

Wiley Rein Secures Victory for the State of Tennessee Over FCC

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Washington, DC – In an important victory for state sovereignty over federal administrative action, the U.S. Court of Appeals for the Sixth Circuit today struck down an order by the Federal Communications Commission (FCC) that preempted state laws in Tennessee and North Carolina restricting municipalities' offering of municipal broadband services. The FCC adopted the controversial order in a 3-2 party-line vote in March 2015, relying on Section 706 of the Telecommunications Act of 1996 for its purported preemption authority. In particular, the FCC claimed that Section 706 served as a mandate for the agency to remove barriers to broadband service, including state-imposed geographic limitations on municipal broadband services.

The State of Tennessee, represented by Wiley Rein as lead counsel, filed a petition challenging the order. The State of Tennessee argued that the FCC's order infringed upon an inviolable aspect of state sovereignty, exceeded the agency's statutory authority, and contradicted controlling Supreme Court precedent. The State of North Carolina also challenged the FCC's preemption of its law, and several *amici* and intervenors participated in the case.

In striking down the order, the Sixth Circuit agreed with the State of Tennessee that preemption of the state regimes was unlawful under binding Supreme Court precedent, which requires a "clear statement" from Congress of intent to preemption "when federal-government preemption results in 'interposing federal authority between a State

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and its municipal subdivisions, which our precedents teach, "are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion." (quoting *Nixon v. Missouri Municipal League*, 541 U.S. 125, 140 (2004)).

The FCC order, the court reasoned, "essentially serves to re-allocate decision-making power between the states and their municipalities." Preempting the state laws at issue thus requires "at least a clear statement in the authorizing legislation." Looking to Section 706 of the Telecommunications Act of 1996 to support the FCC's vast claim to preemptive power, the Sixth Circuit concluded that the "statute falls far short of such a clear statement." Accordingly, the panel reversed the FCC's order.

The State of Tennessee was represented by Wiley Rein's nationally recognized Telecom, Media & Technology litigation practice in this challenge to the FCC's action. Wiley Rein partner Joshua S. Turner argued the case, and with him on brief were partner Megan L. Brown and associate Meredith G. Singer. Associate Christen B'anca Glenn also helped support this important litigation.

The case has received extensive news coverage, including in *The Washington Post* and *The Wall Street Journal*. The team also was named a "Legal Lion" in *Law360's* Weekly Verdict Column.

To read the decision, please [click here](#).