

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies	)	WT Docket No. 13-238
	)	
Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	)	WC Docket No. 11-59
	)	
Amendment of Parts 1 and 17 of the Commission’s Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers	)	RM-11688 (terminated)
	)	
2012 Biennial Review of Telecommunications Regulations	)	WT Docket No. 13-32
	)	

**COMMENTS OF SPRINGFIELD, OREGON**

These Comments are filed by SPRINGFIELD, Oregon in response to the Notice of Proposed Rule Making (NRPM), released on September 26, 2013, in the above-entitled proceeding.

**INTRODUCTION**

The City of Springfield is the ninth largest city in the State of Oregon, with an estimated 2012 population of 59,869, according to the Census Bureau. It is located at the southern end of the Willamette Valley, about 100 miles south of the City of Portland and immediately to the east of the City of Eugene, with which we share a boundary. With Eugene, we are the southernmost major city in Oregon on the heavily travelled I-5 corridor, which is the primary route serving

most industrial and commercial development in the state, and a major route for telecommunications facilities for the entire West Coast.

Springfield is the Oregon home of several major high tech industries, including Symantec, which employs over 1,100 people in Springfield. It is also the home of the largest regional medical facility between Portland and Sacramento, Peace Health's Sacred Heart Medical Center at River Bend campus, a 333-bed facility with about 2,200 employees, and with an associated cardiovascular institute. Fortifying its place as a major regional health care center, Springfield is also the home to McKenzie-Willamette Hospital, and to numerous ancillary medical clinics and service facilities adjacent to the two hospitals. All of the facilities are highly dependent on access to advanced levels of broadband communication.

Springfield has an extensive historic district in its downtown area. The district was established to encourage the restoration, preservation and adaptive use of identified historic landmark structures and sites. The district includes a mix of commercial and residential assets covering approximately 36 square blocks. A zoning overlay district regulates new development and redevelopment to preserve and protect district resources.

The *NPRM* makes numerous proposals and suggests areas where the Commission seeks to remove barriers to the expansion of wireless infrastructure, including:

- Streamlining environmental and historic preservation review procedures;
- Revising the environmental notification exemption for registration of temporary towers;
- Suggesting proposals to clarify the mandate in the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") for State and local government to approve modifications to existing wireless towers and base stations, including collocation; and

- Addressing certain matters that have arisen regarding implementation of Section 332(c)(7)'s preservation of State and local authority relating to wireless siting.

The rulemaking has the potential to affect significantly the interaction between the wireless industry and State and local governments, and to enhance the wireless industry's ability to quickly deploy new technologies such as distributed antenna systems ("DAS") and small cell locations<sup>1</sup>. While the *NPRM*'s proposals are many and the areas in which it seeks comment are numerous, the comments offered below summarize Springfield's primary concerns.

## **PROPOSALS TO STREAMLINE ENVIRONMENTAL REVIEW AND HISTORIC PRESERVATION REVIEW**

The Commission will consider changes to its rules implementing the environmental review process for wireless siting under National Environmental Policy Act of 1969 ("NEPA") and the historic preservation review procedures under Section 106 of the National Historic Preservation Act ("NHPA"). The *NPRM* proposes, among other things, to include explicit language making it easier to deploy DAS and small cell solutions<sup>2</sup>.

NEPA's concern is with the "human environment," (40 CFR 1508.14) defined as including the natural and physical (e.g., built) environment and the relationships of people to that environment. A thorough environmental analysis under NEPA should systematically address the "human" — social and cultural — aspects of the environment as well as those that are more "natural." Visual and social impacts must be part of the NEPA scope of review. Through local regulation, the City of Springfield has sought to balance the desire and need for high quality wireless service with the desire to minimize the visual and other impacts of wireless facilities on

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<sup>1</sup> *The FCC Aims to Remove Barriers for Expanding Wireless Infrastructure*; Kelley Drye Client Advisory; October 4, 2013; Kelley Drye & Warren LLP

<sup>2</sup> *NRPM* Paragraphs 36-52, pages 16-20.

residential and sensitive commercial neighborhoods. NEPA review should support and not circumvent local efforts to apply reasonable protections for those neighborhoods. The relevant sections of the Springfield Development Code are attached hereto as Appendix A. It is worthwhile noting, for example, that Springfield’s regulations limit denial of collocation to clearly defined engineering reasons (See Springfield Development code Section 4-3.145(G) (1) (c.) and that “low visibility” towers require only a staff level of approval (See Springfield Development code 4-3.145(H.)(2.);

***“Other Structures”***

The Commission is seeking comment on whether to update the NEPA exclusion for collocations in Note 1 to Section 1.1306, which currently excludes collocations on an “existing building or antenna tower” from environmental review. The proposed update would amend Note 1 to read “existing building or antenna tower or other structure.” “Other structures” would include structures such as utility poles, water tanks, light poles, and road signs. The rationale for amending Note 1 is to expedite environmental processing of DAS and small cell deployments on existing structures other than buildings and towers<sup>3</sup>.The proposed addition of “other structure,” without qualifying delimitations for how DAS facilities are defined and where they may be installed may have unacceptable impacts on historic and other sensitive neighborhoods.

The Commission is also requesting comment on whether and how to tailor the Section 106 National Historic Preservation Act (NHPA) review process for effects on historic properties in the context of DAS, small cells and similar facilities. In fact the Commission is considering

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<sup>3</sup> NRPM, Paragraphs 36-38, page 16

whether they should adopt an exclusion from Section 106 review similar to the exclusion proposed from NEPA review as discussed above<sup>4</sup>.

The Commission should not adopt a categorical exclusion or finding that DAS and small cell deployments are exempt from Section 106 of the NHPA without clearly defining which DAS and small cell deployments shall be excluded from review. There is a wide variety of equipment which falls into the category of DAS and small cell facilities. Not all of these facilities would be appropriate in sensitive areas. The focus of these definitions should be on their relative visual impact.

The Commission expressed its concern in the NRPM that defining an exclusion by reference to a specific wireless technology such as “DAS” may be both over-inclusive and under-inclusive. It may be over-inclusive because some facilities associated with the named technology could be larger and more obtrusive than contemplated in the general case and therefore have a greater potential for significant environmental effects. Springfield agrees with the Commission’s concern. Future DAS deployments over different spectrum bands may require larger or higher antennas. A definition that relies exclusively on reference to a particular technology may also be under-inclusive in that other technologies that involve comparably unobtrusive wireless facilities may be developed that equally warrant an exclusion, yet would not be covered without further rulemaking.

#### ***Existing Buildings and Utility Poles 45 Years and Older***

The Commission notes that the general provisions of the Collocation Agreement and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (“NPA”) already exclude many DAS and small cell facilities from some or

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<sup>4</sup> NRPM Paragraph 53, page 20.

all of the Section 106 review process. However, a telecommunications advocacy group, the PCIA, notes that collocations on existing buildings or other structures over 45 years old are not excluded<sup>5</sup>. The NRPM states, “PCIA asserts that the percentage of utility poles 45 years or older is significant and growing and that, as a consequence, collocations of small wireless facilities on such existing poles will increasingly not be excluded from review.” Springfield is committed to protecting its inventoried historic and cultural resources. The age of a utility pole is of less consequence to the city’s interest than inventoried historic buildings and sites as well as older buildings which may not be listed as historic buildings but which are near to historic buildings. While we appreciate the PCIA concern as it affects utility poles, the proposed extension of the exclusion to cover all sites older than 45 years, in effect, emasculates the provisions of the NHPA, by excluding building older than 45 years. Local siting standards for wireless equipment in local historic districts that respect local resources and reflect local sensibilities should have precedence over more general federal policies.

