

WRF Secures Precedent Setting Judgment on Rights-of-Way Fees for Telecom Client

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Washington, DC - In a significant victory for all telecommunications companies that use public rights-of-way, the United States Court of Appeals for the First Circuit has handed down a decision affirming a grant of summary judgment in favor of Wiley Rein & Fielding client Puerto Rico Telephone Company. The case, *PRT v. Municipality of Guayanilla*, No. 05-1400 (1st Cir. June 7, 2006), involved a federal court challenge to a municipality's 5% gross revenue fee under Section 253 of the Communications Act. The case constitutes the first Circuit level precedent defining the limits on municipal authority to condition access to public rights-of-way on the payment of "gross revenue fees" under 47 U.S.C. § 253, a part of the Communications Act enacted by the Telecommunications Act of 1996.

The First Circuit opinion contains a strong endorsement of the principle that any rights-of-way fees imposed by a municipality must bear a direct relationship to a telecommunications carrier's use of those rights-of-way and that a municipality's costs of maintaining the rights-of-way are "an essential part of the equation." The unanimous decision by the First Circuit panel also adopts the important principle that once a municipal fee is shown to be a potential barrier to providing service under Section 253(a), the burden of proof shifts to the municipality to show that the fee meets the definition of "fair and reasonable compensation" as specified in Section 253(c) of the federal law. The First Circuit also rejected the looser "totality of the circumstances" test for assessing municipal rights-of-way fees. This test, which is strongly opposed by the carriers, was initially adopted by the 6th Circuit and had been used to uphold gross revenue under Section 253(c).

Related Professionals

Joshua S. Turner
Partner
202.719.4807
jturner@wiley.law
Eve Klindera Reed
Partner
202.719.7404
ereed@wiley.law

Practice Areas

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TMT Appellate
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Video Programming and Cable Franchising

The WRF team consisted of partners Andrew G. McBride, Helgi C. Walker and John E. Barry, Of Counsel Alcides Ortiz and associates Joshua S. Turner, Eve Klindera Reed and Rebekah P. Goodheart, who worked with in-house counsel at PRT and attorneys at the San Juan law firm of Garcia & Fernandez to bring the case to a successful conclusion. This group also had filed the original motion for summary judgment on behalf of PRT, which was granted by the Federal District Court for the District of Puerto Rico in January 2005.

[View the January 2005 release.](#)