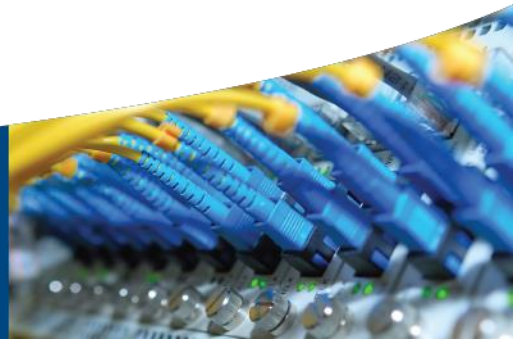

Developments in Wireless

Work Session XI: Telecom – Shot Clocks, Municipal Broadband and How The FCC Controls Your World

International Municipal Lawyers Association
80th Annual Conference
Las Vegas, Nevada

PRESENTED BY

Gail A. Karish
Partner

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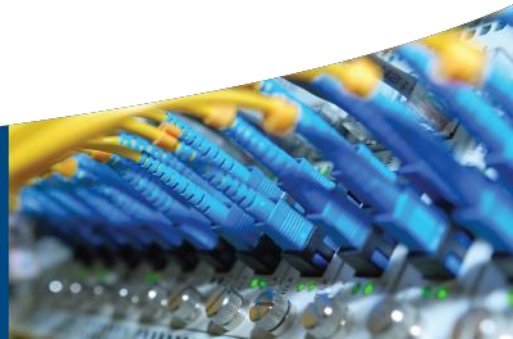


Industry Data

304,360
cell sites in service at year-end 2013

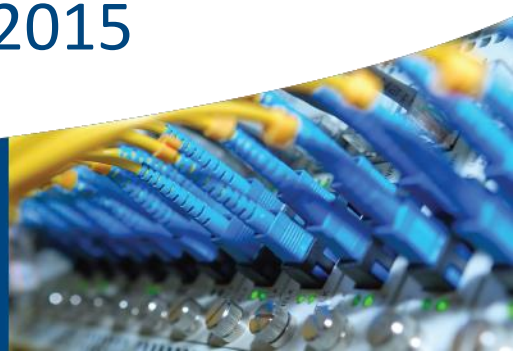
26%
increase in cell sites in five years

7,000
new cell sites providers expected to add in 2013

3,000
small cells Verizon expected to deploy in 2014

40,000 / 1,000 / 10,000
additional small cells, DAS networks, and macrocells
AT&T expected to add from 2013 - 2015

FCC 6409 Order, para. 8 (Oct. 2014)



INDUSTRY DATA

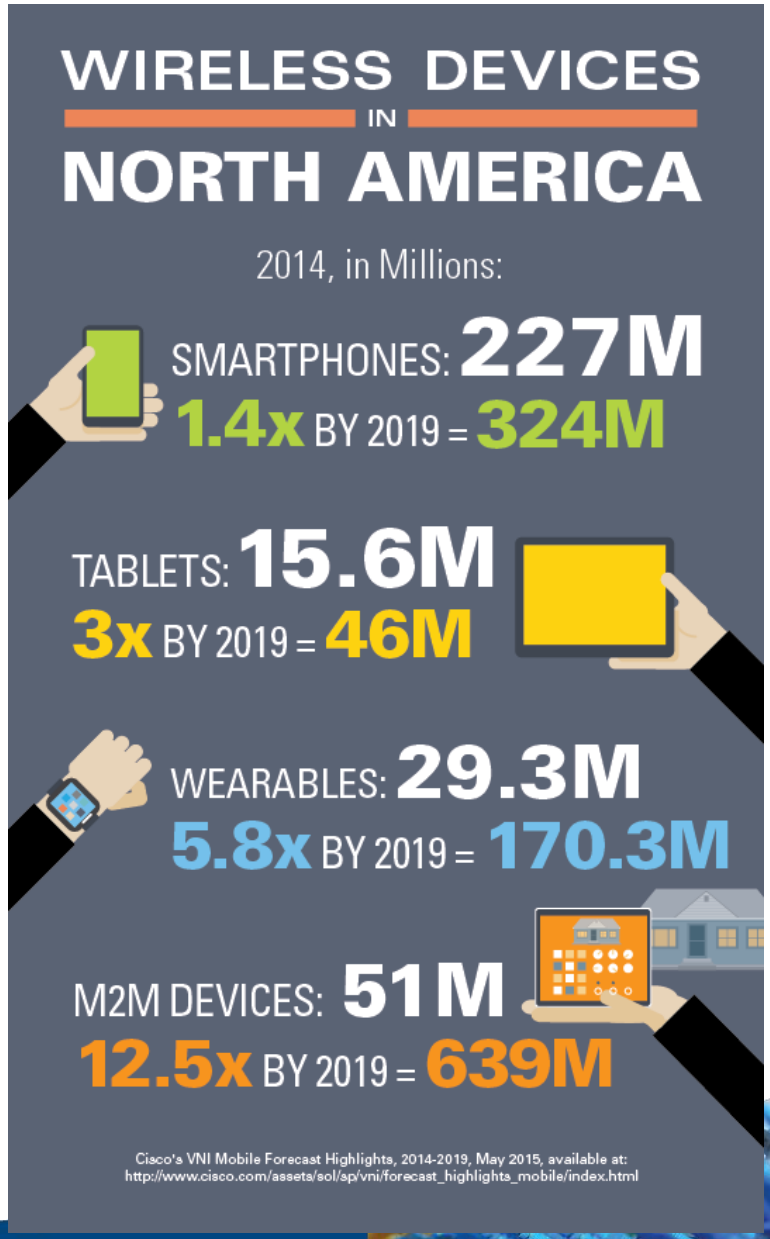
US Invests Twice as Much in Networks Per Household Than EU
Sep 24, 2014

