

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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May 29, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

With the spectrum provisions of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Congress set the stage to bring valuable spectrum to market to meet wireless broadband demand, to provide first responders an interoperable nationwide wireless broadband network, and to generate needed revenue for the Treasury. In addition to making more spectrum available, there are other steps that must be taken to meet consumer demand for wireless services and build the nationwide public safety network – namely, expanding existing networks and deploying next generation networks. Congress passed Section 6409(a) with the intent of streamlining the approval of eligible facilities requests and to avoid lengthy and costly disputes that thwart the efficient use of existing wireless infrastructure in expanding mobile broadband coverage and capacity.

In January of 2013, the Commission initiated a rulemaking proceeding to adopt rules to clarify and implement Section 6409(a). In commencing this action, the Commission expressly acknowledged the need of stakeholders for guidance as to how Section 6409(a) should be applied. Today, more than a year later, the need for that guidance remains.

Time is of the essence. We urge you to take swift action to clarify the terms of Section 6409(a) consistent with the intent of the statute to deliver the benefits of wireless broadband access to all Americans. To ensure that 6409(a) achieves its goal of streamlining the approval of eligible facilities requests, the Commission should adopt rules that provide consistency for applicants and reviewing authorities alike. The FCC should delineate an objective standard for when a modification "substantially change[s] the physical dimensions" of a wireless facility. We agree with the Commission's proposed approach of leveraging its existing rules, particularly the Collocation Programmatic Agreement, to craft this objective standard.

We also agree in principle with many of the Commission's tentative conclusions for the definitions of other key terms of 6409(a). "Wireless tower or base station" should, at a minimum, include structures that support or house an antenna, transceiver, or other associated equipment that constitutes part of a base station, even if they were not built for the sole or primary purpose of providing such support. "Base station" should include antennas, transceivers, and other associated equipment like fiber and coaxial cable, backhaul equipment, and regular and backup power facilities.

Further, 6409(a)'s "may not deny, and shall approve" mandate should establish a non-discretionary review process and a "deemed granted" remedy for eligible facilities requests, including those to structures deemed legal but non-conforming uses, so that these minor modifications and collocations can be submitted, processed and put into use as quickly as possible.

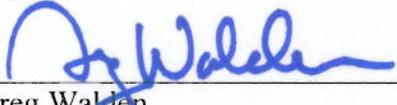
In addition to Section 6409(a), the Commission's other efforts in the rulemaking proceeding to identify ways to foster broadband infrastructure deployment warrant similar swift action. Facilitating both the deployment of small cells for targeted capacity and the use of temporary towers for short, sharp spikes in usage are part and parcel to meeting national broadband goals. Both are important tools for providing the robust service upon which consumers, businesses, and public safety rely.

If you have any questions, please contact David Redl with the Energy & Commerce Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Greg Walden
Chairman
Subcommittee on Communications and
Technology

cc: The Honorable Henry A. Waxman, Ranking Member
House Committee on Energy and Commerce

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

The Honorable Mignon Clyburn, Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel, Commissioner
Federal Communications Commission

The Honorable Ajit Pai, Commissioner
Federal Communications Commission

The Honorable Michael O'Rielly, Commissioner
Federal Communications Commission