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# The FCC's New Wireless Facility Rules



**American Planning Association**

*Making Great Communities Happen*

November 5, 2014  
Washington D.C.



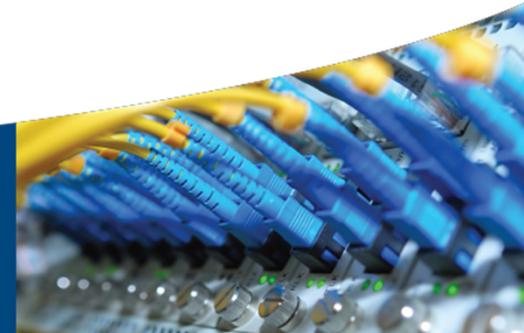
**BEST BEST & KRIEGER LLP**  
ATTORNEYS AT LAW

Gerard L. Lederer  
James R. Hobson  
Matthew K. Schettenhelm

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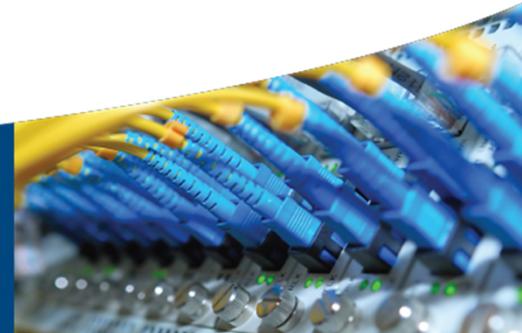


Telecommunications Law



# Caveat

This presentation should not be considered legal advice, and it does not create an attorney-client relationship. It represents our best thinking on issues and developments arising from the FCC's Wireless Infrastructure Report & Order. Should you disagree with any conclusion or suggestion, or if you would simply like to add to the discussion, email [Gerard.Lederer@bbklaw.com](mailto:Gerard.Lederer@bbklaw.com) or provide a comment in the area provided on your screen.



# FCC Report and Order

Federal Communications Commission

FCC 14-153

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Acceleration of Broadband Deployment by ) WT Docket No. 13-238  
Improving Wireless Facilities Siting Policies )  
)  
Acceleration of Broadband Deployment: ) WC Docket No. 11-59  
Expanding the Reach and Reducing the Cost of )  
Broadband Deployment by Improving Policies )  
Regarding Public Rights of Way and Wireless )  
Facilities Siting )  
)  
2012 Biennial Review of ) WT Docket No. 13-32  
Telecommunications Regulations )

## REPORT AND ORDER

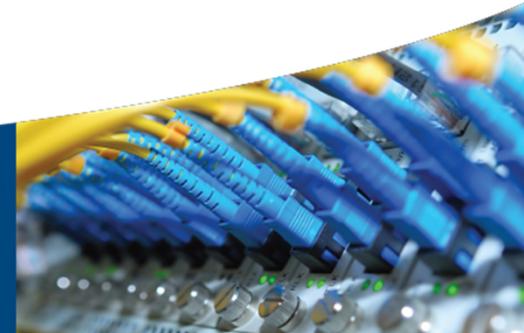
Adopted: October 17, 2014

Released: October 21, 2014

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly  
issuing separate statements.

## 155 Page Report and Order

- Adopted October 17,
- Released October 21,
- **Published in Fed. Register on November \_\_\_\_\_, 2014**
- [Detailed summary](#)



# Outline

- The New FCC Rules
  - 6409(a) Collocations
    - Traditional Towers
    - DAS and other small cells
  - 332(c)(7)
  - NEPA
  - Historic Preservation
  - Temporary Towers
- Your Responses
  - Mandatory
  - Optional



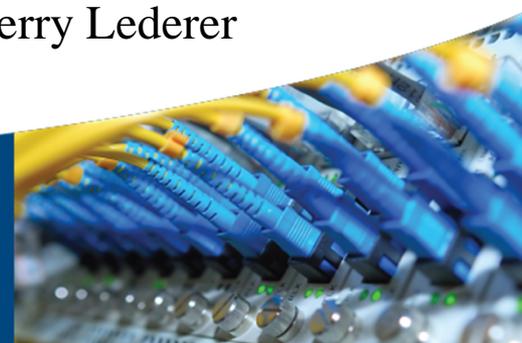
Matthew Schettenhelm



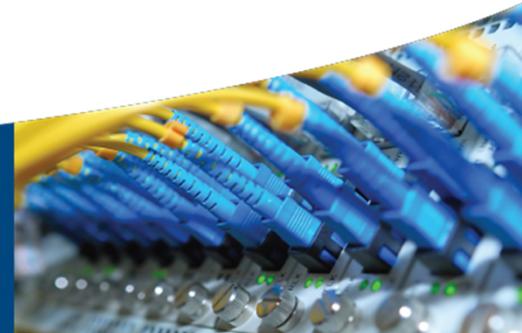
James Hobson



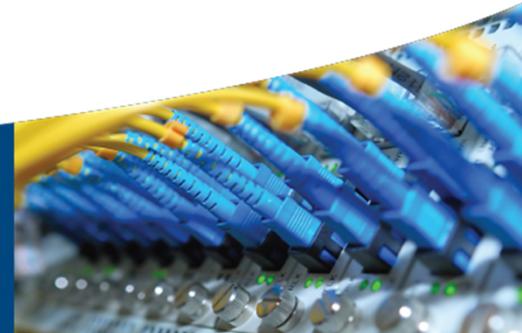
Gerry Lederer

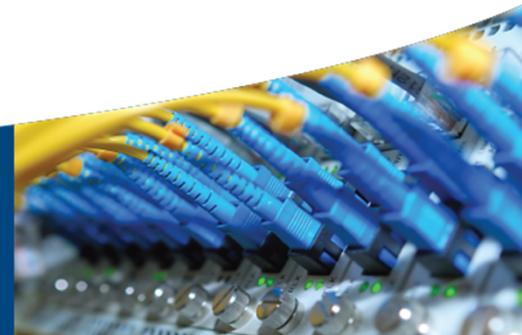


*What are the new FCC rules and  
how do they affect you?*

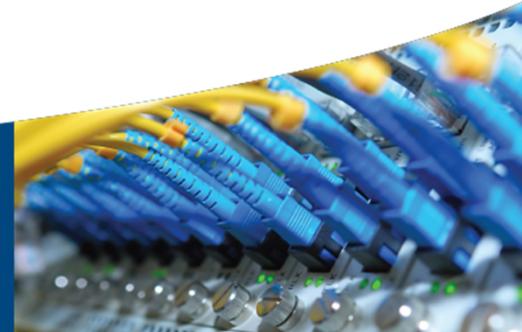


# Big picture

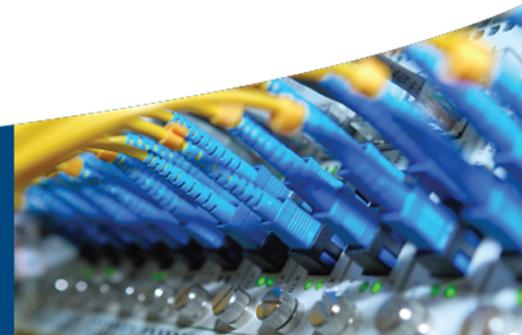




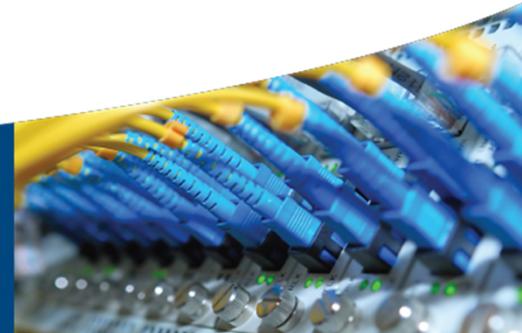
&



# Small cells



# Distributed antenna systems ("DAS")











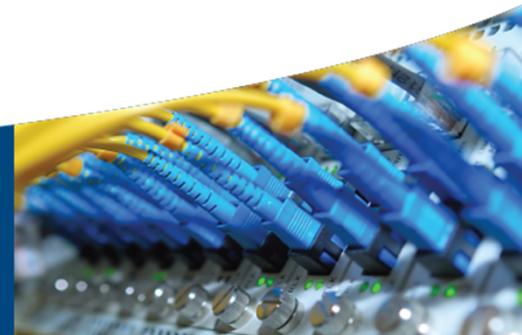




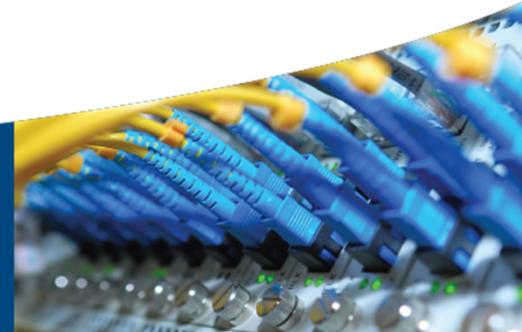




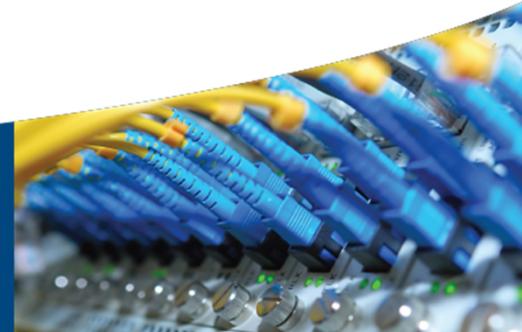
40,000+ small cells



1,000 additional DAS

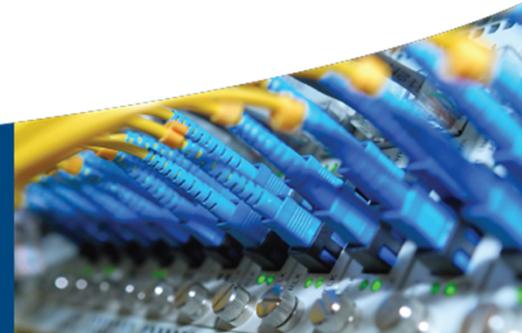


# What legal approvals?



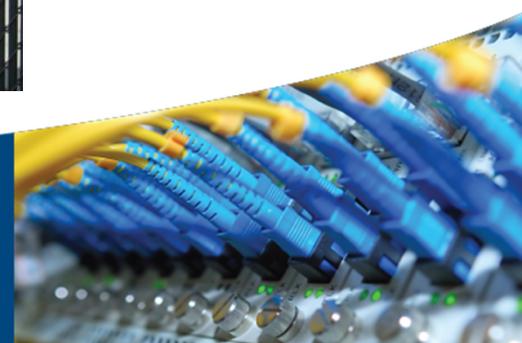
What legal approvals?

# (1) Proprietary



What legal approvals?

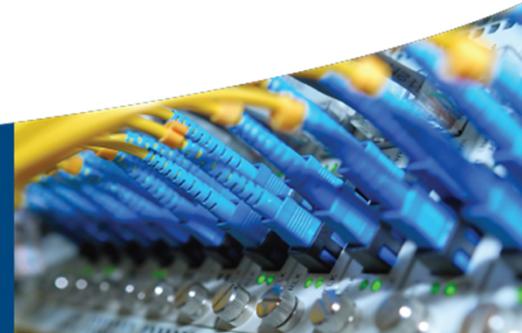
## (2) Regulatory



# (1) Proprietary



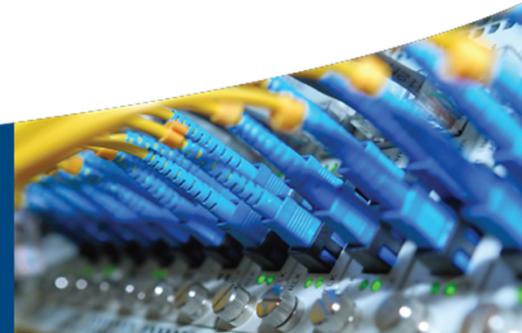
Typically a lease or license



# (1) Proprietary



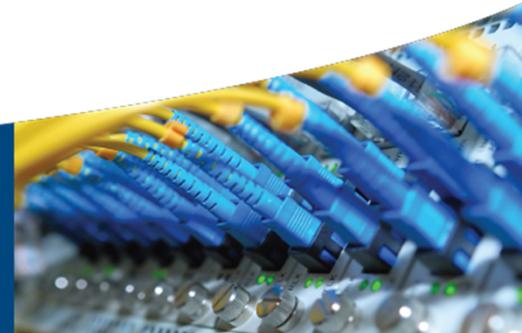
Key lesson #1:



# (1) Proprietary



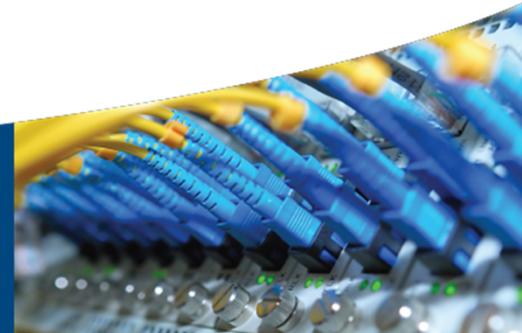
FCC rules do *NOT* limit



## (2) Regulatory



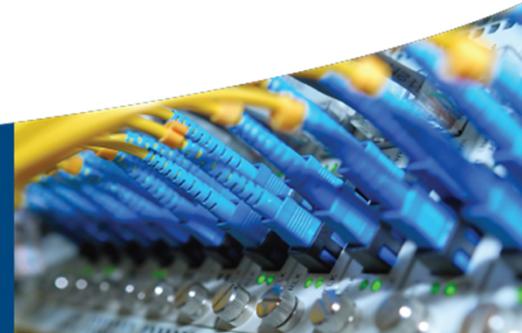
Two categories:



## (2) Regulatory



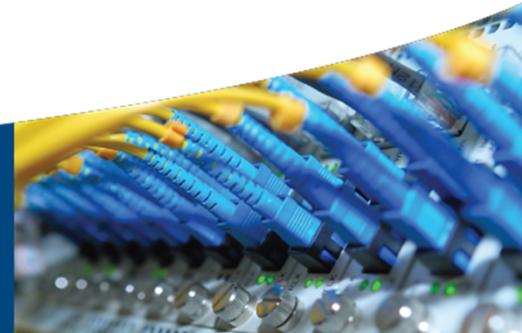
federal



## (2) Regulatory



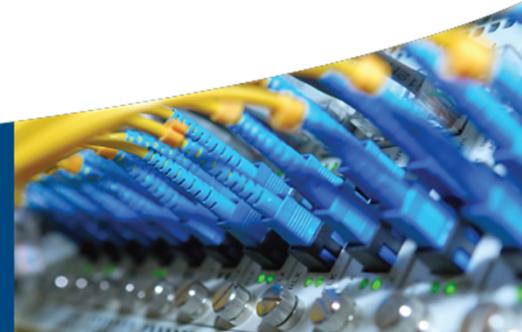
State and local



## (2) Regulatory



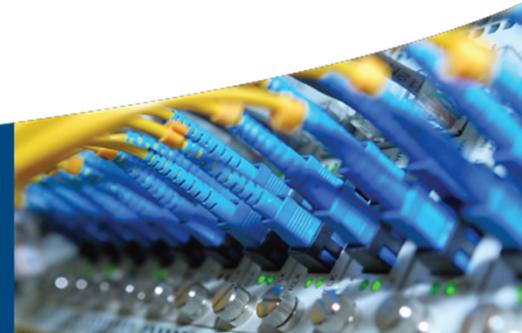
FCC rules *do* limit



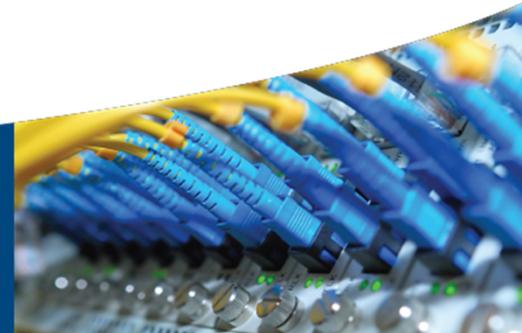
## (2) Regulatory



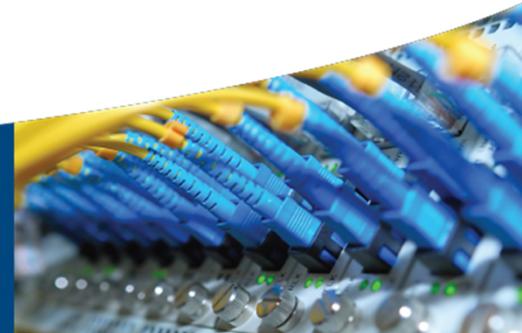
*(significantly)*



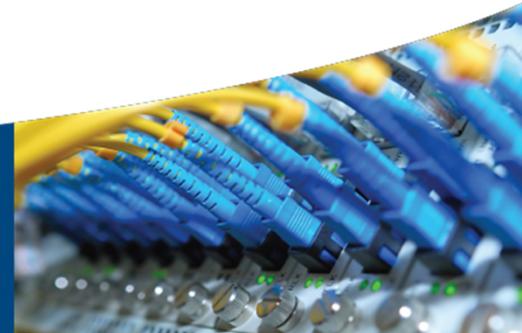
*How do the FCC rules  
limit local regulatory authority?*



