

MEMORANDUM

TO: City Council

FROM: Alfred D. Lott, ICMA-CM, CPM
City Manager

SUBJECT: Comment Letter to Federal Communications Commission in Response to the September 13, 2019 Public Notice on WIA's Petition for Rulemaking, WIA's Petition for Declaratory Ruling, and CTIA's Petition for Declaratory Ruling – Resolution R-6-20

DATE: January 6, 2020

By this memorandum, the staff urges the City Council approve Resolution R-06-20 which would authorized a Comment Letter to the Federal Communications Commission ("FCC") in response to the Public Notice¹ of September 13, 2019 regarding the Petition for Rulemaking and the Petition for Declaratory Ruling filed by Wireless Infrastructure Association ("WIA"), and a Petition for Declaratory Ruling filed by CTIA. WIA and CTIA respectively asked the FCC to adopt new rules or to clarify existing rules regarding Section 6409(a) of the Spectrum Act of 2012. CTIA also requested a clarification of the rules implemented by Section 224 of the Communications Act.

According to WIA, their Rulemaking petition would amend rules for collocations and for fees associated with small cells to be cost-based. WIA's Declaratory petition would clarify: (1) that 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).

According to CTIA, their Declaratory petition would clarify the terms "concealment element," "equipment cabinet," and "base station." The petition would also clarify "deemed granted" under Section 6409. CTIA's petition would also clarify the term "pole" in section 224 including "light poles."

The above cited petitions pose a serious challenge to the City's ability to preserve and protect public property, public safety, and land use integrity. They would also impose undue hardships on City resources. Yet the wireless industry is not satisfied. Despite having been granted broad preemption benefits by the FCC's issuance of the *Small Cell Order* in September 2018, the wireless industry represented by WIA and CTIA, continues to seek further rulemaking and

¹ FCC's DA 19-913, released September 13, 2019

declaratory ruling as a means to further erode local authority over public-right-of-way and land stewardship.

Staff Recommendation

It is the recommendation of the staff that the City Council approved the Comment Letter to the FCC in response to the WIA's and CTIA's petitions. We feel that it is in the best interest of the City to oppose any further intrusion by the FCC and by Wireless Infrastructure Providers into local governments' land use authority and their authority to manage the use of public-right-of-way and public infrastructure. It is our belief that the FCC should not continue to burden municipalities with restrictions on our collaboration and negotiation with local wireless carriers and infrastructure providers integrating wireless technology into our communities.

ADL/mb
Enclosure

**RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
APPROVING THE COMMENT LETTER TO THE FEDERAL COMMUNICATIONS
COMMISSION IN RESPONSE TO THE SEPTEMBER 13, 2019 PUBLIC NOTICE
ON WIA’S PETITION FOR RULEMAKING, WIA’S PETITION FOR
DECLARATORY RULING, AND CTIA’S PETITION FOR DECLARATORY
RULING**

WHEREAS, the City of Bowie (hereafter designated “City”) wishes to file a Comment Letter to the Federal Communications Commission (hereafter designated “FCC”) in response to the September 13, 2019 Public Notice on Wireless Infrastructure Association’s (hereafter designated “WIA”) Petition for Rulemaking, WIA’s Petition for Declaratory Ruling, and CTIA’s Petition for Declaratory Ruling; and

WHEREAS, WIA’s Rulemaking petition would amend rules for collocations and for fees associated with small cells to be cost-based. WIA’s Declaratory petition would clarify: (1) that 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); and

WHEREAS, CTIA’s declaratory petition would clarify the terms “concealment element,” “equipment cabinet,” and “base station.” The petition would also clarify “deemed granted” under Section 6409. CTIA’s petition would also clarify the term “pole” in section 224 including “light poles;” and

WHEREAS, the above cited petitions would pose a serious challenge to the City’s ability to preserve and protect public property, public safety, and land use integrity. And would also impose undue hardships on City resources; and

WHEREAS, on September 27, 2018, the FCC issued a *Declaratory Ruling and Third Report and Order in Accelerating Wireless/Wireline Broadband Deployment* which imposed restrictions on the City’s ability to control its public-right-of-way, increased the burden on the permitting and inspection division of the City, and decreased the local government’s authority over their area.

