Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of State and Local Governments' Obligations to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012	))))	WT Docket No. 19-250 RM-11849

COMMENTS OF CTIA

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CTIA[1] respectfully submits these comments supporting the separate petitions filed by CTIA and by the Wireless Infrastructure Association ("WIA"),[2] which collectively address rules adopted by the Federal Communications Commission ("Commission") implementing Section 6409(a) of the Spectrum Act of 2012 and Section 224 of the Communications Act.[3] Grant of

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[1] CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] CTIA Petition for Declaratory Ruling (filed Sept. 6, 2019) ("CTIA Petition"); WIA Petition for Declaratory Ruling (filed Aug. 27, 2019) ("WIA Petition for Declaratory Ruling"); WIA Petition for Rulemaking (filed Aug. 27, 2019) ("WIA Petition for Rulemaking"). *See also Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling and CTIA Petition for Declaratory Ruling*, Public Notice, WT Docket No. 19-250, WC Docket No. 17-84, RM-11849, DA 19-913 (rel. Sept. 13, 2019) ("September 13 PN") (opening dockets related to the relevant pleadings).

[3] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI § 6409(a), codified at 47 U.S.C. § 1455(a); 47 U.S.C. § 224. The CTIA Petition separately requests that the Commission clarify wireless providers' right to reasonable, nondiscriminatory access to utility poles granted by Section 224 of the Communications Act, 47 U.S.C. § 224, in order to address obstacles that some utilities are erecting that frustrate wireless providers' access to poles. Moreover, CTIA raises many of the same issues regarding Section 6409(a) as in the WIA Petition for Declaratory Ruling, as well as some additional state and local barriers to Section 6409(a)'s implementation. CTIA continues to support all aspects of its Petition, but focuses these Comments solely on the issues raised in WIA's pleadings.

CTIA's and WIA's petitions is consistent with the language and purpose of Sections 6409(a) and 224, and will promote the deployment of next-generation wireless infrastructure needed for 5G.

I. INTRODUCTION AND SUMMARY.

The wireless industry has already invested significantly in next-generation wireless deployment, and plans to spend hundreds of billions of dollars to deploy new infrastructure to support 5G, thereby creating jobs, strengthening the economy, and advancing U.S. global leadership in wireless technology. The Commission has taken concrete actions over the past 20 months to accelerate 5G by removing regulatory barriers that impede deployment.[4] CTIA commends the Commission for those actions, which are helping to pave the way for 5G and the benefits it is already beginning to deliver to U.S. consumers, businesses, and the economy. And a number of localities are partnering with wireless and infrastructure providers to review and approve upgrades to existing infrastructure. However, the CTIA and WIA petitions demonstrate that many discrete regulatory barriers to deployment still remain, particularly as related to deployments on existing infrastructure. The three petitions together thus request Commission actions to advance the national priority to promote 5G by removing barriers that are thwarting the use of existing structures and utility poles. CTIA supports all of the proposals in its Petition and asks the Commission to grant them, but focuses these Comments on its support for WIA's proposals.

[4] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) ("*State/Local Infrastructure Order*"); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102 (2018), *aff'd in part and vacated in part sub nom., United Keetoowah Band of Cherokee Indians of Oklahoma, et al. v. FCC*, No. 18-1129 (D.C. Cir. Aug. 9, 2019).

The WIA Petition for Declaratory Ruling asks the Commission to clarify the rules implementing Section 6409(a) to help ensure that localities cease practices that contradict Congress's clear command that localities "may not deny, and shall approve" applications for non-substantial modifications of facilities.[5] As WIA demonstrates, localities across the nation have erected obstacles that are slowing these modifications. In order to remove these barriers slowing the deployment necessary to deliver 5G throughout the United States, CTIA agrees that the Commission should take the following actions to clarify which deployments qualify for streamlined processing and the appropriate processing practices under 6409(a):

- **Non-substantial changes.** Clarify Section 1.6100(b)(7) to increase certainty over the meaning of terms such as "concealment elements," "conditions," "separation," and "current site" to prevent localities from misinterpreting the rules in ways that incorrectly disqualify modifications from streamlined processing.

