Session Handouts
To Accompany Home Study Audio CD

for

*Telecommunications Planning and the Law:*
*Get Wired or Get Left Behind*
Original Presentation
Friday, March 12, 2004

Moderator: Jane E. Lawton
Cable Communications Administrator
Montgomery County
Rockville, Maryland

Panelists: Russell Legg
Chief Planner
Larimer County Planning
Ft. Collins, Colorado

David Spencer
Regional Director
Wyoming Business Council
Gillette, Wyoming

Michael Stull
Director of Marketing & Sales
Advanced Communications Technology
Sheridan, Wyoming
The Rocky Mountain Land Use Institute  
*Thirteenth Annual Conference*  

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**PRESENTER BIOGRAPHIES**

**Jane E. Lawton**, Cable Communications Administrator for Montgomery County, Maryland, directs the Division of Cable and Communications Services which negotiates and administers cable, OVS, and telecom franchises. She manages an annual budget of over $13M which supports the county’s cable and telecom regulatory activities, 13 public, education, and government channels, and an institutional network and special projects. She also chairs the “Tower Committee,” which recommends sites for wireless facilities in the County. Ms. Lawton previously served as President of the National Association of Telecommunications Officers and Advisors (NATOA) and is a contributor to the NATOA Journal of Telecommunications Policy. She monitors cable and telecom issues at the FCC and serves on the Board of TeleComUnity, which lobbies Congress on behalf of local communities.

Ms. Lawton formerly served four terms as Mayor in the Town of Chevy Chase, and she has extensive knowledge of local land use and zoning law and local regulatory authority. Ms. Lawton began her public service career as a Special Assistant to the Speaker of the U.S. House of Representatives. She graduated from the University of Oklahoma with a degree in Government, History and Economics.

**Russell Legg** is Chief of Planning for the Larimer County Planning Department in Fort Collins, Colorado. He has been with the department for twenty-five years, and it is currently staffed with 18 planners and planning technicians. The department has three work sections: Development Review, Code Administration and Enforcement, and Advanced Planning. Mr. Legg graduated from the University of Oklahoma with a Master of Regional and City Planning. He was project manager of Larimer County's Partnership Land Use System (PLUS) that is the current framework for the existing growth management efforts. He was also project manager and worked with others in establishing the County's Transfer of Development Rights program and a unique combined land use code for the Town of Estes Park and Larimer County. This code has been adopted for that portion of Larimer County surrounding Estes Park and Rocky Mountain National Park. In May of 2003, Mr. Legg worked with Clarion Associates in an effort that resulted in a consultant-produced document titled “Regulatory Options and Strategies Report for Telecommunication Towers, Antenna, and Related Equipment”. The county is using this report to design the next steps in regulatory revision that would establish better criteria for review, approval or denial of Telecommunication Towers.

**David Spencer**, of Buffalo Wyoming, is the Regional Director for the Wyoming Business Council in Northeast Wyoming, including the Counties of Campbell, Crook, Johnson, Sheridan, and Weston. He was the Gillette Area Manager for the consulting firm of Worthington, Lenhart and Carpenter, Inc., from 1992 to 1999. Prior to that, he was the Director of Community Development for the City of Gillette from 1987 to 1992. He was also the Director of Community Development for the City of Rawlins from 1981 to 1987 and Senior Planner with Carbon County, Wyoming, from 1980 to 1981. He has
an M.A. and B.A. from Southern Illinois University at Carbondale with specialization in resource economics, geography and anthropology.

Mr. Spencer is a member of the American Planning Association, the American Institute of Certified Planners, and the Wyoming Economic Development Association. He is an Emeritus Board Member of Western Planning Resources, Inc., a thirteen state regional organization. He also serves on the Regional Advisory Board of The Rocky Mountain Land Use Institute at the University of Denver. He served on the Board of Directors of the Campbell County Economic Development Corporation in Gillette for six years, two of which were as President.

