



## SECTION 6409(a) "SPECTRUM ACT" ADVISORY

**DATE:** April 7, 2015  
**TO:** LMD Staff and Interested Parties  
**FROM:** Keir Miller, Interim Planning Program Supervisor, Lane County - LMD  
**CC:** Andrew Clark, Assistant Lane County Legal Counsel  
**RE:** **Compliance with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (A.K.A. The Spectrum Act)**

### BACKGROUND

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 became law. Although this legislation was primarily implemented to extend payroll tax exemptions, the omnibus act contained many other unrelated provisions. Section 6409(a) of the act, also known as the Spectrum Act, was intended to advance wireless broadband service for public safety and commercial purposes and to provide for the creation of a broadband communications network for first responders. Since 2012 the Spectrum Act has arguably applied to all State and local governments. However, until recently, there was little precedent construing the act and the ambiguity of the statute's language resulted in differing interpretations by industry and local governments. On October 21, 2014, the Federal Communications Commission (FCC) unanimously approved rules (FC14-153) interpreting Section 6409(a). Pertinent elements of FCC order take effect on April 8, 2015.

Along with Section 704 of the Telecommunications Act of 1996 (Public Law 104-104), The Spectrum Act can be viewed as part of the ongoing effort by the wireless industry to achieve federal preemption over local telecommunications zoning regulations. While the constitutionality of the act will likely be challenged and may be repealed in whole or in part, the pressing issue for Lane County (along with many other State and local governments) is to establish an interim process for regulating certain wireless facilities, now that it appears our existing telecommunication regulations do not comport with some aspects of the Spectrum Act.

The following interim guidance is intended to help staff and other interested parties understand how the Land Management Division (LMD) will implement the changes promulgated by the Spectrum Act and subsequent FCC ruling until such time as Lane Code 16.264 is amended to conform to the legislation or it is repealed through the courts. The following guidance is subject to change should LMD's current understanding of the implementation requirements of Section 6409(a) evolve.

### OVERVIEW OF THE ACT

Section 6409(a) mandates that a State or local government must approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission

equipment on existing towers or base stations, that do not result in a *substantial change* to the physical dimensions of such tower or base station. Precisely what constitutes a substantial change is defined within the FCC ruling as are the types of wireless transmission equipment and support structures that are eligible under the act.

The FCC ruling clarifies that Section 6409(a):

- Applies to collocations, removals, or modification of equipment on wireless towers or base stations;
- Mandates that a State or local government “may not deny, and shall approve” any application covered by section 6409(a);
- Does not apply to collocation on a structure that is not a wireless tower or base station; and
- Does not apply if action substantially changes the physical dimensions of a tower or base station.

Regarding the process for reviewing an application under Section 6409(a), the FCC ruling also provides that:

- A State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
- A state or local government must approve an application covered by Section 6409(a) within 60 days from the date of filing, subject to tolling; the running of the period may be tolled by mutual agreement or upon notice that an application is incomplete, but not by a moratorium (an incomplete notice must be provided according with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996, codified as 47 U.S.C. § 332(c)(7)); and
- An application filed under Section 6409(a) is deemed granted if a State or local government fails to act on it within the requisite time period;

In the briefest and most essential terms, Section 6409(a) restricts local land use review of modifications and collocations by establishing the substantial change test as the primary eligibility determinant for the nearly wholesale review exemptions afforded by the Spectrum Act and reduces the processing shot clock from 90 days to 60 days.

The wireless industry, in consultation with National Association of Counties and the National League of Cities, has prepared a review checklist and model ordinance, included as attachments 1 and 2 to this memo. These materials are intended to help jurisdictions understand and implement the Act and subsequent FCC ruling. Although helpful to a degree, these documents have not yet been formally reviewed by County Legal Counsel. Any information provided therein or any other related information provided by the industry, should be viewed with some degree of caution. When questions concerning the interpretation of the Act arise staff should rely primarily upon this document, the FCC Order (FC14-153) and any guidance provided by County Legal Counsel.