- **Shot clocks.** Clarify application of the 60-day shot clock in Section 1.6100(c)(2) by stating: (1) the shot clock begins to run when an applicant begins in good faith to seek necessary government approvals; (2) mandatory pre-application procedures do not toll shot clocks; (3) requirements beyond those needed to determine whether an application qualifies as an Eligible Facilities Request ("EFR") are prohibited; and (4) conditional grants are prohibited.

- **Use of existing antenna structures.** Clarify that certain practices are unlawful, including those that: (1) prohibit modifications to legally built structures; (2) impose new fall zone, setback, or other requirements; or (3) use aesthetic concerns about the underlying structure to claim an application to install or modify antennas or other equipment on that structure is ineligible for Section 6409(a).

The WIA Petition for Rulemaking also requests that the Commission amend Section 1.6100(b)(7)(iv) to provide that only excavation that occurs more than 30 feet outside the site compound is a "substantial change." This small but important rule modification will serve the public interest in driving more intensive use of existing infrastructure by expanding the reach of

[5] 47 U.S.C. § 1455(a).

streamlined processing in a targeted manner. It will also remove the current illogical distinction between the rule and the Nationwide Programmatic Agreement ("NPA"),[6] which by contrast *exempts* a 30-foot expansion of the compound from historic preservation review when an existing structure is entirely replaced.

Adoption of these proposals will remove unnecessary regulatory barriers and expedite infrastructure deployments. Accordingly, the Commission should grant the clarifications of its rules implementing Section 6409(a) that CTIA and WIA request, and grant the separate WIA Petition for Rulemaking to amend one of those rules.

II. THE COMMISSION SHOULD CLARIFY ITS RULES TO PROMOTE NATIONWIDE 5G DEPLOYMENT AND THE BENEFITS IT WILL DELIVER.

Promoting the rapid deployment of 5G and other advanced wireless services is a national policy objective. All five FCC commissioners have pointed to the clear public interest benefits of more rapid and less expensive 5G deployment.[7] The Commission's three 2018 infrastructure-

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[6] Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *codified at* 47 C.F.R. Part 1 Appendix C ("NPA").

[7] *See, e.g.*, Remarks of FCC Chairman Ajit Pai at the 7th Congreso Latinoamericano de Telecomunicaciones Workshop on 5G, Cordoba, Argentina (July 4, 2019) ("5G could be one of the great moonshots of this generation. Think about a world in which speed, capacity, and lag times are effectively no longer constraints on wireless innovation. This could enable new services and applications that could revolutionize … our economy and society."); Remarks of FCC Commissioner Brendan Carr at the Wireless Foundation Awards (Oct. 1, 2019) ("One thing I've seen firsthand is how 5G is creating jobs in communities around the country."); *State/Local Infrastructure Order*, Statement of Commissioner Michael O'Rielly ("Collectively, these provisions will help facilitate the deployment of 5G and enable providers to expand services throughout our nation, with ultimate beneficiaries being the American people."); *id.*, Statement of Commissioner Jessica Rosenworcel, Approving in Part and Dissenting in Part (advocating that the OTARD rule be modified to "create more opportunities for rural deployment by giving providers more siting and backhaul options and creating news use cases for signal boosters. Add this up and you get more competitive, more ubiquitous and less costly 5G deployment."); Statement of FCC Commissioner Geoffrey Starks, Before the Subcommittee on Communications and Technology, Committee on Energy & Commerce, United State House of Representatives (May 15, 2019) ("While I am committed to 'winning the race to 5G,' I am equally committed to the far too many communities with 'no-G.' … It is absolutely imperative that we make sure that quality, affordable broadband is available to all Americans.").

related decisions sought to accelerate the availability of advanced wireless services to the public by removing federal, state, and local regulatory barriers. Those actions are helping to drive investment in the networks needed to deliver 5G and its many benefits. As Commissioner Carr stated, however, the Commission's work is not done; the agency will continue to "implement the decisions Congress has made to streamline the deployment of next-generation technologies" by "eliminating needless restrictions on siting."[8] Additional actions that expedite the review process and reduce the cost for deployment will enable investment dollars to go further, providing more robust services and densified networks to respond to the public's accelerating demand.

