

## **U.S. CODE SECTION 1983 NOT A REMEDY FOR TELECOMMUNICATIONS PLAINTIFFS**

In a case of great importance to municipalities, the U.S. Supreme Court has ruled that the federal Telecommunications Act (TCA) does not permit plaintiffs to sue local governments under 42 U.S.C. § 1983. *City of Rancho Palos Verdes v. Abrams*, 544 U.S. \_\_\_\_ (2005). The crux of the case is that the TCA provides a comprehensive scheme of judicial review, with appropriate remedies for plaintiffs. As such, Congress had no intention of granting telecommunications plaintiffs the additional right to sue local governments on a § 1983 basis.

In this case, Mark Abrams operated a series of telecommunications antennae on his residential property, which is located at a high elevation near the peak of the Rancho Palos Verdes Peninsula. Abrams only had a permit to operate one of the several antennae on his property, which resulted in the City of Rancho Palos Verdes taking enforcement action against him. Abrams was also required to apply for a retroactive conditional use permit for the remaining unpermitted towers.

Abrams' conditional use application was eventually denied on the basis that it "would perpetuate . . . adverse visual impacts" from Abrams' already-existing towers. Abrams appealed the decision, and eventually filed suit against the City, seeking injunctive relief under the TCA, and monetary damages and attorney's fees pursuant to 42 U.S.C. §§ 1983 and 1988. The suit claimed that the City's decision discriminated against the mobile relay services he sought to provide, in violation of the TCA. He also claimed that the decision was not supported by substantial evidence in the record, as required by the TCA.

The two competing statutes in this case have the power to provide various remedies for plaintiffs: In telecommunications cases, the TCA provides that local governments "shall not unreasonably discriminate among providers of functionally equivalent services" and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." When a permit application to site or modify a wireless facility is made, local governments are required to act on such a request "within a reasonable period of time." For a local government to validly deny a request to "place, construct, or modify" a wireless facility, the statute requires that such a decision be "in writing and supported by substantial evidence." The remedy available to persons aggrieved under the statute is injunctive relief upon appeal to the proper court. 47 U.S.C. § 332(c)(7)(B)(v). Section 1983, on the other hand, is a law that gives private citizens the power to sue a government entity which, acting on the basis of state law or municipal ordinance, violates that citizen's constitutional rights. Additionally, if the citizen-plaintiff prevails, section 1988 grants the right to collect attorney's fees in addition to damages.

Municipalities could bear a heavy burden if plaintiffs were permitted to bring § 1983 claims in TCA cases. *Rancho Palos Verdes* makes clear that such remedies are not available to telecommunications plaintiffs; the only remedy available is a court injunction requiring a municipality to comply with the TCA.

- *Brian Monaghan, Attorney, VLCT Municipal Assistance Center*