

11-1545 ARLINGTON, TX, ET AL. V. FCC, ET AL.

DECISION BELOW: 668 F.3d 229

LOWER COURT CASE NUMBER: 10-60039

QUESTION PRESENTED:

This case involves a challenge to the FCC's jurisdiction to implement §332(c)(7) of the Communications Act of 1934, titled "Preservation of Local Zoning Authority." Section 332(c)(7) imposes certain limitations on State and local zoning authority over the placement of wireless service facilities, but authorizes the FCC to address only one of these limitations; it states that no other provision "in this Act" may "limit" or "affect" State and local authority over wireless facilities placement. The FCC concluded that other provisions "in this Act" authorize it to adopt national zoning standards to implement §332(c)(7). The Fifth Circuit deferred to the FCC's jurisdictional determination applying *Chevron U. S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), but acknowledged that "[the Supreme Court has not yet conclusively resolved the question of whether *Chevron* applies in the context of an agency's determination of its own statutory jurisdiction, and the circuit courts of appeals have adopted different approaches to this issue."

The case presents two questions:

1. Whether, contrary to the decisions of at least two other circuits, and in light of this Court's guidance, a court should apply *Chevron* to review an agency's determination of its own jurisdiction; and
2. Whether the FCC may use its general authority under the Communications Act to limit or affect State and local zoning authority over the placement of personal wireless service facilities.

CONSOLIDATED WITH 11-1547 FOR ONE HOUR ORAL ARGUMENT. LIMITED TO QUESTION 1 PRESENTED BY THE PETITION IN NO. 11-1545.
CERT. GRANTED 10/5/2012