Wireless Industry Foresight and Tenacity Pay Off for the American Economy

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When the COVID-19 outbreak shuttered businesses, schools and local government offices, Americans quickly turned to online alternatives that allowed us to continue working, learning, and meeting in safe and accessible virtual environments. Before the pandemic, wireless communication was already an essential utility and our primary means for receiving and sharing information. Consider these statistics: over half of U.S. households have no landline telephone service; the average household contains eleven connected devices; and, up to 80% of 911 calls are made by wireless devices. During the past two months, as society has been forced to move from real to virtual spaces, from offices and schools to streaming conferences and online classes, never before has the need for adequate electronic communication been so vital or so tested. For some of us, this transition from office to online has been surprisingly quick and painless, thanks to the relentless efforts of wireless communications and infrastructure providers, and the myriad consultants and vendors who plan, develop and construct the cell towers, small cells and DAS systems that comprise broadband networks. Without the enormous investment of these private companies, none of these communications and applications would be possible.

Spotlight on Demand and Deficiencies

For many, however, this shift to electronic communication has been frustrating; remote working and learning have been difficult or impossible. Too many rural areas suffer from network coverage deficiencies, and even many developed areas have wireless coverage and capacity challenges. While many of us expect our heightened electronic connectivity to enhance our lives after the shutdown ends, others are wondering if infrastructure will help them catch up or if they?ll be left farther behind. Our forced speedy adoption of new ways of connecting has accelerated an increasingly digital future or, at least, foreshadows what the future may hold. At the same time, it highlights how critical it is for us to extend and improve wireless networks so that, regardless of location, every American can participate in our increasingly wireless world. No one is more focused on this challenge and prepared to improve the current situation than the wireless industry.

Wireless Industry Contributions

Wireless service is the fastest, most efficient way to provide broadband service to underserved rural areas, which means more tower sites are needed. Small cells and DAS systems can provide service in urban areas, commercial centers, and concentrated communities like university campuses, but the backbone of a wireless network is the system of communications towers, and more are needed for coverage, especially in rural areas. Where coverage does exist, more towers and antenna collocations on buildings and other available structures are needed to increase capacity and meet demand. In a mere twenty years, the internet has transformed our world. The number of internet users has increased from 413 million in 2000 to over 3.4 billion in 2016.[1] In the mid-2000s, the smartphone put the internet in our pockets and drove dramatic increases in data consumption year after year as we came to rely on apps for almost every aspect of our lives. Americans? mobile data usage in 2016 was 35 times the volume of traffic in 2010.[2] CTIA reported in 2016 that ?(t)o handle the increase in devices and usage, America?s wireless carriers invested almost $32 billion in 2015, including adding almost 10,000 new cell sites. Since 2010, carriers have invested more than $177 billion to improve their coverage and capacity to better serve all Americans.?[3] The wireless carriers have proven that they are ready, willing, and able to provide necessary wireless infrastructure at their own expense, saving millions in taxpayer-funded public broadband networks.

Government Action to Promote Wireless Infrastructure

Federal and state governments recognize that private carriers need support to create widespread, reliable broadband systems. From the 1996 Telecommunications Act to the more recent Spectrum Act [4], related regulations[5], and FCC Rulings[6] ? the federal government has eased zoning regulations and offered new spectrum to facilitate the build-out of robust broadband networks across the country. Likewise, during the past several years, states have enacted legislation intended to remove obstacles preventing the wireless industry from obtaining the approvals and permits necessary to construct and upgrade needed wireless infrastructure. For example, with the adoption of SB 1282[7] in 2017, the Virginia General Assembly extended some of the benefits of the Federal Spectrum Act to the installation of small cells on buildings and utility poles in rights of way. However, this 2017 legislation did not address new structures in rights-of-way, including replacement utility poles, which are often needed to provide necessary separation between electric lines and small cells. So, in 2018, the General Assembly revisited wireless permitting and enacted legislation to streamline review of what it defined as ?administrative review eligible? projects, including new short poles as well as antenna colocations on existing structures.[8] In the most recent session, the General Assembly adopted HB 831/SB794, allowing broadband providers to use existing easements for fiber without going through the time-consuming and costly process of obtaining an additional easement from the landowner for the same area. Similarly, in 2017, the North Carolina General Assembly passed S.L. 2017-159, which facilitated the development of small wireless facilities, providing for limited administrative review of small cell facilities, and opening up city and state rights-of-way for location of these facilities.

