

Marquette University Law School Marquette Law Scholarly Commons

Faculty Publications

Faculty Scholarship

1-1-2005

Are Municipalities Liable for Damages and Attorney's Fees for Wrongfully Denying a Permit for a Wireless Service Facility?

Ralph C. Anzivino

Marquette University Law School, ralph.anzivino@marquette.edu

Follow this and additional works at: <http://scholarship.law.marquette.edu/facpub>



Part of the [Law Commons](#)

Publication Information

Ralph C. Anzivino, Are Municipalities Liable for Damages and Attorney's Fees for Wrongfully Denying a Permit for a Wireless Service Facility?, 2004-05 Term Preview U.S. Sup. Ct. Cas. 237 (2005). © 2005 American Bar Association. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Repository Citation

Anzivino, Ralph C., "Are Municipalities Liable for Damages and Attorney's Fees for Wrongfully Denying a Permit for a Wireless Service Facility?" (2005). *Faculty Publications*. Paper 433.

<http://scholarship.law.marquette.edu/facpub/433>

This Article is brought to you for free and open access by the Faculty Scholarship at Marquette Law Scholarly Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

Are Municipalities Liable for Damages and Attorney's Fees for Wrongfully Denying a Permit for a Wireless Service Facility?

by *Ralph C. Anzivino*

PREVIEW of *United States Supreme Court Cases*, pages 237-243. © 2005 American Bar Association.

Case at a Glance

Ralph C. Anzivino is a professor of law at Marquette University Law School in Milwaukee, Wisconsin. He can be reached at ralph.anzivino@marquette.edu or 414-288-7094.

Editor's Note: The respondent's brief in this case was not available by PREVIEW's deadline.

ISSUE

Are local governments subject to liability for damages and attorney's fees under 42 U.S.C. §§ 1983 and 1988 for ordinary land-use decisions found to violate the Telecommunications Act?

FACTS

Mark J. Abrams holds numerous FCC licenses and provides radio communication services for profit, individually, and as a principal in a company called Mobile Relay Associates. He is also a licensed amateur radio operator.

Abrams resides in the city of Rancho Palos Verdes. His property and the surrounding neighborhood are zoned for detached, single-family residences in a low-density environment. Between 1989 and 1990, Abrams applied for and received permission from the city's Planning Department to erect a radio antenna in the yard of his residence for ama-

teur use only. The application proposed a 30 foot antenna structure with a 10 foot retractable mast that would extend 40 feet and nest at 30 feet. The city's Municipal Code barred the construction of any antenna taller than 40 feet absent a minor exception permit, which Abrams did not seek. The permit approving the structure specified that the maximum height of the structure shall not exceed 40.0 feet from grade to top of mast when in use and that, when not in use, the structure shall be lowered to 30-foot nesting height. The permit expressly prohibited commercial use.

After receiving his permit, Abrams submitted construction plans that described the project as a 30 foot tower, but depicted an antenna structure with a fixed height of 52.5 feet. Unaware that the Planning Department had specified a maximum height of 40 feet and a nesting height of 30 feet, the building inspector stamped the plans as approved.

(Continued on Page 238)

The Telecommunications Act of 1996 grants to local municipalities primary control over the placement, construction, and modification of wireless facilities. The Act further states that a municipality cannot unreasonably discriminate among providers and specifies expedited procedures for the appeal of an applicant's denial.

The Act does not expressly authorize damages or attorney's fees for a wrongful denial. Nevertheless, the Ninth Circuit has concluded that damages and attorney's fees are recoverable under § 1983 for a wrongful denial.

RANCHO PALOS
VERDES ET AL. V. ABRAMS
DOCKET NO. 03-1601

ARGUMENT DATE:
JANUARY 19, 2005
FROM: THE NINTH CIRCUIT

Thereafter, Abrams erected a 52.5-foot tower. Notwithstanding the permit's prohibition on commercial use of the antenna structure, Abrams used it to provide commercial services. In addition, Abrams, his company, and others, acquired more than 70 FCC licenses to operate on commercial frequencies from Abrams's residence.