## REVISED REVIEW PROCESS

Beginning April 8, 2015, LMD will implement the following measures to comply with the Spectrum Act:

1. Applications for all facilities siting requests, whether considered by the applicant as eligible or not under Section 6409(a), must be submitted on the application form included as attachment 3 of this memo.
2. A two-part review process will be used to evaluate facilities siting requests. Part 1 of the application form requires that the applicant submit sufficient evidence to demonstrate if the proposed request is eligible pursuant to Section 6409(a). Part 2 of the application requests information demonstrating how the approval criteria of LC 16.264(5) have been satisfied.
3. Applicants who feel they meet the eligibility requirements of Section 6409(a) are not required to submit information addressing LC 16.264(5).
4. If after, reviewing the information provided in Section 1, it is determined that the proposed facility is not eligible under Section 6409(a), the application may be processed pursuant to LC16.264(5). If insufficient information has been provided to enable staff to review the proposal pursuant to LC16.264(5) it shall be deemed incomplete in accordance with the same deadlines and requirements applicable under Section 704 of the Telecommunications Act of 1996.

## TIMEFRAMES

The following timelines are applicable to eligible facilities citing requests:

- Within 60 days of the application filing, accounting for tolling, staff shall approve the application if covered by Section 6409(a).
- The tolling period may commence by (1) mutual agreement, or (2) upon written notice to applicant that application is incomplete. The notice must be made within the first 30 days following an application submission, and it must identify the missing information and the code provision, ordinance or application instruction that requires the submission of the information.
- Within 10 days staff must notify the applicant that the supplemental submission (after notification of incomplete application) did not provide the information identified in the original notice that specified the missing information.
- The failure to approve an application within the time for action will result in a deemed grant<sup>1</sup> of the application.

Proposals that constitute a substantial change, and therefore are not eligible, may still be approvable but must successfully meet the full criteria contained in LC 16.264(5). These non-eligible proposals will be subject to the 90 day shot clock.

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<sup>1</sup> A state or local authority may challenge an applicant's written assertion of a deemed grant in any court of competent jurisdiction when it believes the underlying application did not meet the criteria in Section 6409(a) for mandatory approval, would not comply with applicable building codes or other non-discretionary structural and safety codes, or for other reasons is not appropriately "deemed granted." (FC14-153 paras. 234-236)

**FEES**

The current collocation application fee of \$2,600.00 remains in effect for this revised process.

**ATTACHMENTS**

Attachment 1 – Sample Section 6409(a) Review Checklist (for informational purposes only)

Attachment 2 – Sample Section 6409(a) Model Ordinance (for informational purposes only)

Attachment 3 – Revised Collocation Application (for immediate use)

## Wireless Facility Siting: Section 6409(a) Checklist

Note: Use of this checklist is voluntary. It is meant to provide a framework for those jurisdictions needing assistance in complying with Federal timeframes to act on Eligible Facilities Requests for modifications to existing wireless towers or base stations that do not substantially change the physical dimensions of such towers or base stations. This document is not intended to provide legal guidance; jurisdictions are encouraged to consult an attorney on legal matters.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), reads in pertinent part:

“...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).

### Initial Application Review

- A jurisdiction should contemplate three types of wireless facility applications:
  - o Collocation or modification that is not a substantial change (“Eligible Facilities Request”);
  - o Collocation or modification that is a substantial change; OR
  - o New facility
- If the application is for a collocation or modification, the documentation provided by the applicant must state whether the collocation or modification is a substantial change. – See Appendix A for definition of “substantial change.”
  - o Note: The FCC has clarified that “collocation” includes the first placement of transmission equipment on a wireless tower or base station.<sup>1</sup>
- Appropriate application fee should be in place, if applicable.
- Check application for completeness
  - o Note: Must notify applicant in writing of incomplete application **within 30 days** of submission. This tolls the clock (i.e. stops 60 day deadline from running) provided it identifies the specific material missing from the application and cites the basis for requiring the submission of such material. Once applicant submits supplemental materials, the clock again may be tolled if the state or local government notifies applicant in writing **within 10 days** that supplemental submission is also incomplete. If the application is deemed incomplete, the written notice must specify the missing information and the code, provision, ordinance, application instruction or other publically-stated procedures that requires the information.

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<sup>1</sup> See 2014 Infrastructure Order ¶ 179.

