

# **Update on Wireless Telecommunication Infrastructure**

## **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 — each commonly referred to as a “shot clock” — in which localities must decide upon zoning applications.
- The Spectrum Act requires streamlined local administrative approvals for the co-location 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.

## **2016 General Assembly Legislation**

- The 2016 General Assembly (GA) considered HB 1347 (Heretick), which would have prohibited localities from requiring the disclosure of information about the character and location of wireless telecommunications facilities of all types, including a proposed facility’s service coverage and alternative, less-intrusive locations.
- HB 1347 also would have exempted such facilities from certain local application fees, or capped the amount of fees that localities could charge for applications.
- The County (and many other localities) opposed HB 1347, and it was continued to the 2017 GA by the House Committee on Commerce and Labor; the Virginia Wireless Communications Infrastructure Work Group was created to study the bill.
- The Work Group is comprised of GA members and representatives from the telecommunications industry and local governments, including a Virginia Association of Counties representative, and has met numerous times.

## **Update on Sub-Work Group Activities**

- As part of the Work Group efforts, a sub-work group of local government and industry representatives has been negotiating proposed compromise legislation to replace HB 1347 and to be introduced in the 2017 GA.
- Industry representatives are seeking a streamlined, predictable process through which the 5G infrastructure can be built (mostly in public rights-of-way (ROW)), and local government

representatives are seeking to preserve local land use authority (already limited by federal law).

- Concepts proposed by industry representatives of particular concern to local governments include:
  - The creation of one permit per locality, which would allow telecommunication companies to obtain one permit allowing the placement of an unlimited number of telecommunication facilities anywhere in the locality, including in the public ROW and on publicly owned structures, without additional rent;
  - A by-right approval process, instead of a zoning approval process, for wireless facilities below a certain height;
  - Requiring applications for wireless facilities to be treated the same as applications for utility facilities (although utility and wireless facilities may have physical similarities, they exist under different regulatory frameworks);
  - Eliminating local governments' authority to require telecommunication companies to remove abandoned facilities;
  - Shorter "shot clocks" on applications for new telecommunication facilities;
  - Standardizing application fees and rents across the Commonwealth; and,
  - Requiring local governments to pass a standardized local ordinance to ensure that local officials will adhere to the federal Telecommunications Act and Spectrum Act.
- As a result of concerns raised by local government representatives about the aforementioned proposals, the sub-work group has yet to reach a consensus regarding what should be included in the compromise legislation.

#### **Update on the Work Group's October 11, 2016, Meeting**

- VDOT representatives spoke briefly about existing facilities in the ROW and committed to working with the sub-work group to address related items.
- An FCC representative discussed current, informal fact-finding activities to determine whether further federal action regarding state and local governments should be taken to ensure 5G facilities are deployed in a timely manner.
- The sub-work group provided an update on negotiations for the compromise legislation, noting that progress has been made, but additional time is needed.
- Another interesting element of the Work Group dynamics was highlighted in a presentation by Supervisor Manuel Alvarez, who spoke about Goochland County's efforts to increase the number of towers to expand wireless coverage in rural areas. Though some rural legislators on the Work Group are committed to using this process to increase broadband access in their areas, industry representatives have been much more focused on highly populated urban and suburban areas.
- The Work Group is scheduled to meet next on November 9, 2016, for an update from the sub-work group about the status of its negotiations on compromise legislation.