

# Wiley Rein Succeeds in Enforcing Arbitration Clauses as Court Halts Antitrust Class Action Against Wireless Industry

September 18, 2013

Wiley Rein secured an important victory for the wireless industry Monday by prevailing in a petition to compel arbitration in federal district court in the Southern District of New York in lieu of a class action. The class action complaint was filed against major wireless carriers, CTIA-The Wireless Association and a group of message aggregators. The complaint alleged that the industry's system for assigning common short codes (the five- or six-digit numbers used for bulk commercial text messages) violated the Sherman Act. U.S. District Judge Alison J. Nathan granted the wireless carrier defendants' motion to stay the court proceedings and send the case, *In re A2P SMS Litigation*, No. 12 CV 2656 (AJN), to individual arbitration.

Andrew G. McBride, who chairs Wiley Rein's Communications Litigation Practice and co-chairs its Appellate Practice, argued the motion on behalf of all the wireless carrier defendants. He represents Verizon Wireless in the case and was assisted in the case by Wiley Rein attorneys Thomas R. McCarthy and Michael Connolly.

The case concerns the common short code (CSC) system that was established in 2003 by national wireless carriers and CTIA, a trade association. CSCs are five- or six-digit numbers that are shared or "common" to all of the carriers. Under the CSC system, businesses or other organizations are able to lease CSCs for the purpose of sending text messages in bulk, from computers and across multiple carriers' networks, to individuals' wireless devices, and individual consumers are able to communicate with those businesses and organizations by sending text messages to the five- or six-digit CSC.

## Practice Areas

- Class Actions and Complex Multi-Jurisdiction Litigation
- Enforcement of Arbitration Clauses
- Litigation
- Telecom, Media & Technology
- TMT Appellate
- Wireless

To obtain a CSC lease, a business must first submit a Registrant Sublicense (RS) Agreement through the Common Short Code Administration website, which is operated by NeuStar, Inc. through a license with CTIA. A consolidated complaint filed by three CSC lessees in 2012 alleges that the wireless industry conspired to create the CSC system in order to inflate the prices of A2P text messaging.

The wireless carrier defendants successfully argued that the CSC lessee-plaintiffs' claims are subject to individual arbitration on the basis of the arbitration agreement included in the RS Agreement. The court agreed, finding that the dispute falls within the scope of an arbitration clause the plaintiffs had accepted as part of an agreement for leasing short codes. The court rejected the CSC lessee-plaintiffs' argument that their claims were not arbitrable because none of the wireless carrier defendants were signatories to the RS Agreement. The court concluded that the wireless carriers were entitled to enforce the arbitration agreement under principles of equitable estoppel because plaintiffs' claims fall within the broad scope of the arbitration agreement and because plaintiffs' relationship with the wireless carrier defendants is "sufficiently close to justify estopping [plaintiffs] from denying their contractual obligation ... to arbitrate disputes of this kind."