### **Site/Attachment Information**

- Summary of site location (address) and ownership of structure to which collocation or modification applies
  - o Examine: Ownership of support structure, dimensions of support structure prior to collocation (to measure whether collocation or modification would constitute a “substantial change”)
  - o Property boundaries, setbacks, elevation and dimensions of collocation or modification project
- Summary and scope of work to be completed on site
- Changes to current site
  - o Examine: Will collocation or modification defeat the effect of existing concealment elements? Concealment elements include, but are not limited to, artificial tree branches or painting to match a supporting façade.<sup>2</sup>

### **Equipment Specifications**

- Equipment type
- Equipment specifications (Example: dimensions and weight)
- Installation status: E.g., removing, updating, collocating
- Equipment mount type
- FCC antenna structure registration number (if applicable)
- Will collocation equipment require lighting?

### **Compliance with Federal, State and Local Ordinances and Codes**

- Conformance with local zoning and building and safety codes should be reviewed by the jurisdiction’s building or planning department
  - o Examine: E.g., setback requirements, electrical power safety, wind resistance safety
  - o Ensure that facility was lawfully constructed
- Post-installation maintenance schedule
- Any required certifications
  - o Example: Applicant will comply with all applicable federal, state, and local building codes supported by structural analysis

### **Legal**

- Ensure jurisdiction’s applicable insurance/surety bond/other financial requirements are satisfied for installation

### **Contact Information**

- Primary and secondary contact information for wireless facility project coordinators (local government and industry)

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<sup>2</sup> See 2014 Infrastructure Order ¶ 200.

- Emergency contact information in case of tower/collocation disruption

### **Timeframe<sup>3</sup>**

- Within 60 days of the application filing, accounting for tolling, a state or local government shall approve the application if covered by Section 6409(a).
- Tolling period may commence by (1) mutual agreement, or (2) upon written notice to applicant that application is incomplete within the first 30 days following an application submission, as long as notice identifies the missing information, as well as the code provision, ordinance, or application instruction that requires the submission of the information.
- Local jurisdictions have 10 days to notify the applicant that the supplemental submission (after notification of incomplete application) did not provide the information identified in the original notice that specified the missing information.
- The failure to approve an application within the time for action will result in a deemed grant of the application.
  - o A state or local authority may challenge an applicant's written assertion of a deemed grant in any court of competent jurisdiction when it believes the underlying application did not meet the criteria in Section 6409(a) for mandatory approval, would not comply with applicable building codes or other non-discretionary structural and safety codes, or for other reasons is not appropriately "deemed granted."

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<sup>3</sup> The rule implementing the 2014 Infrastructure Order, 47 CFR § 1.40001 ("Wireless Facilities Modifications") becomes effective April 8, 2015; however, §§ 1.40001(c)(3)(i), 1.40001(c)(3)(iii), and 1.140001(c)(4) (reproduced below), which have new information collection requirements, will not be effective until approved by the Office of Management and Budget (OMB). The FCC will publish a document in the Federal Register announcing OMB approval and the relevant effective date.

**47 CFR 1.40001(c)(3)(i)**—To toll the 60-day review timeframe on grounds that an application is incomplete, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of Section 1.140001.

**47 CFR 1.140001(c)(3)(iii)**—Following a supplemental submission from the applicant, the State or local government will have 10 days to notify the applicant in writing if the supplemental submission did not provide the information identified in the State or local government's original notice delineating missing information. The timeframe for review is tolled in the case of second or subsequent notices of incompleteness pursuant to the procedures identified in paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

**47 CFR 1.140001(c)(4)**—If a request is deemed granted because of a failure to timely approve or deny the request, the deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

## APPENDIX A

### How does the FCC define “substantial change”?

The FCC has determined that a modification substantially changes the physical dimension of a wireless tower or base station if it meets ANY of the following criteria:

- ❖ Towers outside public rights of way<sup>4</sup>
  - Increases height by more than 20 feet or 10 percent, whichever is greater;
  - Protrudes from edge of tower more than 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater;
  
- ❖ Towers in public rights of way and for all base stations
  - Increases height of tower or base station by more than 10 percent or 10 feet, whichever is greater;
  - Protrudes from the edge of the structure more than 6 feet;
  
- ❖ Involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
  
- ❖ Entails any excavation or deployment outside the current site of the tower or base station;
  
- ❖ Would defeat existing concealment elements of the tower or base station; or
  
  
- ❖ Does not comply with conditions associated with the prior approval of the tower or base station unless non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.

