

5/24/2023

VIA MyBuildingPermit.com

Mercer Island
Community Planning and Development
9611 SE 36th Street
Mercer Island, WA 98040

RE: 9725 SE 36TH ST Mercer Island, WA 98040 Eligible Facilities Request

Hello:

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 a new 5G broadband network, DISH Wireless is proposing to install 3 antennas and necessary equipment on the roof of the Globe building (the “Request”). This project will help support the 5G connectivity needs of residents, businesses, and first responders. 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. For towers other than towers in the public rights-of-way, it entails excavation or deployment of transmission equipment **outside of the current site by more than 30 feet in any direction**. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the 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 building rises to a height of fifty five feet, four inches, and the planned antenna attachments will increase the height to 64 feet, nine inches. This is a height increase of less than ten feet, and therefore it falls within the limits put forward in 47 C.F.R. § 1.6100(b)(7)(i).



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 request does not increase the width of the structure. The antennas will be set back from the edge of the rooftop.

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: The request involves installation of one equipment cabinet. This cabinet is of the same size as existing cabinets installed for the other carriers on the site, and falls within the limits in 47 C.F.R. § 1.6100(b)(7)(iii).

4. *Does not involve any excavation or deployment outside the current site by more than 30 feet in any direction.*

Details: The request does not involve any excavation or deployment outside of the current site.

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

Details: The request will not defeat any concealment elements of the support structure. The antennas will be screened by FRP, which will provide superior concealment than already existing antennas.

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

Details: The request will comply with any necessary prior conditions.

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,

Eric Bond

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