Need for Local Government Response

Unfortunately, in spite of federal and state legislative support for improved wireless networks, wireless

providers continually face resistance from those who oppose communications towers on grounds ranging from visual impact to perceived health effects. Because zoning approvals and permits for communications facilities are granted or denied at the local level, improving our broadband networks depends on local government response to zoning applications. While there will always be those who oppose these applications, local governments must weigh these objections against the growing necessity of providing adequate wireless coverage to all communities. Local regulators should treat wireless infrastructure as the essential utility it has become rather than categorize it as an undesirable land use with higher burdens for approval. To overcome obstacles to network improvements, local governments should revisit their current zoning ordinances and incorporate updates from Federal and State law. They should seriously evaluate wireless design and siting policies that predate smartphones and update their Comprehensive Plans to reflect the critical importance of wireless facilities to the well-being of their citizens. Wireless facility design and siting policies that were adopted even before internet was widely used and before the invention of the smart phone are out of touch with the reality of our digital world. If this recent disruption to our daily lives becomes, as some have dubbed it, the ?new normal,? the coronavirus may be the wake-up call that forces us to recognize how truly urgent is the need to expand and improve our wireless networks. We strongly urge local governments to consider the benefits of collaborating with wireless providers to ensure that all citizens in all communities get the service they need and depend on. Localities that block opportunities for private sector broadband investment leave many citizens at a disadvantage, without the ability to work and attend school from home, participate in their local governments, reach emergency responders, and benefit from telemedicine and other critical wireless applications.

How our Team Can Help

Williams Mullen?s Land Use Team has decades of experience representing wireless providers, tower development companies, wireless industry consultants, and other industry players on all aspects of land use approvals and site leasing. We advocate for wireless projects before local governments across our region to obtain the approvals necessary to build critical wireless infrastructure. Since the enactment of the 1996 Telecommunications Act, we have stayed abreast of applicable law, and we have lent a hand in shaping local ordinances across our region.

Localities throughout the region are open for business, conducting virtual hearings and providing online application portals. Our team monitors local governments? processes so we can keep clients informed and give our clients the advantage of experience to achieve their business goals.

Our Geographical Reach

With 14 lawyers in five offices, our formidable team has led land use and zoning projects in **90** cities and counties throughout the Commonwealth of Virginia, over **90** counties in North Carolina, and various jurisdictions in South Carolina.

[1] ourworldindata.org

[2] https://www.ctia.org/news/americans-wireless-data-usage-continues-to-skyrocket

[3] https://www.ctia.org/news/americans-data-usage-more-than-doubled-in-2015

[4] The Spectrum Act is the common name for §6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified as 47 U.S.C.A. § 1455.

[5] See 47 C.F.R. § 1.6100 (?Wireless Facility Modifications?).

[6] Recent FCC Rulings relating to Section 332(c)(7) (?Mobile Services?) of the Communications Act and the Spectrum Act (see above) include: Declaratory Ruling, FCC 09-99, adopted November 18, 2009; Report and Order, FCC 14-153, adopted October 21, 2014; and Third Report and Order and Declaratory Ruling, FCC 18-133, adopted September 26, 2018.

[7] SB 1282, now Virginia Code §§ 15.2-2316.3 through 15.2-2316.4 and §§ 56-484.26 through 56-484.31.

[8] HB 1258, now Virginia Code §§ 15.2-2316.4.1 through 15.2-2316.4.3

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