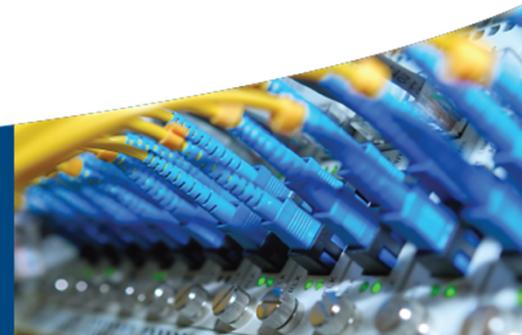
# Two federal statutes address local processes



47 U.S.C. § 332(c)(7)  
&  
47 U.S.C. § 1455(a)



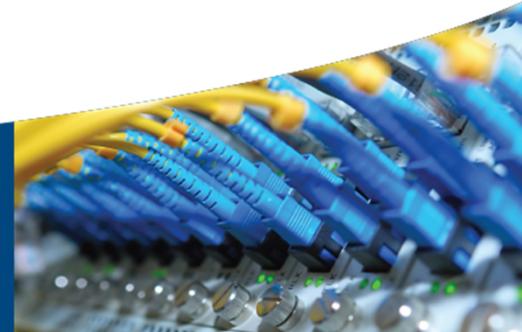
# 47 U.S.C. § 332(c)(7)



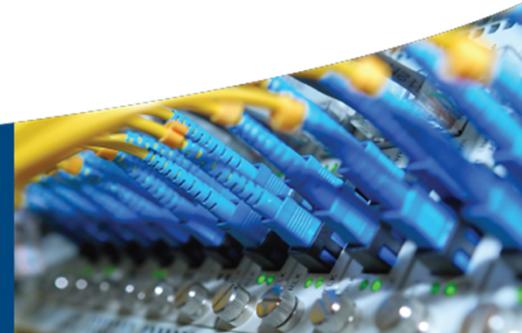
Since 1996



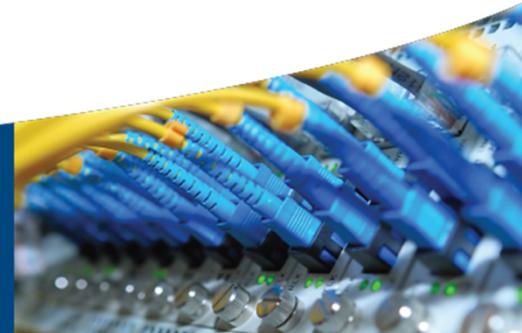
Telecommunications Law



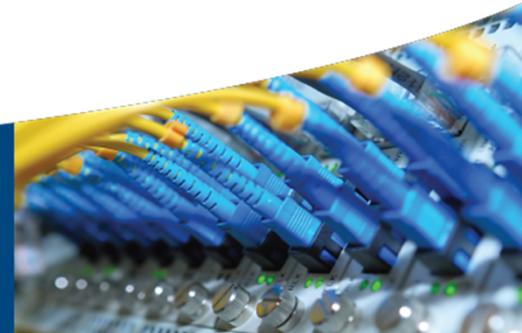
# Imposes 5 limits



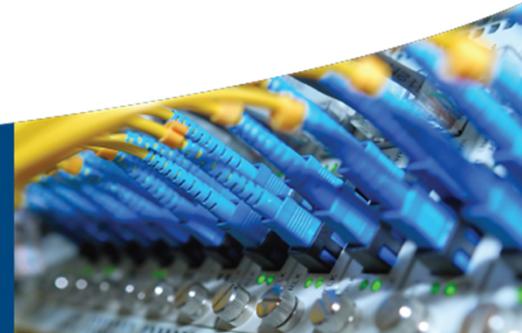
FCC imposed “shot clocks” of 90  
and 150 days in 2009



Generally *preserves*  
local authority

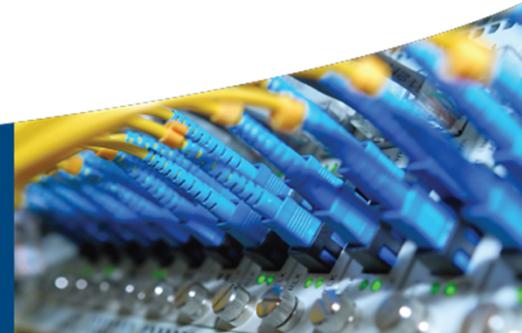


# Only concerns “personal wireless service”

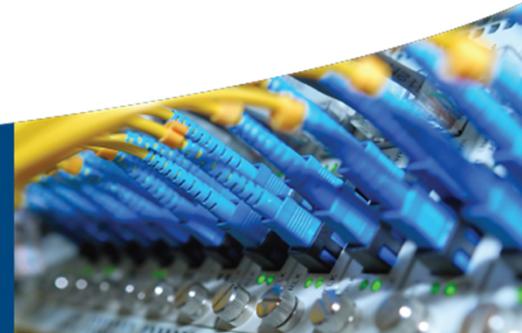


Applies to both *initial* facility  
placement . . .

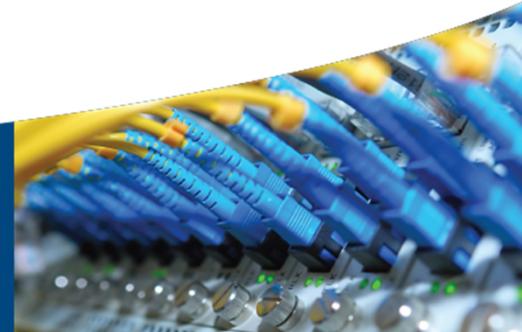
. . . *and modification*



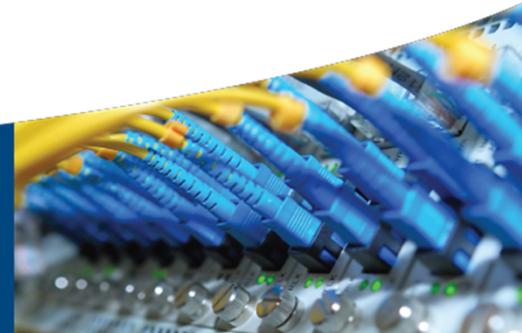
# 47 U.S.C. § 1455(a)



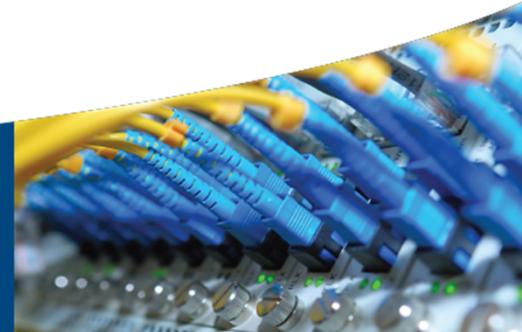
Better known as:



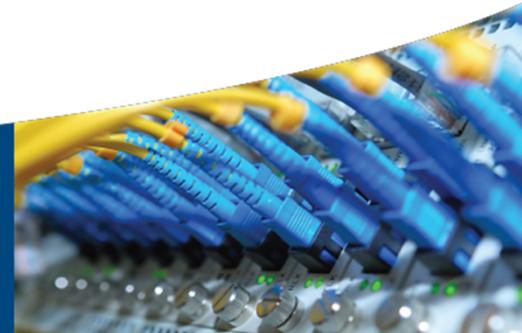
# “Section 6409(a)” of the Middle Class Tax Relief and Job Creation Act of 2012



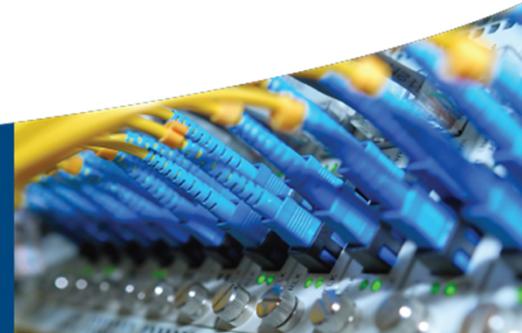
# Concerns only modification



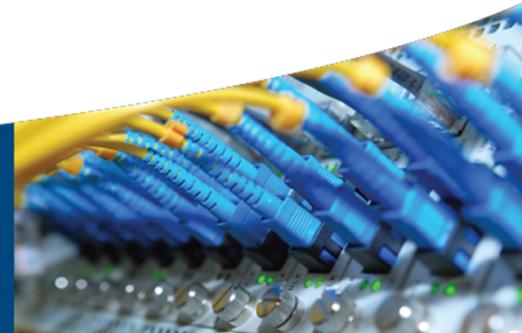
“a State or  
local government . . .”



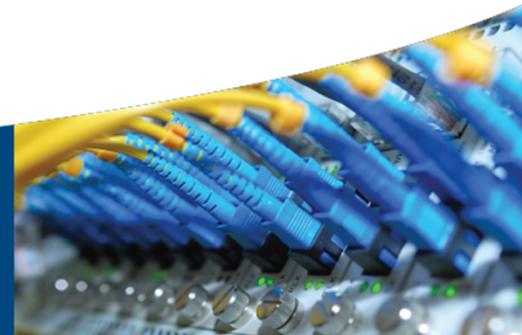
“ . . . may not deny, and shall  
approve, . . .



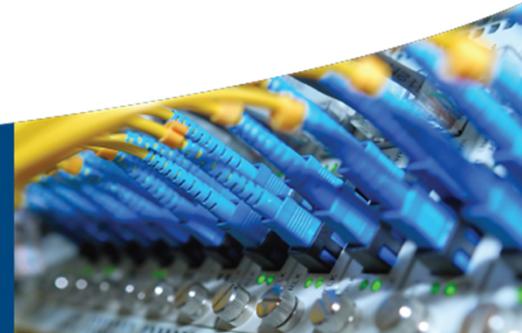
“ . . . an ‘eligible facilities request’ for a modification . . . ”



“ . . . of an  
existing  
wireless tower or base  
station that . . . ”

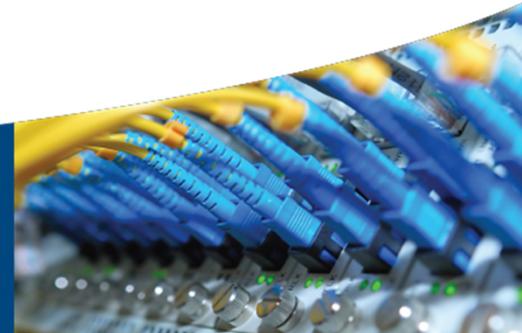


“ . . . does not substantially change the physical dimensions of such tower or base station.”



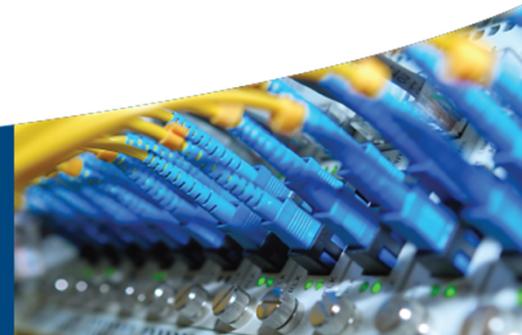
# Congress defined only one term

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



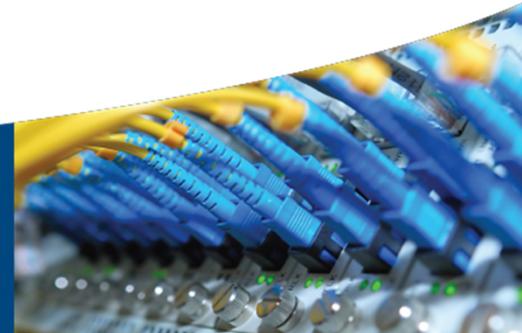
# “Eligible facilities request”:

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



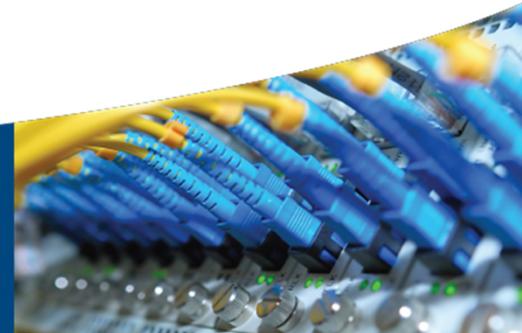
# A request that involves collocation, removal, or replacement of transmission equipment

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



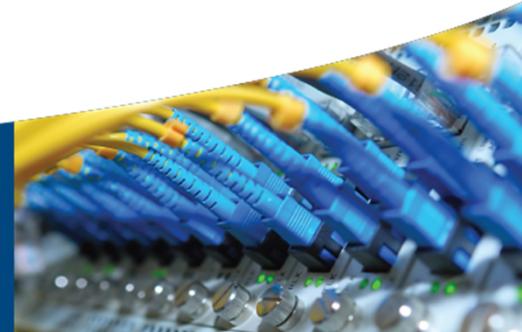
# Congress did not define:

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



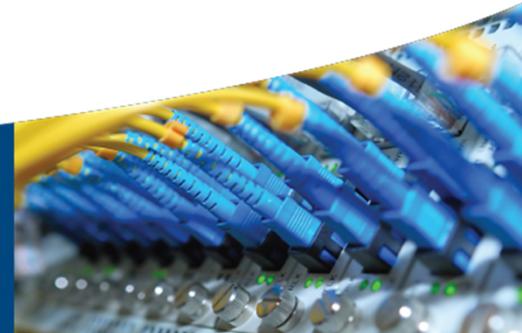
# “collocation”

may not deny, and shall approve, any [request that involves **collocation**, removal, or replacement of transmission equipment] 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



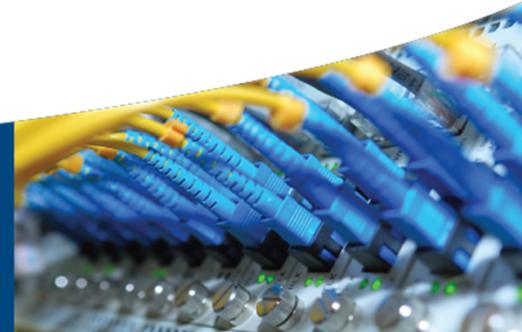
# “replacement”

may not deny, and shall approve, any [request that involves collocation, removal, or **replacement** of transmission equipment] 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



