



Attachment F - Spectrum Act - Wireless Telecommunication Amendments

BACKGROUND & OVERVIEW

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 became law. Section 6409(a) of the act, also known as the Spectrum Act, was intended to advance wireless broadband service for public safety and commercial purposes and to provide for the creation of a broadband communications network for first responders. Along with Section 704 of the Telecommunications Act of 1996 (Public Law 104-104), the Spectrum Act can be viewed as part of the ongoing effort by the wireless industry to achieve federal preemption over local telecommunications zoning regulations. As such, Deschutes County (along with many other State and local governments) must alter existing telecommunication regulations which do not align with certain aspects of the Spectrum Act.

The Spectrum Act and corresponding Federal Communications Commission (FCC) rulings outline the following standards:

- Applies to collocations, removals, or modification of equipment on wireless towers or base stations;
- Mandates that a State or local government “may not deny, and shall approve” any application covered by section 6409(a);
- Does not apply to collocation on a structure that is not a wireless tower or base station; and
- Does not apply if action substantially changes the physical dimensions of a tower or base station.

Regarding the process for reviewing an application under Section 6409(a), the FCC also provides that:

- A State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
- A state or local government must approve an application covered by Section 6409(a) within 60 days from the date of filing, subject to tolling; the running of the period may be tolled by mutual agreement or upon notice that an application is incomplete, but not by a moratorium (an incomplete notice must be provided according with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996, codified as 47 U.S.C. § 332(c)(7)); and

- An application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it within the requisite time period;

In the summary, Section 6409(a) restricts local land use review of modifications and collocations by establishing a “substantial change” test as the primary eligibility determinant for review exemptions afforded by the Spectrum Act and reduces the application processing “shot clock” from 90 days to 60 days.

CURRENT PROCESS & CHANGES

Deschutes County Code (DCC) Section 18.116.250 contains provisions which directly contradict the standards of the Spectrum Act described above. However, the Community Development Department (CDD) currently evaluates and approves applications for non-substantial changes to physical portions of existing wireless telecommunication facilities (such as collocations of infrastructure) pursuant to the standards of Section 6409(a).

However, code amendments would allow a more seamless understanding of the Spectrum Act approval standards for both staff and applicants by codified the Spectrum Act standards in formal Deschutes County documents and ordinances. Any proposed amendments would ultimately include an objective set of standards for what constitutes “substantial changes” to existing wireless telecommunication facilities.

Key Amendment Concerns	
Staff Effort/Resources	Medium/Low
Legal Complexity	Medium
Implementation Urgency	Medium/Low