The CTIA and WIA petitions demonstrate that additional Commission action is needed to advance its priority to remove barriers to 5G deployment. Consistent with both petitions, the Commission should clarify the rules implementing Section 6409(a), and adopt one targeted change to those rules, to address local practices that are impeding more intensive use of existing facilities.

Congress enacted Section 6409(a) to streamline state and local review of certain deployments on existing structures. It declared in unambiguous language that states and localities "may not deny, and shall approve" modifications that do not "substantially change the

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[8] Keynote Remarks of FCC Commissioner Brendan Carr at the WISPAmerica Convention, "Grain Elevators, Water Towers, and Other Ways to Connect to America," Cincinnati, OH (Mar. 20, 2019) ("[W]'re not going to slow down in our efforts to modernize our infrastructure rules. This year, I am taking another look at the federal rules governing wireless infrastructure deployment. We will look to fully and faithfully implement the decisions Congress has made to streamline the deployment of next-generation technologies. We will push the government to be more pro-infrastructure by eliminating needless restrictions on siting wireless facilities."); *see also* Remarks of FCC Commissioner Michael O'Rielly before the Mobile World Congress Americas 2019 Everything Policy Track, Los Angeles, CA, at 3 (Oct. 23, 2019) ("There are other actions we can take to alleviate the barriers to infrastructure siting, especially for macro towers").

physical dimensions" of the structure.[9] The Commission adopted rules that implemented Section 6409(a), and those rules were affirmed on appeal.[10] Localities' role is limited to confirming that a proposed modification is eligible for streamlined Section 6409(a) review and complies with safety-related requirements.

But as CTIA and WIA demonstrate in their petitions, some localities are resisting Congress's clear mandate and undermining the purposes of Section 6409(a). Some are misinterpreting Commission rules to frustrate collocations on and upgrades to wireless structures. Others are seizing on perceived ambiguities in the rules to demand that wireless providers obtain various forms of approval prior to installation of new equipment. By granting the rulings that CTIA and WIA seek, and the targeted rule change that WIA suggests, the Commission will remove these obstacles, streamline deployment, and accelerate the public's access to 5G.

Granting the CTIA and WIA petitions will also advance and effectuate longstanding federal policy to promote more intensive utilization of *existing* infrastructure. Existing poles, structures, and buildings are ideally suited for 5G services—yet unwarranted and unlawful restrictions that some localities and pole owners impose inhibit their use. The Commission has declared that driving more robust use of existing infrastructure clearly serves the public interest, while creating few if any environmental or other concerns.[11] The proposals WIA and CTIA put forth will help advance these important policy objectives.

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[9] 47 U.S.C. § 1455(a).

[10] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865 (2014), *aff'd., Montgomery County, Maryland v. FCC*, 811 F.3d 121 (4th Cir. 2014).

[11] *Id*., 29 FCC Rcd at 12868 ¶ 5.

