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T-Mobile South, LLC v. City of Milton, Ga

United States Court of Appeals, Eleventh Circuit - September 5, 2013 - F.3d - 2013 WL 4750549

Mobile phone service provider brought action claiming that city's denial of its cell phone tower use permit applications violated the writing requirement of the Telecommunications Act (TCA). The United States District Court for the Northern District of Georgia ruled that the city violated the TCA and permanently enjoined it from denying phone service provider's applications. City appealed.

The Court of Appeals held that:

- TCA provision requiring cell phone tower construction permit application denials to be in writing does not require decision to be in a separate writing, and
- City council hearing transcripts, letters, and hearing minutes pertaining to denial of mobile phone service provider's cell phone tower use permit applications satisfied TCA writing requirement for application denials.

Under TCA provision requiring state or local government's denial of cell phone tower construction permit application to be in writing and supported by substantial evidence, there must be reasons for the denial that can be gleaned from the denial itself or from the written record. Provision neither expresses nor implies any requirement that the reasons for denial must be stated in the letter or some other document that announces the decision, if there is a separate document doing that, or prohibit having the reasons stated only in the hearing transcript or minutes.

TCA provision requiring state or local government's denial of cell phone tower construction permit application to be in writing and supported by substantial evidence does not require decision to be in a separate writing, a writing separate from the transcript of the hearing and the minutes of the meeting in which the hearing was held, or a single writing that itself contains all of the grounds and explanations for the decision. To the extent that the decision must contain grounds or reasons or explanations, it is sufficient if those are contained in a different written document or documents that the applicant can access, and all of the written documents should be considered collectively in deciding if the decision is in writing.

Planning commission and city council hearing transcripts, and city council letters and hearing minutes, pertaining to city's denial of mobile phone service provider's cell phone tower use permit applications, were sufficient to satisfy TCA requirement that application denials be in writing, even though denial was not announced or explained in a separate document. Hearing transcripts included recommendations and reasons for decisions, letters notified service provider of decisions on applications, hearing minutes recounted all of the reasons for decisions, and service provider had access to all of the documents before its deadline for filing its lawsuit.

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