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MEMORANDUM

TO: Amy Kesler-Wolfson, City Planner DATE: May 13, 2026

FROM: Robert C. May III, Esq.

CC: David Ruderman, City Attorney

RE: LEGAL STANDARDS FOR ELIGIBLE FACILITIES REQUESTS UNDER 47 U.S.C. § 1455(a)

EXECUTIVE SUMMARY

In 2012, Congress amended the federal Telecommunications Act of 1996 to, among other things, streamline a carrier's ability to add new equipment to existing wireless facilities.[1] This statute is commonly referred to as "Section 6409(a)". As requested by the City Planner, this memorandum summarizes key substantive and procedural rules under this statute and related federal regulations.

Section 6409(a) requires that State and local governments "may not deny, and shall approve" any "eligible facilities request" (or "EFR") for a wireless site collocation or modification so long as it does not cause a "substant[ial] change in [that site's] physical dimensions."[2] FCC regulations and orders adopted in 2014 and in 2020 interpret key terms in this statute and impose certain substantive and procedural limitations on local review. Localities must review applications submitted for approval pursuant to Section 6409(a), but the applicant bears the burden to show it qualifies for mandatory approval.

[1] Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156. (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)).

[2] *See* 47 U.S.C. § 1455(a).

LEGAL STANDARDS

Generally, a proposed change to an existing wireless facility falls within the mandatory approval under Section 6409(a) when the applicant shows that: (1) it proposes to add or change transmission equipment; (2) on an "existing wireless tower or base station"; and (3) the change will not "substantially change the physical dimensions" of the existing wireless tower or base station.[3]

FCC regulations define these key terms and impose mandatory standards, and the federal interpretations do not always align with an ordinary person's interpretation. In addition, the FCC imposes stricter procedural rules and remedies that state and local governments must follow. This section summarizes the key regulations, interpretations and procedural rules.

Existing Tower or Base Station

FCC regulations define the term "**collocation**" in Section 6409(a) as "[t]he mounting or installation of transmission equipment on an [existing wireless tower or base station]" and the term "**transmission equipment**" broadly includes "equipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service."[4]

A "**tower**" means any structure built solely or primarily to support transmission equipment, whether it actually supports any equipment or not.[5] For example, a "tower" includes monopoles, radio towers and other masts originally designed as antenna support structures, but would not include similar structures commonly used to support antennas like telephone poles or electric transmission towers.

In contrast, a "**base station**" means a non-tower structure in a fixed location approved for use as a wireless support by the local jurisdiction that actually supports transmission equipment at the time a collocation or modification request is submitted.[6]

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[3] *See* 47 U.S.C. § 1455(a).
[4] *See* 47 C.F.R. §§ 1.6100(b)(2), (8); *see also 2014 Infrastructure Order* at ¶¶ 158–60 (describing examples for transmission equipment) and ¶¶ 178–81 (discussion what constitutes a collocation under Section 6409).
[5] 47 C.F.R. § 1.6100(b)(9); *see also 2014 Infrastructure Order* at ¶ 166.
[6] *See* 47 C.F.R. § 1.6100(b)(1); *see also 2014 Infrastructure Order* at ¶ 166. The term "base station" can include DAS and small cells. *See* 47 C.F.R. § 1.6100(b)(1)(ii).

Whether a tower or base station "**exists**" depends on both its *physical* and *legal* status.[7] Section 6409(a) does not mandate approval for collocations and modifications when the support structure was constructed or deployed without proper local review, was not required to undergo local review or involves equipment that was not properly approved.[8] This rule attempts to preserve the local government's authority to review wireless facilities in the first instance and withhold statutory benefits under Section 6409 in cases where the site operator deployed equipment without all required prior approvals.

Substantial Change Thresholds

The FCC created a six-part test to determine whether a "substantial change" occurs or not, which involves thresholds for height increases, width increases, new equipment cabinets, new excavation, changes to concealment elements and permit compliance. Thresholds differ between towers and base stations. **Table 1** below summarizes the FCC's substantial change thresholds.

Table 1: Summarized Substantial-Change Thresholds

Criteria	Towers	Base Stations / ROW Facilities
Height Increase	20 feet or 10% (whichever is greater)	10 feet or 10% (whichever is greater)
Width Increase	20 feet or the tower width at the level of the new appurtenance (whichever is greater)	6 feet
Additional Equipment Cabinets	4 new cabinets	4 cabinets; or any new ground cabinets more than 10% taller or more voluminous than existing ground cabinets; or any new cabinets on the ground if no ground cabinets exist

[7] *See* 47 C.F.R. § 1.6100(b)(5); *see also 2014 Infrastructure Order* at ¶ 174.