III. CLARIFYING THE RULES IMPLEMENTING SECTION 6409(A) WILL PROMOTE MORE INTENSIVE USE OF EXISTING INFRASTRUCTURE.

The WIA Petition for Declaratory Ruling is consistent with CTIA's own petition in demonstrating that some localities are thwarting Section 6409(a) by misinterpreting the Commission's rules implementing that provision. WIA identifies specific practices by localities that circumvent Section 6409(a)'s unambiguous command that they "shall approve" non-substantial modifications. The CTIA Petition likewise identifies several of the same objectionable local practices. Localities' misinterpretations trigger extensive local reviews of modifications that go beyond the streamlined, targeted review that Congress provided for EFRs. WIA explains that these practices lead to delays and disputes that undermine Congress's objective to expedite modifications to existing facilities.[12]

The Commission has unquestionable authority to issue a declaratory ruling to clarify its rules and resolve disputes over their interpretation.[13] The CTIA Petition and the WIA Petition for Declaratory Ruling do not ask the Commission to adopt new rules, but merely to clarify the agency's existing rules to effectuate the language and purpose of those provisions, and to promote collocations and upgrades to existing facilities.

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[12] WIA Petition for Declaratory Ruling at 2-4.

[13] *See, e.g.*, 5 U.S.C. § 554(e) ("The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."); 47 C.F.R. § 1.2 ("The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."); *City of Arlington v. FCC,* 668 F.3d 229, 243 (5th Cir. 2012) (stating that Section 554 "empowers agencies to use declaratory rulings to 'remove uncertainty' by issuing statutory interpretations"); *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (citing precedent supporting the Commission's authority to issue declaratory rulings to interpret or clarify the Act).

A. Clarification of the Types of Modifications that Constitute a "Substantial Change."

Section 6409(a) applies to an EFR that "does not substantially change the physical dimensions" of the structure. The Commission adopted Section 1.6100(b)(7) and its subsections to delineate modifications that constitute a "substantial change" and are thus ineligible for streamlined Section 6409(a) review. WIA shows how localities are misinterpreting these provisions by applying them to modifications that are not substantial changes, frustrating the use of existing infrastructure.[14] The Commission should address this barrier by clarifying the rule as CTIA and WIA request. Clarification will prevent localities from improperly interpreting the rule far more broadly than the Commission intended.

***Concealment Elements*.** Section 1.6100(b)(7)(v) provides that a modification is a substantial change if "it would defeat the concealment elements of the eligible support structure." Like CTIA, WIA demonstrates that there is widespread misinterpretation of this rule.[15] The Commission adopted this rule to ensure that stealth facilities or materials such as faux tree branches designed to hide or minimize the appearance of the structure are not removed or compromised by subsequent modifications. But some localities are broadly treating the *entire structure* as a concealment element, or otherwise improperly invoking the rule to deem a modification to be substantial.

WIA thus asks for two clarifications that CTIA also seeks: (1) the term "concealment element" means only a stealth facility or those aspects intended to disguise the facility's appearance; and (2) only concealment elements that were specifically identified as such when the

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[14] WIA Petition for Declaratory Ruling at 9-18.

[15] *Id*. at 10-11.

structure was built count as elements that may not be defeated by a later modification.[16] The Commission should grant these clarification requests.

WIA separately requests that the Commission clarify that the *size* of the facility and equipment specified in a permit, and permit requirements generally, are not concealment elements.[17] It points to examples of some localities treating the facility's size as a concealment element so that any change in dimensions would be deemed substantial, while others are generally treating permit requirements as concealment elements and thereby denying streamlined processing to modifications that qualify under Section 6409(a) and the rules.[18] The Commission should grant WIA's additional clarification requests. The purpose of Section 1.6100(b)(7)(v) is to preclude modifications that remove or render ineffective elements of a facility that were specifically intended to conceal or shield parts of it. Those are the only modifications that constitute a substantial change under this provision.

Prior Conditions. Section 1.6100(b)(7)(vi) states in part that a modification is substantial if 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." WIA demonstrates that some localities are misusing this rule by imposing what the localities assert are "conditions" on the first use of a structure for wireless facilities, such as restrictions on the size, number, or type of antenna, or a limit on the number of providers that can install equipment. Later, when the initial provider seeks to add additional equipment, or other providers seek to collocate, the

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[16] *Id*. at 12; CTIA Petition at 12.

