

Wiley Rein Attorneys Secure Major Victory for Wireless Carriers Preempting Local Government Preference for Particular Technologies

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A team led by Wiley Rein communications attorneys Andrew G. McBride and Joshua S. Turner scored a major victory in a facial challenge brought by Verizon Wireless and other major telecommunications carriers. In *New York SMSA L.P. d/b/a Verizon Wireless v. Town of Clarkstown*, the Southern District of New York found that a local ordinance that legislated a preference for alternate technologies, including Distributed Antenna Systems, and regulated radio frequency interference was preempted by federal law under a field preemption theory. The court held that the remainder of the ordinance was not severable, and sent the Town back to the drawing board with a hard limit of six months to redraft the entire ordinance—any additional time, in the words of the court, would “constitute an impermissible total ban” on wireless service.

Citing the Ninth Circuit’s statement that the Telecommunications Act “represents a congressional judgment that local zoning decisions harmless to the FCC’s greater regulatory scheme—and only those proven to be harmless—should be allowed to stand,” the Court held that “the Town’s legislated preference for alternate technologies interferes with the Telecommunications Act’s pervasive scheme.” The court held that the Town’s ordinance must be “redrafted in its entirety” because the “entire sorting scheme” set out in the ordinance otherwise “would be rendered meaningless” given the “pervasive preference for alternate technologies” which cannot stand.

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Practice Areas

Telecom, Media & Technology
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This victory is significant because of the court's unequivocal ruling on field preemption and because several jurisdictions across the country have been attempting to enact similar preferences for alternate technologies, including Distributed Antenna Systems. Wiley Rein served as lead counsel on behalf a group of wireless carriers in this matter, including Verizon Wireless.