

Federal Preemption

Wiley has comprehensive knowledge of all aspects of federal preemption, from field to conflict preemption, as well as preemption by agency regulation. We have litigated preemption issues both offensively and defensively, from administrative proceedings through appeal.

Our litigators have broad expertise in wireless preemption under the Communications Act. Examples of such representation include:

- **Radiofrequency (RF) Cases:** Wiley has been leading the national defense of class actions based on RF emissions, working with a team of litigation counsel from other prominent firms. Wiley has helped to secure major victories on behalf of wireless carriers and equipment manufacturers in consolidated cases involving allegations of injury caused by RF emissions from wireless devices and systems. *Murray v. Motorola, Inc.* (D.C. Super. Ct.); *Farina v. Nokia* (E.D. Pa.).
- **Tower Siting:** As lead counsel on behalf of a group of wireless carriers, including Verizon Wireless, Wiley secured a major victory in a facial challenge brought by Verizon Wireless and other major telecommunications carriers to a local ordinance that legislated a preference for alternate technologies, including Distributed Antenna Systems (DAS) and regulated RF interference. In *New York SMSA L.P. d/b/a Verizon Wireless v. Town of Clarkstown* (S.D.N.Y.), the Southern District of New York found that the ordinance was preempted by federal law under a field preemption theory.
- **Consumer Protection:** Wiley successfully litigated, on behalf of the wireless industry, the first challenge to a state consumer protection law under 47 U.S.C. § 332, securing a landmark decision invalidating, under Section 332 of the Communications Act, a state law targeting wireless contracts. *Cellco Partnership d/b/a Verizon Wireless v. Hatch* (8th Cir.).
- **Early Termination Fees:** Wiley has provided national litigation and regulatory advice to defend state litigation against wireless companies based on early termination fees. This representation has involved litigation strategy and advocacy before the Federal Communications Commission (FCC).
- **Truth-in-Billing:** Wiley was lead counsel on behalf of the wireless industry before the Eleventh Circuit, on judicial review of the FCC's preemption of state line-item regulation, *National Association of State Utility Consumer Advocates v. FCC and Vermont Public Service Board v. FCC* (11th Cir.), and has represented the wireless industry in courts of appeals nationwide urging federal preemption of state regulation of line items, *Peck v. Cingular Wireless LLC* (9th Cir.).

We have advocated the federal preemption of state and local regulation and other action that interferes with the provision of communication services in violation of Section 253 of the Communications Act. In particular, we have litigated against municipalities that have overstepped the limits on state and local authority proscribed by Section 253, and we have participated in cases nationwide on behalf of *amici*.