

March 27, 2020

COVID-19 Dominates BDAC Discussions; Members Debate Permitting

The coronavirus pandemic and the broadband sector's role in supporting a wide range of activities that have moved increasingly online as Americans shelter at home dominated the discussion during today's meeting of the FCC's Broadband Deployment Advisory Committee.

Some working groups revised their efforts into "pre-coronavirus" and "post-coronavirus" approaches; another group said their completed recommendations are intended to be broad enough to apply to all disasters, including the current one; and industry and government representatives on the BDAC debated the best approach to delays in infrastructure permitting during the widespread shutdowns in response to the pandemic.

During the meeting, which was held by web-based chat, with the audio and restricted views of the chat screen available to the public on the FCC's [fcc.gov/live](https://www.fcc.gov/live) site, the BDAC approved recommendations from its disaster response and recovery working group. It also heard reports from the increasing broadband investment in low-income communities working group and the broadband infrastructure deployment job skills and training opportunities working group. Discussion of the recommendations and reports was relatively brief and involved little controversy.

As she opened the meeting, BDAC Chairwoman Elizabeth Bowles, who is president and chair of Little Rock, Ark.-based Internet service provider Aristotle, Inc., said she was delayed because she "was on the phone with the [Arkansas] state broadband director who wanted to know about usage and whether [the state government needs to say 'no video games'" to preserve connectivity for other purposes. She noted that the state broadband director "was aware that could raise new issues with kids who are being forced to stay home."

After the presentations, BDAC member and Wireless Infrastructure Association President and Chief Executive Officer Jonathan Adelstein raised concerns about delays in wireless infrastructure permitting during the industry's effort to rapidly respond to increases and shifts in demand, which has moved during the day from urban business centers to suburban areas as people shelter in their homes.

"Traffic is moving from urban to suburban more than suburban networks were prepared to handle," Mr. Adelstein said.

"Everybody is collaborating to get that capacity demand addressed," he said, noting Dish Network Corp.'s willingness to provide spectrum for free to AT&T, Inc., and T-Mobile US, Inc., during the pandemic crisis and the FCC's grant of special temporary authority to various wireless carriers to use spectrum they were otherwise unauthorized to use.

However, in areas where new physical facilities are needed to expand the wireless bandwidth available, the industry is facing barriers that he acknowledged are “understandable” from a local point of view. Still, he emphasized, it is “important to recognize that these things are public safety networks responsible for life and limb.”

Mr. Adelstein also pointed to the effort the industry is making to keep workers safe and ensure “they’re meeting all the guidelines and able to get out in the field. The Department of Homeland Security has granted us special designation to be able to have access to the sites so we’re able to get people out there and get them working.”

He added, “If something’s permitted, it’s getting done. But if we can’t get a permit or we can’t get an inspector out there,” the facilities are not being deployed.

Mr. Adelstein emphasized that what the FCC has done to streamline infrastructure deployment only helps where there is existing infrastructure, “but we’re trying to deal with areas where we need new infrastructure, that doesn’t qualify for 6409” relief, that is section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, which requires siting authorities to approve applications for non-substantial collocations, removals, or modifications of wireless facilities on existing structures.

He said that the possibility mentioned by Ms. Bowles at the beginning of the meeting of addressing network congestion by stopping “our kids from playing games online” would be “a whole other crisis.”

Claude Aiken, president and CEO of the Wireless Internet Service Providers Association, echoed Mr. Adelstein’s concerns. “I’m hearing from our WISPA members a lot of the same sort of issues. There’s incredible demands on the ground for new deployment to reach communities with students who do not have a robust broadband connection at home today, and they turn to their local WISP to get them a connection as quickly as possible. We’re looking for creative solutions ... with localities and states in order to get that critical connectivity out. I would emphasize the need for action on these local infrastructure issues.”

However, government officials on the BDAC pushed back against the idea that this is a widespread problem or that the appropriate action is anything other than reaching out to work with the localities where there are problems.

Eve Lewis, assistant city attorney for the city of Coconut Creek, Fla., said that her city has an emergency authorization process. ... We do a green light and the paperwork is completed on the back-end.”

Ms. Lewis added, “We are here to facilitate your needs. ... We want to make sure we are not the bottleneck. I think the willingness on the part of local governments is there to work with you.”

BDAC Vice Chair David Young, who is the fiber infrastructure and right-of-way manager for the city of Lincoln, Neb., and who represents the National League of Cities on the BDAC, echoed Ms. Lewis’s comments. “Largely [localities are] accepting those applications electronically.” He said he would like specific examples from Messrs. Adelstein and Aiken of “applications being held up.”

Mr. Adelstein said that not all communities have electronic permitting, and for some of those that do, it isn’t working properly during the current crisis.

“Permitting processes are just kind of slowing down or grinding to a halt,” he said.

In response to offers from government officials on the BDAC to work with the industry members in reaching out to localities, Mr. Adelstein said, “That’s a super generous offer. ... But we do have hundreds of examples piling up in my inbox, and they’re proprietary, so I’ll need to get permission to share them.”

He added, “This isn’t a drill. We’re doing this right now. ... I don’t want to get stuck in a BDAC bureaucracy.” He suggested that members “should get together offline” to discuss the problem. “I’m not trying to call anybody out, but we’re having real problems in the field,” he added.

Ken Simon, senior vice president and general counsel of Crown Castle International Corp., said that his company is experiencing the problems cited by Messrs. Adelstein and Aiken, although “not with all jurisdictions.” He acknowledged that in some cases, the problems experienced by industry aren’t the faults of localities that are in some cases following state mandates regarding shutting municipal offices, and others are “doing what they think is in best interest of their personnel in light of what is happening now.”

“We have other jurisdictions that are just closed,” Mr. Simon said.

Larry Hanson, executive director of the Georgia Municipal Association, said, “There are orders of governors requiring municipal employees to stay home because they aren’t considered essential workers.” He said that his group is working with the governor to try to address that for essential service permitting.

“But it’s a challenging time. We have two mayors in Georgia in the hospital in intensive care, perhaps neither one going to make it, with the coronavirus for doing their civic duty and out there trying to serve the public and companies. And I can tell you this, it’s a mutual responsibility, it’s not a one-sided responsibility. Companies need to act in good faith, show good faith [and] do more than say what they want to do but live up to it. And I’m sure offline we can find a way to develop a model we can share with governments and companies,” Mr. Hanson said.

“During a crisis in an emergency is not a time to have law firms applying for permits and sending demand letters” to local governments, he added.

Karen Charles Peterson, a commissioner on the Massachusetts Department of Telecommunications and Cable, who represents the National Association of Regulatory Utility Commissioners on the BDAC, said, “We do feel this is critical and this is important. ... With our membership, we think we can be a huge help on this in getting the word out.”

In the end, members interested in the issue agreed to discuss it further in a conference call on Monday, with the FCC’s designated federal officer for the BDAC, Justin Faulb, and Ms. Bowles both emphasizing the restrictions about setting up that effort as a BDAC working group.

Ms. Bowles noted there are provisions for seeking authority to create an ad hoc committee. Mr. Faulb suggested that such an application would go more smoothly if the request included a description of the proposed scope of the committee’s mission, and he warned that with the FCC’s March meeting scheduled for Tuesday and draft items for the April meeting scheduled to circulate among

Commissioners' offices on Wednesday, it might be impossible for the Chairman's office to focus on the request for a few days. —Lynn Stanton, lynn.stanton@wolterkluwer.com

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