IMLA CONFERENCE IN LAS VEGAS
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TELECOM, IN DEPTH, PART I

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8th Circuit U.S. Court of Appeals No. 07-2884, 07-2885, City of Jefferson and City of Springfield v. Cingular Wireless, LLC; Southwestern Bell Wireless, LLC; Nextel West Corporation; Alltel Communications, Inc., July 3, 2008.

Petition before the Court was simply whether providing cell phone service in the City of Springfield makes the company subject to the local tax ordinance on businesses who engage in "supplying telephones, and telecommunications and telephonic services" within the City. The District Court granted the Cities request for declaratory judgment and held that the Defendants, supplied telephonic service within Springfield and therefore were subject to the tax. The issues in this case were similar to the issues in the Missouri class action cases that were being decided in the Circuit Court of St. Louis County, Missouri. The Court specifically found the following:

- Missouri exclusive tax remedy doctrine did not bar Springfield from bringing a declaratory judgment action on the issue of whether Springfield's license tax on suppliers of telephone and telephonic service applies to cell phone companies.

- Springfield was not required to exhaust administrative remedies before bringing its declaratory judgment action.

- Tax Injunction Act provision barring declaratory judgment actions did not apply to Springfield's declaratory judgment action.

- Springfield's license tax applies to cell phone companies because a cell phone is a "telephone" and the companies supply "telephonic services."

- The ordinary definition of "telephone" includes cell phones and a cell phone company is a "telephone company." Even if it is assumed that Springfield's tax ordinance is ambiguous and extrinsic evidence is looked at in interpreting it, the legislative intent was to tax "telephonic services," thereby making the ordinance applicable to cell phone services.

- Legislative intent of recodification of Springfield's ordinance imposing a license tax on businesses supplying telephone and telephonic service within the city to include "telecommunications" was to clarify the scope of the tax ordinance, making it clear that cell phone services are telephonic services subject to the tax, and not to expand the scope of the ordinance.

The foregoing was previously presented at the Missouri Municipal Attorneys Association Summer Seminar on July 19, 2008 by John Mulligan, Jr.