

Supreme Court Confirms the FCC's Ability to Interpret the Scope of its Own Authority and Allows the Antenna Siting Application "Shot Clock" To Remain in Effect

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In a much anticipated decision with potentially widespread ramifications across all federal agencies charged with implementing federal statutes, the United States Supreme Court has permitted the so-called "shot clock" rules of the Federal Communications Commission ("FCC" or "Commission") applicable to wireless siting applications to remain in effect. By a 5-4 margin on May 20, 2013, in [City of Arlington, Texas v. Federal Communications Commission](#), the High Court affirmed that when the FCC interprets an ambiguous provision of a statute that concerns the scope of the FCC's regulatory authority, that interpretation is entitled to the same Chevron deference as its interpretation of any other ambiguous statutory provision unambiguously within the agency's regulatory bailiwick. Under *Chevron*, if a federal "statute is silent or ambiguous with respect to the specific issue [before an agency], the question for the [reviewing] court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If the agency's construction of the ambiguous provision is permissible, then the agency's interpretation is entitled to judicial deference.

Justice Antonin Scalia delivered the opinion of the Court joined by four other justices. Justice Breyer concurred with the Court's opinion in part and concurred in the judgment. Chief Justice Roberts delivered a dissenting opinion joined by two other justices. The differences among the three opinions are rather fine. Distinguishing among the opinions arguably requires almost as much "mental acrobatics," to use the majority's term, as the majority sought to avoid stating that no dichotomy exists, in terms of the deference to which an agency is entitled, between interpretations regarding the scope of an agency's authority under a statute it administers and interpretations applying the jurisdiction the agency clearly has. [Read our full summary of the opinion here.](#)

The impact of the Court's decision in *City of Arlington* will go far beyond the bounds of the FCC's declaratory ruling adopting the antenna siting "shot clock." The decision is not easily limited to the facts in the case before the Court and will likely affect court review of federal agency actions generally, not just those of the FCC. For example, the pending appeals of the [FCC's 2010 Net Neutrality Order which we have previously covered in this blog](#) involve questions of the Commission's interpretation of its own authority. *City of Arlington* may also have the effect of emboldening agencies to make decisions that "push the jurisdictional envelope" under the statutes

they administer. In almost any situation involving the scope of the Commission's authority, where the Act is at least potentially ambiguous as to the FCC's authority to adopt the regulations in question, parties will need to take heed of *City of Arlington*.