While the city was investigating suspected commercial uses of the 52.5-foot antenna tower, Abrams erected another tower. This tower was erected on a trailer in his yard, and extended it to a height of more than 100 feet. Abrams did not seek a permit for the new tower. Instead, he advised the city that the tower was a mobile antenna not covered by the Municipal Code. Although Abrams later lowered the tower to 75 feet, he declined to remove or fully retract it. The city filed an action for declaratory and injunctive relief against Abrams in Los Angeles County Superior Court on April 12, 1999, alleging that both antennas and their commercial use violated the city's zoning laws. On September 13, 1999, the Superior Court preliminarily enjoined Abrams's unauthorized commercial use of the towers and required him to remove the trailer-mounted tower.

After the Superior Court issued the injunction, Abrams applied for a conditional use permit (CUP) to allow him to offer commercial radio services using the 52.5-foot antenna tower in his yard. The staff of the city's Planning Department prepared a report assessing the impact of converting the tower to commercial use. The report recommended that the application be denied. After conducting two hearings and taking written evidence, the Planning Commission adopted a resolution denying the application. The resolution stressed the tower's visual prominence within the neighbor-

hood and its negative visual impacts. The Commission found that the commercial use of such a visually prominent structure would be inconsistent with the residential purpose and character of the neighborhood, as well as the city's Antenna Development Guidelines, which encourage the placement of commercial antennae in non-single family residential areas. The Commission found its decision consistent with each of the Telecommunications Act's (TCA) requirements.

Abrams appealed to the City Council. After further public hearings, the Council adopted a resolution upholding the Planning Commission. Like the Planning Commission, the City Council concluded that the proposed commercial use was inconsistent with the neighborhood's zoning, which is for detached, single-family residences. That designation permits "accessory" structures, *i.e.*, structures closely linked, incidental, and subordinate to the property's use as a single-family residence. The Council found that a commercial antenna was neither incidental nor subordinate to the property's primary use as a residence. The Council noted that, when the city authorized Abrams to build the antenna structure, he expressly agreed that it was not to exceed 40 feet in height and was not to be used for commercial purposes. Notwithstanding those conditions, the antenna structure was constructed at a height of 52.5 feet, and Abrams used it for commercial purposes.

The Council found that the tower and antenna array were highly visible and had adverse visual and aesthetic impacts on the surrounding neighborhood. Because of the tower's height, configuration and proximity to surrounding lots and rights-of-way, as well as the small size of

Abrams's lot, the Council found that the adverse visual impacts could not be addressed except by modifying the tower's height, location, or configuration. Abrams, however, advised the Council that he would not consider any alteration or reduction of the height, size, configuration, or location of the existing tower. Finally, the City Council found that its decision was consistent with the TCA. In the Council's opinion, there was no discrimination among service providers because the denial rested on the tower's adverse visual and aesthetic impacts and Abrams's refusal to mitigate those effects.

Abrams then filed suit in United States District Court for the Central District of California, alleging that the city violated the TCA by denying him a conditional use permit. Abrams sought an injunction requiring the city to issue a permit allowing commercial use of the tower. Abrams also sought damages and attorney's fees under 42 U.S.C. §§ 1983 and 1988, asserting that the city had violated his rights under the TCA. Following trial on a stipulated administrative record, the district court ruled for Abrams, holding that the city's decision was not supported by substantial evidence as required by the TCA. The court entered an order vacating the city's denial of Abrams's application, remanded the matter to the city, and ordered the city to grant the application subject to reasonable conditions. The district court denied Abrams's request for damages under 42 U.S.C. § 1983 and his corresponding request for attorney's fees under 42 U.S.C. § 1988. The court reasoned that the remedies for the TCA violations are subsumed within the TCA's review provisions, and thus, damages pursuant to 42 U.S.C. § 1983 were not available.

Abrams appealed the district court's denial of damages and fees under 42

U.S.C. §§ 1983 and 1988, and the Ninth Circuit reversed. *Abrams v. City of Rancho Palos Verdes*, 354 F.3d 1094 (9th Cir. 2004). The Ninth Circuit concluded that the TCA does create a right of action for expedited judicial review of any final state or local government decision, subject to a short statute of limitations (30 days). But the Ninth Circuit held that the TCA's remedial scheme was not sufficient to close the door on § 1983 liability because it did not provide for any type of relief or specify any remedies. Accordingly, the Ninth Circuit held that § 1983 remedies were available and that the district court should award § 1983 damages. The Ninth Circuit's decision is contrary to the Third and Seventh Circuit decisions on this issue. See, *Nextel Partners, Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir. 2002) and *Prime Co. Personal Communications L.P. v. City of Mequon*, 352 F.3d 1147 (7th Cir. 2003). The city's writ of *certiorari* was granted on May 25, 2004. 125 S.Ct. 26 (2004).

