Wireless Telecommunications Infrastructure
(HB 1258 (Kilgore)/ SB 405 (McDougle))

Overview of Regulation of Wireless Telecommunications Facilities

- The federal Telecommunications Act of 1996 and the Spectrum Act (2012), administered by the Federal Communications Commission (FCC), allow local regulation of wireless telecommunications facilities as long as state and local regulations do not unreasonably discriminate among functionally equivalent providers, and do not prohibit or have the effect of prohibiting wireless service.
- The FCC has imposed presumptively reasonable time periods – referred to as a "shot clock" – in which localities must decide upon zoning applications.
- The Spectrum Act requires streamlined local administrative approvals for the colocation of certain new wireless facilities on structures previously approved to support wireless facilities, if the new facilities do not "substantially change the physical dimensions" of the pre-existing structure.
- Federal law currently allows localities to request that telecommunications companies disclose information about the character and location of wireless telecommunication facilities of all types (i.e., towers, monopoles, distributed antenna systems, and other small-cell facilities, and related equipment cabinets and structures), including a proposed facility's service coverage area and alternative, less-intrusive locations.
- Federal law specifically prohibits localities from basing denials of facility applications on environmental concerns about radio frequency emissions when the facility complies with the FCC's radio frequency regulations.

2017 Virginia Wireless Legislation

- In 2017, the General Assembly (GA) enacted legislation that restricted local land use authority over small cell wireless facilities of certain dimensions that attach to structures.
- That legislation eliminated public hearings by prohibiting special exceptions for such facilities, and instead created a local administrative process with capped fees.
- Under the 2017 legislation, the only allowable reasons for disapproval in the administrative process include:
  - Interference with other communications facilities, including those for public safety;
  - Public safety or critical public service needs;

- Aesthetic impact or failure to obtain other required government permits or approvals, but only if installed on or in publicly owned or publicly controlled property; or,
- Conflict with certain historic ordinances.

Overview of Provisions of 2018 GA Legislation

Similar to the 2017 legislation, **HB 1258** (Kilgore) and **SB 405** (McDougle) further reduce community participation and local land use authority over privately owned towers and poles.

Administrative Process

- The bills allow only administrative review of towers that are: not more than 50 feet tall; not more than 10 feet taller than the closest utility pole within 500 feet in a right-of-way (ROW) or, if not a ROW, in a line of utility poles; not in a historic district; not in a locality that has spent at least 35% of current GF operating revenue on undergrounding since 1980; and, designed for small cell.
- Additionally, only administrative review is allowed for colocation of a facility larger than a small cell facility on any structure that exists or has been approved for installation but not yet constructed.
- Such an administrative process eliminates the public hearing currently required for towers or poles, and removes the discretion or flexibility of the governing body in the process.
- It is important to note that federal law requires approval of a subsequent increase in height that is not a "substantial" change to a tower's physical dimensions (at least 10 feet in the ROW and at least 20 feet outside the ROW), so this administrative process could result in towers 60-70 feet tall.
- The bills cap fees for an administrative review at $500.

Restrictions on all facilities (whether the process is administrative or non-administrative, including special exceptions)

- The bills: set time limits for approval of applications (the lesser of the bills' time limits or federal requirements); require local governments to notify applicants within 10 days of receipt that an application is incomplete or else the application is deemed complete; and, state that an application for any size tower is deemed approved if the deadlines are exceeded without the applicant's consent.
- A locality cannot require proprietary business information to show a need for the tower/colocation, or placement of a locality-owned facility on the project.

- A locality cannot disapprove an application based on: the applicant's choice of technology; a business decision about service, customer demand, or quality of service; or, the fact that a tower or colocated facility exceeds 50 feet unless that prohibition is in a local ordinance and applies generally to all wireless, cable and electric services.
- A locality also cannot disapprove an application in favor of undergrounding utilities in an area unless: all cable and public utilities in that area are required to be undergrounded by a date certain (it is unclear whether localities have authority to create such a requirement, and that requirement does not currently exist in the County); the requirement existed three months before the application was filed; the locality allows colocation on existing structures, including a building within the undergrounded area; and, the locality allows replacement of structures with structures of the same size or smaller within the area.

Additional Provisions

- The bills provide for appeals of administrative and non-administrative decisions to circuit court.
- They confirm existing prohibitions on "unreasonable" discrimination between providers of similar services, but add providers that are not similarly situated, including cable providers who have franchise agreements with localities and publicly regulated electric facilities.
- They prohibit a zoning approval for maintenance or the replacement of wireless facilities and structures that are (i) substantially similar or (ii) of the same size or smaller.
- They require that non-administrative review fees (for special exceptions, for example) do not exceed actual direct costs.