(b)(7)(iii) of the FCC's rules,[9] includes only enclosures placed on the ground or elsewhere on the premises, and not equipment that is installed on the tower or pole.[10] Clarification is needed because the record shows some jurisdictions are treating the installation of remote radio units ("RRUs") on towers or poles as "equipment cabinets" to wrongfully disqualify a project from Section 6409(a) relief.[11]

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[9] Section 1.6100(b)(7)(iii) states that for any eligible support structure, it would be a substantial change (*i.e.*, not subject to Section 6409(a) relief) if the modification "involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets." 47 C.F.R. § 1.6100(b)(7)(iii).

[10] *See, e.g.*, CTIA Petition at 13-15; T-Mobile Comments at 18-20; Verizon Comments at 9; WIA Comments at 11-12.

[11] *See* AT&T Comments at 8-9; CTIA Petition at 13-14; WIA Petition at 13.

RRUs unquestionably are *not* equipment cabinets. An RRU is a radio frequency transceiver that is usually mounted near the antenna at a wireless facility in order to reduce line loss and latency. RRUs are small, compact units, used to facilitate the transmission or reception of wireless communications signals. By contrast, equipment cabinets are larger structures designed to enclose or support radios or other equipment. Equipment cabinets are generally located directly on the ground or on a rooftop separate from the antennas. Any reasonable definition of "equipment cabinet" should not include the equipment it is designed to contain or support.

Richmond, California is among the jurisdictions that have taken the view that simple projects – like upgrading antennas and associated equipment on a pole or tower, with no substantial change in height, width, or appearance – do not qualify for 6409(a) relief because new RRUs cause the number of "equipment cabinets" to exceed the standard allowed under the rules. In an EFR submission to the city earlier this year, T-Mobile sought Section 6409(a) treatment for a proposal to remove and replace antennas and associated equipment, and install additional RRUs, at an existing T-Mobile monopole facility. Richmond's outside consultant reviewed the proposal and concluded it met all of the EFR prongs in the FCC's rules – meaning there would be no substantial increase in height, no substantial increase in width, no impact to concealment elements (the monopole was not camouflaged), and no non-compliance with permit conditions. Nonetheless, the city denied 6409(a) treatment based on the consultant's flawed conclusion that there were too many "equipment cabinets" because it included each individual pole-mounted RRU in the count. As the consultant stated:

> A collocation or modification causes a substantial change when it adds more than the standard number of equipment cabinets for the technology involved (not to exceed four). The FCC does not

> define an "equipment cabinet" or indicate how to determine the "standard number" for a given technology.
>
> Here, the requested modification will exceed the four-cabinet limit because T-Mobile proposes to add a net of six new RRUs. Accordingly, the additional equipment cabinets do form an independent basis to find that T-Mobile is in actuality requesting a substantial change to the existing site.

The Commission must act now to eliminate this abuse of its rules by clarifying that (i) RRUs and other individual pieces of equipment located on the tower or pole are not "equipment cabinets," and (ii) the term "equipment cabinet" includes only enclosures placed directly on the ground or elsewhere on the premises that are used for the specific purpose of supporting or enclosing equipment used to support site operations.

Contrary to the view of some localities, it is the *location* of equipment and compliance with the objective EFR criteria that qualify a modification to be processed under the protections of 6409(a); the fact that an RRU may serve a similar *function* as radios traditionally housed in an equipment cabinet is irrelevant. There are several reasons this is true. First, the FCC, consistent with Congressional intent, intended for its 6409(a) rules to set forth an objective process to determine whether a modification is a qualifying EFR.[12] Determining the function of equipment involves subjective assessments that have no place in determining whether a modification

[12] *See Montgomery County v. FCC*, 811 F.3d 121, 130 (4th Cir. 2015) ("Petitioners believe that municipalities should be able to review each facility application to determine whether the proposal would represent a 'substantial' modification of the original structure. This argument, at its core, takes issue with the fact that the Spectrum Act displaces discretionary municipal control over certain facility modification requests. But that is exactly what Congress intended by forbidding localities from denying qualifying applications. *The FCC's objective criteria are entirely consistent with this purpose, because the concrete standards in the Order eliminate the need for protracted review. By providing concrete, non-discretionary standards*, the FCC has limited the local review process to the simple question of whether the proposed modification falls within the statutory parameters.") (emphasis added).

