

Verizon Wireless 60-Day Eligible Facility Request Modification of Existing Wireless Tower not in the Right-of-Way

Request Date: *August 29, 2024*

Jurisdiction: *El Paso County*

Departments: *Planning and Zoning and Building*

Site Address: *15741 Phantom Canyon, Colorado Springs, CO 80926*

Tax Schedule Number: *7615000004*

Current Zoning: *RR-5*

Verizon Wireless Contact:

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This document serves as Verizon Wireless's eligible facilities request to modify an existing wireless tower at the above-referenced site address. This eligible facilities request must be approved administratively under Section 6409 of the federal Spectrum Act and Federal Communications Commission ("FCC") rules. Review by El Paso County is limited to determining whether the proposed modification qualifies as an eligible facilities request that does not substantially change the physical dimensions of the wireless tower. All permits necessary to commence construction must be approved within 60 days of the request date set forth above, subject to tolling for incompleteness.

For this request, Verizon Wireless attaches the following applications for all the permits required by El Paso County to commence construction of the modification:

- 1. Site plan review*
- 2. Building permit*

Verizon Wireless hereby requests that El Paso County immediately provide a quote of application fees and payment options, which Verizon Wireless will pay promptly. Any delay by El Paso County in quoting application fees or providing payment options will not toll today's commencement of the 60-day period.

Project Description

The existing wireless facility known as CSP Barrett was most recently permitted through El Paso County permit # TWR108 issued in 2010 and originally approved under cases VA-08-005 and EA-10-71. As currently installed, the facility consists of: a 125-foot tall tower with an existing three-sector antenna array located at the 122' centerline, a second three-sector array located at the 109' centerline as well as four microwave antennas at the 65', 60', 50' and 47' centerlines as well as equipment shelters located at ground level for base station equipment.

To accommodate new wireless technologies, Verizon Wireless proposes to remove and replace an existing 4' diameter microwave antenna and one (1) waveguide cable located at the 50' centerline

with a 6' diameter microwave antenna, mount and two (2) new waveguide cables. No additional changes are proposed for the modification.

FCC Rules for Eligible Facilities Requests

The Spectrum Act states that “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.”¹ An “eligible facilities request” is defined to include any collocation, removal, or replacement of existing equipment.²

The FCC adopted rules providing legally binding guidance on key terms of the Spectrum Act, notably defining “substantial change” with the six thresholds described below.³ The FCC requires that qualifying eligible facilities requests be approved within 60 days, subject to tolling for incompleteness.⁴ The 60-day period begins when an applicant takes the first procedural step required by a local government, and submits written documentation.⁵ The only submittal documents a local government can require are those relevant to determining if a proposed modification qualifies as an eligible facilities request.⁶ If a local government does not render a decision within the 60-day period, an eligible facilities request can be deemed granted by operation of law.⁷

The Proposed Modification Does Not Constitute a “Substantial Change”

Below are the FCC’s six “substantial change” thresholds for a wireless tower not in the right-of-way,⁸ each followed by an explanation that the proposed modification does not exceed that threshold.

- 1) 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.

This eligible facility request meets this criterion. The existing tower is 125'-0" overall. The existing and proposed replacement microwave antenna is located at an elevation of 50'-0" on the tower. No height increase is necessary for this proposed change in the microwave antenna. Page A-3 of the enclosed drawings depict the change on an elevation drawing.

- 2) 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.

The replacement antenna as shown on page A-4 of the plan set depict the existing and proposed microwave antenna. The new antenna meets this requirement and protrudes from the tower by approximately 4'.

- 3) It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four.

This modification to the existing facility meets this requirement. No new equipment cabinets are proposed for this upgrade to the microwave antenna.

- 4) It entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which 30 feet is measured excludes any access or utility easements currently related to the site. The “site” is as defined at 47 C.F.R. § 1.6100(b)(6).

The modification meets this criterion. No excavation is proposed in relation to this antenna upgrade.

- 5) Would defeat the concealment elements of the eligible support structure.

There are no existing concealment elements at this facility, meeting this requirement for the proposed modification.

- 6) Does not comply with conditions associated with the siting approval of the construction or modification of the existing facility, unless the non-compliance is due only to a change in height, width, etc., that does not exceed the first four thresholds.

There are no prior conditions of approval that would render the modification to be non-compliant, aside from any conditions that would be preempted by the first four “substantial change” thresholds.

In sum, the modification clearly qualifies as an “eligible facilities request” under the Spectrum Act and FCC rules, because it does not exceed any of the thresholds such that it would “substantially change” the physical dimensions of the existing wireless tower. Failure to process this eligible facilities request and approve all necessary permits within 60 days may result in the request being deemed granted by operation of law.

¹ 47 U.S.C. § 1455(a)(1).

² 47 U.S.C. § 1455(a)(2).

³ See Report and Order FCC 14-153, 29 FCC Rcd. 12865 (FCC October 17, 2014); see also Report and Order FCC 20-153, 85 FR 78005 (FCC October 27, 2020).

⁴ See 47 C.F.R. § 1.6100(c)(2), (3).

⁵ Declaratory Ruling FCC 20-75, 35 FCC Rcd 5977, ¶ 16 (FCC June 9, 2020).

⁶ See 47 C.F.R. § 1.6100(c)(1).

⁷ See 47 C.F.R. § 1.6100(c)(4).

⁸ See 47 C.F.R. § 1.6100(b)(7).