CASE ANALYSIS

The Communications Act of 1934 (TCA) established a comprehensive system for the regulation of communication by wire and radio. In 1996, Congress amended the TCA to secure lower prices and higher quality services for consumers by promoting competition, reducing regulation, and encouraging the rapid development of telephone communication technologies. The 1996 amendments added 47 U.S.C. § 332(c)(7) to address the relationship between local land-use policies and the siting, construction, and modification of antenna towers used to provide cellular and other wireless telephone services. Section 332(c)(7) generally establishes a balance that leaves zoning authority in the hands of state and local governments, but subject to specified limits. Entitled "Preservation of local

zoning authority," § 332(c)(7)(A) states in part: "Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities."

Section 47 U.S.C. § 332(c)(7)(B), however, establishes certain limits on that authority. First, it provides that state and local regulation of the placement, construction, and modification of personal wireless service facilities may not unreasonably discriminate among providers of functionally equivalent services. Second, it declares that such regulation may not prohibit or have the effect of prohibiting the provision of personal wireless services. Finally, the section bars regulation based on the environmental effects of radio frequency emissions if the facilities otherwise comply with FCC rules. Within those limits, states and municipalities retain the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently.

Section 332(c)(7) incorporates local administrative review of an applicant's request, followed by a right to federal judicial review. It requires state and local authorities to act on requests to place, construct, or modify wireless service facilities within a reasonable period of time, taking into account the nature and scope of such request. Any decision denying a request must be in writing and supported by substantial evidence contained in a written record. The TCA provides an express federal cause of action to enforce those requirements: Any person adversely affected by any final action or failure to act by a state or local government may within 30 days after such action or failure to act, commence an action in

any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Finally, persons adversely affected by improper consideration of the "environmental effects of radio frequency emissions" in violation of § 332(c)(7)(B) have an additional option. They may bring the cause of action for judicial review described above, or they may petition the FCC for relief. The FCC handles such requests as petitions for declaratory judgments.

The City's Arguments

Section 1983 creates a cause of action for the violation of any rights, privileges, or immunities secured by the Constitution and laws of the United States, and § 1988 entitles successful § 1983 plaintiffs to attorney's fees. The city asserts that §§ 1983 and 1988 remedies are not available when Congress has provided a comprehensive remedial scheme. The city asserts that the TCA establishes a comprehensive remedial scheme for the enforcement of federal requirements. The Supreme Court has repeatedly held that when Congress enacts a statute that simultaneously establishes a federal interest and provides a tailored means for its vindication, Congress intends enforcement through that specific and tailored procedure rather than through damage actions under more general remedial statutes such as § 1983. *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1 (1981).

The city argues that in provision after provision of the TCA, Congress specified both the legal duty and the appropriate governmental and private remedies. First, recognizing the traditional importance of state and local administrative processes, § 332(c)(7) provides for a local determination. It requires state and

(Continued on Page 240)

local governments to act on requests for authorization to place, construct, or modify personal wireless facilities within a reasonable period of time; requires that any decision to deny be in writing; and requires that such decisions be supported by substantial evidence contained in a written record. Critically, § 332(c)(7) then provides an express and carefully tailored expedited judicial remedy through which a plaintiff can redress violations of the TCA. In particular, any person adversely affected by a state or local government's final action or failure to act may file an action in any court of competent jurisdiction. The TCA also establishes careful conditions on such suits, requiring that such an action be filed within a very short period (30 days) and correspondingly requiring the court to hear and decide such action on an expedited basis. Further, the TCA authorizes any person adversely affected by a violation based on the environmental effects of radio frequency emissions to bring an action in court or petition the FCC for relief. The presence of such an elaborate and detailed enforcement regime indicates that Congress provided precisely the remedies it considered appropriate and supplanted any remedy that otherwise would be available under § 1983.

