

## **City Can't Bar Cell Towers on Looks Only, Court Says**

By James S. Granelli

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Cellphone towers may be ugly, but that's not reason enough for cities to block their construction, a federal appeals court ruled Tuesday.

In the nation's first appellate ruling on an increasingly contentious local issue, the U.S. 9th Circuit Court of Appeals struck down parts of a La Cañada Flintridge law that had allowed the city to withhold building permits on public rights of way for purely aesthetic reasons.

Similar ordinances in cities across California and the nation have slowed efforts by wireless companies to offer better coverage and advanced services they say their 200 million customers demand. Municipal officials counter that they have a responsibility to protect their residents from a proliferation of unsightly infrastructure.

Unlike telephone or cable lines, cellphone transmitters can't be buried underground and need to be high enough to relay signals without obstruction. And they're seemingly everywhere. By June, service providers had installed 178,025 cell sites nationwide - adding more than 15,000 a year for the last four years.

The wireless industry cheered the three-judge panel's unanimous decision, saying it should make it easier for service providers to expand their networks at a time when growth in the number of new cellphone subscribers is slowing. To win customers, cellular companies pitch better reception and new services, such as video and e-mail, which require more towers and antennas.

The case began in 2001, when Sprint wanted to upgrade equipment installed on two existing power poles on busy residential streets. La Cañada Flintridge officials approved Sprint permits at two other locations, but the city and the company couldn't find a compromise on the residential sites.

Cities and wireless providers watched the La Cañada Flintridge case as a test of municipal power.

"Ultimately, cities and service providers knew the courts were going to have to intervene," Flynn said.

Sprint sued, arguing that state law gave it the right to install its equipment on public rights of way as long as it didn't affect public use of roads. The city countered that state law granted it the power to regulate the time, place and manner - essentially the aesthetics - of such improvements and that it had a right to ensure public safety.

U.S. District Judge David O. Carter said the city failed to make its case on public safety grounds, but he agreed that La Cañada Flintridge was within its rights to deny Sprint's permits for aesthetic reasons.

The appellate court disagreed. The judges held that La Cañada Flintridge's ordinance conflicted with sections of the California Utilities Code, which the court said gave companies "broad authority to construct telephone lines and other fixtures" along public rights of way.

Said La Cañada Flintridge Mayor Anthony Portantino: "This is a pretty important decision on land use and local control. We thought this was a place for reasonable controls."

Many states have similar utilities laws. Although the decision applies only to California law, lawyers said other courts nationwide would give it weight when considering similar cases.

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