## **PROPOSALS TO REVISE THE ENVIRONMENTAL NOTIFICATION EXEMPTION FOR REGISTRATION OF TEMPORARY TOWERS**

The Commission proposes to adopt a permanent exemption from the pre-construction environmental notification process for certain temporary towers that require antenna structure registration. The Commission previously granted an interim waiver<sup>6</sup> of the notification process, pending completion of this rulemaking, for temporary towers that have characteristics (very short

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<sup>5</sup> NRPM Paragraph 60, page 23.

<sup>6</sup> Amendment of Parts 1 and 17 of the Commission’s Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers; 2012 Biennial Review of Telecommunications Regulations, RM-11688, WT Docket No. 13-32, *Order*, 28 FCC Rcd 7758 (2013) (“*Waiver Order*”).

duration, height limits, minimal or no excavation, and no lighting) that minimize their potential to cause significant environmental effects. The Commission found that the “the risk that carriers will not be able to meet short-term capacity needs and the resulting detriment to the public if they are required to complete the notification process outweighs the small likelihood that the process will confer any benefit.”<sup>7</sup> The Commission believes that making the waiver permanent would remove an administrative obstacle to the availability of broadband and other wireless services during major events and unanticipated periods of localized high demand<sup>8</sup>.

Under the waiver, an antenna structure would be exempt from the notification requirements if it:

- (i) will be in use for 60 days or less,
- (ii) (ii) requires notice of construction to the FAA,
- (iii) (iii) does not require marking or lighting pursuant to FAA regulations,
- (iv) (iv) will be less than 200 feet in height, and
- (v) will involve minimal or no excavation. Springfield has no objection in general to codification of the waiver order as it applies to

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<sup>7</sup> NRPM Paragraph 79, page 31.

<sup>8</sup> NRPM, Paragraph 68, page 26.



“Cell On Wheels” (COW) in parking lot of the Rose Bowl, Pasadena, California. This COW is 60 feet in height.

the use of temporary towers. The 200-foot tower limit is excessive and not suitable for a temporary installation. A survey of industry providers indicates that temporary towers shows that are generally limited to about 100 feet in height. Peak Industries Inc. located in Spangle, WA, advertises a 150-foot temporary tower that is “the tallest in the industry.” Springfield prohibits

permanent tower facilities greater than 150 feet in height. Towers 200 feet tall and more require guy wires

and more substantial stabilization, with a concomitant greater visual impact. There should not be permission granted for temporary towers that could not be permanently sited. Temporary towers should be used for special events and emergency service and not to avoid the cost and community review required for a permanent installation. One company, *Lattice Communications*, promotes its temporary towers as a solution for developers who have “insufficient funding.” The *Lattice Communications* ad states, “Savvy business owners may elect to reduce costs associated with construction by temporarily incorporating a mobile cell tower into the telecommunications infrastructure until funds are allocated for purchase and

installation of a permanent telecom tower.”

The new rule should regulate the number of times a temporary tower may be used within a single service area to prevent abuse of the exception. For example: under the proposed rules, a single local events facility could



Lattice Communications mobile cell tower facility. Such towers generally do not require guy wires and are limited to about 150 feet in height.

request the use of a temporary tower six times in one year (60 day permits issued 6 times for a single location). Such temporary permitting could circumvent adopted local wireless siting policies.

Provisions should also be made in federal policy to exempt the use of temporary towers following local disasters and national emergencies without permits during the initial response to such circumstances. Springfield policy allows “Cell on Wheels” (COW), as temporary uses for a period not to exceed 14 days, or during a period of emergency as declared by the City, County, or State (Springfield Development Code 4.3-145 (D)(9)).

**PROPOSALS TO CLARIFY THE SPECTRUM ACT**

The *NPRM* proposes to adopt rules to clarify the requirements of Section 6409(a) of the Spectrum Act. That section provides that “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,”<sup>9</sup> including requests to “collocate new transmission equipment.” The *NPRM* systematically examines the terminology of Section 6409(a) and proposes expansive definitions. Of particular note, the *NPRM* examines what it means to “substantially change the physical dimensions” of a wireless tower or base station which is crux of much of the ambiguity around Section 6409(a). In this context, the *NPRM* cites to the Collocation Agreement’s four-prong test to determine whether a collocation will affect a “substantial increase in the size of a tower. Under the four-prong test, a “substantial increase in the size of the tower” occurs if:

- 1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with

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<sup>9</sup> NRPM Paragraph 101 and 102, page 39.

separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site<sup>10</sup>.

The Commission noted that under the four-prong test, successive 10% increases in the size of tower which could theoretically increase a tower's size by double over time. Surely the Commission did not intend to allow for "serial additions" that allow for a truly significant change in tower dimensions without review. Springfield is opposed making significant changes in tower dimension without local review and approval.

The *NPRM* notes that the four-prong test in the Collocation Agreement only applies to "towers," which would put its applicability to DAS and small cell deployments in some doubt.

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<sup>10</sup> NRPM Paragraph 118 and 119, pages 44-45.

The shortcomings of the four-prong test are significant when their application is illustrated as shown below.



The historic 50' silos shown above are located in Montgomery County, Maryland. The photo on the left shows how approved six-panel antenna were installed and painted to minimize their visual impact. The photo simulation on the right shows how application of the proposed 4-prong definition of no “significant change” could be lawfully applied. Credit *Photos by: Robert P. Hunnicutt, Columbia Telecommunications Corporation. Commentary on Photos, New Wireless Regulation from the 2012 Middle Class Tax Relief and Job Creation Act; March 2012*

Isotope, a consulting firm with expertise in FCC technical regulations and with assisting municipalities in wireless facility permitting processes, made the following observations concerning Section 6409(a) in a 2012 newsletter, shortly after the passage of the 2012 Middle Class Tax Relief and Job Creation Act. “What if the proposal were to modify a facility by adding to the diameter of a concealed antenna unipole? Despite the FCC’s prior use of a 20 foot horizontal extension as a threshold for “substantially change,” it would seem out of context when considering a modification to a stealth design. The whole point of a stealth design is to maintain visual inconspicuousness. Adding up to twenty feet to the unipole’s width could completely violate the intent of the municipality having required a unipole in the first place.” Springfield concurs with the comments made in the newsletter article.



Consider the two images above (unipole left, conventional monopole right, each about the same height). Is the new law saying that it is not a substantial change to a cell tower if it is converted? Credit photos and comment: *New Wireless Regulation from the 2012 Middle Class Tax Relief and Job Creation Act; March 2012*

Consider a cell tower with several wireless providers already on it, and an eligible facility wants to go up ten feet to accommodate new antennas. Let's say that changes the tower in a way that requires new air navigation lighting, because the tower was originally built to be just short of the required-lighting height. Or perhaps the change causes the tower to exceed the permissible height for the zoning district, fail a fall zone criterion or exceed a property line setback. Cities should have the authority to determine whether these conditions make for a substantial change. Section 6409(a) implies that such a collocation change could not be opposed by local authorities.

Section 6409 (a) was put in place because many wireless service providers have been upgrading their networks to provide better service, only to be delayed by full application proceedings for truly minor changes. Not all changes are minor, and there's the problem.