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<sup>4</sup> Section 6409(a) applies only to state and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities, e.g., as owners of support structures or real property. *See* 2014 Infrastructure Order ¶ 239.

## APPENDIX B

### Application Elements that May Voluntarily be Adopted by Local Jurisdictions

A jurisdiction should review whether existing application processes meet the requirements of the FCC's 2014 Infrastructure Order. A jurisdiction may consider including the following elements in its application form for an Eligible Facilities Request:

1. Applicant's certification that they have the legal authority to collocate/modify support structure which may include approvals from the jurisdiction authorizing the initial placement of transmission equipment on the tower or other structure.
2. The identity of the owner of the parcel.
3. Detailed site plan. Except where the facility will be located entirely within an existing structure or an existing building, a detailed site plan should show:
  - (a) Existing and proposed improvements. The location and dimensions of the existing facility and the maximum height above ground of the facility (also identified in height above sea level).
  - (b) Elevation. The benchmarks and datum used for elevations.
  - (c) Design. The design of the facility, including the specific type of support structure and the design, type, location, size, height and configuration of applicant's existing and proposed antennas and other equipment. The method(s) by which the antennas will be attached to the mounting structure should be depicted.
  - (d) All existing setbacks.
  - (e) Location of accessways. The location of all existing accessways and the location and design of all proposed accessways.



## Wireless Facility Siting: Model Chapter Implementing Section 6409(a) and

### Wireless Facility Siting: Section 6409(a) Checklist

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. In October 2014, the Federal Communications Commission unanimously approved rules interpreting Section 6409(a).

In an effort to assist jurisdictions with limited resources to comply with the new rules, wireless industry associations PCIA and CTIA affirmatively committed to working with local government associations – the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors – to: 1) develop a model ordinance and application for reviewing eligible facilities requests under Section 6409(a); 2) distribute wireless siting best practices; 3) create a checklist that local government officials can use to help streamline the review process; and 4) hold webinars regarding the application process.

As we have made clear, neither the model ordinance nor checklist is intended to provide legal advice; we strongly encourage jurisdictions to consult with an attorney on legal matters. Further, neither the model ordinance nor checklist imposes any legal obligation whatsoever on any jurisdiction. These documents are meant only to provide a framework that jurisdictions may voluntarily use to determine if their current wireless siting review process complies with the FCC's new rules.

The FCC rules do not require jurisdictions to use or adopt these documents. Some localities may need to revise their existing local laws to the extent that they conflict with the new rules. Some localities with consistent local laws or no laws that regulate wireless deployments may not need to take any legislative action for compliance.

Some may view the model ordinance and checklist as overly broad or too narrow in scope. The presence or absence of any provision or item should not be seen as either an express endorsement or rejection of the provision or item. Again, these documents are not intended to provide legal advice.

Legal or regulatory action challenging the FCC's rules may be taken. In the event any such efforts result in a change in the rules, we will notify our members of such via websites, publications, and all other appropriate means.

Finally, if your jurisdiction has an ordinance or checklist implementing Section 6409(a) and the FCC's rules, please send it to Julia Pulidindi at: [Pulidindi@nlc.org](mailto:Pulidindi@nlc.org). We will make these materials available to our members. In addition, in preparation for the development of *voluntary* wireless broadband facilities siting best practices, we encourage you to share your experiences in dealing with the new rules with us. Tell us what works, what doesn't, and how the process could be made better.

## Wireless Facility Siting: Model Chapter Implementing Section 6409(a)

Note: Use of this model chapter is voluntary. It is meant to provide a framework for those jurisdictions needing assistance in complying with Federal timeframes to act on Eligible Facilities Requests for modifications to existing wireless towers or base stations that do not substantially change the physical dimensions of such towers or base stations. This document is not intended to provide legal guidance; jurisdictions are encouraged to consult an attorney on legal matters.

