Federal Law under the Spectrum Act and how it relates to the Homestead Trail Cell Tower.

The Middle Class Tax Relief and Job Creation Act of 2012 included Section 6409 codifying requirements to compel municipalities to allow modifications to certain eligible facilities. This portion of the law is often referred to as the Spectrum Act. As originally written, there was room for interpretations of the law. For clarification, the FCC published 14-153 in 2014 to define the terms in the language of this law.

The Spectrum Act Section 6409 applies to the modification of an eligible facility for the purposes of collocating telecommunications equipment. It goes on to specify that a city must approve and may not deny requests as long as they are not a substantial change.

The question then becomes two-fold in the case of the Homestead Trail Cell Tower development proposal. Is the existing structure an "eligible facility" and if it is, are the proposed changes to the tower "substantial." If it is not eligible, the city cannot be compelled to approve it under Federal Law. Likewise, if the proposal constitutes a substantial change, again, the city cannot be compelled to approve it.

The Spectrum Act uses the words "existing wireless tower or base station" when describing eligible facilities. FCC 14-153 goes on to clarify the law by defining, three relevant terms: tower, base station and existing.

> **Tower** is defined as a structure built for the sole purpose of supporting Commission licensed or authorized antennas in ¶169. The pole in question for this case, did originally meet the definition of tower.
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> **Base Stations** are defined as locations at the time of application support or house antenna, transceiver or other associated equipment is ¶168. It is worth noting that in ¶162 the discussion of the base station indicates the "support or house" equipment does indeed require the equipment be in use. The structure in question DOES NOT qualify as a base station.
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> Simply being a tower is not enough under the statute, so in order to preserve the state and local authority, FCC 14-153 went further in defining the term "existing." The term "**existing**" requires wireless towers or base stations have been reviewed and approved under the applicable local zoning or siting process or that the deployment of existing transmission equipment on the structure received another form of affirmative State or local regulatory approval ¶174. The pole in question DOES NOT meet this requirement.

The Homestead Trail current pole does not meet the requirements of an "existing tower" because the only development plans that were approved for the site show a 50' tower. That means, the current standing 99'3" monopole was constructed **without approval of applicable local zoning or siting process**.

At this point, it is obvious that the abandoned structure in question is **NOT** an eligible facility and hence, the city cannot be compelled to approve this project under Federal Law. But for full analysis, we can also determine this proposal constitutes a substantial change.

FCC 14-153 developed a 4 prong test, ironically including 6 criteria. If the proposal exceeds **ANY** of the included criteria the project can be objectively labelled a "substantial change." If a proposal is a "substantial change" a city cannot be compelled to approve it under Federal Law.

The criteria for the 4 prong test are height, width, number of cabinets, current site, concealment issues and meeting conditions of original approval. Two of these criteria are exceeded by proposed development. This document will only address the two in question; height and current site.

An increases in height by "more than 20 feet or 10 percent, whichever is greater" constitutes a substantial change. The only local land use/zoning approval for this tower site was in 2006 and it was a modification to a 50 foot tower. In order to avoid towers being built and subsequently growing incrementally by 20 feet multiple times over the course of several years, the Spectrum Act specifies that a tower be measured from the most recent local zoning approved plan prior to 2012 when the Spectrum Act was codified. "Specifically, we find that whether a modification constitutes a substantial change must be determined by measuring the change in height from the dimensions of the "tower or base station" as originally approved or as of the **most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act**, whichever is greater" ¶ 196.

The law requires the height benchmark for this structure to be 50 feet. The proposal is for a 99 foot 3 inch tower which clearly exceeds the substantial change criteria as set forth by the FCC 14-153. This means that the city is **NOT** compelled to approve this project and should deny it due to Colorado Springs City Code.

The development plan clearly shows that it exceeds the criteria for expansion beyond the current site. FCC 14-153 spells out the fourth criteria as "excavation and deployment beyond the current site." The plans show a 20 foot by 20 foot concrete pad and a new equipment shelter that will be deployed beyond the existing lease area. Additionally new fencing will enclose this area adding 425.7 sq ft to the base site area. The FCC defines the **current site** as "for towers other than towers in the public right-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." The developer clearly depicts their lease area on the development plans. This project constitutes a substantial change under FCC 14-153 and hence the can be denied by Colorado Springs.

The developer will argue they have access to the entire 5.01 acre parcel per a land use agreement with Century Link, the property owner. They have not presented this documentation. It is obvious they do not have access to the full 5.01 acres as Century Link has utility boxes on a portion and a small area is leased to the Air Force. This argument is weak and because they have not yet provided documentation of this agreement, it is possible it is still being created. There was a surveyor on the property September 27th 2019, surveying the USAF lease area but when approached by two neighbors, stated he was told not to talk to any neighbors. If the applicant presents a "Master Service Agreement," the date on that agreement is critical to this case. If it dated September 27th or later, it has no bearing on this decision because federal law refers to the current site at the time of application. If it is dated prior to that date, further investigation is required to ensure the applicant did not commit criminal fraud by backdating a document that is material to this case.

Under the Federal Law and applicable FCC regulation, the Homestead Trail Cell Tower proposal would only need to exceed one of these criteria to ensure the Federal Law **DOES NOT** pre-empt the city's local code and directive. There are three distinct and clear pathways to show Colorado Springs is not compelled to approve this project. Federal Law was written to ensure local zoning authorities retain authority for cases exactly like this. Do not let the developer argue cherry picked portions of law to bully the city to acquiescence.