No. 13-975

In the Supreme Court of the United States

T-MOBILE SOUTH, LLC, PETITIONER

v.

CITY OF ROSWELL, GEORGIA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
MALCOLM L. STEWART
Deputy Solicitor General
ANN O'CONNELL
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

JONATHAN B. SALLET
General Counsel
DAVID M. GOSSETT
Acting Deputy General Counsel
RICHARD K. WELCH
Deputy Associate General Counsel
MATTHEW J. DUNNE
Counsel
Federal Communications Commission
Washington, D.C. 20554

QUESTION PRESENTED

The Communications Act of 1934, 47 U.S.C. 151 *et seq.*, as amended by the Telecommunications Act of 1996, 47 U.S.C. 251 *et seq.*, provides that "[a]ny decision by a State or local government * * * to deny a request to place, construct, or modify personal wireless service facilities," such as a cell tower, "shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. 332(c)(7)(B)(iii).

The question presented is as follows: Whether, when denying an application for a permit to construct a new cell tower, the relevant state or local government must provide a clear statement of reasons for the denial, and, if so, whether those reasons must be set forth in the written "decision * * * to deny [the] request," 47 U.S.C. 332(c)(7)(B)(iii), or whether they may instead appear elsewhere in the written record that supports the decision.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations: Page

Miscellaneous:

Miscellaneous—Continued: Page

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 13-975

T-MOBILE SOUTH, LLC, PETITIONER

v.

CITY OF ROSWELL, GEORGIA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

INTEREST OF THE UNITED STATES

This case presents the question whether the Communications Act of 1934, 47 U.S.C. 151 *et seq.* (Communications Act), as amended by the Telecommunications Act of 1996, 47 U.S.C. 251 *et seq.* (1996 Act), requires a state or local government, when denying an application for a permit to construct a new cell tower, to provide clear reasons for the denial, and, if so, whether those reasons must be set forth in the written "decision * * * to deny [the] request," or whether they may instead appear elsewhere in the written record that supports the decision. 47 U.S.C. 332(c)(7)(B)(iii). The resolution of that question will affect the ability of wireless communications providers to respond to the rapidly growing demand for their services. The Federal Communications Commission

(FCC or Commission) administers the Communications Act, see 47 U.S.C. 201(b); is authorized issue interpretations governing Section 332(c)(7), see *City of Arlington* v. *FCC*, 133 S. Ct. 1863, 1866 (2013); and is responsible for "mak[ing] available * * * to all the people of the United States * * * a rapid, efficient, Nation-wide * * * radio communication service with adequate facilities at reasonable charges," 47 U.S.C. 151. The United States therefore has a significant interest in the question presented.

STATEMENT

1. a. A robust national telecommunications network is "essential to the Nation's global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses." Exec. Order No. 13,616, 77 Fed. Reg. 36,903 (2012); see American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 516; FCC, *Connecting America: The National Broadband Plan* 9 (Mar. 16, 2010), http://download.broadband.gov/plan/national-broadband-plan.pdf (*FCC Broadband Plan*). "People are using broadband in ways they could not imagine even a few years ago," and the country's demand for these networks will continue to grow. *FCC Broadband Plan* 15; see *id.* at 15-16. Accordingly, network infrastructure that "may be adequate today likely will not meet our needs in the future." *In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 27 FCC Rcd. 10,342, 10,347, ¶ 6 (2012).

Wireless technologies are an increasingly important part of the communications landscape, as

consumers use wireless technology to supplement or replace traditional phone lines and other "wired" networks. "The rapid adoption of smartphones and tablet computers, combined with deployment of high-speed 3G and 4G [wireless] technologies, is driving more intensive use of mobile networks, so much so that the total number of mobile wireless connections now exceeds the total U.S. population." *In re Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, 29 FCC Rcd. 4610, 4613, ¶ 3 (2014) (*AWS Spectrum Rule*).

That explosive growth is expected to continue. One prediction is that "total smartphone traffic over mobile networks will increase 10 times between 2013 and 2019." *AWS Spectrum Rule* 4613, ¶ 3 & n.6 (citing Ericsson, *Ericsson Mobility Report on the Pulse of the Networked Society* 7, 11 (Nov. 2013), http://www.ericsson.com/res/docs/2013/ericsson-mobility-report-november-2013.pdf). The mobile wireless industry plays an increasingly significant role in the United States economy. See *In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 28 FCC Rcd. 3700, 3929, ¶ 361 (2013) (*2013 Wireless Competition Report*). By one estimate, the industry generated $146.2 billion in economic activity retained as United States gross domestic product in 2011. *Id.* at 3930, ¶ 362 & n.1110 (citing Roger Entner, *The Wireless Industry: The Essential Engine of US Economic Growth*, Recon Analytics 1 (May 2012), http://apps.fcc.gov/ecfs/document/view;jsessionid=KKDdQLC-SVmlSq66DvmdylQLdn1BKnfcs1K4HhQvy!1007083101!-2 24088 840?id=7022009489).

b. The construction and improvement of wireless networks depends on physical infrastructure, including cell towers. See *2013 Wireless Competition Report* 3906, ¶ 320. "The number of cell sites in use by wireless providers continues to grow in order to satisfy the increased demand for mobile wireless services, to expand geographic service area coverage, to improve coverage in existing service areas, and to accommodate newer technologies." *Id.* at 3906, ¶ 322. According to a trade organization report, wireless carriers used 283,385 cell sites by the end of 2011, an increase of 12 percent in just one year. *Ibid.*

While the required cellular transmission equipment can sometimes be placed on an existing "tall building, water tower * * * or other structure providing sufficient height above the surrounding area," the equipment must often instead be placed atop a "purpose-built communications tower." *2013 Wireless Competition Report* 3906, ¶ 320. Construction of such towers often requires "regulatory and zoning approvals from state and local authorities," which can act as a "significant constraint[]" on providers' ability to expand and improve their networks. *Id.* at 3908, ¶ 328; see *id.* at 3908-3909, ¶¶ 328-330.

