T-Mobile South, LLC v. City of Roswell: Supreme Court Weighs in on City Council's Denial of Application to Build Cell Phone Tower

Jan 29, 2015

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On January 14, 2015, the United States Supreme Court issued a decision in *T-Mobile, LLC v. City of Roswell*, which clarified the procedural requirements that local governments must follow when denying applications submitted by telecommunication companies to construct cell phone towers.

In this case, the City Council of Roswell, Georgia held a public hearing to consider such an application. The applicant recorded the hearing for its own records. Each Council member individually voiced his or her concerns regarding the request and unanimously denied the application by motion. Two days after the hearing, Council sent a written denial letter to the applicant. Although Council's reasons for the denial were not included in the letter, it did contain information on how the applicant could obtain access to the minutes of the hearing. Twenty-six days later, the written minutes were published. The applicant appealed Council's decision.

The District Court found for the applicant, holding that a denial letter must include Council's reasons for its rejection. The Eleventh Circuit reversed on the grounds that the applicant had a recording of the hearing and was provided with a denial letter instructing the applicant on how to obtain the minutes.

The Supreme Court disagreed with both lower courts and held that the Telecommunications Act of 1966 requires local governments to comply with the following requirements when denying a request to place, construct, or modify personal wireless service facilities: (1) written reasons for a denial must provided to the applicant; (2) the reasons must be composed with sufficient clarity to allow for judicial review; (3) the stated reasons need not be in the denial letter itself, but may be provided in some other written record – such as Council's published minutes; and (4) the reasons must be

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issued "essentially contemporaneously with the denial." The Court held that Council would have been in complete compliance with the Act if it had issued its minutes "essentially contemporaneously" with the denial.

The Supreme Court assured local governments that these rules should not cause any undue burden since the denial itself need only be issued within a reasonable period of time, which has generally been interpreted, in this context, to consist of a period between 90 and 150 days. Thus, the Supreme Court instructed that "[i]f a locality is not in a position to provide its reasons promptly, the locality can delay the issuance of its denial within this 90- or 150- day window, and instead release it along with its reasons once those reasons are ready to be provided."

Additionally, a worthy caveat to note is the Supreme Court's recommendation that local governments avoid relying on published minutes to serve as its documented reasons for denial. The Court warned that without a succinct statement of reasons written by Council, the City may open itself up to an unwanted debate regarding its basis for denial and a reviewing court may ascribe a rationale to the City's decision that was never intended.

The full case is available here.

If you have any further questions regarding this case or its application, please contact Mitch Banchefsky at 614-559-7240, Laura Leister at 614-559-7220, or any member of Frost Brown Todd's Government Services Practice Group.

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