

WRF Secures Major Victory in Important Preemption Litigation

October 15, 2004

On October 14, 2004, on behalf of Verizon Wireless and a coalition of national and regional wireless carriers, Wiley Rein & Fielding secured a Stay Pending Appeal from the United States Court of Appeals for the Eighth Circuit in a case of first impression concerning the scope of federal preemption under Section 332 of the federal Telecommunications Act. This Stay prevents Minnesota's unlawful attempt at rate regulation from taking effect, protecting Minnesota and national wireless consumers from great inconvenience and confusion, as well as securing the federal rights of wireless carriers to be free from rate regulation.

On May 29, 2004, the state of Minnesota enacted a statute, styled as a Wireless Consumer Protection law, that directly regulates critical aspects of the wireless industry, including the rates that wireless carriers charge their customers. Equally troubling, the law is so vague and ambiguous that carriers cannot readily determine whether, or to what extent, they must modify their marketing, customer-service and business practices and operations to even attempt compliance with the statute's demands, which will have ramifications across the nation.

WRF litigated this case in the District of Minnesota, seeking declaratory and injunctive relief to prevent this encroachment on wireless carriers' federal rights and avoid substantial and unrecoverable economic and competitive losses that would flow from the law's enforcement. On June 29, 2004, WRF secured a Temporary Restraining Order. On September 3, 2004, however, the District Court substantially reversed itself, ordering the dissolution of most of the TRO. Because of the importance of these novel preemption issues,

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WRF is appealing that decision to the Eighth Circuit, and thus immediately sought and received a stay of the TRO's dissolution from the District Court, which was stayed until October 15, 2004. Facing imminent and substantial economic losses, and threats to customer goodwill and competitive position, WRF sought a full Stay Pending Appeal from the Eighth Circuit, which was granted on October 14, 2004. The Eighth Circuit's Stay allows the parties to litigate the appeal free from the threat of substantial disruption to wireless service, and prevents disruptions to service and contractual confusion for Minnesota's two million wireless subscribers. Appellants' merits brief is due November 2.

The case is *Cellco Partnership et al. v. Mike Hatch*, (Eighth Circuit No. 04-3198, District Court No. 04-2981).

- [View Preliminary Injunction Opinion](#)
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