2. a. Before 1996, local zoning board regulation "created an inconsistent and, at times, conflicting patchwork of requirements" for cell towers. H.R. Rep. No. 204, 104th Cong., 1st Sess. 94 (1995) (*House Report*). To reduce "the impediments imposed by local governments upon the installation of facilities for wireless communications," Congress amended the Communications Act in 1996, see 1996 Act, Pub. L. No. 104-104, 110 Stat. 56, and "impose[d] specific limitations on the traditional authority of state and

local governments to regulate the location, construction, and modification of such facilities," *City of Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113, 115 (2005). The limitations that the 1996 Act imposes on States and localities are designed to "speed deployment and the availability of competitive wireless telecommunications services," which Congress predicted would "ultimately * * * provide consumers with lower costs as well as with a greater range [of] options for such services." *House Report* 94.

The 1996 Act imposes both substantive and procedural limitations on the authority of state and local governments to regulate the placement, construction, and modification of personal wireless service facilities. See *City of Rancho Palos Verdes*, 544 U.S. at 115. The substantive limitations provide that state and local governments "shall not unreasonably discriminate among providers of functionally equivalent services," 47 U.S.C. 332(c)(7)(B)(i)(I); shall not take actions that "prohibit or have the effect of prohibiting the provision of personal wireless services," 47 U.S.C. 332(c)(7)(B)(i)(II); and shall not regulate the placement of wireless facilities "on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions," 47 U.S.C. 332(c)(7)(B)(iv).

As a procedural matter, States and localities must act on requests for authorization "to place, construct, or modify" wireless facilities "within a reasonable period of time." 47 U.S.C. 332(c)(7)(B)(ii). A decision denying such a request "shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. 332(c)(7)(B)(iii). The House Con-

ference Report accompanying the 1996 Act explains that Congress chose "[t]he phrase 'substantial evidence contained in a written record'" in order to incorporate "the traditional standard used for judicial review of agency actions." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 208 (1996) (*Conference Report*). Any person adversely affected by a final action (or failure to act) by a state or local government may commence a suit in any court of competent jurisdiction within 30 days of the final action (or failure to act), and the plaintiff is entitled to expedited judicial review. 47 U.S.C. 332(c)(7)(B)(v).

The 1996 Act includes a savings clause, which states that, "[e]xcept as provided in" Section 332(c)(7), nothing in the Communications Act "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." 47 U.S.C. 332(c)(7)(A).

b. In the years since the 1996 Act was enacted, Congress has supplemented and the FCC has interpreted the restrictions set forth in Section 332(c)(7). In 2009, the FCC interpreted the requirement that localities issue decisions "within a reasonable period of time," 47 U.S.C. 332(c)(7)(B)(ii), to impose a presumptive limit of 90 days for the review of collocation applications (*i.e.*, applications to install antennae that do not require the construction of a new tower), and 150 days for the review of siting applications other than collocations, see *In re Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Vari-*

ance, 24 FCC Rcd. 13,994, 13,995, ¶ 4 (2009) (*2009 Ruling*). The FCC found its interpretation necessary because, even after passage of the 1996 Act, "wireless service providers [had] often faced lengthy and unreasonable delays in the consideration of their facility siting applications, and * * * [these] delays [were] impeding the deployment of advanced and emergency services." *Id.* at 14,004-14,005, ¶ 32. In *City of Arlington* v. *FCC*, 133 S. Ct. 1863 (2013), the Court upheld the FCC's authority to promulgate that order interpreting Section 332(c)(7). *Id.* at 1874-1875.

In 2012, Congress further streamlined the local review process by providing that, "[n]otwithstanding" the review provisions contained in the 1996 Act, a "local government may not deny, and shall approve" requests for "modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 232 (47 U.S.C. 1455(a)) (2012 Act). That requirement facilitates the rapid approval of collocated antennae that do not require the construction of a new tower.[1]

---

[1] The FCC has issued a notice of proposed rulemaking that seeks comments on a number of terms in the 2012 Act and also on issues related to remedies. The remedial issues include whether the FCC should provide that an application is "deemed granted" by operation of law where a state or local government (1) fails to act on an application within a reasonable time, as required by 47 U.S.C. 332(c)(7)(B)(ii); or (2) fails to approve a collocation request covered by the 2012 Act, 47 U.S.C. 1455(a). See *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 28 FCC Rcd. 14,238, 14,288-14,289, 14,295-14,296, ¶¶ 137-140, 161-162 (2013).

3. Petitioner provides wireless communications services to consumers pursuant to a license from the FCC. Pet. App. 19a. In 2010, petitioner submitted an application to respondent for a permit to construct a new cell tower in the City of Roswell, Georgia. *Id.* at 3a. A local ordinance establishes guidelines for the location and construction of cell towers to "encourage the development of wireless communications while protecting the health, safety, and welfare of the public and maintaining the aesthetic integrity of the community." City of Roswell, Ga., Code of Ordinances (Ordinance) § 21.2.1 (2008); see J.A. 67.

Under the local ordinance, telecommunications companies that seek to construct cell towers must submit applications to the city. In ruling on those applications, the city considers (1) proximity to residential structures; (2) the proposed height of the tower; (3) the nature of uses on the adjacent property; (4) the surrounding topography; (5) the design of the facility; (6) proposed ingress and egress; (7) the availability of existing towers, structures, or alternative technology; (8) the need for a tower at the specific location; and (9) the city's master siting plan. Ordinance § 21.2.4(a); see J.A. 71-72. The ordinance further provides that towers placed in a residential area must be "alternative tower structures only" that are compatible with the natural setting, such as man-made trees, clock towers, bell steeples, or light poles. Ordinance § 21.2.5(a); see J.A. 75; see also J.A. 68.

This case arose out of petitioner's proposal to build a 108-foot tower on a 2.8-acre parcel of vacant property in a residential neighborhood. Pet. App. 3a, 19a-20a. The proposed tower would be designed to look much like a pine tree, though it would be approximate-

ly 20 to 25 feet taller than the trees surrounding it. *Id.* at 3a-4a.

