



**From:** [Tytis Markwardt](#)  
**To:** [APA Regulatory Programs Comments](#)  
**Subject:** Cell phone towers  
**Date:** Monday, September 11, 2023 4:48:31 PM

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I vote against any new additions to the existing towers. My vote also will say to disassemble all towers. They are emitting harmful radioactive waves into the atmosphere and causing damage to natural wildlife.

Have any of these locations been scouted for protected raptures?

Or were these towers strictly generating profit for specific groups of individuals?

Surely there must be a master plan book?

Thanks for your time,  
Tytis Alexander Markwardt



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September 12, 2023

Ariel Lynch  
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Email: [RPComments@apa.ny.gov](mailto:RPComments@apa.ny.gov)



Dear Ariel:

We appreciate the opportunity to provide comment to the Agency regarding the proposed General Permit 2023-1. We offer the following comments regarding the proposed General Permit and the proposed Telecommunications Authorization Form.

**The Agency is Prohibited by Federal Law from Requiring the Telecommunications Authorization Forms for Eligible Facilities Requests.**

The General Permit process is generally consistent with the requirements of the Middle Class Tax Relief and Job Creation Act of 2012, Section 6409 (codified in 47 U.S.C. § 1455) and its corresponding implementing regulations (47 C.F.R. § 1.6100 et seq.) (the “**6409 Rules**”). However, the Agency’s requirement that wireless providers submit a Telecommunications Authorization Form (the “**Consent Form**”) with each Eligible Facilities Request (“**EFR**”) submission is inconsistent with the 6409 Rules. The relevant provision of the 6409 Rules is set forth in 47 C.F.R. 1.600 (c)(1):

*Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.*

Requiring submission of a Consent Form as part of the application requirements for an EFR is inconsistent with the plain language of 6409 Rules, that clearly and unequivocally states that applicants are only required to submit such information as is necessary to determine whether the project qualifies as an EFR. Since the Consent Form contains no information relevant to the determination whether the proposed project qualifies as an EFR, the 6409 Rules prohibit the

Agency from requiring this submission of the Consent Form when an applicant has asserted that its project in an EFR.

### **The Agency Should Implement a Waiver Process for the Consent Form**

For projects that do not qualify as an EFR (and therefore the Agency is free to require submission of the Consent Form) it is respectfully suggested that the Agency implement a waiver or other similar process for instances where a project sponsor has made a good faith effort to obtain the required signature(s) on the Consent Form from the listed signatories without success. Since the Agency instituted the requirement for a landowner signature form (the Consent Form being the latest iteration of the required consent form), several of our clients have occasionally had great difficulty obtaining signatures from the required signatories. In such instances, client representatives often make several in-person visits to landowner properties, send one or more certified letters, emails and/or make numerous phone calls to contact the landowner to obtain the signatures.

In response, there are times when landowners are unavailable, resist efforts to contact them and/or refuse to execute the form itself (sometimes unless they receive additional remuneration), all while the lease agreement between the tower owner/tenant and the landowner almost universally contains express language authorizing the tower owner/tenant to seek any and all government approvals necessary to construct, operate and maintain the tower on the landowner's property. In such instances, the tower owner/tenant is given no choice but to (1) stop pursuing the project/upgrade; (2) seek judicial intervention to enforce its leasehold rights and require the landlord/property owner to execute the form (at great expense and delay); or (3) pay the "ransom" the landlord/property owner may seek as a condition of the signature. The Agency's insistence on receiving the signed Consent Form before an application is deemed "complete" places the tower owner/tenant in an untenable position.

Where a tower company makes a good faith effort to both notify the landowner of its impending project and/or the landowner refuses to execute the Consent Form, the Agency should provide a waiver or similar process to allow tower owner/tenants to proceed with projects without landowner signature, particularly if the lease between the landowner and the tower company expressly provides landowner consent to the tower owner seeking government approvals for a tower. Refusing to process applications for wireless telecommunications projects without a landowner-executed Consent Form where the Landowner is either unavailable or otherwise unwilling to execute the form, creates a major obstacle to upgrading wireless telecommunications service in the Park.<sup>1</sup>

We appreciate the opportunity to comment on the proposed General Permit and the Consent Form. While we appreciate the Agency's latest effort, we must also respectfully suggest that the Agency modify its 2002 policy that requires telecommunications facilities over 40' tall

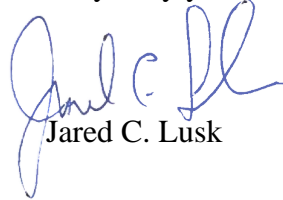
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<sup>1</sup> While the new Consent Form allows a landowner to provide consent for future projects, it does nothing to solve the problem of existing landowners who were never provided the opportunity to provide the prospective approval for future upgrades.

be “substantially invisible.” This arbitrary standard is the main impediment to delivering much-needed reliable wireless telecommunications service to a greater portion of the Park.

