



New York State
Adirondack
Park Agency

KATHY HOCHUL
Governor

BARBARA RICE
Executive Director

Eligible Facilities Request: Definitions and Requirements

I. Eligible Facilities Request

Under section 6409(a) of the Spectrum Act, an eligible facilities request (EFR) is any request for modification of an *existing* wireless tower or base station that *does not substantially change the physical dimensions* of such tower or base station and involves *co-location, removal, or replacement of transmission equipment*.

II. Existing Equipment

To qualify as existing, equipment must have been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process. This may include a structure other than a tower, or a structure not built primarily for providing support to wireless equipment. However, at the time of the application, the structure must support or house equipment that has been reviewed and approved under 47 CFR 1.6100(b)(1)(iii).

III. Substantial Change

A modification substantially changes the physical dimensions of an eligible support structure if it meets **any** of the following criteria:

A. Height

1. For towers not in public rights-of ways, the modification increases the height of the existing tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater (measured in feet from the top of the existing antennas to the bottom of the proposed highest antennas).
2. For other eligible support structures, the modification increases the height of the existing structure by more than 10% or more than 10 feet, whichever is greater.

B. Appurtenances

3. For towers not in public rights-of-way, the modification involves adding an appurtenance to the body of the tower that would protrude 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.
4. For other eligible support structures, the modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet.

C. Equipment Cabinets

5. For any eligible support structure, the modification involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.
6. For towers in public rights-of-way and base stations, the modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

D. Excavation or Deployment Outside the Site Boundary

7. For towers in public rights-of-way, it entails any excavation or deployment outside the current site boundary.
8. For towers not in public rights-of-way, it entails any excavation or deployment of transmission equipment outside the current site by more than 30 feet in any direction.

E. Concealment Elements

9. Any modification that defeats a concealment element(s) is a substantial change to existing facilities.
10. Concealment element means an element that is part of a stealth-designed facility intended to make a structure look like something other than a wireless facility, and that was part of a prior approval.
11. To defeat a concealment element, a proposed modification must cause a reasonable person to view a structure's intended stealth design as no longer effective after the modification.

F. Conditions Associated with Siting Approval

12. A modification may be a substantial change if it does not comply with conditions associated with the siting approval. Such conditions may relate to improving the aesthetics, or minimizing visual impacts, of non-stealth facilities.
13. There must be evidence that, at the time of approval of the original facility, the locality required the feature and conditioned approval upon its continuing existence.
14. When a proposed modification otherwise permissible under section 1.6100(b)(7)(i)-(iv) cannot reasonably comply with conditions associated with siting approval under section 1.6100(b)(7)(vi), the conflict should be resolved in favor of permitting the modifications.
15. However, the Agency can enforce a condition associated with siting approval if the provider reasonably could comply with, and meet, the purpose of the condition.

IV. Application Process

Pursuant to section 6409(a) of the Spectrum Act, local agencies shall not deny any eligible facilities request (EFR) for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

- A. Federal Regulations: The Shot Clock Commences with the First Procedural Step
FCC regulations provide that the shot clock for the review and approval of an EFR under section 6409 of the Spectrum Act begins to run when the application is filed. The shot clock commences when the applicant takes the “first procedural step,” which is “submission of the type of filing that is typically required to initiate a standard zoning or siting review of a proposed deployment that is not subject to section 6409(a).”

- B. Adirondack Park Agency Regulations: Landowner Signatures Required
The Agency’s signed permit application is the “filing that is typically required” for facility modifications. Pursuant to Agency regulations, applications “shall contain the signatures of all owners of record of the land involved.” Thus, the first procedural step in the application for an EFR under section 6409 is submission of an application signed by the landowner(s). The FCC stated that, “[i]n taking the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process, applicants demonstrate that they are complying with a local government's procedures.” Therefore, when an applicant submits an EFR to the APA without the required landowner signatures, that application remains unfiled, and the shot clock does not begin to run.

- C. Shot Clock
Pursuant to FCC regulations, the Agency must make a final decision on EFR applications within 60 calendar days from receipt of the signed application. Any and all days that Agency staff is reviewing a received application are counted on the shot clock. If the Agency needs additional information from the applicant, it will send a Notice of Incomplete Application (NIPA) within 15 days. Upon sending the NIPA, the shot clock is tolled (i.e., suspended). When the Agency receives a response to the NIPA, the shot clock resumes the following day. The Agency has 10 days from receipt of a NIPA response to send a subsequent NIPA. All days are calendar days. But if a deadline falls on a weekend or holiday, it rolls over to the next business day.