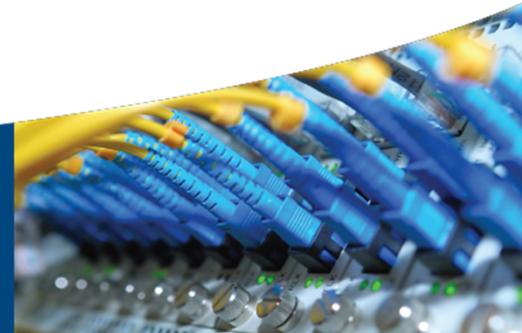
# “transmission equipment”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



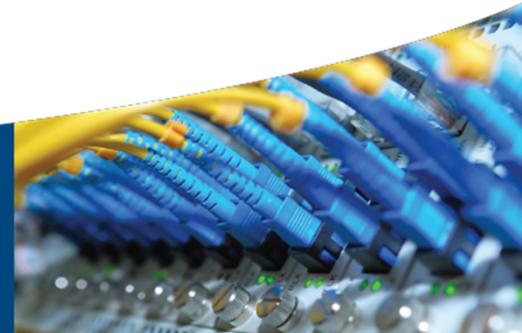
# “existing wireless tower or base station”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



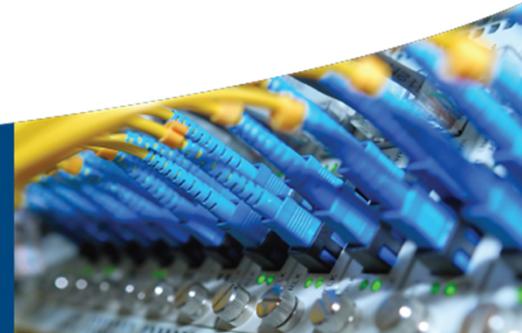
# “substantially change the physical dimensions”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



“may not deny,  
and shall approve”

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



Before the  
Federal Communications Commission  
Washington, D.C. 20554

|   |   |                      |
|---|---|----------------------|
| In the Matter of  | ) |                      |
|   | ) |                      |
| Acceleration of Broadband Deployment by<br>Improving Wireless Facilities Siting Policies  | ) | WT Docket No. 13-238 |
|   | ) |                      |
| Acceleration of Broadband Deployment:<br>Expanding the Reach and Reducing the Cost of<br>Broadband Deployment by Improving Policies<br>Regarding Public Rights of Way and Wireless<br>Facilities Siting | ) | WC Docket No. 11-59  |
|   | ) |                      |
| 2012 Biennial Review of<br>Telecommunications Regulations   | ) | WT Docket No. 13-32  |
|   | ) |                      |

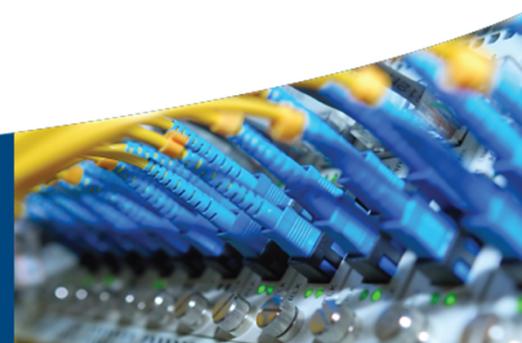
**REPORT AND ORDER**

**Adopted: October 17, 2014**

**Released: October 21, 2014**

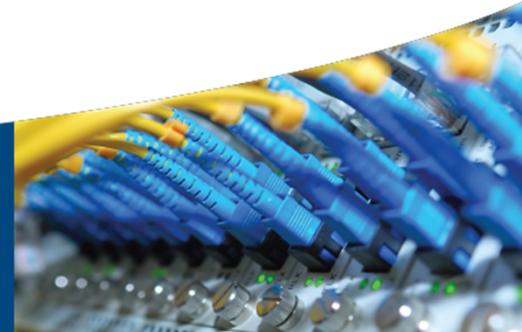
By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly  
issuing separate statements.

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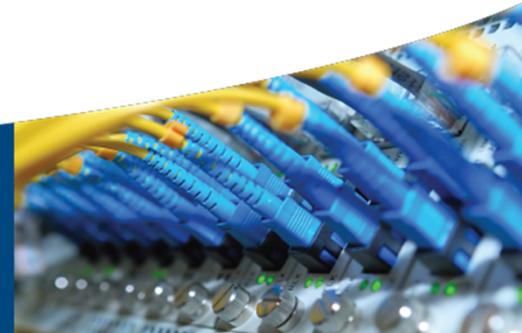
# The FCC defines key terms

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



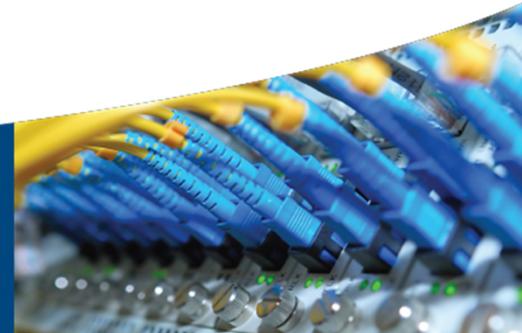
# Basic policy clash

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



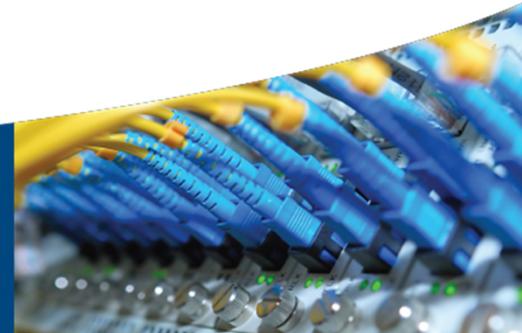
# Industry = wants Section 6409(a) to apply broadly

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



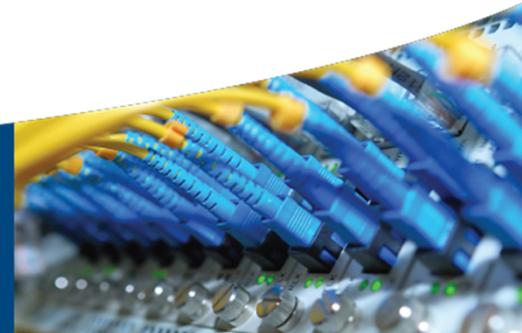
Local governments =  
How can we approve  
*underlying* facilities if they  
can expand automatically in  
problematic ways?

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



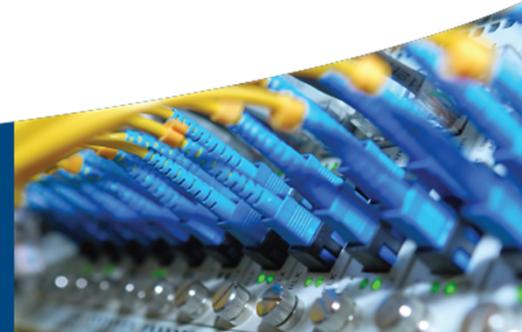
# *What services does it apply to?*

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



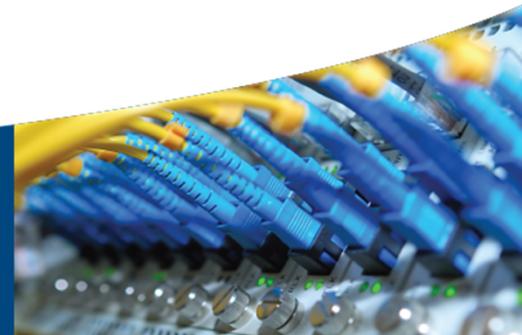
# Very broad

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



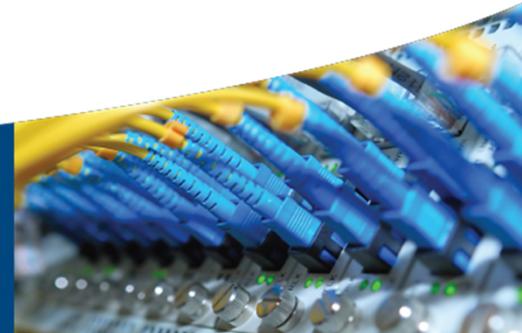
# Equipment used for “any Commission-authorized wireless communications service.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



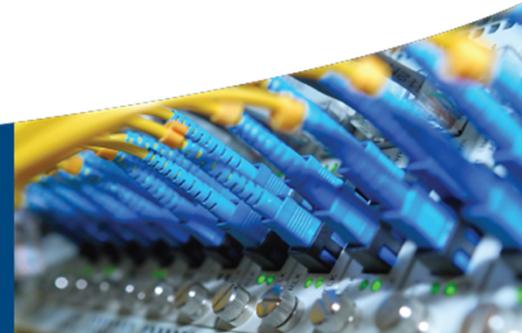
# broader than 47 U.S.C. § 332(c)(7)

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



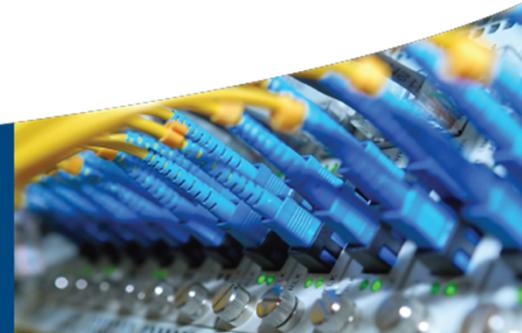
# Includes both licensed and unlicensed services

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



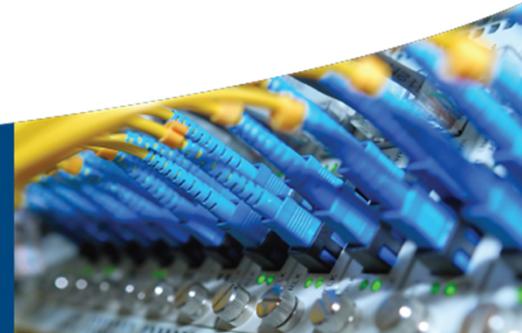
# Even includes broadcast

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



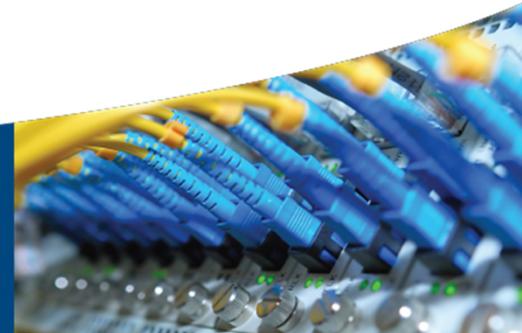
# *Under Section 6409(a), what facilities can a provider modify?*

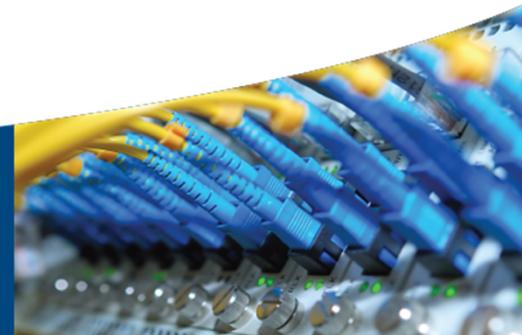
may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] for a modification of an **existing wireless tower or base station** that does not substantially change the physical dimensions of such tower or base station



# One significant question:

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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

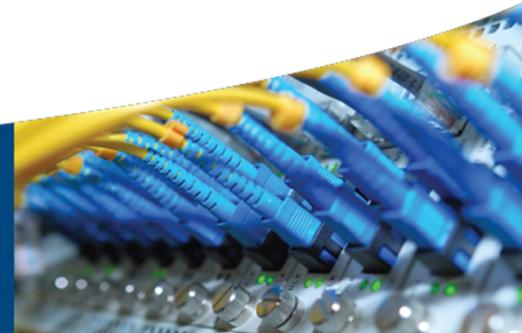






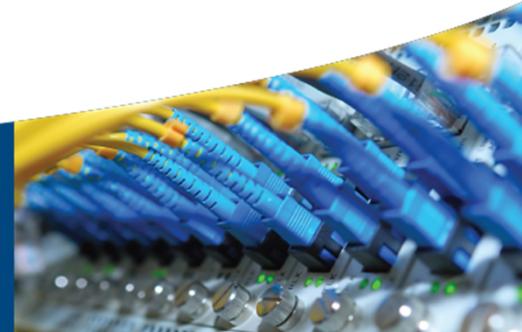
# Existing wireless tower or base station

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



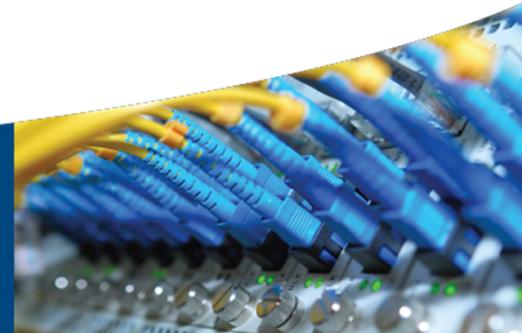
# wireless tower =

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



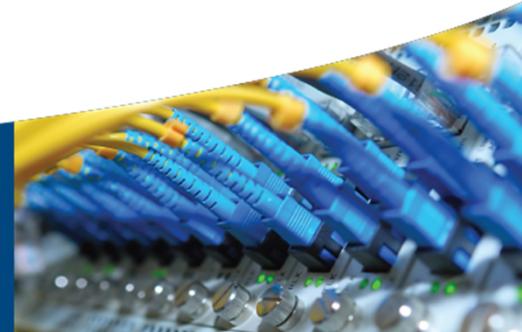
“Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



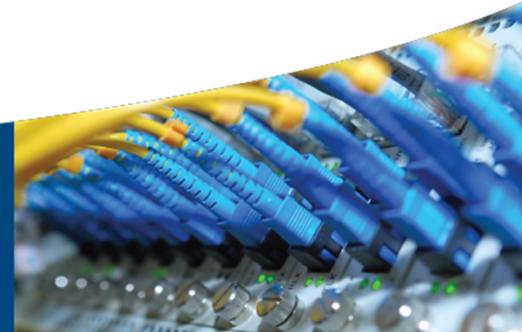
# Test is facility's purpose: it must be *primarily* intended for FCC facilities

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



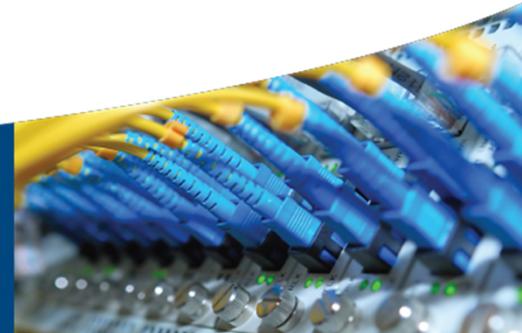
Excludes buildings, light poles, utility poles, water towers, etc.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



