

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
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In the Matter of Implementation of State and Local)	WT Docket No. 19-250
Governments' Obligation to Approve Certain Wireless)	RM-11849
Facility Modification Requests Under Section 6409(a) of)	
the Spectrum Act of 2012)	

COMMENTS OF NOKIA

Nokia respectfully submits Comments in support of the Petition for Declaratory Ruling and Petition for Rulemaking filed by the Wireless Infrastructure Association (“WIA”) and the Petition for Declaratory Ruling filed by CTIA (collectively, the “Petitions”)¹ seeking rule clarifications and rule changes to facilitate wireless siting and promote proliferation of wireless technologies to consumers throughout the United States.

Nokia applauds the Commission’s efforts to streamline deployment of wireless infrastructure and encourages a continuing focus on reducing barriers to provision of robust and innovative communications services throughout the United States. As the Petitions describe in detail, facilities siting remains a major impediment to connecting communities.

In these Comments, Nokia first discusses the major, important actions already taken by the Commission, providing context for the WIA and CTIA Petitions, which seek to

¹ Wireless Infrastructure Association (WIA) Petition for Rulemaking (filed Aug. 27, 2019) (“WIA Rulemaking Petition”); WIA Petition for Declaratory Ruling (filed Aug. 27, 2019) (“WIA Declaratory Petition”); CTIA Petition for Declaratory Ruling (filed September 6, 2019) (“CTIA Petition”).

build on the Commission's efforts by clarifying lawful implementation of Section 6409(a) of the Spectrum Act of 2012.²

We then discuss specific aspects of the Petitions. In particular, Nokia supports clarification of Commission rules to ensure that shot clocks are implemented as intended to encourage an efficient, transparent and predictable regulatory process. Nokia also supports the clarifications sought by WIA and CTIA regarding what qualifies as an "Eligible Facilities Request" subject to streamlined processing under Section 6409(a) including ambiguities and misinterpretations of the rules surrounding concealment features and cabinets. These Comments then discuss our support WIA's Petition for Rulemaking to ensure (i) that collocations requiring limited compound expansions qualify for streamlined treatment and (ii) that fees for processing EFRs are reasonable and cost-based. Nokia thanks CTIA and WIA for their thoughtful Petitions and asks that the Commission grant the Petitions as discussed in these Comments.

I. THE COMMISSION SHOULD CONTINUE ITS EFFORTS TO PROMOTE INFRASTRUCTURE SITING REFORM

Since taking the reins of the Commission in early 2017, Chairman Ajit Pai has recognized that U.S. leadership in advanced wireless services hinges on the building of robust telecommunications network infrastructure to power those services. Among Chairman Pai's early initiatives was the creation of the Broadband Deployment Advisory Committee ("BDAC"), chartered to advise the Commission on infrastructure deployment issues. In addressing the first BDAC meeting in April 2017, Chairman Pai stated:

Deploying broadband is hard, expensive, and time-consuming work, whether you're trenching fiber, attaching equipment to poles, or setting up a gateway earth station. Red tape shouldn't make those tasks even harder. To me, it's

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI, § 6409(a), 126 Stat. 156 (Feb. 22, 2012) (Spectrum Act) (codified at 47 U.S.C. § 1455(a)).

pretty simple: With rules that make it easier to deploy broadband, we will see more broadband deployed. And in turn, we can empower millions of Americans with digital opportunity.³

Chairman Pai later articulated a three-prong strategy to Facilitate America's Superiority in 5G Technology (the "5G FAST Plan"). 5G FAST lists infrastructure policy reforms as one of the three key components of 5G FAST, along with pushing more spectrum into the marketplace and modernizing outdated regulations.⁴

The Commission has backed these policy goals with real-world action, promulgating several common-sense reforms to speed infrastructure deployment. In 2018 alone the Commission issued major reforms estimated to save our country Billions in red-tape spending, including updating Federal environmental and historic preservation rules and then state and local siting policies, clarifying reasonable fees and timeframes for government review of applications to site small-cell infrastructure.⁵ These reforms have the potential to free substantial capital for expanded network investment.

With so much accomplished, there is still much to do. Commissioner Carr, who has taken a leadership role in infrastructure siting reform, stated as the year began, "In 2019, I am taking another look at the federal rules governing wireless infrastructure deployment. We will look to fully and faithfully implement the decisions Congress has made to streamline the

³ Remarks of FCC Chairman Ajit Pai at the First Meeting of the Federal Communications Commission's Broadband Deployment Advisory Committee, Washington, DC, April 21, 2017, available at <https://www.fcc.gov/document/chairman-pai-opens-1st-broadband-deployment-advisory-committee-meeting>.

⁴ See "The FCC's 5G Fast Plan," available at <https://www.fcc.gov/5G>.

