



Planning and Permitting Mobile Broadband Communications Infrastructure



**IS IT TIME TO AMEND YOUR LOCAL
CODE?**

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Is It Time To Amend Your Local Code?



Mobile Broadband Infrastructure



Evolution In Public Utility Demands



Do you remember the way we used electricity at home?



Evolution In Public Utility Demands



...and at our places of business?



Evolution In Public Utility Demands



Compare that to how we use electricity today?

At Work ...

At Home...



In 2011, US citizens
consumed 3.856 Billion
kWh of electricity

13 times more than in 1950

The Wireless Evolution



Where we were...

Wireless Service As The New Public Utility



- **Technology Is Driving Broadband Infrastructure Needs**
 - June 2012 – estimated 321.7 million wireless subscribers
 - Wireless network data traffic reported at 341.2 billion megabytes (111% increase from the prior year)
 - Wireless Only Households: 2005 – 8.4% v. 2012 – 38.2%
 - NY - 21% of households are wireless only, 90% of people use cell phones



**Business &
Households**



Voice to Data

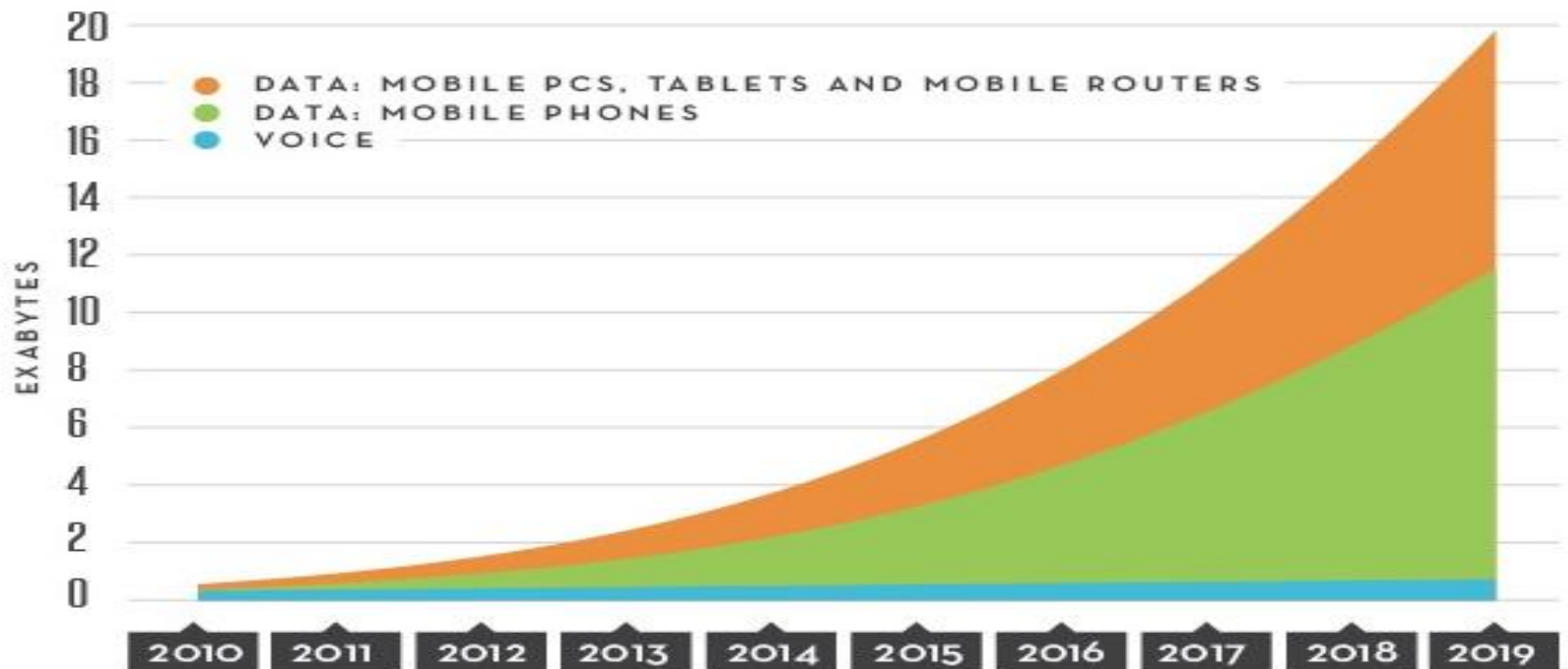


Mobile Data Usage



GLOBAL DATA TRAFFIC GROWTH TO 2019

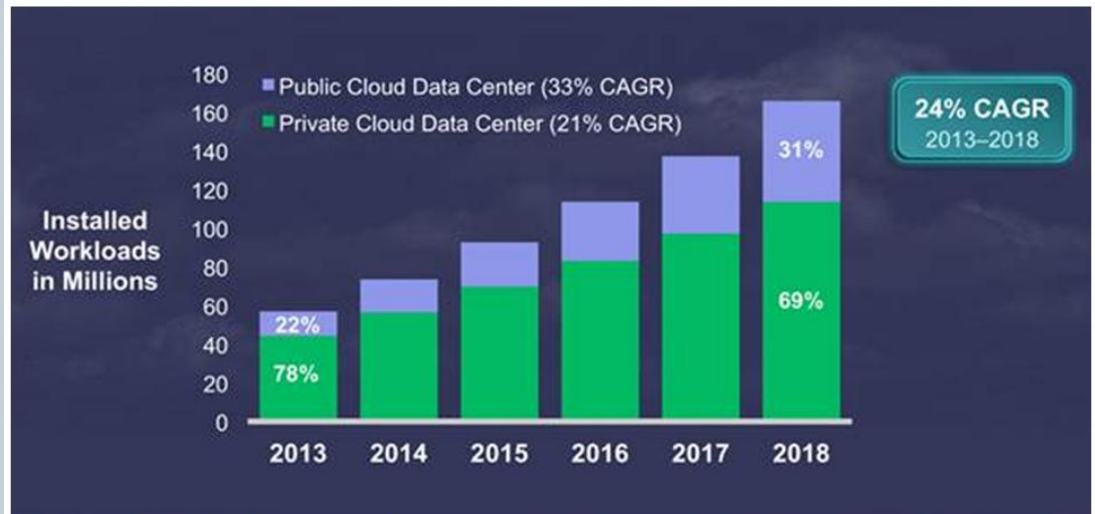
MORE MOBILE TRAFFIC (MONTHLY EXABYTES)



Mobile Data Growth

Data Centers

Cisco projects data center traffic to nearly ***triple*** on the back of cloud growth in the next five years to 8.6 zettabytes annually by 2018.



*Note a workload is the amount of processing that a computer has been given to do at a given time.

Mobile Data and Community Connectivity

LinkNYC – Transitioning Pay Phone to “Links”



Key Features

1. 24/7 free Internet access with up to gigabit speeds
2. Integrated lighting
3. Digital displays to provide insight-driven and intelligently programmed advertising & public service announcements
4. Android tablet with touch screen display, directional speaker & microphone
5. Tactile keypad & Braille lettering, dedicated 911 button, USB charger, headphone jack
6. Iconic and durable aluminum construction designed and built in NYC