On April 7, 2010, respondent's zoning department issued a memorandum concluding that petitioner's application met all ordinance requirements for the construction of a cell tower. Pet. App. 4a, 21a. The zoning department recommended that the City Council approve the application on the conditions that petitioner: (1) move the site of the cell tower to the west property line of the proposed site, so that the tower's largest visual impact would be on the adjacent homeowner who had agreed to lease the site to petitioner; (2) construct a fence around the tower; and (3) install 33 live evergreen trees around the tower. *Ibid.*

On April 12, 2010, the City Council held a public hearing to consider petitioner's application. Petitioner's representatives spoke in support of the application, and 13 residents spoke in opposition. Pet. App. 5a-6a. Comments from the public expressed concern that the tower would be unattractive, J.A. 129-130; that petitioner did not have many customers in the area, J.A. 138; that cell towers would soon be obsolete, J.A. 140-141, 143; that petitioner's service in the area was already quite good, J.A. 141-143; that the tower would harm property values, J.A. 145-152; and that living near a cell tower is unsafe for children, J.A. 153-154, 158.

After the public discussion and a rebuttal from petitioner, the mayor invited members of the City Council to give their views. Councilmember Nancy Diamond had recused herself because of her home's proximity to the proposed tower. J.A. 111. Councilmember Jerry Orlans complimented both sides on their presentations but stated no view on whether the per-

mit should be approved or denied. J.A. 173. Councilmember Kent Igleheart stated that "one of [his] key concerns is that other carriers apparently have sufficient coverage in this area," and that his "[b]ottom line" was that it is not "appropriate for residentially zoned properties to have * * * cell towers." J.A. 173-174. Councilmember Rich Dippolito stated that he "d[id] not believe [the tower] [wa]s compatible with the natural setting." J.A. 175-176. Councilmember Becky Wynn stated that she did not think the tower was "compatible with this area." J.A. 176.

Finally, Councilmember Betty Price, the liaison to the zoning department, made remarks and then made a motion. Dr. Price stated:

> I think based on our ordinance, Article 21.2.1, which was shown on the screen earlier, the purpose and intent of our cell-phone ordinance is to protect the residential areas from the adverse impact of telecommunication towers and to minimize the number of towers and the other adverse impacts being minimized.
>
> I think the conclusion from that first section would be that this is aesthetically incompatible and certainly in this area. It's other than I-1, C-3 offices or highway commercial area.
>
> Number two, the alternative tower that was proposed, in my opinion, it would not be compatible with the natural setting and surrounding structures also due to the height being created by the other trees.[2]

---

[2] The meeting's minutes reflect that Dr. Price stated that the tower would not be compatible with the natural setting "due to the

> And, number three, in our Ordinance 21.2.4, the proximity to residential structures, the nearness to other homes, and being within the residential zoning area and adjacent properties, therefore, the adverse effects to the enjoyment of those neighbors and potential loss of resale value among other potential parameters are difficult really to definitively assess.
>
> Therefore, overall, I move to deny the application for the wireless facility monopine tower on Lake Charles Drive.

J.A. 177. Councilmembers Orlans and Wynn seconded the motion, and the motion passed unanimously. J.A. 340.

On April 14, 2010, the director of the zoning department sent a letter informing petitioner that the application had been denied. Pet. App. 9a. The letter stated:

> Please be advised the City of Roswell Mayor and City Council denied the request from T-Mobile for a 108' mono-pine alternative tower structure during their April 12, 2010 hearing. The minutes from the aforementioned hearing may be obtained from the city clerk. Please contact Sue Creel or Betsy Branch at 770-641-3727.

J.A. 278; see Pet. App. 9a. Detailed minutes of the April 12, 2010, hearing were not approved by the City Council until a meeting held on May 10, 2010. Those detailed minutes (J.A. 321-341) replaced the City Council's "brief minutes" that had previously been

---

height being *greater* than the other trees." J.A. 340 (emphasis added).

adopted on April 19, 2010. See City of Roswell, *Meeting of Mayor and City Council Zoning* (May 10, 2010), https://roswell.legistar.com/MeetingDetail.aspx?ID=101786&GUID=63828B21-EB83-4485-B4EA-10 EE65CF48CD&Options=info|&Search= (5/10/10 Minutes). Additionally, petitioner had arranged for a court reporter to transcribe the City Council meeting, and the transcript was available on April 19, 2010. Pet. App. 16a; Pet. Br. 12 n.2.

On May 13, 2010, 29 days after respondent had informed petitioner that its application had been denied, petitioner filed a complaint in federal district court pursuant to Section 332(c)(7), alleging that the city's denial of petitioner's application was not supported by substantial evidence in the record and would have the effect of prohibiting the provision of personal wireless services, in violation of Section 332(c)(7)(B)(i)(II). Pet. App. 9a, 22a. Petitioner sought an injunction compelling the city to grant the requested permit. *Ibid.*

3. The district court granted summary judgment to petitioner. Pet. App. 19a-35a. The court concluded that respondent had violated Section 332(c)(7)(B)(iii) "by failing to issue a written decision stating the reasons for its denial of [petitioner's] application." *Id.* at 25a. The court explained that "[t]he 'in writing' requirement demands something more than a bare written statement of denial, because the judicial review contemplated by the [1996 Act] is frustrated if a reviewing court has no means to ascertain the rationale behind the decision." *Id.* at 27a. The court held that, to satisfy the "in writing" requirement, a written decision "must (1) be separate from the written record; (2) describe the reasons for the denial; and

(3) contain a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record that supports those reasons." *Id.* at 27a-28a (citation omitted).

