

WRF Secures Major Victory in Important Preemption Litigation

December 12, 2005

Washington, DC-On December 9, 2005, on behalf of Verizon Wireless and a coalition of national and regional wireless carriers, Wiley Rein & Fielding prevailed before the United States Court of Appeals for the Eighth Circuit, which vacated the judgment of the district court and entered a permanent injunction preventing enforcement of an unlawful state law, in a case of critical importance to the wireless industry. This case raised issues of first impression in the Eighth Circuit, and addresses critical legal issues for the wireless industry.

In its decision, the three-judge panel of the Eighth Circuit unanimously agreed with the wireless industry's position that a Minnesota consumer protection statute enacted in the summer of 2004 was preempted because it constituted unlawful rate regulation under Section 332(c) of the Communications Act. By permanently enjoining this law from taking effect, the Eighth Circuit has protected Minnesota and national wireless consumers from great inconvenience and confusion, vindicated Congress' intent that wireless carriers are to be free from state rate regulation, and affirmed the propriety of standard contracting practices common throughout the wireless industry.

Minnesota's statute, styled as a Wireless Consumer Protection law, directly regulated critical aspects of wireless contracts, including the rates that wireless carriers charge their customers. The Eighth Circuit agreed that the statute's central provision effectively barred carriers from exercising their contractual right to make changes to wireless plans during the course of a contract by requiring a 60-day waiting period from the time of notice to the customer of the proposed change. The Court concluded that this requirement locked in wireless rates for periods of 60 days in violation of federal law.

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The Court's analysis provides the latest judicial interpretation of critical elements of the Communications Act and the scope of federal preemption, over which there has been much litigation. This case provides a clear vindication of the standard contracts and practices used throughout the wireless industry. It also sends a warning to states considering similar regulation to weaken or invalidate lawful, mutually beneficial contract terms, that they should respect the limitations Congress put on their power over wireless rates and the practices and contract terms that directly affect those rates.

The case is *Cellco Partnership et al. v. Mike Hatch*, No. 04-3198 (8th Cir. Dec. 9, 2005).