Board of County Commissioners

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February 3, 2014

Federal Communications Commission
Washington, DC 20554

RE: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122

On behalf of Jefferson County, Colorado, I write to provide comments regarding the Federal Communication Commission's ("FCC's") proposed rules to implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409").

Jefferson County extends from suburbs west of Denver, Colorado, into the mountains beyond. It has an estimated population of 535,734 (2010), making it the fourth most populous county in Colorado. It consists of 773 square miles, of which 651 square miles are unincorporated and subject to Jefferson County zoning regulation. Within unincorporated Jefferson County there are currently over 200 permitted telecommunications facilities, including all of the Metro Denver area's major television broadcast arrays and many of its broadcast radio antennas. Telecommunications facilities are collocated at over 100 sites in unincorporated Jefferson County.

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012

Jefferson County is concerned that the rules proposed by the FCC would expand Section 6409 beyond its intended scope and unduly limit local zoning regulation. For the reasons set forth below, Jefferson County is in favor of a delay in passage of specific rules to implement Section 6409. Overly general rules cannot adequately address the wide variety of circumstances presented by collocation requests. Differing standards are appropriate, for example, for broadcast towers as opposed to buildings or antennas disguised as light poles.

Should the FCC determine that it is appropriate to institute regulations at this time, however, the County believes that the proposed rules should be substantially changed in several respects.

The County believes that the phrase "existing wireless tower or base station" should be read to require that the tower or base station at issue currently be used for wireless transmission. Otherwise, long abandoned and nonconforming structures in areas no longer suited for telecommunications uses could be commandeered for such uses, regardless of local regulation. For this reason, the County suggests that the proposed definition for "wireless tower" be amended to require not only that the tower was built for the primary purpose of supporting antennas, but that the tower is in fact currently used for wireless transmission. The definition for a base station should be similarly amended to require that a base station is in fact currently used for transmission.

Section 6409 should not be read to allow collocation of any type of telecommunications facility with any other type. The addition of a new type of service – for instance, television broadcast to an existing PWS facility – is best viewed as limited because it is not collocation at all. "Collocation" implies like services being located with each other. The definition of collocation should be defined as "the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals of the same FCC service type as other transmission equipment currently operating from the same eligible support structure." There is no collocation if another provider is not already located and currently operating wireless equipment of the same FCC service type at the site.

The County also disagrees with the proposed test for substantial increase in physical dimensions. It allows for additions that would overwhelm many existing wireless facilities. As just one example, the County has allowed PWS facilities disguised as light poles. These facilities, as opposed to typical light poles, were built for the primary purpose of supporting antennas, and therefore would seem to meet the proposed definition of a tower. Yet to allow a twenty foot increase in the height of a structure intended to appear as a light pole – or to allow an increase of twenty feet in the width of that light pole – constitutes an enormous relative change in the physical dimensions of the facility. The proposed rules appear to allow such changes. Similarly, wireless has been allowed on residential apartment buildings. Unless the proposed rules are amended to clarify that buildings will not constitute base stations, an apartment complex would appear to fall within the definition of a base station. Facilities extending twenty feet into the air, or twenty feet wide, would never have been allowed in a residential area under long-standing regulations. Yet the proposed rules apparently allow these changes. There must be proportionality in the rules, particularly for facilities that were designed to be disguised or unobtrusive.

The above problems are aggravated by the fact that the proposed rules do not account for repeated collocations. Serial collocations within the bounds of the ten percent/twenty

foot limitations proposed could create a facility much larger than the approved installation. For instance, one year a ten percent increase in size could be approved, followed by another ten percent increase in size each of the next two years. After three years, the facility would be roughly thirty percent larger. While this problem could be mitigated by limiting the collocation authorization to a single collocation, it would be more appropriate to require collocations to be proportional to and compatible with the locally-authorized structure. Such decisions are best made by local authorities.

While the statute requires that eligible facilities requests be approved, the FCC should not impede local government's ability to place reasonable conditions on such improvements. The County has design standards in place for telecommunications facilities and, in some cases, site-specific zoning requires that telecommunications facilities meet certain requirements. The County understands the concern that such requirements could be unduly burdensome, and suggests a standard such as that found in 47 U.S.C. 332(c)(7)(B)(i)(II): local government regulations "shall not prohibit or have the effect of prohibiting" the installation of eligible facilities requests that meet the requirements of Section 6409.

The County also believes that rules of general applicability, such as zone district height limitations, should continue to apply and were not intended to be preempted by section 6409. These rules are not specific to telecommunications and are important to the organized development of the community, including the preservation of property values, scenic views and community character.

Finally, facilities that do not conform to current zoning should not be treated as "existing" towers or base stations. Such facilities are only tolerated and are prohibited from expanding under local regulation due to their incompatibility with current zoning.

Applications

Local governments should remain free to request information from applicants without any restriction other than a requirement that application procedures not prohibit or have the effect of prohibiting collocation requests. A wide variety of information may be relevant to determining whether a proposal meets local standards.

Jefferson County is opposed to any "deemed granted" rule based on failure to process applications to collocate. A deemed granted rule could lead to granting collocation requests that meet neither federal nor local standards. Failure to meet any time restriction should simply enable the applicant to immediately seek judicial review.

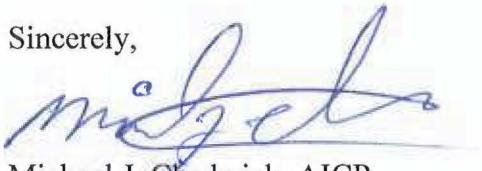
Legal Challenges

Jefferson County supports applicants' right to appeal any denial of a telecommunications permit. However, such process should take place locally, through standard administrative and judicial review procedures. To require local governments to defend their administrative decisions in Washington, D.C. on a regular basis would be financially burdensome, particularly given the possibility of many collocation requests. Local courts can protect the rights created by Section 6409 and any adopted regulations.

In the event that the Commission adopts specific rules regarding the above matters at this time, a period of six months to one year would be appropriate to allow local governments time to update regulations to comport with such rules.

Thank you for your consideration of Jefferson County's comments. Please feel free to contact me with any questions or concerns.

Sincerely,



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Jefferson County Zoning Administrator