

U.S. Supreme Court Tells Cities to Explain a Cell Tower Denial in Timely Fashion, Even if in a Separate Document

The tension between demand for high-quality, ubiquitous cell phone service and opposition to cell towers in residential neighborhoods has resulted in significant disputes between wireless carriers and municipalities over siting of such towers. Typically, the fight begins and ends at a city council. Recently, however, one such dispute resulted in a U.S. Supreme Court decision, [T-Mobile South, LLC v. City of Roswell, Georgia](#), No. 13-975, Jan. 14, 2015, which delved into procedural issues associated with denial of proposed cell towers and provided guidance to municipalities as to how and when such denials must be explained. T-Mobile proposed to construct a cell tower (disguised as a 108-foot tall pine tree, as required by local ordinance) on a vacant residential property. As is often the case, there was substantial neighborhood opposition to the new tower based on concerns that it was not needed, that the technology was outdated, and that it was aesthetically incompatible with the neighborhood. The application was discussed at a public meeting and ultimately rejected by the City Council. After the meeting, the City sent a notice of the denial to T-Mobile but without any written explanation. Minutes of the Council meeting were published 26 days later, shortly before the deadline to file suit challenging the denial. Approval or rejection of cell phone towers is addressed in the federal Telecommunications Act of 1996. In that Act, Congress delegated to the local governments the power to consider cell tower applications and required that a denial of an application "be in writing and supported by substantial evidence contained in a written record." T-Mobile argued that the denial, while in writing, did not contain any explanation and, as such, could not be supported by substantial evidence. The City argued that T-Mobile representatives were present at the public meeting and thus knew the reasons. On top of that, they claimed, the release of the meeting minutes 26 days later (and four days before a petition for judicial review was due) satisfied the Act's requirement of a written explanation. The Eleventh Circuit upheld Roswell's denial, and the Supreme Court granted certiorari to resolve a conflict between the circuits. With a surprising degree of dissension on a seemingly simple issue, the Court addressed conflicting views in the Courts of Appeal and ultimately determined that a City need not include the rationale for its denial of a cell tower application in the denial document itself, provided it states those reasons with sufficient clarity in some other written record issued essentially contemporaneously with the denial. The Court did not set a precise time limit between the denial and the statement of reasons, but concluded that the 26-day delay between the notice of denial and release of the detailed minutes in this case did not satisfy the "essentially- contemporaneous" standard. It reasoned that a near-contemporaneous statement of reasons was necessary because suit must be filed within 30 days, and the record must reflect the stated rationale in order to enable judicial review. Justice Sotomayor, who delivered the majority opinion, criticized Chief Justice Robert's dissenting view, under which the locality would have been allowed to withhold its explanation for denial until after the lawsuit is filed. The majority opinion, in a sharply worded footnote, observed that such a practice would lead to post hoc rationalization by the public agency in its defense of its action. Ultimately, the Court remanded the case for further proceedings, and the City of Roswell may well deny the application again, but this time in a letter with some explanation. The Court was painstaking in its refusal to even consider whether the denial was actually based on "substantial evidence," leaving to another day the question of whether a locality can deny a cell tower application based primarily on NIMBY concerns. The Court also offered little guidance on what sort of written record is needed to pass procedural muster. It acknowledged that "a locality may rely on detailed meeting minutes as it did here," but suggested that "the local government may be better served by including a separate statement containing its reasons."

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