⁵ See, e.g., *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) ("State/Local Infrastructure Order"); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102 (2018).

deployment of next-generation technologies.”⁶ As noted by CTIA, Commission O’Rielly has made a similar call to action to “close the loopholes in section 6409 that some localities have been exploiting.”⁷ Through its review of the CTIA and WIA Petitions, the Commission has the opportunity to do just that by ensuring that Section 6409 is faithfully and uniformly implemented by states and localities.

II. WIA AND CTIA OFFER COMMON-SENSE CLARIFICATIONS TO SECTION 6409 THAT WILL SERVE THE PUBLIC INTEREST

A. Shot Clock Reforms

In its *2014 Order* implementing Section 6409, the Commission instituted a 60-day shot clock on local reviews of EFR applications.⁸ WIA highlights that jurisdictions are undermining this shot-clock directive in two major ways, which can be cured through a Commission declaratory ruling. First, WIA raises concerns with localities treating a request for modification under Section 6409(a) as multiple approvals, each with a 60-day shot clock, rather than one process that must be completed within a single 60-day period. Second, WIA raises the problem of localities contravening the 60-day shot clock by delaying when the 60-day period starts. Nokia respectfully suggests that these problems are closely related and that both require Commission clarification to uphold Congressional intent for Section 6409.

In Nokia’s experience, many jurisdictions have ill-defined processes for receiving and processing requests to site infrastructure. For example, although localities are increasingly

⁶ 5G Jobs in the Year of 5G, Keynote Remarks of FCC Commissioner Brendan Carr at the NATE UNITE Conference and Trade Show, February 5, 2019, available at <https://medium.com/@BrendanCarrFCC/5g-jobs-in-the-year-of-5g-3c4ce0b14ace>.

⁷ CTIA Petition at 12 (quoting *State/Local Infrastructure Order*, Statement of Commissioner O’Rielly).

⁸ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12955-58 (2014).

aware of Federal requirements related to infrastructure siting, it is still common for jurisdictions to retain legacy processes that fail to incorporate Section 6409(a) or other more recent reforms. Actions that qualify for 6409(a) streamlined treatment can be delayed by localities seeking modified lease terms, for instance, when attempting to negotiate a master agreement or franchise license prior to requesting regulatory siting approvals. Local governments use these master agreements as a substitute for a comprehensive legal framework. The lack of clear procedures makes the application process much more difficult at the outset – it can be hard for the applicant to know where to even start, let alone obtain the required authorization to move forward. The Commission’s continuing efforts to prescribe uniform procedures, timelines and fees can go a long way to mitigating this issue.

Nokia agrees with WIA that the very same guardrails the Commission implemented in the context of the Section 332 shot clock should apply here.⁹ A siting application shot clock applies to *all authorizations* required for final grant. States and localities that have byzantine, multi-step, multi-agency processes should not be permitted to extend their review time-frame due to this layered application process.

Equally important is providing clarity that, as WIA requests, “the 6409(a) shot clock begins once an applicant in good faith attempts to seek the necessary local government approvals.”¹⁰ Nokia’s experience is consistent with WIA’s description of localities with no process for EFR, and some localities use a lack of process as a means to argue the shot clock has not started. This ability to effectively stonewall an applicant should not relieve a locality of its obligation to timely process applications submitted in good faith.

⁹ WIA Declaratory Petition at 6.

¹⁰ *Id.* at 8.

As such, Nokia supports a clear directive to states that (i) provides certainty for when the shot clock begins and (ii) clarifies that the shot-clock is for the granting of all authorizations needed for the applicant to move forward.

B. Commission Action is Needed to Avoid Divergent Interpretations of Section 6409(a)

CTIA and WIA each describe in their Petitions a number of ambiguities that localities use to exclude structures from Section 6409(a) streamlining. In some cases, these ambiguities are being exploited, with specific intent “to undermine Congress’s intent and [FCC] actions.”¹¹ Regardless whether intentional or not, CTIA and WIA have highlighted in their Petitions several issues that are leading localities to erroneously exclude non-substantial changes to facilities, causing undue delay and expense. To quote Commissioner O’Rielly’s words on this very topic, “This must stop.”¹²

While Nokia supports Commission clarifications regarding the full list raised in the Petitions, these Comments highlight two issues in particular that are highlighted by both CTIA and WIA as vulnerable to misinterpretation under the Commission’s streamlining rules pursuant to Section 6409(a): (1) concealment elements; and (2) what constitutes an equipment “cabinet.”

Concealment elements. Both CTIA and WIA provide ample evidence of localities undermining Commission intent by broadly defining what a “concealment element” is, as a means to claim an application is outside the scope of an EFR. The Petitions raise the concern that some localities interpret the entirety of the facility as constituting a “concealment

¹¹ CTIA Petition at 12 (quoting *State/Local Infrastructure Order*, Statement of Commissioner O’Rielly).