Municipalities are now being told to approve minor changes, however they are ultimately defined. Unfortunately, in protecting modifications to existing facilities, this new law may provoke protective local responses to *new facility* proposals. Planning Commissions hearing applications for new wireless facilities will consider the fact that their approval of a new facility with conditions today may not necessarily lock in those conditions for the future. Any newly approved facility whose future modification meets the threshold of the Jobs Act, could lose those original restrictive conditions. Height limits, dimensional limits, stealth design, prohibition of changes that would require FAA lighting, and other controls on a newly approved facility could be bypassed under the new law, if some interpretations of the law hold true.<sup>11</sup>

Springfield concurs with the position taken by the Intergovernmental Advisory Committee (IAC)<sup>12</sup> in its argument (referenced in the NRPM) that “the question of substantiality . . . cannot be resolved by the adoption of mechanical percentages or numerical rules applicable anywhere and everywhere in the United States, but rather must be evaluated in the context of specific installations and a particular community’s land use requirements and decisions.”<sup>13</sup> As an example, the IAC suggests that a change in a tower’s height of only 5 percent that would “adversely affect substantial safety, esthetic or quality-of-life elements” would represent a substantial change in physical dimensions.<sup>14</sup> The IAC position reinforces Springfield’s position that local siting authority and local policy development is needed to avoid the unintended impacts of one size fits all national policy making. The notion of “substantiality,” whether applied to size or other impact, must be rooted in local sensibilities

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<sup>11</sup> *New Wireless Regulation from the 2012 Middle Class Tax Relief and Job Creation Act*; Isotrope Wireless; March 2012

<sup>12</sup> The Intergovernmental Advisory Committee (“IAC”), formerly known as the Local and State Government Advisory Committee, was created in 1997 to provide guidance to the Commission on issues of importance to state, local and tribal governments, as well as to the Commission.

<sup>13</sup> NRPM, Paragraph 94, pg. 36

<sup>14</sup> Ibid NRPM Paragraph 94

and should not be subject to a national one-size fits all definition.

***Definitions: Collocation, Wireless***

The Commission seeks comment on other proposed definitions for terms used in Section 6409(a). These include “transmission equipment,” “collocation,” and “wireless.”

**Collocation.** Under the Collocation Agreement<sup>15</sup>, collocation is defined as “the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes<sup>16</sup>.”

Collocation should be defined in terms of adding antennae to existing towers, buildings or other structures supporting existing wireless transmission equipment. Springfield encourages collocation and even requires developers to sign an agreement allowing collocation of equipment owned by other providers. Expedited processing of collocated equipment makes sense when the original tower or structure has already undergone local siting review. Defining collocation to mean the location of new equipment on a structure which does not already support wireless equipment would circumvent the legitimate siting authority of local jurisdictions, particularly if such a definition is tied to a “*may not deny and shall approve*” policy for collocation as discussed in the NRPM.

**Wireless Telecommunications System (WTS) Facility.** Section 6409(a) refers broadly to “transmission equipment” without referencing any particular service. Similarly, in defining eligible facilities to be modified, it refers broadly to a “wireless” tower or base station<sup>17</sup>.

Springfield defines “Wireless” and “Transmission Equipment” in one context as Wireless Telecommunications Systems (WTS) facilities. They are defined as “*any facility that transmits*

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<sup>15</sup> 47 C.F.R. Part 1, App. B, Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § I.A (“Collocation Agreement”).

<sup>16</sup> NRPM Section 113, pg. 43

<sup>17</sup> NRPM Paragraph 103, pg. 40

*and/or receives electromagnetic waves, including, but not limited to, antennas, dish antennas, microwave antennas, and other types of equipment for the transmission or receipt of these signals, including, but not limited to, telecommunications towers and similar supporting structures, equipment cabinets or buildings, parking areas, and other accessory development. This definition also includes any facility that transmits radio or television signals. This definition does not apply to amateur radio stations as defined by the Federal Communications Commission, Part 97 of the Commission's Rules" (Springfield Development Code 4.3-145 E).*

The importance of the federal definition of these terms for local jurisdictions is crucial when Section 6409(a) proposes to exempt from local review and require approval of “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,” including requests to “collocate new transmission equipment.” ***State and Local Authority vs. “May Not Deny and Shall Approve”***

The NRPM seeks comment on whether, by directing that States and localities “may not deny and shall approve” covered requests, Section 6409(a) requires States and localities to approve all requests that meet the definition of eligible facilities requests and do not result in a substantial change in the dimensions of the facility, without exception and/or discretionary review.

Springfield objects to the proposed removal of local authority to approve and or condition the approval of new facilities. The discussion and illustrations of the shortcomings of the current definitions of “significant change” demonstrate the need for a local hand in approving facility applications. Local governments must retain the ability to condition their approval on

alterations to the request, adherence to State or local building codes and land use laws, or other conditions.

### ***Shot Clock Issues***

With respect to a time limit for processing of local government requests under Section 6409(a), the *NPRM* notes that Section 6409(a) establishes 90 days as a presumptively reasonable period of time to process collocation applications under Section 332(c)(7). The FCC seeks comments on whether to adopt an identical standard for Section 6409(a). Finally, with respect to remedies and enforcement, the Commission seeks comments on what remedies should be available to enforce Section 6409(a) in cases of failure to act or decisions adverse to the applicant.

Springfield and the State of Oregon (ORS 227.178) have policies and statutes which already define a reasonable period of time for processing quasi-judicial land use decisions which includes construction permits. These same local policies and state statutes provide for an applicant's right to appeal adverse decisions and to remedy circumstances where a city fails to act (ORS. 227.179). Consideration of a "deemed granted" approach to remedying a failure to act within a specified period of time conflicts with an established due process grounded in state statute and is not needed in Oregon. Any federal remedy should be subordinate to such existing local policies and process.

### ***Proposals to Clarify the Requirements of Section 332(c) (7)***

The *NPRM* provides six "discrete" proposals intended to clarify the *2009 Declaratory Ruling's* interpreting 47 U.S.C. §332(c)(7).[8] Section 332(c)(7), expressly preserved local zoning authority but bars local and state regulations that discriminate or have the effect of prohibiting the deployment of "personal wireless services." The Commission asks:

1. Whether the “substantial increase in size” test for collocations should be interpreted in the same manner for Section 332(c)(7) as under Section 6409(a) for a substantial change in physical dimensions<sup>18</sup>;

Response: The “substantial increase in size test” for collocation found in Section 6409(a) should be suspended in all cases until a better policy is developed. The test should not be used for Section 332(c) (7). The current four-pronged test is deeply flawed.

2. What constitutes a “complete” application under the statute which commences a State or local government’s review of an application and starts the timeframe for action on an application<sup>19</sup>;

Response: A “complete” application is one which responds to the submittal requirements of the local jurisdiction in good faith with due diligence and rigor. The applicant cannot be the arbiter of what is needed for a complete application. Oregon statute requires cities to provide applicants with a detailed list of the information needed to make an application complete within 30 days. ORS 227.178 (2) states, *“If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:*

*(a) All of the missing information;*

*(b) Some of the missing information and written notice from the applicant that no other information will be provided; or*

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<sup>18</sup> NRPM, Paragraph 152, page 56

<sup>19</sup> NRPM Paragraph 153, page 56.