**Michael Stull**, is employed as Director of Marketing, Sales and Customer Affairs with Sheridan-based Advanced Communications Technology, a facilities based telecommunications company providing optical transport services, long distance, and high speed and dedicated Internet throughout Wyoming. ACT, as the company is also known, also engages in competitive ventures primarily against Qwest Communications. Mr. Stull’s prior positions include Director of Telecommunications for the Wyoming Business Council, US West’s Manager of Public and Government Affairs for Wyoming, and Executive Director of the Wyoming Association of Municipalities. For several years he served as General Counsel to Senator Alan K. Simpson (Ret.) and as a staff member of the United States Senate Judiciary Committee. He holds both a Bachelor of Science in Finance and a Juris Doctorate with emphasis in corporate law from the University of Wyoming. Michael is a member of the Wyoming Bar Association. He is active in Rotary and serves as Chairman of the Board of the Sheridan Area Development Alliance.
MONTGOMERY COUNTY, MARYLAND
THE TOWER COORDINATION PROCESS

JANE E. LAWTON
Cable Communications Administrator
Chair, TTFCG

TELECOMMUNICATIONS TRANSMISSION FACILITIES COORDINATING GROUP
Montgomery County Office of Cable and Communications Services
Montgomery County Office of Management and Budget
Montgomery County Department of Technology Services
Montgomery County Department of Permitting Services
Montgomery County Public Schools
Washington Suburban Sanitary Commission
Maryland-National Capital Park and Planning Commission
BACKGROUND AND DESCRIPTION OF THE TOWER COORDINATION PROCESS

I. Background

In early 1995, Montgomery County officials were faced with a growing demand for towers and monopoles to support wireless communications needs. They recognized that the number of applications for sites would increase even more to meet both government and private sector needs. The FCC had licensed six carriers to provide wireless communications services and was expected to license more in the future. The County Executive and the County Council wanted to minimize the negative impact of these sites on the community.

An interagency taskforce was formed to study the problem. The taskforce met extensively with industry representatives and government agencies, and concluded that in the near future well over 300 sites would be needed. They reported that the number of new poles needed could be reduced by two-thirds (to about 130) if antennas could be located on existing rooftops, water tanks, towers or monopoles. Industry representatives also made it clear that what they needed most was a speedy and reliable process in order to level the competitive playing field.

The study’s examination of the County’s existing processes for considering and siting facilities on both public and private land revealed the need for change. At that time, all new monopoles required carriers to obtain a Special Exception from County zoning regulations - a costly and time-consuming process. The taskforce recommended that the County develop a new comprehensive policy and regulatory process to govern the siting of telecommunications facilities.

The taskforce report recommended the creation of a Tower Coordinator position within the Executive Branch and the designation of a person within each land-owning and land use agency to work with the Tower Coordinator. This group would pro-actively engage the County Government and its agencies to recommend the most appropriate sites for telecommunications towers and monopoles by evaluating requests filed with the County. The ultimate decision-making authority would remain with each agency. The report suggested that agencies be allowed to keep the revenue received from leasing their facilities in order to encourage agencies to make their facilities available to private carriers.

II. Legislative Response

The County’s Zoning Ordinance allows certain types of construction to take place as a matter of right, requiring only that a building permit be issued by the Department of Permitting Services prior to the start of construction. Other types of construction are allowed only if the Board of Appeals grants a Special Exception after review by the Planning Board.
In 1996, in response to the taskforce report, the County Council adopted a Zoning Text Amendment (ZTA 95028) to regulate the installation of telecommunications facilities on private and public lands and to address many of the issues raised by the study. The legislation provided that the installation of telecommunications facilities would be encouraged at less intrusive sites, including industrial and commercial lands, existing buildings, water towers, power transmission poles, and certain public lands. Co-location of telecommunications facilities was required to minimize the negative impact in residential areas and to diminish the multiplicity of towers. Subsequent to initial legislation, additional changes have been made based on the experience of the process over time. Limits on support structure heights have now been lowered unless a clear need can be demonstrated for increased height, a provision for larger joint-use equipment shelters has been added, use of amateur radio support structures for commercial purposes have been prohibited, and most recently, application fees for the review process have been established. A summary of the current zoning and the fee structure are provided below. Complete information about the County's process may be found at the County's website.

