
WilmerHale Wins Significant Antitrust Victory for Qwest Corporation in Ninth Circuit

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On Friday, September 24, WilmerHale won an important victory for our client Qwest Corporation in the United States Court of Appeals for the Ninth Circuit in *MetroNet Services Corp. v. Qwest Corp.* The decision is one of the first by a court of appeals applying the Supreme Court's decision in *Verizon v. Law Offices of Curtis V. Trinko*. The decision follows *Trinko* in placing important limits on the use of Section 2 of the Sherman Act to require an alleged monopolist to assist rivals.

MetroNet is a reseller of Centrex services to small business customers in the Seattle-Tacoma area. In 2000, MetroNet filed an antitrust action against Qwest, the incumbent local exchange operator, alleging that Qwest had monopolized the Seattle-Tacoma market for Centrex services for small business customers by changing the terms of a quantity discount to require that customers have 21 or more lines at a single location to qualify for the discount, thus eliminating the arbitrage opportunity on which resellers like MetroNet had based their business model. Prior to *Trinko*, the Ninth Circuit had reversed a grant of summary judgment in Qwest's favor, holding that Qwest's conduct violated the essential facilities doctrine and could be found to constitute exclusionary conduct under Section 2 of the Sherman Act.

On behalf of Qwest, WilmerHale petitioned the Supreme Court for certiorari, asking that the Court hold the petition pending its decision in *Trinko* and, if it reversed the Second Circuit in *Trinko*, that it vacate the Ninth Circuit decision in *MetroNet* and remand for reconsideration in light of *Trinko*. Following its decision in *Trinko*, the Supreme Court granted our petition, vacated the prior Ninth Circuit decision and remanded it for further consideration as we had requested.

On September 24, the Ninth Circuit issued its decision on remand. Reversing its prior decision, the court affirmed summary judgment in favor of Qwest. It held, first, that MetroNet could not prove an essential facilities claim, because the Telecommunications Act of 1996 provides the means for MetroNet to obtain access to Qwest's local exchange network. It held, second, that Qwest's changes in pricing in order to eliminate arbitrage did not constitute exclusionary conduct under the Supreme Court's refusal-to-deal precedents as interpreted by *Trinko* because Qwest had not refused to deal with MetroNet on the same terms as it did with its direct retail customers. And, third, the court held that the contours of Section 2 should not be expanded to make it unlawful for a

monopolist to seek to eliminate arbitrage, finding that the costs of antitrust intervention were likely to outweigh the benefits where a state utility commission had authority to regulate Qwest's pricing structure and had exercised that authority.

The decision is an important victory not only for Qwest, but for the entire telecommunications industry. It makes clear that after *Trinko* allegedly dominant firms have no general duty under the antitrust laws to assist their rivals in competing against them. [William Kolasky](#) and Jonathan Nuechterlein led the WilmerHale team working on the case. We were co-counsel in the case with Perkins Coie, which put together the factual record on which the grant of summary judgment was based.