
04/07/2025

Board of Zoning Adjustment
441 4th Street, NW
Washington, DC 20001

Re: TowerCo's and Verizon Wireless's Zoning Antenna Permit application ("Application") and Eligible Facilities Request for a fifteen-foot (15') extension and collocation of equipment on an existing wireless telecommunications facility ("Facility") located at 2500 Benning Road NE, Washington DC 20002 Parcel #01600042/ Site ID: DC0003_Spingarn

Dear Zoning Administrator:

As part of our Building Permit application, we are submitting this application as an eligible facilities request under Section 6409, referenced below.

Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act ("Section 6409") was adopted in 2012. Under Section 6409, your city retains discretionary zoning review over the construction of *new* towers, but simple collocations and/or equipment upgrades at existing telecommunications facilities must be approved. The new law 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." (Emphasis added.)

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.**" (Emphasis added.)

Also, the Federal Communications Commission issued a Wireless Infrastructure Report and Order on October 17, 2014 ("FCC Order") which established regulations that clarify and streamline the municipal approval process for eligible facilities requests under Section 6409. A copy of the FCC Order is enclosed herewith.

The FCC Order clarifies 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** [Section 6409]. 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. 1.40001(c)(1) (Emphasis added).

Verizon's Application is an Eligible Facilities Request under Section 6409

Verizon'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.”

As shown on the plans prepared by MRA dated 04/02/2025 Verizon's proposed installation consists principally of the following elements:

Verizon Wireless proposes (1) 21'0"x12'6" steel platform within a 18'6"x27'0" fenced compound. 12 antennas will be mounted on an existing 89' monopole with a proposed extension of 15'.

Accordingly, Verizon's installation involves **the** “collocation of new transmission equipment” that will increase the height of the structure and expand the compound area, however these modifications do not constitute a “substantial change. As a result, the installation “does not substantially change the physical dimensions of such tower or base station.” Therefore, these proposed equipment upgrades constitute an “eligible facilities request” under Section 6409 and must be approved.

Fifteen foot (15') tower extension with clarification of measurement.

The FCC Report clarifies that for eligible support structures that are towers, **a change is considered a substantial change if “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.”** 47 C.F.R. 1.40001(b)(7)(i). (Emphasis added). The FCC further clarifies in their Declaratory Ruling that section 1.6100(b)(7)(i) allows an increase in the height of the tower of up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of the tower. The top of other Carrier's antenna is at 89 feet, the bottom of Verizon's antenna is 95 feet, which is a separation of 6 feet and within the FCC “Substantial” threshold.

Further, DCMR (Zoning Regulations of 2016) Section 1311.4(b) explicitly states that “*A report from the Office of Planning is not required for collocation on an existing permitted antenna tower provided the installation would not increase the existing height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty feet (20 ft.), whichever is greater; [Emphasis added].* Section 1311.1 allows the

Zoning Administrator to take final action on an antenna tower permit application without a report from the Office of Planning when said report is exempted in accordance with Subtitle C §1311.4.

Timeline for Review and Approval

We would like to highlight an important timing requirement for processing this application. The FCC Order determined that **a municipality must act on an eligible facilities request within sixty (60) days of receiving the application**. 47 C.F.R. 1.40001(c)(2) (Emphasis added). (Note, the sixty (60)-day period is also known as the "Shot Clock"). Thus, the city must approve this application within sixty (60) days of its receipt. The FCC Order provides that upon a municipality's failure to act prior to expiration of the Shot Clock, the **"request shall be deemed granted"** and Verizon Wireless will be legally entitled to proceed with construction. 47 C.F.R. 1.40001(c)(4) (Emphasis added).

Note that the FCC Order does allow the Shot Clock to be tolled if an application is incomplete. However, in order to do so, a municipality must provide written notice that the application is incomplete within thirty (30) days of the submittal. 47 C.F.R. 1.40001(c)(3)(i). The notice must "clearly and specifically" describe the missing documents or information, 47 C.F.R. 1.40001(c)(3)(i), and, as previously mentioned, such documentation must be necessary to the determination of whether the application qualifies as an eligible facilities request. If the municipality requests additional information after the first thirty (30) days have passed, we will still provide any "reasonably related" information allowed under the FCC Order, but the Shot Clock will not be tolled.

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

If the Washington D.C. Office of Planning believes that this application does not qualify as an eligible facilities request under Section 6409, please let me know immediately. Otherwise, if you have any questions, please feel free to call or email me. Thank you for your cooperation.

Sincerely,

Samantha Eck

Samantha Eck
Senior Land Use Specialist