

Tower Siting and Wireless Facilities Access

Wiley represents commercial mobile service providers in disputes and negotiations with local governments, zoning boards, state universities, and other governmental and regulatory entities involved in the placement and regulation of the wireless antennae, base stations, and ancillary equipment. Of particular note, Wiley has assisted carriers in successfully challenging unlawful preferences for Distributed Antenna Systems (DAS) and other "alternative technologies." For example, as lead counsel on behalf of a group of wireless carriers in this matter, including Verizon Wireless, Wiley secured a major victory in a facial challenge brought by Verizon Wireless and other major telecommunications carriers to a local ordinance that legislated a preference for alternate technologies, including DAS and regulated radiofrequency (RF) interference. In *New York SMSA L.P. d/b/a Verizon Wireless v. Town of Clarkstown* (S.D.N.Y.), the Southern District of New York found that the ordinance was preempted by federal law under a field preemption theory.

Some local commissions, governments, and regulatory entities seek to unlawfully deny, restrict, or impose conditions on permits needed to offer wireless service; recently, this has led a number of these entities to adopt exclusive agreements or preferential requirements for the use of DAS and "alternative technologies." These conditions—and the complex patchwork of regulatory processes carriers must navigate to fulfill them—can undermine exclusive federal control over radio transmissions and the technology used to send and receive them, thwart the pro-competitive purpose of the Communications Act, impede technological advancement, and may be preempted by Sections 253 and 332 of the Communications Act. Moreover, exclusive arrangements, even between private entities and telecommunications carriers, can run afoul of Section 201 of the Communications Act and be prohibited.

Wiley vigorously defends the rights of wireless carriers to a fair, transparent regulatory process as well as access requirements that comply with federal law and do not erect unnecessary barriers to entry. As such, the firm is involved in dispute resolution and litigation in state and federal court to vindicate those rights. Our combination of national reach, significant Federal Communications Commission (FCC) experience, and an ability to handle litigation from inception through the appellate stage makes us uniquely qualified to deal with such disputes.