Thank you.

Very truly yours,



Jared C. Lusk

JCL/mkv



September 29, 2023

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To the Adirondack Park Agency:

The Wireless Infrastructure Association (“WIA”)<sup>1</sup> along with the New York State Wireless Association (“NYSWA”) hereby responds to the Adirondack Park Agency (“APA”) proposal to create streamlined and efficient rules for Eligible Facilities Requests (“EFR”) within the APA’s jurisdiction.<sup>2</sup> The EFR Proposal is an appreciated update to the APA’s rules that will clarify and harmonize APA procedure with Federal rules which have proven to promote the rapid deployment of telecommunications infrastructure. Further, the EFR Proposal will ensure that residents, businesses, and visitors in the Adirondack Park have access to quality and necessary telecommunications services wherever they go.

This proposal is particularly timely in light of state and federal efforts to ensure connectivity reaches every American at home and on the move.<sup>3</sup> The ability to quickly

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<sup>1</sup> WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. WIA’s members include infrastructure providers, carriers, and professional services firms.

<sup>2</sup> Eligible Facilities Request: Definitions and Requirements, Adirondack Park Agency (Aug. 2023), <https://apa.ny.gov/Mailing/2023/08/Regulatory/EFR-DefinitionsRequirements.pdf> [EFR Proposal].

<sup>3</sup> See e.g., ConnectALL Initiative, <https://broadband.ny.gov/about-connectall> (last visited Sept. 29, 2023) (“The mission of ConnectALL is to build New York State’s digital infrastructure and connect all New Yorkers through the internet. The ConnectALL Office oversees the statewide digital equity plan and administers over \$1 billion in public investments across the state.”); Infrastructure Investment and Jobs Act, Pub. Law No. 117-58, div. F (2021) (providing funding to ensure all Americans have access to broadband at certain speeds) [“IIJA”].

and predictably upgrade wireless infrastructure is key to addressing service gaps and ensure that coverage reaches the most remote and hard-to-reach corners of the Park. The APA's proposal provides a framework to help providers reach this goal in New York.

### *The APA Proposal Will Promote Telecommunications Deployments to Meet New Yorkers Needs*

Americans continue to consume more data every year, increasingly over mobile networks.<sup>4</sup> Access to high-speed mobile broadband has become expected for most Americans. However, as starkly highlighted by the covid pandemic, millions of households—mostly in rural areas—do not have access to basic broadband in their homes. To meet these demands and expand connectivity, providers increasingly need to densify their networks. This ranges from updating and adding antennas and network equipment to implementing new innovations at cell sites that can increase capacity and provide faster service. However, these minor modifications are often reviewed as a brand-new project, despite having minimal impact on the physical dimensions of the actual site. This inconsistency is an unnecessary drain on agency resources and adds undue delay to deployment. The EFR Proposal fixes this issue by recognizing where the underlying infrastructure has already been approved, applications to make non-substantial modifications should be favorably considered and acted on promptly.

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<sup>4</sup> See generally *Ericsson Mobility Report* at 18 (June 2023) (demonstrating that mobile traffic has almost doubled from 2021 to 2023), <https://www.ericsson.com/49dd9d/assets/local/reports-papers/mobility-report/documents/2023/ericsson-mobility-report-june-2023.pdf>; *2023 Annual Survey Highlights*, CTIA (July 25, 2023) (reporting mobile data traffic passing 73 trillion MB by the end of 2022).

By making the permitting process in the Adirondack Park more consistent and predictable the APA will also actively encourage investment and network deployment. Indeed, many states, along with the federal government, have recognized the need for a consistent and streamlined process for telecommunications improvements by adopting “colocation-by-right” statutes similar to the APA’s proposal.<sup>5</sup> A proportionate and predictable permitting process is key to attracting investment, particularly when service providers are allocating increasingly scarce resources to meet continually growing demand. These rules will ensure New Yorkers are not left behind due to a difficult deployment regime.

#### *Allowing Non-Substantial Modifications to Towers Is Consistent with State and Federal Mandates*

Removing barriers to deployment like the APA proposes also furthers the goals of the Biden Administration as expressed throughout the Infrastructure Investment and Jobs Act and, relevantly, the \$42.5 billion Broadband Equity, Access, and Deployment

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<sup>5</sup> *Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, Report and Order, FED. COM’NS. COMM’S. (Oct. 27, 2020); FLA. STAT. § 365.172(13)(d) (2019) (“A collocation proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the local government’s regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.”); IND. CODE § 8-1-32.3-11 (2016) (allowing compound expansions up to 2500sf); MICH. COMP. LAWS § 125.3514(1)(c) (2019) (allowing compound expansions up to 2500sf); MO. REV. STAT. § 67.5092(13)(d) (2014) (including compound expansions up to 2500 sf); N.J. STAT. ANN. 40:55D46.2(1)(a)(2) (West 2012) (allowing compound expansions up to 2500sf); N.C. GEN. STAT. § 160A400.51(7b)(c) (2017) (referring to cities and towns and allowing compound expansions up to 2,500 sf); N.C. GEN. STAT. § 153A-349.51(7a)(c) (2013) referring to counties and allowing compound expansions up to 2,500 sf); WIS. STAT. § 66.0404(1)(s)(4) (2019) (allowing compound expansion up to 2500sf).