qualifies for Section 6409(a) relief. Second, the purpose of the equipment is irrelevant in the context of a rule intended to address issues of visual appearance or the extent of physical equipment on the site. Third, the rule itself focuses on the location of transmission equipment, imposing size restrictions on equipment mounted on an eligible support structure.[13] Thus, it should make no difference if an attachment is an antenna or an RRU as long as it fits the objective substantial change criteria. And fourth, a four-RRU restriction would, as a practical matter, preclude Section 6409(a) relief for collocations on any eligible support structure (*i.e.*, a structure with an existing antenna), because each carrier needs at least three RRUs at a typical three-sector site (one for each sector) to provide service in all directions and on different spectrum bands.

Other opponents contend that if RRUs are not treated as equipment cabinets, then there will be no limits to attachments on a structure. This is a red herring. In addition to the size limits contained in the FCC's rules that already constrain EFR size, localities have adopted safety codes that, along with general engineering principles, limit what can be placed on a given structure (through loading standards, spacing requirements, and interference constraints). Thus, even when an EFR qualifies for Section 6409(a) relief, it still remains subject to all lawfully adopted health and safety regulations as well as engineering principles.[14]

[13] *See* 47 C.F.R. § 1.6100(b)(7)(i)-(ii).

[14] Indeed, RRUs mounted closer to antennas improve service by reducing line losses between the radio and antenna.

III. CONFUSION OVER THE SCOPE OF THE TERM "CONCEALMENT ELEMENTS" IS DELAYING NEEDED DEPLOYMENTS.

Numerous commenters agree that it is critical for the Commission to further clarify the term "concealment element," as that term is used in Section 1.6100(b)(7)(v) of its rules.[15] Below, we discuss examples highlighting three areas where clarification is particularly important: (i) equipment size is not a concealment element, and minor changes to concealment elements should not automatically disqualify a modification from EFR status; (ii) imposing after-the-fact concealment requirements as a condition of EFR approval at existing non-stealth sites is contrary to the rule and statute; and (iii) overbroad definitions of concealment are likewise contrary to the rule and statute.

Size itself is not a concealment element. T-Mobile recently litigated the failure to grant an EFR in Douglas County, Colorado. In that case, T-Mobile requested EFR approval to modify a 35-foot slim line monopole. The modifications consisted of replacing and adding facilities that would expand the existing concealment shroud by twenty inches and the height of the pole by twelve inches to be able utilize its newly obtained 600 MHz spectrum – both non-substantial changes under the FCC's rules. Nonetheless the city rejected Section 6409(a) treatment on the grounds that the minor change in size would defeat the concealment. The district court agreed with the city, in a ruling that makes clear the need for clarification by the FCC.[16]

[15] *See, e.g.*, AMT Comments at 8-10; AT&T Comments at 6-8; CCA Comments at 7-9; Crown Comments at 8-10; CTIA Comments at 8-9; CTIA Petition at 9-13; Nokia Comments at 6-7; T-Mobile Comments at 7-10; WIA Comments at 11; WIA Petition at 10-13.

[16] *See Bd. of Cty. Comm'rs for Douglas Cty., Colo. v. Crown Castle USA, Inc.*, 2019 U.S. Dist. LEXIS 153512 (D. Colo. 2019).