*(c) Written notice from the applicant that none of the missing information will be provided.*

*This completeness policy is tied to the 120-day review timeframe set by the state for application processing.”*

Oregon statutes govern the issuance of moratoria for land use decisions which include wireless facility installations. The *2009 Declaratory Ruling* conflicts and interferes with established state and local policy and should be dropped.

3. Whether to toll the statute’s timeframes as interpreted in the *2009 Declaratory Ruling* in the event of local moratoria<sup>20</sup>;

Response: In Oregon, local moratoria on land use actions including construction and land development must be approved by the state. The Land Use Board of Appeals review upon petition by a county, city or special district governing body or state agency or a person or group of persons whose interests are substantially affected, any moratorium on construction or land development or a corrective program alleged to have been adopted in violation of the provisions of ORS 197.505-197.520. The *2009 Declaratory Ruling* conflicts and interferes with established Oregon statutes concerning moratoria and should be dropped.

4. Whether the presumptively reasonable timeframes adopted in the *2009 Declaratory Ruling* should extend to DAS and small cell facilities<sup>21</sup>;

Response: As mentioned above, Springfield and the State of Oregon have policies and statutes (ORS 227.178) which already define a reasonable period of time for processing quasi-judicial land use decisions which includes construction permits. These same local policies and state statutes provide for an applicant’s right to appeal adverse decisions and to

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<sup>20</sup> NRPM Paragraph 155, page 57.

<sup>21</sup> NRPM, Paragraph 158, page 58.

remedy circumstances where a city fails to act. Consideration of a “deemed granted” approach to remedying a failure to act within a specified period of time is not needed in Oregon. Any federal remedy should be subordinate to such existing local and state policies. The *2009 Declaratory Ruling* conflicts and interferes with established state and local policy and should be dropped.

5. Whether ordinances establishing preferences for the placement of wireless facilities on municipal property are unreasonably discriminatory under 47 USC § 332(c)(7)(B)(i)(I); and<sup>22</sup>

Response: Siting policies should both benefit and protect neighborhoods, particularly residential and sensitive commercial districts. Springfield has no ordinances which establish preference for the placement of wireless facilities on municipal property.

6. Whether to reconsider the *2009 Declaratory Ruling*’s rejection of a “Deemed Granted” remedy and finding that a court should review a State or local jurisdiction’s failure to act within a reasonable timeframe on an expedited basis<sup>23</sup>.

Response: Oregon allows for the filing of a writ of mandamus with the courts for quasi-judicial land use actions that are not decided within 120 days. ORS 227.179 states “...*if the governing body of a city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the county where the application was submitted to compel the governing body or its designee to issue the approval.*”

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<sup>22</sup> NRPM Paragraph 160, page 58.

<sup>23</sup> NRPM, Paragraph 161, page 58.

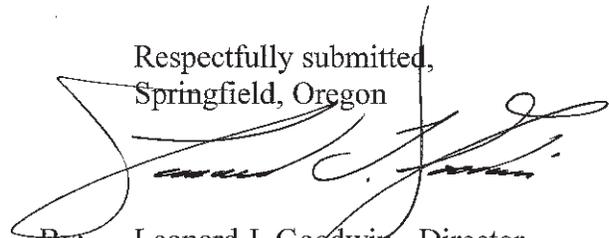
*(2) The governing body shall retain jurisdiction to make a land use decision on the application until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction for all decisions regarding the application, including settlement, shall be with the circuit court.*

The proposed “deemed granted” remedy interferes with the due process already established in Oregon law. Springfield opposes the federally proposed remedy.

## **CONCLUSION**

Springfield would like to thank the Commission for the opportunity to comment on the various issues related to the acceleration of broadband deployment presented in the NRPM dated September 26, 2013. We appreciate the Commission’s efforts to better understand the needs and concerns of practices and policies surrounding cities’ regulation of the siting of wireless telecommunications facilities and the protection of sensitive residential, commercial and historic districts within their planning jurisdiction. Springfield strongly encourages the Commission to consider its comments, as well as those submitted by all cities, before taking any action that may adversely affect the siting authority of cities with respect to telecommunications facilities.

Respectfully submitted,  
Springfield, Oregon



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## APPENDIX A

### Excerpted Sections City of Springfield Development Code

#### 4.3-145 Wireless Telecommunications System (WTS) Facilities

- A.** Purpose. This Section is intended to:
1. Implement the requirements of the Federal Telecommunications Act of 1996;
  2. Provide a uniform and comprehensive set of standards and review procedures for the placement, operation, alteration and removal of WTS facilities;
  3. Allow new WTS facilities where necessary to provide service coverage and there is a demonstrated need that cannot be met through existing facilities;
  4. Maximize the use of existing WTS facilities in order to minimize the need to construct additional facilities;
  5. Encourage the siting of new WTS facilities in preferred locations;
  6. Lessen impacts of new WTS facilities on surrounding residential areas; and
  7. Minimize visual impacts of new WTS facilities through careful design, configuration, screening, and innovative camouflaging techniques.
- B.** Applicability/Conflicts.
1. **Applicability.** This Section applies within Springfield's city limits and its Urban Services Area. No WTS facility may be constructed, altered (to include co-locations) or replaced, unless exempt, without complying with the requirements of this Section. Exempt facilities are listed in Subsection D. below.
  2. **Conflicts.** In cases where:
    - a. The development standards of this Section conflict with other Sections of this Code, these standards will prevail.

**EXCEPTION:** In the Glenwood Riverfront, the WTS standards regarding type and height of the antenna will apply. All other aspects of the application submittal and review process specified in this Section will apply.

**b.** These development standards conflict with Federal and/or State regulations, the Federal and/or State regulations will prevail.

**C.** Pre-Existing WTS Facilities.

**1.** WTS facilities that lawfully existed prior to the adoption of the Ordinance codified in this Section shall be allowed to continue their use as they presently exist.

**2.** Routine maintenance will be permitted on lawful pre-existing WTS facilities as specified in Subsection D.1.

**3.** Lawfully existing WTS facilities may be replaced as specified in Subsection D.2.

**D.** Exemptions. The following shall be considered exempt structures or activities, however, all other applicable Federal, State and City permits will be required:

**1.** Emergency or routine repairs or routine maintenance of previously approved WTS facilities.

**2.** Replacement of existing previously approved WTS facilities.

**a.** A WTS facility may be replaced if it:

**i.** Is in the exact location of the facility being replaced;

**ii.** Is of a construction type identical in height, size, lighting and painting;

**iii.** Can accommodate the co-location of additional antennas or arrays;

**iv.** Does not increase radio frequency emissions from any source; and

**v.** Does not intrude or cause further intrusion into a setback area.

**b.** Those WTS facilities that cannot meet the replacement standard in Subsection D.2.a. will be treated as new construction, requiring Type I or III review as specified in Subsection H.

**3.** Industrial, scientific and medical equipment operating at frequencies designated for that purpose by the Federal Communications Commission.

4. Essential public telecommunications services: military, Federal, State, and local government telecommunications facilities.
5. Amateur and citizen band radio transmitters and antennas.
6. Military or civilian radar operating within the regulated frequency ranges for the purpose of defense or aircraft safety.
7. Antennas (including, but not limited to: direct-to-home satellite dishes; TV antennas; and wireless cable antennas) used by viewers to receive video programming signals from direct broadcast facilities, broadband radio service providers, and TV broadcast stations.
8. Low-powered networked telecommunications facilities including, but not limited to, microcell radio transceivers located on existing utility poles and light standards within public right-of-way.
9. Cell on Wheels (COW), which are permitted as temporary uses in nonresidential Metro Plan or 2030 Springfield Refinement Plan designations for a period not to exceed 14 days, or during a period of emergency as declared by the City, County, or State.

