



## Channel Law Group, LLP

100 OCEANGATE  
SUITE 1400  
LONG BEACH, CA 90802-4323

Fax: (562) 216-5090  
[www.channellawgroup.com](http://www.channellawgroup.com)

Writer's Direct: 310-982-1760  
[jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com)

### COURT ORDERS ISSUANCE OF PERMITS FOR 130 FOOT MONOPOLE IN RESIDENTIAL NEIGHBORHOOD; EMERGENCY SERVICES, USE BY FIRE DEPARTMENT PERSUASIVE

**“If you look at communications, without it we are nowhere.”**

-Judge John R. Padova

---

#### **Facts**

Sprint Spectrum (“Sprint”) and a local volunteer fire department (“Department”) jointly applied to a Pennsylvania municipality for zoning permits for the construction of a 130 foot tall monopole in a residential neighborhood. Notably, the joint application sought a variance to exceed the 15 foot height restriction in the zone. The facility was designed to accommodate both antennas for the volunteer fire departments “emergency radio system” and Sprint’s PCS antennas. Both Sprint and the volunteer fire department (“Department”) maintained that their wireless systems were inadequate. The Department testified that its poor radio communication system, part of the County’s 911 system, contributed to the deaths of at least two people.

The Upper Chichester Township Zoning Hearing Board (“municipality”) denied the permits citing concerns about decreased property values, the compatibility of the facility in a residential neighborhood, and the availability of other sites to meet the coverage gaps. Significantly, the Board refused to recognize the application as a joint project with the Fire Department, instead treating the application as an application for a commercial wireless communication facility.

#### **Federal District Court Ruling**

Sprint and the Fire Department brought suit in federal court arguing that the denial violated the 1996 Telecommunications Act (“TCA”), specifically § 332’s substantial evidence and unreasonable discrimination provisions. The district court agreed and ordered the municipality to issue all zoning permits within 30 days. The municipality, however, refused to issue the building permits for the facility. Sprint and the Fire Department returned to court and sought an injunction, and the court agreed. The municipality appealed both orders.

#### **Appellate Ruling**

The Third Circuit Court of Appeals affirmed the district court’s rulings on October 4, 2007 ordering the municipality to issue both zoning and building permits.

#### **Emergency Services of Facility Important Consideration**

The court refused to accept the municipality’s argument that the monopole was a mere “commercial” wireless service communication facility subject to a higher standard of review. Rather, the court detailed the emergency services component of the facility, including the services provided by Sprint, restating the district court’s opinion, saying:

“If you look at communications, without it we are nowhere. We look upon redundancy in this age, particularly after 9/11, as critical to emergency operations. As a result we have taken action with regard to further alerting people through our cell phones, regular pagers in addition to fire pagers which we found to be inadequate in certain areas. So communication is definitely associated with any emergency service.”

The court then held that it was “abundantly clear” that the radio tower would be an accessory use to the fire station due to the emergency services provided.

#### Residents’ Generalized Concerns about Aesthetics and Property Values Insufficient

The court rejected the municipality’s arguments that the denial was supported by substantial evidence on the basis of resident testimony regarding the facility’s aesthetics and the impact on residential property values. The court held that the residents’ concerns were insufficient because they were not backed up by evidence and/or devoid of any documented data. Significantly, the court distinguished two key cases precisely on this issue saying, “[o]ne could forcefully argue that the erection of any telecommunications equipment would have an adverse impact on the aesthetics of any residential community. However, under the circumstances here, such an unforgiving and absolutist approval [to] local land use regulation would eviscerate the national policy of promoting the telecommunications industry that is endemic in the TCA.”

#### Building Permit Process Covered Under Telecom Act

The court also rejected the municipality’s argument that the district court could not order it to issue a building permit, saying that such an approach would effectively allow an “end run around the requirements of the TCA and thereby allow local regulatory agencies to subvert a federal policy by elevating zoning authority over congressional policy as enacted into law via the TCA.”

*Ogden Fire Co. No. 1; Sprint Spectrum v. Upper Chichester Township*, \_\_\_ F.3d\_\_\_, 2007 U.S. App. LEXIS 23263 (3d Cir. 2007)

#### **About Channel Law Group, LLP**

*Channel Law Group’s attorneys are recognized experts in communications and media law. We have extensive experience assisting wireless carriers, tower companies, cable operators and telecommunications carriers with a variety of network deployment issues and offer land use, real estate, franchising, right-of-way, regulatory compliance and contract-related expertise, providing transactional, regulatory and litigation support in many of these areas. We also have assisted start-up programming ventures and have advised on a panoply of organizational, operational, financing and transactional issues, including production and rights acquisition, affiliation, and distribution.*

*If you have any questions about this case or the services that Channel Law Group, LLP provides, please contact Jamie T. Hall at 310-982-1760 or [jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com).*