

Ninth Circuit Upholds City Discretion Regarding Installation of Wireless Telecommunications Facilities on City Property

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Federal law does not preempt a city's discretion to approve or deny a lease for installation of wireless telecommunication facilities on its property, according to a decision of the Ninth Circuit Court of Appeals issued last week.

In *Omnipoint Communications, Inc. v. City of Huntington Beach*, the court considered whether the federal Telecommunications Act of 1996 ("TCA") preempted an initiative measure that required voter approval before a structure costing more than \$100,000 could be built in any city park. The case arose when the Huntington Beach City Council executed a site license agreement with Omnipoint Communications to allow installation of an antenna facility in a city park and subsequently required the carrier to stop work once it became apparent that voter approval was required due to the structure's cost.

The Ninth Circuit rejected the carrier's federal preemption challenge to the voter approval requirement. The TCA imposes certain limitations on cities when exercising land use authority over the installation of wireless telecommunications facilities. Significantly, the court ruled that the TCA "applies only to local zoning and land use decisions and does not address a municipality's property rights as a landowner."

For advice regarding land use regulations or leasing of public entity property for wireless telecommunications facilities, please contact Gena Stinnett.