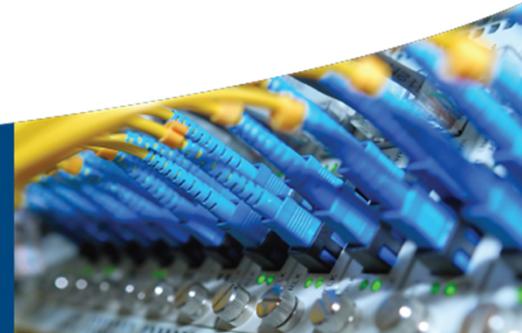
# Base station

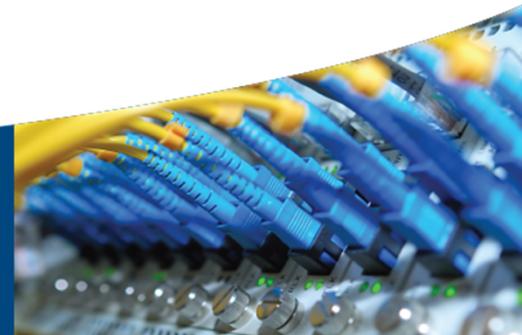
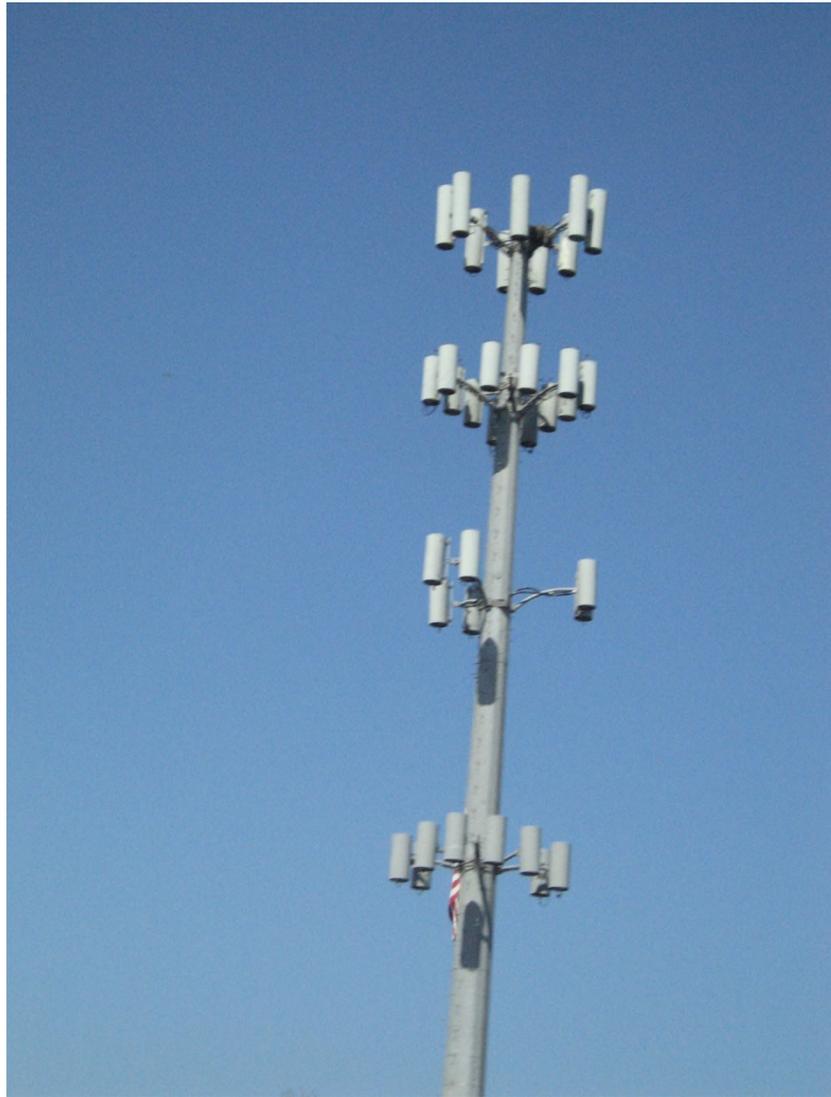
may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] for a modification of an existing wireless tower or **base station** that does not substantially change the physical dimensions of such tower or base station



*Just equipment that  
communicates to  
mobile stations  
at a wireless tower?*

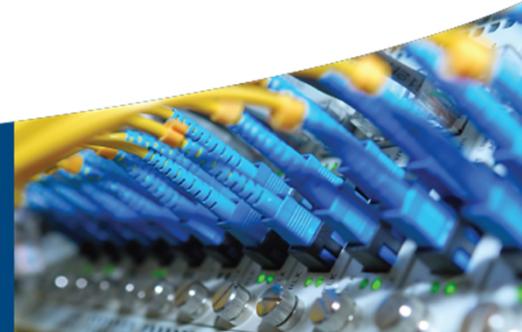
may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] for a modification of an existing wireless tower or **base station** that does not substantially change the physical dimensions of such tower or base station





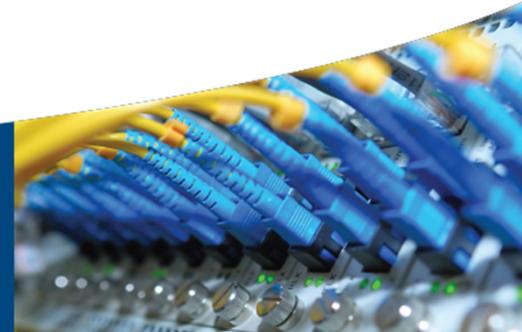
# No. Much broader.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



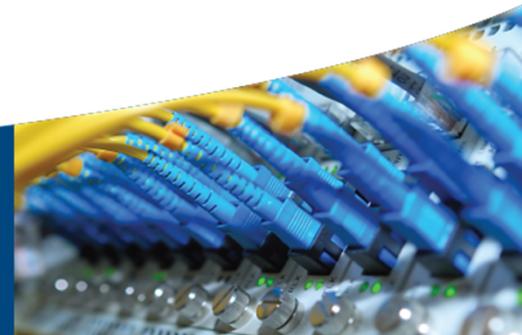
“Any structure or equipment at a fixed location that enables FCC-licensed or authorized communications between user equipment and a communications network.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



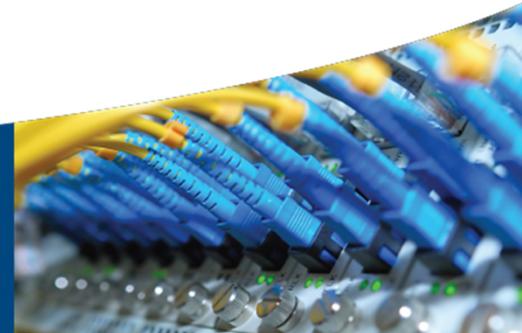
Note “base station” is not limited to equipment: it’s “[a]ny structure or equipment”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



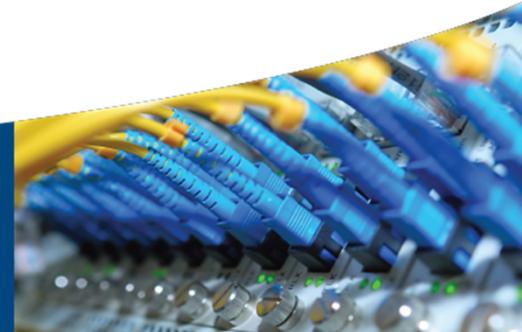
“Base station” potentially reaches *anything* that supports an antenna (regardless of its primary purpose)

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



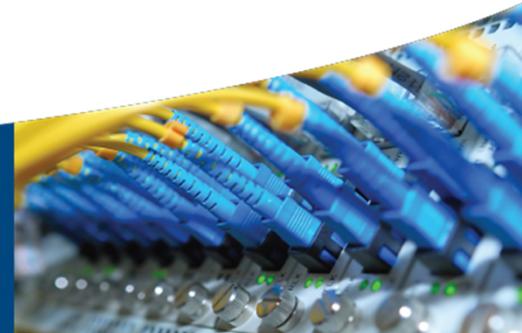
*Includes* buildings, light poles, utility poles, water towers, etc.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



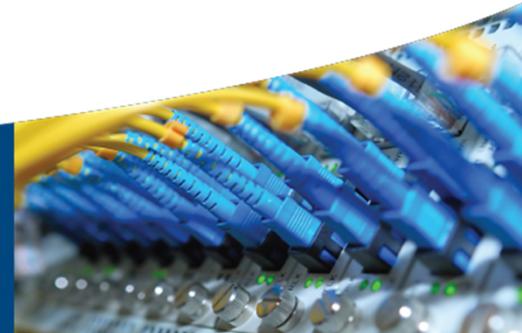
# FCC clarifies that “base station” includes DAS and small cells

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



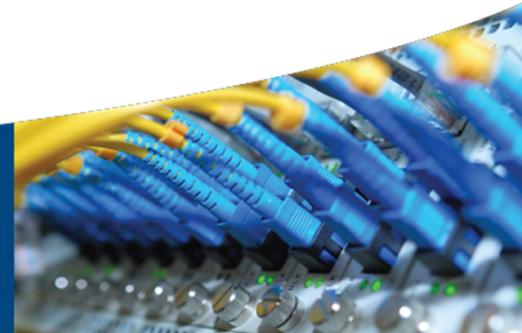
Does *not* include structures that do not support or house any wireless equipment when the application is filed

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



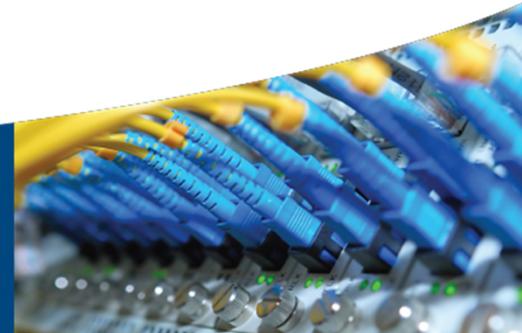
# “existing”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



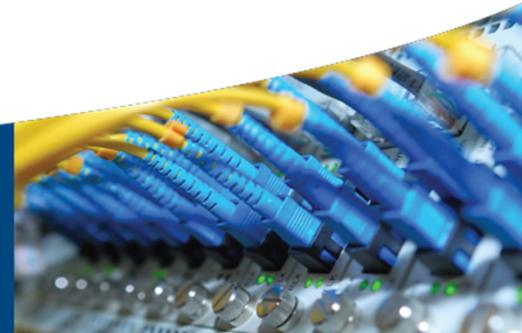
# FCC effectively reads as “approved”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



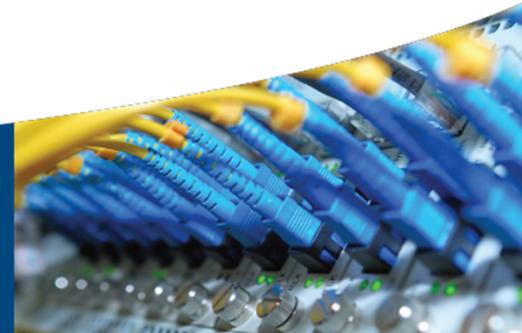
Tower or base station must  
have been “reviewed and  
approved under the  
applicable local zoning or  
siting process . . .”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



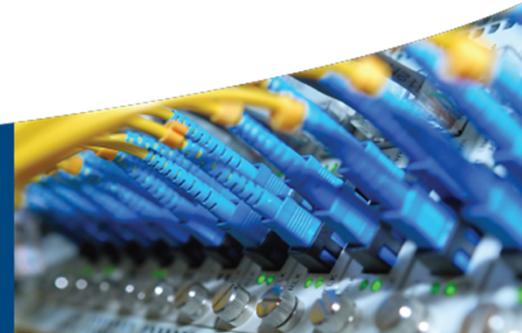
“or the deployment of existing transmission equipment on the structure received another form or affirmative State or local regulatory approval (e.g., authorization from a State public utility commission).”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



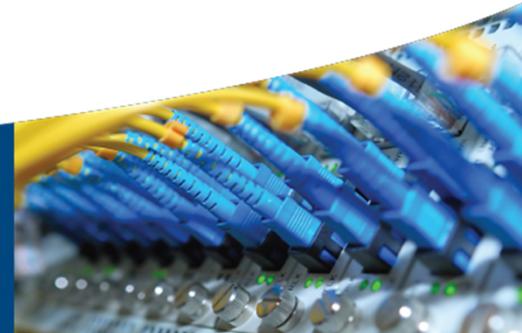
# Limits the number of “base stations” that fall under Section 6409(a)

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



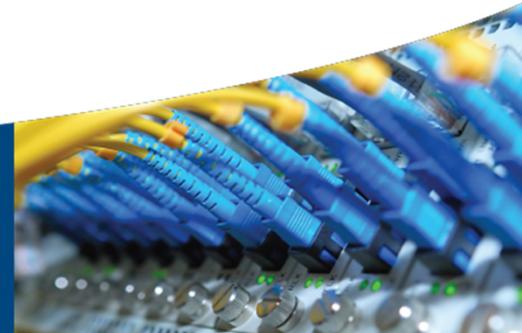
Section 6409(a) permits modifications of only those wireless facilities and support structure that have already been once “approved.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



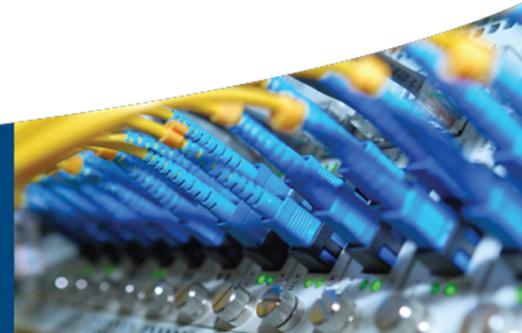
# Facilities placed “by right” should not qualify as “existing.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



# Facilities that you *already* approved through a zoning review *are* “existing.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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

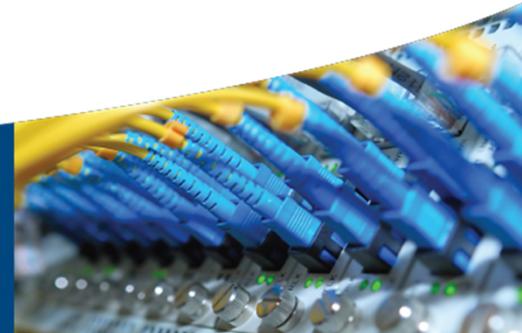




# Key lessons:

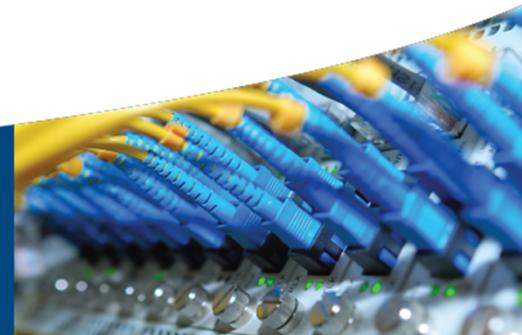
1. The FCC's 6409(a) rules do not apply to leasing.
2. The FCC's 6409(a) rules permit modifications of “small cells” and underlying support structures, not just cell towers.
3. To be eligible for a Sec. 6409(a) modification, a facility must have been “approved” at least once.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



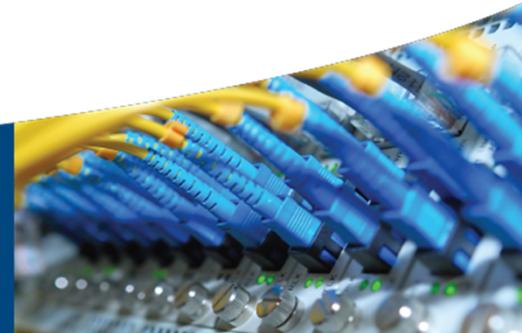
# *What requests fall under the Section 6409(a) process?*

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



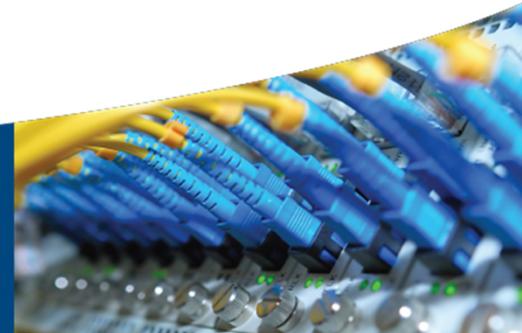
# Requests that involve collocation, removal, or replacement of transmission equipment

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



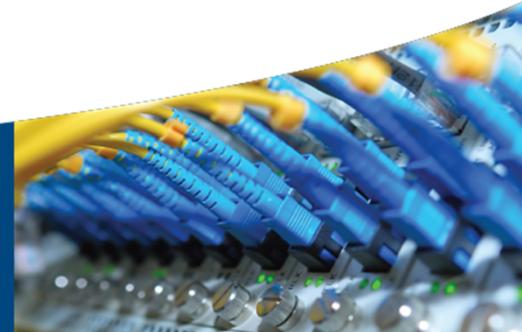
# Is “transmission equipment” only equipment that directly transmits communications signals?

