

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JUDGMENT IN A CIVIL CASE

NEW CINGULAR WIRELESS PCS, LLC

vs.

Plaintiff

**CASE NUMBER: 3:11-CV-510
(ATB)**

**TOWN OF FENTON and ZONING
BOARD OF APPEALS OF FENTON**

Defendants

Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that plaintiff's motion for judgment on the pleadings is GRANTED.

IT IS DECLARED that the defendants, in denying plaintiff's zoning use variance, violated the Telecommunications Act of 1996 ("TCA"), 42 U.S.C., §§ 332(c)(7)(B)(iii); TCA, 42 U.S.C., § 332(c)(7)(B)(i)(II); and N.Y.C.P.L.R., Article 78.

IT IS FURTHER ORDERED AND ADJUDGED that the Zoning Board of Appeal's denial be VACATED; the defendants promptly approve plaintiff's zoning use variance and grant and issue any and all other permits as may be required by plaintiff to place, construct and operate and allow plaintiff to construct and operate the proposed facility at the proposed site; and it is further ORDERED that the court will retain jurisdiction until such time as all required permits have been issued to plaintiff.

All of the above pursuant to the Memorandum-Decision and Order of the Honorable Magistrate Judge Andrew T. Baxter, dated the 4th day of January, 2012.

DATED: January 4, 2012



Lawrence A. Baum
Clerk of Court

s/ Melissa Ennis

Melissa Ennis, Deputy Clerk