



Edward T. Depp

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Tip's practice focuses on complex corporate, administrative law and litigation matters involving utilities, life science companies, financial institutions and other regulated industries.

His primary area of practice has been focused on the utility arena, where he has accumulated a thorough knowledge of utility law as it relates to the telecommunications, energy, electric, water, gas, and sewage industries. Understanding that each industry carries a unique culture and language, Tip has utilized his depth and breadth of experience to quickly help his clients resolve issues that arise from time to time with regulators, other utilities, and customers. As former in-house counsel for a large national competitive local exchange carrier, he is attuned to the business concerns driving the legal process and represents clients zealously from that perspective. Tip has extensively represented rural cooperatives and a wide variety of other clients in commercial and regulatory disputes before state and federal courts, state public utility commissions, and other administrative and trade bodies. He has a particular interest in helping clients implement advanced technology and innovation in the utility industries.

Tip also assists clients in the life sciences and healthcare industries with various local clinical research, regulatory and corporate matters. He has a concrete knowledge of the various regulatory, financial, intellectual property, and related business and legal issues that impact drug/device development, and he enjoys counseling these companies as they develop their business and/or position themselves for the acquisition process.

He has assisted large financial institutions with various regulatory compliance and litigation matters. He understands the industry, and he has also been successful in resolving acrimonious estate litigation, as well as complex patent litigation. Tip has also advised clients regarding safety and soundness audits, as well as complex regulatory questions involving Regulation Z and the Truth in Lending Act.

Services

- Litigation
- Antitrust & Trade Regulation
- Public Utilities Industry

- Banking & Financial Services
- Cybersecurity & Data Privacy
- Franchise & Distribution
- Corporate & Transactional
- Regulatory Compliance

Education

- University of Minnesota Law School (J.D., *cum laude*, 2000)
- Tulane University (B.A., *magna cum laude*, 1996)
 - Glendy Burke Medal of Honor in Speech

Bar Admissions

- Kentucky

Court Admissions

- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky

Affiliations/Memberships

- American Bar Association
- Kentucky Bar Association
- Louisville Bar Association
- Kentucky Public Service Commission, Rules of Procedure Advisory Group
- Electric Cooperative Bar Association (ECBA)

Distinctions

- *Best Lawyers*[®]
 - Utilities Law (2022-2024)
 - Communications Law (2023-2024)
 - Energy Law (2023-2024)
- Kentucky *Rising Stars*[®] (2013 - 2015)

Experience

Represented a Telecommunication Construction Company with Strategic Asset Purchase from Wireless Internet Service Provider

We represented the acquirer, our client's newly formed subsidiary White Cloud Communications US, LLC, in its asset purchase from a locally-owned and operated wireless Internet service provider. This deal was another step toward the client's strategic vision to expand broadband cable service in rural areas. Dinsmore spearheaded the transaction, ensuring our client and its affiliates were represented and protected during the deal and beyond closing. Our deal team navigated through every aspect of the transaction, including working with local regulatory bodies to gain transaction approvals.

Represented a Telecommunication Construction Company with Strategic Asset Purchase of Company Operating Broadband Cable Networks in Kentucky

Our client's newly formed subsidiaries, White Cloud Communications US, LLC and White Cloud OZ, LLC, purchased the assets of a local company operating broadband cable networks throughout Kentucky. This deal enables our client to continue its strategic expansion throughout the greater Midwest and sets up the company for continued future success. Dinsmore worked together with seller's counsel through every step of the transaction, which included several regulatory issues with the Federal Communications Commission and the development, formation, and implementation of a unique ownership structure enabling the company to utilize the benefits of a Qualified Opportunity Fund.

Pre-Bid Due Diligence

Represented a bidder in connection with the pre-bid due diligence related to a major energy utility acquisition involving Kentucky, Tennessee, and Indiana legal issues. The ultimate value of the deal for the successful bidder was reported to be approximately \$9.5 billion. The work involved all aspects of public utility regulation and environmental law, as well as strategizing likely communications with major political stakeholders throughout all levels of state and local government. Notable areas of representation in this matter included issues involving:

- Regulatory approvals for change in ownership or control of utilities;
- Regulatory approvals for financing applications;
- Regulatory approvals for obtaining certificate of public convenience and necessity;
- Renewable energy contract review;
- PSC and OSHA complaints;
- Utility supply and vendor contracts;
- Utility tariffs;
- Litigation;
- Regulatory review of rate-affecting issues;
- Fuel Adjustment Clauses;
- Pollution Control Bond change in control;
- Cost recovery of capital expenditures for pollution control equipment and renewable energy projects;
- Environmental surcharges;
- Projecting future impact of greenhouse gas regulations;
- Title V air permits;
- Environmental contamination and compliance issues associated with ongoing operations;
- Disposal of coal combustion by-products;
- General environmental regulatory compliance;

- State and local taxation;
- Real estate and operating leases;
- Franchises, rights-of-way, permitting, planning and zoning, and eminent domain;
- Retail operations review;
- Wholesale electric supply agreements;
- Gas pipeline regulatory issues; and
- Legislative, policy, and strategic planning advice.

Merger of Multi-state Non-profit Electrical Cooperatives

Dinsmore served as counsel with respect to the merger of two non-profit electrical cooperatives providing electrical services to more than 40,000 members in Kentucky and Tennessee and provided assistance with obtaining associated regulatory approvals.

Sale of Telecommunication Company Assets

Dinsmore acted as lead counsel representing a closely-held, Kentucky-based telecommunications company in multiple multi-million dollar asset sales to various publicly-traded, international telecommunication companies.

Advice regarding Establishment and Operation of Natural Gas utility (Gas/Water/Sewage)

We are currently assisting a large, municipal water and sewage utility in Kentucky with respect to its plans to enter the natural gas business in order to spur economic development in the region. We are advising the client on all aspects on the statutory and regulatory issues implicated by this new venture, as well as the related issues implicated by its status as a municipal instrumentality. In addition to helping the client navigate these issues, we have also been retained to assist with negotiations regarding gas purchase agreements, transmission and distribution issues, eminent domain issues, and all aspects of the project – “from A to Z” - that will help them secure the supply of gas and deliver it to customers.

Rate Cases

We represented a Generation & Transmission (G&T) electric utility in two rate cases. Our representation commenced while the utility was in difficult financial straits, and through our efforts, we helped the utility secure sufficient revenues to ensure its continued viability and the continued provision of safe, reliable, and reasonable service to its customers. Throughout this representation, we interfaced heavily with the staff at the Kentucky Public Service Commission and other stakeholders in the litigation.

Access Reform (Telecommunications)

We represent 13 of Kentucky’s 15 local rural exchange carriers (RLECs) in connection with the Kentucky Public Service Commission’s ongoing administrative case regarding potential reforms to intrastate access charges, high cost support, and universal service. This representation is ongoing.

Certificate of Public Convenience and Necessity in Contested Case Involving Construction of Additional Water Supply Facilities

We represented our client, a large water company, in a heavily-contested case before the Kentucky Public Service Commission regarding a different large water utility’s efforts to build a new water treatment plant. By presenting a reliable, cost-efficient alternative to the other water utility’s proposal, our representation was successful in paving the way for fruitful discussions between our client and other new large potential customers.

Certified Territory Dispute (Electric)

We represented a large aluminum smelter before the Public Utilities Commission of Ohio in a territorial dispute with a large, multi-state electric utility and a small electric cooperative, both located in Ohio. Our client had previously been removed from the certified service area of a large, multi-state electric utility and into that of a smaller electric cooperative that would permit the client to purchase its electricity on the open market. When market conditions made the open-market purchase of electricity infeasible, we represented the client in a successful effort – spanning political and union lines – to rejoin the service territory of the large utility. As a result of these efforts, the client was able to resume its operations.

Dispute Over Jurisdictionality of Mobile to Landline Calls

When the Brandenburg Telephone Company needed Sprint to pay its access charges, it turned to Dinsmore. Sprint had been withholding millions of dollars in access charges billed to it pursuant to Brandenburg Telephone Company's filed and approved tariffs. Sprint claimed that although the tariff language jurisdictionalized access traffic as inter/intrastate on the basis of a juxtaposition of the called and calling party numbers, the advent of wireless telecommunications required jurisdictionalization based on the location of the wireless switch handling the traffic. Before the Franklin Circuit Court, Dinsmore successfully argued that the plain language and historical application of Brandenburg Telephone Company's tariff prevailed. As the Franklin Circuit Court agreed in reversing the Commission, any other outcome would have resulted in an impermissible violation of Brandenburg Telephone Company's constitutional due process rights. As a result of the reversal, the client will be able to recover a substantial amount of unpaid charges, and it establishes an important precedent for other wireline carriers across the Commonwealth.

