Insights: Publications

Data Centers: What Corporate Counsel Need to Know Now

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Kilpatrick's John Livingston and Ben Smith presented on the topic of “Data Centers: What Corporate Counsel Need to Know Now” at the firm's annual “In-House Counsel Summit” in Durham, North Carolina, on September 24. They examined the legal, business, and regulatory issues shaping today's rapidly expanding data center market. John and Ben provided practical guidance on contracting structures, power procurement, real estate and development risk, and key lease and cloud-computing provisions to help organizations manage cost, reliability, and regulatory exposure.

Key takeaways from John and Ben's presentation include:

1. **Explosive Data Center Growth Impacts Multiple Practice Areas.** The U.S. data center market is booming with construction starts seeing exponential growth. The hyperscale segment alone is forecast to grow from $37 billion to over $245 billion by 2031. Effective counseling of clients in this market requires expertise in a wide range of legal disciplines, including real estate, land use, environmental, construction, corporate, tax, energy and utilities, commercial contracting, and data privacy. The pace of growth has made this an ever-evolving market that legal practitioners need to stay abreast of to effectively counsel clients.

2. **AI Is a Primary Demand Driver.** Artificial intelligence and generative AI account for approximately 40% of data center demand growth, with cloud migration, SaaS adoption, 5G, IoT, and edge computing contributing additional momentum. A single ChatGPT query requires nearly ten times the electricity of a standard Google search, underscoring the resource intensity of AI-driven computing.

3. **The Southeast (Including North Carolina) Is a Growth Epicenter.** The Southeastern U.S. is expected to attract approximately $128 billion in cumulative colocation investments during 2026–2031, accounting for around 28% of total U.S. investment. North Carolina reportedly already hosts over 100 data centers, and Duke Energy has reported that new data center demand accounts for 92% of all electric load growth in the state.

4. **The Public Has Significant Concerns Regarding Data Center Growth, Including Environmental and Community Impacts.** Water consumption, electricity demand (data centers accounted for an estimated 4% of U.S. electricity consumption in 2023, potentially rising to 12% by 2028), noise and light pollution from backup generators, and land use displacement are driving local opposition and regulatory scrutiny.

Engineering to address concerns where possible and community engagement strategies are increasingly essential components of project planning and development.

5. **North Carolina's Regulated Utility Framework Creates Unique Challenges.** Because North Carolina is a regulated utility state with three vertically integrated utilities (Duke Energy Progress, Duke Energy Carolinas, and Dominion North Carolina), data centers' massive and constant electricity demand triggers new investments in generation, transmission, and distribution infrastructure—creating costs that are shared with all ratepayers under existing regulatory frameworks. The North Carolina Utilities Commission has opened proceedings to address how large-load customers should be integrated into the electric system, including potential new tariffs and concepts such as “Bring Your Own Energy” programs where data center developers co-locate or co-build energy generation facilities to meet their demand.
6. **Contracting Structures Vary Significantly and Carry Distinct Legal Risks.** Structures for procuring compute from data centers range from hyperscale self-builds and build-to-suit arrangements to colocation leases, cloud computing, and GPU-as-a-Service models. Each structure presents different risk profiles and legal challenges. In particular, data center leases are fundamentally different from standard commercial leases: power economics (priced per kW/month rather than $/sq. ft.), take-or-pay structures, PUE caps, power ramp provisions, and uptime SLAs are central terms that have no analog in traditional real estate.
7. **Cross-Contract Alignment Is a Critical Negotiation Priority.** Liquidated damages provisions must be carefully aligned across power purchase agreements, EPC contracts, leases, and downstream service level agreements to avoid unhedged exposure. Other key negotiation priorities include robust expansion options conditioned on deliverable power capacity, comprehensive termination and step-in rights for power delivery failure, and flexibility to accommodate evolving regulatory requirements such as closed-loop cooling mandates and emissions reporting.

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