III. Coordination Process

The County Executive proposed and the County Council adopted an Executive Regulation providing for appointment of the Tower Coordinator to serve as the primary point of contact for industry representatives. The Regulation also creates the Telecommunications Transmission Facilities Coordinating Group (Tower Committee) to review tower site applications and make site recommendations.

The goal of the process is to assist industry by ensuring a timely review of applications and by providing a reliable process among agencies. Applications for antennas on existing structures are typically processed within 30 days, and the goal is to process all applications in less than 60 days. The Tower Committee is scheduled to meet monthly. Their recommendations are required prior to the issuance of a building permit. Industry representatives attend and participate in these meetings. The final decision to lease public land remains with the land-owning agency, and lease revenues are retained by that agency.

IV. Functions of the Tower Coordinator

The Tower Coordinator is responsible for creating and maintaining a database of existing wireless telecommunications facilities in the county, as well as existing structures of certain heights in all zones that could serve as potential sites for the placement of antennas or monopoles. The Coordinator checks applications for siting of new monopoles against the database to determine whether an alternative site exists that could meet the applicant's needs.

Applications for siting of telecommunications facilities are received by the Tower Coordinator and are reviewed to ensure that they are complete. The Tower Coordinator works with the Department of Permitting Services to confirm the zoning of the site for each application, verifies whether it is considered “by right” or requires a special exception, and provides a recommendation on each siting request to the Tower Committee. The Coordinator also staffs the meetings of the Tower Committee, maintains a written
record of all actions, and serves as a technical resource to the Board of Appeals and other agencies as needed.

GOALS AND RESULTS OF THE MONTGOMERY COUNTY TOWER COORDINATION PROCESS

I. Goal: To establish a reliable and expedient process for telecommunication carriers to site transmission facilities in the county and to speed deployment of services for residents while maintaining adequate public protection.

Action: Montgomery County amended its zoning ordinance to allow “by right” sites in most zones, to encourage co-location and to establish reasonable height and setback requirements:
- “By right” placement of antennas on existing private and public buildings and structures in all zones, except attachment to a single family residence;
- “By right” placement of new monopoles in industrial, commercial and some agricultural zones;
- Special exception process retained for new sites in single family residential zones

Effect: Greatly reduced application review time when compared to the lengthy and costly special exception hearing process that had been required for all sites in the past.

II. Goal: To promote appropriate location and co-location of facilities to minimize adverse impact to the community and public facilities. To provide a forum for private carriers and public agencies to meet and reach consensus on sensible siting of facilities. To encourage public agencies to develop and adopt criteria and a process to expedite requests for use of public land for telecommunication purposes.

Action: Creation of a Tower Committee composed of representatives from relevant land owning and land use agencies to review all new telecommunications facilities and antenna siting requests. The Committee meets frequently, with industry reps in attendance and actively participating, to review and make recommendations on all applications. Meetings are open to the public.

III. Goal: To provide a centralized source for private providers, County agencies, and the public to obtain information regarding the County’s siting process and the location and description of potential sites

Action: Appointment of a Tower Coordinator and creation of an electronic database that contains information about all antenna and tower sites, all public sites, all buildings of certain heights, all public property, and other data helpful to providers and the public. Providers file annual plans with the Tower Coordinator detailing current and planned sites. This database has proved to be an invaluable tool for providers, agencies, and the public in evaluating co-location possibilities and for alternate sites which may have less negative impact on the community.
IV. Role of the Tower Committee