Respondent argued that its letter of denial satisfied the "in writing" requirement because it referred to the minutes of the meeting and because a transcript of the meeting was available. Pet. App. 28a. In rejecting that contention, the district court observed that "[t]he minutes and transcript of the hearing reflect questions and comments by individual Council members, but nowhere is there a clear articulation of the rationale of the Council as a whole for denying the application." *Ibid.* The court explained that respondent had offered three justifications for the denial: the tower's aesthetic incompatibility with the neighborhood, its adverse impact on property values, and petitioner's failure to demonstrate a need for the tower. *Id.* at 30a. The court stated that "none of these reasons was cited by a majority of the council members as a basis for their vote to deny the application." *Ibid.*[3] The court concluded that, because it could not determine respondent's rationale for the decision to deny the application, it was unable to assess whether respondent's decision was supported by substantial evidence. *Id.* at 33a.

---

[3] In support of that statement, the district court noted that "[t]hree of the six council members (Dippolito, Wynn, Price) cited the tower's incompatibility with the neighborhood." Pet. App. 30a. The court counted Kay Love as one of "the six Council members who voted." *Id.* at 28a. As explained below, pp. 29-30, *infra*, Ms. Love is not a member of the City Council, and only five council members voted on the motion.

Because the district court concluded that respondent had violated the "in writing" requirement, it did not consider whether respondent's decision was supported by substantial evidence in the written record or whether the decision would effectively prohibit petitioner from providing wireless services, in violation of Section 332(c)(7)(B)(i)(II). Pet. App. 10a-11a, 25a. The court ordered respondent to grant petitioner's permit application. *Id.* at 34a-35a.

4. The court of appeals reversed. Pet. App. 1a-18a.

a. The court of appeals relied on its decision in *T-Mobile South, LLC* v. *City of Milton*, 728 F.3d 1274 (11th Cir. 2013), which was decided while petitioner's appeal in this case was pending. In *City of Milton*, the court stated that, because a local government's denial of a permit application must be supported by substantial evidence, "there must be reasons for the denial that can be gleaned from the denial itself or from the written record." *Id.* at 1283. The court held in *City of Milton* that, "to the extent that the decision must contain grounds or reasons or explanations, it is sufficient if those are contained in a different written document or documents that the applicant is given or has access to." *Id.* at 1285. The court explained that the written documents available to T-Mobile in *City of Milton* had included transcripts of the City Council hearings, denial letters, and detailed minutes of the hearings. *Id.* at 1285-1286. The court stated that "T-Mobile had access to all of those documents before its deadline for filing the lawsuit, and collectively they are enough to satisfy the writing requirement of [Section] 332(c)(7)(B)(iii)." *Id.* at 1286.

b. Relying on its decision in *City of Milton*, the court of appeals in this case concluded that respond-

ent had likewise satisfied the "in writing" requirement of Section 332(c)(7)(B)(iii). Pet. App. 16a. The court explained that respondent had provided petitioner with "a written letter clearly stating that the City Council had denied [petitioner's] request to build the proposed cell tower." *Id.* at 15a. The court further explained that the letter had informed petitioner that written minutes were available and had provided contact information for assistance in obtaining the minutes. *Ibid.*

The court of appeals concluded that the minutes of the relevant City Council meeting adequately explained the reasons for respondent's denial of petitioner's application. The court stated that those minutes "summarize the testimony of experts and concerned citizens, along with comments and questions from councilmembers"; recount the reasons given by Dr. Price in support of her motion; indicate that two additional council members seconded the motion; and state that the motion passed unanimously. Pet. App. 15a. The court further stated that petitioner "received, or at least could have received, an even more detailed written account of [respondent's] decision" to deny the application by obtaining a transcript of the hearing, which was available on April 19, 2010. *Id.* at 16a.

SUMMARY OF ARGUMENT

A. In the 1996 Act, Congress imposed specific limitations on the traditional authority of state and local governments to regulate the construction of cell towers. One such limitation is the requirement that any decision to deny permission to construct a cell tower "shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C.

332(c)(7)(B)(iii). The substantial-evidence standard is borrowed from administrative law, and this Court has long recognized that courts cannot conduct substantial-evidence review unless the agency explains its reasoning. *SEC* v. *Chenery Corp.*, 318 U.S. 80, 94 (1943). By authorizing substantial-evidence review of siting decisions made by state and local governments, Congress has imposed a corollary requirement that the relevant governmental body must provide a clear statement of its reasons for denying an application to construct a cell phone tower. Such a statement is also necessary for the reviewing court to determine whether the state or local government has denied an application for reasons that are prohibited by the 1996 Act.

B. Although state and local governments must give reasons for denying cell tower applications, those reasons need not be provided in the written denial itself, so long as they are clearly reflected somewhere in the written record. Local zoning boards often operate by discussing an issue at a hearing and then producing written minutes of the meeting. So long as those minutes or another document in the written record clearly sets forth the reasons for denial of the application, the 1996 Act should not be read to disrupt that traditional practice.

If a state or local government relies upon the written record to supply its statement of reasons, however, the written record must be available at substantially the same time as the decision denying the request. The contemporaneous availability of such documents is necessary not only to satisfy the "in writing" requirement, but also to enable the applicant to deter-

mine, within the 30-day time limit provided in the statute, whether to seek judicial review.

C. Respondent did not timely provide a written statement of reasons for its denial of petitioner's permit application. Although respondent sent petitioner a letter stating that the City Council had denied petitioner's application, that letter contained no reasons for the decision, and the meeting minutes referenced in the letter were not available to petitioner at substantially the same time. And while petitioner itself prepared a transcript that was available roughly one week after the hearing, an applicant's ability to reduce a local government's oral decision to writing does not transform the government's oral decision into a written one. The facts of this case, in which the transcript misidentifies a city employee as a voting council member, demonstrate why the local government must itself provide a transcript that it can review and approve before the transcript can be considered a written statement of reasons from the government.

If the detailed minutes or a transcript created by respondent had been made available to petitioner at substantially the same time as petitioner's application had been denied, either document would have sufficed as a statement of reasons for the denial. In their oral statements during the hearing, a majority of the council members clearly identified aesthetic incompatibility with the neighborhood as a reason why they were voting to deny petitioner's application.