("BEAD") Program.<sup>6</sup> The EFR Proposal will enable greater deployment of home broadband over Fixed Wireless Access ("FWA"). This technology, which uses the same infrastructure as mobile networks, can quickly and affordably provide coverage at the speeds consumers need. As FWA technology has improved with the rollout of 5G networks, more consumers than ever are flocking to this solution. In 2023 alone, ninety percent of net new broadband subscribers were adopting Fixed Wireless.<sup>7</sup> In addition to federal funds, the Empire State Development office is deploying millions of dollars in investment to connect New Yorkers.<sup>8</sup> Communities with proactive rules that encourage deployment will ensure these funds are able to quickly be put to work providing connectivity rather than used to complete duplicative reviews.

While we generally support the EFR Proposal, we also respectfully suggest the following modifications to the rules to ensure the APA's intended results. As currently drafted, it is possible that the requirement of landowner signature can become an undue burden if not reasonably limited.<sup>9</sup> We understand the need for the EFR to include an underlying property owner acknowledgement demonstrating understanding that a telecommunications facility will be built or modified on the subject parcel. It is in line with

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<sup>6</sup> See IIJA, div. F.

<sup>7</sup> Press Release, *About 3,500,000 Added Broadband From top Providers in 2022*, LIECHTMAN RESEARCH GROUP (Mar. 2, 2023), <https://www.leichtmanresearch.com/about-3500000-added-broadband-from-top-providers-in-2022/> ("Top broadband providers added about 3.5 million subscribers in 2022. Fixed wireless services accounted for 90% of the net broadband additions in 2022, compared to 20% of the net adds in 2021.").

<sup>8</sup> See ConnectALL, About, <https://broadband.ny.gov/about-connectall> (last visited Sept. 29, 2023).

<sup>9</sup> See EFR Proposal at IV.B.



the streamlining of the proposed EFR process to allow for the use of existing property owner written acknowledgements to serve the purpose of the APA Telecommunication Approvals Authorization Form ("Form"). It is our recommendation that the first and signature pages of the existing, fully executed lease agreement between the facility owner and the underlying property owner replace the proposed Form.

*Conclusion*

The EFR proposal contains smart policies that are critical to enabling the next generation of telecommunications networks. Modifications to existing wireless infrastructure are needed to both expand coverage and add needed capacity. Lack of adequate broadband connection continues to be a major concern for Upstate New Yorkers and delivering this needed service should not be hampered by redundant review processes. By recognizing where the underlying infrastructure has already undergone the regular review process, the APA will save park resources while expediting deployment. WIA and NYSWA appreciate the APA's proactive approach to encourage deployment and appreciate the opportunity to provide the industry's input on these rules.

Respectfully submitted,

/s/ Michael Saperstein

Michael Saperstein  
Chief Strategy Officer and  
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/s/ Paul Fettuccia

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September 29, 2023

Ariel Lynch  
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PO Box 99, 1133 NYS Route 86  
Ray Brook, NY 12977



Re: T-Mobile Comments on the Adirondack Park Agency Proposed General Permit 2023G-1 and the Eligible Facilities Requests: Definitions and Requirements

Dear Ms. Lynch,

I write on behalf of T-Mobile Northeast LLC (“T-Mobile”). T-Mobile appreciates the opportunity to provide comments on the Adirondack Park Agency’s (the “APA”) proposed General Permit 2023G-1 (the “Proposed Permit Application”) and Eligible Facilities Requests: Definitions and Requirements (the “Definitions and Requirements”). As you know, T-Mobile provides wireless communication services across the Adirondack Park (the “Park”) area to residents, businesses, and visitors. Indeed, consumers have become ever more reliant on wireless services, exclusively, and their demands continue to grow. T-Mobile has observed a significant increase in network usage and traffic. To address those network demands, as well as anticipated future demand, T-Mobile is continuously working to rapidly improve and enhance our networks using a range of technologies to increase the coverage, capacity, and performance this increased demand requires. Meeting these needs requires significant investments in our networks, including upgrades and modifications to existing sites as well as the development of new sites.

T-Mobile understands that the Proposed Permit Application, as well as the Definitions and Requirements, are intended to align the APA’s permit processing regulations with federal law. While we appreciate the APA’s efforts and are strongly supportive of the changes, we did want to highlight a few instances where we believe the Proposed Permit Application and the Definitions and Requirements may not completely align with federal law.