The Tower Committee consists of representatives from various land owning and land use agencies. It reviews the tower applications, considers the recommendation and other information compiled by the Tower Coordinator, and formulates a siting recommendation that goes forward to the affected agency. The participants on the Committee include members from land owning agencies, including the Department of Transportation and Public Works, the Montgomery County Public Schools, the Maryland-National Capital Parks and Planning Commission, and the Washington Suburban Sanitary Commission; from land use agencies, such as the Department of Permitting Services; and other parties involved in telecommunications services for the County, such as the Department of Information Systems and Telecommunications, the Office of Cable Communications Administration, and the Office of Management and Budget.

The Committee meetings provide a forum for members to discuss siting issues, review and comment on telecommunications transmission facility policies of various agencies, and facilitate communications between member agencies and between government officials and the industry. The Committee also stays current on federal legislation and FCC rulemakings that affect tower siting and issues such as federal rules concerning RF emissions. One of the added benefits of the Committee is that each participating agency now has a person with extensive knowledge about the telecommunications industry’s needs and the appropriate involvement for local government.

For the industry, a speedy and reliable process is in place. Applications for antenna sites that are allowed as a matter of right by the zoning ordinance are typically approved within thirty days. Applications involving sites that require a special exception for construction of a new tower or monopole are evaluated more closely and often take somewhat longer to receive a recommendation. Barring any unusual circumstances, the sixty-day time frame established by the Executive Regulation has been adequate for processing applications.
<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
<th>% of Received</th>
<th>% Recommended</th>
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<td>Total Applications Received</td>
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<tr>
<td>Existing Bldgs/Structures/Monopoles - By Right</td>
<td>510</td>
<td>85%</td>
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<tr>
<td>Recommended</td>
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<td></td>
<td>94%</td>
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<tr>
<td>New Monopoles - By Right</td>
<td>11</td>
<td>2%</td>
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<tr>
<td>Recommended</td>
<td>9</td>
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<td>82%</td>
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<tr>
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<td>New Monopoles/Towers - (Special Exception)</td>
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<tr>
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### Applications Received as of January 14, 2004

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<th>Number Withdrawn</th>
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<tr>
<td><strong>New Monopoles/Towers</strong></td>
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<td>1</td>
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<td>0</td>
<td>0</td>
<td>9</td>
<td>82%</td>
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<tr>
<td><strong>Private Property (Special Exception)</strong></td>
<td>41</td>
<td>13</td>
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<td>2</td>
<td>26</td>
<td>63%</td>
</tr>
<tr>
<td><strong>Public Property</strong></td>
<td>39</td>
<td>9</td>
<td>1</td>
<td>2</td>
<td>27</td>
<td>71%</td>
</tr>
</tbody>
</table>

Results: To date, 601 applications have been submitted to the Tower Committee for review, of which 540 were recommended for approval on a total of 260 different sites in the county. Maximum use of existing facilities has been achieved, and new monopoles have been designed to accommodate collocation by other future carriers. Of those recommended for approval:

- 422 (78%) were on private land;
- 118 (22%) were on public land;
- 478 (89%) were attached to existing structures (commercial buildings, churches, water towers);
- 62 recommendations to erect new monopoles: 9 “by right”; 28 in conjunction with a public use; and just 25 required Special Exception hearings;
- 48% of the new monopoles are already being used for co-location by other carriers: 11 have two carriers, 6 have three carriers, 6 have four carriers, 4 have five carriers, and 3 have six carriers on the same monopole.
ZONING TEXT AMENDMENT SUMMARY

I. Private Telecommunications Facilities Allowed as a Matter of Right

On Publicly Owned Land:
Antennas attached to existing structures owned or operated by a county, bi-county, state or federal agency, except those owned by independent fire departments or rescue squads.

On Privately Owned Land:
Antennas and unmanned equipment buildings or cabinets on rooftops:
- Buildings at least 30 feet high in multi-family, commercial or industrial zones;
- Buildings greater than 50 feet high in one-family residential zones, but not on a one-family residence.

