TELECOMMUNICATIONS LAW AND PRACTICE IN GEORGIA

ACCG WEBINAR

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Panel

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Goals for Session

• Basics of Wireless Communication
• Description of the Industry and Current Trends
• Overview of the Current Regulatory Framework
• Lessons from Recent Case Law
• Practice Tips for County Governments
Caveats

• **Not** Legal Advice

• **Overview** of Wireless Basics

• **Overview** of Legislation, Regulations, Case Law and Legal Requirements

• **General** Practical Advice
WIRELESS BASICS
Elements of Wireless Network

• **Cell Site** – Antennas at appropriate height along with associated ground equipment

• **Base Station** – Ground equipment at cell site that facilitates the transmission and reception of wireless signals

• **Switch** – Central location through which all calls or data in a given area are routed to a landline or to another mobile device
Basic Wireless Network Design

[Diagram showing a network with a switch (SWITCH) connecting two BASE STATION and PSTN]

PCIA
The Wireless Infrastructure Association

TROUTMAN SANDERS

10
Basic Tower Types

- Monopole
- Self-Supporting Tower (Lattice Tower)
- Guyed Tower
Monopole
Self-Supporting/Lattice Tower
Guyed Tower
Stealth Design

- Design of tower/antennas intended to blend into surrounding landscape or built environment – both urban and natural

- Wide variety of applications

- Trade-off between stealth design and service quality, including height of facility and ability to co-locate additional carriers
Ancient Stealth Treatment

"Guess which one is the cell tower."

TUESDAY 7 SEPTEMBER
“Mono-Pine”
“Slick Stick”
Flagpole
Light Standard
Building Mounted & Screened
Other Stealth Towers?
WIRELESS INDUSTRY
STATUS & TRENDS
Growth in Wireless Communication

• Close to 45% of Georgia households have “cut the cord” – relying entirely on wireless service for communication – National Center for Health Statistics, June, 2015

• FCC reports about 70% of all E911 calls are made from a mobile device

• Significant number of wireless E911 calls are made from residences
“Wireless Only” Growth
2003 - 2014

Percent

Children with wireless service only

Adults with wireless service only

NOTE: Adults are aged 18 and over; children are under age 18.
DATA SOURCE: CDC/NCHS, National Health Interview Survey.
Coverage & Capacity

• First generation of wireless infrastructure provided basic voice coverage

• As wireless devices evolved, the system has evolved to transmit voice & data at high speeds

• As wireless use has increased, carriers are challenged to provide enough capacity

• Majority of new wireless infrastructure is aimed at increasing wireless system capacity & speed

• Most local government ordinances are still based on coverage scenarios
Some Wireless Industry Trends

• Increasing need to serve residential areas due to continuing growth in “wireless only” households

• Use of small cells, distributed antenna systems (“DAS”) and other emerging technologies where warranted and feasible

• Increasing use of third-party tower companies for build-to-suit tower deployment – virtually eliminating “speculative towers”
Meeting the Needs

- Wireless carriers upgrading existing sites by changing and adding antennas, adding capacity when possible
- New coverage and capacity added primarily through co-location on existing towers or other structures
- Adding new towers to increase coverage and capacity if necessary
THE FEDERAL REGULATORY FRAMEWORK
Federal Telecommunications Act

• Timely deployment of wireless infrastructure is federal priority – Telecommunications Act of 1996 set parameters for local zoning review:
  – No unreasonable discrimination
  – No prohibition/effective prohibition of service
  – Action within a reasonable time
  – Denial must be in writing and supported by substantial evidence
  – No consideration of radio frequency emissions
  – Expedited review by courts
Section 704 of TCA

GRANT OF AUTHORITY

• Amends 47 U.S.C. Sec. 332 (c)

• “Except as provided . . . nothing . . . shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities”
“Regulation of the placement, construction, and modification of personal wireless services facilities shall not unreasonably discriminate among providers of functionally equivalent services; and shall not prohibit or have the effect of prohibiting the provision of services”
“A state or local government . . . shall act on any request for authorization . . . within a reasonable period of time after the request is duly filed . . . , taking into account the nature and scope of such request”
“Any decision ... to deny a request to place, construct, or modify personal wireless facilities shall be in writing and supported by substantial evidence contained in a written record”
“No state or local government . . . may regulate . . . personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that facilities comply with the [FCC’s] regulations concerning such emissions”
Section 704 of TCA
RIGHT TO EXPEDITED REVIEW

• “Any person adversely affected by any final action or failure to act by a state or local government . . . that is inconsistent with [Section 704 of the TCA] may, within 30 days . . . commence an action in any court of competent jurisdiction”

• “The court shall hear and decide such action on an expedited basis”
“No Unreasonable Discrimination”

- Intent - “provide flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services” - House Conference Report

- Allows Reasonable Discrimination
Reasonable Discrimination

• Discrimination arising from traditional bases of zoning decisions, such as:

  – **Neighborhood Preservation** - limitations in residential areas, and;

  – **Aesthetic Concerns** - different treatment of self-supporting towers, guyed towers, and monopoles
No Prohibition on Services

• Outright Ban on Personal Wireless Services

• Actions creating “prohibitory effect”
  – Prohibiting service providers from filling gaps in overall system
  – Repeated denials of “good faith efforts” by providers to find less intrusive alternatives, less sensitive sites, use other designs, or co-locate
Decision in Writing?

