

CARLTON FIELDS

ATTORNEYS AT LAW

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SUPREME COURT RULES THAT TELECOM ACT DOES NOT PREEMPT STATE STATUTES BARRING POLITICAL SUBDIVISIONS FROM PROVIDING TELECOM SERVICES

Nixon v. Missouri Municipal League, 124 S.Ct. 1555 (Mar. 24, 2004)

The U.S. Supreme Court, in an 8-1 decision, has ruled that the Telecommunications Act, 47 U.S.C. § 253, does not preempt a state statute that forbids political subdivisions from providing or offering telecommunications services.

Section 253(a) of the Telecom Act states that, “no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Missouri and seven other states have statutes that limit the ability of municipalities to provide telecommunications services. A challenge to Missouri’s statute was before the Supreme Court.

The Supreme Court held that, absent an “unmistakably clear” statement that Congress intended to interpose federal authority between a state and its subdivisions, the Telecom Act would be interpreted to preserve a state’s “chosen disposition of its own power.” The Court also pointed out that interpreting the “any entity” language in Section 253(a) to include political subdivisions of a state would produce “strange and indeterminate results,” which Congress did not likely intend.

Comment: As a result of the Court’s ruling, other states may seek to enact statutes that forbid political subdivisions from providing telecommunications services.