

Shameless Plug for the League, CSAC, and SCAN NATOA

- Since the Telecom Act in 1996, federal legislative and administrative efforts have steadily preempted local authority over traditionally local zoning control over wireless infrastructure.
- The League of CA Cities, California State Association of Counties, and SCAN NATOA formed “California Local Governments” to provide pro-bono advocacy for local authority over local issues in FCC rulemaking proceedings.
- In its first effort, California Local Governments convinced the FCC to adopt several recommendations its briefings were cited (more favorably than not) more than 50 times in the Report and Order.

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PUBLICATION UPDATE

- Order published in Federal Register today (Jan. 8, 2015)

- NEPA/NHPA/Shot Clock Rules effective February 8, 2015

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- Some complicated math for Section 6409(a)

- Some portions of the Section 6409(a) rules require approval by the Office of Management and Budget (OMB)
- Portions that require OMB approval - * effective 90 days from OMB approval
- Portions that do not require OMB approval - * effective April 9, 2015

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SECTION 6409(a)

(a) Facility modifications.

(1) In general. Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or 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.

(2) Eligible facilities request. For purposes of this subsection, the term “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.

(3) Applicability of environmental laws. Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

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SECTION 6409(a)

State and local governments “may not deny, and shall approve” any “eligible facilities request” so long as it does not “substantially change the physical dimensions of the existing wireless tower or base station.”

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ELIGIBLE FACILITIES REQUEST

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Collocations and modifications (removals and replacements) of wireless transmission equipment at an existing wireless tower or base station.

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ELIGIBLE FACILITIES REQUEST

Collocations and modifications (removals and replacements) of wireless transmission equipment at an existing wireless tower or base station.

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ELIGIBLE FACILITIES REQUEST: *COLLOCATION*

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“[T]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”

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ELIGIBLE FACILITIES REQUEST: *MODIFICATION*

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- Not well defined, but at least includes “removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure.”

ELIGIBLE FACILITIES REQUEST

Collocations and modifications of wireless transmission equipment at an existing wireless tower or base station.

ELIGIBLE FACILITIES REQUEST: *WIRELESS TRANSMISSION EQUIPMENT*

“[A]ny equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.”

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ELIGIBLE FACILITIES REQUEST

Collocations and modifications of wireless transmission equipment at an existing wireless tower or base station.

