



October 10, 2014

VIA ECFS

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

Re: *Ex Parte Communication*
WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59

Dear Ms. Dortch:

CTIA – The Wireless Association® and PCIA – The Wireless Infrastructure Association (collectively, “CTIA and PCIA”) write to convey their strong support for the FCC to adopt a Report and Order facilitating wireless infrastructure deployment at its October 17, 2014 Open Meeting. CTIA and PCIA reiterate that the FCC should implement a “deemed granted” remedy to carry out the mandate in Section 6409(a) of the Spectrum Act that local jurisdictions “may not deny, and shall approve” any Eligible Facilities Request (“EFR”).¹ The most effective way to carry out Congressional intent is to deem granted applications that are not acted upon in a timely manner or are impermissibly denied by a local jurisdiction. At most, local jurisdictions should

¹ Middle Class Tax Relief and Job Creation Act of 2012, 112 Pub. L. 96, Title VI, 126 Stat. 156, 232, § 6409(a) (2012) (“Spectrum Act”), *codified at* 47 U.S.C. § 1455(a); *see* Comments of CTIA – The Wireless Association®, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, at 17-18 (Feb. 3, 2014); Reply Comments of CTIA – The Wireless Association®, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, at 8-10 (Mar. 5, 2014) (“CTIA Reply Comments”); Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, at 50-53 (Feb. 3, 2014); Reply Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, at 23-26 (Mar. 5, 2014) (“PCIA Reply Comments”).

be given 60 days to review and approve EFR applications, followed by a 30-day period for the locality to seek injunctive relief from a court.²

There is good reason to adopt a 60-day review period for EFR applications, as distinguished from the FCC's current 90-day review period for collocations under Section 332(c)(7) "shot clock." When the FCC adopted the 90-day review period in 2009, it rejected a shorter time frame because it recognized that local jurisdictions needed flexibility and time to "explore collaborative solutions," "prepare a written explanation," and "accommodate reasonable, generally applicable procedural requirements."³ In other words, the 90-day period recognized that localities may have numerous substantive steps to take with respect to collocations, consistent with Section 332(c)(7)'s preservation of local zoning authority.

Three years later, Congress removed the need for that flexibility and additional time for substantive deliberations – making a shorter time frame appropriate – by mandating approval of Section 6409(a) EFR applications. As a result of this action, local review can be completed in minutes versus months. Once a locality receives a Section 6409(a) application, it need only:

- Confirm that the application proposes to collocate new transmission equipment or replace existing transmission equipment, as defined by the Commission;
- Confirm that the application involves an existing wireless tower or base station, as defined by the Commission; and
- Confirm that the physical dimensions of the tower or base station would not substantially change, as defined by the Commission.

This simple process can easily be completed within 60 days. In fact, prior to enactment of Section 6409(a), the Commission recognized that a traditional review of collocation applications can be completed within 14 days or less.⁴

Simply put, an expedited review period is warranted because an EFR application should be subject, at most, to an administrative review consisting only of verification by the local

² See Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 13-238, at 3 (Oct. 8, 2014) (explaining that if local jurisdictions are permitted up to 30 days at the end of the application review period to bring action in a court of competent jurisdiction, then that review period "should be no more than 60 days so that the total time allowed is not more than 90 days").

³ See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, 24 FCC Rcd 13994, ¶ 44 (2009) ("*Declaratory Ruling*"), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

⁴ See *Declaratory Ruling*, 24 FCC Rcd at 14011.

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jurisdiction that, in fact, the application is an eligible facilities request.⁵ As CTIA and PCIA have explained, the limited scope of the administrative review coupled with the “shall approve” mandate in Section 6409(a) warrants reducing the time period for review.⁶

Pursuant to Section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206, this letter is being electronically filed via ECFS. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

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⁵ See CTIA Reply Comments at 6; PCIA Reply Comments at 21.

⁶ See CTIA Reply Comments at 6 (“Pursuant to Section 6409(a), a state or local government ‘may not deny, and shall 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.’ This test is simple and straightforward and should trigger, at most, a ministerial review at the local level. With a significantly reduced level of review, there should be a concomitant shortening of the time for review.”); PCIA Reply Comments at 21 (“An expedited timeline is warranted by the narrow scope of review now permitted for EFR applications and to help achieve the statute’s streamlining goals. Given the limited review now permitted for EFR applications, any arguments advocating longer timeframes are simply not credible.”).