

Testimony before the Senate Committee on Communications and Technology

Public Hearing on SB 1345
Providing for Streamlined Procedures for Reviewing Applications
for the Modification or Collocation of Wireless Telecommunications
Facilities and Wireless Support Structures

Presented by

RICHARD M. WILLIAMS, ESQUIRE
HOURIGAN, KLUGER & QUINN, P.C.
600 THIRD AVENUE
KINGSTON, PA 18704

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Good Morning Chairman Folmer, Chairman Farnese and members of the Committee on Communications and Technology. My name is Richard M. Williams. I am here today to testify in support of SB 1345 which would streamline land use applications for the collocation of wireless telecommunications facilities on existing structures in the Commonwealth.

By way of background, I am a shareholder in the law firm of Hourigan, Kluger & Quinn, P.C., located in Kingston, Luzerne County, Pennsylvania. My practice includes the representation of individuals and business entities in land use proceedings throughout Northeastern and Central Pennsylvania. Since 1997, I have represented wireless carriers in securing zoning and land use approvals in hundreds of jurisdictions throughout the Commonwealth. In that time, I have witnessed the variety of issues wireless carriers have encountered in siting facilities. These issues have included difficulty in locating wireless facilities upon existing structures.

Prior to addressing the issues that I have noted upon my review of SB 1345, I wanted to provide two brief examples of an issue that this legislation will alleviate if enacted. The examples that I am going to discuss are not isolated incidents. Rather, they are commonplace.

First, a wireless carrier whom I represent is proposing to install or “collocate” its antennas and supporting equipment upon a nine story building owned by a University member of the State System of Higher Education. The antennas would be installed upon an elevator shaft. In addition, the supporting equipment cabinets would be placed on an elevated platform on the roof of the building. Both the antennas and the equipment cabinets would be entirely shielded from view.

In support of the application, I recently met with the municipal zoning officer. At that meeting, the zoning officer offered his opinion that the proposed application would require the grant of at least four variances from the provisions of the municipal zoning ordinance. One of the variances necessary would involve a request for a “use variance” as the municipality in question only permits collocation of facilities upon existing structures within three of its thirteen zoning districts. Interestingly, this municipality does not permit collocation in several industrial and commercial zoning districts.

As the Committee may know, a variance is perhaps the hardest form of relief to obtain under the Pennsylvania Municipalities Planning Code. According to our courts, a variance should be granted sparingly and only under exceptional circumstances. In my own experience, out of the hundreds of zoning cases that I have handled in my practice, in only a handful have the criteria necessary for the grant of a variance existed.

The requirements of the municipal zoning ordinance coupled with the standards associated with the grant of a variance afford the municipal zoning hearing board almost unfettered discretion in

the approval or denial of this application. In my opinion, the carrier's proposal to collocate its antennas and supporting equipment upon the roof of an existing nine story building constitutes the least intrusive alternative to providing and enhancing wireless service in this particular community. This proposal also serves the purpose of providing a public university with revenue outside of its traditional sources. Notwithstanding these facts, the success or failure of this project rests squarely upon three individuals comprising the zoning hearing board who are not versed in the intricacies of wireless network design and who will possibly view the application in light of their own beliefs and prejudices.

Second, I recently attended a zoning hearing on behalf of a carrier who proposed the installation of wireless antennas upon the roof of a building used as a storage facility for a local school district. Although antennas operated by another carrier were already installed on the roof of the building, my client, and its expert witness team consisting of engineers and consultants, were required to attend and to testify in support of the application.

The application in this second example was granted. However, the carrier subjected itself to a possible denial by having its proposal reviewed by members of the community who were not well versed in wireless communications. In addition, the carrier incurred substantial expense in the preparation of reports and the attendance of its engineering professionals at the zoning hearing.

As these two examples demonstrate, the proposed streamlined process and procedure afforded by SB 1345 are critical to the prompt and orderly build-out of wireless networks within the Commonwealth. Given the significant increase in wireless customers as well as the fact that wireless traffic now includes a substantial data component, the ability of wireless carriers to utilize less intrusive alternatives to the construction of new towers without the ability of local governments to deny such applications is imperative.

With respect to provisions of SB 1345, I would like to address three specific provisions of the Bill and their potential impact. The first issue involves the definitions of "Collocation" and "Wireless Support Structure" as set forth in Section 2 of SB 1345. As currently drafted, the streamlined process afforded by SB 1345 would apply solely to the collocation, modification or replacement of wireless facilities upon existing monopoles or towers. The revised draft being submitted to you by the wireless carriers here today would expand these definitions to include utility poles, buildings and water towers. In other words, SB 1345 would afford a streamlined process for collocations upon all existing structures.

As the Committee may be aware, wireless carriers utilize all types of existing structures to house their facilities. These structures include existing towers, water tanks, utility poles, hospitals, schools, apartment buildings, farm structures and other types of buildings. In fact, many zoning ordinances throughout the Commonwealth require that a carrier disqualify an existing structure as a location for its facility prior to constructing a new tower within the municipality.

Structures such as buildings, utility poles and water tanks are often chosen by a carrier as the best candidates for collocation. Such structures, because of their location and height, are ideal for the installation of wireless facilities. In addition, such structures generally afford the community with the least obtrusive alternative to the construction of a new tower.

Allowing a carrier to pursue a streamlined process for collocation, regardless of the type of structure, may further serve to reduce the proliferation of new towers. If faced with a choice between the streamlined process afforded by SB 1345 and the lengthy delays generally encountered in the permitting of a new tower, a carrier, in the majority of circumstances, will choose to collocate its facility to take advantage of the process.

