

Cohen, Dippell and Everist, P.C.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment by)	
Improving Wireless Facilities Siting)	WT Docket No. 13-238
Policies)	
Acceleration of Broadband Deployment:)	
Expanding the Reach and Reducing the)	WC Docket No. 11-59
Cost of Broadband Deployment by Improving))	
Policies Regarding Public Rights of Way)	
and Wireless Facilities Siting)	
2012 Biennial Review of)	WT Docket No. 13-32
Telecommunications Regulation)	

Petition for Reconsideration
on Behalf of
COHEN, DIPPELL AND EVERIST, P.C.

This petition for reconsideration is submitted on behalf of Cohen, Dippell and Everist, P.C. (“CDE”) and is in response to the Report and Order released by the Commission on October 21, 2014. CDE and its predecessors have practiced before the Federal Communications Commission (“FCC”) for over 70 years in broadcast and telecommunications matters. The firm or its predecessors have been located in Washington, DC since 1937 and performed professional consulting engineering services to the communications industry.

The undersigned is licensed as a Professional Engineer in the District of Columbia and has been in continuous employment with this firm or its predecessors for over fifty (50) years.

In particular, clarification is sought on the meaning of the following two paragraphs as it relates to broadcast towers for which the structures are subject to upgrade, replacement for reasons related to broadcast equipment and generally with regard to those changes due to the Incentive Auction.

The relevant paragraphs (#146 and #181) in which clarification is sought are shown below.

“146. *Background.* We first address the scope of wireless services to which the provision applies through the definitions of both “transmission equipment” and “wireless tower or base station.” In the *Infrastructure NPRM*, the Commission observed that Section 6409(a) refers to “transmission equipment” without referencing any particular service, and similarly refers generally to a “wireless” tower or base station, rather than specifying towers and base stations used for particular services.³⁷⁷ The Commission therefore proposed to find that Section 6409(a) applies to equipment used in connection with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband.³⁷⁸ The Commission further proposed to define a “wireless” tower or base station to include one used for any such purpose (i.e., to cover the same scope of services as “transmission equipment”).³⁷⁹”

”181. We agree with Alexandria et al., however, that “replacement,” as used in Section

³⁷⁷*Infrastructure NPRM*, 28 FCC Rcd at 14277 para. 103

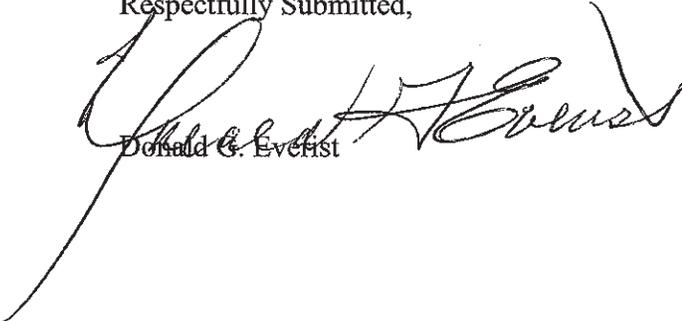
³⁷⁸*See id* at 14277 para. 104

³⁷⁹*Id.*

6409(a)(2)(C), relates only to the replacement of “transmission equipment,” and that such equipment does not include the structure on which the equipment is located.⁴⁸⁵ Even under the condition that it would not substantially change the physical dimensions of the structure, replacement of an entire structure may affect or implicate local land use values differently than the addition, removal, or replacement of transmission equipment, and we find no textual support for the conclusion that Congress intended to extend mandatory approval to new structures. Thus, we decline to interpret “eligible facilities requests” to include replacement of the underlying structure.”

Clarification is sought that the above language only applies to situations involving a new wireless installation and the language does not apply nor is applicable when broadcast towers supporting structures are being modified or upgraded due to broadcast related equipment alteration or changes. The reason for this clarification is that it is anticipated a number of television stations RF system equipment including the antenna and possibly the supporting structure will be changed or altered due to the Incentive Auction. Any other consideration will significantly alter and hamper the buildout schedule due to the Incentive Auction.

Respectfully Submitted,


Donald G. Everist

DATE: February 6, 2015

⁴⁸⁵Alexandria et al. Comments at 31 (arguing that replacement of a tower is not a “modification” of it and that Congress knew how to address “replacement” when that was its intent).