Wireless Facility Siting: Section 6409(a) Checklist

Note: Use of this checklist is voluntary. It is meant to provide a framework for those jurisdictions needing assistance in complying with Federal timeframes to act on Eligible Facilities Requests for modifications to existing wireless towers or base stations that do not substantially change the physical dimensions of such towers or base stations. This document is not intended to provide legal guidance; jurisdictions are encouraged to consult an attorney on legal matters. This document's authors hereby waive all copyright and related or neighboring rights together with all associated claims and causes of action with respect to this work to the extent possible under the law.

> Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), reads in pertinent part:
>
> "…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." (emphasis added).

Initial Application Review

- A jurisdiction should contemplate three types of wireless facility applications:
  - Collocation or modification that is not a substantial change ("Eligible Facilities Request");
  - Collocation or modification that is a substantial change; OR
  - New facility
- If the application is for a collocation or modification, the documentation provided by the applicant must state whether the collocation or modification is a substantial change. – See Appendix A for definition of "substantial change."
  - Note: The FCC has clarified that "collocation" includes the first placement of transmission equipment on a wireless tower or base station.[1]
- Appropriate application fee should be in place, if applicable.
- Check application for completeness
  - Note: Must notify applicant in writing of incomplete application **within 30 days** of submission. This tolls the clock (i.e. stops 60 day deadline from running) provided it identifies the specific material missing from the application and cites the basis for requiring the submission of such material. Once applicant submits supplemental materials, the clock again may be tolled if the state or local government notifies applicant in writing **within 10 days** that supplemental submission is also incomplete. If the application is deemed incomplete, the written notice must specify

[1] *See* 2014 Infrastructure Order ¶ 179.

the missing information and the code, provision, ordinance, application instruction or other publically-stated procedures that requires the information.

Site/Attachment Information

- Summary of site location (address) and ownership of structure to which collocation or modification applies
    - Examine: Ownership of support structure, dimensions of support structure prior to collocation (to measure whether collocation or modification would constitute a "substantial change")
    - Property boundaries, setbacks, elevation and dimensions of collocation or modification project
- Summary and scope of work to be completed on site
- Changes to current site
    - Examine: Will collocation or modification defeat the effect of existing concealment elements? Concealment elements include, but are not limited to, artificial tree branches or painting to match a supporting façade.[2]

Equipment Specifications

- Equipment type
- Equipment specifications (Example: dimensions and weight)
- Installation status: E.g., removing, updating, collocating
- Equipment mount type
- FCC antenna structure registration number (if applicable)
- Will collocation equipment require lighting?

Compliance with Federal, State and Local Ordinances and Codes

- Conformance with local zoning and building and safety codes should be reviewed by the jurisdiction's building or planning department
    - Examine: E.g., setback requirements, electrical power safety, wind resistance safety
    - Ensure that facility was lawfully constructed
- Post-installation maintenance schedule
- Any required certifications
    - Example: Applicant will comply with all applicable federal, state, and local building codes supported by structural analysis

Legal

- Ensure jurisdiction's applicable insurance/surety bond/other financial requirements are satisfied for installation

[2] *See* 2014 Infrastructure Order ¶ 200.

Contact Information

- Primary and secondary contact information for wireless facility project coordinators (local government and industry)
- Emergency contact information in case of tower/collocation disruption

Timeframe[3]

- Within 60 days of the application filing, accounting for tolling, a state or local government shall approve the application if covered by Section 6409(a).
- Tolling period may commence by (1) mutual agreement, or (2) upon written notice to applicant that application is incomplete within the first 30 days following an application submission, as long as notice identifies the missing information, as well as the code provision, ordinance, or application instruction that requires the submission of the information.
- Local jurisdictions have 10 days to notify the applicant that the supplemental submission (after notification of incomplete application) did not provide the information identified in the original notice that specified the missing information.
- The failure to approve an application within the time for action will result in a deemed grant of the application.
    - A state or local authority may challenge an applicant's written assertion of a deemed grant in any court of competent jurisdiction when it believes the underlying application did not meet the criteria in Section 6409(a) for mandatory approval, would not comply with applicable building codes or other non-discretionary structural and safety codes, or for other reasons is not appropriately "deemed granted."

[3] All provisions of the rule implementing Section 6409(a), as stated in the 2014 Infrastructure Order and 47 CFR § 1.40001 ("Wireless Facilities Modifications") became effective May 18, 2015.

APPENDIX A

How does the FCC define "substantial change"?

The FCC has determined that a modification substantially changes the physical dimension of a wireless tower or base station if it meets ANY of the following criteria:

- Towers outside public rights of way[4]
  - Increases height by more than 20 feet or 10 percent, whichever is greater;
  - Protrudes from edge of tower more than 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

- Towers in public rights of way and for all base stations
  - Increases height of tower or base station by more than 10 percent or 10 feet, whichever is greater;
  - Protrudes from the edge of the structure more than 6 feet;

- Involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;

- Entails any excavation or deployment outside the current site of the tower or base station;

- Would defeat existing concealment elements of the tower or base station; or

- Does not comply with conditions associated with the prior approval of the tower or base station unless non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds.

[4] Section 6409(a) applies only to state and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities, e.g., as owners of support structures or real property. *See* 2014 Infrastructure Order ¶ 239.

APPENDIX B

Application Elements that May Voluntarily be Adopted by Local Jurisdictions

A jurisdiction should review whether existing application processes meet the requirements of the FCC's 2014 Infrastructure Order. A jurisdiction may consider including the following elements in its application form for an Eligible Facilities Request:

1. Applicant's certification that they have the legal authority to collocate/modify support structure which may include approvals from the jurisdiction authorizing the initial placement of transmission equipment on the tower or other structure.

2. The identity of the owner of the parcel.

3. Detailed site plan. Except where the facility will be located entirely within an existing structure or an existing building, a detailed site plan should show:

(a) Existing and proposed improvements. The location and dimensions of the existing facility and the maximum height above ground of the facility (also identified in height above sea level).

(b) Elevation. The benchmarks and datum used for elevations.

(c) Design. The design of the facility, including the specific type of support structure and the design, type, location, size, height and configuration of applicant's existing and proposed antennas and other equipment. The method(s) by which the antennas will be attached to the mounting structure should be depicted.

(d) All existing setbacks.

(e) Location of accessways. The location of all existing accessways and the location and design of all proposed accessways.