



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

www.ct.gov/csc

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TO: Connecticut Siting Council Agenda Recipients

FROM: Melanie A. Bachman, Acting Executive Director/Staff Attorney *LAB*

RE: **PETITION NO. 1133 – Connecticut Siting Council petition for a declaratory ruling pursuant to Conn. Gen. Stat. §4-176 that Conn. Gen. Stat. §16-50k does not apply to Eligible Facilities Requests for existing telecommunications facilities submitted under the Federal Communications Commission (FCC) rules adopted pursuant to the October 21, 2014 FCC Wireless Infrastructure Report and Order.**

During a public meeting of the Connecticut Siting Council (Council) held on January 8, 2015, the Council, on its own motion, opened a petition for a declaratory ruling pursuant to Conn. Gen. Stat. §4-176 that Conn. Gen. Stat. §16-50k does not apply to Eligible Facilities Requests (EFRs) for existing telecommunications facilities submitted under the Federal Communications Commission (FCC) rules pursuant to the October 21, 2014 FCC Wireless Infrastructure Report and Order (FCC Order).

Under the FCC Order, the FCC adopted the following rules to clarify and implement the requirements of Section 6409(a) of the Spectrum Act:

1. Clarify that a modification “substantially changes” the physical dimensions of a tower or base station, as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act, if it meets any of the following criteria:
 - For towers outside of public rights-of-way, it increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
 - For towers outside of public rights-of-way, it protrudes from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; and for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than 6 feet;
 - It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
 - It entails any excavation or deployment outside the current site of the tower or base station;
 - It would defeat the existing concealment elements of the tower or base station; or
 - It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.

2. Provide that states and localities may continue to enforce and condition approval on compliance with generally applicable building, structural, electrical and safety codes and with other laws codifying objective standards reasonably related to health and safety;

3. With regard to the process for reviewing an application under Section 6409(a), provide that:
 - A state or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a);
 - Within 60 days from the date of filing, accounting for tolling, a state or local government shall approve an application covered by Section 6409(a); and
 - The running of the period may be tolled by mutual agreement or upon notice that an application is incomplete provided in accordance with the same deadlines and requirements applicable under Section 332(c)(7), as described below, but not by a moratorium.
4. Provide that an application filed under Section 6409(a) is deemed granted if a state or local government fails to act on it within the requisite time period;
5. Clarify that Section 6409(a) applies only to state and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities; and
6. Provide that parties may bring disputes – including disputes related to application denials and deemed grants – in any court of competent jurisdiction. The Commission will not entertain such disputes.

Consistent with Council Petition Nos. 1000 and 1073, Connecticut Light and Power Company and the United Illuminating Company declaratory rulings that no Certificate of Environmental Compatibility and Public Need is required for all transmission remediation activities pursuant to the North American Electric Reliability Corporation (NERC) facility ratings recommendation to industry, the Council proposes the following process for submission, evaluation and approval of EFRs:

1. Each carrier shall file with the Council a sub-petition for each Eligible Facilities Request (EFR) that includes the following information:
 - a. The location and history of the existing telecommunications facility for which the proposed modifications are requested (ex. facility originally approved in Council Docket No. X); and
 - b. Submission of a detailed description of the requested modifications, including, but not limited to, how the modifications meet the FCC criteria for an EFR with an associated site plan, structural analysis report and power density report.
2. Carriers shall provide notice to the town(s) and abutting property owners of the proposed modifications for the EFR with a copy of the site-specific sub-petition indicating comments or concerns should be submitted to the Council within 30 days of the date that the sub-petition is sent to the town(s) and abutting property owners. Proof of such notice shall be provided to the Council at the time the site-specific sub-petition is filed with the Council.
3. Once the sub-petition is filed with the Council, the assigned analyst shall review the filing for completeness and draft a sub-petition summary for distribution to Council members with a comment deadline.
4. If no comments or concerns are received from the town, abutting property owners or Council members within the designated time period, a decision letter, with conditions, if appropriate, will be submitted to the requesting carrier within the FCC 60-day deadline.

The Council requests that comments regarding the above-referenced petition for a declaratory ruling be submitted to the Council on or before the close of business on February 10, 2015.