[17] WIA Petition for Declaratory Ruling at 12-13.

[18] *Id*. (citing Letter from Kenneth J. Simon, Crown Castle International Corp., to Marlene H. Dortch, FCC, WT Docket No. 17-79, at 12-14 (filed Aug. 10, 2018)).

localities assert that these are substantial changes even if they otherwise meet the criteria for EFRs under the Commission's rules.[19]

These localities are circumventing Section 1.6100(b)(7)(vi). Although the modification would comply with all of the size and other requirements the Commission set for non-substantial modifications, the localities refuse to treat it as an EFR because it does not meet some *additional* condition that is not in the rule—or in some instances actually conflicts with the rule. In effect, these localities have added new limits to Section 1.6100(b)(7)(vi). The Commission should clarify that local restrictions do not constitute "conditions" under this rule.

Antenna Separation. WIA states that some localities are misapplying Section 1.6100(b)(7)(i), which defines "substantial change" to include a modification that would increase "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." Such localities incorrectly assume that the italicized language means that the height of the new antenna, plus the distance to the nearest existing antenna, cannot exceed 20 feet.[20]

The most logical reading of Section 1.6100(b)(7)(i), however, is that "separation" means the distance between the existing and new antennas—not that distance *plus* the height of the new antenna—because that height is not "separation." Moreover, as WIA notes, the Collocation Agreement contains identical language,[21] and the Commission's Fact Sheet on the Collocation Agreement clarified that this language means "a separation of 20 feet from the nearest existing

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[19] *Id*. at 15-16.

[20] *Id*. at 17.

[21] Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, *codified at* 47 C.F.R. Part 1 Appendix B, Sec. I.E.1 (2001) ("Collocation Agreement"). The Collocation Agreement was amended in 2016, but this provision was not revised.

antenna."[22] It is thus only the distance between the antennas that is pertinent. The Commission should clarify that the language in its rule italicized above means a separation distance of 20 feet from the new antenna to the nearest existing antenna, and that the height of the new antenna is not to be included in this calculation.

Excavation. Section 1.6100(b)(7)(iv) provides that a substantial change occurs if a modification "entails any excavation or deployment outside the current site." WIA states that some localities are ignoring the rule by incorrectly applying it to the dimensions of the *original* site, thereby ignoring any subsequent increases to the site. It thus asks the Commission to declare that the rule "meant what it said – a substantial change occurs if excavation or deployment is required outside the *current* site and the initial boundaries of a site are irrelevant under this analysis."[23] This request merely requires the Commission to affirm the clear language of Section 1.6100(b)(7)(iv). Excavation or deployment within the boundaries of the current site is not a major change, and localities should treat applications to perform that work as EFRs.[24]

B. Operation of the Shot Clock for EFRs.

Section 1.6100(c)(2) sets a 60-day shot clock for localities to act on EFRs. The Commission determined that establishing this timeframe for review is consistent with the language and purpose of Section 6409(a), and a federal appeals court affirmed this ruling.[25] But as WIA and CTIA demonstrate, some localities are misapplying or ignoring the shot clock,

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[22] WIA Petition for Declaratory Ruling at 17-18.

[23] *Id*. at 18 (emphasis in original).

[24] WIA's separate Petition for Rulemaking seeks to amend Section 1.6100(b)(7)(iv) to provide that excavations or deployments within 30 feet of the current site boundaries also qualify as EFRs. CTIA supports that request, as discussed in Section IV of these Comments.

[25] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865 (2014), *aff'd., Montgomery County, Maryland v. FCC*, 811 F.3d 121 (4th Cir. 2014).

imposing requirements that have no basis in the Commission's rules, and undermining the streamlined process Congress directed.