7. Sleek design and decreased footprint to restore sidewalk space and improve visual continuity



Small Cell Infrastructure



- Used to support – not replace – macrocell tower sites
 - Limited range and low power mobile base stations
 - Deployed for 3G and 4G/LTE technologies



Mobile Broadband – Health, Safety, Welfare

- Mobile Devices and First Responders
 - 70% of *all* 911 calls each year come from a wireless device
 - “Text-to-911” services nationwide in localities where municipal Public Safety Answering Points (PSAPs) support technology
 - FirstNet – Nationwide public safety broadband network
 - Machine to Machine and the Healthcare Industry



Federal Wireless Policies



- General theme throughout past 18 years:
 - Lawmakers enacting policy that furthers the goal of the Telecommunications Act of 1996 of...
 - ✦ “accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies to all Americans.” *H.R. Rep. No. 104-458, at 206 (1996) (Conf. Rep.)*.
- **The Telecommunications Act of 1996 (“TCA”)**
 - The TCA preempted state and local municipal authority with regard to personal wireless services facilities (“PWSF”) subject to the limited exceptions set forth in § 332(c)(7).
 - § 332(c)(7): “Preservation of Local Zoning Authority”

Federal Wireless Policies



- Municipalities cannot:
 - unreasonably discriminate among providers of functionally equivalent services (i.e., cannot favor Verizon over AT&T, etc.);
 - effectively prohibit the provision of personal wireless services;
 - or regulate PWSF on the basis of the effects of RF emissions
- Municipalities are also obligated to:
 - issue a decision in writing that is supported by substantial evidence contained in a written record (should the request be denied); AND
 - act on any request to place, construct, or modify PWSF **within a reasonable period of time** after the request is duly filed

The Need For Speed – The Shot Clock



- 2009 Federal Communications Commission Declaratory Ruling on “reasonable period of time”
 - 90 days for collocation applications; and
 - 150 days for all other applications (i.e., new tower sites).