- “Denied” stamped on letter describing application?
- Letter stating “as a result of public hearing . . . application was denied?”
- Letter confirming vote to deny?
- Vote recorded in minutes of meeting?
TCA – “In Writing” Requirement

• Federal Telecommunications Act requires localities to provide written notice of denial and written reasons for denial of applications to build cell towers. Reasons need not be in the denial notice itself but must be stated with clarity in some other written record that is “issued essentially contemporaneously” with notice of denial.  T-Mobile South, LLC v. City of Roswell, Georgia, ___ S. Ct. ___ (January 14, 2015)
Substantial Evidence

WRITTEN RECORD

• Means “more that a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”

• “[C]ourt is not free to substitute its judgment for that of the [local government]”

• Court compelled to review entire record
Substantial Evidence

WRITTEN RECORD

• If conflicting evidence in record, local government must adequately explain reasons for rejecting competent evidence

• Local authority decision to deny must be overturned if court “cannot conscientiously find the evidence supporting that decision is substantial, when viewed in light that the record in its entirety furnishes, including . . . evidence opposed to the [local government’s] view”
TCA – “Substantial Evidence” Requirement

• Generalized concerns regarding safety in the absence of any supporting evidence in the record to contradict valid engineering reports and conclusions regarding tower safety and design did not provide “substantial evidence” required to justify denial of application. *Verizon Wireless of The East, L.P. v. Columbia County, Georgia, No. 1:14-cv-00211 (S.D. Ga. April 23, 2015)*
No Consideration of Environmental Effects!

• No denial may be based on purported health concerns over radio frequency emissions

• Use of thinly-veiled proxies scrutinized by courts 
  (aesthetics/property values)

• Record of discussion important

• Local government may require operation in compliance with FCC emission standards
Remedies Available Under TCA

• Writ of Mandamus compelling grant of zoning approval

• Injunction ordering issuance of required permits

• Remand unlikely, but possible
FCC Declaratory Ruling
NOVEMBER 18, 2009

• Clarified “one provider” rule – can’t deny application because one provider already has adequate service in jurisdiction because doing so is “unreasonable discrimination”

• Also set limits on “reasonable time” for local review and action (“Shot Clock”):
  - 90 days for collocation
  - 150 days for new structures
  - Initial 30-day completeness review
Challenge to FCC Ruling

• Several cities challenged FCC “Shot Clock” ruling, arguing FCC had no authority to determine what “unreasonable discrimination” and “reasonable time” meant in TCA

• U.S. Supreme Court disagreed and held that **FCC has the authority to interpret these ambiguous terms.**  *City of Arlington, Texas v. FCC*, 133 S. Ct. 1863 (2013)
“Notwithstanding Section 704 of the Telecommunications Act of 1996 . . . 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” §6409(a)
2014 FCC Report & Order

- “Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies,” Published in Federal Register on January 8, 2015
- Adopts exclusions from NEPA and Section 106 historic review for certain collocations on towers, utility structures, and buildings
- Provides guidance on implementation of Section 6409(a) – The Spectrum Act
2014 FCC Report & Order - II

• Defines “substantial change”:
  – Increase in height by more than 10% or 20 feet, whichever is greater
  – Extends outward more than 20 feet from existing tower
  – Installation of more than standard number of cabinets, not to exceed four
  – Excavation outside current lease area
  – Defeats existing facility concealment elements
  – Violates conditions of approval, provided such conditions do not contradict “substantial change” thresholds
“Eligible Facilities Request”
Allows local governments to require applications

“Reasonably related to determining whether request meets the requirements of [Section 6409(a)]”

**60-day** time period (“shot clock”) for review and approval, with initial 30-day completeness review

Incompleteness determination must be in writing and specifically state deficiencies; tolls time period

Timeframe for review continues to run regardless of any local moratorium

“Deemed granted” remedy after 60 days
GEORGIA’S REGULATORY FRAMEWORK
Recent Georgia Legislation

• **Advanced Broadband Collocation Act** (2010) established streamlined procedure for review and permitting of modification and collocation of wireless facilities.

• Superseded by **Mobile BILD Act** on July 1, 2014.

• Further ensures the timely deployment of wireless services in accordance with state policy and federal law, including **new wireless facilities**, collocations, and modifications.
Collocation
Mobile BILD Act

O.C.G.A. §§ 36-66B-1 through 7

• Keeps limits on scope of review for **collocation**:
  
  – No evaluation of technical, business, or service characteristics of proposed facility
  
  – No review of radio frequency or other analysis related to need or business decision

• Process collocations & modifications like any other building/electrical permit application

• Adopts FCC Declaratory Ruling “shot clock” timeline for decision on collocation (90/30)

• **Limits fee for collocation/modification to $500**
Mobile BILD Act - II

• Places limits on review of new towers:
  – No conditions inconsistent with BILD Act
  – May not require removal of active tower as condition of approval for new tower
  – May not require tower placement on public property

• Adopts FCC Declaratory Ruling “shot clock” timeline for decision on new build (150 day decision/30 day completeness review period)
Mobile BILD Act - III

• General Provisions:
  – No zoning or permitting fees exceeding reasonable cost of the actual regulatory activity performed
  – No pass through fees for contingency-fee based consultants
  – Fair market rates for lease of public property for wireless facilities
COUNTY GOVERNMENT PRACTICE TIPS
Practice Tips

• Understand the increasing reliance on wireless service for business, personal, and emergency communication needs in community

• Understand the investment carriers make in licensing and designing their system

• Understand the legal environment and monitor changes in the law

• Adopt reasonable standards and workable ordinances tailored to local conditions, staff abilities, time for review, and budget
Practice Tips - II

• Establish clear procedures to minimize delays in considering applications
• Work cooperatively with applicants to provide clear understanding of process and standards
• Build a written record from the start using credible evidence and analysis
• Explicitly reject arguments regarding health effects of radio frequency emissions
Practice Tips - III

• Supplement staff skills only to extent necessary – keep control of process

• Base staff recommendations and final decisions on standards and on reliable, substantial evidence in written record

• Promptly provide written notice of denials together with written explanation of reasons for such denial
QUESTIONS?
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