

WRF Team Secures Victory in D.C. Circuit with Respect to Deemed Lawful Status of Vitelco Tariff

April 13, 2006

Washington, DC—In a significant victory for local exchange carriers, Wiley Rein & Fielding partner Helgi C. Walker successfully secured reversal of an order of the Federal Communications Commission (FCC) that found client Virgin Islands Telephone Corporation (Vitelco) liable for damages based on a tariff filing for access charges. The court found that the FCC's reconsideration of its suspension of the tariff, which the Commission claimed permanently removed "deemed lawful" status from the tariff, restored the tariff to its previous legal status.

The order in question held Vitelco liable to AT&T for damages resulting from Vitelco's overearnings during the period covered by a 1997 tariff. The FCC found that the tariff had lost its "deemed lawful" status—and thus could give rise to damages—based on its earlier suspension of the tariff, despite the fact that the FCC had later reconsidered its decision to suspend. The court stated in its decision that "there is nothing to suggest that the Reconsideration Order had anything other than the effect of vacating the earlier order," and that "the Commission's determination that Vitelco was liable for retroactive refunds . . . was therefore arbitrary and capricious." The court accordingly vacated the order in part and remanded for further proceedings.

USTelecom Vice President, Law and General Counsel Jim Olson hailed the decision as "a significant victory for all companies that file tariffs at the FCC."

Related Professionals

Eve Klindera Reed
Partner
202.719.7404
ereed@wiley.law

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Ms. Walker led a team consisting of WRF associates Eve Klindera Reed and Kelion N. Kasler.

View the full D.C. Circuit opinion.