Network providers invested more than two times per household in the U.S. than carriers in the EU.

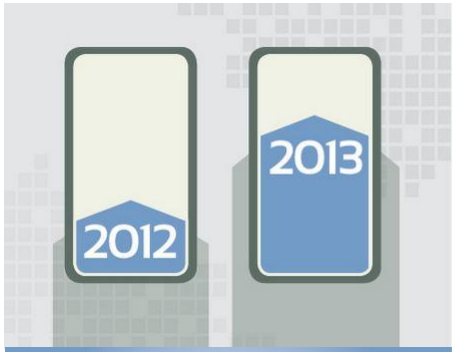
US Leads Europe in LTE Coverage
Sep 24, 2014

Leading Europe by nearly 60 percent, 86 percent of U.S. households have access to LTE services.

U. Penn. Law School, U.S. vs. European Broadband Deployment: What Do the Data Say?, June 2014, *https://www.law.upenn.edu/live/news/4786-new-university-of-pennsylvania-analysis-finds-us#.U5oK1LGAN8E*



Industry Data



Mobile Data Doubles

U.S. mobile data use doubled from 2012 to 2013, and will increase about 650% by 2018.

Source: Cisco, VNI Mobile Forecast Highlights, 2013-2018, at "United States – 2018 Forecast Highlights and 2013 Year in Review."



Mobile Video Huge Winner

About 56% of all mobile data is now data-intensive video, and that traffic will increase by 600% by 2018.

Source: Cisco, *VNI Mobile Forecast Highlights*, 2013-2018, at "United States – Mobile Applications."



Wireless Data Sustained Growth Spurt

Wireless data growth is projected to increase nearly 400 times from 2008 to 2018.

Source: Cisco, VNI Mobile Forecast Highlights, 2013-2018, at "United States – Year in Review and Device Growth Profiles – Smartphones."



Smartphones Driving Traffic Increase

The network traffic generated by a smartphone is 49 times more than a basic handset, and smartphone traffic is predicted to increase 325% by 2018.

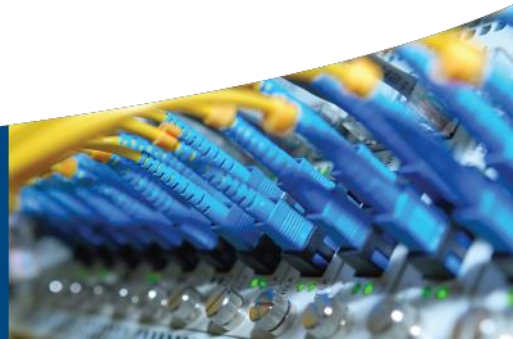
Source: Cisco, VNI Mobile Forecast Highlights, 2013-2018, at "United States – Year in Review and Device Growth Profiles – Smartphones."



