

# Wiley Rein Vindicates Important First Amendment Victory for Wireless Industry

February 28, 2013

Wiley Rein secured another significant First Amendment victory for the Wireless Industry when the U.S. Court of Appeals for the Ninth Circuit on February 27, 2013 denied a Petition for Rehearing En Banc filed by the City of San Francisco. The Petition for Rehearing sought to reverse the Ninth Circuit's September 2012 decision prohibiting the City of San Francisco from requiring that retailers warn consumers about unsubstantiated dangers from radio frequency (RF) energy emitted by cell phones.

Wiley Rein partners Andrew G. McBride, Joshua S. Turner and Megan L. Brown serve as lead counsel for CTIA - The Wireless Association in the industry's challenge to the City's cell phone warning requirements. Mr. McBride successfully argued *CTIA v. City and County of San Francisco* before the Appeals Court, defending the First Amendment rights of manufacturers and retailers across the country. Mr. McBride and his team led the opposition to the City's Petition for Rehearing.

The City-mandated point-of-sale disclosures at issue contained warnings about cell phone safety and "recommendations" from the City about how consumers could reduce their exposure to RF energy. CTIA prevailed in its argument that the City's warning regime constitutes government-compelled speech in violation of retailers' First Amendment rights. The Ninth Circuit panel held that the Federal Communications Commission "has established limits of radiofrequency energy exposure, within which it has concluded using cell phones is safe," and that San Francisco had conceded "that there is no evidence of cancer caused by cell phones." The court accordingly found that the City's materials contained "more than just facts" and were "misleading and controversial."

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The City sought Rehearing En Banc, arguing that the Ninth Circuit's decision imperiled a variety of unrelated disclosure and warning regimes. CTIA opposed the Petition, arguing that the decision focused on the nature of the City's dictated message, which the Panel correctly found "could prove to be interpreted by consumers as expressing San Francisco's opinion that using cell phones is dangerous." As a result, CTIA argued that the panel properly found that the City's warnings were unjustified under the First Amendment, which protects private parties from being forced to promote government-crafted or preferred messages.

Rehearing was unanimously denied, with no judge on the Ninth Circuit calling for a vote on the City's petition for review by the full court.

To view the Ninth Circuit's February 27 order, [click here](#).