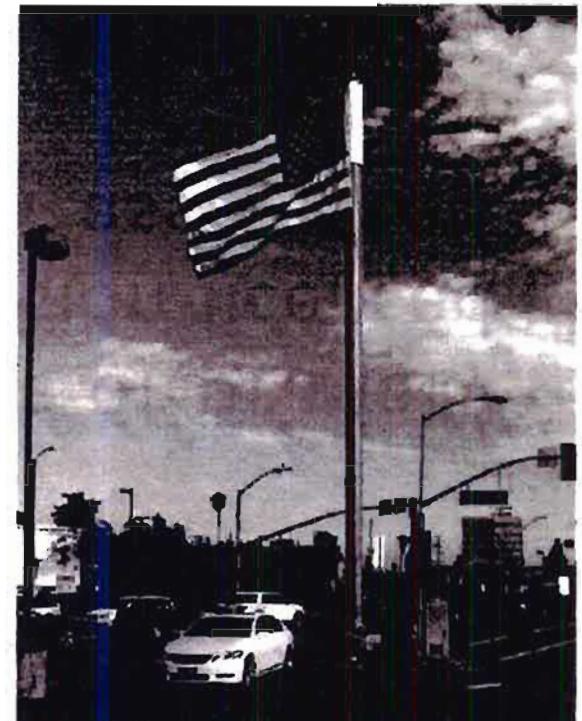
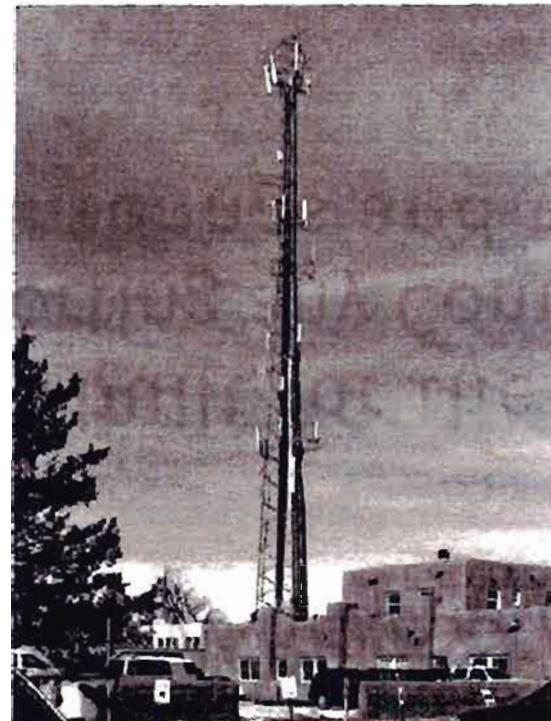
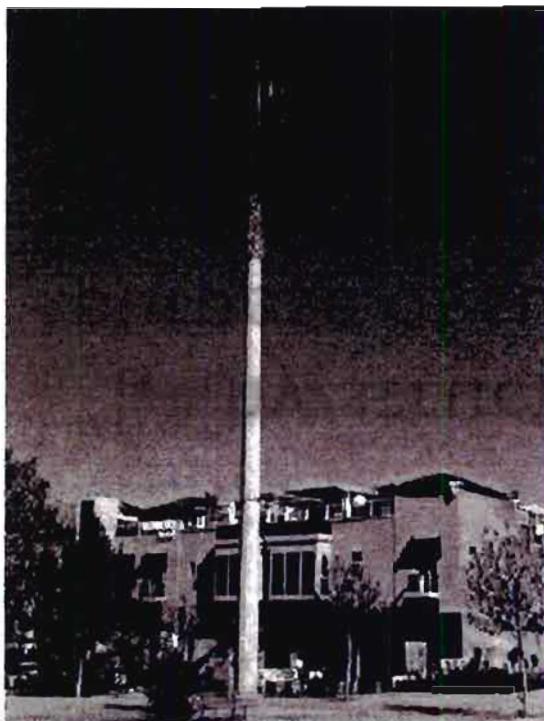
ELIGIBLE FACILITIES REQUEST: *EXISTING WIRELESS TOWER*

“[A]ny structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities”

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ELIGIBLE FACILITIES REQUEST: *EXISTING WIRELESS TOWER*

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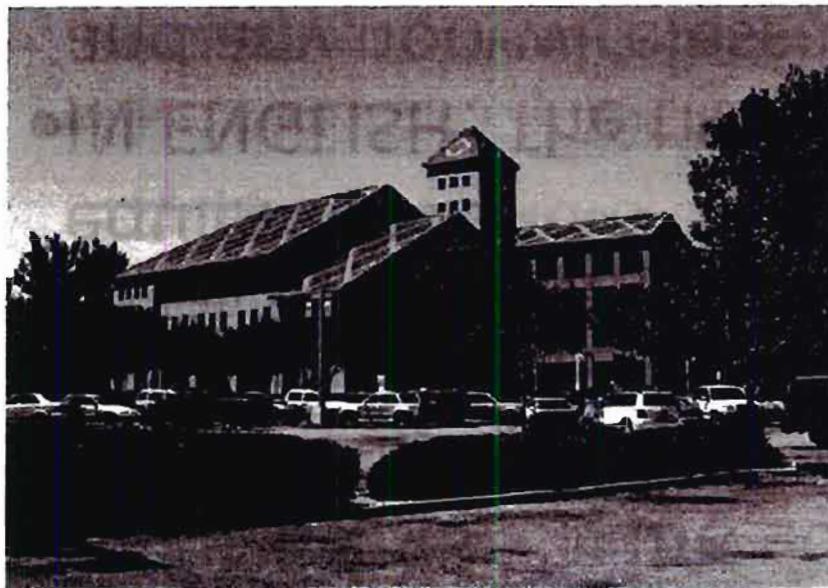
ELIGIBLE FACILITIES REQUEST:

EXISTING BASE STATION

- **DEFINED AS:** “[T]he equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network.”
- **IN ENGLISH:** The transmission equipment itself and any non-wireless tower structure that supports transmission equipment under a valid permit for a wireless use.