Tablet Use and Bandwidth

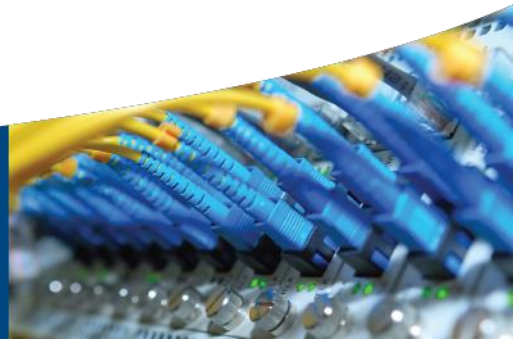
The network traffic generated by a tablet is 127 times more than a basic handset, and tablet traffic is predicted to increase by nearly 370% by 2018.

Source: Cisco, VNI Mobile Forecast Highlights, 2013-2018, at "United States – Device Growth Traffic Profiles – Tablets."



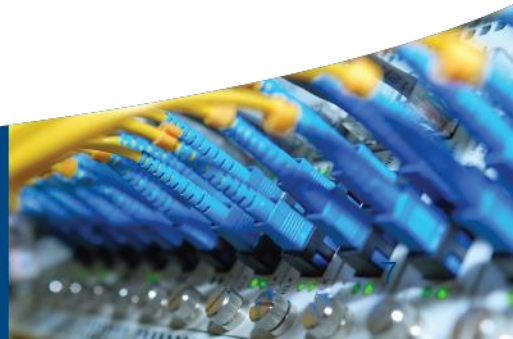
What's New?

- Court actions/decisions
- A new shot clock
- State bills



Major Federal Provisions

- **1996 - 47 U.S.C. § 332(c)(7)** (Preservation of Local Zoning Authority)
- **2012 - 47 U.S.C. § 1455 (Section 6409)** (Collocation/Modification of Existing Facilities)



Section 332(c)(7)

- Applies to "personal wireless service (PWS) facilities" (includes commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services)
- Generally preserves local zoning authority, but imposes five limitations:
  - Shall not "unreasonably discriminate" among providers of functionally equivalent services
  - Shall not prohibit or effectively prohibit provision of PWS
  - Locality must act on request within "reasonable period of time"
  - Decision to deny must be "in writing" and supported by "substantial evidence"
  - No regulation of RF – except may require applicant to satisfy FCC rules
- Limitations do not apply to actions in proprietary capacity



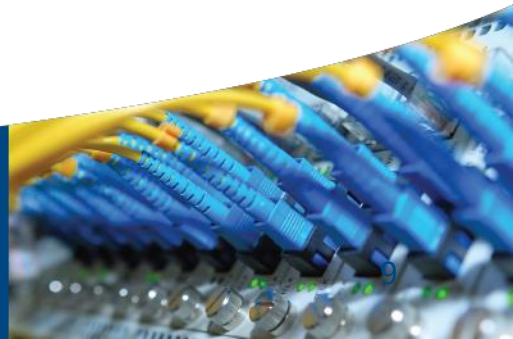
"In writing" Requirement

Denial and substantial evidence need not be in same document, but must be essentially contemporaneous.

T-MOBILE SOUTH, LLC v. CITY OF ROSWELL, 135 S.Ct. 808 (2015)

http://www.supremecourt.gov/opinions/14pdf/13-975_8n6a.pdf

- *Impact*: harder to meet shot clocks

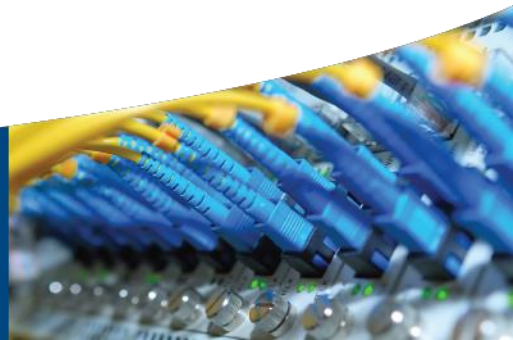


Section 6409(a) (47 U.S.C. §1455(a))