WIA and CTIA supply examples of localities that assert that the shot clock only applies to the EFR itself, not to associated permits that the locality may require.[26] The result is that providers are unable to obtain action within 60 days, undercutting the rule. As WIA and CTIA note, the Commission has ruled that the shot clocks it adopted to effectuate Section 332(c)(7) apply to all required permits.[27] The Commission should similarly clarify that the 60-day time frame for EFRs applies to *all* required permits.

WIA also shows that some localities refuse to consider the shot clock to start until the localities establish procedures for processing EFRs or until pre-application meetings or public hearings have been completed. Other localities consider those administrative procedures to be outside the 60-day limit required for action on the EFR. But as WIA notes, public hearings are unnecessary because approval of an EFR is limited to determining that the application qualifies as an EFR. These practices also result in lengthy reviews, undercutting the prompt action on EFRs that Section 1.6100(c)(2) requires.[28]

Accordingly, the Commission should clarify Section 1.6100(c)(2) as WIA requests, by ruling that: (i) the shot clock begins to run once an applicant in good faith attempts to seek the necessary government approvals;[29] (ii) mandatory pre-application procedures do not toll the shot

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[26] WIA Petition for Declaratory Ruling at 5; CTIA Petition at 18.

[27] WIA Petition for Declaratory Ruling at 6; CTIA Petition at 19 (citing *State/Local Infrastructure Order* ¶ 144).

[28] WIA Petition for Declaratory Ruling at 8-9.

[29] As WIA notes, the Commission should further clarify that a good faith attempt includes submitting an EFR under any reasonable process and starts upon initial written submission in the case where a state or local government requires any type of pre-application submission or meetings. *Id.* at 8-9.

clocks; and (iii) if a public hearing is nonetheless held, it must occur within the 60-day review period and must be limited to the presentation of information reasonably related to determining that an application qualifies as an EFR.[30]

Other localities impose extensive and burdensome permitting requirements that they require to be satisfied before they will consider the shot clock to begin running. But as WIA notes, these requirements are not based in Section 6409(a) or the Commission's rules; instead, localities use them to conduct full-scale review of an application rather than limit their evaluation to determining whether the application qualifies as an EFR, as federal law requires. Therefore, the Commission should rule that all documentation requests and process requirements that localities impose for modifications to existing structures must be reasonably related to determining whether a proposal qualifies under Section 6409(a).[31]

WIA also demonstrates that some localities attach conditions to their approvals of EFRs, adding delays and costs to upgrading existing facilities.[32] To address this barrier, the Commission should rule that conditional approvals of EFRs violate Section 6409(a)—as the statute expressly directs that localities "shall approve" such applications—and that localities may not impose conditions unless they relate to compliance with non-discretionary codes reasonably related to safety, including building and structural codes.

Finally, other localities may act within the shot clock period but fail to provide a complete explanation for their denial of an EFR. To address this problem, the Commission should grant WIA's request to clarify that a denial of an EFR must (i) be in writing; (ii) clearly

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[30] *Id*. at 9.

[31] *Id*. at 23-24.

[32] *Id*. at 20-21.

and specifically make an express determination that the EFR is not covered by Section 6409(a); and (iii) include a clear explanation of the reasons for the denial.[33]

C. Removing Additional Barriers to Upgrading Existing Facilities.

WIA identifies other practices by localities that have no basis in Section 6409(a) or the Commission's rules—in particular, those that hold applicants to account for circumstances that are outside the applicant's control or are otherwise outside the scope of the EFR. Such practices frustrate upgrades to existing antenna structures and undermine the purpose of the EFR process that Congress and the Commission established. Clarifying that localities may not erect these regulatory barriers will speed collocations on and modifications to existing structures, consistent with Section 6409(a). Specifically, the Commission should rule that:

- Modifications to legal, non-conforming structures—*i.e.*, structures that were lawfully constructed but that do not satisfy new local requirements adopted after the structure was erected—do not per se constitute substantial changes;[34]
- Fall zone, setback, landscaping, fencing and other requirements that are adopted or retroactively adjusted after a structure is first constructed cannot be invoked to delay or deny an EFR; [35] and
- Blight on or other aesthetic concerns about a previously approved antenna structure or the ground area around it cannot render an application to install or modify antennas or other equipment on that structure ineligible for Section 6409(a) and may not be used to delay processing an EFR.[36]

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[33] *Id*. at 7.

