

**STATEMENT OF COMMISSIONER GEOFFREY STARKS  
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

More than 106,000 people have died from COVID-19 so far and unemployment has hit its highest levels since the Great Depression. The school year is ending, and millions of children have missed months of in-classroom instruction. And in the last 2 weeks, the recent protests have brought millions of people into the streets of cities across the country to demonstrate for justice. This is a true moment in American history.

State and local governments form the front line for all of these issues. They run the public hospitals and emergency response units treating the sick, dispense benefits to the unemployed, operate the schools struggling to provide distance learning to our children, and oversee the police departments that are both the focus on the demonstrations and helping to keep us safe. Even in good times, they operate on tight budgets and limited resources.

For State and local governments across the country, tax revenues are declining due to the economic fallout of COVID-19, even as they must increase their expenditures to respond to the pandemic and the demonstrations. Replacing retiring employees is out of the question, and layoffs and furloughs are under consideration, even as these governments prepare their budgets for the next year.

That is the moment in time in which we place today's item. Let me be clear -- I support the deployment of infrastructure to improve service and connect more Americans. Low-income and minority families in particular rely on wireless service, and I hope that any benefits from today's item will result in improved service and more affordable offerings for all neighborhoods, not just those with the wealthiest Americans. Moreover, tower technician jobs offer a path to financial security for many Americans even in these uncertain times. Finally, streamlining the infrastructure approval process has had broad support. Congress intended to provide a quick path for approval of straightforward modifications when it adopted Section 6409, and a unanimous Commission adopted implementing rules back in 2014.

But this isn't the right way to achieve those goals. Instead of reducing burdens, today's Declaratory Ruling imposes new obligations on local governments at a time where they have the least amount of time and resources. Instead of providing clarity, it creates uncertainty. Because of these issues, I'm concerned that today's decision may actually slow the growth of advanced wireless service rather than accelerating it.

Those who support this decision claim that it's necessary because local governments have unreasonably blocked straightforward modifications to existing wireless sites, insisting on burdensome and unnecessary meetings and documentation. According to the petitions, these alleged practices have slowed or prevented upgrades that would provide advanced services and allow more Americans to realize the promise of 5G. Supporters claim that we must act now to encourage the growth of these services.

This is starkly different from what these parties are publicly and commercially saying elsewhere. Just recently, T-Mobile announced that it now offers 5G coverage in all 50 states. AT&T says it remains on track to offer nationwide 5G sometime this summer, and Verizon plans to offer 5G service in 60 cities by the end of 2020. DISH remains committed to building a standalone nationwide 5G network in the next few years, and the major tower companies have asserted that even COVID-19 hasn't slowed down their buildout efforts.

Moreover, despite today's challenges, local governments continue to take timely action on applications from these companies and their partners. Even [industry](#) has recognized the [efforts](#) of local governments to maintain operations while their offices must be closed, including allowing electronic filing via online portals and email, creating drop boxes for hard copies of documents, and waiving and modifying requirements regarding permits, filing fees and public meetings.

Given the unusual circumstances and the extraordinary efforts by local governments to continue the timely processing of applications, I'm deeply disappointed that we rejected the reasonable request for more time to review the draft order submitted on behalf of local governments across the country and supported by 24 Members of Congress. While it's true that the Petitions underlying this decision were filed last Fall, as today's decision repeatedly notes, we do not adopt the recommendations proposed in those filings. It was only with the release of the draft Declaratory Ruling just three weeks ago that commenters learned that the Commission was even considering certain issues, let alone specific outcomes. Indeed, even the Commissioners only saw the current version yesterday, which contains substantive differences from the original draft.

Even under the best of circumstances, three weeks would not be enough notice for such an important decision, which will affect communities around the nation. At a minimum, we should have deferred our consideration of this item to allow interested parties more time to analyze and comment on the draft decision. But I would have gone further and dealt with these issues through a rulemaking proceeding, with notice of our proposed approach and an opportunity for public comment.

I do agree that our rules could use clarification, but the item here consistently misses the mark. For example, we should clearly define when the Section 6409 shot clock starts. But while the Declaratory Ruling acknowledges the value of preliminary reviews and meetings, it nevertheless starts the shot clock before those events take place and provides no flexibility to adjust once an applicant submits its paperwork and requests that first meeting. Under today's decision, once an applicant has taken these actions, the local government must ensure that every other step in the process is completed before the shot clock expires. This approach not only places an unfair burden on the local governments but could lead to disputes between governments and applicants about the reasonableness of any requirement and whether it can be accomplished within the 60-day shot clock period. We should have done a rulemaking to discuss these issues and how to avoid such outcomes.

There are other issues. In many cases, local governments approved sites years ago, well before passage of the Spectrum Act. Particularly for smaller cities, it's unlikely that their decisions explain the intent behind a particular requirement affecting a site's appearance. Yet today's Declaratory Ruling states that, unless the regulator can provide express evidence in the record demonstrating that a requirement was intended to disguise the nature of the equipment as something other than a wireless facility, the local government must give streamlined treatment to any changes. Moreover, for changes in appearance that don't disguise the nature of the equipment but merely make it harder to notice, the Declaratory Ruling establishes a standard that effectively preempts any requirement that the applicant claims it cannot reasonably meet.

The confusion doesn't stop there. This decision explicitly states that the number of equipment cabinets that can be added to a site is measured for each eligible facilities request and rejects the interpretation that the relevant rule sets a cumulative limit. The local governments are justifiably confused about whether today's decision effectively eliminates any limitation on the number of equipment cabinets that may be added over time. Today's decision disagrees with the suggestion that there's no such limit but fails to explain exactly how a local government would derive it. A rulemaking could have clearly spelled out our expectations.

Taken as a whole, rather than clarifying our policies and expediting approvals, the posture of this Declaratory Ruling is likely to lead to time-consuming and costly disputes about intent and reasonableness between local governments and industry; and furthermore, it is likely to lead to protracted litigation. Moreover, because of the substantial burdens we place on local governments' review of modifications to existing sites, those governments may even give greater scrutiny to initial siting requests, leading to additional frustration and delays.

These problems would be serious in a proposed rulemaking, but the process followed here raises the stakes even higher. Because this is a Declaratory Ruling, it applies retroactively to decisions that may be decades old.<sup>1</sup> This decision will create uncertainty regarding existing sites across the country. Moreover, doing this via a Declaratory Ruling will place an undue burden on local governments that are unfamiliar with the Commission. A clerk in a small city may not realize that a proposed site modification will require her to review not only the Code of Federal Regulations but the language of this decision and our 2014 order.

I wish that we had addressed these issues in a rulemaking proceeding, like the one we initiate today regarding proposed excavations and the meaning of the term "current site." While I have serious reservations about the approach proposed in the NPRM, I agree that we should receive input from the public before we act further in this area, although I would have provided more time for that input. I hope that we reconsider that timetable, given all the other demands currently faced by local governments. I dissent.

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<sup>1</sup> See *Connect America Fund Developing a Unified Intercarrier Compensation Regime*, Order on Remand and Declaratory Ruling, WC Docket No. 10-90 *et al.*, FCC 19-131 at para. 26 (rel. Dec. 17, 2019) ("As a general matter, declaratory rulings are adjudicatory and are presumed to have retroactive effect.") (citations omitted).