I. **Eligible Facilities Request: Definitions and Requirements**

Many of T-Mobile’s applications to modify existing wireless facilities are covered by Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012, commonly known as the “Spectrum Act” (Pub. Law No. 112-96, 126 Stat 156) (“Section 6409”). Section 6409 states that state and local governments “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.” Under Section 6409, an Eligible Facilities Request is any request to modify a Tower or Base Station that involves “collocations of new Transmission Equipment,” “removal,” or “replacement” of Transmission Equipment.

In its implementing regulations, the Federal Communications Commission (“FCC”) set forth objective criteria for when a proposed modification or collocation does not substantially change the existing tower



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or base station, 47 C.F.R. § 1.6100(b)(7)), and therefore such project is an Eligible Facilities Request (“EFR”) under the Spectrum Act that must be granted. The Proposed Permit Application and the Definitions and Requirements appropriately seek to mimic those implementing regulations.

#### A. The Shot Clock

Under federal law, EFR’s will be deemed granted if the City fails to approve or deny the request within sixty (60) days after submittal. The FCC recently clarified that the sixty (60) day “shot clock” begins when (1) the applicant takes the first procedural step in the regulatory review process, and (2) the applicant provides written documentation demonstrating that the applicable eligible facilities request criteria are satisfied. *In 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*, Declaratory Ruling and Notice of Proposed Rulemaking, DA 20-75 ¶ 16 (June 10, 2020) (“2020 Declaratory Ruling”).

With respect to any pre-screening or pre-submittal requirements, T-Mobile would note that the FCC’s 2020 *Declaratory Ruling* expressly rejected the notion that “pre-submittal” requirements toll the shot clock. As the FCC explained,

“a local government may not delay the triggering of the shot clock by establishing a “first step that is outside of the applicant’s control or is not objectively verifiable. For example, if the first step required by a local government is that applicants meet with municipal staff before making any filing, the applicant should be able making any filing, the applicant should be able to satisfy that first step by making a written request to schedule the meeting—a step within the applicant’s control. In this example, the 60-day shot clock would start once the applicant has made a written request for the meeting and the applicant also has satisfied the second of our criteria (documentation).”

*Id.* at ¶ 18.

If sixty (60) days pass after the submission of an EFR and an agency/jurisdiction has not acted to grant or deny such request, the request is deemed granted. At such time, an applicant may advise the agency/jurisdiction that the application has been deemed granted. Unfortunately, T-Mobile is concerned that the APA’s Definitions and Requirements do not align with the above regulations.

Pursuant to Sec. IV(A) of the Definitions and Requirements, the APA understands that the shot clock commences with the “first procedural step,” as discussed above. However, that is internally inconsistent with Sec. IV(C), which states that “the Agency must make a final decision on EFR applications within 60 calendar days from receipt of the **completed application**” (**emphasis added**). Indeed, pursuant to federal law the shot clock commences upon the filing of an application, whether complete or not. While Notices of Incomplete Application may pause the shot clock, it merely commences again upon resubmittal of the requested materials, rather than restarting. Accordingly, T-Mobile suggests revising Sec. IV(C) to clarify that the 60-day shot clock applies upon receipt of any application, but that it pauses upon timely issuance of a Notice of Incomplete Application.

#### B. Concealment





Under federal law and the APA's Definitions and Requirements, a modification qualifies as a substantial change if it does not "defeat concealment." As defined by the FCC, a "concealment element" is something that makes a wireless facility appear to be something "fundamentally different than a wireless facility. *2020 Declaratory Ruling* ¶ 35. While this is generally consistent with the Definitions and Requirements, the APA introduces some subjectivity by utilizing the term "stealth" in Sec. 3(E)(10) and (11). What is or is not "stealth" is often subjective to the individual viewing the facility, which is why the FCC chose to define "concealment elements" as they did. To eliminate confusion, T-Mobile recommends two revisions. First, eliminate the term "stealth-designed" from Sec. 3(E)(10). Second, Sec. 3(E)(11) can be amended to replace the term "stealth design" with "concealment element." These revisions would ensure that Sec. 3(E) is in complete alignment with federal law while eliminating any potential subjectivity.

### **C. Height Measurements**

T-Mobile acknowledges and appreciates the APA adopting the FCC's regulations with respect to height increases. Specifically, Sec. III(A)(1) makes clear that, for towers outside the public rights of way, a modification is a substantial change if it "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." The FCC affirmed in its *2020 Declaratory Ruling* that height increases are "as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower." *Id.* ¶ 35. Accordingly, T-Mobile encourages the APA to incorporate that clarification in Sec. III(A) to ensure any height increases are measured consistent with federal law.