### I. PURPOSE

This Chapter implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”),<sup>1</sup> as interpreted by the Federal Communications Commission’s (“FCC” or “Commission”) Acceleration of Broadband Deployment Report & Order,<sup>2</sup> which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

### II. DEFINITIONS<sup>3</sup>

For the purposes of this Chapter, the terms used have the following meanings:<sup>4</sup>

- a. *Base Station*. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:
  - i. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
  - ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).
  - iii. Any structure other than a tower that, at the time the relevant application is filed with [jurisdiction] under this section, supports or houses equipment described in paragraphs (a)(i)-(a)(ii) that has been reviewed and approved

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<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, 112 Pub. L. 96, *codified at* 47 U.S.C. 1455.

<sup>2</sup> Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order*, 29 FCC Rcd 12865 (2014) (“2014 Infrastructure Order”).

<sup>3</sup> These definitions were adapted from the FCC’s own definitions. *See generally* 47 CFR § 1.40001(b). For a discussion of these definitions, see 2014 Infrastructure Order ¶¶ 145-204.

<sup>4</sup> A jurisdiction may wish to incorporate these definitions, which are specific to Section 6409(a), into its wireless facilities ordinance more broadly; alternatively, these can be stand-alone definitions solely for Eligible Facilities Requests under Section 6409(a).

under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with [jurisdiction] under this section, does not support or house equipment described in (a)(i)-(ii) of this section.

- b. *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- c. *Eligible Facilities Request.* Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
  - i. Collocation of new transmission equipment;
  - ii. Removal of transmission equipment; or
  - iii. Replacement of transmission equipment.
- d. *Eligible support structure.* Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with [jurisdiction] under this section.
- e. *Existing.* A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.
- f. *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted t that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- g. *Substantial Change.* A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
  - i. For towers other than towers in the public rights-of-way, 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; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;<sup>5</sup>

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<sup>5</sup> Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. 47 CFR § 1.40001(b)(7)(i)(A).

- ii. For towers other than towers in the public rights-of-way, 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; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- iv. It entails any excavation or deployment outside the current site;
- v. It would defeat the concealment elements of the eligible support structure; or
- vi. 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, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (g)(i)-(g)(iv) of this section.<sup>6</sup>
- h. *Transmission Equipment.* Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- i. *Tower.* Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

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<sup>6</sup> See 2014 Infrastructure Order ¶ 200. This section identifies the limited number of prior conditions of site approval that may not be used to determine whether a modification qualifies as a substantial change. *Id.*

### III. APPLICATION REVIEW<sup>7</sup>

- a. *Application.* [Jurisdiction] shall prepare and make publicly available an application form which shall be limited to the information necessary for [jurisdiction] to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.
- b. *Type of Review.* Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, [identify appropriate department– e.g., Public Works, Planning] shall review such application to determine whether the application so qualifies.<sup>8</sup>
- c. *Timeframe for Review.* Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, [jurisdiction] shall approve the application unless it determines that the application is not covered by this Chapter.
- d. *Tolling of the Timeframe for Review.* The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by [jurisdiction] and the applicant, or in cases where [jurisdiction’s reviewing body] determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
  - i. To toll the timeframe for incompleteness, [jurisdiction] must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.
  - ii. The timeframe for review begins running again when the applicant makes a supplemental submission in response to [jurisdiction’s] notice of incompleteness.
  - iii. Following a supplemental submission, [jurisdiction] will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- b. *Interaction with Section 332(c)(7).*<sup>9</sup> If [jurisdiction] determines that the applicant’s request is not covered by Section 6409(a) as delineated under this Chapter, the

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<sup>7</sup> This section was adapted from the FCC’s rules. *See generally* 47 CFR § 1.40001(c). For a discussion of application review processes, see 2014 Infrastructure Order ¶¶ 205-236.

<sup>8</sup> The jurisdiction may wish to review whether existing processes meet the requirements of the 2014 Infrastructure Order. *See, e.g.,* 47 CFR § 1.40001(c)(1); 2014 Infrastructure Order ¶ 214.