The city also argues that § 1983 is not available where statutory remedies are incompatible with individual enforcement under § 1983. In the city's opinion, any enforcement through § 1983 is clearly inconsistent with § 332(c)(7). The statutory cause of action created requires expedition by providing speedy redress for violation of the TCA. It imposes a 30-day filing period. That deadline ensures that affected persons seek relief quickly, consistent both with traditional zoning requirements and with Congress's intent to avoid delays that might interfere

with the goal of rapid deployment of new telecommunications technologies for the public benefit. The city maintains that allowing plaintiffs to assert TCA claims under § 1983 would upset this balance. A plaintiff would be freed of the short 30-day limitations period for filing suit. Instead, a plaintiff would have four years to commence a § 1983 action under 28 U.S.C. § 1658. Also, allowing suit under § 1983 would free courts of the obligation to hear the claim on an expedited basis. The absence of mandatory expedition does not merely harm litigants who must bear losses that accrue during delay. It also harms the public interest by delaying the rapid deployment of new telecommunication technologies that Congress sought to promote. By imposing a 30-day filing period and mandating expedited review under the TCA, Congress provided a mechanism for rapid and streamlined resolution of antenna-siting decisions in the public interest. Replacing the mechanism with a four-year limitations period and ordinary time frames for judicial resolution under § 1983 grossly undermines Congress's intent.

The city also believes that imposing § 1983 liability and the associated obligation to pay attorney's fees will impose a significant financial burden on municipalities. It is inevitable that local governments, particularly small, rural municipalities, will sometimes stumble, albeit in an earnest attempt to comply with the TCA. Because municipalities do not enjoy immunity from suit under § 1983, permitting § 1983 actions in this context threatens significant liability for virtually every mistake in implementing the TCA's often-complex requirements. The potential exposure is enormous. Each year, municipalities must address tens of thousands of applicants to construct wireless facilities. Over the last

decade, the number of cell towers increased from 25,000 to 165,000. According to the Cellular Telephone Industry Association, more than 23,000 new cell sites were added in 2003 alone, and there is no sign the expansion will abate. Under the Ninth Circuit's view, each proposal for a new or modified cell site represents a potential damages and fee award.

Moreover, § 332(c)(7) plaintiffs are often large corporations or affiliates, while the defendants are often small, rural municipalities that cannot risk significant liability. Suits involving § 332(c)(7) typically pit substantial corporations, such as Verizon, against small towns with a planning commission whose members may double as alderman. Plaintiffs such as AT&T Wireless, a \$7 billion subsidiary of a \$62 billion multi-national corporation, are more than happy to serve as private attorneys general to enforce the legislative measures they have lobbied through Congress, without the need for taxpayers to pay their litigation costs. Compared to the budgets of the defendant local governments, the fees incurred by such well-funded and determined plaintiffs can be staggering. A single erroneous zoning decision could cost the smallest of towns hundreds of thousands of dollars. Surely Congress never anticipated such a result.

Further, the threat of such awards will seriously distort the decision-making process. Permitting suit under § 1983 for claimed violations of § 332(c)(7) would not threaten local governments with liability for authorizing a facility. Rather, they would confront that risk only if they deny authorization. Smaller communities that lack sufficient resources to risk damages and attorney's fees may shrink from meaningfully overseeing the placement of the often-unsightly transmission towers that

otherwise seem to sprout like weeds after a summer rain. The resulting patchwork of towers, sited with little regard for legitimate zoning and planning requirements, would be wholly inconsistent with Congress's goal of preserving state and local authority. The routine imposition of damages and fees thus stretches the TCA too far.

The city also believes that the Ninth Circuit's reasoning is incorrect. The Ninth Circuit did not dispute that § 332(c)(7) provides for the invocation of local administrative procedures followed by federal judicial review. To the contrary, it acknowledged that § 332(c)(7) expressly provides private judicial remedies through which a plaintiff can redress TCA violations in federal court. But, the Ninth Circuit held that § 332(c)(7) is not significantly remedial because it does not provide for any specified type of relief. In the Ninth Circuit's opinion, the TCA grants no remedies beyond procedural rights. The Ninth Circuit deemed the cause of action for expedited judicial review to be hollow because an expedited decision does nothing to remedy a TCA violation. The city believes that the Ninth Circuit's assertion that § 332(c)(7) creates a federal private cause of action, but affords successful plaintiffs no remedies at all, borders on the absurd. A statutory cause of action that does not permit courts to impose remedies would be non-justifiable. Federal courts have no authority to issue advisory opinions without relief that alters the legal relationship of the parties. Moreover, Congress designed the cause of action in § 332(c)(7) to provide a mechanism for judicial relief.