### **II. APA General Permit 2023G-1 Application Form**

T-Mobile is supportive of the APA's efforts to streamline the application review and submittal process for modifications that do not substantially change the existing wireless facility. While T-Mobile has no issues with many of the materials required under Part 4 of the Proposed Permit Application, we believe Part 4(H) is unnecessary and may unduly delay submittal of applications to the APA. Part 4(H) requires that an applicant submit a "[d]escription of required permits and other necessary approvals from local, state, or federal agencies," and "[p]rovide permits, permit applications, agency contact information, and other correspondence if applicable, including any documentation from the New York State Historic Preservation Office (SHPO) confirming that the project will have no adverse impact to historic resources." While T-Mobile understands the APA's desire to ensure all federal, state, and local processes are adhered to, we believe the APA review process should be independent of those reviews. Indeed, T-Mobile often submits for certain determinations, including submittals to state SHPO offices, concurrent to the local permitting application. As an alternative, T-Mobile suggests that these materials should only be necessary for permit issuance, rather than at permit submittal. This solution would balance the APA's desire to ensure those processes are adhered to, while ensuring that there are no undue barriers to application submittal to the APA.

### **III. Conclusion**

T-Mobile appreciates the APA's consideration of the comments above and its willingness to continue a dialogue with us. We are dedicated to working cooperatively with the APA to build a process that ensures these critical upgrades can be undertaken and the APA's interests are protected. We believe that the above





suggestions would further that goal and welcome the opportunity to engage with the APA on these issues moving forward. Please feel free to contact me at [timothy.halinski1@t-mobile.com](mailto:timothy.halinski1@t-mobile.com). Respectfully,

*Timothy Halinski*

Tim Halinski  
Corporate Counsel, T-Mobile



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September 29, 2023

**By E-Filing**

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Re: APA Project ID – GP2023G-1  
Proposed General Permit for Tower Modifications  
Eligible Facility Requests Under Federal Law  
Comments on General Permit Terms & Conditions

Dear Ms. Lynch:

On behalf of New Cingular Wireless PCS, LLC (AT&T), please accept these comments on proposed General Permit GP2023G-1.

Streamlining of the Adirondack Park Agency’s (APA) regulatory requirements for the siting and approval of wireless facilities is a specific recommendation of the New York State Upstate Cellular Task Force (Task Force). The APA’s consideration of GP2023G-1 to clarify its permit requirements governing the modification of existing wireless facilities is certainly an appropriate action for the agency’s implementation. We welcome the APA’s direction and adoption of a new general permit for eligible facility requests, and appreciate the opportunity to provide feedback on proposed General Permit GP2023G-1

**The New York State Upstate Cellular Coverage Task Force’s  
Findings & Recommendations Support Adoption of a Streamlined Permitting Process**

The Task Force was established in 2019 by a prior State Administration to explore ways in which the State and wireless carriers could advance rural coverage in parts of New York where there are market, geographic and other barriers to the deployment of wireless services. The Task Force’s Final Report, as released by Governor Hochul, broadly recommends a three-pronged State-led strategy to meet cellular coverage goals identified in the report, which include improving service



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within the Adirondack Park’s boundaries. Of the three strategies one is “[s]treamlining regulatory processes for deployment of new cellular infrastructure.”<sup>1</sup>

With respect to the APA, the Task Force’s Final Report specifically found that “[m]odernizing and simplifying the APA permit review process could encourage more investment in cellular infrastructure within the Park by improving predictability and cost-effectiveness.”<sup>2</sup> The Task Force recommended that the APA consider “innovative ways to improve processes either with technology, the creation of new approval pathways, or through collaboration” and “[t]he creation of guides or protocols [to] increase the clarity of the process and better communicate expectations to applicants.”<sup>3</sup> The Task Force noted that permitting efficiency and agency coordination could “reduce the length of review and improve process legibility without deviating from existing policy goals.”<sup>4</sup>

A new general permit to conform specifically to federal requirements for the modification of eligible facilities is one step the APA can take that is consistent with the Task Force’s findings and recommendations.

**The APA’s Draft GP2023G-1 Generally Conforms to  
Section 6409 and Federal Eligible Facility Request Rules With the Exception of the  
Landowner Signature Requirement to Commence the APA EFR Review Process**

Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act (Section 6409) provides that:

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.<sup>5</sup>

Section 6409 further defined an “eligible facilities request” as one involving “(A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.”<sup>6</sup>

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<sup>1</sup> *New York State Upstate Cellular Coverage Task Force Final Report*, § 5, pg. 65.

<sup>2</sup> *Id.* § 3.3 pg. 47.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 5.3 pg. 68.

<sup>5</sup> 47 U.S.C. § 1455.

<sup>6</sup> *Id.*





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Federal Communications Commission (FCC) orders and regulations in furtherance of Section 6409 set forth the legal parameters upon which collocation at an existing tower site shall be permitted and not deemed a “substantial change” that could otherwise be subject to State or local permitting discretion.<sup>7</sup> As a result, there is a nationally uniform set of rules for State and local approval of eligible facility requests by wireless carriers and tower companies (EFR Rules).

