

PRESS RELEASE

# Wiley Rein & Fielding Client Wins First Amendment and Commercial Speech Victory

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Washington, DC—Wiley Rein & Fielding LLP obtained a significant First Amendment and commercial speech decision in favor of Verizon Northwest Inc. this week. In *Verizon Northwest Inc. v. Showalter*, the federal district court in Seattle permanently enjoined the Washington Utilities and Transportation Commission from enforcing its new rules restricting telecommunications' carriers use of "customer proprietary network information" (CPNI), the customer-specific information that carriers acquire in the process of providing services. WRF had previously obtained a preliminary injunction from the same court preventing enforcement of the new CPNI rules.

The federal court granted Verizon's motion for summary judgment and denied the Washington Commission's cross-motion for summary judgment, on the grounds that the new CPNI rules would restrict telecommunications carriers' rights to communicate with their customers regarding products and services in which the customers may have a particular interest. The court rejected the Washington Commission's arguments that the federal court should abstain while the Washington Commission further clarified its rules, that the First Amendment rights of carriers were not implicated at all, and that their new CPNI rules could withstand First Amendment scrutiny.

In ruling for Verizon, the court specifically held that the new Washington rules, which would have required carriers to obtain "opt-in" or affirmative approval *before* they could engage in tailored communications with their customers, did not directly advance any privacy interest. Similarly, the court determined that the new rules were not narrowly tailored as the First Amendment requires because there were obviously less speech restrictive alternatives, including the FCC's "opt-out" regime, that the Washington Commission could have

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adopted instead.

Andrew G. McBride, the WRF Communications, Litigation, and Appellate partner representing Verizon, explained that the ruling represents a significant victory as Washington was the first state to enact new CPNI rules that are more speech restrictive than the federal CPNI rules adopted by the FCC in 2002. WRF associates Kathryn L. Comerford, Joshua Turner and Rebekah Goodheart assisted on the case.