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



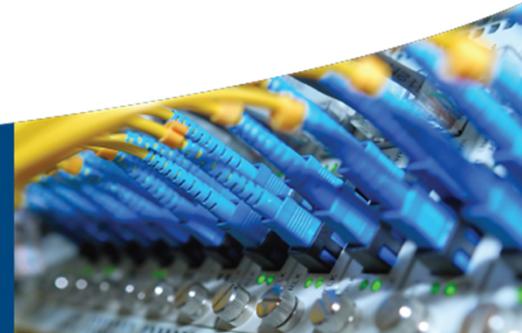
No.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



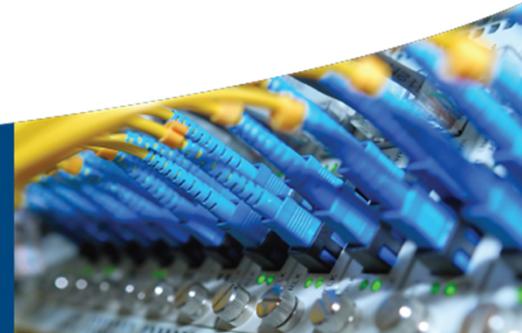
# Any equipment that facilitates transmission

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



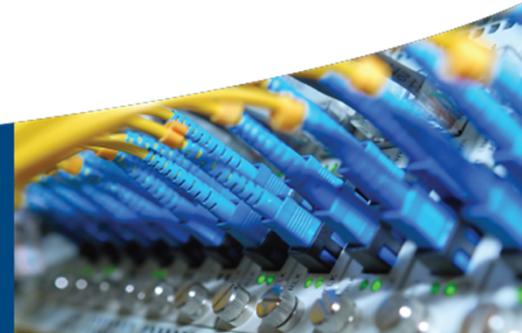
# Includes:

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



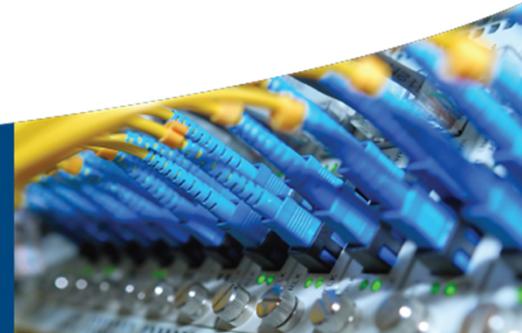
# Radio transceivers

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



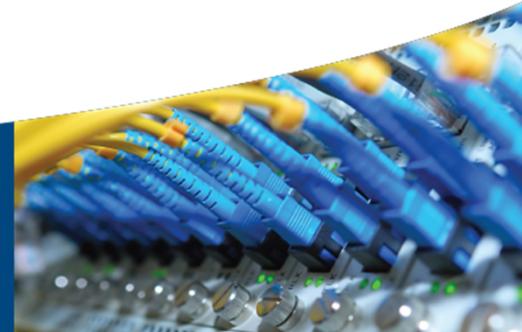
# antennas

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



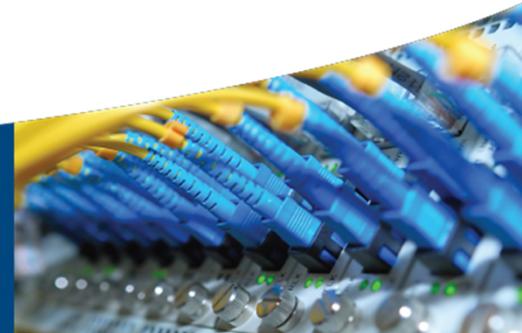
# Coaxial or fiber-optic cable

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



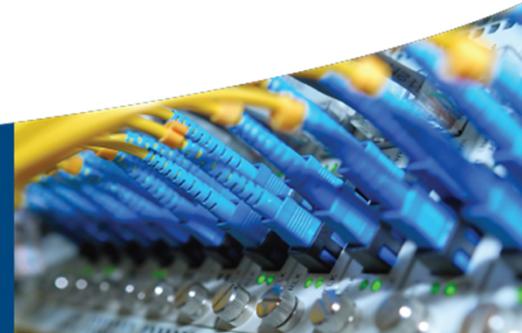
# Regular and backup power supplies

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of **transmission equipment**] 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



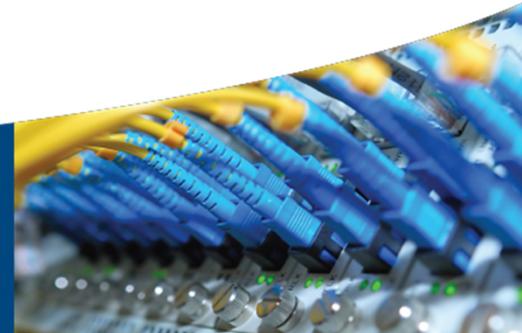
*Is “collocation” limited to  
adding wireless equipment  
where other equipment  
already exists?*

may not deny, and shall approve, any [request that involves **collocation**, removal, or replacement of transmission equipment] 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



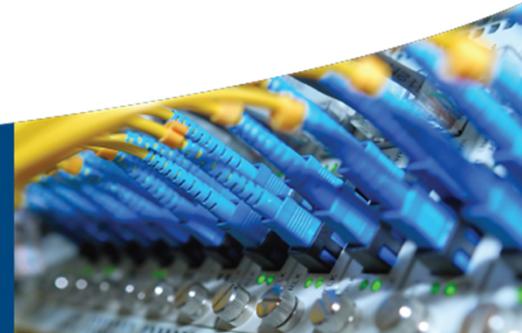
# No. Term also covers the first wireless installation on a structure.

may not deny, and shall approve, any [request that involves **collocation**, removal, or replacement of transmission equipment] 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



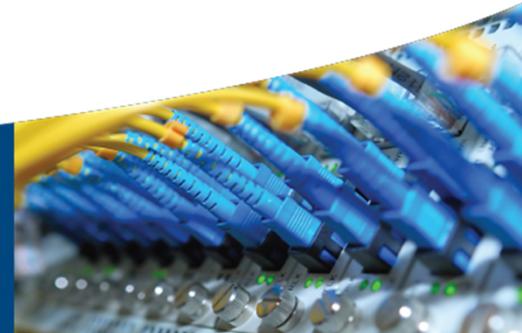
# *Does Section 6409(a) apply to “hardening” a tower or base station?*

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



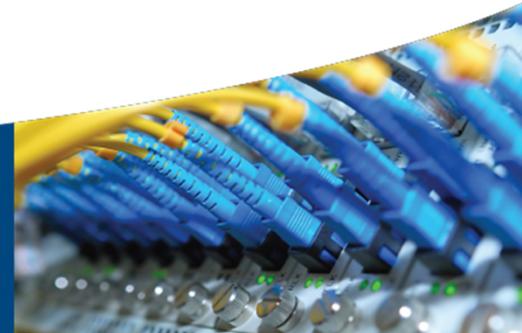
Yes, but only if “hardening”  
is “necessary” to support the  
collocation, removal, or  
replacement of transmission  
equipment.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



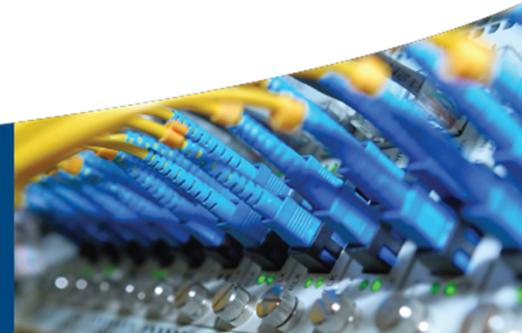
# *Does Section 6409(a) apply to replacement of a tower or base station?*

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



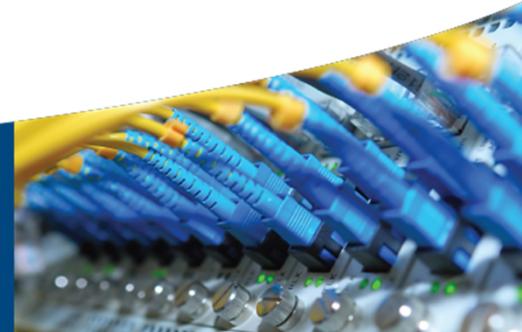
No.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



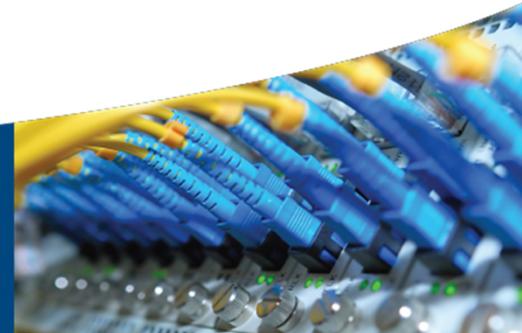
*What modifications  
“substantially change the  
physical dimensions” of the  
tower or base station?*

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



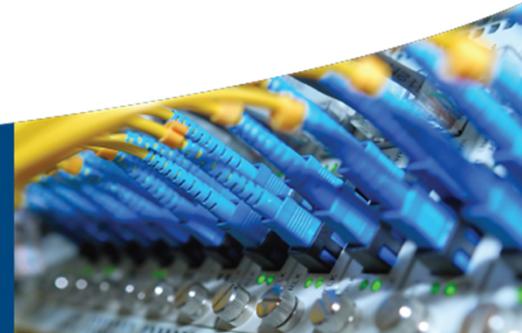
# Key debate: Evaluate context vs. fixed, “objective” rules

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



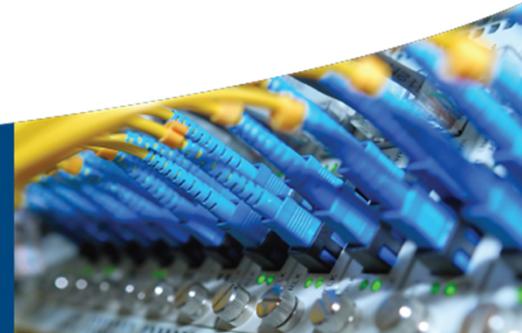
# What about aesthetic changes?

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



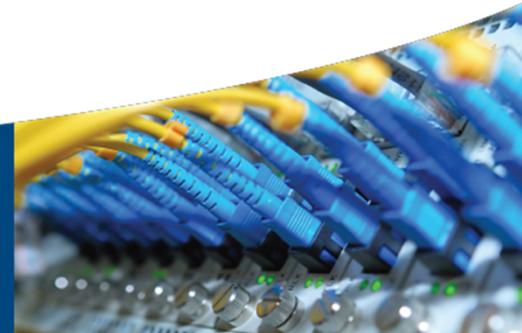
# What about modifications that present public-safety issues?

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



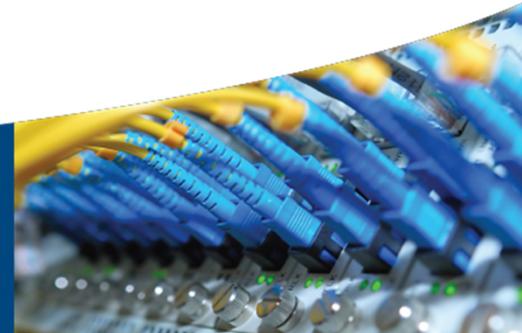
# FCC adopts modified “objective” standard that evaluates 6 factors

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



1. Height
2. Width
3. New Equipment Cabinets
4. Deployment/Excavation  
Beyond Site
5. Concealment Elements
6. Other Conditions

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

## Height:

For towers other than towers in the rights-of-way:

If the modification increases the tower by:

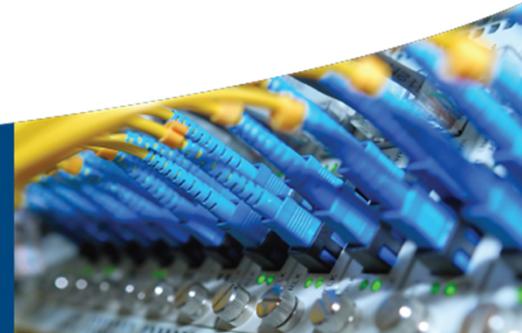
More than 10%;

or

The height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet,

. . . whichever is **greater**.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

## Height:

For towers in the rights-of-way and all base stations:

If the modification increases the facility by:

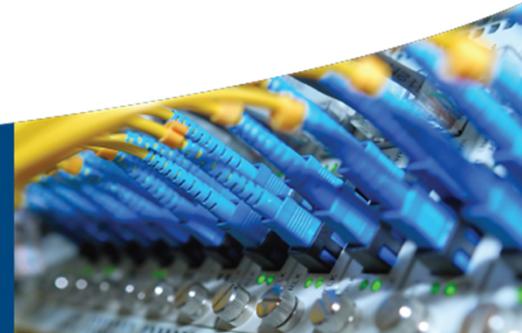
More than 10%;

or

More than 10 feet,

. . . whichever is **greater**.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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

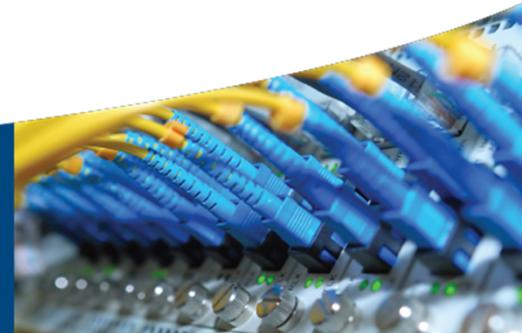


*A “substantial change” occurs only if:*

## Height:

**Baseline for measurement:** In both cases, height is measured from the dimensions of the tower or base station (as it had been previously lawfully modified) on February 22, 2012, except for deployments separated horizontally, for which height is measured from the original support structure only.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

## Width:

For towers other than towers in the rights-of-way:

It involves adding an appurtenance that would protrude from the edge of the tower:

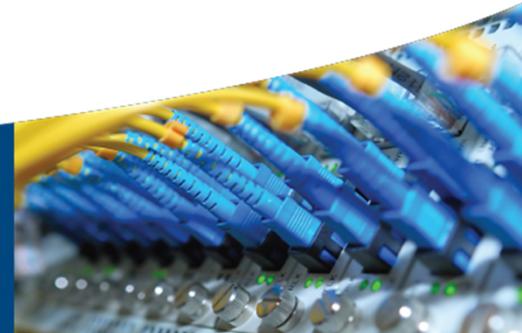
More than 20 feet;

or

More than the width of the tower structure at the level of the appurtenance,

. . . whichever is **greater**.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