¹² *Id.*

element” and thus – the logic goes – no change to any aspect of the structure would be an EFR. More common are interpretations of the rules that effectively exclude from EFR all facilities that include as a part of the design a concealment element. Thus, the locality will exclude such a facility from EFR eligibility even if no change is proposed for the portion of the facility considered a concealment element, and even if the proposed changes are not visually perceptible. Nokia therefore supports proposed clarifications that would require localities to narrowly construe the meaning of “concealment element” to better align with Congressional intent.

Definition of “cabinet.” Both Petitions also highlight misinterpretations of the Commission’s Rules that designate as a “substantial change” certain scenarios where there is an increase in the number of equipment cabinets. As CTIA explains, the Commission’s Rules make clear that “cabinets” are structures installed on the ground, underground, or elsewhere on the premises. They do not include equipment attached to the structure itself, which is regulated in a different section of the rules. It strains credulity, for example, for a base station installed on a tower to be considered a “cabinet” simply because it is enclosed in plastic or metal housing that conceal or protect the electronics inside.

These are just two of the many categories of issues identified in the Petitions. The two issues discussed above together with those many additional examples portray an urgent need for Commission action. Nokia respectfully suggests that there is no real way to catalogue the full range of scenarios subject to misapplication, leading to a failure to proper implementation of Section 6409. As such, in addition to the Commission addressing specific issues highlighted in the Petitions, Nokia also supports WIA’s request that the Commission adopt a catchall clarification that it is unlawful for localities to imposed “process and/or information requirements

that substantially delay, defeat, or reduce the protections afforded under 6409(a).”¹³ This would avoid the mischief that could come from localities narrowly reading a Commission order only addressing a narrow set of enumerated problems, leaving a subset of loopholes that could be used to unduly delay deployment of advanced wireless communications services.

III. THE COMMISSION SHOULD GRANT WIA’S REQUEST TO INITIATE A RULEMAKING WITHOUT DELAY

Concurrent with its Petition for Declaratory ruling, WIA also petitioned the Commission to open a targeted rulemaking proceeding on proposals to update the implementation rules pursuant to Section 6409(a). Nokia urges that the Commission grant the WIA Rulemaking Petition to initiate a rulemaking proceeding that would facilitate limited compound expansions as well as ensure that fees associated with EFRs are cost-based.

A. Small Compound Expansions Should Qualify for Relief Under Section 6409(a)

Wireless carriers are rapidly deploying 5G technologies using an unprecedented number of cell sites. The ability to collocate equipment on existing towers is critical to the timely deployment of nationwide 5G. But as WIA’s Rulemaking Petition highlights, deployers continue to face regulatory challenges when trying to collocate transmission equipment on existing towers.¹⁴

Many existing wireless towers were built to support the operations of a single carrier, but today they support antennas from multiple wireless carriers. As a result, existing cabinets and enclosures at the tower site that house equipment are full and no longer support the installation of additional equipment. Tower sites must be expanded slightly to permit the

¹³ WIA Declaratory Petition at 21-22.

¹⁴ WIA Rulemaking Petition at 7-9.

installation of additional enclosures. Under the Commission's current rules, however, minor expansions to a tower compound – even as little as a one-foot expansion – constitutes a substantial change to the site and thus does not qualify for relief under Section 6409(a). Nokia agrees that the current rules discourage the use of existing infrastructure that is capable of supporting additional wireless deployments. Thus, we support the Commission initiating a rulemaking to consider updating these rules to clarify that limited compound expansions – excavation within 30 feet of a tower site – qualify for relief under Section 6409(a). Such a rule change is consistent with the Commission's goal of promoting collocation and removing barriers to 5G deployment.

B. Fees for Processing EFRs Should be Based on Actual and Direct Costs

As Nokia has experienced first-hand, onerous fees can threaten the economics of a deployment. The Commission has previously concluded that excessive fees imposed by local governments on the deployment of small cells threaten the deployment of 5G services and adopted rules requiring that fees be cost-based. Despite these rules, the WIA Rulemaking Petition cites multiple jurisdictions that continue to impose fees in a manner that inhibits deployment. Nokia agrees that the manner in which certain localities are imposing fees continue to be barrier to deployment, and Commission action is needed to curb these practices.

To remedy this recurring problem of excessive fees, WIA asks the Commission to initiate a rulemaking to amend its rules to expressly state that (i) fees must be based on actual and direct costs incurred by the government; (ii) the non-payment of fees subject to a good faith dispute cannot form the basis for delaying action or denying a permit; and (iii) escrow or deposit fees may only be used for review that is reasonably related to making a determination of whether a request qualifies for relief under Section 6409(a). Nokia agrees that these changes would serve

the public interest, and that the Commission should initiate a rulemaking that would ensure fees associated with EFRs must be cost-based.

VIII. CONCLUSION

Nokia supports the Commission's ongoing efforts to review the rules governing siting of the infrastructure critical to the Nation's communications networks. The Petitions submitted by CTIA and WIA provide several common-sense reforms that would further the Commission's and Congress's goals and benefit communities across the country. Therefore, the Commission should grant the Petitions as discussed above.

Respectfully submitted,

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