<sup>9</sup> *See* 47 U.S.C. § 332(c)(7); *In re* 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

presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of [jurisdiction's] decision that the application is not a covered request. To the extent such information is necessary, [jurisdiction] may request additional information from the applicant to evaluate the application under Section 332(c)(7)<sup>10</sup>, pursuant to the limitations applicable to other Section 332(c)(7) reviews.<sup>11</sup>

- c. *Failure to Act.* In the event [jurisdiction] fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- d. *Remedies.* Applicants and [jurisdiction] may bring claims related to Section 6409(a) to any court of competent jurisdiction.

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All Wireless Siting Proposals as Requiring a Variance, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) ("Shot Clock Ruling"), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-99A1\\_Rcd.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-99A1_Rcd.pdf).

<sup>10</sup> See 2014 Infrastructure Order ¶ 220. For example, an applicant may submit a request for review under Section 6409(a) asserting the modification does not substantially change the physical dimensions of the facility, when in fact the application proposes a substantial change and is therefore not covered under Section 6409(a). See *id.*

<sup>11</sup> See 2014 Infrastructure Order ¶¶ 258-260 (prescribing limits on application review and tolling for applications under Section 332(c)(7)).

Date Received:

LAND MANAGEMENT DIVISION



LAND USE APPLICATION - DIRECTOR  
Telecommunications Tower: Collocation

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97408 Planning: 682-3577

For Office Use Only: FILE #

FEE:

GENERAL SUBMITTAL INFORMATION

Applicant (print name): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Applicant Signature: \_\_\_\_\_

Agent (print name): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Agent Signature: \_\_\_\_\_

Land Owner (print name): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*Through applying for this application I authorize the Lane County Planning Director, designee, or hearings official to enter upon the property subject of the application to conduct a site visit if necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.*

Land Owner Signature: \_\_\_\_\_

LOCATION

Township Range Section Taxlot(s)

Site address

Proposal (Describe the work that is being proposed)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ADJOINING OWNERSHIP** Is any adjacent property under the same ownership as the subject property? List the map and tax lot(s).

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**SITE PLAN** A site plan must be included. Refer to the handout entitled "How to prepare your plot plan". Identify nearby driveways. Driveways spacing standards are contained in Lane Code 15.138.

**ZONING** \_\_\_\_\_

**ACREAGE:** \_\_\_\_\_

**FIRE DISTRICT:** \_\_\_\_\_

**DESCRIBE THE ACCESS TO THE PROPERTY (circle the answer):**

State Hwy                      County Rd                      Public Rd                      Private Easement

Road name: \_\_\_\_\_

**NUMBER OF EXISTING DWELLINGS ON PARCEL:** \_\_\_\_\_

**EXISTING IMPROVEMENTS:** What structures or development does the property contain? Will any structure be removed/demolished besides the existing dwelling?

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**PHYSICAL FEATURES:** Describe the following physical features of the property.

- The vegetation on the property: \_\_\_\_\_

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- The Topography of the property: \_\_\_\_\_

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- Any Significant Features of the property (steep slopes, water bodies, etc.): \_\_\_\_\_

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**PART 1 – SPECTRUM ACT EXEMPTION ELIGIBILITY REVIEW**

**EQUIPMENT SPECIFICATIONS** Provide documentation describing the following:

1. Installation status (e.g., removing, updating, collocating)
2. Type of equipment involved (description)
3. Proposed equipment specifications (dimensions and weight)
4. Tower or base station specification (dimensions prior to collocation)
5. Tower or base station specifications (design dimensions after proposed to collocation)
6. Equipment mount type
7. FCC antenna structure registration number (if applicable)
8. Will collocation equipment require lighting? Yes \_\_\_\_\_ No\_\_\_\_\_ (check 1)
9. Is the facility proposed on a tower within a public right of way? Yes \_\_\_\_\_ No\_\_\_\_\_ (check 1)
10. Has the tower or base station been lawfully permitted by Lane County? Yes \_\_\_\_\_ No\_\_\_\_\_ (check 1)
11. If the answer to question 10 is yes, then provide the approved building permit number:\_\_\_\_\_

**ELIGIBILITY REVIEW**

Provide a detailed narrative describing how the proposed modification does not constitute a substantial change as that term is defined by the Federal Communications Commission Ruling (FC14-145). Specifically state how the proposal will or will not trigger the 6 substantial change thresholds listed below. Where necessary attach additional supporting documentation:

1. For towers other than towers in the public rights-of-way, will the proposal 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? For other eligible support structures, will the proposal increases the height of the structure by more than 10% or more than ten feet, whichever is greater?