The FCC and the Need for Speed in 2014



- 2014 FCC Clarification of the Shot Clock

- Starting the clock;
- Tolling the clock; and
- Determining completeness.



- City of Arlington v. FCC, *133 S.Ct. 1863 (2013)*
- Crown Castle NGE. Inc. v. Town of Greenburgh ,
2013 WL 3357169 (S.D.N.Y 2013) affirmed 552 Fed.Appx.
27 (2d Cir. 2014)

Necessity / Aesthetic Intrusion Substantial Evidence



- Crown Castle NGE. Inc. v. Town of Greenburgh
 - “[t]he fact that Crown Castle had only a single client at the time [MetroPCS] that would benefit from the proposed facilities was not significant, as there still was a need for the proposed facility.”
 - Aesthetic Intrusion?



What about SEQRA?



- **SEQRA vs. The Shot Clock**

- Bell Atl. Mobile of Rochester L.P. v. Town of Irondequoit, 848 F.Supp.2d 391 (W.D.N.Y. 2012)



“In Fill” Installations – Section 6409



- State or municipality “may not deny, and shall approve” any eligible facilities.
 - Collocation, removal and replacement of equipment
- 2014 FCC Order and Section 6409



“In Fill” Installations – Section 6409



- What is a “substantial change”?



- What is the Section 6409 process?



Recent / Pending Case Law



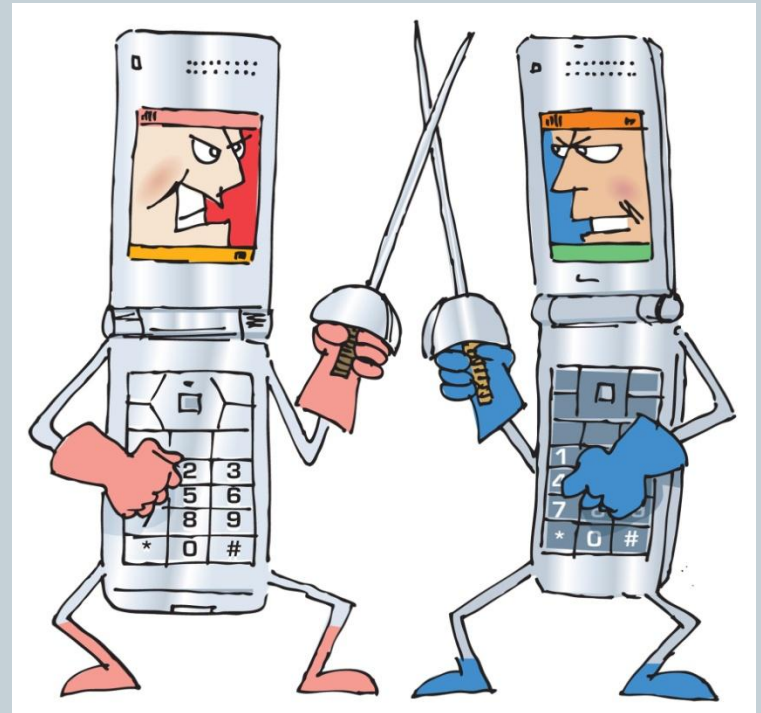
- *Orange County-Poughkeepsie Limited Partnership v. Town of East Fishkill, No. 13-CV-4791(KMK)(S.D.N.Y. Jan. 30, 2015)(appeal pending)*
 - Indefinite Tower Extensions under Section 6409? / Speculation?
 - Significant Gap includes number of people affected
 - Guarantee radio frequency needs of other carriers?



Dueling Experts



- *Sprint Spectrum, L.P. v. Zoning Board of Adjustments of the Borough of Paramus, 2015 WL 1786306 (3rd Cir. 2015)*
 - TCA requires a “good faith effort” to identify less intrusive means
 - *Dueling Experts*



I Know What To Say...But How Do I Say It?



- *T-Mobile South, LLC v. City of Roswell*, 135 S.Ct. 808 (2015)

**TCA “In Writing” Requirement
“Essentially Contemporaneously”**



Recommendations / Handouts



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