Federal EFR Rules set objective and verifiable definitions and standards for what constitutes a “substantial change in the physical dimensions” of an existing tower or base station.<sup>8</sup> These same rules also set forth specific timeframes for review of EFRs by State and local agencies and there is an applicant deemed granted remedy for any agency failure to timely act on an EFR.<sup>9</sup> The APA’s draft permit for GP2023G-1 appropriately incorporates federal definitions and substantive standards for agency action as set forth in the Section 6409 and the EFR Rules.<sup>10</sup>

The one area of concern we have identified is procedural and set forth in Section IV.B of the APA’s Eligible Facilities Request: Definitions and Requirements and the draft Application Review Process. Those draft APA documents state that the landowner’s signature would be required on the application itself or evidenced through a landowner signed APA Telecommunications Authorization Form. Additionally, the draft permit states that a GP2023G-1 application filed without a landowner signature would not be considered complete by the APA. Further that, in the APA’s opinion, an application filed without a landowner’s signature would not commence the 60-day review period under federal EFR Rules.

While on its face a landowner signature may seem like a benign requirement, the reality is that most tower sites are owned by tower companies and subject to ground leases or easements with property owners and may also include third-party management companies representing property owners. Some landowners have even monetized their tower site interests such that they are no longer the beneficial owners of the land underlying a tower site and merely maintain fee simple ownership as part of their overall property holdings. In these real estate scenarios, obtaining a landowner signature on an APA form may not be a simple task and in many cases a signature

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<sup>7</sup> *Acceleration of Broadband Deployment by Improving Wireless Facility Siting Policies*, 29 FCC Rcd. 12865 (2014) (EFR Order) (codified at 47 CFR § 1.6100); and *Implementation of State & 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 (June 10, 2020)(EFR Order II).

<sup>8</sup> 47 C.F.R. § 1.6100(b).

<sup>9</sup> 47 C.F.R. § 1.6100(c)(2-5).

<sup>10</sup> The general permit would also be consistent with the Adirondack Park Agency Act. NY Exec Law § 809(8)(b) (which allows project sponsors to file applications for modifications of an existing permit and streamlined approval where there is no material change).



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requirement from the APA has created a landowner marketplace that does not legally exist under their controlling real estate instruments.<sup>11</sup>

Additionally, there are federal legal considerations associated with a landowner signature requirement. The FCC's regulations and the EFR Orders specifically limit State and local governments from requiring information beyond that which is reasonably related to determining whether a proposed modification meets federal EFR Rules.<sup>12</sup> Indeed, when federal EFR Rules were updated in 2020, the FCC specifically found that:

“There is evidence in the record that some local jurisdictions effectively postpone the date on which they consider eligible facilities requests to be duly filed (thereby delaying the commencement of the shot clock) by treating applications as incomplete unless applicants have complied with time consuming requirements. Such requirements include meeting with city or county staff, consulting with neighborhood councils, **obtaining various certifications**, or making presentations at public hearings.”<sup>13</sup>

As such, the federal EFR Rules were procedurally clarified further to provide “an applicant has effectively submitted a request for approval that triggers the running of the shot clock when it satisfies both of the following criteria: (1) the applicant takes the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process under section 6409(a), and, to the extent it has not done so as part of the first required procedural step, (2) the applicant submits written documentation addressing the applicable eligible facilities request criteria, including that the proposed modification would not cause a “substantial change” to the existing structure.”<sup>14</sup> In determining what is an acceptable first step that a State or local government may require as part of any “applicable regulatory review process”, the FCC ruled that “a local government may not delay the triggering of the shot clock by establishing a “first step” that is outside of the applicant’s control or is not objectively verifiable.”<sup>15</sup>

With respect to proposed GP2023G-1, the draft general permit’s proposed landowner signature requirement on an APA form is an item that is beyond an applicant’s direct control. As such, it could not be implemented as a procedural completeness requirement for purposes of an EFR nor would the absence of a landowner’s signature in an EFR filing by an applicant toll the 60-day

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<sup>11</sup> Id. (the APA enabling legislation does not require landowner signatures and Section 9 NYCRR § 572.4 of the APA’s rules could not be applied as a procedural requirement to an EFR in light of Section 6409’s preemption of “any other provision of law”)(the APA’s interest is simply to ensure applicant standing versus regulating any private property rights of landowners).

<sup>12</sup> 47 U.S.C. § 1455, 47 C.F.R. § 1.6100(c)(1), EFR Order ¶ 214, EFR Order II ¶ 23.

<sup>13</sup> EFR Order II ¶ 15 (emphasis supplied).

<sup>14</sup> Id. ¶ 16.

<sup>15</sup> Id. ¶ 18.



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review period under federal EFR Rules. In order to clarify and maximize the APA's and applicants' efficiencies and oversight of EFR applications, and because this is an area where the APA's interest is limited to the applicant's standing, we would request that the draft GP2023G-1 application documents and forms remove the requirement for a landowner signature.