In-House Counsel

We serve as the in-house legal department for Bluegrass Cellular, a commercial mobile radio service (CMRS or cellular) provider throughout Central Kentucky. We assist the client with a wide variety of needs, including negotiating and drafting customer service agreements, vendor agreements, roaming agreements and intercarrier agreements, as well as offering counsel on regulatory compliance, cell tower siting and construction, and other general litigation needs.

Negotiation and Arbitration of Interconnection Agreement (Telecommunications)

We represented an Indiana-based competitive local exchange carrier in the negotiation and arbitration of its interconnection agreement with AT&T in Kentucky. During this representation before the Kentucky Public Service Commission, we were successful in allowing our client to obtain the interconnection services necessary to begin offering competitive 911 service in Kentucky. This has become a landmark result, as it has opened the Kentucky 911 market to the first effective competition in history.

Regulated Utilities and Alternative Fuels

Having represented regulated utilities before approximately 20 state utility regulatory commissions, Mr. Depp has experience across the spectrum of the telecommunications, electricity, water, natural gas, and sewage industries. In addition to his utility work, Mr. Depp also has experience advising clients with respect to matters involving alternative fuels such as biodiesel and ethanol. Representative examples of Mr. Depp's utility and alternative fuels experience include the following.

- Representing a large aluminum smelter in its efforts to move from the certified service territory of an electric cooperative to that of a large electric utility.

- Representing twelve rural ILECs in the negotiation and arbitration of interconnection agreements with CMRS carriers.
- Representing an ILEC in its efforts to obtain a rate increase under traditional rate of return regulation.
- Representing an ILEC in its efforts to obtain access to the utility poles of an electric utility under rates, terms, and conditions identical to those available to cable television companies.
- Representing a CMRS carrier in its efforts to obtain numerous certificates of public convenience and necessity from local planning units and utility regulatory commissions.
- Representing a start-up company in its efforts to establish a wind farm for purposes of generating electricity for transport and sale.
- Representing a start-up company in its efforts to use landfill gas to generate electricity for transport and sale.
- Representing a water utility in its efforts to implement efficient solutions to a regional water crisis and discourage another water utility's plans to construct a new water treatment plant.
- Representing a CLEC in the negotiations and arbitration of an interconnection agreement to open effective competition in the 911/E911 services market in Kentucky.
- Reviewing, negotiating, and effectuating wireless license transfers.
- Representing 7 ILECs in a regulatory proceeding to determine whether a transit tariff is lawful.
- Representing a condominium association in an effort to compel appropriate service by a sewage utility.
- Negotiating on behalf of manufacturing operations in securing electricity, gas, steam, and telecommunications services.
- Representing a CLEC before the United States Court of Appeals for the Sixth Circuit regarding the opt-in provision of the Telecommunications Act of 1996.
- Representing wireline and wireless carriers in their efforts to obtain eligible telecommunications carrier status.
- Advising wireline and wireless carriers regarding regulatory compliance issues such as those relating to customer proprietary network information.
- Advising a wireless carrier as it launches new products and services.
- Advising clients with respect to proposed legislation affecting utility operations and regulatory obligations.
- Advising utilities with respect to state and local taxation issues.
- Responding to FCC investigations and informal consumer complaints.
- Negotiating and closing asset purchase agreements between regulated utilities, as well as securing necessary regulatory approvals for the same.
- Obtaining regulatory approvals for regulated utilities seeking to construct new plant and/or take on new financing.

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- Responding to numerous state utility regulatory commission investigations and inquiries regarding regulatory obligations and/or customer complaints.
 - Reviewing, revising, and filing tariffs.
 - Representing an alternative fuel manufacturer in discussions with the Kentucky Dept. of Agriculture and the National Biodiesel Board.
 - Advising an ethanol manufacturer with respect to regulatory and utility-related issues associated with a contemplated manufacturing plant.

Regulatory Approvals (Electric)

We currently represent the Kentucky Association of Electric Cooperatives (KAEC), a trade organization that serves as the unified voice for all of Kentucky's electric cooperatives. In this representation, we have been actively meeting and negotiating with the Kentucky Public Service Commission to streamline and improve the efficiency of the Commission's policies and procedures relating to the approval of the work plans. The negotiations are ongoing.

Publications

August 10, 2016

FCC Provides Guidance to Public Utilities on Autodialing and Prerecorded Calls