In concluding that respondent had provided an adequate statement of reasons contained in the written record, the court of appeals cited the testimony of experts and concerned citizens offered during the City Council hearing. Only statements by council members

indicating that they were persuaded by such testimony, however, can satisfy the statutory requirement that the government itself provide a statement of reasons. The court also viewed the reasons given by Dr. Price before she moved to deny petitioner's application as attributable to the City Council as a whole, given that the motion passed unanimously. There is no clear indication in the record, however, whether the other council members agreed with Dr. Price's rationales, or instead simply supported her motion for their own previously-stated reasons.

ARGUMENT

47 U.S.C. 332(c)(7)(B)(iii) REQUIRES A STATE OR LOCAL GOVERNMENT TO PROVIDE A CLEAR STATEMENT OF REASONS FOR THE DENIAL OF A REQUEST TO CONSTRUCT A CELL TOWER, BUT THE STATEMENT OF REASONS DOES NOT NEED TO APPEAR IN THE WRITTEN DECISION DENYING THE REQUEST

A. State And Local Governments Must Provide A Clear Statement Of Reasons For Denying Permission To Construct A Cell Tower

1. a. In the 1996 Act, Congress "impose[d] specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of" facilities for wireless communication. *City of Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113, 115 (2005). One such limitation is the requirement that "[a]ny decision by a State or local government * * * to deny a request" for permission to construct a cell tower "shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. 332(c)(7)(B)(iii).

In imposing that requirement, Congress understood that it was incorporating "the traditional standard used for judicial review of agency actions." *Conference Report* 208. For example, under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, when a court reviews an agency decision that is "bound up with a record-based factual conclusion," the court "reviews an agency's reasoning to determine whether it is * * * supported by substantial evidence." *Dickinson* v. *Zurko*, 527 U.S. 150, 164 (1999) (internal quotation marks omitted); see 5 U.S.C. 706(2)(E) (a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be * * * unsupported by substantial evidence").

In order to evaluate whether a local government's decision is "supported by substantial evidence contained in [the] written record," 47 U.S.C. 332(c)(7)(B)(iii), a reviewing court must identify the reason or reasons why the application was denied. This Court has long recognized that "courts cannot exercise their duty of [substantial-evidence] review unless they are advised of the considerations underlying the action under review." *SEC* v. *Chenery Corp.*, 318 U.S. 80, 94 (1943). Thus, under established principles of administrative law, courts "will not uphold a discretionary agency decision where the agency has offered a justification in court different from what it provided in its opinion." *Morgan Stanley Capital Grp., Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 544 (2008) (citing *Chenery*, 318 U.S. at 94-95); see *Chenery*, 318 U.S. at 94 ("The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropri-

ate safeguard for the interests protected by the Act. There must be such a responsible finding.").

In this respect, by requiring that any denial of a request for permission to construct a cell tower be supported by substantial evidence, and by authorizing judicial review to determine whether that requirement has been satisfied, Congress has imposed requirements on state and local governments that are more stringent than the rational-basis standard ordinarily applied to legislative acts in the economic sphere. "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC* v. *Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). And "because [the Court] never require[s] a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id.* at 315; see *United States* v. *O'Brien*, 391 U.S. 367, 376-377, 384-385 (1968).

In conducting substantial-evidence review, by contrast, the court must confine itself to the rationales actually proffered by the agency as bases for its decision. By requiring that state and local government cell-tower siting decisions be supported by substantial evidence, and by authorizing judicial review of those decisions, Congress effectively imposed a corollary requirement that the local government state its reasons for denying permission to construct a cell tower, so that substantial-evidence review can be conducted.

Cf. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 487 (1951) ("It would be mischievous word-playing to find that the scope of [substantial-evidence] review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act.").

The statement of reasons must also be clear. "If * * * [substantial-evidence] review is to be undertaken at all, courts must at least be able to ascertain the basis of the zoning decision at issue; only then can they accurately assess the evidentiary support it finds in the written record." *MetroPCS, Inc.* v. *City & Cnty. of S.F.*, 400 F.3d 715, 722 (9th Cir. 2005). Accordingly, although courts may "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned," *Bowman Transp., Inc.* v. *Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974), a court may not "guess as to the agency's findings or reasons," *Greater Bos. Television Corp.* v. *FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970).

A statement of reasons also enables the reviewing court to determine whether the local government has denied the application for a reason that is prohibited by the 1996 Act. Under the statute, a State or locality may "not unreasonably discriminate among providers of functionally equivalent services," and may not prohibit construction of personal wireless service facilities "on the basis of the environmental effects of radio frequency emissions." 47 U.S.C. 332(c)(7)(B)(i)(I) and (iv). To enforce those statutory prohibitions, a reviewing court will often need to ascertain why the government denied permission to construct a cell tower.

b. For the foregoing reasons, the courts of appeals have generally held that Section 332(c)(7)(B)(iii) requires a state or local government to provide a state-

ment of reasons when denying a request for permission to construct a cell tower. See *Southwestern Bell Mobile Sys., Inc.* v. *Todd*, 244 F.3d 51, 60 (1st Cir. 2001) ("[P]ermitting local boards to issue written denials that give no reasons for a decision would frustrate meaningful judicial review."); *New Par* v. *City of Saginaw*, 301 F.3d 390, 395-396 (6th Cir. 2002) (same); *Helcher* v. *Dearborn Cnty.*, 595 F.3d 710, 719 (7th Cir. 2010) ("The 'in writing' requirement is met so long as the written decision contains a sufficient explanation of the reasons for the permit denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons."); *MetroPCS*, 400 F.3d at 722 (9th Cir.) ("[T]he purposes of the 'in writing' requirement would be ill-served by allowing local zoning authorities to issue [an] * * * opaque, unelaborated ruling."); but see *AT&T Wireless PCS, Inc.* v. *City Council of City of Va. Beach*, 155 F.3d 423, 429-430 (4th Cir. 1998) (explanation of decision not required).[4]

