

Update on Wireless Telecommunications Infrastructure

September 19, 2017

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.
- Federal law allows localities to request information about proposed wireless telecommunication facilities of all types (i.e., towers, monopoles, distributed antenna systems, and other small-cell facilities, and related equipment cabinets and structures). This information includes (i) service areas before and after the proposed facility comes online to ensure that a decision does not effectively prohibit service and (ii) alternative, less-intrusive locations that may allow service and blend better within the existing community.
- The FCC has imposed presumptively reasonable time periods — each commonly referred to as a “shot clock” — in which localities must decide upon zoning applications. Under the Spectrum Act, the County provides streamlined administrative approvals for co-location of new wireless facilities on structures previously approved to support wireless facilities, if the new facilities do not “substantially change the physical dimensions” of the structure.
- Federal law specifically prohibits localities from denying facility applications for environmental concerns about radio frequency emissions when the facility complies with the FCC’s radio frequency regulations.
- Currently, the FCC is considering further nationwide restrictions on localities’ authority over the siting of wireless facilities.

2016 Virginia General Assembly (GA) Legislation

- In 2016, the GA reduced local flexibility throughout the Commonwealth by deeming telecommunications towers in conformance with a locality’s comprehensive plan where the locality’s zoning ordinance permits such towers by right.
- This action eliminated public hearings before local planning commissions for such facilities (the 2017 GA failed to pass the County’s initiative making the 2016 legislation permissive for localities in Planning District 8, which includes Northern Virginia).
- To ensure residents have the opportunity to weigh in on such facilities, the Board of Supervisors amended the Zoning Ordinance to remove all by-right provisions for such towers, effectively retaining public hearings.

2017 Virginia General Assembly Legislation

- HB 2196/SB 1282 were introduced at the request of various telecommunications services and facilities providers to impose additional restrictions on local governments’ authority over the siting and character of wireless communications infrastructure.
- As introduced, the bills were identical and applied to all telecommunications facilities, including small cell, tall towers, and related cabinets and facilities.

- As the session proceeded and legislators heard more and more from local governments, negotiations began in earnest among representatives of industry, local governments, and the Virginia Department of Transportation (VDOT).
- The negotiations were helped by a closer than expected vote on the Senate floor during consideration of SB 1282 (which passed the Senate 21-18 with 1 abstention), and with the defeat on the House floor of HB 2196 (57-37).
- Negotiations over SB 1282 continued, and a compromise bill ultimately passed both chambers.
- The 2017 compromise bill was substantially more limited than the introduced bills because it addressed only small cell facilities that attach to existing structures, although it did restrict local authority for zoning approval of such facilities, among other things.
- As part of the compromise agreement, the Virginia Association of Counties (VACo) and the Virginia Municipal League (VML) supported the negotiated bill and committed to working with industry stakeholders to streamline local processes for free-standing towers and facilities in unserved or underserved rural areas.

Post-2017 Virginia General Assembly Wireless Telecommunications

Workgroup

- Soon after the end of the 2017 session, the GA convened a workgroup to further address wireless telecommunications issues – the expectation among local governments was that the workgroup would focus solely on rural areas, as agreed during the 2017 GA session.
- Unfortunately, the workgroup instead began with proposed legislation that would apply throughout the Commonwealth, restricting local land use authority over the siting of larger facilities attached to existing structures and free-standing facilities of all designs, bulk, and heights.
- A sub-workgroup with representatives from many of the same stakeholders included in negotiations during the 2017 GA session (industry, VACo, VML, and certain local governments) has been tasked by the larger workgroup to seek compromise legislation.
- General topics discussed in the sub-workgroup include: further removal of public hearings for the zoning approval of a subset of such facilities; reduction of localities' access to certain information about a telecommunications company's service (which localities use to ensure a local decision complies with federal law and does not effectively prohibit service); limiting local applications and fees for review; and, deeming applications approved if a locality does not meet certain deadlines for decisions.
- After many meetings of the sub-workgroup, however, compromise has not been reached.
- Currently, the larger workgroup has scheduled its next meeting for September 25, 2017, and, as advertised in its agenda, will discuss zoning issues, among other topics.