10 Things to Know about the Supreme Court’s Decision in T-Mobile v. City of Roswell (Jan. 14, 2015)

The Supreme Court sided with T-Mobile on its challenge to the City of Roswell’s denial of an application to build a cell tower—but Justice Sotomayor’s opinion raises more questions than it answers.

Section 332 of the Communications Act allows cell phone companies to bring federal court challenges to denials of requests to construct cell towers. In this case, the Roswell City Council denied T-Mobile’s application even though its Planning and Zoning Division had recommended approval. The Supreme Court held that the City satisfied the statutory requirement that denials to be “in writing and supported by substantial evidence contained in a written record” by sending T-Mobile a one-paragraph letter saying the City Council had voted to deny T-Mobile’s application and later providing the minutes of the City Council meeting. But the Court also held that the minutes should have been provided contemporaneously with the letter rather than 26 days later, and, as a result of this delay, reversed the Eleventh Circuit’s decision upholding the denial.

1. The City in question is Roswell, Georgia. There has been no suggestion of alien sightings in this Roswell.

2. The federal statute restricts local zoning authority. Section 332(c)(7) is entitled “preservation of local zoning authority”—but the title of the statutory provision is misleading because its purpose is to restrict local zoning authority.

3. The statute prohibits municipalities from effectively prohibiting wireless service and requires municipalities to act promptly on requests to construct cell towers. Municipalities may not “unreasonably discriminate among providers,” adopt rules that effectively prohibit wireless service, or make health and safety rules that are more onerous than the FCC’s rules. Nor may they sit on applications to build cell towers—the statute requires them to act with a “reasonable period of time,” which the FCC has construed to mean 150 days to act on applications to build a new tower.

4. The statute requires denials of construction applications to be “in writing and supported by substantial evidence contained in a written record.” The City argued that it would satisfy the “in writing” requirement to just stamp “denied” on an application. T-Mobile claimed that the City had to explain its denial in a written document.

5. The Court Agreed with T-Mobile that the City had to provide reasons for the denial. Otherwise there would be no way to determine whether denial was “supported by substantial evidence” and not made for a reason the statute prohibits.
6. **But the Court rejected the argument that the City had to write an order explaining the denial.** The Court held that it was sufficient for the City Council to provide the minutes of the meeting at which the denial was issued.

7. **The Court ruled for T-Mobile because the reasons for the denial had to be issued “essentially contemporaneously” with the denial.** The Court inferred this requirement to give wireless companies time to make a decision whether to appeal within the 30-day time limit.

8. **It is not clear whether T-Mobile will be able to build the tower at issue.** The Court remanded for the Eleventh Circuit to address what remedy is warranted; Justice Alito concurred on the understanding that the opinion did not mean that “When a locality has erred, the inevitable remedy is that the tower must be built.”

9. **The Court ducked the question whether the minutes actually explained why the City Council denied the application.** T-Mobile had argued that the minutes showed only that five members voted to deny the application without saying why. The members did raise a number of concerns (including many aesthetic concerns), but did not explain why they rejected the recommendation that the tower be approved. The Court side-stepped T-Mobile’s argument.

10. **Chief Justice Roberts dissented, joined by Justices Ginsburg and Thomas.** This unlikely trio of dissenters argued that the statute said that the requirement that the reasons for the denial be issued contemporaneously with the denial is “found nowhere in the text of the statute”; Justice Thomas accused the majority of treating municipalities “as less than conscripts in the ‘national bureaucracy.’”

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**The Bottom Line:** If providing minutes from a city council meeting rather than a written explanation of a denial of an application to build a cell tower is permissible, how are reviewing courts to decide what really motivated a decision to deny an application? What if the city council members say nothing at all, but only listen to commenters and then vote? What if some council members express concerns that the statute says they may not take into account? Even though the Court has held that the statute does not require municipalities to explain their decisions, it would be better for everyone if they did. If the reasons are sound, the decision is more likely to be upheld if it is explained. If the reasons are not sound, the public will benefit from the construction of the cell tower and the increased coverage it provides.

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