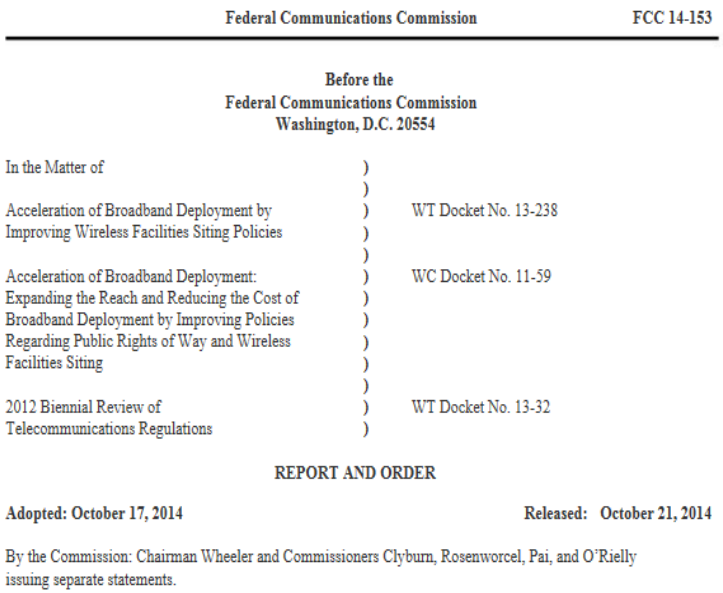
Notwithstanding… any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

"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.



FCC Report and Order



Federal Communications Commission FCC 14-153

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies	)	WT Docket No. 13-238
	)	
Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	)	WC Docket No. 11-59
	)	
2012 Biennial Review of Telecommunications Regulations	)	WT Docket No. 13-32

REPORT AND ORDER

Adopted: October 17, 2014 **Released: October 21, 2014**

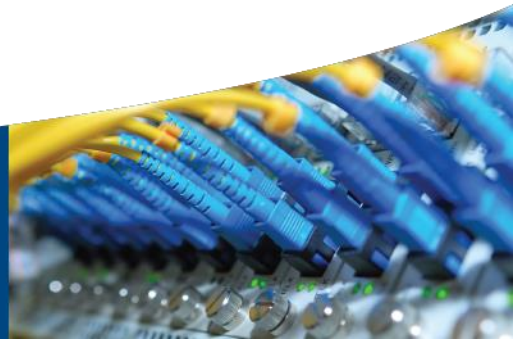
By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly issuing separate statements.

- 155 pages
  - Adopted October 17, 2014
  - Published in Fed. Reg. January 8, 2015
  - Now fully effective
  - *Appeal Underway – Argument Scheduled in 4th Cir. for October 28*

A New Shot Clock

"As the demand for wireless ***capacity*** surges, we must take steps to ensure that the networks underlying wireless services can bear the load."

FCC 6409 Order, para. 8



Application Review

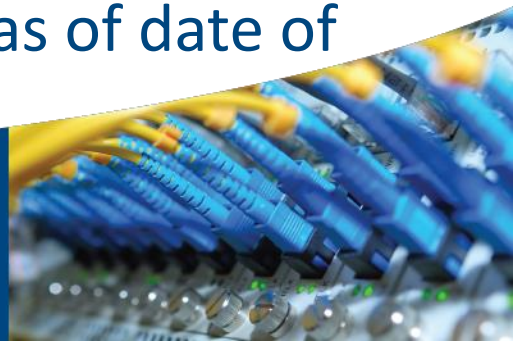
- Can require "documentation reasonably related" to determining whether request meets requirements of Section 6409 as interpreted by FCC.

- Timeline to Act
  - Sixty days to approve UNLESS locality determines facility is not covered.
  - Time frame tolled by agreement; or if notice provided of incompleteness (30/10) with detailed citation to requirements.



FCC Rules 47 CFR § 1.40001

1. Substantial Change (Height/Width)
   - Towers other than Right of Way (ROW) towers, modification:
     - Increases height by more than 10% or 20 feet whichever is greater; or
     - Appurtenance added protrudes from body of structure more than 20 feet or width of tower at pt. of attachment.
   - All other support structures, modification:
     - Increases height by 10 feet or 10%, whichever is greater;
     - Appurtenance added protrudes more than 6 feet.
   - Height measured from facility as it exists as of date of passage of Act (2012).