**E.** Definitions. The words and phrases used in this Section shall have the following meanings:

**Antenna.** Any system of wires, poles, rods, reflecting discs or similar devices designed for telephonic, radio, facsimile, data, or television telecommunications through sending and/or receiving of electromagnetic waves when the system is either external to or attached to the exterior of a structure. Antennas include, but are not limited to, devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted up and rotated through a vertical mast or tower interconnecting the boom and antenna support. All of the latter elements are part of the antenna.

**Antenna Height.** The vertical distance measured from the ground surface at grade to the tip of the highest point of the antenna on the proposed structure.

**Antenna Support.** Any pole, telescoping mast, tower, tripod or any other structure that supports a device used in the transmitting and/or receiving of electromagnetic waves.

**Approval Authority.**

1. Type I Review. Staff has the authority to approve new co-locations, equipment replacement, and applications for low visibility and stealth WTS facilities.

2. Type III Review. The Planning Commission and the City Council are the Approval Authority for applications to construct high and medium visibility WTS facilities within the city limits.

3. Type III Review. The Hearings Official, by agreement with Lane County, is the Approval Authority for high and medium visibility WTS facilities located outside the city limits but within the Springfield Urban Growth Boundary.

**Camouflaged.** Any WTS facility that is designed to blend into the surrounding environment. Examples of camouflaged facilities include, but are not limited to: architecturally screened roof-mounted antennas; building-mounted antennas painted to match the existing structure; antennas integrated into architectural elements; towers made to look like trees; and antenna support structures designed to look like flag poles or light poles.

**Carrier.** A company authorized by the FCC to build and/or operate a WTS facility.

**Co-Location.** The use of a single WTS tower for the placement of multiple antennas or related telecommunications equipment often involving different carriers.

**Equipment Building, Shelter or Cabinet.** A cabinet or building used to house associated equipment used by providers at a WTS facility. Associated equipment includes, but is not limited to, air conditioning and emergency generators.

**Façade-Mounted Antenna.** An antenna architecturally integrated into the façade of a building or structure.

**Facility.** A WTS facility.

**Faux Tree.** A WTS tower camouflaged to resemble a tree.

**Guyed Tower.** A WTS tower that is supported, in whole or in part, by guy wires and ground anchors.

**High Visibility.** The following WTS facilities are examples of high visibility facilities:

1. Monopoles, lattice towers and guyed towers.
2. Any WTS facilities that do not meet the definition of stealth, low visibility, or moderate visibility.

**Lattice Tower.** A guyed or self-supporting three or four sided, open, steel frame support structure used to support WTS equipment.

**Low Visibility.** The following are examples of low visibility WTS facilities that shall not exceed the height limit of the base zone and shall not increase the height of an existing WTS facility:

1. Whip antennas not exceeding 6 feet in length or height, including mounting, and measuring no more than 3 inches in diameter, located on existing structures including, but not limited to, water storage tanks, high-voltage transmission towers, utility towers and poles, sign standards, and roadway overpasses, with equipment cabinets that are screened from view.
2. Facilities, including equipment cabinets that are screened from view through the use of architectural treatments, including, but not limited to, cupolas, steeples and parapets, and are consistent with existing development on adjacent properties.
3. Additions to existing permitted low-visibility facilities, if the additions themselves meet the definition of low visibility and are designed to minimize visibility the WTS facility.
4. Changes to an existing building that are consistent with the building's architectural style and the equipment cabinets are not visible.

**Maintenance.** Emergency or routine repairs or replacement of transmitters, antennas, or other components of previously approved WTS facilities that do not create a significant change in visual appearance or visual impact.

**Microcells.** These devices provide additional coverage and capacity where there are high numbers of users within urban and suburban macrocells. The antennas for microcells are mounted at street level, typically on the external walls of existing structures, lamp-posts, and other street furniture. Microcell antennas are usually smaller than macrocell antennas, and when mounted on existing structures, can often blend into building features. Microcells provide radio coverage over distances, typically between 100 meters and 1,000 meters, and operate at power levels substantially below those of macrocells.

**Moderate Visibility.** The following WTS facilities are examples of moderate visibility facilities:

1. Panel-shaped antennas not exceeding 8 feet in length or height that are flush-mounted to an existing building façade or other existing structure on at least one edge, or extend a maximum of 24 inches from the building façade or other structure at any edge, do not exceed the height of the building or other structure, and are designed to blend with the color, texture, and design of the existing building or structure, with equipment cabinets that are screened from view.

2. WTS facilities that are camouflaged, including, but not limited to, faux trees, flag poles, and light poles; provided, that the equipment building, shelter, or cabinet for the facility is screened or camouflaged.

**Monopole.** A WTS facility consisting of a single pole constructed for purposes of supporting 1 or more antennas without guy wires or ground anchors.

**Panel or Directional Antenna.** An antenna or array of antennas designed to concentrate a radio signal in a particular area.

**Residential Zoning District.** Any Springfield zoning district where single-family and or multi-family dwelling units are intended to be the dominate land use.

**RF.** Radio frequency.

**Roof-Mounted Antenna.** Any antenna with its support structure placed directly on the roof of any building or structure.

**Screened.** Concealed from view with a sight obscuring fence, wall or vegetation.

**Service Area.** The area served by a single WTS facility.

**Side-Mounted Antennas.** Those antennas that are mounted on the side of a tower structure at any height, and including both the antennas and equipment with protective radome coatings. This term also includes microwave dish antennas, solid or not, located at 150 feet or lower on a tower structure, regardless of the dish diameter. The term does not include solid microwave dish antennas exceeding 6 feet in diameter that are located above 150 feet on a tower structure.

**Small Top-Mounted Antennas.** Any antenna mounted on the top of a tower structure where the antenna is 20 feet or less in height and 6 inches or less in outside diameter.

**Speculation Tower.** An antenna support structure designed for the purpose of providing location mounts for WTS facilities, without a binding written commitment or executed lease from a service provider to utilize or lease space on the tower at the time the application is submitted.

**Stealth.** WTS facilities including, but not limited to, microcells, antennas, equipment cabinets, and any other ancillary equipment that cannot be seen from any street or any adjacent property, improved or unimproved, and that do not result in any apparent architectural changes or additions to existing buildings. The addition of landscaping, walls, fences, or grading as screening techniques does not make an otherwise visible WTS facility a stealth facility.

**Telecommunications.** The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Tower or WTS Tower.** Any mast, pole, monopole, guyed tower, lattice tower, freestanding tower, or other structure designed and primarily used to support antennas.

**Whip Antenna.** An antenna that transmits or receives signals in 360 degrees. Whip antennas are typically cylindrical in shape, less than 3 inches in diameter and no more than 6 feet long, including the mounting.

**Wireless Telecommunications System (WTS) Facility.** Any facility that transmits and/or receives electromagnetic waves, including, but not limited to, antennas, dish antennas, microwave antennas, and other types of equipment for the transmission or receipt of these signals, including, but not limited to, telecommunications towers and similar supporting structures, equipment cabinets or buildings, parking areas, and other accessory development. This definition also includes any facility that transmits radio or television signals. This definition does not apply to amateur radio stations as defined by the Federal Communications Commission, Part 97 of the Commission's Rules.

