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U.S. Supreme Court to Decide Key Cell Tower Siting Case.

The nation's top judiciary body will decide how thorough local governments need to be when informing telecommunications providers that their cell tower permit applications have been denied.

Cities and wireless providers have been at odds for years over how detailed written denials of cell tower permit applications should be. Some clarity is on the horizon, however, as the U.S. Supreme Court will weigh in on the issue later this year, setting the stage for a legal showdown that may have a significant impact on local governments.

Under federal law, municipalities are required to inform applicants in writing that a cell tower permit has been denied. But the lower courts are split on whether the "in writing" provision of the U.S. Telecommunications Act of 1996 (TCA) requires a separate explanation from a municipality for that denial. While it may be a narrow issue, the remedy for failing to meet the requirement is the granting of the permit. So even if a city decides a tower isn't appropriate, the company would get permission to build it anyway, usurping local decision-making power.

The nation's high court will hear arguments in T-Mobile South v. City of Roswell, Ga., a case where the city issued a letter to T-Mobile denying its permit application and informing the company it could obtain hearing minutes where councilmembers explained their reasoning from the city clerk. T-Mobile sued, claiming the notification did not meet the "in writing" provision of the TCA.

The lower courts involved in the case ruled in favor of T-Mobile. On appeal, however, the 11th U.S. Circuit Court of Appeals disagreed with the ruling, overturning the decision.

According to Lisa Soronen, executive director of the State and Local Legal Center, the federal appeals court relied on a plain reading of the statute. The court's decision noted that the TCA doesn't say that the cell tower permit decision must "'be in a separate writing,' a 'writing separate from the transcription of the hearing and the minutes of the meeting in which the hearing was held,' or 'in a single writing that itself contains all of the ground and explanations for the decision.'"

As a result, the U.S. Supreme Court will determine whether a document from a state or local government stating that an application has been denied, but provides no reason for the denial, satisfies the requirements of the TCA.

Lani Williams, general counsel of the LGL-Roundtable, a group that assists municipalities on complex legal issues, admitted that many local government attorneys and advocates were caught off guard by the U.S. Supreme Court taking the case.

While the high court regularly takes up issues where there is disagreement between various federal circuit courts or between federal and state courts, Williams explained that she and other attorneys that work on telecom matters on a regular basis didn't feel the "in writing" debate was urgent enough to be tackled on the "big stage."

A number of lower courts have ruled over the past few years that a written decision explaining the

reasoning on cell tower siting permit applications was necessary. And while municipalities were doing their best to comply based on case law, Williams argued the task is difficult for many smaller communities because a clerk not versed in telecommunications law has to try and go through a huge verbatim transcription and pull out every reason why an application was denied.

And if the clerk or city employee makes an error and doesn't interpret the reasoning correctly, Williams said it could inadvertently lead to a lawsuit where the judicial remedy is to push the permit forward instead of re-starting the permitting process or amending it.

"We'd rather just say, 'Here's your transcript, you can read it just as well as anyone else can, and these are the reasons we denied it,'" Williams said. "Instead of repeating it in a one- or two-page letter written by a clerk, who may get it wrong."

Jonathan Campbell, director of Government Affairs for PCIA – The Wireless Infrastructure Association, disagreed. He called the example of a clerical error "a bit extreme," and argued that the "in-writing" provision is meant to give clarity to wireless providers so they know the "rules of the road" for the particular jurisdiction on why the application was denied and what can be changed in the future to gain approval.

"I think it's beneficial for just about everybody involved, because it allows the municipality to clearly state the grounds … and it saves the municipality time as far as litigating the case with the carriers," Campbell said. "It [also] saves carriers time as far as getting a clear decision on their applications."

Williams, however, was steadfast in her belief that local governments' decisions regarding cell tower siting shouldn't be overturned because wireless providers want municipalities to spoon-feed them

"None of us like dropped calls and we get frustrated," she said. "But on the other hand, in whose backyard are those cell towers going to go? I believe in local control. And if a community decides it is OK with a few dropped calls in favor of the aesthetics that they want … if they go through that calculus, they should be entitled to have their decision be upheld."

Brian Heaton | Senior Writer
Brian Heaton is a senior writer for Government Technology. He primarily covers technology legislation and IT policy issues. Brian started his journalism career in 1998, covering sports and fitness for two trade publications based in Long Island, N.Y. He's also a member of the Professional Bowlers Association, and competes in regional tournaments throughout Northern California and Nevada.