### **Conclusion**

The APA's consideration of a specific general permit related to its regulatory authority over eligible modifications to existing wireless facilities in the Park is encouraging. Adoption of such a permit and implementation by the APA's professional staff would set clear expectations for both the agency and applicants. With one procedural change, GP2023G-1 would create a useful process and pathway for permits which retains the APA's authority under federal EFR Rules, provides greater certainty for the wireless industry, and facilitates the critical provision of wireless services within the Park in a manner that preserves and protects environmental resources.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Chris B. Fisher', with a long horizontal flourish extending to the right.

Christopher B. Fisher

cc: AT&T



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September 29, 2023



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Raul J. Aguirre

Ariel Lynch  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977  
*(via electronic transmission)*

**Re: Eligible Facilities Request General Permit, GP2023G-1**

Dear Environmental Program Specialist Ariel Lynch,

The Adirondack Council thanks you for the opportunity to comment on the Eligible Facilities Request (EFR) general permit, GP2023G-1. In an era of rapidly evolving wireless technologies, it is critical that sound permitting policies enable us to protect the finite natural resources and scenic vistas of the Park through prioritizing projects within road corridors, colocating vertically, and adherence to the substantially invisible rule with the APA’s Towers<sup>1</sup> policy (Agency-4).

Permit Review: The Council would like to elevate the impressive 25-day average turn-around time for wireless communications permit review that the Adirondack Park Agency staff are able to achieve. In addition, to date, the Agency has never rejected a signed permit application, a true testament to the staff’s review process and to Agency-4 allowing for appropriately sited development without compromising the wild character of the Adirondacks.

Telecommunication Approvals Authorization Form: This form is an improvement for communications companies because it will allow them to request landowner approval, via a signature, for future cell tower projects and infrastructure to be developed and maintained over time. The landowner approvals will run with the land in perpetuity. However, there is concern that the form may be capitalized upon (and ultimately prioritize) projects over landowner rights. Therefore, the form must include specific horizontal and vertical increase limits such as “file any application(s) with the Adirondack Park Agency to increase the height [by no more than 10 feet] of an existing telecommunications tower.” This will ensure that each height increase will have a cap and protect the landowners’ authority to review each prospective height increase.

Federal Rules and Regulations: Section 6409 of the Spectrum Act enacted 47 CFR 1.6100 which prohibits state or local government from denying “any eligible



<sup>1</sup> Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park, February 15, 2002.

facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.” This is the basis for this general permit’s inception, allowing for more clarity on compliance with federal regulations. What is not discussed is the 2014 Infrastructure Order, which states that a substantial change occurs when a proposed modification will (emphasis added):

- 1) exceed defined limits on increases in the height or girth of the structure or the number of associated equipment cabinets,
- 2) involve excavation or deployment on ground outside a structure’s current site,
- 3) defeat the concealment elements of the preexisting structure, *or*
- 4) *violate conditions previously imposed by the local zoning authority.*

Violation of conditions previously imposed by the local zoning authority would be any conditions outlined in local zoning regulations, the 2002 Agency-4 policy, and in § 809(10) of the APA Act which ensures consistency with Adirondack Park Land Use and Development Plan, compatibility with land use area attributes, and has no “undue adverse impact on Park resources, including the natural, scenic, aesthetic, and open space resources.” While the Adirondack Park Agency is subject to FCC rules and regulations, it is not hampered by them. The Council urges the Agency to update the draft general permit, application, certificate, and other related documentation to reflect this state and local authority.

Substantial Change: “Substantial change” is defined as follows by 47 CFR § 1.6100 (b)(7)(i-vi), reproduced here in whole (emphasis added):

(7) Substantial change. **A modification substantially changes the physical dimensions of an eligible support structure if it meets any** of the following criteria:

(i) For towers other than towers in the public rights-of-way, it **increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater**; for other eligible support structures, **it increases the height of the structure by more than 10% or more than ten feet, whichever is greater**;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves **adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet**, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it 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;

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by **more than 30 feet in any direction**. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(v) It would **defeat the concealment elements of the eligible support structure**; or

(vi) ***It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment***, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

The Agency must amend their “Definitions and Requirements” document to ensure clarity that if *any* of the above conditions are met, that the facility will not be considered an eligible facility. This is inclusive of the language that describes “conditions associated with the siting approval of the... eligible support structure or base station.” Any facility that has undergone Agency approval is therefore subject to all Agency rules, regulations, guiding documents, and policies when pursuing an EFR request. This must be made crystal clear within the eligibility guidelines that currently do not emphasize that only one of the listed criteria must be met in order to be considered a substantial change.

Consolidation of Visual Intrusion: As conditions associated with siting approval have been established as authorities within local government and agency powers, the agency must acknowledge its *consolidation of visual intrusion* rule within the Agency-4 policy. This rule ensures that even if equipment is colocated on or immediately adjacent to existing infrastructure (including utility poles, water tanks, or buildings), the policy will “maintain the visual quality and character of the site and [will] avoid undue adverse impacts to scenic vistas, locally important viewsheds, and historic resources.”