2. The 1996 Act contains a savings clause, which states that, "[e]xcept as provided in [Section 332(c)(7)], nothing in this chapter shall limit or affect the authority of a State or local government * * * over decisions regarding the placement,

---

[4] The Eleventh Circuit's position on this issue is somewhat unclear. That court has stated that the substantial-evidence requirement "necessarily means that there must be reasons for the denial that can be gleaned from * * * the written record." *T-Mobile S., LLC* v. *City of Milton*, 728 F.3d 1274, 1283 (2013). In the same opinion, however, the court also stated that, "*to the extent that the decision must contain grounds or reasons or explanations*, it is sufficient if those are contained in a different written document or documents." *Id.* at 1285 (emphasis added)); see *id.* at 1286 ("We need not consider whether something less than or different from all of th[e]se documents would be enough.").

construction, and modification of personal wireless service facilities." 47 U.S.C. 332(c)(7)(A). As explained above, however, the requirement of a written statement of reasons for a denial is inherent in Section 332(c)(7)(B)(iii)'s express requirement that any such denial "shall be in writing and supported by substantial evidence contained in a written record." Because the introductory language of the savings clause ("[e]xcept as provided in [Section 332(c)(7)]") recognizes that Section 332(c)(7) constrains the authority of state and local governments in this context, the savings clause does not prevent the Court from giving Section 332(c)(7)(B)(iii) its most natural reading.

To be sure, under the rational-basis principles described above, see p. 20, *supra*, local zoning boards *ordinarily* need not provide reasons for their decisions, and members of city councils will *ordinarily* operate free of any obligation to state reasons for voting in a particular way. The 1996 Act alters that ordinary scheme, however, by placing "specific limitations on the traditional authority of state and local governments" when those governments rule on cell-tower siting applications. *City of Rancho Palos Verdes*, 544 U.S. at 115. By requiring that decisions denying permission to build cell towers be in writing and supported by substantial evidence, Congress has mandated that, in this specific context, zoning authorities must use more formal procedures than they might otherwise use, including the provision of a clear statement of reasons for any denial.

B. The State Or Local Government's Statement Of Reasons Need Not Appear In The Written Decision Denying The Request, So Long As The Reasons For The Denial Are Included In A Contemporaneously Available Written Record

1. Petitioner endorses a rule (Pet. Br. 17-40) adopted by the First Circuit in *Todd*, *supra*, under which a state or local government must state its reasons for denying an application to construct a cell tower in a written "decision * * * to deny," 47 U.S.C. 332(c)(7)(B)(iii), that is separate from the written record. Under that rule, a statement of reasons cannot be incorporated from elsewhere in the written record. See *Todd*, 244 F.3d at 60; see also *MetroPCS*, 400 F.3d at 723; *New Par*, 301 F.3d at 395-396. The 1996 Act does not impose such an inflexible requirement.

Although Congress's provision for substantial-evidence review imposes a corollary requirement that the local government give reasons for denying an application to construct a cell tower, the statute neither explicitly nor implicitly requires that those reasons be provided in the written denial itself. Consistent with the savings clause, 47 U.S.C. 332(c)(7)(A), permitting the statement of reasons to be incorporated from the written record minimizes the intrusion on the normal processes of local governments, which are often composed of laypeople who are not accustomed to writing opinions setting forth the reasons for their actions. As reflected in decisions addressing this issue, local zoning boards or city councils often operate by discussing an issue during a hearing, and then providing "minutes" or a written summary of what transpired at the meeting, which are reviewed and

may be amended by the board. See, *e.g.*, *T-Mobile S., LLC* v. *City of Milton*, 728 F.3d 1274, 1278-1280 (11th Cir. 2013); *Helcher*, 595 F.3d at 715; *New Par*, 301 F.3d at 396. The 1996 Act should not be read to disturb that process, so long as the minutes or another document in the record clearly sets forth the reasons for the denial.

A strict requirement that the state or local government include a statement of reasons in a "decision * * * to deny" that is separate from the written record would often serve little purpose. 47 U.S.C. 332(c)(7)(B)(iii). So long as the written record provides a clear statement of the reasons for the denial of an application, a reviewing court can assess whether those reasons are supported by substantial evidence and permitted by the statute. That approach is consistent with the established administrative-law principle that an agency's "procedure of affirming and adopting wholesale the reasoning of the [administrative law judge] without further elaboration * * * ordinarily provides * * * sufficient explanation of the basis of the decision both to the parties and to reviewing courts." *United Food & Commercial Workers Int'l Union, AFL-CIO, Local 150-A* v. *NLRB*, 880 F.2d 1422, 1436 (D.C. Cir. 1989).

Nor would it "frustrate meaningful judicial review," *Todd*, 244 F.3d at 60, to allow local boards to rely on reasons given elsewhere in the record. To the contrary, in some cases the written record of a local government proceeding may provide a statement of reasons that is perfectly clear. In *AT&T Wireless PCS, Inc.* v. *Winston-Salem Zoning Board of Adjustment*, 172 F.3d 307 (4th Cir. 1999), for example, a local zoning ordinance required the board to make

four specific findings in order to approve a wireless tower, *id.* at 310-311. The zoning board voted on each finding separately, concluding that the proposal satisfied the first three criteria but not the fourth because "the tower would not be 'in harmony with the area in which it is to be located.'" *Id.* at 311. Minutes of such a meeting would satisfy the "in writing" requirement of Section 332(c)(7)(B)(iii) because a reviewing court could readily discern the zoning board's reasons for the decision. Similarly in *Helcher*, *supra*, a local board relied on the minutes themselves, once approved by the board, as the written denial. 595 F.3d at 716. Those minutes made clear that the council had voted in favor of a motion to deny the application "as a result of * * * noncompliance" with specific ordinances. *Id.* at 722. Because that writing "provide[d] an explanation that allow[ed the court], in combination with the written record, to determine if the decision [was] supported by substantial evidence," the Seventh Circuit concluded that the minutes were sufficient to satisfy the "in writing" requirement. *Ibid.*

To be sure, it may sometimes be difficult to discern the rationale of a legislative body from a written record, and the local government may be better served by including a separate statement containing its reasons. But in cases where a clear statement of reasons appears in the written record, those reasons need not be repeated in the separate decision denying the applicant's request.