Antennas on the building facade:
- At height of at least 30 feet in multi-family, commercial or industrial zones,
- At height greater than 50 feet in one-family residential zones, but not on a one-family residence.

Antennas mounted on existing structures. (No height requirements.)

II. General

In all cases, unmanned equipment buildings or cabinets used for one telecommunications service provider must not exceed 560 square feet and 12 feet in height (14 feet in height on a rooftop). An equipment building used for more than service provider the square footage must not exceed 1500 square feet.

If located on a building roof on private land, the equipment building/cabinet combined with any other equipment building(s) and structure(s) must not occupy more than 25% of the roof area. (No restriction on public buildings.)

A new support structure must be set back from any off-site dwelling a distance of 300 feet in agricultural and residential zones and one foot for every foot in height for all other zones.

For all zones, support structures must not exceed 155 feet in height unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes and must be sited to minimize its visual impact.

III. Allowable Land Uses

Residential Zones, One-Family:
Antennas on existing buildings and structures are a permitted use subject to the provisions described above. Antennas on existing buildings that do not meet the minimum height requirements may be authorized as
special exceptions. New monopoles or towers on residential zoned properties require a special exception (unless they will be publicly owned or there is a public use).

R-T Zones, Townhouse, Residential:
Use for telecommunications facilities is not allowed.

Commercial Zones:
Antennas on existing buildings and structures are a permitted use subject to the provisions described above. Antennas on existing buildings that do not meet the minimum height requirements need to obtain a special exception. New towers or monopoles are permitted with certain setback requirements and, in certain cases, by special exception.

Industrial Zones:
Antennas on existing buildings and structures are a permitted use subject to the provisions described above. Antennas on existing buildings that do not meet the minimum height requirements need to obtain a special exception. New towers or monopoles are permitted with certain setback requirements and, in certain cases, by special exception.

Agricultural Zones:
For all agricultural zones, a freestanding monopoles is also a permitted use up to 155 feet in height within an overhead transmission line right-of-way, but not closer than 300 feet to any off-site residence.

IV. Application Fee Structure

1) An annual fee of $500 is paid when an annual plan is submitted.
2) Application fees:
   - $500 for minor modifications to existing antennas at a single site, adding antennas to an existing site or changing or adding equipment at a single existing site;
   - $1,500 for a modification or addition of antennas, or changing or adding equipment at two or more existing sites;
   - $1,000 for use of an existing structure permitted by right for collocation of new antennas;
   - $2,000 for construction of a new support structure permitted by right;
   - $2,500 for construction of a new support structure requiring a Special Exception or review by the County's Planning Commission.
Telecommunications Planning and the Law: Get Wired (Wireless) or Get Left Behind

A Presentation to the Rocky Mountain Land Use Institute
March 12, 2004

Jane E. Lawton
Cable Communications Administrator
Montgomery County, MD
The Bottom Line

- The Information Superhighway is under construction all around us
- Local land use planners and local telecom officials need to work together to ensure that no community is left behind
  - Maximize the benefits of technology
  - Anticipate challenges by being proactive
Broadband and advanced wireless are essential services

No longer just “important”
Now “essential” to
  - Economic vitality
  - Future growth
Businesses of all sizes
Gov’t services—education, libraries, public safety
Residents of all ages, professions
Local planners and regulators must be proactive

- There is a change in “essential infrastructure” requirements for communities
  - Driven by digital convergence and broadband

Local officials should

- Embrace technology
- Implement new processes to accommodate changes
- Accommodate and attract business
- Simultaneously protect the community/minimize negative impact
Areas to Consider

- Federal and state law governing cable, telecom, wireless
- Federal and state regulatory bodies (FCC, PUC)
- Local franchises and contracts with providers
- Local law and regulations re: Rights-of-Way
- Consult with industry and local business
Federal law confirms local regulatory authority