The city admits that § 332(c)(7) does not enumerate the available remedies. However, federal courts adjudicating claims under statutes

that create a cause of action, but are silent about remedies, are presumed to have the power to award any "appropriate" relief. In the context of judicial review of zoning disputes, the traditionally available and thus "appropriate" relief has long been equitable or specific relief, such as an injunction requiring the defendant to issue improperly withheld permits, or a remand for a new decision that complies with legal standards. Consistent with that tradition, every court (except for the Ninth Circuit) that has considered the matter has concluded that § 332(c)(7) authorizes injunctive relief. Indeed, the district court ordered precisely that relief in this case. There is nothing "hollow" about those traditional remedies. They have long provided prompt and effective review and revision of zoning and land-use decisions. They likewise have proved effective in the context of the Administrative Procedure Act, which provides similar (and potentially more limited) specific relief from unlawful or erroneous agency decisions. Federal courts that hear and decide cases under § 332(c)(7) have the authority to order the issuance of the very thing the Abrams sought in the first instance, a permit to build the disputed antenna structure. That relief is quick and complete.

Finally, the evolution of the text that ultimately became § 332(c)(7) belies the contention that Congress intended to impose damages and fee awards under §§ 1983 and 1988. As originally drafted, the 1996 amendments would have vested the FCC with total responsibility and authority to preempt state and local zoning law regarding wireless communication tower siting. Nothing in the legislative record suggests that such agency preemption would have resulted in the imposition of § 1983 liability. Indeed, Congress appears to have shifted from FCC enforce-

ment to judicial review to avoid imposing financial burdens, such as the cost of traveling to Washington, D.C., to defend actions before the FCC, on small and rural municipalities. To read the resulting statute to require those local governments to pay damages under § 1983 and fees under § 1988 would impose the very sort of financial burdens that Congress sought to avoid.

Abrams's Arguments

Abrams maintains that to obtain remedies pursuant to § 1983, a plaintiff must first establish a federal "right." Once a plaintiff satisfies the initial burden of proving he has a federal statutory right, he creates a rebuttable presumption that he is entitled to § 1983 remedies. The parties agree that the TCA clearly grants enforceable "rights." Thus, the only question in this case is whether the city can rebut the presumption that Congress intended § 1983 remedies to be available for TCA violations. One can rebut the presumption in favor of § 1983 remedies if one can prove that Congress either expressly or impliedly foreclosed § 1983 remedies. The TCA's language provides no support for the theory that Congress expressly foreclosed § 1983. Thus, the question narrows to whether Congress impliedly foreclosed § 1983 remedies.

Congress impliedly forecloses § 1983 remedies when it creates a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983. However, the mere existence of administrative mechanisms to safeguard an individual's interests does not sufficiently evince the requisite congressional intent. In other words, it is not enough that Congress provides procedures by which a plaintiff can enforce his rights under a statute. The city

(Continued on Page 242)

must prove that through the remedies Congress provided in the TCA, it intended to close the door on § 1983 liability.

Abrams argues that the TCA does not explicitly provide for any types of remedies such as damages, injunctions, attorney's fees, or costs. Rather, the TCA only provides a short statute of limitations (30 days), expedited judicial review, and avenues through which a plaintiff can redress TCA violations (an action in any court of competent jurisdiction and permissive ability to petition the FCC). Clearly, the TCA does not contain a comprehensive remedial scheme. The TCA grants no remedies beyond procedural rights. Thus the procedural provisions are insufficient to establish that the TCA contains a comprehensive remedial scheme that closes the door on § 1983 liability.