2. If a local government relies upon the written record to supply its statement of reasons for denying permission to construct a cell tower, the written record containing the statement of reasons must be made

available at substantially the same time as the written decision denying the request.

If the local government gives clear reasons for the denial orally at a hearing, a transcript of the hearing, if timely provided by the local government, may serve as a written statement of reasons. In contrast, many local governments rely on minutes as the official written documentation of what occurred at a hearing, and meeting minutes often are not available until they are approved at the next board meeting. See, *e.g.*, *Helcher*, 595 F.3d at 715. Meeting minutes that are not available at substantially the same time as the written denial cannot serve as the written statement of reasons for the denial.

The 1996 Act requires state and local governments to act on wireless siting applications "within a reasonable period of time." 47 U.S.C. 332(c)(7)(B)(ii). The FCC has interpreted that requirement as generally allowing 90 days for collocation applications and 150 days for siting applications other than collocations. *2009 Ruling* 13,995, ¶ 4. So long as the meeting minutes are prepared and approved within the pertinent 90- or 150-day window, a local government can comply with all applicable requirements by deferring transmission of its written denial to the applicant until those minutes are available for contemporaneous transmission.

The contemporaneous availability of any documents from the written record that set forth the local government's reasoning is necessary not only to satisfy the "in writing" requirement, but also to give the applicant information necessary to determine whether judicial review is warranted. A person adversely affected by a final action of a state or local govern-

ment may bring suit "within 30 days after such action." 47 U.S.C. 332(c)(7)(B)(v). If the local government's reasons for the denial are not available at substantially the same time as the denial itself, the applicant cannot make an informed decision, within the time provided by the statute, whether to exercise its right to seek judicial review.

C. Respondent Did Not Provide A Contemporaneously Available Written Statement Of Reasons For Its Denial Of Petitioner's Permit Application

Under the standard set forth above, respondent violated the requirement that its decision to deny petitioner's request must be "in writing," 47 U.S.C. 332(c)(7)(B)(iii), because respondent did not timely provide a written statement of reasons for the denial.

1. On April 14, 2010, respondent sent petitioner a letter stating that the City Council had denied petitioner's application to construct a cell tower during a meeting held on April 12, 2010, and that "[t]he minutes from the aforementioned hearing [could] be obtained from the city clerk." Pet. App. 9a. Those minutes were not available, however, at substantially the same time as the decision denying petitioner's application. See *id.* at 9a, 16a. Instead, the City Council adopted "brief minutes" on April 19, 2010, and it did not approve the detailed minutes until May 10, 2010—four days before petitioner's time for seeking judicial review of respondent's decision would expire. See 5/10/10 Minutes. Because of the substantial gap between the written denial of petitioner's application and respondent's issuance of the detailed minutes, respondent did not provide a timely written statement of reasons for the denial.

2. The transcript that petitioner created by hiring a court reporter to transcribe the meeting also does not suffice as a written statement of reasons for respondent's denial of petitioner's application. One would not normally consider a city council to have issued a decision "in writing" when it does so orally, even if the council makes it possible for private parties to reduce the oral decision to written form.

The facts of this case illustrate why a hearing transcript created by the applicant, as distinct from minutes or a transcript that is created and approved by the governmental body itself, is not sufficient to constitute the local government's written decision. The transcript in this case contains at least one significant error that may have affected the district court's view of whether an adequate statement of reasons had been provided. The transcript identifies the City Administrator, Kay Love, as a seventh member of the City Council. See J.A. 110. Ms. Love, however, is not a member of the City Council. See J.A. 321 (minutes listing Ms. Love under category "Staff Present" as the City Administrator); City of Roswell, *City Council*, http://www.roswellgov.com/index/aspx?nid=74 (last visited July 9, 2014) (list of City Council members).

In concluding that the minutes and transcript of the April 12, 2010, hearing did not provide a "clear articulation of the rationale of the Council as a whole for denying the application," the district court stated that "[t]hree of the six council members (Dippolito, Wynn, Price) cited the tower's incompatibility with the neighborhood," but that "no[] * * * reason[] was cited by a majority of the council members." Pet. App. 28a, 30a. In making that observation, the court, presumably based on the transcript created by the

court reporter hired by petitioner, mistakenly counted Ms. Love as a sixth voting council member, after the recusal of Ms. Diamond. See *id.* at 28a ("Of the six Council members who voted, one (Kay Love) did not speak at all during the hearing."); see also *id.* at 7a n.2 (court of appeals stating that "Councilmember Kay Love was present at the hearing but did not comment"); compare J.A. 110 (transcript listing seven council members), with J.A. 321 (minutes listing six council members). It therefore appears that a majority of the five voting members of the City Council identified incompatibility with the neighborhood as a reason for denying petitioner's application. That error in the transcript highlights the importance of the local government's providing the applicant with a written statement of reasons for the denial, rather than relying on the ability of the applicant, who may be unfamiliar with the local government and its operations, to reduce an oral hearing to writing.[5]

3. If the detailed minutes or a transcript created and approved by respondent had been made available to petitioner at substantially the same time as the decision denying petitioner's application, either docu-

---

[5] Other, less significant errors reinforce the same point. For example, the transcript states that one of Dr. Price's reasons for moving to deny petitioner's application was the tower's incompatibility with the natural setting "due to the height being *created by* the other trees"—which could have been a reference to the zoning board's recommendation that petitioner's application be granted on the condition that petitioner install 33 evergreen trees around the proposed tower. J.A. 177 (emphasis added); see Pet. App. 4a, 21a. The minutes, on the other hand, reflect that Dr. Price was concerned with the tower's incompatibility with the natural setting "due to the height being *greater than* the other trees"—a complaint about the tower itself. J.A. 340 (emphasis added).

ment would have sufficed as a statement of reasons for the denial.

a. In the minutes (and in the transcript), four of the five voting council members stated their reasons for denying petitioner's application. Mr. Igleheart stated that "one of [his] key concerns is that other carriers apparently have sufficient coverage in this area," and that his "[b]ottom line" was that it is not "appropriate for residentially zoned properties to have * * * cell towers." J.A. 173-174. Mr. Dippolito stated that he "d[id] not believe [the tower] [wa]s compatible with the natural setting." J.A. 175-176. Ms. Wynn stated that she did not think the tower was "compatible with this area." J.A. 176. And Dr. Price stated that the tower was "aesthetically incompatible" with the area, was not compatible with the natural setting, and would harm the enjoyment and resale value of adjacent property. J.A. 177. Mr. Orlans provided no explanation for his vote, J.A. 173, and Ms. Diamond recused herself, J.A. 111.