ELIGIBLE FACILITIES REQUEST: *EXISTING BASE STATION*

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both non-tower structures with legally permitted wireless transmission equipment

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SECTION 6409(a)

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SUBSTANTIAL CHANGE

- **OBJECTIVE:** based on empirical (more or less) changes to height, width, equipment cabinets, excavation, concealment, and permit compliance
- **DISJUNCTIVE:** must comply with all six elements
- **CUMULATIVE:** the Commission standards effectively create an invisible envelope around all wireless towers and base stations within which carriers can expand and change its transmission equipment

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request increases the height more than:

- 10% or one additional antenna array not more than 20 feet (whichever is greater) higher for towers on private property, or
- 10% or 10 feet (whichever is greater) for towers in the public rights-of-way and all base stations;

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request increases the width more than:

- 20 feet or the tower width at the level of the appurtenance (whichever is greater) for towers on private property, or
- six feet for towers in the public rights-of-way and all base stations;

SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed eligible facilities request involves
more than four (4) equipment cabinets

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SUBSTANTIAL CHANGE OCCURS WHEN . . .

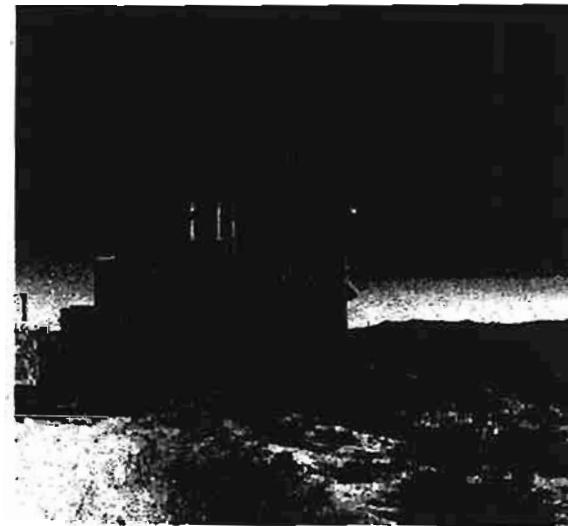
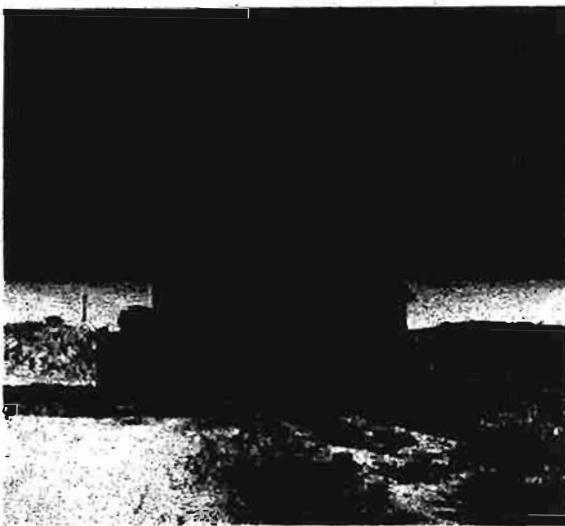
the proposed eligible facilities request involves
any excavation outside either:

- the lease or license area on private property, or
- the “proximity” to the ground-mounted equipment in the ROW; or

SUBSTANTIAL CHANGE OCCURS WHEN . . .