**F. General Standards.** The Federal Telecommunications Act of 1996 establishes limitations on the siting standards that local governments can place on WTS facilities. Section 704 of the Act states that local siting standards shall not:

- 1) "unreasonably discriminate among providers of functionally equivalent services"
- 2) "prohibit or have the effect of prohibiting the provision of personal wireless services."

All applications for WTS facilities are subject to the standards in this Section to the extent that they do not violate Federal limitations on local siting standards. Where application of the standards found in this Section constitutes a violation, the least intrusive alternative for providing coverage shall be allowed as an exception to the standards.

- 1. Design for Co-Location.** All new towers shall be designed to structurally accommodate the maximum number of additional users technically practicable.
- 2. Demonstrated Need for New WTS Facilities.** Applications shall demonstrate that the proposed WTS facility is necessary to close a significant gap in service coverage or capacity for the carrier and is the least intrusive means to close the significant gap.
- 3. Lack of Coverage and Lack of Capacity.** The application shall demonstrate that the gap in service cannot be closed by upgrading other existing facilities. In doing so, evidence shall clearly

support a conclusion that the gap results from a lack of coverage and not a lack of capacity to achieve adequate service. If the proposed

WTS facility is to improve capacity, evidence shall further justify why other methods for improving service capacity are not reasonable, available or effective.

**4.** Identify the Least Intrusive Alternative for Providing Coverage. The application shall demonstrate a good faith effort to identify and evaluate less intrusive alternatives, including, but not limited to, less sensitive sites, alternative design systems, alternative tower designs, the use of repeaters, or multiple facilities. Subsection F.5. defines the type of WTS facilities that are allowed in each zoning district.

**5.** Location of WTS Facilities by Type. Subsection E. defines various types of WTS facilities by their visual impact. These are: high visibility, moderate visibility, low visibility and stealth facilities. Table 4.3-1 lists the type of WTS facilities allowed in each of Springfield’s zoning districts.

**Table 4.3-1**

<b>Zoning Districts</b>	<b>Types Allowed</b>
Special Heavy Industrial Heavy Industrial Light-Medium Industrial Quarry Mining Operations	High visibility Moderate visibility Low visibility Stealth
Community Commercial Campus Industrial Booth Kelly Mixed Use Major Retail Commercial Mixed Use Employment Mixed Use Commercial Medical Service	Low visibility Moderate visibility Stealth
Neighborhood Commercial General Office Low Density Residential Medium Density Residential High Density Residential Mixed Use Residential Public Land and Open Space	Low visibility Stealth

**6.** Maximum Number of High Visibility WTS Facilities. No more than 1 high visibility facility is allowed on any 1 lot/parcel.

**EXCEPTION:** The Approval Authority may approve exceeding the maximum number of high visibility facilities per lot/parcel if one of the following findings is made:

**a.** Co-location of additional high visibility facilities is consistent with neighborhood character;

**b.** The provider has shown that denial of an application for additional high visibility WTS facilities would have the effect of prohibiting service because the proposed facility would fill a significant gap in coverage and no alternative locations are available and technologically feasible; or

**c.** The provider has shown that denial of an application for additional high visibility WTS facilities would unreasonably discriminate among providers of functionally equivalent services.

**7.** Separation between Towers. No new WTS tower may be installed closer than 2,000 feet from any existing or proposed tower unless supporting findings can be made under Subsections F.2., 3. and 4. by the Approval Authority.

**8.** WTS Facilities Adjacent to Residentially Zoned Property. In order to ensure public safety, all towers located on or adjacent to any residential zoning district shall be set back from all residential property lines by a distance at least equal to the height of the facility, including any antennas or other appurtenances. The setback shall be measured from that part of the WTS tower that is closest to the neighboring residentially zoned property.

**9.** Historic Buildings and Structures. No WTS facility shall be allowed on any building or structure, or in any district, that is listed on any Federal, State or local historic register unless a finding is made by the Approval Authority that the proposed facility will have no adverse effect on the appearance of the building, structure, or district. No change in architecture and no high or moderate visibility WTS facilities are permitted on any building or any site within a historic district. Proposed WTS facilities in the Historic Overlay District are also subject to the applicable provisions of Section 3.3-900.

**10.** Equipment Location. The following location standards shall apply to WTS facilities:

**a.** No WTS facility shall be located in a front, rear, or side yard building setback in any base zone and no portion of any antenna array shall extend beyond the property lines;

**b.** Where there is no building, the WTS facility shall be located at least 30 feet from a property line abutting a street;

c. For guyed WTS towers, all guy anchors shall be located at least 50 feet from all property lines.

**11. Tower Height.** Towers may exceed the height limits otherwise provided for in this Code. However, all towers greater than the height limit of the base zone shall require Discretionary Use approval through a Type III review process, subject to the approval criteria specified in Subsection I.

**12. Accessory Building Size.** All accessory buildings and structures built to contain equipment accessory to a WTS facility shall not exceed 12 feet in height unless a greater height is necessary and required by a condition of approval to maximize architectural integration. Each accessory building or structure located on any residential or public land and open space zoned property is limited to 200 square feet, unless approved through the Discretionary Use process.

**13. Visual Impact.** All WTS facilities shall be designed to minimize the visual impact to the greatest extent practicable by means of placement, screening, landscaping, and camouflage. All facilities shall also be designed to be compatible with existing architectural elements, building materials, and other site characteristics. The applicant shall use the least visible antennas reasonably available to accomplish the coverage objectives. All high visibility and moderate visibility facilities shall be sited in a manner to cause the least detriment to the viewshed of abutting properties, neighboring properties, and distant properties.

**14. Minimize Visibility.** Colors and materials for WTS facilities shall be nonreflective and chosen to minimize visibility. Facilities, including support equipment and buildings, shall be painted or textured using colors to match or blend with the primary background, unless required by any other applicable law.

**15. Camouflaged Facilities.** All camouflaged WTS facilities shall be designed to visually and operationally blend into the surrounding area in a manner consistent with existing development on adjacent properties. The facility shall also be appropriate for the specific site. In other words, it shall not “stand out” from its surrounding environment.

**16. Façade-Mounted Antenna.** Façade-mounted antennas shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted antennas shall not extend more than 2 feet out from the building face.

**17. Roof-Mounted Antenna.** Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator’s service area and shall be set back as far from the building edge as possible or otherwise screened to minimize visibility from the public right-of-way and adjacent properties.

**18.** Compliance with Photo Simulations. As a condition of approval and prior to final staff inspection of the WTS facility, the applicant shall submit evidence, e.g., photos, sufficient to prove that the facility is in substantial conformance with photo simulations provided with the initial application. Nonconformance shall require any necessary modification to achieve compliance within 90 days of notifying the applicant.

**19.** Noise. Noise from any equipment supporting the WTS facility shall comply with the regulations specified in OAR 340-035-0035.

**20.** Signage. No signs, striping, graphics, or other attention-getting devices are permitted on any WTS facility except for warning and safety signage that shall:

- a.** Have a surface area of no more than 3 square feet;
- b.** Be affixed to a fence or equipment cabinet; and
- c.** Be limited to no more than 2 signs, unless more are required by any other applicable law.

**21.** Traffic Obstruction. Maintenance vehicles servicing WTS facilities located in the public or private right-of-way shall not park on the traveled way or in a manner that obstructs traffic.

