

Project Summary
Proposed Modification to Existing Wireless Telecommunications Facility
4584 Hodgen Road, Colorado Springs, CO 80908-APN: 61000-00-508

Project Description

This project is an “Eligible Facilities Request” to review the proposed modification of the above referenced wireless facility and to determine that the proposal conforms to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C. § 1455(a) (“Section 6409(a”). Generally, Section 6409(a) requires that local governments “may not deny, and shall approve,” certain requests to collocate with or modify an existing wireless tower or base station so long as that request will not “substantially change the physical dimensions”.

The existing wireless facility is located at 4584 Hodgen Road, Colorado Springs, CO 80908-APN: 61000-00-508, and consists of an existing 170’ self-support tower located within an existing fenced compound. The existing wireless facility has multiple carriers currently operating with tower and ground mounted equipment.

American Tower is proposing to add (1) new 80kw Emergency Backup Generator. The generator will provide power to the existing wireless facilities in the event of a commercial power outage. This proposal does not include the addition of any antennas, nor will it increase the height of the existing tower or the footprint of the existing equipment area.

Project Purpose

The purpose of this project is to provide a source of emergency backup power in the event of a commercial power outage. This is a critical step in ensuring the existing wireless facility remains on air in the event of an emergency. Wireless coverage is critical to first responders and El Paso County residents and visitors alike. The proposed generator would only operate in times of a commercial power outage, allowing the wireless providers to remain on-air.

Justification Statement

This section will describe how the proposed use is substantially compatible with uses permitted in the same general area, how the proposed use would not be materially detrimental to other properties within the same area, and how the proposed installation will be compliant with federal regulations concerning the modification of existing facilities.

The proposed modifications to the existing facility are compatible with uses permitted in the same general area. This can be evidenced by the fact that as this proposal is for a modification to an already permitted wireless communication facility, this use has already been approved and established at this location and would not be materially detrimental to other properties within the same area.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, which was signed into law February 22, 2012, mandates that state and local governments provide a nondiscretionary approval of an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The FCC defines substantial change as the mounting of a proposed antenna that would increase the existing height of the tower by more than 10%. American Tower's proposed modifications fall within the scope of this statute. For further clarification on Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, please review the attached explanatory document included with this submittal, which includes links to all necessary materials.

Conclusion

As evidenced by the text above and the supporting documents provided as part of this application, the proposed modifications are in compliance with the existing approvals for this facility, Federal regulations concerning the modification of an existing wireless communication facility, and FCC Rules and Regulations concerning RF Emissions.

I would like to thank you for your time and efforts in reviewing this application and look forward to any feedback you may have.

Sincerely,

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Streamlined Wireless Facilities Deployment:

Federal Regulation in the Middle Class Tax Relief and Job Creation Act of 2012

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 mandates that state and local governments must approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The Act was signed into law February 22, 2012. The section mandating streamlined modification and collocation approval ensures the timely deployment of wireless services.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012ⁱ

(a) Facility Modification.—

(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 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.

The Act applies to eligible facilities requests for modification of existing wireless towers and base stations:

- ☞ The Act defines “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves:
 - Collocation of new transmission equipment;
 - Removal of transmission equipment; or
 - Replacement of transmission equipment.
- ☞ The Federal Communications Commission (“FCC”) defines “collocation” as “the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”ⁱⁱ
- ☞ The FCC defines a “substantial change” as:
 - The mounting of a proposed antenna on the tower that would increase the existing 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, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
 - The mounting of a proposed antenna that would involve 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, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.ⁱⁱⁱ
- ☞ The FCC defines a “tower” as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”^{iv}
- ☞ The federal regulations define a “base station” as “[a] station at a specified site authorized to communicate with mobile stations;” or “[a] land station in the land mobile service.”^v

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Federal Regulation of Wireless Siting in the Middle Class Tax Relief and Job Creation Act of 2012, cont.

The Act requires approval for all eligible facilities requests that do not substantially change the physical dimensions of such tower or base station and:

- ☞ Applies despite section 704 of the Telecommunications Act of 1996, which preserves the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and *modification* of personal wireless service facilities;^{vi}
- ☞ Preempts zoning review and conditional approvals of eligible facilities requests;^{vii}
- ☞ Requires eligible facilities requests only be subject to administrative review processes and not discretionary review processes that allow a state or local government to deny or condition an eligible facilities request.
- ☞ Requires that eligible facilities requests for the modification of legal, non-conforming towers must be approved.

The FCC's Wireless Facility Siting "Shot Clock" applies to eligible facilities request for collocation:

- ☞ State and local governments have 90 days to act on an application to collocate wireless facilities on existing structures.^{viii}
- ☞ Under the Act, state and local governments *must* approve within 60 days any eligible facilities requests for collocation or replacement of transmission equipment on existing towers that do not substantially change the physical dimensions of such tower.

ⁱ For the full text of the Act and its legislative history, see Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §6409 (2012), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3630enr/pdf/BILLS-112hr3630enr.pdf>; see also H.R. Rep. No. 112-399 at 132-33 (2012) (Conf. Rep.), available at <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt399/pdf/CRPT-112hrpt399.pdf>.

ⁱⁱ Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), 47 C.F.R. Part I, Appendix B, available at <http://wireless.fcc.gov/releases/da010691a.pdf> ("Collocation Agreement"); see also *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) ("Shot Clock Ruling"), recon. denied, 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., *et al.* v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-99A1_Rcd.pdf; see also *Wireless Telecommunications Bureau & Mass Media Bureau Announce the Release of a Fact sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement*, Public Notice, 17 FCC Rcd 508 (2002), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-28A1.pdf.

ⁱⁱⁱ Collocation Agreement.

^{iv} *Id.*

^v See, e.g., 47 C.F.R. §§24.5, 90.7.

^{vi} 47 U.S.C. §332(c)(7)(A). The Telecommunications Act of 1996 defines "personal wireless service facilities" as facilities for the provision of personal wireless services, including commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. §332(c)(7)(C).

^{vii} See 158 CONG. REC. E237-239 (daily ed. Feb. 24, 2012) (statement of Rep. Upton), available at <http://www.gpo.gov/fdsys/pkg/CREC-2012-02-24/pdf/CREC-2012-02-24-pt1-PgE237-5.pdf>. Zoning review and/or conditional approvals of eligible facilities request can have the effect of denying such requests as a conditional approval is not an approval *per se*; therefore it is a denial and a violation of the Act.

^{viii} *Shot Clock Ruling*.

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