Sixth Circuit Reverses FCC's Decision to Preempt State Broadband Barriers

1 message

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Baller Stokes & Lide, Counsel to Wilson, NC, and Chattanooga, TN, Statement on Sixth Circuit Decision Reversing the Federal Communications Commission's (FCC) Order to Remove North Carolina and Tennessee Barriers to Community Broadband Initiatives

On July 24, 2014, The Electric Power Board of Chattanooga, Tennessee, and the City of Wilson, North Carolina, petitioned the Federal Communications Commission to remove certain state laws that impose barriers to broadband investment and competition. The FCC granted the petitions on February 26, 2015. The States of Tennessee and North Carolina sought review of the FCC's order. Today, the Sixth Circuit Court of Appeals reversed the FCC's order.

Washington (August 10, 2016) – As lead federal counsel to Wilson and EPB in their preemption petition before the FCC, we are obviously disappointed by today's outcome. The Court based its decision on a single point of law – that the FCC lacks statutory to preempt state barriers to public broadband initiatives.

Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, instructs the FCC to "encourage the deployment [of broadband] on a reasonable and timely basis…to all Americans" and to take "immediate action" by "removing barriers to infrastructure investment and by promoting competition" in the broadband market. Although the FCC found the broadband was not being deployed on a reasonable and timely basis in Tennessee and North Carolina and that the laws of these states discouraged broadband deployment, investment, and competition, the Court found that

Section 706 did not with sufficient clarity authorize the FCC to preempt the state laws in question.

Notably, the Court did not dispute the FCC's factual findings, based on a massive public record, that the laws of Tennessee and North Carolina at issue are anticompetitive and contrary to the public interest. In fact, the Court stated that it did not question "the public benefits that the FCC identifies in permitting municipalities to expand Gigabit Internet coverage."

"This is a very disappointing decision, but support for local Internet choice is growing rapidly across America, and the fight to preserve, protect, and advance community decision-making will go on," said Jim Baller.

The Sixth Circuit decision is available HERE.

See also, statements from Chairman Wheeler, Commissioner Clyburn, Commissioner O'Reilly, and Commissioner Pai

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