



PUBLIC NOTICE

Federal Communications Commission
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DA 19-913

Released: September 13, 2019

WIRELESS TELECOMMUNICATIONS BUREAU AND WIRELINE COMPETITION BUREAU SEEK COMMENT ON WIA PETITION FOR RULEMAKING, WIA PETITION FOR DECLARATORY RULING AND CTIA PETITION FOR DECLARATORY RULING

WT Docket No. 19-250
WC Docket No. 17-84
RM-11849

Comment Date: October 15, 2019
Reply Comment Date: October 30, 2019

By this Public Notice, the Wireless Telecommunications Bureau and Wireline Competition Bureau (Bureaus) seek comment on a Petition for Rulemaking filed by the Wireless Infrastructure Association (WIA), a Petition for Declaratory Ruling filed by WIA, and a Petition for Declaratory Ruling filed by CTIA.¹ WIA's Petition for Rulemaking and Petition for Declaratory Ruling ask the Commission to adopt new rules or clarify existing rules regarding Section 6409(a) of the Spectrum Act of 2012 (Section 6409).² CTIA's Petition for Declaratory Ruling similarly seeks clarification of rules relating to Section 6409 and also requests clarifications of rules implementing Section 224 of the Communications Act.³ The Bureaus are creating a new docket number to address the Section 6409 issues in the Petitions.⁴

WIA's Petition for Rulemaking asks the Commission to amend our rules to reflect that collocations requiring an expansion of the current site—within 30 feet of a tower site—qualify for relief under Section 6409(a) and to require that fees associated with eligible facilities requests under Section 6409 be cost-based. WIA's Petition for Declaratory Ruling asks the Commission to clarify: (1) that

¹ Wireless Infrastructure Association (WIA) Petition for Rulemaking (filed Aug. 27, 2019); [https://ecfsapi.fcc.gov/file/108273047516225/WIA%20Petition%20for%20Rulemaking%20\(8-27-19\).pdf](https://ecfsapi.fcc.gov/file/108273047516225/WIA%20Petition%20for%20Rulemaking%20(8-27-19).pdf); WIA Petition for Declaratory Ruling (filed Aug. 27, 2019); [https://ecfsapi.fcc.gov/file/10827091727851/WIA%20Petition%20for%20Declaratory%20Ruling%20\(8-27-19\).pdf](https://ecfsapi.fcc.gov/file/10827091727851/WIA%20Petition%20for%20Declaratory%20Ruling%20(8-27-19).pdf); CTIA Petition for Declaratory Ruling (filed September 6, 2019); <https://ecfsapi.fcc.gov/file/10906760521179/190906%20CTIA%20Infrastructure%20PDR%20Final.pdf>.

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI, § 6409(a), 126 Stat. 156 (Feb. 22, 2012) (Spectrum Act) (codified at 47 U.S.C. § 1455(a)). The rule, 47 CFR § 1.6100, was originally codified as 47 CFR § 1.40001, *see Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865 (2014), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015); and was later redesignated as § 1.6100 (with no substantive changes). *See* 83 FR 51697, 51886 (Oct 15, 2018)

³ 47 U.S.C. § 224.

⁴ We assign RM-11849 to WIA's Petition for Rulemaking. WIA's Petition for Declaratory Ruling was filed in WT Docket 17-79. CTIA's Petition for Declaratory Ruling was filed in WT Docket 17-79 and WC Docket 17-84. Instead of continuing to use WT Docket No. 17-79, we open a new docket, WT 19-250. The petitions are combined into a single docket.

Section 6409(a) and our related rules apply to all state and local authorizations; (2) when the time to decide an application begins to run; (3) what constitutes a substantial change under Section 6409(a); (4) that “conditional” approvals by localities violate Section 6409(a); and (5) that localities may not establish processes or impose conditions that effectively defeat or reduce the protections afforded under Section 6409(a).⁵

CTIA’s Petition for Declaratory Ruling asks the Commission to clarify the terms “concealment element,” “equipment cabinet,” and “base station” in our rules, and clarify that when an application is “deemed granted” under Section 6409, applicants may lawfully construct even if the siting authority has not issued construction permits. With respect to section 224, CTIA asks the Commission to: (1) determine that the definition of the term “pole” in section 224 includes light poles; (2) conclude that utilities may not impose blanket prohibitions on access to certain parts of the pole; and (3) clarify that utilities may not ask attachers to accept terms and conditions that are inconsistent with the Commission’s rules.

We seek comment on these issues and all other issues raised by the three Petitions. We invite interested parties to submit factual data and economic analysis of the costs and benefits of the specific declaratory rulings, clarifications, and rule amendments discussed in the Petitions (or any alternative policies) and other factors relevant to whether they would serve the public interest. We also seek comment on whether the Commission should amend its rules in other respects or adopt other policies to more effectively implement the Spectrum Act, promote infrastructure deployment, and serve the interests of consumers, and on the Commission’s legal authority to take such actions.

Filing Requirements. Interested parties may file comments on or before the date indicated on the first page of this document.⁶ All filings must refer to **RM-11849** and **WT Docket No. 19-250**, and if addressing issues relating to section 224, **WC Docket 17-84**.⁷ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).⁸

- **Electronic Filers:** Comments may be filed electronically using the Commission’s online Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

⁵ 47 CFR §§ 1.6100(b) and (c). WIA also seeks clarification of the meaning of phrases in the rule such as “separation from the nearest antenna,” “equipment cabinets,” and “outside the current site.” 47 CFR §§ 1.6100(b)(7)(i), (b)(7)(iii)-(iv).

⁶ See 47 CFR §§ 1.2, 1.405, and 1.419.

⁷ All filings relating to this Public Notice should refer *only* to the dockets listed above.

⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 844-432-2275 (videophone), or 202-418-0432 (TTY).

Additional Information. For further information regarding this Notice, please contact David Sieradzki, Senior Counsel, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at (202) 418-1368, or by e-mail to David.Sieradzki@fcc.gov or Mike Ray, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0357 or michael.ray@fcc.gov.

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⁹ 47 CFR §§ 1.1200 *et seq.*