

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.

PETITION NO. 1133

DATE: FEBRUARY 10, 2015

COMMENTS OF T-MOBILE

On January 8, 2015 the Connecticut Siting Council (“Council”), on its own motion, opened a petition for declaratory ruling pursuant to Conn. Gen. Stat. §4-176, which seeks to conclude that Conn. Gen. Stat. §16-50k does not apply to Eligible Facilities Requests (EFRs) for existing telecommunications facilities as a result of recent rules and clarifications adopted under federal law; and, accordingly proposes certain procedures to effectuate the Council’s compliance with such law.¹

As detailed herein, T-Mobile Northeast LLC (“T-Mobile”) supports the Council’s efforts to amend its own processes to comply with federal laws recently adopted to ensure more predictable and efficient deployment of wireless facilities in the United States, including the State of Connecticut.²

I. Comments

T-Mobile supports the Council’s conclusion that Conn. Gen. Stat. §16-50k does not apply to Eligible Facilities Requests (EFRs) for existing

¹ Petition No. 1133 Request for Comments dated January 9, 2015 (“Council’s Petition”).

² In The Matter Of Acceleration Of Broadband Deployment By Improving Wireless Facilities Siting Policies, FCC 14-143, 2014 WL 5374631 (F.C.C.)(Adopted October 17, 2014).

telecommunications facilities as amended under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 and the rules subsequently adopted in a Federal Communication Commission (F.C.C.) Report and Order (“FCC Order”).³

In support of its efforts, Congress and the FCC both emphasized the critical nature of wireless infrastructure; and, thereby established a certain time period to further ensure the timely deployment of such facilities so as to benefit public safety and the economy. Consequently, federal law now preempts any discretionary review process for eligible modifications of existing wireless towers or existing base stations;⁴ and, requires that EFR approvals be granted within 60 days or be deemed granted.

It is therefore appropriate that the Council acknowledge that these types of facilities are excluded from Conn. Gen. Stat. § 16-50k, the “substantial adverse environmental impact” analysis, so as to be compliant with the federal mandate for such approvals (i.e. within 60 days).

T-Mobile also supports the Council’s efforts to develop any processes that may further clarify and ensure consistent application of the federal mandate. Seemingly to those ends, the Council has further proposed a process which enables a notice and comment period for abutters and towns via Items 2 and 4 included in the Council’s Petition. While such items are likely designed to further ensure compliance with the mandate, the specifics of the proposed process run afoul of the express language of Section 6409(a), which provides:

[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.

³ *Id.*

⁴ Section 6409(a) provides, “notwithstanding section 704 of the Telecommunications Act of 1996 or any other provisions 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.”

Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §6409(a), 126 Stat. 156.

Importantly, the federal law makes no provision for notice to abutters or to towns, nor the consideration of any comments or concerns of abutters or towns; and, the 60-day time period for approval identified in the FCC Order is absolute.

In support of the mandate, the FCC detailed that the role of state and local governments is limited as to existing telecommunications facilities; and, that applicants seeking modifications to such facilities shall merely provide such documentation that is “reasonably related to determining whether the request meets the requirements of the provision.”⁵ In so concluding, the FCC determined that such a limited role of state and local governments was appropriate given the express language found in Section 6409(a) and the overarching federal policy initiatives to facilitate timely approval of such wireless infrastructure deployment requests.⁶

Under the federal statutory process, the Council is only authorized to consider whether the applicant submitted documentation demonstrating the absence of a substantial change in the physical dimensions of the tower or base station. No other criterion is to be considered. Therefore, T-Mobile urges the Council to reconsider Items 2 and 4 of the Council’s Petition as such notice and comment is not provided for in federal law; and to further ensure that any process adopted by the Council is consistent with federal law.

II. Conclusion

T-Mobile supports the Council’s conclusion that Conn. Gen. Stat. §16-50k does not apply to Eligible Facilities Requests (EFRs) for existing telecommunications facilities as amended under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 and the rules subsequently adopted in a Federal Communication Commission (F.C.C.) Report and Order (“FCC Order”).⁷ In addition, T-Mobile requests that the Council reconsider Items 2 and 4 of the Council’s Petition as discussed herein and to ultimately ensure

⁵ In The Matter Of Acceleration Of Broadband Deployment By Improving Wireless Facilities Siting Policies, FCC 14-143, 2014 WL 5374631 at Section 214.

⁶ Id.

⁷ Id.

that the processes adopted provide for a more predictable and efficient deployment of wireless facilities in the State of Connecticut

T-Mobile reserves the right to respond to the comments of other participants or those of the Council itself.

Respectfully Submitted,

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