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Dale M. Buchanan, Chair
Planning Board
Ashland Town Hall
101 Main Street
Ashland, Massachusetts 01721

**RE: Eligible Facilities Request - Section 6409(a) of the Spectrum Act
Wireless Facility Modification
20 Ponderosa Road, Ashland, MA**

Dear Chair Buchanan:

On September 28, 2020, T-Mobile by its representative CCTMO LLC filed an application for an eligible facilities request pursuant to Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of 2012 to amend the Special Permit for the modification of its existing wireless communications facility located at 20 Ponderosa Road, Ashland, Massachusetts. In accordance with the discussion at the October 22nd meeting, I am providing additional information to further clarify the nature of the modification and to address the requests of the Planning Board to clarify certain aspects of the proposal.

My client appreciates the opportunity to undertake the continued review with the Board and looks forward to further discussing the nature and extent of the modification. For purposes of that review, I am providing this correspondence to further outline compliance with the standards for an eligible facilities request that will not “substantially change the physical dimensions” of the eligible support structure pursuant to Section 6409(a) of the Spectrum Act¹.

With regard to the process for reviewing a submission under Section 6409(a), the Federal Communications Commission has provided 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);

Within 60 days from the date of filing, accounting for tolling, a State or local government shall approve an application covered by Section 6409(a); and

¹ Section 6409(a) of the Spectrum Act is codified at 47 U.S.C. § 1455.

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.

PROJECT DESCRIPTION

The eligible facilities request involves removing three (3) existing antennas and three (3) remote radio heads. Installing nine (9) new wireless communication antennas on the existing antenna mount for a total of twelve (12) antennas with six (6) new remote radio units mounted behind the antennas and cabling on an existing 150' Wireless Communications Facility Tower located at the Property. The antennas will be located at the same centerline height of 147'. The Project also includes removing one (1) equipment cabinet and installing one (1) equipment cabinet and adding one (1) battery cabinet on the existing concrete pad within the existing fenced area.

SATISFACTION OF ELIGIBILITY REQUEST STANDARDS

On February 22, 2012, President Obama signed into law H.R. 3630, known as the “Middle Class Tax Relief and Job Creation Act of 2012,” which then became Public Law 112-96 (“P.L. 112-96”).² Section 6409(a) of P.L. 112-96 adds new language to the existing body of laws, regulations, and decisions pertaining to wireless facility zoning.³ The Spectrum Act was passed to “advance wireless broadband service” for both public safety and commercial purposes.

My client respectfully submits the proposed modification satisfies the standards for issuance of a permit in accordance with an eligible facility request pursuant to 47 U.S.C. §1455 and 47 C.F.R. §1.6100. In an effort to advance Congress’ goal of facilitating the rapid deployment of qualified modifications, the Federal Communications Commission adopted rules in 2014 and more recently in 2020 to clarify many of the terms of Section 6409(a). The Commission stated that the purpose of implementing the rules “will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision, reducing the delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure, thereby promoting the advanced wireless broadband services.”

² *Middle Class Tax Relief and Job Creation Act of 2012*, Pub L. No. 112-96, 126 Stat. 156 (2012).

³ Section 6409(a) states:

(a) FACILITY MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government 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.

(2) ELIGIBLE FACILITIES REQUEST.—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) APPLICABILITY OF ENVIRONMENTAL LAWS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

47 U.S. Code §1455(a) and 47 C.F.R. §1.6100(b) builds on the existing legal framework for wireless facilities by requiring permitting authorities to approve an eligible facilities request in an effort to streamline “the process for siting of a wireless facility by preempting the ability of State and local authorities to delay collocation of, removal of, and replacement of wireless transmission equipment.” “Collocation” is defined as “the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” The term “eligible support structure” means any existing structure that is a “tower” or “base station.” The term “eligible facilities request” includes any request for modification of an existing wireless tower or base station that involves— (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.⁴

Federal authorities clearly provide that an eligible facilities request should be administratively approved if the installation does not result in a substantial change.⁵ Through its statutory mandate and given the lack of statutory definitions, the Federal Communications Commission has defined a substantial change under Section 6409(a) as follows:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new

⁴ 47 U.S.C. § 1455(a)(2) and §1.6100(b)(3)

⁵ See 47 U.S.C. §1455(a) and 47 C.F.R. §1.6100(b)

equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in above.

The proposed T-Mobile modification of an existing facility involving the removal, replacement, collocation of antennas with remote radio units on the same mount at the same centerline height of 147' and removal, replacement and collocation of equipment cabinets within the existing fenced area. The proposed modification satisfies the standards for each of the applicable listed criterion of an eligible facilities request in that: (i) antennas will be installed at the same height (ii) mounted at the same distance from the existing tower, (iii) following the modification there will only be three cabinets (iv) there will be no excavation outside of the existing fenced area, (v) the modification does not defeat the concealment elements of a standard monopole and (vi) the installation continues to comply with the siting approval.

It is clear that state and local authorities have no power to deny a complying installation, and any attempt to do so would be in direct conflict with federal law. Having satisfied the standards for the modification of an eligible support structure that will not result in a substantial change, the applicant respectfully requests Planning Board approval as a qualified Section 6409(a) Modification.

I look forward to meeting with you to continue the discussion of the proposed eligible facilities modification. Should the Planning Board require any additional information, please don't hesitate to contact me directly at (781) 873-0021. Thank you.

Very truly yours,
DUVAL & KLASNICK LLC



By: Daniel D. Klasnick
Attorney at Law