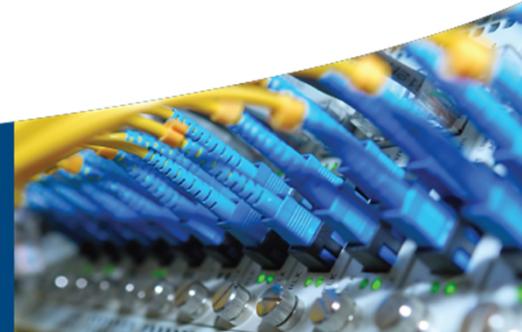
## Width:

For other towers and all base stations:

It involves adding an appurtenance that would protrude from the edge of the structure:

More than 6 feet.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



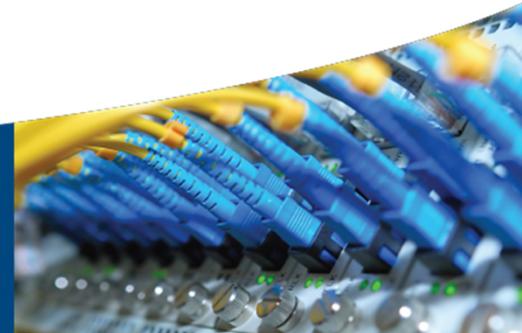
*A “substantial change” occurs only if:*

## Equipment Cabinets:

Generally:

If it involves installing more than the standard number of cabinets for the technology involved, not to exceed four cabinets.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



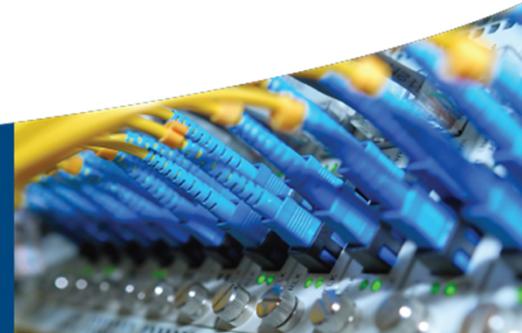
A “*substantial change*” occurs only if:

## Equipment Cabinets:

For towers in the rights-of-way and all base stations:

If it involves installation of *any* cabinets if there are no pre-existing cabinets, or involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other associated ground cabinets

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

# Excavation/Deployment Beyond Site

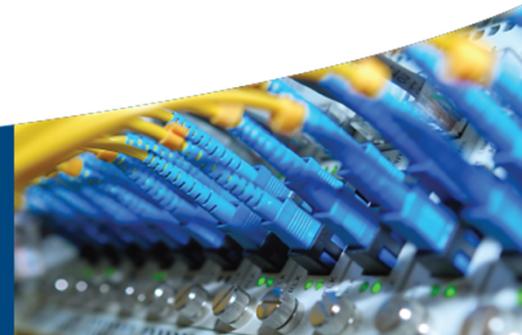
The request involves excavation or deployment outside the current “site.”

“Site” is:

For towers other than those in the rights-of-way:

the current boundaries of the leased or owned property surrounding the tower and any access or utility easements

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

# Excavation/Deployment Beyond Site

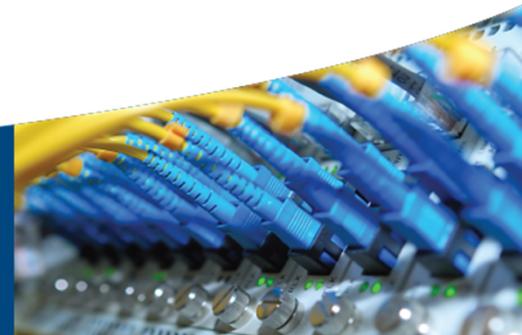
The request involves excavation or deployment outside the current “site.”

“Site” is:

For towers in the rights-of-way and base stations:

Further restricted to the area “in proximity” to the structure and to other transmission equipment already deployed on the ground

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



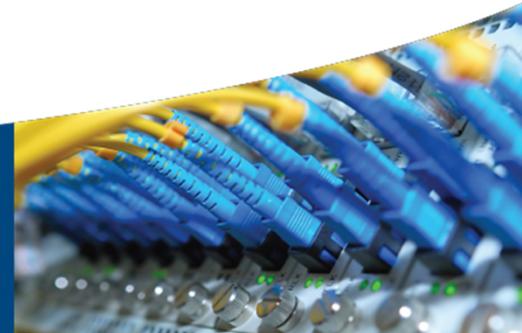
*A “substantial change” occurs only if:*

# Defeat Concealment Elements

For “concealed or ‘stealth-designed facilities,’” if a modification would:

“defeat the concealments elements of”  
the wireless tower or base station.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



*A “substantial change” occurs only if:*

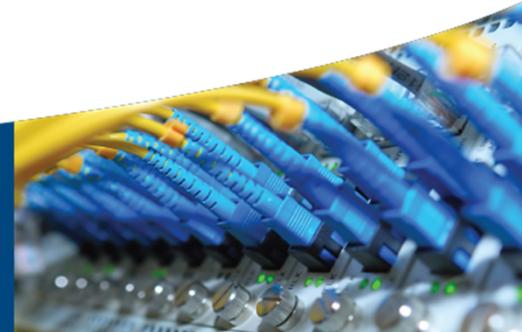
## Defeat Other Conditions

The modification would not comply with other conditions imposed on the applicable wireless tower or base station, “unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the ‘substantial change’ thresholds.”

Examples:

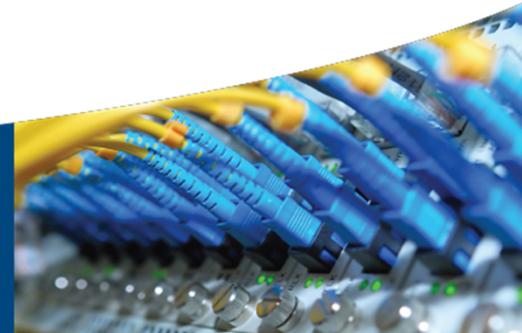
Fencing, access to the site, drainage

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



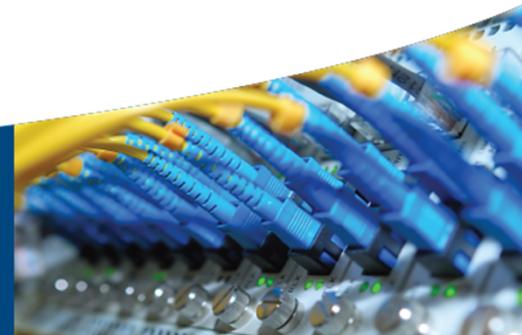
All modifications remain subject to “building codes and other non-discretionary structural and safety codes.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



# Requests must still comply with “any relevant Federal requirement,” including FAA, NEPA, and NHPA requirements

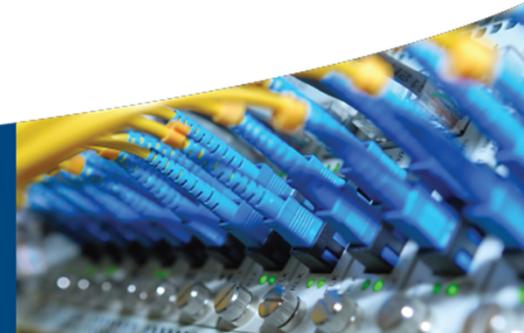
may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] for a modification of an existing wireless tower or base station that **does not substantially change the physical dimensions** of such tower or base station



# Key lessons:

1. The FCC's 6409(a) rules do not apply to leasing.
2. The FCC's 6409(a) rules permit modifications of “small cells” and underlying support structures, not just cell towers.
3. To be eligible for a Sec. 6409(a) modification, a facility must have been “approved” at least once.
4. Any “approved” wireless equipment may generally be modified if it honors safety codes, preserves “stealth,” & extends less than 10 ft. up/6 ft. out.

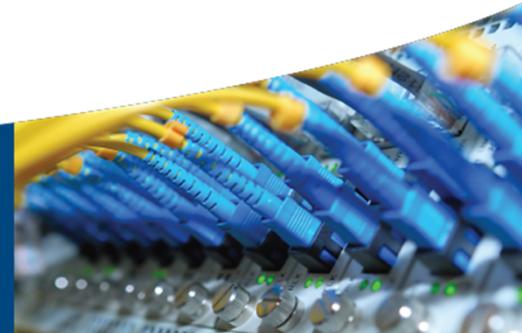
may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] for a modification of an **existing wireless tower or base station** that does not substantially change the physical dimensions of such tower or base station





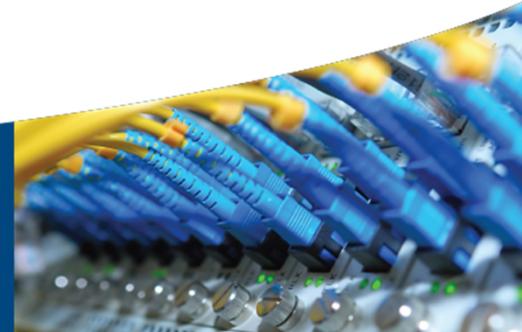
*Can local governments  
require an application for  
Section 6409(a)  
modifications?*

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



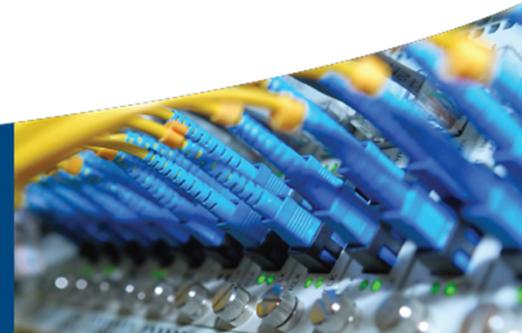
# Yes, but . . .

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



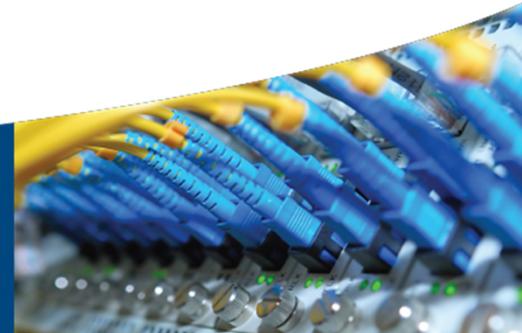
# May only seek documentation about whether meets Section 6409(a)'s requirements

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



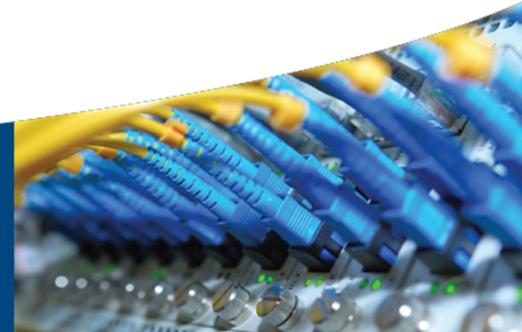
# May not inquire about “need” for modification or “business case” for it

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



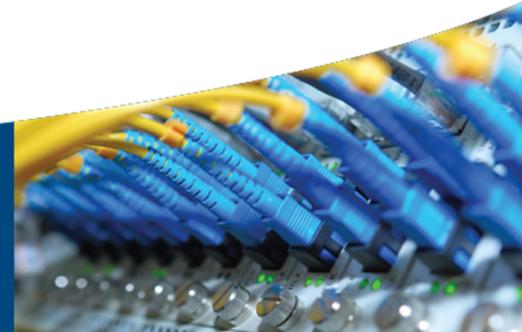
# *Is there a “shot clock” for action on Section 6409(a) modifications?*

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



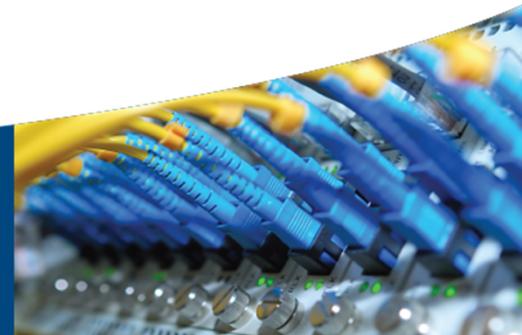
# Yes. 60 days.

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



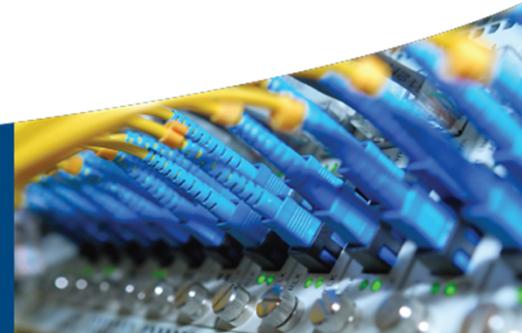
If no grant or denial during  
that period, request is  
“deemed granted.”

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



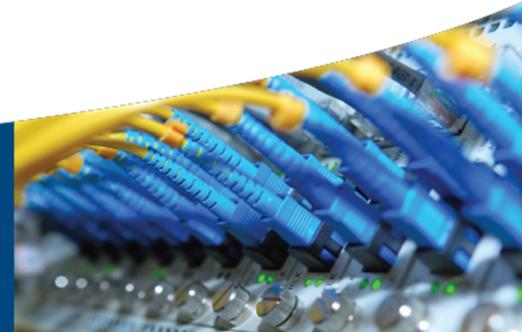
# 60-day period may be tolled by . . .

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



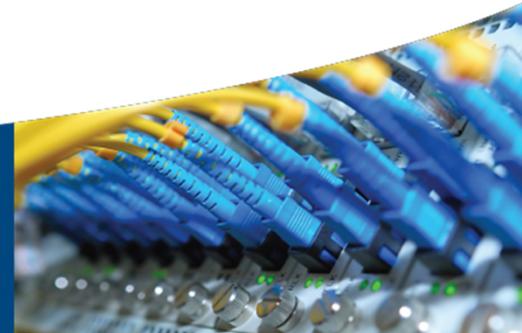
# Agreement of the parties, or

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



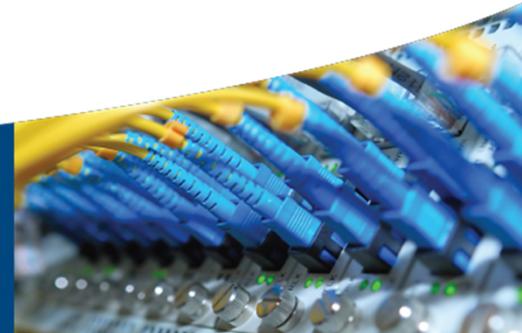
For incompleteness, if local government gives specific notice of incompleteness in writing within 30 days.