FCC Rules 47 CFR § 1.40001

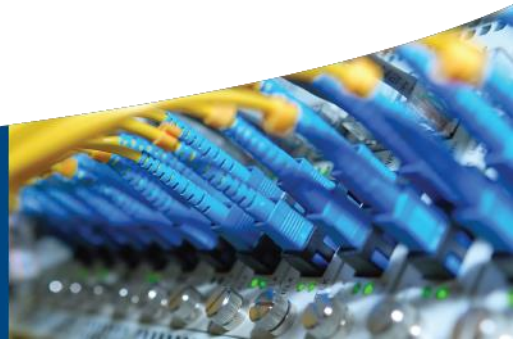
1. Substantial Change for towers and base stations in ROW:
   - New equipment cabinets if there are none, or involves placement of cabinets 10% greater in height or overall volume than other cabinets associated with structure.
   - All other eligible support structures:
     - Installation of more than four equipment cabinets.
   - It entails any excavation or deployment outside of site.
   - It would defeat "concealment elements" of the "eligible support structure."



FCC Rules 47 CFR § 1.40001

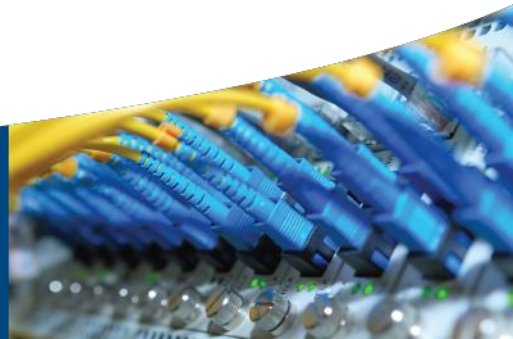
- Tower
  - Structure built for sole or primary purpose of supporting FCC licensed or authorized antennas and associated facilities.

- Base Station
  - Equipment associated with wireless comm. service
  - Antennas, coax, backup power supplies
  - “any structure other than a tower” that at time of application was supporting or housing the above (walls, rooftops are support structures).



FCC Rules 47 CFR § 1.40001

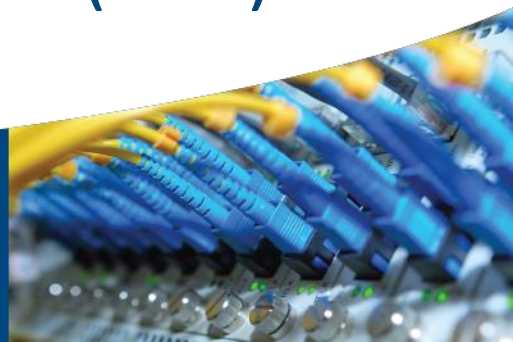
- Existing
  - A constructed tower or base station that has been "reviewed and approved under the applicable zoning or siting process or under another State or local" process, except towers not in a zoned area when built, but lawfully constructed (non-conforming uses?).



FCC Rules 47 CFR § 1.40001

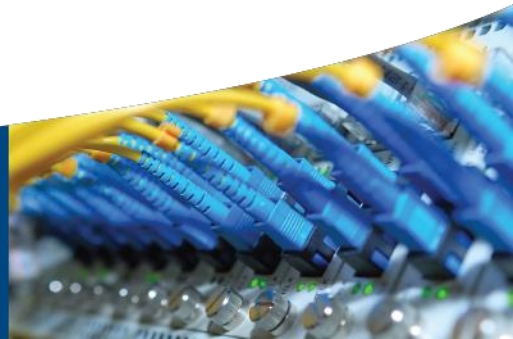
Key Notes:

- Does not preempt generally applicable safety and health codes.
- Does not apply to proprietary property of community.
- Reaches *all* wireless facilities – including Wi-Fi deployments.
- Reaches Distributed Antenna Systems (DAS) & Small Cells.



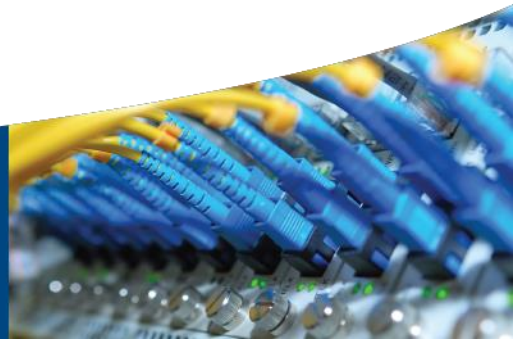
Application Review

- Failure to Act = application deemed granted.
- Deemed grant becomes effective after applicant notifies community that time has passed.



