

Wiley Rein Secures Important Victory for the Future of Wireless Infrastructure

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Wiley Rein has helped secure an important victory for Verizon Wireless in a wireless siting dispute in New York. *Bell Atlantic Mobile of Rochester, d/b/a Verizon Wireless v. Town of Irondequoit*, W.D.N.Y. Case No. 11-CV-6141 (January 31, 2012). *Town of Irondequoit* is one of the first cases applying the FCC's 2009 "Shot Clock Order" since that order was upheld last month by the Fifth Circuit Court of Appeals. In the Shot Clock Order, the FCC sought to promote the deployment of wireless infrastructure and end what it identified as the "lengthy and unreasonable delays" in the processing of wireless siting applications by local governments. The Commission found that, the "persistence of such delays is impeding the deployment of advanced and emergency services."

In *Town of Irondequoit*, the locality invoked state environmental requirements in order to avoid compliance with the specific time limits set out by the FCC in the Shot Clock order. The District Court rejected this tactic, finding that the Town's eleventh-hour claim that further environmental review was required was "pretextual and unsupported by substantial evidence." The District Court went on to conclude that the Town had "willfully disregarded the law and wrongfully delayed action on [the] application." Because that delay was unreasonable and constituted an "effective prohibition" of wireless services, the Court entered an injunction against the Town requiring issuance of all necessary permits for Verizon Wireless facility. The Court also retained jurisdiction to enforce compliance with its order.

This decision is a vindication of federal law and policy in the area of wireless infrastructure, and an important early application of the FCC's Shot Clock order. It sends a strong message to local governments across the country that federal courts will strictly enforce

Related Professionals

Joshua S. Turner
Partner
202.719.4807
jturner@wiley.law

Megan L. Brown
Partner
202.719.7579
mbrown@wiley.law

Practice Areas

Issues and Appeals
Telecom, Media & Technology
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Wireless

the time limits set down by the FCC, state law excuses notwithstanding.

Wiley Rein litigates wireless preemption cases across the country. Wiley Rein Partner Joshua S. Turner argued the case. Partner Megan L. Brown and Brendan Morrissey, in the Communications Litigation and Appellate Practices, worked on the case with Mr. Turner and local counsel.