



Thomas M. Johnson, Jr.

Partner



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Tom has over 15 years' experience in private practice and public service at the federal and state levels representing clients in high-stakes appellate and regulatory litigation matters. Prior to joining Wiley, Tom was the General Counsel at the Federal Communications Commission (FCC), where he served as the agency's chief legal officer and briefed dozens of appeals – personally arguing two – in the federal courts of appeals in constitutional and administrative law challenges to the FCC's orders. Tom managed a team of over 70 attorneys and staff and provided consultation and advice on a wide range of practice areas relating to the FCC's work, including administrative law, appellate and trial litigation, bankruptcy, ethics, fiscal law, fraud, labor and employment, and public records requests. He has spent his career advising clients on all stages of federal agency rulemaking, adjudication, and litigation, in fields ranging from communications to environmental law to securities to labor and employment. He frequently speaks and writes on legal issues and his articles have appeared in the *Wall Street Journal*, *Washington Post*, *National Review*, *Forbes*, and *Newark Star-Ledger*.

Representative Matters

- Oversaw the legal review of the FCC's 2017 Restoring Internet Freedom Order, which repealed the prior Administration's "net neutrality" rules and restored a light-touch regulatory framework to broadband internet access service. Successfully defended this framework at oral argument before the U.S. Court of Appeals for the D.C. Circuit, in a victory that the President called a "great win for the future and speed of the internet."

Practice Areas

Issues and Appeals
Litigation
Telecom, Media & Technology

Credentials

Education

J.D., *magna cum laude*, Harvard Law School

B.A., *magna cum laude*, Georgetown University

Law Journals

Deputy Editor-in-Chief, *Harvard Journal of Law and Public Policy*

Clerkships

Law Clerk for the Honorable Jerry E. Smith, U.S. Court of Appeals for the Fifth Circuit (2005-2006)

Bar and Court Memberships

District of Columbia Bar
New York Bar
Supreme Court of the United States
U.S. Courts of Appeals for the Fifth and District of Columbia Circuits
U.S. District Court for the District of Columbia and Eastern District of Michigan

- Persuaded the U.S. Supreme Court to review the FCC's deregulation of outdated media ownership rules, resulting in a "unanimous knockdown" (*Wall Street Journal*) of a Third Circuit decision vacating those rules, thus allowing for pro-competitive media combinations that have been held up in court for decades.
- Successfully defended the FCC's national security and supply chain order, which established a process to exclude insecure equipment from American communications networks, at oral argument before the U.S. Court of Appeals for the Fifth Circuit, resulting in a unanimous decision rejecting constitutional and statutory arguments raised by Huawei.
- Developed and drafted the legal analysis for a series of three FCC orders that streamlined state and local approvals for wireless infrastructure deployment to promote the more rapid rollout of 5G services, and oversaw the successful defense of the substantial majority of these orders in litigation before the U.S. Courts of Appeals for the Ninth and D.C. Circuits.
- Filed two FCC General Counsel statements of interest that successfully persuaded two federal district courts that the City of Berkeley's "right-to-know" ordinance for cell-phone retailers, and alleged class-action tort claims against Apple, were preempted by FCC rules on radiofrequency emission (RF) limits.
- Formulated the legal framework for the FCC's unique plan to clear portions of critical "C-band" spectrum, occupied by incumbent satellite companies, for use in emerging 5G services.
- Oversaw the FCC's legal review of the merger of the third- and fourth-largest mobile telecom providers. Collaborated with the U.S. Department of Justice to file a joint *amicus* brief successfully urging a federal court to reject an antitrust challenge by state attorneys general to the merger.
- Successfully defended the constitutionality of West Virginia's "right to work" law in briefs and at oral argument before the Supreme Court of Appeals of West Virginia.
- Developed litigation strategy and drafted briefs as part of team bringing challenges under the Administrative Procedure Act to U.S. Environmental Protection Agency rules under the Clean Air Act and Clean Water Act, including the Clean Power Plan, New Source Rule, Methane Rule, and Waters of the United States rule.
- Managed the drafting of briefs in a successful administrative law challenge to the U.S. Securities and Exchange Commission's "extractive industries" rule, adopted as part of Dodd-Frank, which the agency estimated would impose billions of dollars in costs on covered issuers.
- Second-chaired oral argument in U.S. Supreme Court on behalf of New York municipality in case that resulted in landmark opinion holding that client's practice of starting legislative sessions with an invocation does not violate the Establishment Clause.

Professional Experience

- General Counsel, Federal Communications Commission (2017-2021)
- Deputy Solicitor General, Office of the West Virginia Attorney General (2016-2017)

- Private Practice (2006-2016)

Affiliations

- Executive Committee, Administrative Law Practice Group, The Federalist Society
- Retail Litigation Center
- Co-Founder and Board Member, St. Thomas More Guild for the Diocese of Arlington, Catholic Bar Association

Recognitions

- Recognized by *The Legal 500 US* in Telecom and Broadcast: Transactional (2022)