

WEST VIRGINIA CODE: §31J-1-3

§31J-1-3. Wireless facility modifications.

(a) Definitions. Terms used in this section have the following meanings.

"Base station" means a structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(A) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(B) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(C) The term includes any structure other than a tower that, at the time the relevant application is filed with the state or local government under this section, supports or houses equipment defined as base stations and transmission equipment that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(D) The term does not include any structure that, at the time the relevant application is filed with the state or local government under this section, does not support or house equipment defined as base stations and transmission equipment.

"Concealment element" means elements of a stealth-designed facility intended to make the facility look like something other than a telecommunications tower. There must be express evidence in the record to demonstrate that the reviewing authority considered in its approval of the original facility for wireless service that a stealth design would look like something other than a facility for wireless service, such as a pine tree, flag pole, or chimney.

"Colocation" means the 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.

"Eligible facilities request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- (A) Colocation of new transmission equipment;
- (B) Removal of transmission equipment; or
- (C) Replacement of transmission equipment.

"Eligible support structure" means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the state or local government under this section.

"Existing" means a constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

"Site" means for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the adoption of this Act.

"Substantial change" means a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(A) For towers, 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 20 feet, whichever is greater, and where separation from the nearest existing antenna means the distance from the top of the highest existing antenna on the tower to the bottom of the proposed new antenna to be deployed above it; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(i) 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.

(ii) For towers, it 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; 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 47 C.F.R. § 1.40001(b)(7)(i) through (iv).

"Transmission equipment" means equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

"Tower" means any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(b) Review of applications. A state or local government may not deny and shall approve an application for a modification of an existing wireless service facility if:

- (1) The requested modification would not substantially change the physical dimensions of the wireless service facility;
- (2) The requested modification involves:

(A) Colocation of new transmission equipment;

(B) Removal of transmission equipment; or

(C) Replacement of transmission equipment; and

(3) The request meets the requirements of this section.

(c) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, the reviewing authority 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. The reviewing authority 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.

(d) Fees for applications. A reviewing authority may not impose on an applicant fees or charges that exceed the one-time non-recurring reasonable costs actually incurred by the reviewing authority to review the application.

(e) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the reviewing authority shall approve the application unless it determines that the application is not covered by this section.

(f) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the reviewing state or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(1) To toll the timeframe for incompleteness, the reviewing state or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under §31J-1-3(c).

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the state or local government's notice of incompleteness.

(3) Following a supplemental submission, the state or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in §31J-1-3(e). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(g) Failure to act. In the event the reviewing authority fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the reviewing authority in writing after the review period has

expired (accounting for any tolling) that the application has been deemed granted.

WV Legislature