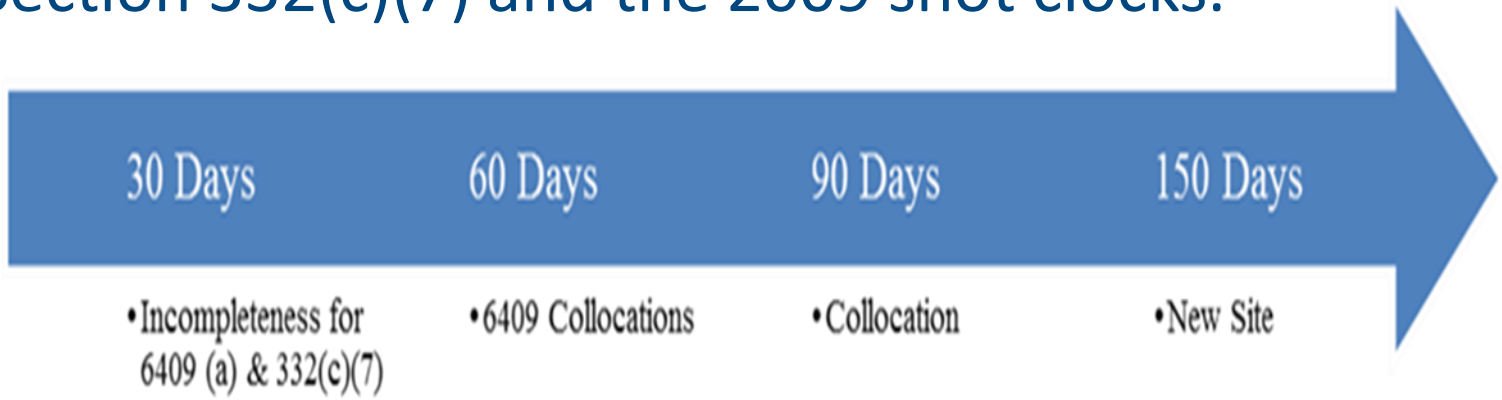
What Happens After Deemed Grant

- Community has 30 days to file appeal in court after notified of deemed grant
- Locality can bring appeal within 30 days of notice of deemed grant when it believes application:
  - Did not meet Section 6409(a) mandatory approval criteria, or
  - Would not comply with applicable building codes or other non-discretionary structural and safety codes, or
  - For other reasons is not appropriately "deemed granted."



Sec. 332(c)(7) & 6409 Together

An application that is NOT eligible under Section 6409 may still be subject to consideration under Section 332(c)(7) and the 2009 shot clocks.





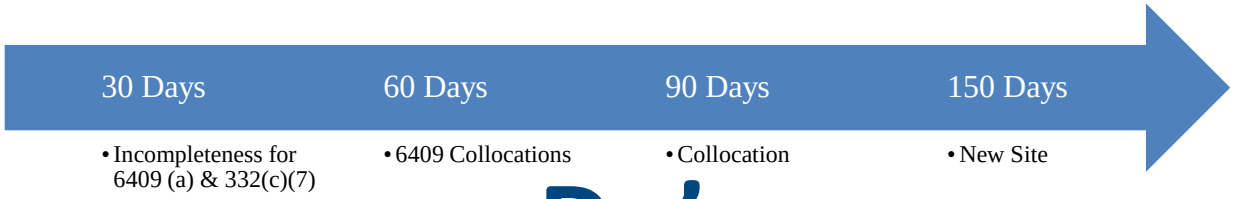
Do's

- Examine whether your laws and forms are consistent with new order (Hint: Probably not).
  - Clarify in your ordinance/government practice manual that DAS/small cell applications are entitled to Shot Clock.
- Consider enactment of an ordinance that prefers government property for cell locations.



