

October 20, 2021

Martha's Vineyard Commission
Attn: Alex Elvin - DRI Coordinator
The Stone Building
33 New York Avenue
Oak Bluffs, MA 02557

RE: New Cingular Wireless PCS, LLC ("AT&T") Application for Wireless Collocation ("Application") for collocation at the existing wireless telecommunications facility ("Facility") located at 21 New Lane Vineyard Haven, MA 02568

Dear Alex:

AT&T is seeking to collocate at the above-referenced Facility. We are submitting this Application as an Eligible Facilities Request under Section 6409, referenced below. Please find enclosed the following documents in support of our application:

1. Referral Letter from Town of West Tisbury
2. DRI Application Form
3. Check – TBD
4. Signed and Stamped Construction Drawings (Rev1 date 08/02/21)
5. Structural Analysis Report - Passing
6. Antenna Mount Analysis Report - Passing
7. Letter of Authorization from Tower Owner (ATC)
8. COI for Contractor
9. Excerpt from the FCC Order regarding 6409

Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act

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

"a State or local government may not deny, and **shall approve**, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (Emphasis added.)

The federal law defines an "Eligible Facilities Request" as "(A) **collocation of new transmission equipment**; (B) removal of transmission equipment; or (C) replacement of transmission equipment." (Emphasis added.)

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

The FCC Order clarifies that municipal review of an Eligible Facilities Request is **limited to determining whether the request falls within Section 6409:**

“a State or local government may require the applicant to provide documentation or information **only to the extent reasonably related to determining whether the request meets the requirements of this section** [Section 6409]. A State or local government **may not require an applicant to submit any other documentation**, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.” 47 C.F.R. 1.40001(c)(1) (Emphasis added).

AT&T’s Application is an Eligible Facilities Request under Section 6409

A&T’s application qualifies as an Eligible Facilities Request under Section 6409 because the proposed installation involves “a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”

As shown on the plans prepared by Dewberry Engineering, dated 08/02/21, (*included in this package*), AT&T’s proposed installation consists principally of the following elements:

1. An array of antennas (and associated ancillary equipment and cabling) mounted at 73’ ACL (with a proposed 15’ tower extension).
2. Equipment cabinets and diesel generator on a steel platform located within the existing fenced compound.

Accordingly, AT&T’s installation involves the **“collocation of new transmission equipment” and “adding of equipment” that will not increase the height of the tower more than 10% or 20’ (whichever is greater) nor the dimensions of the equipment compound.** As a result, the installation “does not substantially change the physical dimensions of such tower or base station.” Therefore, the proposed installation constitutes an “Eligible Facilities Request” under Section 6409 and must be approved.

Timeline for Review and Approval

We would like to highlight an important timing requirement for processing this application. The FCC Order determined that **a municipality must act on an Eligible Facilities Request within sixty (60) days of receiving the application.** 47 C.F.R. 1.40001(c)(2) (Emphasis added). (Note, the sixty (60)-day period is also known as the “Shot Clock”). Thus, the city must approve this application within sixty (60) days of its receipt. The FCC Order provides that upon a municipality’s failure to act prior to expiration of the Shot Clock, the **“request shall be deemed granted”** and AT&T will be legally entitled to proceed with construction. 47 C.F.R. 1.40001(c)(4) (Emphasis added).

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

In light of the foregoing, AT&T respectfully requests that its proposed collocation be approved.

In the meantime, if you have any questions, please feel free to call or email me. Thank you for your cooperation.

Sincerely,

*Kimberly Revak
Site Acquisition Consultant
Centerline Communications – Agent for AT&T
38 Treeline Court
Fishkill, New York 12524
Cell: 845-242-1652
Email: krevak@clinellc.com*



47 USC 1455

Middle Class Tax Relief and Job Creation Act of 2012

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT

(a) FACILITY MODIFICATION.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST.—For purposes this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves —

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) APPLICABILITY OF ENVIRONMENTAL LAWS. Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.