First, the court noted that Section 1.6100(b)(7)(v) is "less than clear" and "provides no definition" for the term "concealment element."[17] Next, while the court stated that concealment elements include the "particularized conditions or steps" imposed to achieve concealment and not the "overall appearance of the structure,"[18] it found that diameter was a concealment element in this case – thus prohibiting T-Mobile from utilizing its 600 MHz spectrum unless it went through the unreasonable delay of a full land use permitting process. It did so notwithstanding the fact that the proposed modification *fit within the size elements set forth in the rule*. But by taking this approach, the court read the size elements of Section 1.6100(b)(7)(i)-(ii) out of the rules. The court recognized as much:

> It is true that in cases such as this, where the concealment elements include specific height and width limits, that *means that the Rule's more general size limits carry no weight*, and it also means that Crown Castle is right that no material changes to the physical dimensions of the pole can be made under this expedited, mandatory-approval process…. *The Court recognizes that for the subset of facilities with size-related concealment elements, this may, as Crown Castle argues, frustrate the goal of the Act and the Rule* to speed up the process of adding bandwidth and other improvements.[19]

This proceeding affords the FCC the opportunity to correct this erroneous result and establish a clear nationwide baseline – size itself is not a concealment element[20] – consistent with the rule of statutory construction long recognized by the Commission that "no part of a statute should be

[17] *See id.* at *20.

[18] *See id.* at *20-*22.

[19] *Id.* at *30 (emphasis added) (footnote omitted).

[20] *See* CCA Comments at 9 & n.32; T-Mobile Comments at 9-10;

presumed to be redundant or superfluous or otherwise be read out of the statute."[21] Quite simply, the FCC should find that one cannot interpret one section of the rule in a way that renders another section non-existent, and that is exactly what the localities seek to do here.

After-the-fact stealthing requirements are inconsistent with the rule. Nor should the FCC allow new concealment elements to be imposed as a condition of EFR approval, overriding the "shall approve" mandate in Section 6409(a) and the FCC's rules, simply because modern codes now require stealthing. While the FCC's rules protect *existing* concealment elements from being defeated by a proposed modification in order to enjoy Section 6409(a) relief, the rules make no provision for *new* stealthing requirements to be added as a condition of grant.[22] To the contrary, the rules state simply that localities "shall approve" qualifying modifications – not that they may approve EFRs with conditions.[23]

Notwithstanding this, localities around the country have attempted to require T-Mobile to screen previously unscreened rooftops in order to obtain Section 6409(a) relief, even though the statute and the rules mandate approval for qualifying EFRs. The following examples make clear the FCC must clarify that grants conditioned on anything other than health and safety compliance

[21] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations*, 77 F.C.C.2d 308, 362 n.76 (1979) (citing *United States v. Menasche*, 348 U.S. 528, 538-39 (1955); *Markham v. Cabell*, 326 U.S. 404, 411 (1945)).

[22] *See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12949-50 ¶ 200 (2014) ("*Wireless Infrastructure Order*") (finding that "a modification constitutes a substantial change in physical dimensions under Section 6409(a) if the change … would defeat *the existing* concealment elements of the tower or base station") (emphasis added), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015); *see also id*. at 12874 ¶ 21 (same).

[23] *See* 47 C.F.R. § 1.6100(c).

violate the "shall approve" mandate in Section 6409(a) and the FCC's rules.[24] As the Commission indicated in its 2014 order adopting rules implementing Section 6409(a), states and localities may "condition approval on compliance with non-discretionary codes reasonably related to health and safety,"[25] but not on subjective, contextual factors like aesthetics that are unrelated to protecting *an existing* concealment element.[26]

- ***Seattle, WA***. The city frequently issues correction notices, which reject straightforward upgrade applications that meet all criteria for Section 6409(a) treatment at existing non-stealth sites. Those notices impermissibly require the sites to be stealthed as a condition of approval. For example, the city recently issued a correction notice in response to a proposal to remove and replace T-Mobile antennas and associated equipment on a rooftop. Even though the proposal met all criteria for 6409(a) treatment and screening was not required at the building when the existing facilities were initially approved, the city stated that the company must come into compliance with the current code requirements regarding screening to obtain approval for the requested modification. T-Mobile responded, explaining that the proposed modification qualifies as an EFR that the city "shall approve," and no added screening can be required now without violating Section 6409(a). This issue is still pending.