[8] *See 2014 Infrastructure Order* at ¶ 174 ("[I]f a tower or base station was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative State or local regulatory approval, the governing authority is not obligated to grant a collocation application under Section 6409(a).").

Criteria	Towers	Base Stations / ROW Facilities
Deployments/Excavation Outside the Current Site Area	not more than 30 feet from the edge of site area (excluding access or utility easements)	any expansion beyond the original site area
Changes in Concealment	changes cannot "defeat" the concealment on a facility designed to look like something other than a wireless facility (*i.e.*, cause a reasonable person to view the structure's intended stealth design as no longer effective after the modification)	
Compliance with Prior Conditions	changes must comply with prior conditions, except any condition that limits increases in height, width, equipment cabinets or footprint below the applicable substantial change threshold	

A project that exceeds any one threshold causes a substantial change. Additionally, the FCC considers a substantial change to occur when the project replaces the entire support structure or violates a generally applicable law or regulation reasonably related to public health and safety. State and local jurisdictions cannot consider any other criteria or threshold for a substantial change.[9]

Special Procedural Rules and Remedies

The FCC's procedural rules and time limits (commonly referred to as the "shot clock") apply to EFRs, but with additional restrictions and remedies as described below.

When an applicant requests approval pursuant to Section 6409, the state or local government (1) may only require the applicant to provide information reasonably related to the determination on whether the proposed project meets the criteria for an eligible facilities request; and (2) must approve or deny the application within 60 days from submittal.[10] The 60-day shot clock commences when: "(1) the applicant takes the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process under section 6409(a), and, to the extent it has not done so as part of the first required procedural step, (2) the applicant submits written documentation showing that a proposed modification is an eligible facilities request."[11] The shot clock commences

[9] *See 2014 Infrastructure Order* at ¶¶ 199, 202.
[10] *See 2014 Infrastructure Order* at ¶¶ 214–15.
[11] *In re Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests*, 35 FCC Rcd. 5977 ¶ 16 (June 10, 2020) [hereinafter "*2020 Declaratory Ruling*"].

even if the state or local government "declines to accept" documentation tendered by an applicant.[12] The shot clock may be tolled for incomplete applications or by mutual consent.[13]

If the local government fails to approve or deny an EFR application within the 60-day shot clock, federal regulations deem the application granted upon a written notice from the applicant.[14] Local governments may challenge the deemed granted notice in federal court within 30 days from the notice, but otherwise the applicant may proceed with construction.[15]

With respect to application requirements, the *2014 Infrastructure Order* preserves "considerable flexibility in determining precisely what information or documentation to require" for a complete application.[16] Although the FCC specifically prohibited requirements to demonstrate "the need for the proposed modification", it generally did not define specific permissible or impermissible requirements.[17] The FCC also encouraged state and local governments to combine the Section 6409 review with other permit review processes (such as entitlement and construction), which necessarily would allow for additional disclosures related to those permit applications.[18] State and local governments can set the requirements for a complete application so long as the requirements reasonably relate to whether the proposed modification meets the criteria for mandatory approval under the FCC rules.

The FCC specifically prohibits requirements to demonstrate the need or business case for a modification cannot be used to deem an EFR application incomplete because the FCC deems this information unrelated to whether a modification meets the criteria for an eligible facilities request.[19] This restriction covers application requirements such as

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[12] *See id.* at ¶ 20.
[13] *See id.* at ¶¶ 217–18.
[14] 47 C.F.R. § 1.6100(c)(4).
[15] *Id.* § 1.6100(c)(5); *see also T-Mobile W. LLC v. City and Cnty. of San Francisco*, No. 20-cv-08139-SI, 2021 WL 1056788, *4 (N.D. Cal. Mar. 18, 2021) (finding that installations constructed under a deemed-granted notice but without physical permits were legal).
[16] *See 2014 Infrastructure Order* at ¶ 214.
[17] *See id*.
[18] *See id.* at ¶¶ 214 n.595, 220.
[19] 47 C.F.R. § 1.6100(c)(1); *see also 2014 Infrastructure Order* at ¶ 214.

propagation maps, drive test data, dropped call logs and other materials traditionally used to assess the applicant's technical or service-related needs.[20]

CONCLUSION

This memorandum provides a basic summary based on current legal standards under Section 6409(a). This memorandum has not been prepared for any current or proposed application, and staff should consult with legal counsel with any questions about whether or how these standards apply to specific applications.

/RCM

[20] *See 2014 Infrastructure Order* at ¶ 214.