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## **MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT 2012 OBLIGATES LOCAL GOVERNMENTS TO APPROVE CERTAIN COMMUNICATIONS FACILITIES**

It may seem surprising that legislation entitled the "Middle Class Tax Relief and Job Creation Act of 2012" (the "Act") would have anything to do with communications facilities. However, the Act also addresses the creation of a public safety communications network and contains language to support wireless carriers' ability to modify communications equipment on cellular towers and base stations.

Specifically, Section 6409 of the Act provides:

### SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

#### (a) FACILITY MODIFICATIONS.--

(1) IN GENERAL.--Notwithstanding Section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, 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.

(2) ELIGIBLE FACILITIES REQUEST.--For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves--

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

Thus, local governments are mandated to approve modifications to an existing wireless tower or base station that fit within the parameters of the Act.

Many carriers are seeking such modifications and citing the Act as mandating approval. However, most modifications actually will not fall within the limited circumstances covered by the Act. Local governments maintain the authority to regulate the installation of communications facilities pursuant to the Telecommunications Act of 1996, and Florida law. In addition, the Act does not apply where the local government is acting in its capacity as landlord as opposed to its capacity as a regulatory authority.

If you have any questions concerning this topic, please contact our GrayRobinson [Communications, Cable & Broadband](#) law team.

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