This policy codifies FCC regulations for the APA and improves transparency for providers. However, the Agency does not relinquish its authority to enforce its own rules, regulations and policies when reviewing applications for eligible facilities including an ability to require shielding, screening and natural tones in paint. The Council supports the Agency-4 policy and the APA in its review and regulation of communication towers that continually improve our connectivity and maintain the wild character of the Adirondack Park.

Sincerely,



Raul J. Aguirre  
Executive Director



Jess Grant  
Conservation Associate

# PROTECT THE ADIRONDACKS!

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September 29, 2023

Ariel Lynch  
Adirondack Park Agency  
1133 NYS Route 86  
PO Box 99  
Ray Brook NY 12977

Re: Public comments on Draft Adirondack Park Agency (APA) General Permit/Order, 2023G-1, for Certain Modifications of Existing Towers or Base Stations, known as Eligible Facilities Requests (EFR)

Dear Ms. Lynch:

Protect the Adirondacks has reviewed the draft Adirondack Park Agency (APA) General Permit/Order, 2023G-1, for Certain Modifications of Existing Towers or Base Stations, known as Eligible Facilities Requests (EFRs). We appreciate the opportunity to review and comment on APA's draft General Permit for EFRs.

We are concerned that the proposed General Permit has the potential to undermine thoughtful planning and permitting that protect the Adirondack Park's important scenic resources from the adverse impacts of visible cell towers and other communications structures. We understand that APA is constrained by the federal rules implemented by the Federal Communications Commission, but believe that there are some revisions that could strengthen APA's review process to protect the prior work that has been done around the Adirondack Park to prevent telecommunications towers from becoming eyesores.

APA's proposed General Permit for EFRs would allow for replacement and new equipment on an existing, previously approved tower or base, so long as the equipment does not "substantially change" the physical dimensions of the tower or base.<sup>1</sup> The term "substantially change" would allow for an

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<sup>1</sup> Notably, APA already uses a General Permit (2005G-3R) for replacement and new telecommunications equipment on existing towers and structures (e.g., water tanks, buildings). There are 10-business day timeframes in the General Permit for APA to issue a decision.





increase in both width and height of the existing tower, up to 10% of the height of an existing tower or 20 feet above the next highest antenna.

Replacement or new equipment would “substantially change” the physical dimensions of the tower, and would not be allowed through the EFRs process, if it would defeat a “concealment element”. 47 C.F.R. § 1.6100(b)(7)(v). A “concealment element” did not have to be “explicitly articulated . . . as a condition or requirement of a prior approval”, so long as APA or the local municipality “considered in its approval that a stealth design for a telecommunications facility would look like something else, such as a pine tree, flag pole or chimney”. May 19, 2020 FCC Fact Sheet p. 17<sup>2</sup>. APA should revise the EFR Definitions and Requirements Section III(E) to give examples of when a tower has been approved to look like something else, such as a pine tree or barn silo, or has been approved with a certain color of paint to camouflage the tower. This revision will give clearer direction to applicants and APA staff about what is considered a “concealment element” in the Adirondack Park.

Additionally, replacement or new equipment would “substantially change” the physical dimensions of the tower, and would not be allowed through the EFR process, if it would “not comply with conditions associated with the siting approval of the construction or modification of the” approved tower. 47 C.F.R. § 1.6100(b)(7)(vi). As noted in the draft General Permit, the proposed modifications to an existing tower must be “consistent with the Agency’s Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park (Towers Policy)”. Accordingly, an EFR application for a modification that does not comply with the “substantially invisible” standard in APA’s Towers Policy must be rejected because it would not be in compliance with the General Permit for EFRs.

Further, the Towers Policy, which was adopted in 2002, requires that towers in the Adirondack Park are “substantially invisible” as set forth in that policy at pages 3 to 4. Therefore, any tower approved pursuant to that policy incorporates conditions that ensure that the towers are “substantially invisible”. The EFR Definitions and Requirements Section III(F)(12) should be modified to reflect that the “conditions associated with siting approval” in the context of the Adirondack Park include the siting and placement decisions that are inherent in approving new towers pursuant to APA’s Towers Policy. Additionally, the draft Application for the General Permit (pages 6-7) should be revised to ask about compliance with APA’s Towers Policy for both the existing facility and the proposed modification.

Finally, the process for the issuance of a certificate approving the EFR should incorporate notice to the public that the EFR application has been submitted to APA. Such notice should be placed in the Environmental Notice Bulletin allowing for public comment upon the receipt of, and before APA makes a determination on, an EFR application.

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<sup>2</sup> Available at <https://docs.fcc.gov/public/attachments/DOC-364459A1.pdf>.



On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on the draft General Permit for EFRs.

Sincerely,

A handwritten signature in black ink that reads "Claudia K. Bryner". The signature is written in a cursive style with a large initial 'C'.

Deputy Director