The cases in which courts have found that Congress implied its intent to foreclose resort to § 1983 remedies presented remedial schemes more comprehensive than the TCA. In those cases, courts held that Congress impliedly foreclosed § 1983 remedies because the statutes had unusually elaborate enforcement provisions. The statutes permitted civil penalties, litigation costs, injunctive relief, and suspensions or revocations. The TCA is different from those statutes because the TCA does not provide for any type of relief. While one may argue that the lack of any damages clause in the TCA is evidence that Congress impliedly intended to foreclose damages, a better justification for the absence of such a remedial provision is that Congress intended to preserve an aggrieved plaintiff's right to invoke § 1983 damages. An implied preservation is consistent with the presumption in favor of § 1983 remedies. Thus, since the TCA contains no remedies at all,

one must conclude that Congress did not intend to foreclose § 1983 remedies.

Abrams further asserts that the TCA's provisions are not remedial in nature. One can hardly consider the limitations period a remedy. Shortening the limitations period to 30 days imposes a burden on an aggrieved plaintiff, not a benefit. The TCA's provision allowing a plaintiff to commence an action in any court of competent jurisdiction is hollow as well. The only benefit to an aggrieved plaintiff is expedited judicial review. However, an expedited decision does nothing to remedy a TCA violation in itself. Significantly, a court can fully comply with all of the TCA's provisions before it even makes a determination on liability. Thus, the TCA contains procedural, rather than remedial, provisions.

In addition, the TCA's provisions are completely compatible with § 1983's remedies. Congress can limit the time in which a plaintiff can file for relief and can require an expeditious review in any court of competent jurisdictions, without inadvertently limiting the plaintiff's remedies at the same time. If a court were to consider the TCA's procedural provisions sufficiently comprehensive to foreclose § 1983 remedies, such logic would prevent Congress from ever providing statutes of limitations or other procedural provisions without also defining specific remedies. Such a holding would unnecessarily limit § 1983 remedies to those generic statutes that grant a right and nothing else. No such limitation should be grafted onto § 1983 remedies. The TCA and § 1983 remedies are entirely compatible.

Finally, the TCA confirms Congress's affirmative intent to preserve § 1983 remedies. Section

601(c)(1) of the TCA provides that the TCA shall not be construed to modify, impair, or supersede federal, state, or local law unless expressly so provided in the Act or any amendments. The plain language of § 601(c)(1) demonstrates that Congress did not intend the TCA to alter the operation of any federal law unless the TCA expressly provided for such change. Section 1983 clearly falls within the parameters of this general savings clause.

SIGNIFICANCE

The telecommunications industry is one of the fastest growing in the nation. As the industry grows, the need for more antenna towers will have to be addressed. The Telecommunications Act places primary decision-making on the construction and placement of these towers in the hands of the local municipalities. Further, the Telecommunications Act specifies procedural safeguards that must be complied with at the local level, and provides the aggrieved applicant with expedited appeal rights to the courts for redress in the event an applicant's request is wrongfully denied. The TCA does not expressly provide for the recovery of attorneys fees and damages to an applicant for a wrongful denial. The Circuits are split on whether an aggrieved applicant is entitled to damages and attorneys fees pursuant to § 1983. The prevailing rule is that if a statute has a sufficient remedial scheme, Congress intended the remedial scheme to control and additional remedies, such as § 1983, are not available to supplement the statutory scheme. The Supreme Court must decide whether the TCA provides a sufficient remedial scheme to preclude § 1983 damages.

**ATTORNEYS FOR THE
PARTIES**

For City of Rancho Palos Verdes et al. (Jeffrey A. Lamken (202) 639-7700)

For Mark J. Abrams (Seth P. Waxman (202) 663-6000)

AMICUS BRIEFS

In Support of City of Rancho Palos Verdes

Alabama, et al. (Kevin C. Newsome (334) 242-7401)

Local Governments and Related Associations (Roy T. Englert, Jr. (202) 775-4500)

National League of Cities et al. (Richard Ruda (202) 434-4850)

United States (Paul D. Clement, Acting Solicitor General (202) 514-2217)

In Support of Mark J. Abrams

American Mobile Telecommunications Association (Russell D. Lukas (703) 584-8664)

Cellular Telecommunications & Internet Association (Andrew G. McBride (202) 719-7000)

James A. Kay, Jr. (Barry Richard (850) 222-6891)

Lawyers' Committee for Civil Rights Under Law et al. (Reginald D. Steer (415) 765-9500)

Public Citizen, Inc. (Scott L. Nelson (202) 588-7724)