- Old law governing zoning of antennas and towers is 25 years old—did not contemplate huge proliferation of wireless infrastructure
- Industry efforts to pre-empt - NAB Petition to FCC
- 1996 Telecom Law addresses the issue and reconfirms local authority
Regulatory Authority under 1996 Law

Section 332(C)(7)

- Reconfirms local role -- with procedural requirements and limitation that zoning not prohibit wireless service
- Protects local zoning processes
- Must treat providers equitably, fairly
- Prohibits “barriers to entry”
- Requires record for decisions
- Preempts re RF health hazards and frequency assignments
- No preference for public safety (FCC spectrum assignment currently under review)
Local zoning authority over infrastructure varies by type

REGULATION ALLOWED

- Personal wireless service facilities
- Broadcast towers
- Equipment for receiving broadcast and fixed wireless signals
  - Antennas and commercial satellite dishes
  - Distributed systems

REGULATION LIMITED

- Equipment for DBS and amateur radio antennas
Montgomery County’s Tower Coordination Process

- Task force with industry and planning and zoning board participation
- Working moratorium – drafted legislation and regulation
- Goal to manage the placement of infrastructure and speed competition
Montgomery County’s Tower Coordination Process, cont’d

_identified community needs_
- Mitigate negative aesthetics
- Decrease tower proliferation
- Preserve historic resources and open space

_identified industry needs_
- Speed to market / reliable process

Zoning text amendments

Executive regulation established Tower Coordination process
- Participation by industry and planners
- Speedy and reliable process
- Created data base
Tower Process Results

Have Reviewed 601 antenna siting applications
- 510 collocations - existing structures 85%
- 91 new monopoles/towers – 15%

Recommended Approval of 540
- 478 collocations – 89%
- 62 new monopoles/towers – 11%
Challenge for Local Officials

- Protect integrity of local master plans
- Implement reasonable controls
- Open dialog with all stakeholders
- Agree on common goal
- Work it out if possible
Seek Creative Solutions

- Propose a telecommunications plan
- Utility poles, water towers, tree poles, steeples, windmills, tall structures
- Camouflage with design and paint
- Collaborate with public uses: fire stations, emergency communications, lights for schools, recreation, parks
- Encourage public discourse
Court Cases – Questions remain

- Written record supported by “substantial evidence”
- “Unreasonable discrimination” among service providers
- “Prohibiting” the provision of service
- What remedies are available? Can the court “direct action” of local communities
- Health effects – local gov’t role as landlord.
Litigation to date suggests:

Courts are more likely to uphold local zoning decisions if

- Significant process is granted
- Deliberations are timely, detailed, and documented
- Expert testimony demonstrates the impact on the community and/or the availability of alternative sites/collocations
Litigation to date suggests, cont’d:

Courts are less likely to uphold local zoning decisions if

- Short process
- Without adequate explanation/not supported
- Based on citizen, rather than expert, testimony
- Based on general aesthetics or health effects, rather than engineering or technical characteristics
Suggested Strategies

- Remember that you do have the authority to regulate
- Adopt a zoning ordinance that is mindful of the 1996 Law
- Be consistent in process and criteria
- Document, document, document your grounds for denial
- Use experts (legal, engineering) where necessary
Your Plans Must Integrate Telecom Infrastructure

Create a plan that accommodates, welcomes, facilitates these technologies:

- Essential to attracting businesses
- Essential to attracting residents
- Essential to government functioning and services
- Essential to public safety/homeland security
Telecommunication Planning and the Law - RMLU Institute

March 12, 2004

A Discussion of Telecommunications Permitting Processes and Land Use Policy for Larimer County, Colorado

Russell Legg - Chief Planner
CMRS- (Cell Tower) Current Policy and Regulations

- Cell towers are vital
- Co-location such as the Conoco Flagpole site are fast tracked
- Concealed /stealth towers such as the cell towers as rocks are fast tracked.
- East of major north south transportation routes are fast tracked.
Non stealth or single server require full Special Review

