

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **TAX - NEW YORK**

### **T-Mobile Northeast, LLC v. DeBellis**

**Supreme Court, Appellate Division, Second Department, New York - October 26, 2016 - N.Y.S.3d - 2016 WL 6270168 - 2016 N.Y. Slip Op. 07031**

Cellular telephone service provider brought hybrid article 78 proceeding and declaratory judgment action against city and school district, seeking to compel city to determine and approve provider's petitions for property tax refunds for tax paid related to its equipment and antennas housed on rooftops of office buildings within its service area.

The Supreme Court, Westchester County, denied the petition and dismissed the proceeding. Provider appealed.

The Supreme Court, Appellate Division, held that:

- Fiber optic and coaxial cables constituted taxable real property;
- Base transceiver station cabinets constituted taxable real property;
- Rooftop antennas were fixtures that were taxable as real property.

Fiber optic and coaxial cables, as well as connections between cellular telephone services provider's equipment housed on rooftops of buildings in its service area and that of local exchanger carrier, were "lines" or "wires" under tax statute permitting taxation of real property, and thus constituted taxable real property.

Cellular telephone service provider's base transceiver station cabinets housed on rooftops of buildings in its service area constituted "inclosures for electrical conductors" within meaning of statute permitting taxation of such inclosures as real property, and thus constituted taxable real property.

Cellular telephone provider's rooftop antennas, which were flat and four to five feet in both length and width, could properly be characterized as "inclosures for electrical conductors" within meaning of tax statute permitting taxation of real property, inasmuch as they were a part of base transceiver station cabinet, and thus constituted taxable real property.

Cellular telephone provider's rooftop antennas constituted fixtures within meaning of tax statute permitting taxation of real property, and thus constituted taxable real property. Equipment was fastened to host buildings by bolts, frames, pipes, and brackets, and was weighted down with I-beams and cinder blocks, and provider demonstrated its intent to make equipment permanent for term of the leasehold.