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Tennessee v. Federal Communications Commission

United States Court of Appeals, Sixth Circuit - August 10, 2016 - F.3d - 2016 WL 4205905

States of Tennessee and North Carolina petitioned for review of an order of the Federal Communications Commission (FCC) which purported to preempt state statutory provisions that either forbade or put onerous restrictions on expansion of broadband service networks by municipal telecommunications providers.

The Court of Appeals held that:

- Clear statement rule applied in determining whether state statutes that either forbid or restricted expansion of broadband service networks by municipal telecommunications providers were preempted by Telecommunications Act, and
- Telecommunications Act provision relating to promotion of competition in broadband marketplace did not preempt state statute regulating expansion of municipal broadband service networks.

Clear statement rule applied in determining whether state statutes that either forbid or restricted expansion of broadband service networks by municipal telecommunications providers were preempted by Telecommunications Act provision relating to promotion of competition in broadband marketplace, as federal preemption of state law threatened to trench on the states' arrangements for conducting their own governments.

Telecommunications Act provision relating to promotion of competition in broadband marketplace did not contain a clear statement authorizing preemption of Tennessee and North Carolina statutes that either forbid or put onerous restrictions on expansion of broadband service networks by municipal telecommunications providers, and, thus provision did not authorize such preemption. Telecommunications Act provision's directive to remove barriers and promote competition could not be read to limit a state's ability to trump a municipality's exercise of discretion otherwise permitted by Federal Communications Commission (FCC) regulations.