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RODNEY W. CARTER
MILWAUKEE:
414.978.5365
CHICAGO:
312.655.1500
RODNEY.CARTER@
HUSCHBLACKWELL.COM

JAMES C. REMINGTON
MILWAUKEE:
414.978.5527
JAKE.REMINGTON@
HUSCHBLACKWELL.COM

Husch Blackwell Wins on Appeal, Securing Broad Preemption Ruling and Permits for Tillman Infrastructure to Construct New AT&T Telecommunications Tower

A Husch Blackwell land use litigation team secured a victory on behalf of Tillman Infrastructure in the Wisconsin Court of Appeals. The Court of Appeals' decision affirmed previously-awarded permits for Tillman Infrastructure to construct a new telecommunications tower to house needed wireless communications infrastructure. Persuaded by Tillman's arguments, the Court held that a restrictive local ordinance was preempted by Wisconsin's Mobile Tower Siting Statute, enacted in 2013 to promote orderly deployment of telecommunications infrastructure.

Tillman Infrastructure, joined by AT&T, applied to the Columbia County (Wisconsin) Planning and Zoning Department for a permit to construct a new tower that would house telecommunications equipment owned and operated by AT&T, which sought to relocate its equipment for tower-leasing cost savings.

After the Department issued the permit to Tillman, a competing tower company (SBA Structures) and another party challenged the Department's decision—first before the County Board of Adjustment and then in court. Among other things, the challengers invoked a restrictive local ordinance prohibiting new towers within one-half mile of existing towers—regardless of topography, technological issues, network needs, or economic considerations.

In a decision recommended for publication, the Court of Appeals agreed with Tillman's position and rejected the challengers' arguments. More specifically,

the Court held that the state Mobile Tower Siting Statute, § 66.0404, preempted the separation requirement in the local ordinance. The decision sets binding statewide precedent and offers guidance on resolving conflicts between local ordinances and state statutes. Husch Blackwell expects the decision to benefit the telecom industry by ensuring consistent statewide regulations for the siting and construction of telecommunications towers, facilitating streamlined procedures, reducing conflicts from varying local ordinances, removing local barriers to tower placement, simplifying compliance, and reducing costs.

“We are pleased with the Court’s decision,” said Rod Carter, a Husch Blackwell partner who led the representation of Tillman Infrastructure. “This case sets binding precedent and gives guidance on local ordinances that conflict with state statutes.”

In addition to Carter, the Husch Blackwell team included Jake Remington, and Joseph Diedrich. Carter and Remington led Tillman’s efforts to secure the permit initially. Diedrich led the efforts in litigation, securing the favorable appellate outcome.