WHEREAS, NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bowie, Maryland, that the Comment Letter to the FCC is approved in response the WIA’s and CTIA’s petitions.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a meeting on January 6, 2020.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Awilda Hernandez
City Clerk

Timothy J. Adams
Mayor

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
WIA PETITION FOR RULEMAKING,)	WT Docket No. 19-250
WIA PETITION FOR DECLARATORY)	RM-11849
RULING, AND CTIA PETITION FOR)	WC Docket 17-84
DECLARATORY RULING)	

COMMENTS OF THE CITY OF BOWIE, MARYLAND

The City of Bowie, Maryland (“City”), files these comments in response to the public notice, released September 13, 2019, in the above-entitled proceeding.

Introduction

The City urges the Commission to decline the relief requested in CTIA’s and WIA’s petitions. The City currently works with wireless infrastructure providers to come to mutually agreeable solutions on the deployment of wireless facilities, large and small. We strongly oppose any further FCC intrusion into local governments’ land use authority and their authority to manage the use of public rights-of-way and public infrastructure by wireless infrastructure providers.

We ask that the Commission avoid placing any additional restrictions on municipalities as they collaborate with their local wireless carriers and infrastructure providers to integrate this technology into their communities.

The WIA and CTIA petitions pose a serious challenge to local governments’ ability to preserve and protect public property, public safety, and land use integrity. Despite the fact that an FCC’s 2018 *Small Cell Order*, which granted broad preemption benefits to the wireless industry, only went into effect in January 2019, and still remains under legal challenge by local governments as of this writing, WIA and CTIA filed petitions seeking to further erode local authority and further skew federal regulations in favor of the wireless companies. Industry’s ceaseless assault on local elected leaders’ ability to perform their duty to act in the best interest of the residents of their community needs to be halted.

Section 6409(a)

The FCC should reject the petitions' proposals regarding Section 6409(a) of the 2012 Spectrum Act. The City is particularly concerned about WIA's suggestion that localities should be prohibited from attaching conditions to their grants of Section 6409(a) applications. Conditions attached to permit grants are the means by which a permit is enforced. WIA's proposal would, for example, deprive localities of any meaningful ability to enforce the very kinds of screening/concealment and safety code requirements that the FCC's 2014 *Section 6409 Order* permitted localities to impose on Section 6409(a) facilities. And it would even undermine a localities' ability to ensure that a facility, as actually built, does not involve a "substantial change" and is therefore entitled to Section 6409(a)'s benefits. If a permit cannot be conditioned on the facility actually not involving a "substantial change" as the FCC has defined it, then contrary to its plain language, Section 6409(a) would sanction the installation of facilities that do not comply with Section 6409(a).

WIA's and CTIA's other proposals regarding Section 6409(a) are equally misguided. They are all designed to stretch the definition of what constitutes an eligible facilities request far beyond any common-sense understanding of what would constitute an insubstantial change in a facility's existing physical dimensions.

Visual Aspects of a Small Wireless Facility

The City has already published aesthetic standards for small cell facilities in light of the *Small Cell Order*. Those standards were developed with industry input. The petitions' requests to limit the definition of "concealment element," shrink the interpretation of what constitutes an "equipment cabinet," expand the term "base station" to include the entire building or structure, and discard the notion that number and size of antennas is irrelevant to whether a change is substantial or not are all unacceptable.

Poles

It is common in Maryland to have a scenario where a utility-owned light pole is placed in a municipal right-of-way and is therefore subject to municipal laws or regulations governing the use of the right-of-way or agreements between the municipality and utility. Requests in the petitions to allow for mandatory access to light poles on terms and conditions dictated by the federal government unravels carefully crafted work done at the local level with the agreement of both utilities and municipalities. We see these proposals as a further unwarranted federal intrusion on local authority to govern an area in which local governments and utilities have mutually operated for years.

Conclusion

The City strongly urges the Commission to deny the petitions. The City opposes any further attempt by the FCC to limit or preempt local authority.

Thank you for the opportunity to submit comments on these petitions and the siting of small wireless infrastructure. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, and not to take any action that may adversely affect local governments' ability to exercise their land use, right-of-way, and public infrastructure authority.

Respectfully submitted,
Timothy J. Adams, Mayor

By: _____