The Spectrum Act: The Rights of Telecommunications Companies Continue to be Recognized Under Federal Law

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On March 21, 2021, the United States District Court for the Northern District of California issued an opinion in a case filed by T-Mobile West LLC that reinforces the rights of telecommunications companies to modify and upgrade their wireless facilities. The decision is based on a federal law known as the Spectrum Act, which was passed by Congress in 2012. The intent of this law was to further encourage and enhance the growth of national telecommunications networks, including the creation of a broadband communications network for first responders.

The first major piece of legislation addressed to telecommunications law that Congress had passed since the Communications Act of 1934 was the Telecommunications Act of 1996. This now 25-year-old law governs federal, state and local government oversight of siting of wireless service facilities. The 1996 Act establishes a comprehensive framework for exercising jurisdiction by state and local zoning authorities over the construction, modification and placement of facilities. The law preserves local zoning authority yet clarifies when the exercise of local zoning authority may be preempted by the FCC. It prohibits any action that would ban altogether the construction, modification or placement of these kinds of facilities in a particular area and specifies procedures to be followed by local zoning officials for acting on a request to place these kinds of facilities. It also provides for review by the courts or the FCC of any decision by a zoning authority that is inconsistent with the law.

In 2012, Congress again passed legislation designed to further the goal of proliferating wireless facilities throughout the county and improve nationwide service. Under Section 6409 of the Spectrum Act, state and local governments are forbidden to deny requests to modify wireless equipment, so long as the modification does not “substantially change the physical dimensions” of the tower or facility.

In October 2014, the FCC issued an order that clarified many important terms under Section 6409 and implemented required procedures for local governmental agencies, including a sixty-day deadline for a local agency to approve an application under Section 6409, even though no such deadline is contained in the statute. If a local government fails to approve or deny an eligible facilities request within the 60-day period, "the eligible facilities request shall be deemed granted," which becomes effective once the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling)."Applicants subject to adverse decisions by local governments may bring claims related to this process in any court of competent jurisdiction within 30 days of such decision. The FCC Order does allow some limitation by declaring that localities may continue to condition approval on compliance with “generally applicable building, structural, electrical, and safety codes.” Local agencies may also deny applications which do not qualify under Section 6409.

Factual Background

T-Mobile provides wireless telecommunications services throughout the United States. It uses a network of "cell sites" to provide telecommunications services. The cell sites require regular maintenance, such as adding or modifying antennas and other technology equipment, to provide services and increase coverage, capacity, and reliability.

T-Mobile was required to obtain permits from the City and County of San Francisco to install or modify T-Mobile's cell sites and wireless facilities. In 2020, T-Mobile submitted applications to these local government agencies for the purpose of upgrading its cell sites. Thereafter, T-Mobile notified them that they failed to approve T-Mobile's applications and, under 47 C.F.R. § 1.1600, the applications are "deemed granted."

After suing the City and County of San Francisco to have the dispute resolved by the federal court, T-Mobile filed a motion on February 2, 2021 for summary judgment and for a preliminary injunction, arguing that the defendants violated the Spectrum Act by failing to timely approve T-Mobile's applications. It requested an order from the Court compelling the defendants to issue permits for applications after T-Mobile issued the "deemed granted" notice, and that they must approve T-Mobile's pending and future applications within 60 days of submission.

The City and County argued that the Spectrum Act violates the Tenth Amendment's anticommandeering doctrine because "the Constitution `confers upon Congress the power to regulate individuals, not states.'" The anticommandeering doctrine provides that the "Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." The Spectrum Act states that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

The Decision

The District Court rejected the defendants' arguments, holding that the Spectrum Act does not direct local governments to enact or refrain from enacting regulations regarding modifications to wireless towers or base stations. Therefore, "the Spectrum Act does not violate the anticommandeering doctrine." Concerning the defendants' argument that the Spectrum Act imposes no affirmative obligations on it to issue permits for T-Mobile's applications, the Court said that the FCC's Order established "a deemed granted remedy for cases in which . . . [a] municipal reviewing authority fails to issue a decision within 60 days on an application submitted pursuant to the Spectrum Act." The District Court further held that the FCC Order states that the deemed granted approach does not deprive States and localities of the opportunity to determine whether an application is covered; rather, it provides a remedy for a failure to act within the fixed but substantial time period within which they must determine, on a non-discretionary and objective basis, whether an application fits within the parameters of Section 6409(a).

On the application for injunctive relief, the District Court again agreed with T-Mobile, finding it had shown a likelihood of success on the merits of its claim that the City and County violated the Spectrum Act by failing to act on T-Mobile's applications, and that an injunction "will serve the public's interest in promoting rapid but reasonable wireless facility deployment."

Conclusion

Congress properly recognized, by passing the Spectrum Act in 2012, that swift deployment of wireless facilities and equipment upgrades are needed to enhance telecommunications services universally used by consumers and businesses alike, and that they are vital to the nation. As shown by this recent case, the Spectrum Act is being interpreted by the Courts to achieve that laudable goal by preventing state and local governments from delaying applications that allow for telecommunication equipment upgrades.