

Agent for T-Mobile: Ryka Consulting, Jessica Pierce

Date: 6/1/22

Site Address: 1110 S Meridian, Puyallup, WA

To whom it may concern:

Re: Eligible Facilities Request to Modify Transmission Equipment at Wireless Facility Located on a Structure at 1110 S Meridian, Puyallup, WA.

A. T-Mobile Proposed Filing an Eligible Facilities Request that Must be Granted

Ryka Consulting is requesting approval, on behalf of T-Mobile (“T-Mobile”), via the attached Eligible Facilities Request application to add, remove, modify, or replace Transmission Equipment (the “Request”) at an Existing Base Station located at 1110 S Meridian, Puyallup, WA.

This Request is governed by Section 6409 of the Spectrum Act (which states that state and local governments “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.”¹ Under Section 6409, an Eligible Facilities Request is any request to modify a Tower or Base Station that involves “collocations of new Transmission Equipment,” “removal,” or “replacement” of Transmission Equipment.

The FCC has defined Base Station as “the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network . . . the term includes equipment associated with wireless communications service including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supply, and comparable equipment.”² The term existing Base Station also includes a structure that currently houses or supports an antenna, transceiver or other associated equipment that constitutes part of a Base Station at the time the application is filed even if the structure was not built solely or primarily to provide such support. The existing Base Station in this application is a High Pole and presently contains wireless facilities.

¹ 47 U.S.C. Sect. 1455(a)) and the Federal Communications Commission’s (“FCC’s”) implementing regulations at 47 C.F.R. § 1.6100 2 47 CFR § 1.6100(b)(1)

In its implementing regulations, the FCC determined that any modification to an existing Base Station that meets the following six criteria does not substantially change it (47 C.F.R. § 1.6100(b)(7)), and therefore such project is an Eligible Facilities Request under the Spectrum Act that must be granted. The proposed project satisfies those criteria because it:

1) Will not increase the height of the Base Station by more than 10 percent (10%) or ten (10) feet, whichever is greater;

Details: No change in height is proposed with this modification.

2) Does not protrude from the edge of the Base Station by more than six (6) feet;

Details: The new equipment shall not protrude by the edge of the Base Station by more than (6) feet.

3) The proposed project does not defeat any existing concealment elements at the site. To be considered a “concealment element,” the element must have been a part of the facility at either: (1) the time of original approval; or (2) at the last modification of the tower if such modification occurred prior to the February 22, 2012 or outside the 6409(a) process (whichever is later).

A “concealment element” is something that makes a wireless facility appear to be something “fundamentally different than a wireless facility,” it does not include “any attribute that minimizes the visual impact of a facility, such as a specific location on a rooftop site or placement behind a tree line or fence.”³ Moreover, a modification can increase the size of the concealment features, so long as they: (i) do not increase by more than the criteria in (1) and (2) above, and (ii) would continue to make “the structure appear not to be a wireless Facility.” If so, then the modification would not defeat concealment.

Details: A redesigned FRP shroud will be installed to replace the existing FRP shroud. This modification does not defeat any existing concealment elements.

4) Does not entail any excavation outside the current Base Station;

Details: The proposed project will not involve excavations outside the current base station.

5) Does not involve the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four.

Details: There are no new cabinets proposed with this modification.

³ *Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, FCC 20-75, Declaratory Ruling and Notice of Proposed Rulemaking, ¶ 35 (June 10, 2020). (“5G Upgrade Order”).

6) The proposed project complies with prior conditions of approval of the Base Station, except for any non-compliance that is due to an increase in height, increase in width, addition of equipment cabinets, or new excavation that does not exceed the thresholds above. These conditions may relate to aesthetics or minimizing the visual impact of the wireless facility. To be enforced, there must be express evidence of specific conditions of approval and continued compliance with such conditions.

Response: Not applicable.

Finally, the list of equipment that will be installed as part of this Request qualifies as Transmission Equipment under the FCC's rules at 47 C.F.R. § 1.6100(b)(8).

B. The 60-day Shot Clock Applies to All Necessary Permits or Authorizations for T-Mobile to Proceed with the Request

Under Section 6409 "a State or local government may not deny, and shall approve, any eligible facilities request . . ." within 60 days of the filing of a complete application.⁴ As the FCC's explained, that time period covers "all qualifying applications" and all necessary permits and authorizations.⁵ Where a jurisdiction requires an applicant to obtain clearance from separate departments and/or numerous permits, the FCC explained that the applicant starts **the 60 day shot clock when: 1) it takes the "first procedural step" that the jurisdiction requires, even if there are multiple potential "first steps" with various municipal committees or departments, and 2) the applicant provides written documentation demonstrating that the applicable eligible facilities request criteria are satisfied.**⁶ Here, the 60-day shot clock starts with the filing of the enclosed application.

C. Federal Law Requires Expedited Permit Processing of Eligible Facilities Requests, Otherwise, they are and Deemed Granted Under federal law, an Eligible Facilities Request is deemed granted 60 days after a complete application is filed.⁷ Thus, if 60 days pass after the submission of the Request and the City has not acted to grant or deny the Request, it will be deemed granted. At that time, the applicant may advise the City that the application has been deemed granted. If the City wishes to contest whether the Request has been deemed granted, the burden is on the City to file a lawsuit in a court of competent jurisdiction within 30 days after receipt of a written communication notifying it that the Request has been deemed granted. Here, it is clear that the deemed granted remedy applies to all of the City's requirements.

T-Mobile is committed to working cooperatively with you to process this request in a timely and efficient manner. Please do not hesitate to contact me if you have questions at JPierce@RYKACONSULTING.COM, or by phone at 206-200-8333.

Jessica Pierce
Ryka Consulting
An authorized representative of T-Mobile

⁴ *Id.* ¶ 39 (June 10, 2020). 47 U.S.C. § 1455(a)(1).

⁵ *City of Portland v. U.S.*, 2020 U.S. App. Lexis 25553 **48-49 (9th Cir. Aug. 12, 2020).

⁶ *5G Upgrade Order*, ¶¶ 15-16 (June 10, 2020). The FCC also explained that its ruling provided "considerable flexibility" to structure their procedures for review of Eligible Facilities Requests, "but prevent localities from 'impos[ing] lengthy and onerous processes not justified by the limited scope of review contemplated' by Section 6409(a)." *Id.* ¶ 17.

⁷ Under FCC's rules, the City has 30 days from receipt to determine whether the application is complete.