**22.** Parking. No net loss in required on-site parking spaces shall occur as a result of the installation of any WTS facility.

**23.** Sidewalks and Pathways. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian paths or bikeways on public or private land.

**24.** Lighting. WTS facilities shall not include any beacon lights or strobe lights, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If beacon lights or strobe lights are required, the Approval Authority shall review any available alternatives and approve the design with the least visual impact. All other site lighting for security and maintenance purposes shall be shielded and directed downward, and shall comply with the outdoor lighting standards in Section 4.5-100, unless required by any other applicable law.

**25.** Landscaping. For WTS facilities with towers that exceed the height limitations of the base zone, at least 1 row of evergreen trees or shrubs, not less than 4 feet high at the time of planting, and spaced out not more than 15 feet apart, shall be provided in the landscape setback. Shrubs shall be of a variety that can be expected to grow to form a continuous hedge at least 5 feet in height within 2 years of planting. Trees and shrubs in the vicinity of guy wires shall be

of a kind that would not exceed 20 feet in height or would not affect the stability of the guys. In all other cases, the landscaping, screening and fence standards specified in Section 4.4-100 shall apply.

**26. Prohibited WTS Facilities.**

- a.** Any high or moderate visibility WTS facility in the Historic Overlay District.
- b.** Any WTS facility in the public right-of-way that severely limits access to abutting property, which limits public access or use of the sidewalk, or which constitutes a vision clearance violation.
- c.** Any detached WTS facility taller than 150 feet above finished grade at the base of the tower.

**27. Speculation.** No application shall be accepted or approved for a speculation WTS tower, i.e., from an applicant that simply constructs towers and leases tower space to service carriers, but is not a service carrier, unless the applicant submits a binding written commitment or executed lease from a service carrier to utilize or lease space on the tower.

**G. Application Submittal Requirements.** All applications for a WTS facility shall provide the following reports, documents or documentation:

**1. Submittal Requirements for Low Visibility and Stealth Facilities (Type I review).** All applications for low visibility and stealth WTS facilities shall submit the following reports and documentation:

- a. Narrative.** The application shall include a written narrative that describes in detail all of the equipment and components proposed to be part of the WTS facility, including, but not limited to, towers, antennas and arrays, equipment cabinets, back-up generators, air conditioning units, lighting, landscaping and fencing.
- b. Geographic Service Area.** The applicant shall identify the geographic service area for the proposed WTS facility, including a map showing all of the applicant's and any other existing sites in the local service network associated with the gap the facility is meant to close. The applicant shall describe how this service area fits into and is necessary for the service provider's service network.

The service area map for the proposed WTS facility shall include the following:

- i.** The area of significant gap in the existing coverage area;



**h.** Zoning and Comprehensive Plan Designation. Provide the zoning and applicable comprehensive plan (e.g., Metro Plan, 2030 Springfield Refinement Plan) designation of the proposed site and the surrounding properties within 500 feet.

**i.** FCC, FAA or Other Required Licenses and Determinations. Provide a copy of all pertinent submittals to the FCC, FAA or other State or Federal agencies including environmental assessments and impact statements, and data, assumptions, calculations, and measurements relating to RF emissions safety standards.

**2.** Submittal Requirements for Moderate and High Visibility Facilities (Type III Review). Applications for moderate and high visibility WTS facilities shall require all of the required materials for low visibility and stealth WTS facilities specified in Subsection G.1. In addition to the applicable Site Plan and Discretionary Use application requirements, WTS applications shall require the applicant to address the following:

**a.** Height. Provide an engineer's diagram showing the height of the WTS facility and all of its visible components, including the number and types of antennas that can be accommodated. Carriers shall provide evidence that establishes that the proposed WTS facilities are designed to the minimum height required from a technological standpoint to meet the carrier's coverage objectives. If the WTS facility tower height will exceed the height restrictions of the applicable base zone, the narrative shall include a discussion of the physical constraints, e.g., topographical features, making the additional height necessary. The narrative shall include consideration of the possibility for design alternatives, including the use of multiple sites or microcell technology that would avoid the need for the additional height for the proposed WTS facility.

**b.** Construction. Describe the anticipated construction techniques and timeframe for construction or installation of the WTS facility to include all temporary staging and the type of vehicles and equipment to be used.

**c.** Maintenance. Describe the anticipated maintenance and monitoring program for the antennas, back-up equipment, and landscaping.

**d.** Noise/Acoustical Information. Provide the manufacturer's specifications for all noise-generating equipment including, but not limited to, air conditioning units and back-up generators, and a depiction of the equipment location in relation to abutting properties.

**e.** Landscaping and Screening. Discuss how the proposed landscaping and screening materials will screen the site at maturity.

**f.** Co-Location. In addition to the co-location requirements specified in Subsection G.1.c., the applicant shall submit a statement from an Oregon registered engineer certifying that the proposed WTS facility and tower, as designed and built, will accommodate co-locations, and that the facility complies with the non-ionizing electromagnetic radiation emission standards as specified by the FCC. The applicant shall also submit:

**i.** A letter stating the applicant's willingness to allow other carriers to co-locate on the proposed facilities wherever technically and economically feasible and aesthetically desirable;

**ii.** A copy of the original Site Plan for the approved existing WTS facility updated to reflect current and proposed conditions on the site; and

**iii.** A depiction of the existing WTS facility showing the proposed placement of the co-located antenna and associated equipment. The depiction shall note the height, color and physical arrangement of the antenna and equipment.

**g.** Lease. If the site is to be leased, a copy of the proposed or existing lease agreement authorizing development and operation of the proposed WTS facility.

**h.** Legal Access. The applicant shall provide copies of existing or proposed easements, access permits and/or grants of right-of-way necessary to provide lawful access to and from the site to a City street or a State highway.

**i.** Lighting and Marking. Any proposed lighting and marking of the WTS facility, including any required by the FAA.

**j.** Utilities. Utility and service lines for proposed WTS facilities shall be placed underground.

**k.** Alternative Site Analysis. The applicant shall include an analysis of alternative sites and technological design options for the WTS facility within and outside of the City that are capable of meeting the same service objectives as the proposed site with an equivalent or lesser visual or aesthetic impact. If a new tower is proposed, the applicant shall demonstrate the need for a new tower, and why alternative locations and design alternatives, or alternative technologies including, but not limited to microcells and signal repeaters, cannot be used to meet the identified service objectives.

**I.** Visual Impact Study and Photo Simulations. The applicant shall provide a visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette, and screening for all components of the proposed WTS facility. The analysis shall include photo simulations and other information necessary to determine visual impact of the facility as seen from multiple directions. The applicant shall include a map showing where the photos were taken.

**3.** Independent Consultation Report.

**a.** Review and approval of WTS facilities depends on highly specialized scientific and engineering expertise not ordinarily available to Springfield staff or to residents who may be adversely impacted by the proposed development of these facilities. Therefore, in order to allow the Approval Authority to make an informed decision on a proposed WTS facility, the Director may require the applicant to fund an independent consultation report for all new moderate and high visibility facilities. The consultation shall be performed by a qualified professional with expertise pertinent to the scope of the service requested.

**b.** The scope of the independent consultation shall focus on the applicant's alternatives analysis. The consultant will evaluate conclusions of applicant's analysis to determine if there are alternative locations or technologies that were not considered or which could be employed to reduce the service gap but with less visual or aesthetic impact. There may be circumstances where this scope may vary but the overall objective shall be to verify that the applicant's proposal is safe and is the least impactful alternative for closing the service gap.

