

Livin' La Vida Loca Under Sec. 6409(a)

Presenter:

JONATHAN L. KRAMER, ESQ.

Principal Attorney

Kramer Telecom Law Firm, P.C.

Los Angeles, California

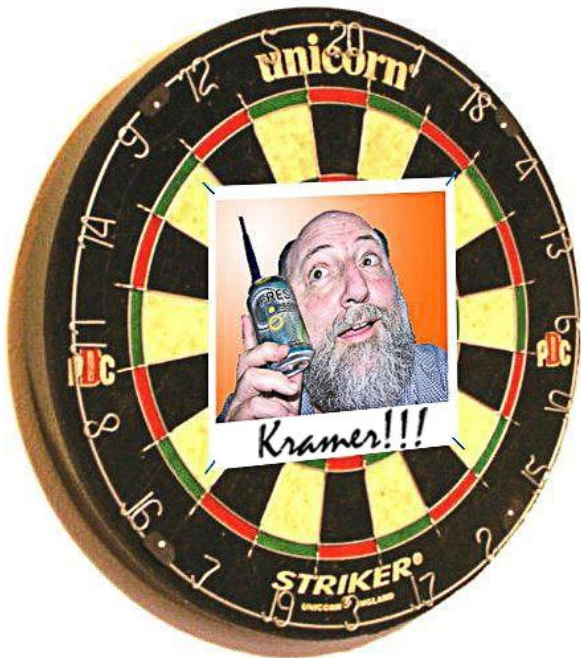
TelecomLawFirm.com

CellTowerSites.com (blog)

CellTowerPhotos.com (gallery)



Unique multicarrier site:
City of Albuquerque, NM



Jonathan L. Kramer, Esq.

Really Important Disclaimer for those wireless industry attorneys who are just *itch'n* to depose Kramer, and for everyone else, too:

Kramer's current views expressed today do not necessarily represent the views of any of his clients, friends, or foes. His views are subject to change as enforceable decisions clarify the issues.

(Heck, your views just might evolve, too.)

Jonathan L. Kramer, Esq.

Principal Attorney

Kramer Telecom Law Firm, P.C.

- Admitted to Practice Law in California
 - Practice areas: Telecom Law (Wireless & Broadband); Telecom Site Leasing (governments and private landlords); Litigation support for government agencies (local, state, federal, and military)
- Wireless Siting Planner for local governments (+1,000 planning cases)
- Radio Frequency and Broadband Telecom Engineer
- Expert witness typically retained by government agencies and private clients in connection with wireless law suits
- RF Emissions Safety Reviewer
 - Co-author, co-editor of the FCC's publication:
A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance
- FCC Licensee
 - Top commercial radio-telephone, marine digital, ship radar, and amateur licenses
- Member: California Wireless Association, IMLA, FCBA, NATOA, SCAN, SBE
- More at <http://TelecomLawFirm.com/people/>

What we worried about...

Mono-Strosity site: *Southern CA*
(Suffering from a Faux Pine Disease?)



And now, just 145 simple words:

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.

(3) APPLICABILITY OF ENVIRONMENTAL LAWS- Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

Throwing Gasoline on a Fire

“If the tower doesn’t grow, they can’t say no!”

“Significant victory for the industry”

“This legislation is an important win for our industry. It will save hundreds of millions of dollars as the industry deploys new technologies *without wasteful review of existing wireless infrastructure sites*. This will enable better network planning and build-out on existing and new sites. It will produce more capital investment and job growth to keep up with the dramatic increase in wireless use.”

Who's On First?

- **Every term must have a meaning.**
- **What/Who defines each meaning?**
 - Local Governments?
 - FCC?
 - The Collocation Programmatic Agreement (2001)?
 - The Nationwide Programmatic Agreement? (2004)?

Gaming 6409(a): Substantial Change

Some *potential mischief* related to “Substantial increase in the size of the tower” . . .

Scenario 1 (Existing wireless tower *that is* subject to Sec. 6409(a)) -

Time 1: An existing wireless tower 100' tall

Time 2: Applicant files for an increase by 10% (result: tower grows to 110')

Time 3: Applicant files for an increase by 10% (result: tower grows to 121')

Time 4: Applicant files for an increase by 10% (result: tower grows to 133') . . .