[34] *Id*. at 19.

[35] *Id*. at 19-20.

[36] *Id*. at 16-17. This is not to suggest that a locality is powerless to remedy instances of blight, but rather that the locality cannot use such concerns as a basis to delay or deny an EFR.

IV. QUALIFYING CERTAIN COMPOUND EXPANSIONS FOR STREAMLINED REVIEW WILL EXPEDITE NEXT-GENERATION WIRELESS DEPLOYMENT.

Section 1.6100(b)(7)(iv) defines the installation of ground equipment or other work anywhere outside the compound's existing boundaries as a "substantial change," precluding an application to perform that work from qualifying as an EFR. The WIA Petition for Rulemaking demonstrates that the rule discourages modifications to existing structures or collocation of additional antennas on them, because associated ground equipment often needs to be installed just outside of the compound's existing boundaries to complete those upgrades. WIA thus asks the Commission to amend Section 1.6100(b)(7)(iv) to provide that only excavation that occurs more than 30 feet outside the current site boundaries constitutes a substantial change.[37]

This rule amendment will remove an unnecessary regulatory barrier and serve the public interest in promoting upgrades to existing facilities. There is an acute need for collocations because many towers were originally built to serve a single provider, which one or two equipment shelters in the compound could accommodate. But this tower model has shifted from single-tenant use to multi-tenant collocations, driven in part by the growth of independent neutral host companies. Hosting multiple providers requires placing more ground equipment, in turn requiring more space around the base of the tower. Yet where the collocation involves even the most minimal expansion of the existing site—even one foot—the work is considered to be a substantial change because Section 1.6100(b)(7)(iv) defines a "substantial change" to include "any excavation or deployment outside the current site."

The limit in Section 1.6100(b)(7)(iv) also contrasts with the more reasonable limit for new structures in Section III.B of the NPA, which provides that an application to completely

[37] WIA Petition for Rulemaking at 2-3; 7-9.

replace a tower is exempt from Section 106 review if it involves excavation that "does not expand the boundaries of the leased area or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site."[38] As WIA notes, Section 1.6100(b)(7)(iv) as currently written "creates unnecessary barriers to deployment and produces a counter-intuitive result: collocations that involve minor (less than 30-feet) compound expansions are treated as substantial increases, but new structures that involve ground excavation up to 30 feet outside of the boundary are not."[39] This disparity is not warranted. Aligning Section 1.6100(b)(7)(iv) with NPA Section III.B to allow work in a 30-foot "grace area" beyond the pre-existing compound to qualify as an EFR would remove this irrational distinction.

The current rule also undermines the Commission's longstanding policy to encourage collocations. By updating this rule to classify an application to perform excavation and other work up to 30 feet beyond the current site boundaries as an EFR, the Commission will promote more collocations, allow them to be completed faster, and help reduce the need to construct new facilities. Amending the rule as WIA requests would thus serve the public interest. CTIA urges the Commission to issue a notice of proposed rulemaking to make this narrow but important change to Section 1.6100(b)(7)(iv).

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[38] NPA § III.B.

[39] WIA Petition for Rulemaking at 10.

V. CONCLUSION.

WIA makes a compelling showing that some localities have erected barriers to deployments that seek to use existing antenna structures. Such misinterpretations of Section 6409(a) and the Commission's rules are thwarting the national policy to promote 5G and specifically to promote the use of existing facilities. By granting the CTIA and WIA petitions, the Commission will help effectuate Congress's objective to drive more intensive use of existing infrastructure, and will promote the availability of 5G and other wireless services to the American public.

Respectfully submitted,

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