Given the fact that a significant number of collocations involve structures that cannot be classified as a monopole or a tower, this modification to SB 1345 is highly recommended.

Second, the provisions of the Bill addressing when a collocation upon an existing structure may be regulated is problematic due to the recent enactment of Federal legislation. Specifically, Section 3(b)(1) of SB 1345 allows a municipality to regulate a collocation application if the placement of telecommunications equipment would require the wireless support structure to have lighting or if an extension of the structure would exceed the height limitations of the municipality. Similarly, Section 4(b) precludes the use of the streamlined procedure afforded by SB 1345 if: (i) the proposed collocation would increase the overall height or width of the structure; (ii) the proposed collocation would increase the dimensions of the equipment compound; or (iii) the proposed collocation would exceed the weight limits for the structure. Section 4(b)(3) also requires that any collocation comply with the conditions of approval applicable to the initial wireless support structure.

Sections 3(b)(1) and 4(b) do not appear to be supported by recent Federal legislation enacted since the introduction of SB 1345. As the Committee may be aware, Congress recently passed the Middle Class Tax Relief and Job Creation Act of 2012. Section 4225 of this Act mandates that local governments approve an “eligible facilities request” for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station. Thus, The Middle Class Tax Relief and Job Creation Act of 2012 allows collocations involving a “substantial change” to the physical dimensions of the structure to be regulated by a state or local government.

A “substantial change” is defined by the FCC to include two specific modifications of the structure. First, the FCC considers any modification that increases the existing height of a structure by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet (20’), whichever is greater as a “substantial change” allowing for heightened regulation. The FCC also defines a “substantial change” as the addition of an appurtenance to the tower that would protrude from the edge of the tower more than twenty feet (20’) or more than the width of the structure at the level of the appurtenance, whichever is greater.

Federal regulations do not, however, allow local regulation of wireless collocations based upon the factors outlined in Sections 3(b)(1) and 4(b) of SB 1345. Given this inconsistency, it is recommended that SB 1345 be revised to mirror existing Federal law when affording municipalities the right to regulate collocations upon existing structures.

The wireless carriers before you today have submitted a revised draft of SB 1345 which depicts for the Committee's convenience certain modifications to the proposed language of the Bill. The draft submitted to you mirrors Federal law by deleting the provisions of SB 1345 which specify the instances allowing for heightened municipal review and by allowing such review in the event of a "substantial change" to the structure. In addition, the revised draft adds the defined terms "substantial change" and "substantially change" to Section 2. The definitions of the terms "substantial change" and "substantially change" in the revised draft comport with Federal law.

Based on the foregoing, I recommend that the provisions of SB 1345 allowing for heightened regulation be revised in accordance with the draft submitted by the carriers testifying before you today. The acceptance of this revision will ensure that the Pennsylvania legislation is entirely consistent with Federal mandates.

The final issue that I would like to address involves the addition of the concept of a "replacement" of antennas or equipment to an existing facility. In accordance with the revised draft submitted by the carriers here today, a "replacement" of antennas or equipment upon an existing structure or within an existing equipment compound would be permitted without the necessity of obtaining building or zoning permits from the municipality.

A replacement is a narrowly tailored modification of equipment. It is a situation where a carrier replaces existing antennas on a structure with equipment of the same size and weight. It is commonly referred to in the industry as a "like for like" modification.

Section 2 of the carriers' revised Bill defines a "replacement" as "[t]he replacement of wireless telecommunications facilities on an existing wireless support structure or within an existing equipment compound with equipment composed of the same wind loading and structural loading that does not Substantially Change the physical dimensions of the existing wireless support structure." Under this definition, the key feature is that a "replacement" involves "equipment composed of the same wind loading and structural loading."

For example, a carrier may replace an existing antenna on a tower with an antenna of the same height and weight due to age, technological advancement or as a result of normal maintenance. Rather than requiring the carrier to obtain building and zoning permits for this limited situation, a carrier should be able to proceed with the "replacement" without unnecessary municipal involvement. A "replacement" of antennas or equipment as defined by the carriers would not alter the design and structural characteristics of the existing structure. Accordingly, it is recommended that the added delay and cost of municipal involvement in this situation be avoided.

As a final note, I have personally witnessed the change in how municipalities have approached the siting of wireless facilities. In 1997, few municipalities had provisions in their ordinance addressing wireless facilities. Today, almost all municipalities with whom I deal have an ordinance specifically addressing and regulating the use. Many of these ordinances establish unreasonable barriers to collocation. The first example cited in my introductory remarks is a good one. That particular ordinance permits collocation only in three of thirteen zoning districts. A collocation in any other zoning district would require the grant of a use variance.

Unreasonable barriers to the prompt and efficient build-out of wireless networks exist throughout the Commonwealth. These barriers serve to hamper and limit the communications infrastructure which will be critical to residents and business of the Commonwealth in the twenty-first century.

SB 1345 will assist in alleviating the issues experienced by wireless carriers in the development of their networks. The passage of SB 1345, with the revisions noted by the carriers testifying before you today, will serve to assist in removing these barriers. Given the unique issues experienced by wireless carriers and the current state of municipal regulation, now is the time to pursue moving forward in the implementation of SB 1345.

Thank you for the opportunity to speak today. Upon conclusion of this panel's testimony, I will welcome questions from the Committee.