

# Wiley Helps Persuade Ninth Circuit to Uphold FCC Orders Speeding Broadband and 5G Infrastructure Deployment

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## RULING IS A MAJOR VICTORY FOR WIRELESS AND WIRELINE INDUSTRY CLIENTS

August 12, 2020

Washington, DC – Wiley helped persuade the U.S. Court of Appeals for the Ninth Circuit to largely uphold three orders the Federal Communications Commission (FCC) adopted in 2018 to speed the nationwide deployment of broadband and next-generation (5G) wireless infrastructure.

The ruling, issued today by a three-judge Ninth Circuit panel in *City of Portland v. United States*, is a major victory for the communications industry. The FCC orders provide critically important relief to the wireless and wireline industries from onerous regulations that have increased costs and delayed deployment of hundreds of thousands of 5G “small-cell” facilities in communities throughout the United States.

In rejecting electric industry and local government petitioners’ constitutional and administrative challenges to the FCC orders, the court adopted arguments advanced by attorneys in Wiley’s Telecom, Media & Technology (TMT) and Appellate practices on behalf of intervenors CTIA–The Wireless Association and USTelecom–The Broadband Association.

“[T]he FCC is interpreting and enforcing the 1996 Telecommunications Act, adopted by Congress pursuant to its delegated authority under the Commerce Clause, to ensure that municipalities are not charging small cell providers unreasonable fees,” the court said in its opinion. The court similarly held the FCC’s ILEC “rate reform rule, like the

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overlapping, preexisting violations, and self-help rules, is an appropriate exercise of the FCC’s regulatory authority under the Telecommunications Act.”

Partner Joshua S. Turner, co-chair of Wiley’s Communications Enforcement & Compliance Practice, argued before the Ninth Circuit on behalf of CTIA. Partner and Appellate Practice chair Claire J. Evans argued the case on behalf of USTelecom and Verizon. Other key members of the Wiley team include partners Megan L. Brown, Christopher S. Huther – chair of Wiley’s Pole Attachment and Infrastructure Deployment Practice – and Ari Meltzer; special counsel Frank Scaduto; and associates Sara M. Baxenberg, Jeremy J. Broggi, and Boyd Garriott.

Today’s Ninth Circuit decision is a “massive victory for U.S. leadership in 5G, our nation’s economy, and American consumers,” FCC Chairman Ajit Pai said in a statement. “The court rightly affirmed the FCC’s efforts to ensure that infrastructure deployment critical to 5G ... is not impeded by exorbitant fees imposed by state and local governments, undue delays in local permitting, and unreasonable barriers to pole access.”

The court’s opinion can be found [here](#).

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