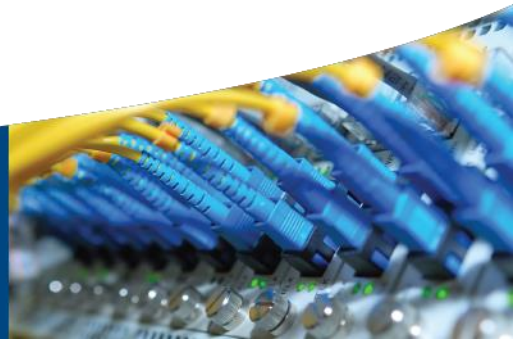
Changes to Your Applications/Process

- More stealth?
- Require applicant to provide documentation that is "reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a)."
  - Meets size change – including cumulative limit.
  - Meets any stealth obligations.
  - Meets any building code/safety/non-discretionary structural code.
  - Complies with any condition of approval of construction or modification imposed on the applicable wireless tower or base station.



Do's

- Proprietary
  - Ensure everyone in your organization understands that this order does not grant right of free collocations on government property.
  - Ensure that you don't grant that right in your leases by requiring approval in writing of municipality.
  - Ensure that industry does not use new rules as an excuse to install generators or switch out equipment at your sites.



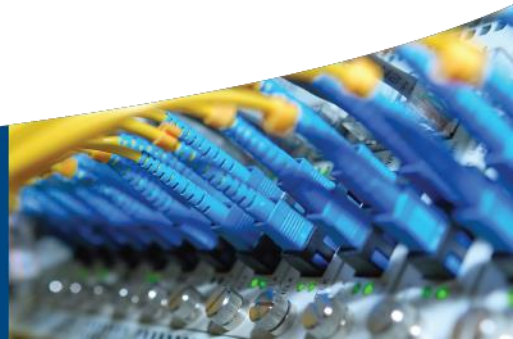


Don'ts

- Impose a moratorium –
  - Commission is specific that moratoria will not toll 6409(a) or 332(c)(7) applications.
- Approve without understanding how a facility may expand – the smallest facility may grow an additional 10 feet up and 6 feet out.
- Demand documentation for the business need for the proposed modification or require a business case for expansion.

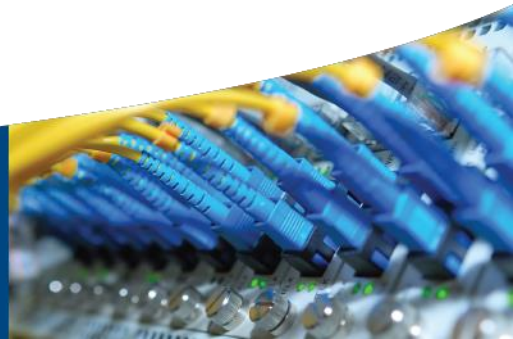
Recent State Laws

- California AB 57
- Georgia HB 176
- Iowa, House File 655
- Indiana
- Missouri SB 650
- New Hampshire SB 101
- North Carolina HB 664
- Michigan SB 1064
- Pennsylvania SB 1345
- Wisconsin AB 40



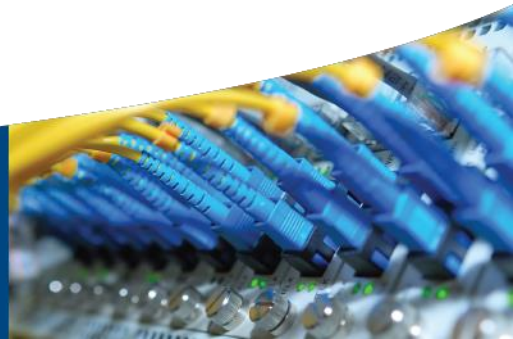
Primary Purposes of State Laws

- ***Impose their own rules and shot clocks expediting certain types of applications***
  - E.g. Georgia Mobile Broadband Infrastructure Leads to Development (BILD) Act, HB 176
    - Shot Clocks for Municipality to Act
      - New "wireless support structure": 150 days
      - Collocation request: 90 days
- ***Impose deemed granted remedies even where FCC declined to do so***
  - E.g. California AB 57 (deemed granted for all 3 federal shot clocks)
- ***Both***
  - E.g. Iowa Cell Siting Act, House File 655
    - Deemed granted remedy for collocations and new builds
    - Shot Clock for Municipality to Act
      - New build: 150 days
      - Collocation: 90 days



Summary

- Demand for capacity not coverage
- Denials in writing with reasons contemporaneously
- 6409 appeal to be heard soon
- 6409 shot clock implementation issues need close attention
- Be aware of state level legislative action to bolster federal rules



Thank you.



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