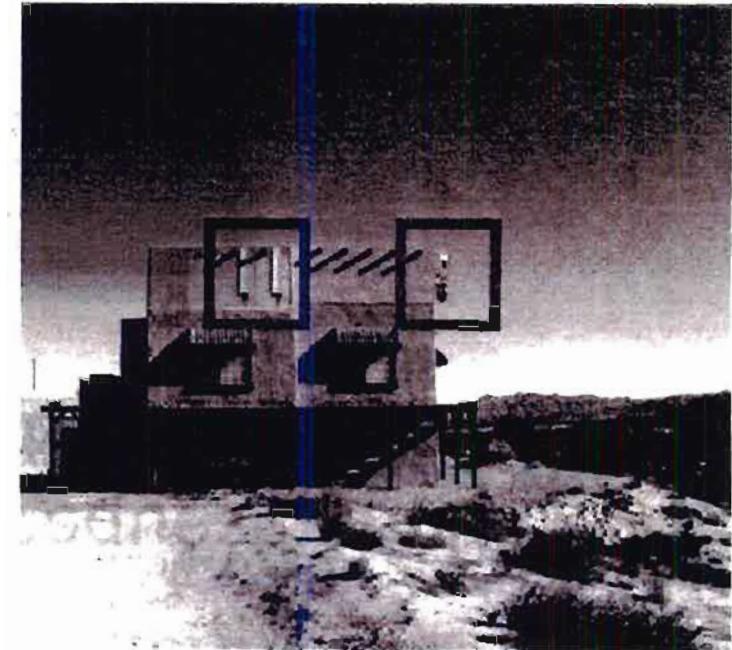
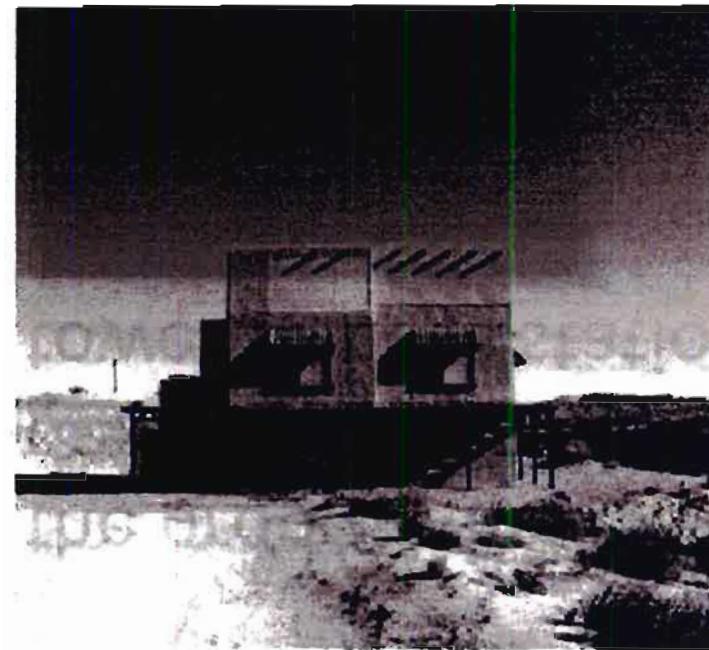
the proposed eligible facilities request would
defeat the existing concealment elements of the
tower or base station;

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SUBSTANTIAL CHANGE OCCURS WHEN . . .



SUBSTANTIAL CHANGE OCCURS WHEN . . .

the proposed collocation would violate a prior condition of approval that does not conflict with the Commission standards for a substantial change

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MAY NOT DENY, and SHALL APPROVE
DEEMED GRANTED REMEDY

- PERMIT DEEMED GRANTED after failure to act within 60 DAYS after application is submitted
- period tolls by mutual agreement and some incomplete notices
- period does not toll for a moratorium
- applicant must provide written notice before it starts construction
- disputes still resolved by courts, not the Commission

MAY NOT DENY, and SHALL APPROVE: ***CONDITIONAL APPROVALS***

- Conditional approval not tantamount to a denial
- Exempt from prior conditions that conflict with thresholds for a substantial change or are subjective
- Probably still valid conditions include drainage, landscaping, maintenance, lighting, fencing, access, indemnification, compliance with all generally applicable laws, etc.

MAY NOT DENY, and SHALL APPROVE

affects government in its
regulatory capacities

no effect on government in its
proprietary capacities

WHAT DOES THIS MEAN FOR CITY OFFICIALS?

- Wireless tenants on municipally owned or controlled properties will want to upgrade, expand, or collocate (*i.e.*, sublease). These events usually require the landlord's (the city's) prior approval.
- Do not allow zoning/building/community development staff to grant landlord's approval on behalf of the city (this should probably come from the CMO or the CAO)
- Check existing leases and licenses to ensure that tenants do not exceed their contractual rights
- Ensure that cities share in the additional revenue from collocations and upgrades/expansions

What Can City Officials Do Right Now?

- Educate your staff members
 - Zoning / Building / Public Works / City Attorneys' Office / etc.
- Make sure you're in-house practices follow the new Shot Clock rules
- Submit Comments to the OMB about what a paperwork burden the new Section 6409(a) regulations create
 - 47 CFR 1.40001(c)(3)(i) – one chance to toll the shot clock for incompleteness
 - 47 CFR 1.40001(c)(3)(iii) – 10 days to review subsequent submittals
 - 47 CFR 1.40001(c)(4) – deemed granted does not become effective until applicant provides written notice