A majority of the City Council (three of five voting members) thus identified aesthetic incompatibility with the surrounding area as a reason for voting to disapprove petitioner's application. If the minutes or transcript had been provided to petitioner at substantially the same time as the letter communicating the denial, Section 332(c)(7)(B)(iii)'s requirements would have been satisfied, even though the letter itself did not explain the City Council's rationale.[6]

---

[6] As explained in the text, in this case, a majority of the voting members of the relevant governing body agreed on one reason for denying petitioner's application. Although majority agreement on a single rationale is sufficient to satisfy the 1996 Act's "in writing" requirement, it is not clear that such agreement is necessary. If

b. The court of appeals concluded that the minutes and transcript adequately stated the reasons for respondent's denial of the permit application because they "summarize[d] the testimony of experts and concerned citizens, along with comments and questions from councilmembers," and because they recounted the reasons given by Dr. Price in support of her motion, which passed unanimously. Pet. App. 15a. Neither of those features of the minutes and transcript provides a clear statement of reasons for the City Council's decision to deny petitioner's application.

A summary of the testimony given by experts and concerned citizens at the hearing does not constitute a

---

each member of a council majority gives a different reason for voting to deny an application, but each reason is permissible and supported by substantial evidence in the record, that combination of rationales would likely be a proper basis for upholding the local government's decision. See *Corus Grp. PLC* v. *ITC*, 352 F.3d 1351, 1363 (Fed. Cir. 2003) (stating that, "in reviewing a[n] [International Trade] Commission determination, each of the various separate opinions making up the majority decision is subject to judicial scrutiny under the applicable statutory standard," and that "[i]f any opinion necessary to the majority * * * fails to satisfy the statutory standard, the decision must be set aside"); *United States Steel Grp.* v. *United States*, 96 F.3d 1352, 1361-1362 (Fed. Cir. 1996) (concluding that commissioners of the International Trade Commission were permitted to engage in different reasoning to reach the same conclusion); *NLRB* v. *American Can Co.*, 658 F.2d 746, 753 (10th Cir. 1981) (stating that there was "no lack of clarity" in the National Labor Relations Board's opinion, in which the Board members "made their views plain in three separate opinions," and that "there is no decision which holds that the lack of a majority rationale renders the Board's orders unenforceable"); but see *Chicago Local No. 458-3M* v. *NLRB*, 206 F.3d 22, 30 (D.C. Cir. 2000) (assuming that the court needed to identify "a majority-supported conclusion of law that the court c[ould] review").

statement of reasons for the denial unless the council members indicate that they are voting against the application based on those reasons. In this case, for example, there was testimony that property values would be harmed, J.A. 145-152, along with testimony that property values would not be harmed, J.A. 164-167, and petitioner's representatives gave a rebuttal to the opposition testimony offered during the hearing, J.A. 161-171. Only statements of the council or its members that they are voting to deny the application for one or more of the reasons given by experts or concerned citizens—and not the views expressed in that testimony by the citizens themselves—can constitute a statement of reasons for the council's decision.

The court of appeals was also wrong in suggesting, see Pet. App. 15a, that the reasons given by Dr. Price before she moved to deny petitioner's application can fairly be imputed to the entire council. Before she moved to deny petitioner's application, Dr. Price stated her view that the tower would be aesthetically incompatible with the area; that a monopine tower, "in [her] opinion," would not be compatible with the natural setting; and that the tower would negatively affect the enjoyment and resale values of nearby property. J.A. 177. Although the voting members then unanimously voted in favor of Dr. Price's motion to deny the application, Pet. App. 15a, there is no clear indication in the record that the other council members agreed with Dr. Price's reasoning.

A council member who disagreed with some or all of Dr. Price's stated reasons for making the motion, but who believed for other reasons that petitioner's application should be denied, would presumably have voted in favor of the motion itself. The council could

have endorsed Dr. Price's reasoning by incorporating her rationales into the decision denying petitioner's application, or into another contemporaneously-issued written document, but the council chose instead to rely on a written record that reflects individual statements made by each council member. In those circumstances, the views of Dr. Price cannot reliably be imputed to the entire group.

The facts of this case underscore that, although the 1996 Act does not *require* a zoning authority to provide a statement of reasons in the decision denying a request for permission to construct a cell tower, a local zoning board would be well-advised to provide such a statement. If in fact the other voting members agreed with Dr. Price's rationales, as well as with her bottom-line conclusion that petitioner's application should be denied, those rationales could easily have been incorporated into the denial letter itself or into an accompanying document that was unambiguously transmitted on behalf of the council as a body. In some cases, a statement of reasons as short as a single sentence could satisfy the 1996 Act's requirements. By providing such a statement, a state or local government that denies a cell-tower siting application can protect itself against the risk that its reasons for acting will be unclear to a reviewing court.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
MALCOLM L. STEWART
Deputy Solicitor General
ANN O'CONNELL
Assistant to the Solicitor General

JONATHAN B. SALLET
General Counsel
DAVID M. GOSSETT
Acting Deputy General Counsel
RICHARD K. WELCH
Deputy Associate General Counsel
MATTHEW J. DUNNE
Counsel
Federal Communications Commission

JULY 2014