- Expensive submittal process
- Public hearings
- Notifications
- Review by Planning Commission
- Approval by Board of Commissioners
Future Regulatory Options

- Recognize extensive preemption by TCA
- Improve written record and evidence
- Improve strategies to maximize the use of existing infrastructure
- Inventory with a GIS data base or require applicants to inventory all existing tall sites within (X) distance of the proposed site such as water towers, electrical poles, barns, silo’s, church steeples.
TV Radio and Broadcast Towers
Current Policy

- All require Special Review approval
- No affect on wildlife or wetlands
- Natural hazards
- “Compatible with existing and allowed land uses and be in harmony with the neighborhood
- Will not affect property values
Recent History for Broadcast Tower Review

- Fox TV tower denied and relocated out of County
- Clear channel unanimously recommended for denial by Planning Commission based on compatibility
- Clear channel unanimously recommended for approval by the Board of Commissioner based on compatibility.
- The public, nearby neighbors and media noted that special review criteria failed when focused on Broadcast Towers
Call in the Consultants
Technical Assistance

• Retained Clarion Associates
• Looked at Regulatory authority
• Broad local authority to control location and character
• Technology and market trends
• Best Practices in Colorado Jurisdictions
• And Montgomery County Maryland
• Report is on Larimer County web site at
• www.larimer.org/planning
Next Steps

• Create a plan and scope to address the issues
• Create a focus panel of affected industry interests
• Inventory all existing Broadcast sites
• Develop location standards
• Develop visual standards
• Refine compatibility and tower location issues
Our Goal

- A fair and predictable process
- Refined review criteria appropriate to Broadcast tower needs and impacts
- Increase use of all existing infrastructure
Section 253. Removal of barriers to entry

a) In General

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.
Rocky Mountain Land Use Institute
Get Wired or Get Left Behind

Michael Stull
Wyoming’s Formula

• Wyoming Telecommunications Act of 1995
  – WY Statutes - Title 37, Chapter 15
    • Remove Implicit Subsidization
      – Originating Switched Access
      – Terminating Switched Access
      – Long Distance
      – Differing Business and Residential Rates
Introduction

• As a local official what can I do to promote competition and the deployment of telecommunications technologies and services throughout the jurisdictions I serve?

• THREE THINGS
THREE THINGS

1) Know and consistently enforce Section 253(a),(b),(c) and (d) of the Federal Telecommunications Act.
   – Casper, Wyoming and the C.A.V.E. People
Section 253. Removal of barriers to entry

• a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

• b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

• c) State and local Government Authority. Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

• d) Preemption. If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.
THREE THINGS

1) Know and consistently enforce Section 253(a),(b),(c) and (d) of the Federal Telecommunications Act.

2) Remove onerous regulation surrounding franchise development.
   - Right-Of-Way Management – “Neutral and Nondiscriminatory”
     - Sheridan, Wyoming and “Dirk the Quirk.”
   - Franchise Compensation – Adhere to equal treatment principles and avoid “per foot” facilities charges.
     - The Douglas, Wyoming experience. “Competition! We don’t need no stinking Competition!”
   - Government Engineered Networks - Beware!
     - Cody, Wyoming, cable television franchises and the Tri-County Telephone Tragedy.
THREE THINGS

1) Know and consistently enforce Section 253(a),(b),(c) and (d) of the Federal Telecommunications Act.

2) Remove onerous regulation surrounding franchise development.

3) Involve local utility companies in government planning activities.
   - Establish a regular public-private work group.
   - Let’s all eat some “KROE” Lane.
THREE THINGS

1) Know and consistently enforce Section 253(a), (b), (c) and (d) of the Federal Telecommunications Act.

2) Remove onerous regulation surrounding franchise development.

3) Involve local utility companies in government planning activities.
Thank You!

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