- ***Colorado Springs, CO***. This jurisdiction has taken a similar position with respect to unstealthed existing rooftop sites. For example, at one site where T-Mobile proposed to replace existing antennas – where the replaced antennas were the same size or smaller, and the overall antenna count was decreasing – the city asserted that the company would have to screen all of the replacement antennas. Moreover, it indicated that as others get replaced, those replacement antennas would need to be screened as well.

- ***West Hollywood, CA***. In this jurisdiction, T-Mobile had several existing unscreened sites where the jurisdiction required screening in connection with like-kind antenna swaps. Our vendor was told that going forward, anything that is not screened must be screened when replacing like-for-like antennas, regardless of whether the sites qualified for Section 6409(a) treatment.

[24] *See, e.g.*, Crown Comments at 7-8; CTIA Petition at 19; T-Mobile Comments at 14-15; WIA Petition at 20-21, 25.

[25] *Wireless Infrastructure Order*, 29 FCC Rcd at 12956 n.595; *see also id*. at 12945 ¶ 188, 12951 ¶ 202.

[26] *See id*. at 12941-51 ¶¶ 183-203.

Overbroad definitions of concealment elements must be curtailed. Finally, T-Mobile agrees with commenters that the FCC should make clear that localities cannot adopt sweeping definitions of the term "concealment element" in an effort to deny Section 6409(a) treatment at existing sites.[27] Nor should they be able to deem each aspect of a site as a concealment element in order to prevent any future site modifications from qualifying for section 6409(a) treatment.[28] The following examples illustrate this unfortunate trend among jurisdictions:

- ***Richmond, CA***. City code provides that all conditional use or administrative use permits are automatically subject to conditions, including the following specific to concealment elements: "Permittee acknowledges and agrees that *each and every aspect and/or element of the wireless facility*, including without limitation its coloring, finishes, placement, orientation and proportionality with the structures in the immediate vicinity, that, by its sense and context, aids, contributes or otherwise furthers the concealment of the facility, in whole or in part, shall be deemed to be a concealment element of the support structure." *See* Richmond, CA, Code, § 15.04.614.070(H) (emphasis added). While this commitment is triggered when applicants seek approval for a new facility, it can be used to prevent 6409(a) treatment for future modifications resulting in any change, however minor, on grounds the change would defeat the concealment.

- ***Santa Ana, CA***. The city has a sweeping view of what constitutes concealment elements, which are defined to include: (1) radio frequency transparent screening; (2) approved, specific colors; (3) minimizing the size of the site; (4) integrating the installation into existing utility infrastructure; (5) installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and (6) controlling the installation location. *See* Santa Ana, CA, Code, § 33-231(f). While some of these measures are reasonable, "[m]inimizing the size of the site" is overbroad, as it sweeps in any element of a wireless facility approval related to site size (*e.g.*, height and width).[29] As with the Richmond example, such a broad sweep can be used to frustrate future modifications otherwise eligible for Section 6409(a) relief if they involve any increase in facility size, even if within the limits prescribed by the Commission.

[27] *See, e.g.*, AT&T Comments at 6-7; CCA Comments at 7-8; Crown Comments at 9-10; CTIA Comments at 8-9; Nokia Comments at 7; T-Mobile Comments at 7-10; WIA Comments at 11.

[28] *See, e.g.*, CTIA Petition at 12-13; T-Mobile Comments at 7-10.

[29] The Vallejo, CA code takes a similar approach, enumerating eight different concealment elements. While some are reasonable, the one related to "[m]inimizing the size of the site" is overbroad for the reasons explained above. *See* Vallejo, CA, Code, § 10.18.020(I).

CONCLUSION

The record contains ample evidence that additional FCC action is necessary to address continuing barriers to infrastructure siting, including with respect to macro cells. The scenarios described above include just some of the most recent examples of attempts by municipalities to frustrate and delay siting requests entitled to treatment under Section 6409(a). The FCC has the authority to take the steps needed to clarify its intent and remove these wrongful barriers to the Section 6409(a) processes. The FCC should grant the CTIA and WIA petitions and take additional action consistent with T-Mobile's comments filed in this proceeding.

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