



2/9/2023

El Paso County, CO
Planning and Community Development
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: New Cingular Wireless PCS, LLC (“AT&T”) building permit application (“Application”) at the existing wireless telecommunications facility located at 7423 Templeton Gap Road, Colorado Springs, CO 80922.
Application Submittal under Section 6409

Dear Planning and Community Development,

On behalf of AT&T, we are submitting this application to modify the exiting wireless site at the above-referenced address as an eligible facilities request under Section 6409, as described below.

Please find the enclosed construction drawings in support of AT&T’s Application.

Background/Applicable Law

Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act (“Section 6409”) was adopted in 2012. Under Section 6409, the jurisdiction retains discretionary zoning review over the construction of certain new wireless facilities such as new towers, but collocations and/or equipment upgrades at existing telecommunications facilities must be approved. The law, now codified at 47 U.S.C. § 1455, provides 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.

The federal law defines an “eligible facilities request” as “(A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.”

Since the law's passage, the Federal Communications Commission ("FCC") established regulations that clarify and streamline the municipal approval process for eligible facilities requests under Section 6409.

These regulations¹ clarify that municipal review of an eligible facilities request is limited to determining whether the request falls within Section 6409:

[A] State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section [47 C.F.R. § 1.6100]. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

47 C.F.R. § 1.6100(c)(1).

AT&T's Application is an Eligible Facilities Request under Section 6409

AT&T's Application qualifies as an eligible facilities request under Section 6409 because the proposed installation involves "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

As shown on the submitted construction drawings, AT&T's proposed installation consists principally of the following elements:

No Tower Work. Install (1) 30kW Diesel Generator with base fuel tank on concrete pad. Swap ATS/CAM LOC. Install ATS Alarm Relay. Install E-Stop, Install 4'-0" Utility H-Frame

Accordingly, AT&T's installation involves the collocation of new transmission equipment that will not substantially increase the height of the structure nor the dimensions of the equipment compound. As a result, the installation does not substantially change the physical dimensions of the structure.

<u>Component</u>	<u>Federal Section 6409 Limits</u>	<u>AT&T's Proposed Modification</u>
Increase height of original structure	10 feet or less	No increase in height.
Antennas extending horizontally from edge of structure	6 feet or less	Antennas extend less than 6 feet horizontally from edge of structure

¹The 6409 regulations were previously codified at 47 C.F.R. § 1.40001.

²47 U.S.C. § 1455(a)(1).

Additional equipment cabinets	4 or fewer (does not include separately mounted radios and other pieces of equipment); no new ground-mounted cabinets if there were none before; if there were ground-mounted cabinets, then no new ground-mounted cabinets more than 10% larger than the existing cabinets	Fewer than 4 additional equipment cabinets.
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Timeline for Review and Approval

We would like to highlight an important timing requirement for processing this Application. The FCC determined that a municipality must act on an eligible facilities request within sixty (60) days of receiving the application. 47 C.F.R. § 1.6100(c)(2). (Note, this sixty (60)-day period is also known as the “Shot Clock.”)

A municipality may toll the Shot Clock by providing written notice that an application is incomplete within thirty (30) days of its submittal. 47 C.F.R. § 1.6100(c)(3)(i). The notice must “clearly and specifically” describe the missing documents or information, 47 C.F.R. §1.6100(c)(3)(i), and, as previously mentioned, such documentation must be necessary to the determination of whether an application qualifies as an eligible facilities request.

In light of the foregoing, AT&T respectfully requests that its proposed wireless site modification be approved pursuant to Section 6409.

AT&T’s team wants to work with you to make this project a success. If the you believe that AT&T’s Application does not qualify as an eligible facilities request under Section 6409, please let me know as soon as you are able. Otherwise, if you have any questions, please feel free to call or email me.

Thank you for your consideration of AT&T’s proposal.

Sincerely,



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