

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849

As telecommunications laws go, Section 6409 of the 2012 Middle Class Tax Relief and Job Creation Act is simple and straightforward. It forbids localities from exercising their traditional zoning authority to deny applications to modify wireless towers or base stations if—and only if—the application does not “substantially change the physical dimensions” of the existing facility. Congress enacted this law because it made sense to speed up routine approvals for wireless deployments that almost always have no impact on state or local interests. But Congress also took care to bar applications from this process that would result in substantial changes to existing towers.

I'm familiar with this section of the law. As congressional staff, I was in the proverbial room where it happened and helped write it. But being there is hardly necessary. The law is clear on its face. It's also clear that the decision we make today is inconsistent with the statute and that if we continue down this road we risk thwarting the very partnerships with local interests we need if we want to see smart cities technology truly develop.

Let me explain.

First, you can't square the plain language of Section 6409 with today's decision. It stretches credulity to suggest that excavation or deployment of up to 30 feet outside the boundaries of a tower compound does not “substantially change the physical dimensions” of that site. Thirty feet is five refrigerators laid out one after the other. It's half the size of a bowling lane. It's about one-fifth of the size of the Leaning Tower of Pisa. You can't tell me that construction of this size does not “substantially change the physical dimensions” of a site. The Federal Communications Commission used to acknowledge this, too. When the agency first interpreted Section 6409 in 2014, it concluded that excavation outside the current site of a tower was a substantial change. That didn't mean that a wireless provider could not expand an existing site—it simply meant that those applications would be approved in the normal course, subject to regular state and local review.

Our rationale for changing direction today doesn't stand up to scrutiny. The agency acknowledges that in its decision in 2014 it drew guidance from similar language in the Nationwide Programmatic Agreement of the Collocation of Wireless Antennas, or the Collocation NPA. It then relies on the fact that the Collocation NPA was amended recently to exclude excavations of up to 30 feet from the definition of “substantial change” to suggest that the FCC could do the same here. But this is comparing apples to oranges. The Collocation NPA addresses the review process under Section 106 of the National Historic Preservation Act. It says nothing about Section 6409 of the Middle Class Tax Relief and Job Creation Act. Whatever changes have been made to the Collocation NPA, the FCC cannot expand the scope of Section 6409 without authority from Congress to do so.

Second, when we proceed like this, we create genuinely unhelpful friction between state and local interests who have filed en masse in this proceeding to protest how this agency is diminishing their authority. By doing so, we reduce the opportunity to foster the kind of partnerships between providers and state and local authorities that can help build smart cities—where connectivity will help improve the quality of life. That can mean everything from adaptive traffic signals to increased energy efficiency to improved waste management to more data-driven problem solving in real time. But we won't get there

anytime soon if this agency keeps reading the statute in a way that leaves state and local authorities aggrieved that they lack a say in what is built in their own backyards. We need a way forward that speeds the review of essential facilities and makes cities and states partners and not adversaries in this process. I think we are creative enough to develop one. But this isn't it. I dissent.