

Wiley Successfully Challenges Fees Hindering 5G Deployment in Rochester, NY

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Wiley Rein LLP won a federal lawsuit challenging exorbitant fees imposed by the City of Rochester, NY on 5G small-cell and fiber optic facilities in public rights of way (Case No. 6:20-cv-06866). The fees threaten the rollout of broadband infrastructure in the city, and as a result they violate the federal Communications Act and the Federal Communications Commission's implementing regulations. The favorable rulings secured by Wiley in this case are critical to the wireless and broadband industries' ability to quickly deploy new high-speed services to U.S. consumers – and the principles in this case could have a multibillion-dollar impact in jurisdictions across the country.

The litigation stemmed from a 2019 telecommunications code adopted by the City of Rochester which imposed exorbitant fees on 5G small-cell and fiber optic facilities in public rights of way. The fees threatened the rollout of broadband infrastructure in the city and, Wiley argued, violated the federal Communications Act and the FCC's implementing regulations. The suit was one of three related challenges to the city's fees brought by the telecommunications industry.

The case was resolved in February 2024 after the U.S. District Court for the Western District of New York ruled that the city's fees were not a "reasonable approximation of its costs" and therefore violated federal law, having the effect of "prohibiting the provision of telecommunications services and personal wireless services."

"We are pleased that the court recognized that the fees imposed by the City of Rochester were unlawful because they weren't a reasonable approximation of the city's costs," said Wiley partner

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Joshua S. Turner. "These rulings will allow telecommunications companies to provide more consumers with access to vital high-speed services."

Turner and Wiley partner Sara M. Baxenberg represented a telecommunications service provider in the case.