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



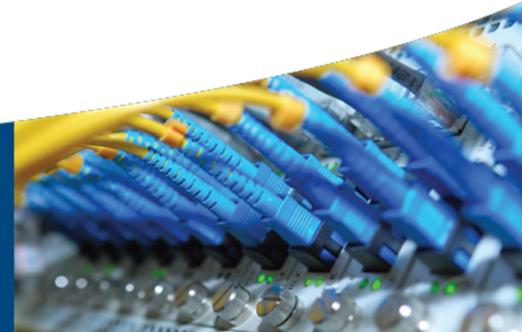
After applicant responds,  
shot clock runs again, but  
local government then has  
10 additional days to toll if  
requested information (but  
only that information) is still  
missing

may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] 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



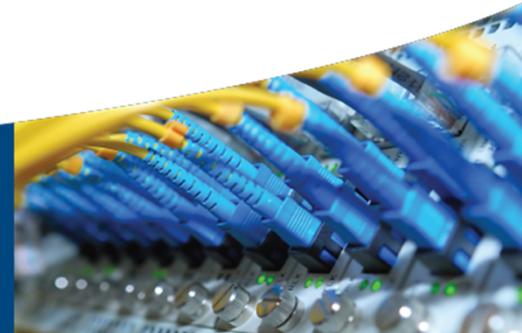
# 60-day period runs regardless of any local moratoria

**may not deny, and shall approve**, any [request that involves collocation, removal, or replacement of transmission equipment] 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



# FCC: any disputes should be resolved in the courts

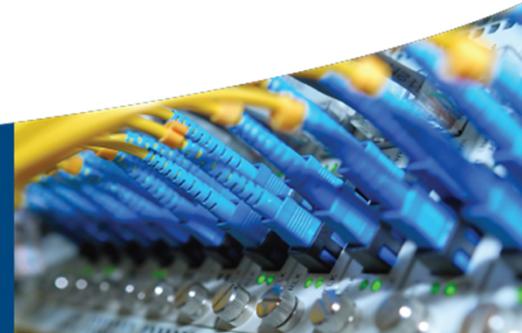
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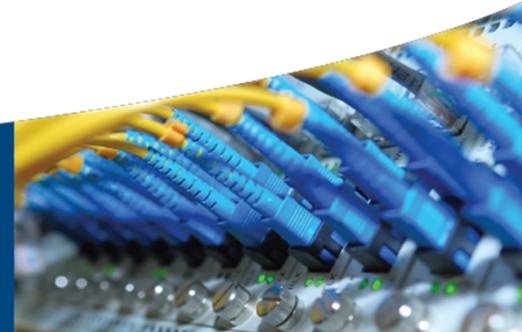
# Key lessons:

1. The FCC's 6409(a) rules do not apply to leasing.
2. The FCC's 6409(a) rules permit modifications of “small cells” and underlying support structures, not just cell towers.
3. To be eligible for a Sec. 6409(a) modification, a facility must have been “approved” at least once.
4. Any “approved” wireless equipment may generally be modified if it honors safety codes, preserves “stealth,” & extends less than 10 ft. up & 6 ft. out.
5. If a local government does not grant or deny a covered 6409(a) modification within 60 days, it is “deemed” granted by FCC rule.

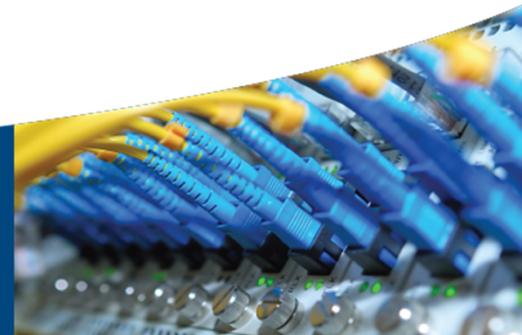
may not deny, and shall approve, any [request that involves collocation, removal, or replacement of transmission equipment] for a modification of an **existing wireless tower or base station** that does not substantially change the physical dimensions of such tower or base station



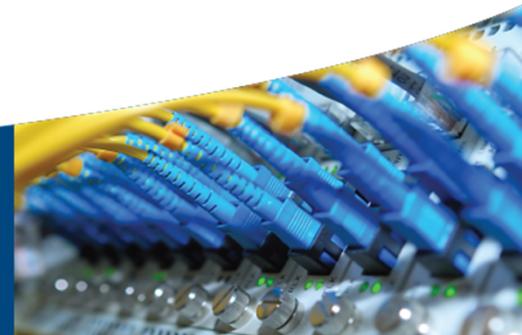
# *When do the rules take effect?*



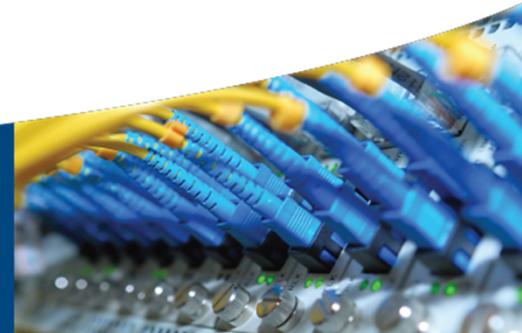
# 90 days from Federal Register publication



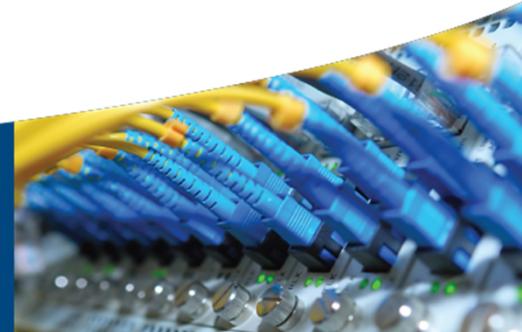
*How has the FCC  
revised its rules under  
47 U.S.C. § 332(c)(7)?*



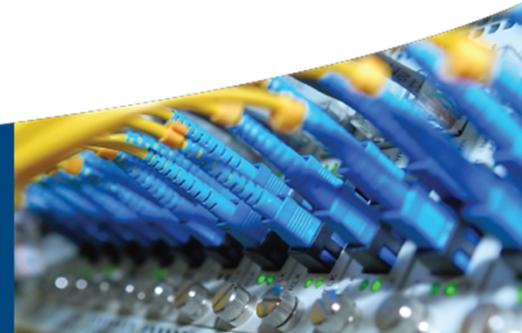
Updates how “shot clocks”  
operate in five ways:



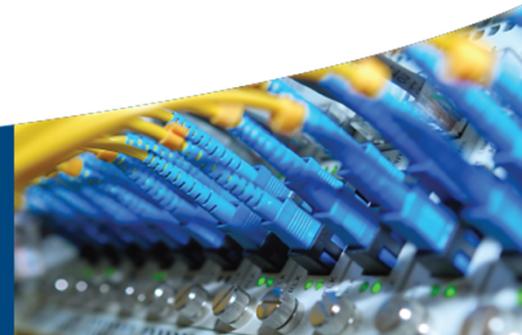
(1)



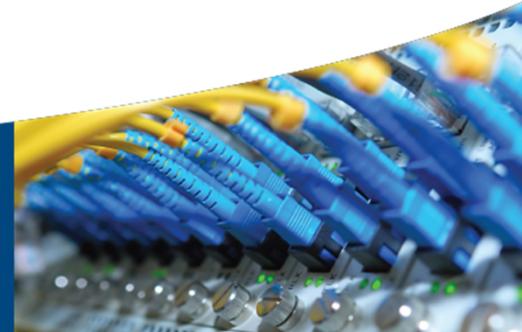
Clock starts to run when  
application submitted, not  
when deemed complete



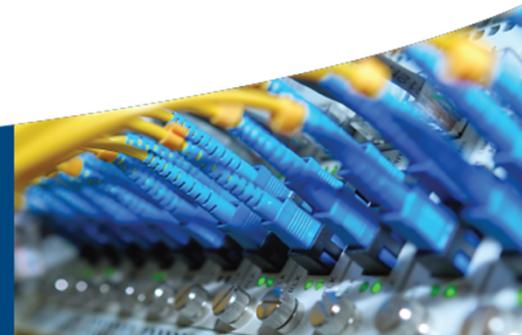
(2)



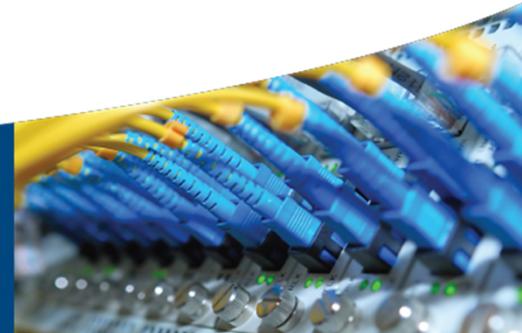
After incompleteness notice  
and response, local  
governments have 10 days to  
notify applicant of requested  
information still missing



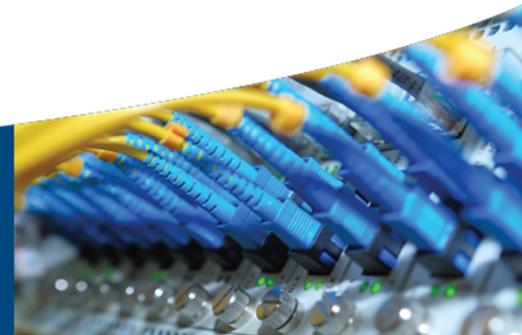
(3)



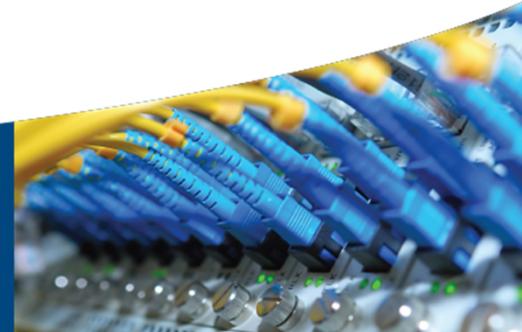
Local government must specify the code provision, ordinance, or other publically-stated procedure that requires missing info.



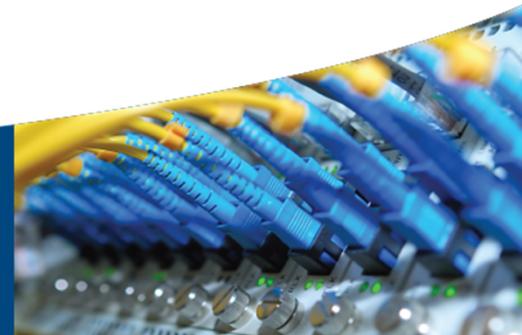
(4)



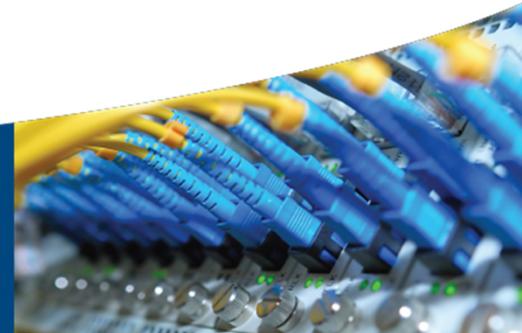
# Shot clocks run regardless of local moratoria



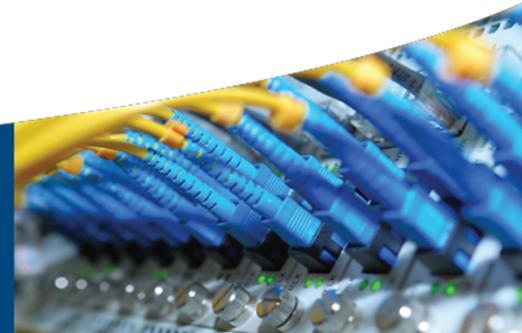
(5)



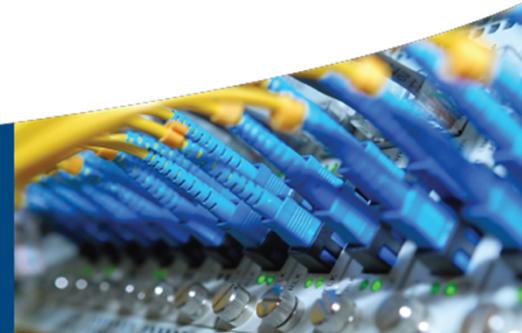
Shot clocks apply to DAS and small cells, if they are used for personal wireless service



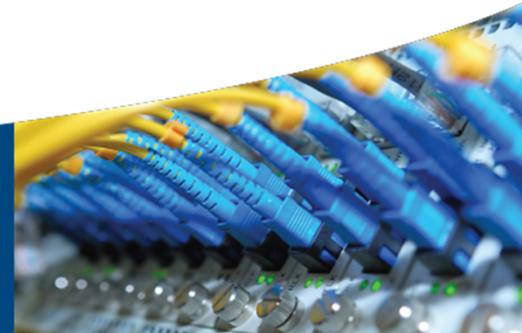
FCC refused to find that preferences for siting on municipal property are *per se* unlawful



# FCC declined to adopt “deemed granted” remedy under Section 332(c)(7)



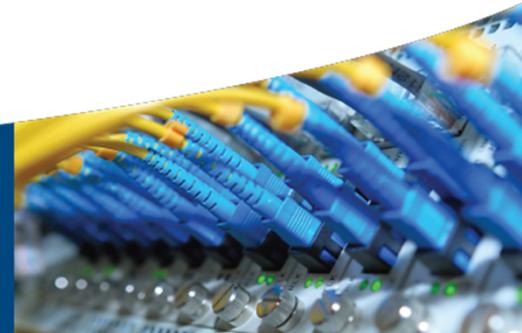
*How has the FCC limited its  
own review of wireless  
modifications -- and how  
does this impact local  
governments?*



## I. NEW “CATEGORICAL EXCLUSIONS” FROM NEPA AND NHPA REVIEW

- HUGE PROBLEM: NO CAP ON SIZES OF DAS AND “SMALL” CELLS

## II. RELIEF FROM PUBLIC NOTICE FOR INSTALLATION OF TEMPORARY TOWERS



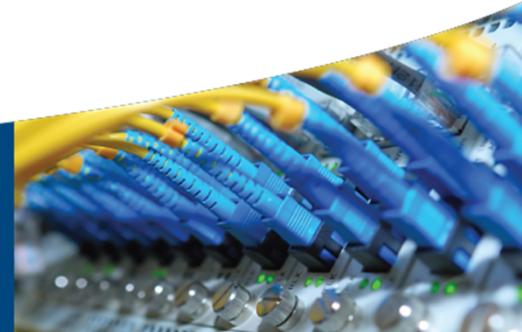
# EXCLUSIONS IN PRIOR RULES

Per Section 1.1306(b), actions do not:

- Involve a site location specified under §1.1307(a) (1)-(7), or
- Involve high intensity lighting under §1.1307(a)(8).
- Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

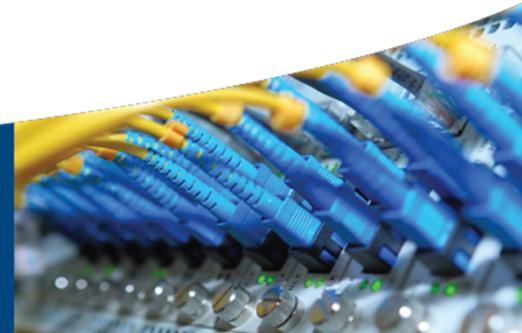
With explanatory Notes 1-3:

1. Existing buildings or towers not infringing historic preservation at Section 1.1307(a)(4), together with
  - a. installation of aerial wire or cable over existing aerial corridors of prior or permitted use
  - b. or the underground installation of wire or cable along existing underground corridors of prior or permitted use
2. Height alone does not compel environmental assessment (“EA”)
3. “Antenna farm” structures, as defined, generally exempt



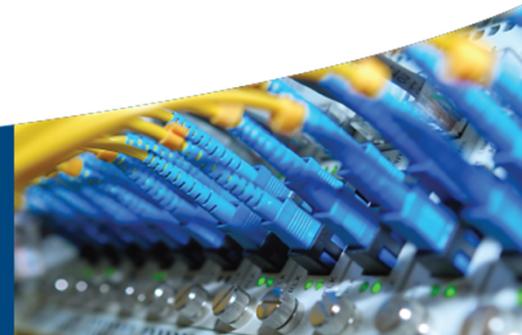
## NEW NEPA EXCLUSIONS

- No exclusions immune from EA under Sections 1.1307(c) or (d), citizen complaint or FCC's own motion
- No exclusions immune from RF radiation safeguards under Section 1.1307(b)
- Added under Section 1.1306, Notes 1 and 4:
  - Antennas include all on-site equipment associated with antennas – “transceivers, cables, wiring, converters, power supplies, equipment cabinets and other comparable equipment”
  - Interior installations also excluded, unless historic preservation implicated
  - Present exclusion for buildings and antenna towers extends to “other man-made structures” unless historic preservation implicated



