

TOWER AND WIRELESS ORDINANCES
THE NEED FOR NEW OR REVISED ORDINANCE
IT'S ALL ABOUT STRIKING A "BALANCE" OF THE DIFFERENT PARTIES' NEEDS
(WHAT'S COMING AND WHAT'S THE IMPACT ON THE COMMUNITY)

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THE WIRELESS INDUSTRY'S AGENDA: Most communities are not aware that the wireless telecommunications industry has acknowledged that it will need several hundred thousand more facilities in the next several years. While in the short term there are certainly issues of a more critical nature facing most communities, *few will have more of a long term, permanent impact and effect on the nature and character of a community than this issue, even if the new facilities are co-located on existing structures.* The number, placement and appearance of these facilities goes to the heart of *preserving the nature and character of a community* and the effects of today's decisions regarding these facilities will have ramifications for decades.

WHAT IS THE CAUSE OR REASON FOR THIS SITUATION? The full answer is somewhat complicated, but a short explanation is that the wireless carriers are now deploying wireless internet access service. Shortly, along with other 3rd generation services, they will be followed by 4th generation services already being deployed on a test basis. To implement this service they need to *reduce the size of the area served by each site* to eliminate the fringe or marginal areas, as currently there is often intermittent, spotty or otherwise unreliable coverage. Eliminating the marginal fringe areas is critical for today's data services, especially those using the internet such as electronic funds transfers and medical imaging transfers where the service must be absolutely 100% reliable.

Another cause for this situation is that more and more sites no longer have the *capacity* to deal with the volume of calls, because there are more cell phone users and increased call activity per user, especially during peak times. As a result, calls are being blocked or dropped. Thus, the carriers need to upgrade the capacity of the existing sites, as well as to add new sites to "hand-off" the excess call volume to. Just these two situations alone, wireless internet access and the need to increase call-handling capacity, will result in *3 to 4 times more sites than currently exist* in most communities within the next few years. Many are already seeing a new round of applications for new sites. Others, including rural communities, will see these applications soon. Wireless number portability, which is now required by law to be offered, and which allows customers to change service providers without changing phone numbers, will only exacerbate the call capacity problems, because customers with less than acceptable service will move to carriers with better service, which in turn will put a strain on even the good networks. Simply to retain customers, all carriers will need to improve their network quality and coverage. Lastly, with the newer flat rate service packages offered by wireless carriers, more and more businesses and private individuals are eliminating their traditional land line phone service in favor of wireless service. To meet this demand, carriers have to place wireless sites deeper and deeper into neighborhoods, making the issue of siting even more problematic for local officials- more sites closer to homes.

HOW TO DEAL WITH THE SITUATION? By being *proactive* and being *prepared* to address it, but in a way that enables all parties to "win" and that doesn't slow down the deployment of the new technology or expanded coverage in the community. Yet at the same time local officials need to assure that the *community* always controls the issue. If not addressed properly, communities will 1) almost assuredly have many more sites than are really needed; 2) sites will be significantly more visually intrusive than necessary; 3) and the community won't know if they're safe, i.e. built in compliance with applicable federal and state laws and regulations, because there is *little or no monitoring or enforcement by the states or feds*. In this context, The Center for Municipal Solutions strongly recommends updating and revising your current tower and wireless ordinances to reflect the current and anticipated situation. Assuming that one wants to preserve and protect the nature and character of the community, this is simply too important an issue and *it's too easy to "get out in front of" to ignore*. Besides which, *it shouldn't cost the community a dime* if it's done correctly, including a new or revised ordinance or set of regulations that is customized for your community.

The good news is that communities can get the needed expert advice and assistance in revising existing ordinances, both of which are needed to assure that the community is truly in control, at **NO COST** to the community.

What should a good ordinance do? First, a well crafted ordinance or regulations should place the community in control of all matters related to the siting, construction and any substantive modification of the tower or (co-located) wireless facility. Only in this manner can a true win-win situation be assured where: 1) the carrier gets what it can prove it needs; 2) the public is assured that the nature and character of the community is preserved and protected by requiring that any wireless facility be as visually innocuous and unobtrusive as is possible; and 3) the local government is assured of substantially increasing its revenue.

