

Bill 10 (2022)
Testimony



Committee on Zoning and Planning
City and County of Honolulu
Honolulu, Hawaii 96813-3077

Re: DISH Wireless Written Testimony Submission for the August 25, 2022 Meeting of the Committee on Zoning and Planning, City and County of Honolulu, Hawaii Regarding Land Use Ordinance Amendments Contained in Proposed CD1 to Bill 10 (2022)

Dear Councilmembers:

More than ever before (especially after the COVID-19 pandemic and its effects) people rely on wireless broadband services to communicate and access things like healthcare, education, jobs, and public safety. It is vital that we continue to connect people and things. Wireless broadband is a relatively low-cost, low-impact way to ensure increased connectivity for all residents of Honolulu. DISH is poised to contribute to this objective in a meaningful way over the next few years

In July 2019, as part of the Sprint/T-Mobile merger, DISH entered into a series of agreements and commitments with the US Department of Justice, the Federal Communications Commission (“FCC”) and T-Mobile that accelerated DISH’s entry into the wireless market as the country’s fourth nationwide wireless carrier¹. The carefully crafted remedy imposed by the DOJ addressed the competitive harms that could potentially have resulted from T-Mobile acquiring Sprint. DISH purchased Sprint’s prepaid mobile businesses (including Boost) and its approximately 9 million subscribers. Furthermore, the FCC imposed requirements for DISH to build a 5G broadband network covering the US within certain deadlines (the 2022 deadline was met)². DISH’s plans include the installation of wireless sites in Honolulu that will increase access to 5G wireless broadband services.

DISH is pleased to learn that the City and County of Honolulu is considering revisions to the communications-related sections of its Land Use Ordinance (the “Code”) with Proposed CD1 to Bill 10. We welcome the opportunity to work with the City and County to achieve a well-balanced approach to increase broadband connectivity options for consumers while minimizing the physical impact of infrastructure on the surrounding community. The most effective way to do this is to encourage

¹ **Links to Relevant Press Releases**

- DISH’s July 26 press release is [HERE](#)
- DOJ’s July 26 press release is [HERE](#)

² **FCC Deadline Requirements:**

- Deployed 5G broadband service to more than **20%** of U.S. population by **June 14, 2022**
- Deploy 5G broadband service to at least **70%** of U.S. population by **June 14, 2023**
- Deploy 5G broadband service to at least **75%** of U.S. population by **June 14, 2025**



communications carriers to co-locate on existing wireless communications facilities by implementing the provisions of Section 6409 of the Spectrum Act and related FCC regulations³ ("6409"). 6409 provides that carriers may modify existing wireless facilities (including new co-locations) so long as such modifications do not substantially change the existing site, while simultaneously reducing the administrative burden on City and County planning resources.

While we fully support and appreciate the current proposal to incorporate aspects of 6409 into the Code, in order to fully realize the benefits of wireless co-locations and technology upgrades, the provisions of 6409 must be fully integrated into the Code. We recommend further revising the Code to adopt all aspects of 6409, to include the regulations governing the definition of an eligible facilities request (and related terms), permissible conditions of approval, and the 60-day review and approval shot clock; and providing a clear framework for the implementation of the revised Code. Otherwise, the benefits of administrative efficiency and reduced impact of shared wireless facilities cannot be realized.

Definitions

DISH suggests that the Code be amended to incorporate the definitions related to eligible facilities requests ("EFR"), including but not limited to existing sites. Existing sites include both structures that were constructed for the specific purpose of accommodating communications equipment, as well as those structures whose primary purposes are unrelated to communications equipment, but have been legally sited and approved to house communications equipment⁴. Under the Code, communications towers, communication tower alternative support structures, and accessory communication structures are all existing sites to which an eligible facilities request applies.

Review Criteria

A request to modify an existing site that does not result in a substantial change should be approved. Review of the EFR is limited to determining if the six substantial change criteria of 6409 are met⁵. The Code should be revised to incorporate these six criteria as the only aspects of the proposed modification to be reviewed.

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, codified at 47 U.S.C. § 1455(a) (2012); *In re Acceleration of Broadband Deployment by Improving Wireless Facility Siting Policies*, FCC 14-153, 29 FCC Rcd. 12865 (rel. Oct. 21, 2014) ("Infrastructure Order"); *In re Implementation of State & Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, FCC 20-75, 35 FCC Rcd. 5977 (rel. June 10, 2020) ("5G Upgrade Order"); *In re Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications*, FCC 20-153, 35 FCC Rcd. 13188 (rel. Nov. 3, 2020) ("Site Expansion Order") (together the "FCC Orders") (codified at 47 CFR § 1.6100).

⁴ See 47 C.F.R. § 1.6100(b)(5) defining "existing" site as a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process, or other applicable state and local regulatory review process.

⁵ See 47 C.F.R. § 1.6100(b)(7)



Further, whether or not a request for modification of an existing site is an EFR is not dependent upon the zoning district in which the site is located. The Code should be amended to provide that an EFR is reviewed under the same six criteria in all zoning districts, including special districts, because the structures under review already legally house communications equipment, and the EFR criteria expressly limit approval of modifications to those that do not substantially change the existing site.

Shot Clock

The Code should be revised to incorporate the 60-day shot clock of 6409, meaning that the Honolulu Department of Planning and Permitting (“DPP”) has 60 days in which to approve a properly completed application or make a determination that the six criteria of an EFR are not satisfied. If the application is not so acted upon within 60 days of submission then the request for modification is deemed to be approved and all City and County permits are deemed granted under 6409⁶.

Procedural Framework

We recommend a clear and simple EFR in-take process. The Code should include the creation of an EFR checklist and procedure for the DPP and all other applicable agencies to receive and review an EFR for any zoning district within 60 days of receipt. There should be no pre-application process for an EFR. Additionally, the 60-day shot clock applies to all City and County approvals and permits, such that a process that allows all reviews to occur within 60 days is necessary.

We also recommend that the paperwork required to be submitted with an EFR be limited to 1) those documents necessary to demonstrate that the six EFR criteria are met, and 2) those documents necessary to demonstrate that the proposed modification complies with codes related to health and safety. Any additional paperwork causes unnecessary delays and increased administrative burdens for the DPP and the applicant.

This is a summary of DISH’s recommendations to the latest proposed Code amendment; however, we look forward to the opportunity to working further with Honolulu on this important initiative. We believe that we have a chance to ensure that Honolulu fully realizes the benefits of increased wireless broadband connectivity and greater administrative efficiency in a manner that limits impacts on the surrounding community. Thank you for allowing us to participate in the process.

A handwritten signature in blue ink, appearing to read "Harold Hewett".

Harold Hewett
Interim Market Manager, Honolulu
DISH Wireless

⁶ See 47 C.F.R. § 1.6100(c)