Scenario 2 (New wireless tower *not* subject to Sec. 6409(a)) -

Time 1: A new existing wireless application for a tower 100' tall; the government approves only 90' tall

Time 2: Before tower is built, applicant files a 6409 modification for a height increase of 10%, claiming tower is 'existing' by some vested right granted via the building permit (result: tower grows to 99')

Time 3: Applicant files for an increase by 10% (result: tower grows to 109')

Time 4: Applicant files for an increase by 10% (result: tower grows to 120') . . .

Scenario 3 (Existing camouflaged wireless tower *that is* subject to Sec. 6409(a)) –

Time 1: An existing camouflaged wireless tower

Time 2: Applicant files for an increase by 10% *and* a mono-pole replacement. . .

BEFORE

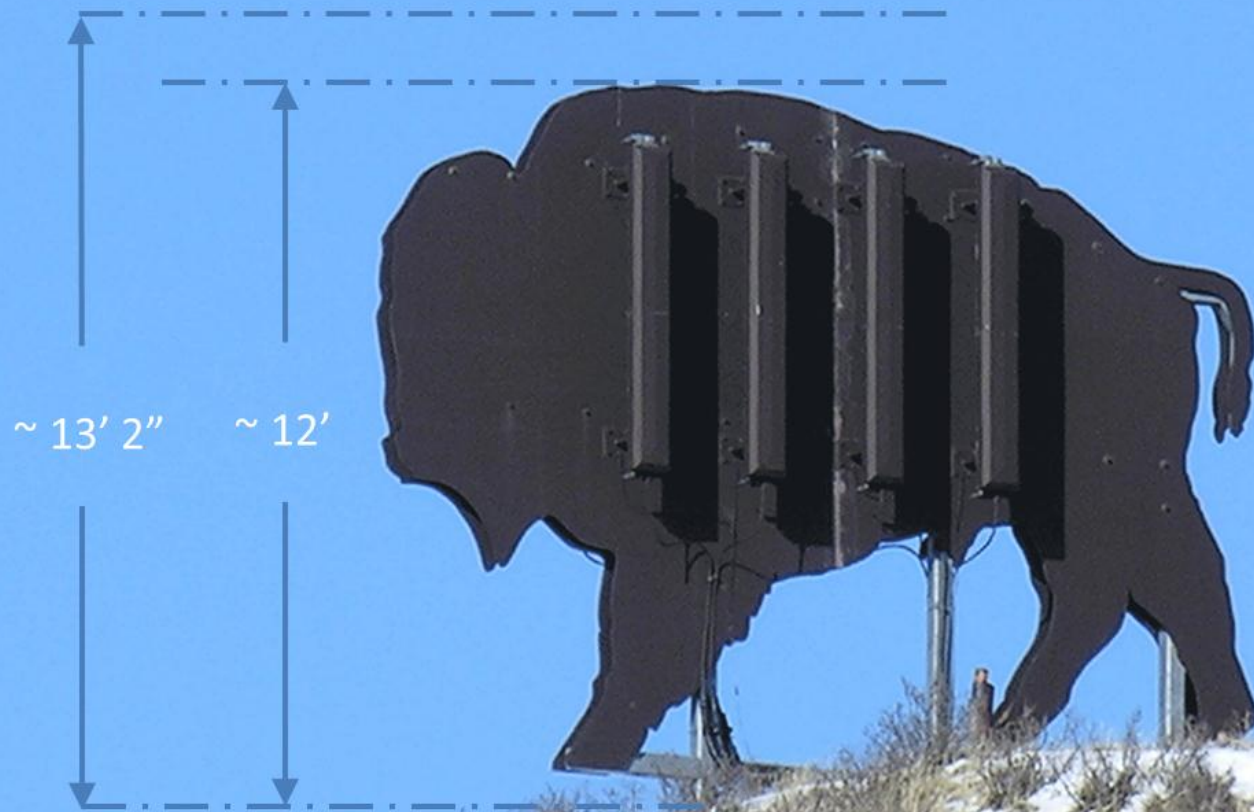
Mono-Flagpole: *Las Cruces, NM*

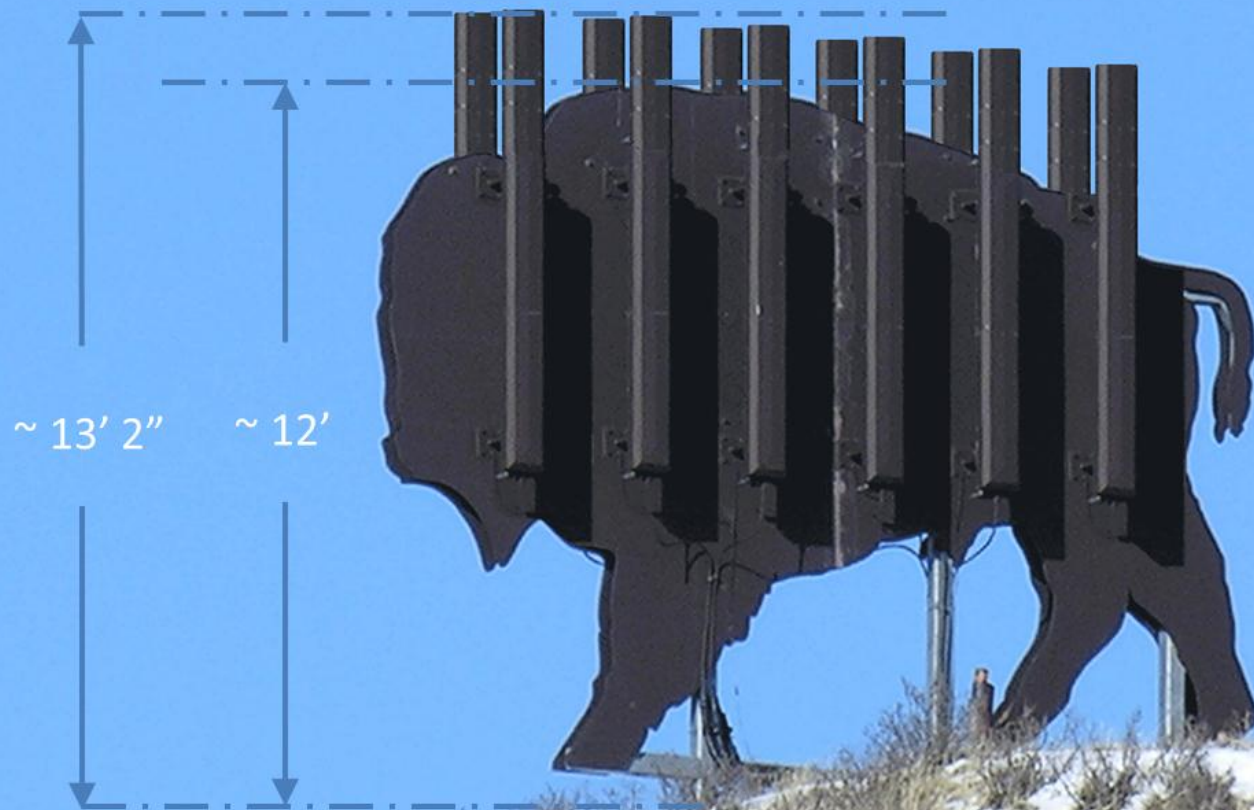


Mono-Morpher? *Las Cruces, NM*

AFTER?







Living the 6409(a) Life

Potential Points of (Dis)Agreement related to Sec. 6409(a) . . .

1. The government (rather than the applicant) determines whether a particular collocation project is subject to Sec. 6409(a);
2. Not every collocation project is subject to Section 6409(a);
3. Not every element of a collocation project may be subject to Section 6409(a)...
Example: Qualifying new antennas and BTS *plus* a new standby power generator.

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- Governments are likely to (continue to) require the use of a comprehensive wireless application; and
 - Be prepared to explain why you believe a project is Subject to 6409(a) treatment.
 - Expect building permit rejections if safety codes are not met (building code; electrical code; fire code; TIA-222-G; etc.)

Living the 6409(a) Life

Closing thoughts related to Sec. 6409(a) . . .

For most of you. . .

- The limits (constitutional and regulatory) limits of Sec. 6409(a) will be tested and defined...that'll be done above your pay grade.
 - Unless you're an attorney, steer clear of providing legal interpretations about what Sec. 6409(a) means...that'll be done above your pay grade.
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- (Trusted) Talk is not cheap!
 - Continue working cooperatively with your local governments while Sec. 6409(a) is being sorted out...hopefully your governments will continue to work cooperatively with you, too.

“Can we all get along?”