

12/21/2022

Mercer Island Community Planning & Development
930 Tacoma Ave S
Tacoma, WA 98402

***Re: Dish Wireless Site SESEA00387B
Eligible Facilities Request***

Dear Pierce County Planning and Building Department:

On behalf of DISH Wireless L.L.C. ("DISH Wireless"), we are submitting an Eligible Facilities Request ("EFR") to modify an existing support structure pursuant to Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") and the rules of the Federal Communications Commission ("FCC"). *See* Pub. Law No. 112-96, 126 Stat. 156 (2012); 47 C.F.R. §1.6100.

Specifically, as it moves to deploy the nation's first standalone 5G broadband network, DISH Wireless is proposing to attach a wireless communications facility of three antennas to the radio tower at 9100 SE 42nd Street, and place a concrete pad at the base of the building to hold necessary equipment (the "Request"). This project will help support the wireless connectivity needs of residents, businesses, and first responders in the community – needs that are now more critical than ever, especially for consumers without access to other sources of connectivity. DISH Wireless looks forward to working cooperatively with you to advance these important efforts in your community.

This Request is governed by Section 6409(a) of Spectrum Act which, as you may know, provides that state and local governments "may not deny, and shall approve" any EFR to modify an existing wireless tower or base station that does not "substantially change the physical dimensions of such tower or base station." *See* Spectrum Act § 6409(a)(1), 126 Stat. at 232. Under Section 6409, such modifications include the collocation, removal, or replacement of transmission equipment. *See id.* § 6409(a)(2), 126 Stat. at 232-33. Under the FCC's rule implementing Section 6409(a), an existing base station is a structure that currently houses or supports an approved antenna, transceiver or other associated equipment "even if the structure was not built for the sole or primary purpose of providing such support." 47 C.F.R. § 1.6100(b)(1), (b)(5).

Similarly, the list of equipment that will be installed as part of this Request qualifies as "transmission equipment," which the FCC defines as "[e]quipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable." *See* 47 C.F.R. § 1.6100(b)(8).

The FCC has determined that a modification is not a substantial change, and therefore is an EFR that shall be approved under the Spectrum Act, as long as it does not fall within any of the following six criteria (47 C.F.R. § 1.6100(b)(7)):

1. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
2. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site;
5. It would defeat the concealment elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in criteria 1-4 above.

Pursuant to Section 1.6100(c) of the FCC's rules, which provides that jurisdictions may require documentation or information "only to the extent reasonably related to determining whether the request meets the requirements" of the FCC rule, DISH Wireless provides the following information to demonstrate that the proposed Request does not constitute a substantial change under the criteria above because it:

1. *Does not involve an increase in height in excess of the limits in 47 C.F.R. § 1.6100(b)(7)(i).*

Details: The addition of the antennas will not increase the height of the 135ft pole.

2. *Does not involve an increase in width in excess of the limits in 47 C.F.R. § 1.6100(b)(7)(ii).*

Details: The addition of antennas will not extend the width of the tower by more than the existing width of the tower, and much less than 20ft limit.

3. *Does not involve installation of new equipment cabinets in excess of the limits in 47 C.F.R. § 1.6100(b)(7)(iii).*

Details: Only one equipment cabinet will be installed at the base, which is well within the four cabinet limit.

4. *Does not involve any excavation or deployment outside the current site.*

Details: All excavation and deployment will be limited to the current site and the immediate base of the structure.

5. *Would not defeat any concealment elements of the eligible support structure.*

Details: The addition of the antennas will not defeat the existing concealment elements.

6. *Complies with any prior conditions, except for any non-compliance due to exceeding the thresholds in criteria 1-4 above.*

Details: The proposal will comply with all prior conditions as necessary.

Under the FCC's rule, the submission of this request for EFR approval initiates a 60-day shot clock to review and approve the application. *Id.* § 1.6100(c)(2). If that time passes without action, "the request shall be deemed granted." *Id.* § 1.6100(c)(4).

DISH Wireless is committed to working cooperatively with you to process this request in a timely and efficient manner. [We also understand that these are unprecedented times and welcome the opportunity to answer any questions or concerns you may have to facilitate your review process]. We look forward to developing a long-term collaborative working relationship with you.

Please do not hesitate to contact me if you have any questions or need any other information.

Respectfully submitted,

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