Next, a well crafted set of regulations or ordinance should give tower companies no "standing" (normally these are different entities than the carriers). This is because tower companies have no "need" under the federal law. Only carriers have a mandated "need", since only the carriers provide service. Tower companies simply own one type of structure that can be attached to if there is nothing else and are no different than the owner of any structure to which antennas can be affixed, such as a building, billboard, light pole, utility pole, electric high tension tower, steeples, silos, etc. The community would not be expected to give the owners of any of these structures any particular standing under wireless regulations. Why would they give the owner of simply a different type of structure any standing, since towers are merely another type of structure that can be used? In point of fact, towers are not a necessary prerequisite to the provision of wireless service and should always be the last resort for attachment of antennas. Yet, at the same time, if it can be proven that a new tower is needed, well done regulations can actually benefit the tower owner since, by requiring co-location, it drives all carriers to that tower, thereby increasing revenue and eliminating any marketing costs.

A well-crafted set of regulations should also expressly recognize the Community's needs *first* and as *superior* to those of the carrier, since without the community's need for service the carrier has no "need" to provide service. In this context, and as an example of how control can work to the benefit of both the industry and the public, we have had clients require 2 wireless facilities, instead of the single one originally proposed, to maximize coverage in the community. It's difficult for a company to argue that they don't want to or realize the revenue from 2 sites, instead of just one (on average more than \$4,000/carrier/site/day) and not provide the service. In point of fact, this is what they're mandated to do and why they're in business, i.e. as long as it's not "commercially impractical" (as defined under the federal Uniform Commercial Code and case law). This is one example of how the community can create the desired *sympiotic* relationship, since in reality both the industry and the community are "joined at the hip" from an economic development perspective.

Another key component to a well crafted set of regulations is to *require* co-location. Forget about "incenting" it, since that's not necessary. Simply require it, unless it can be proven not to work, including an exhaustive inventory of all possible co-location alternative sites and a set of propagation studies for each one that the carrier claims will not work (backed by the modeling information that was used to produce them) proving that it won't work. It should be noted that the community may require two less visually obtrusive (co-located) sites to cover the same area that would otherwise need a more intrusive (i.e. taller) site or a tower. Wireless facilities can even be camouflaged to be virtually undetectable in such "wide open" and highly visible situations as on the face of a cliff.

Lastly, a well-crafted set of regulations should require the applicant to place an escrow deposit with the local government to cover the cost of the expert assistance needed to truly deal as an equal with the applicant and who knows the options and thus what can be, as opposed to what is requested. Since the carrier is the financial beneficiary of the permit, the taxpayers should not be required to bear the cost of the needed expert assistance.

In short, the siting and construction of wireless facilities need not be an adversarial situation *if the community is as knowledgeable as the company's experts* and knows what its options and choices are and which ones will work in a given situation and which won't. However, to do this, the community simply *must* know (or have access to those who know) at least as much as the company's experts, including what information is needed to make an informed decision as regards the community's options, how to read and interpret the needed technical information and then apply it to the situation. This is not rocket science, but it is largely technical and requires more than a modicum of knowledge and experience. Regrettably, the net effect of most communities' regulations is merely to have a process in place, but that don't truly enable the community to do much more than the company is willing to do or thinks of doing itself. In other words, while the regulations are critical, even more so is having the needed expertise to review and analyze what has been asserted as being needed versus what's in the community's best long term interests and being able to strike a balance between the two that satisfies the needs of both. Only in this manner can a community be in control and be assured of striking the needed balance between the carrier's needs and the community needs and interest.

About the author: Rusty Monroe is the co-founder of The Center for Municipal Solutions, a national consulting firm exclusively serving local governments, with hundreds of client communities in 20 states. He is regular lecturer to local governmental organizations on the state and federal levels and has been widely published in various local governmental organizations' publications. The Center's web site is www.telecomsol.com.