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2. For towers other than towers in the public rights-of-way will the proposal 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? For other eligible support structures, will the proposal involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet?

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3. For any eligible support structure, will the proposal involve the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, will the proposal involve the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else will the proposal involve the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure?

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4. Does the proposal entail any excavation or deployment outside of the current site?

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5. Will the proposal defeat the effect of existing concealment elements? Concealment elements include, but are not limited to, artificial tree branches or painting to match a supporting façade.

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6. Will the proposal fail to comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is *substantial change* as that term is defined in the October 21, 2014 Federal Communications Commission (FCC) ruling FC14-153.

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**PART 2 – LC 16.264 REQUIRED SUBMITTALS**

**NOTE: Completion of this section is not required for eligible facilities qualifying for the Section 6409(a) “Spectrum Act “exemption .**

**LC 16.264(5)(b) Required submittals. An application for a collocation shall include the following information:**

\_\_\_ (1) A site plan, drawn to scale, showing:

- (A) Structures. All existing and proposed structures on the site. Include any dwellings or schools within 1200 feet of the tower;
- (B) Access. The access road to the site and the public road serving that access road. Submit all necessary easements for access to the site; and
- (C) Taxlots. Identify the taxlot containing the telecommunication facility and all taxlots crossed by the access road.

\_\_\_ (2) A description of the tower design and height. The description shall include:

- (A) A site-specific study of the tower site identifying the proposed color and surfacing of the tower, collocation, and ancillary facilities;
- (B) The engineered design capacity of the tower in terms of the number and type of collocations it is designed to accommodate.

\_\_\_ (3) If the collocation is within 14,000 feet of an airport, provide the FAA registration number for the tower structure, or documentation showing that the tower does not require registration.

\_\_\_ (4) Documentation demonstrating that the Oregon Department of Aviation has reviewed the proposal. When the proposed collocation does not increase the height of the tower, documents from the ODA approving the tower may be substituted.

- \_\_\_ (5) A signed statement from the property owner indicating awareness of the removal responsibilities of LC 16.264(5)(c)(ii). A lease agreement or similar authorization for the proposed use from the federal government that includes a removal requirement may be substituted for applications involving telecommunication facilities located on federal land.
- \_\_\_ (6) Signature(s) of the property owner(s) on the application form or a written statement from the property owner(s) granting authorization to proceed with the land use application. A lease agreement or similar authorization for the proposed use from the Federal government may be substituted for applications involving telecommunication facilities located on federal land.
- \_\_\_ (7) Certification by an Oregon-registered professional engineer that the telecommunication facility, as amended by the proposed collocation, complies with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).
- \_\_\_ (8) Certification by an Oregon-registered professional engineer that the telecommunication facility will support the proposed collocated equipment.
- \_\_\_ (9) Documentation showing that the applicant has an FCC license for the geographic region and for the service proposed by the collocation.
- \_\_\_ (10) A performance bond payable to Lane County and acceptable to the Director to cover the cost of removal of the collocation, ancillary facilities, and restoration of the site to the way it appeared before collocation approval. – This cannot be made a condition of approval.
- \_\_\_ (11) Other information requested in the application form provided by the Director, such as but not limited to, peer review by an independent engineering firm of the proposed telecommunications facility system design. During the review and approval process, the Director may request additional information including but not limited to, balloon tests, photo simulations, and other measures of visual impact.

**PART 2 – LC 16.264 APPROVAL CRITERIA**

**NOTE: Completion of this section is not required for eligible facilities qualifying for the Section 6409(a) “Spectrum Act “exemption.**

**LC 16.264(3) Standards applicable to all telecommunication facilities.**

Answer every question. Attach additional pages if necessary.

