

“What keeps you up at night?”

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Time limits on telecom company facility siting approvals

By David J. Falcone

SUMMARY

A federal appeals court upheld a decision of the Federal Communications Commission requiring local governments to respond to a telecommunications provider's site plan or collocation application within 90 or 150 days.

On January 23, 2012 the Fifth Circuit of the United States Court of Appeals upheld the decision of the Federal Communications Commission (“FCC”) to cause state and local governments and municipalities to act within 90 days to process personal wireless service facility siting applications requesting collocations and within 150 days to process all other applications. *City of Arlington, Texas; City of San Antonio, Texas v. Federal Communications Commission; United States of America*, 2012 WL 171473 (5th Cir., 2012). The Fifth Circuit's decision provides relief to telecommunications providers who have often been the victim of prolonged decision making on applications for wireless telecommunications facilities – many lasting more than one year.

The Fifth Circuit's decision is not without limitations, however. The court was clear to state that a local government's failure to act within the 90 or 150-day time period does not, in and of itself, provide the telecommunications provider a deemed approval. Instead, the court held that “a lack of decision within these time frames would constitute a failure to act that would be actionable.” It would then be incumbent upon the applicant to file an action in court within 30 days.

Additionally, the court upheld the FCC's order that state and local governments and municipalities must alert an applicant within 30 days of the applicant's submission that the submission is incomplete. By doing so, the government or municipality can act to toll the 90 or 150-day clock. A failure to provide such alert within the prescribed 30-day period, however, allows the applicant to enforce the standard 90 or 150-day limitation.

Lastly, the court was clear to emphasize that irrespective of the established time thresholds, state and local governments were simply mandated to act within a “reasonable time period.” Although the FCC established guidelines for what “reasonable” should be, the court recognized that each situation, if appealed, would be considered on an individualized basis thereby affording state and local governments the ability to make the case that a prolonged application process was in fact “reasonable.”

Still, the court’s decision is a win for telecommunications providers everywhere insofar as a standard of reasonableness has been set and the door to more expedient review of telecommunications applications opened.

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