T-Mobile South, LLC v. City of Roswell, Georgia, No. 13-975 (described in the May 5, 2014, Docket Report)

Section 332(c)(7)(B)(iii) of the Telecommunications Act of 1996 ("the Act") provides that when a local government denies a request to construct or modify a "personal wireless service facility"—such as a cellular tower—its decision must be "in writing and supported by substantial evidence contained in a written record." The Supreme Court granted certiorari to decide whether the "writing" must identify the "substantial evidence" supporting the denial. In a decision issued earlier today, the Supreme Court ruled that although a locality's reasons for denying a request need not appear in the denial letter, the reasons must be "provided or made accessible to the applicant essentially contemporaneously with the written denial letter or notice."

In 2010, petitioner T-Mobile South, LLC ("T-Mobile") applied to the city government of Roswell, Georgia, for a permit to construct a cellular tower on a vacant parcel of land. At a public hearing, members of the city council expressed a variety of concerns about the application, which ranged from perceived aesthetic problems with the proposed tower to questions about whether the tower would be capable of providing power for 911 services. The city council voted unanimously to deny T-Mobile's application and notified the company of the decision in a letter sent two days later. The letter stated that T-Mobile's application had been denied but did not set forth any rationale for the council's decision. Instead, the letter stated that "[t]he minutes from the . . . hearing may be obtained from the city clerk." The city issued the meeting minutes 26 days after the denial letter.

The Eleventh Circuit held that the letter satisfied the Act's requirements. "[T]o the extent that the decision must contain grounds or reasons or explanations," the court reasoned, "it is sufficient if those are contained in a different written document or document that the applicant is given access to." 731 F.3d 1213, 1285.

In a 6-3 vote, the Supreme Court reversed the Eleventh Circuit's decision and remanded for further proceedings. In the opinion authored by Justice Sotomayor, the Court generally agreed with the Eleventh Circuit "that the Act requires localities to provide reasons when they deny cell phone tower siting applications, but … does not require localities to provide them in written denial letters or notices themselves." According to the Court, "[a] locality may satisfy its statutory obligations if it states its reasons with sufficient clarity in some other written record issued essentially contemporaneously with the denial." In this case, however, the Court concluded that the city did not comply with its obligations because it did not issue the meeting minutes that supported the decision for 26 days after the letter of denial.

The dissent, authored by Chief Justice Roberts, concluded that the city "fully complied with its obligations" under the Act because "[i]t issued its decision in writing, and it submitted a written record containing—so far as we know—substantial evidence supporting that decision." According to the dissenting opinion, a local government need not necessarily " provide 'its written reasons at essentially the same time that it communicates its denial.'"

The decision is important to companies in the wireless industry, which frequently apply to local governments across the country for permits to construct or modify cellular towers.

Any questions about the case should be directed to Brian Netter (+1 202 263 3339) in our Washington, D.C. office.