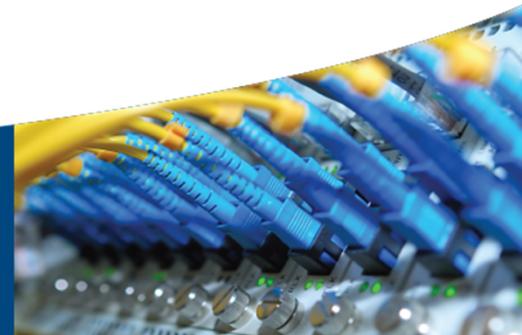
## NEW NEPA EXCLUSIONS (2)

- Added under new Note 4, Section 1.1306:
  1. Involving above-ground placement in communications and utility ROWs, if
  2. ROW so designated by government or tribe, and
  3. In active use for such purpose; and
  4. Involves no substantial increase in size compared to existing ROW structures in same vicinity, size increase defined as:
    - a. Exceeds height of existing support structures in vicinity by more than 10% or 20 feet, whichever greater; or
    - b. Adds more than four new equipment cabinets or more than one new equipment shelter; or
    - c. New appurtenance protruding more than 20 feet or more than the width of structure at level of appurtenance
    - d. Construction outside site, as defined at Order, para. 63



## NEW NHPA EXCLUSIONS

- Related reading at 47 CFR Part 1: Existing “programmatic agreements” on wireless collocation (Appendix B) and NHPA review process (Appendix C)
- Order (para. 86) refers to a pending new programmatic agreement which may further extend exclusions
- UTILITY STRUCTURES, meaning utility poles or transmission towers, but not public lighting structures
  - a. Size-limited Open or closed antenna volumes not exceeding 3 cubic feet per antenna or 6 cubic feet cumulatively, with cumulative limit per structure of 17 cubic feet for associated equipment, limits to include any existing equipment except:
  - b. Vertical cable runs connecting power and other services; and
  - c. Ancillary equipment (e.g. power meters) installed by others outside applicant’s ownership or control; and
  - d. Comparable non-included equipment from pre-existing wireless deployments on the structure



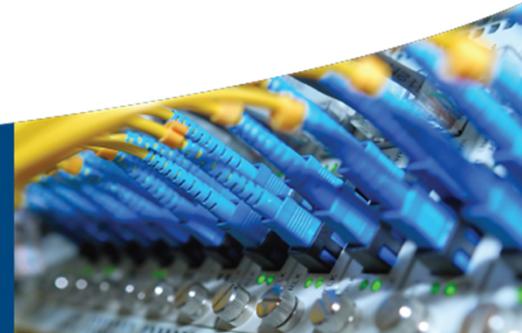
## **BUILDINGS AND OTHER NON-TOWER STRUCTURES**

- a. Age of 45 years or greater no longer affects exclusion
- b. Eligible for exclusion if at least one pre-existing antenna;  
and
- c. Per Order, para. 97, in same vicinity as prior antenna; and
- d. No new visual intrusion; and
- e. Limited to 3 feet in height or width; with
- f. No new equipment cabinets visible from street or adjacent spaces; and
- g. Same concealment requirements as pre-existing antenna;  
and
- h. No new ground disturbance in relation to prior installation;  
and
- i. New installation not inside, or within 250 feet of, boundary of a historic district, and not on National Register structure, and not subject of pending complaint about harm to historic property
- j. Interior installations generally treated same as above

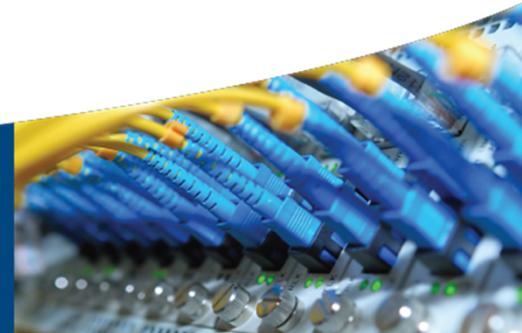


## TEMPORARY TOWERS

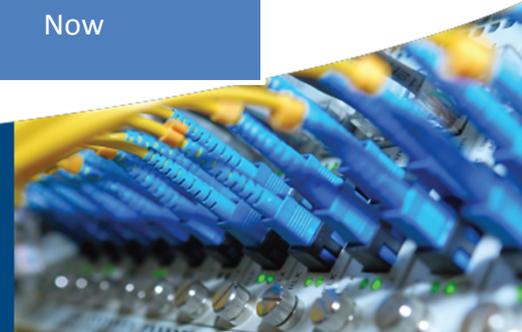
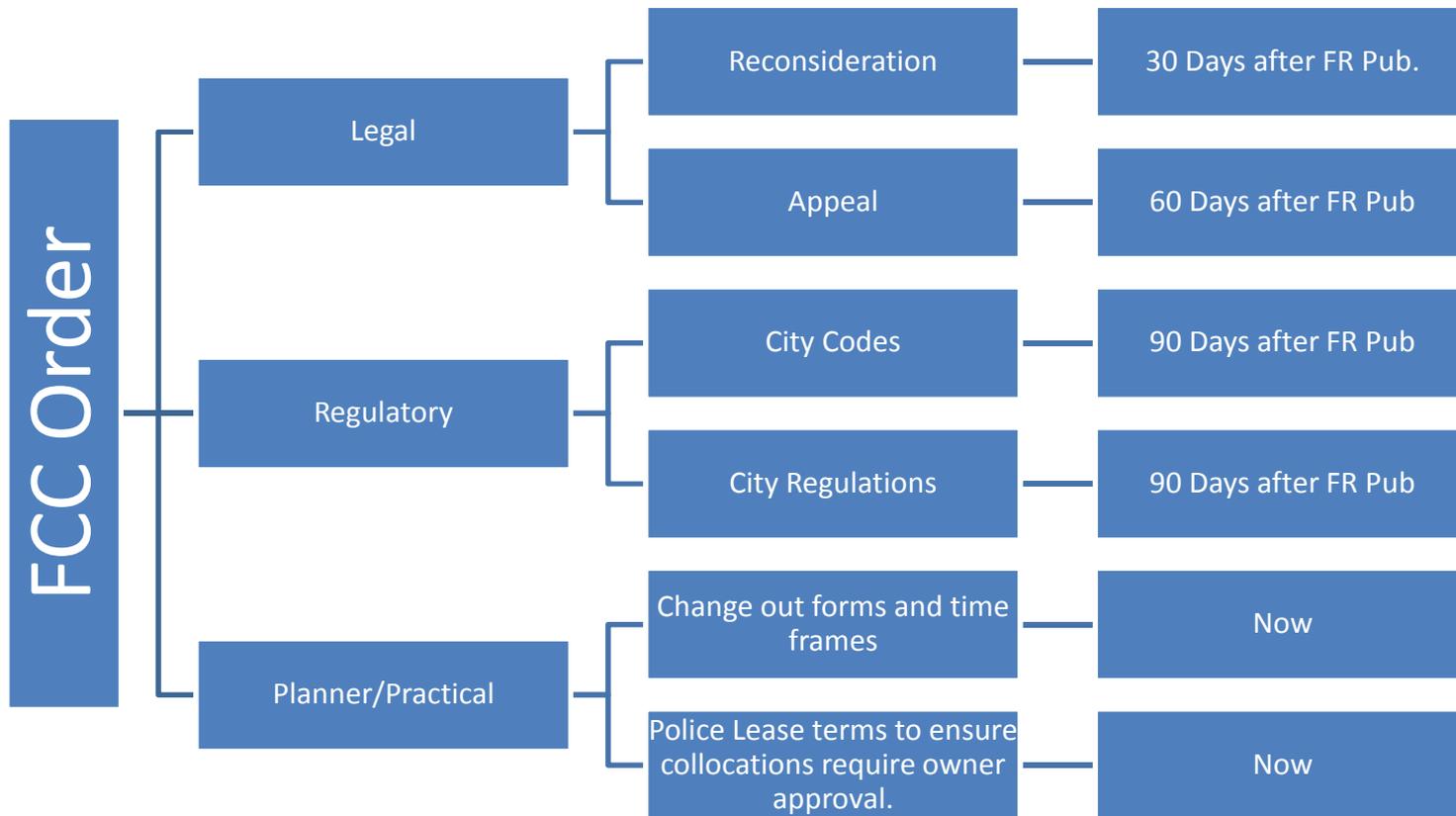
This codifies a previous waiver from notice requirements only (47 CFR Part 17) for temporary towers not subject to environmental assessment under Section 1.1307 and (1) to be placed for no more than 60 days; (2) do not require construction notice to the Federal Aviation Administration (“FAA”), or marking or lighting under FAA regulations; (3) extend no higher than 200 feet above ground level; and (4) involve no or minimal ground excavation. See Order, ¶¶ 106-134.

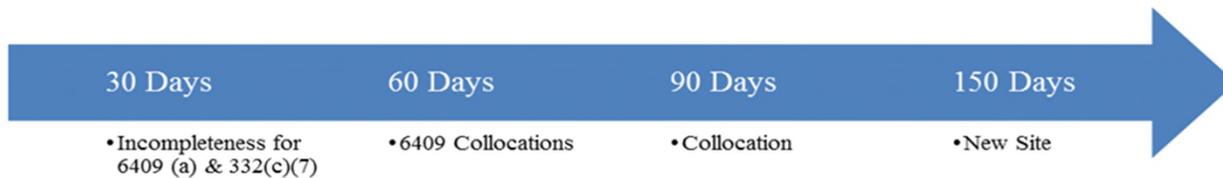


# *Local government response to the FCC's rules*



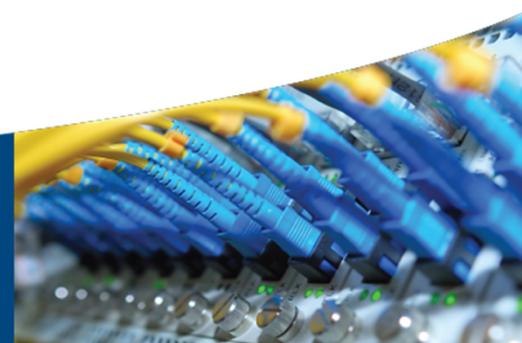
# Local Government Responses & Time Line





# Dos

- Examine whether your laws and forms are consistent with new order (Hint: Probably not).
  - Clarify in your ordinance/government practice manual that DAS/small cell applications are entitled to Shot Clock.
- Consider enactment of an ordinance that prefers government property for cell locations.



30 Days

• Incompleteness for  
6409 (a) & 332(c)(7)

60 Days

• 6409 Collocations

90 Days

• Collocation

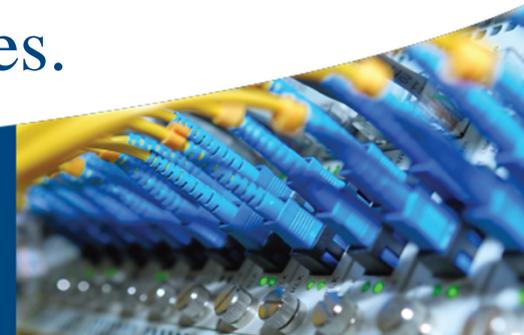
150 Days

• New Site

# Dos

- Proprietary

- Ensure everyone in your organization understands that this order does not grant right of free collocations on government property.
- Ensure that you don't grant that right in your leases / licenses by requiring approval in writing of municipality/Special District for changes.
- Ensure that industry does not use new rules as an excuse to install generators at your sites.



30 Days

• Incompleteness for  
6409 (a) & 332(c)(7)

60 Days

• 6409 Collocations

90 Days

• Collocation

150 Days

• New Site

# Thoughts on Your Process

- Require the applicant to choose under what statutory term it is seeking approval: 332(c)(7) or 6409(a). In so doing, you establish their time line.
- Understand that there are now three shot clocks, and that Federal times do not extend shorter state timelines.
- You are limited to what you first list as missing.
  - No opportunity to add discoveries.



30 Days

• Incompleteness for  
6409 (a) & 332(c)(7)

60 Days

• 6409 Collocations

90 Days

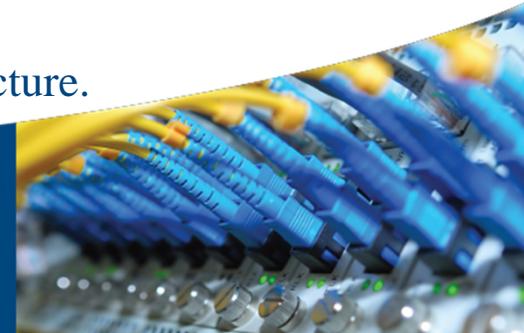
• Collocation

150 Days

• New Site

# Changes to Your Applications

- Require applicant provide documentation that is “reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a).”
  - Meets size change – including cumulative limit
  - Meets any stealth obligations
  - Meets any building code obligations
  - Meets and safety code obligations
  - Meets any non-discretionary structural code
  - Complies with any condition of approval of construction or modification imposed on the applicable wireless tower or base station, i.e. does it comply with
    - Conditions regarding fencing,
    - Access to the site,
    - Drainage, and
    - Other conditions of approval placed on the underlying structure.



30 Days

60 Days

90 Days

150 Days

• Incompleteness for  
6409 (a) & 332(c)(7)

• 6409 Collocations

• Collocation

• New Site

## 6409(a) Forms (cont.)

- Fees are not addressed in Order.
  - Make sure you comply with your state law.
- Not clear that you can demand documentation that site complies with any relevant Federal requirement, including any applicable Commission, FAA, NEPA, or Section 106 requirements.
- Not clear what the status is of local historic preservation limitations.



30 Days

• Incompleteness for  
6409 (a) & 332(c)(7)

60 Days

• 6409 Collocations

90 Days

• Collocation

150 Days

• New Site

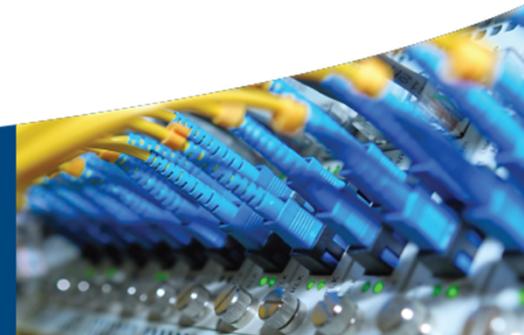
# Don'ts

- Impose a moratorium –
  - Commission is specific that moratoria will not toll 6409(a) or 332(c)(7) applications.
- Approve without understanding how a facility could expand – the smallest facility may grow an additional 10 feet up and 6 feet out.
- Demand documentation for the business need for the proposed modification or require a business case for expansion.



# Next Steps

- BB&K will create working client groups to address the legal and practical challenges facing local governments.
  - **Reconsideration** – Are areas of the rules unclear or not workable?
  - **Appeal** – Do the rules or the underlying statute violate statutory or constitutional protections?
  - **Ordinance and Form Review**
    - Must be done with an eye to state law and charters, there could be shared insights.
- Please let us know of your interest.



# About BB&K

- Best Best & Krieger LLP is a full-service law firm with nearly 200 attorneys in California and Washington, D.C. delivering effective, timely and service-oriented solutions to complex legal issues facing public agencies, businesses and individuals.
- BB&K lawyers serve as city attorney to 30 California cities and as general and special counsel to special districts, school districts, cities, counties and other public agencies.
- The firm has been helping businesses, from local to international, achieve their goals for more than 100 years.



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