

Wiley Helps Secure FCC Preemption Win for Fiber Optic Networks

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Washington, DC – On behalf of Bluebird Network, Wiley helped persuade the Federal Communications Commission (FCC) to preempt the imposition, by three Missouri cities, of a legal framework that would have inhibited the company's deployment of a robust communications infrastructure to facilitate access to health care, employment, and social connectivity.

The framework established by the cities of Cameron, Maryville, and St. Joseph, Missouri would have effectively required Bluebird to pay duplicative rights-of-way fees on its fiber optic network, based solely on another company's passive ownership of the facilities Bluebird used to provide telecommunications services. Those requirements violate Section 253 of the Communications Act, the FCC said yesterday in a Declaratory Ruling.

According to the ruling, the Commission has long held, under Section 253, "that a state or local legal requirement that 'materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment' effectively prohibits the provision of telecommunications services, thereby contravening Congress' intent to promote the deployment of lower cost, higher quality services to consumers by opening telecommunications markets to competition."

The FCC agreed to preempt the framework after finding that the requirements would allow the three cities to effectively double-charge Bluebird for a single use of the public rights-of-way simply because another entity owns the network. An increase in fees of that magnitude constitutes a violation of Section 253, the FCC held. The Commission also concluded that the fees were not saved by Section

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253(c), because fees based solely on ownership do not constitute rights of way management, and because they were assessed in a discriminatory manner.

The Wiley attorneys representing Bluebird are partners Joshua S. Turner and Bennett L. Ross and associate Jodi A. Goldberg.

To read the FCC ruling, please [click here](#).