**(a) Telecommunication facilities shall be limited to the height necessary to provide the service, not to exceed 200 feet in height from ground level.**

Height of the collocation from ground level: \_\_\_\_\_

**(b) Based on the existing conditions and vegetation at the site, telecommunication facilities shall be designed and constructed to reduce visibility of the facilities. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.**

**(i) The transmission tower shall be surfaced in a non-reflective material that minimizes glare and is colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background.**

**(ii) The antenna, related telecommunication equipment and ancillary facilities shall be surfaced in non-reflective material to match the transmission tower. If not attached to a transmission tower, they shall be colored similar to the adjacent background.**

How will the collocation comply with these standards? \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(c) Consideration shall be given to other sites and equipment that would have less visual impact than those proposed. The applicant shall demonstrate that less intrusive sites and equipment are not available or do not provide the communication coverage necessary to provide the service. Visual impact can be measured by techniques including, but not limited to, balloon tests and photo simulations.**

What evidence are you submitting that you have complied with this requirement? Attach additional pages if necessary. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(d) No lighting of telecommunication facilities is allowed, except as required by the Federal Aviation Administration, Oregon Department of Aviation or other federal or state agencies. Required lighting shall be shielded from the ground to the extent it does not violate state or federal requirements.**

Will the collocation have any lighting? Yes No

If Yes, supply proof that a federal or state agency requires the lighting.

**(e) Equipment areas shall be enclosed by a chain link fence or equivalent.**

How will be equipment area be enclosed? \_\_\_\_\_  
\_\_\_\_\_

**(f) Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited.**

Will there be any signs? Yes No

**(g) Maintenance and repair of a lawfully existing telecommunication facility does not require a land use application approval.**

**(h) Changeouts. The changeout of an existing transmission tower or collocation does not require a land use application when the following criteria apply:**

- (i) The new equipment does not increase the tower height or base diameter.**
- (ii) No new lights are proposed unless required by the Oregon Department of Aviation (ODA) or the Federal Aviation Administration (FAA).**
- (iii) The new equipment does not increase the number of antennas or external transmitters. Existing antennas and external transmitters may remain for a period not to exceed six (6) months in order to accommodate the transfer of service from the existing antennas or transmitters to the replacement antennas or transmitters.**
- (iv) The replacement antennas or external transmitters shall not exceed the size (e.g., area or length) of existing antennas or transmitters by more than twenty (20) percent.**
- (v) The new equipment shall have a similar exterior color as the existing equipment.**

If your project complies with LC 16.264(g) or (h), a land use application is not required.

**(i) Within a forest zone, the following standards shall apply:**

- (i) A fuel break shall extend 50 feet surrounding ancillary facilities containing propane or gas powered generating equipment. Except for trees, vegetation within the fuel break shall be maintained at less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet above ground) branches. Nonflammable materials (i.e., gravel) shall be placed within 30 feet surrounding ancillary facilities that contain propane or gas powered generating equipment.**

**(ii) Private roads and driveways that provide access to transmission towers in the forest zones shall comply with the Fire Safety Design Standards of LC 16.211(8)(e)(i) through (vii).**

These firebreak standards will be a condition of approval in the forest zones.

**(j) Notice. In lieu of the notice area in LC 14.100(4) and 14.300(3)(d), when the application involves a leased area notice shall be sent to landowners and applicable community organizations recognized by the Lane County Board of Commissioners in LM 3.513, within ½ mile of the leased area. If the property does not contain a leased area, notice shall be sent as required by LC 14.100(4) or 14.300(3)(d), as applicable.**

The Land Management Division will send notice as required in subsection (j).

**LC 16.264(5)(c) Performance standards.**

**Collocations shall comply with the following:**

**(i) All collocations on the structure shall comply with the non-ionizing electromagnetic radiation (NIER) emission standards as set forth by the Federal Communications Commission (FCC).**

**(ii) Any collocation and ancillary facilities authorized under this subsection shall be removed after one year of non-use and the approval shall expire.**

**(iii) The provider shall maintain an FCC license for the geographic region and for the service provided by the collocation. (Revised by Ordinance 4-02, Effective 4.10.02; 17-04, 3.18.05)**