**c.** The applicant shall be informed of the Director's decision about the need for an independent consultation at the time of the Pre-Submittal Meeting that is required under Section 5.1-120C. It is anticipated that the independent consultation will be required when the applicant proposes to locate a moderate or high visibility WTS facility in a residential zoning district or within 500 feet of a residential zoning district. Other instances where a proposed WTS facility may have a visual or aesthetic impact on sensitive neighborhoods could also prompt the Director to require an independent consultation.

**H.** Review Process. The review process is determined by the type of WTS facility or activity that is proposed. High or moderate visibility WTS facilities, defined in Subsection E., require Type III Planning Commission or Hearings Official review. Low visibility or stealth facilities, and the co-location of new equipment of existing facilities are allowed under a Type I staff review with applicable building or electrical permits. Routine equipment repair and maintenance do not require planning review; however, applicable building and electrical permits are required.

- 1.** Development Issues Meeting. A Development Issues Meeting (DIM) as specified in Subsection 5.1-120A. is required only for high and moderate visibility WTS facility applications. Applicable development standards as specified in Subsection F. and submittal requirements as specified in Subsection G., will be discussed at the DIM.
- 2.** Type I Review Process. The following WTS facilities are allowed with the approval of the Director with applicable building and electrical permits:
  - a.** Stealth and low visibility WTS facilities, as defined in Subsection E., in any zoning district.
  - b.** Façade-mounted antennas or low powered networked telecommunications facilities, e.g., as those employing microcell antennas integrated into the architecture of an existing building in a manner that no change to the architecture is apparent and no part of the WTS facility is visible to public view.
  - c.** Antennas or arrays that are hidden from public view through the use of architectural treatments, e.g., within a cupola, steeple, or parapet which is consistent with the applicable building height limitation.
  - d.** New antennas or arrays including side-mounted antennas and small top-mounted antennas that are attached to an existing broadcast communication facility located in any zone. No more than 3 small top-mounted antennas shall be placed on the top of any one facility without a Type III review.
  - e.** To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location of antennas or arrays on existing towers shall take precedence over the construction of new towers, provided the co-location is accomplished in a manner consistent with the following:
    - i.** An existing tower may be modified or rebuilt to a taller height to accommodate the co-location of additional antennas or arrays, as long as the modified or rebuilt tower will not exceed the height limit of the applicable zoning district. Proposals to increase the height of a tower in a residential zoning district, or within 500 feet of a residential zoning district shall be reviewed under a Type III process. The height change may only occur one time per tower.
    - ii.** An existing tower that is modified or reconstructed to accommodate the co-location of additional antennas or arrays shall

be of the same tower type and reconstructed in the exact same location as the existing tower.

**f.** WTS facilities proposed within the public right-of-way on an existing utility or light pole in any zoning district, so long as they meet all of the following:

**i.** The antennas do not project more than 24 inches above the existing utility pole support structure;

**ii.** No more than a total of 2 antennas or antenna arrays are located on a single pole; and

**iii.** The equipment cabinet is no larger than 6 cubic feet and is concealed from public view by burying or screening by means other than walls or fences.

**g.** Co-location of antennas or arrays on existing WTS facilities.

**h.** The Director will use the applicable criteria specified in Subsection I. to evaluate the proposal.

**3.** Type III Review Process. The Planning Commission or Hearings Official review and approve a Discretionary Use application and a concurrently processed Site Plan Review application for the following WTS facilities:

**a.** High visibility and moderate visibility WTS facilities.

**b.** All other locations and situations not specified in Subsections H.2. and 3.

**c.** The Planning Commission or Hearings Official will use the applicable criteria specified in Subsection I. in place of the Discretionary Use criteria in Section 5.9-120 to evaluate the proposal.

**4.** Council Notification and Possible Review.

**a.** A briefing memorandum shall be prepared and submitted to the City Council upon receipt of an application for a high or moderate visibility or any other WTS facility subject to review by the Planning Commission. By action of the City Council, an application for a facility proposed within the city limits may be elevated for direct City Council review. In those instances where an application is elevated for direct review, the City Council shall be the Approval Authority and will use the applicable criteria specified in Subsection I. in place of the Discretionary Use criteria in Section 5.9-120 to evaluate the proposal.

**b.** By agreement with Lane County, the Hearings Official shall be the Approval Authority for applications outside of the city limits but inside of the Springfield Urban Growth Boundary. The Hearings Official will use the applicable criteria specified in Subsection I. in place of the Discretionary Use criteria in Section 5.9-120 to evaluate the proposal.

**I.** Approval Criteria.

**1.** Low Visibility and Stealth WTS Facility Applications. The Director shall approve the low visibility and stealth WTS facility applications upon a determination that the applicable standards specified in Subsection F. and the submittal requirements specified in Subsection G. are met.

**2.** Moderate and High Visibility WTS Facility Applications. The Approval Authority shall approve moderate visibility and high visibility WTS facility applications upon a determination that the applicable standards specified in Subsection F. and the submittal requirements specified in Subsection G. are met. Through the Discretionary Use review, the Approval Authority shall also determine if there are any impacts of the proposed WTS facility on adjacent properties and on the public that can be mitigated through application of other Springfield Development Code standards or conditions of approval as specified in Subsection J.

**J.** Conditions of Approval. For Type III applications, the Approval Authority may impose any reasonable conditions deemed necessary to achieve compliance with the approval criteria as allowed by Section 5.9-125.

**K.** Maintenance. The property owner and the carrier in charge of the WTS facility and tower shall maintain all equipment and structures, landscaping, driveways and mitigating measures as approved. Additionally:

**1.** All WTS facilities shall maintain compliance with current RF emission standards of the FCC, the National Electric Safety Code, and all State and local regulations.

**2.** All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.

**L.** Inspections.

**1.** The City shall have the authority to enter onto the property upon which a WTS facility is located to inspect the facility for the purpose of determining whether it complies with the Building Code and all other construction standards provided by the City and Federal and State law.

**2.** The City reserves the right to conduct inspections at any time, upon reasonable notice to the WTS facility owner. In the event the inspection results in a determination that violation of applicable construction and maintenance standards established by the City has occurred, remedy of the violation may include cost recovery for all City costs incurred in confirming and processing the violation.

**M.** Abandonment or Discontinuation of Use. The following requirements apply to the abandonment and/or discontinuation of use for all WTS facilities:

**1.** All WTS facilities located on a utility pole shall be promptly removed at the operator's expense at any time a utility is scheduled to be placed underground or otherwise moved.

**2.** All operators who intend to abandon or discontinue the use of any WTS facility shall notify the City of their intentions no less than 60 days prior to the final day of use.

**3.** WTS facilities shall be considered abandoned 90 days following the final day of use or operation.

**4.** All abandoned WTS facilities shall be physically removed by the service provider and/or property owner no more than 90 days following the final day of use or of determination that the facility has been abandoned, whichever occurs first.

**5.** The City reserves the right to remove any WTS facilities that are abandoned for more than 90 days at the expense of the facility owner.

**6.** Any abandoned site shall be restored to its natural or former condition. Grading and landscaping in good condition may remain.

**N.** Review of WTS Facilities Standards. In the event that the Federal or State government adopts mandatory or advisory standards more stringent than those described in this Section, staff will prepare a report and recommendation for the City Council with recommendations on any necessary amendments to the City's adopted standards. (6292)