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California Court Invalidates City Ordinance Regulating Telecom Carriers ***Qwest Communications Corp. v. City of Berkeley*, 2003 WL 1857631** **(N.D. Cal. April 7, 2003)**

A United States District Court in California enjoined enforcement of ordinances enacted by the City of Berkeley that imposed registration and permit requirements on telecommunications carriers seeking to install telecommunications facilities in public rights-of-way. The court held that the ordinances were preempted by the Federal Telecommunications Act, because they went beyond lawful management of public rights-of-way and created substantial barriers to entry.

Section 253 of the Federal Telecommunications Act forbids state and local governments from passing laws or regulations that may prohibit or have the effect of prohibiting the provision of telecommunications service. However, the Act contains a safe harbor provision that allows state and local governments to manage the public rights-of-way.

The City of Berkeley denied a request by Qwest Communications to use its rights of way to build infrastructure for upgraded telecommunications capacity. The City enacted an ordinance, which was subsequently amended, to regulate telecommunications carriers by imposing registration and permit requirements. Qwest filed suit, challenging the ordinance. The court held that both the ordinance and the amendment were preempted by the Federal Telecommunications Act. The court stated, "[A] regulatory structure that allows a city to bar a telecommunications provider from operating in the city 'prohibits or has the effect of prohibiting' the company's ability to provide telecommunications services."

Comments: Other similar decisions from around the country have held that the federal preemption is "virtually absolute" and the role of state and local government is narrowly circumscribed with regard to right-of-way ordinances. Thomas Dye, of Carlton Fields' Telecommunications Litigation Practice Group, represented BellSouth in some of the leading Eleventh Circuit cases on this issue: *BellSouth Telecomm., Inc. v. City of Coral Springs*, 42 F.Supp.2d 1304 (S.D. Fla. 1999), *rev'd in part, Bellsouth Telecomm., Inc. v. Town of Palm Beach*, 252 F.3d 1169 (11th Cir. 2001).

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