

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**AT&T SERVICES, INC.,**

Petitioners,

v.

**UNITED STATES OF AMERICA,**

and

**FEDERAL COMMUNICATIONS  
COMMISSION,**

Respondents.

**AMERICAN PUBLIC POWER  
ASSOCIATION,**

Petitioners,

v.

**UNITED STATES OF AMERICA,**

and

**FEDERAL COMMUNICATIONS  
COMMISSION,**

Respondents.

**CITY OF AUSTIN, TEXAS, ET AL.,**

Petitioners,

v.

**UNITED STATES OF AMERICA,**

Case Nos. 18-1294  
(consolidated w/18-1305, 18-1326  
and 18-1330)

Case No. 18-1305

Case No. 18-1326

and

**FEDERAL COMMUNICATIONS  
COMMISSION**

Respondents.

**CITY OF BOWIE, MARYLAND, ET AL.,**

Petitioners,

Case No. 18-1330

v.

**UNITED STATES OF AMERICA,**

and

**FEDERAL COMMUNICATIONS  
COMMISSION**

Respondents.

**MOTION OF THE CITY OF ALBUQUERQUE, NEW MEXICO; THE  
CITY OF BROOKHAVEN, GEORGIA; THE CITY OF DUBUQUE, IOWA;  
THE CITY OF EMERYVILLE, CALIFORNIA; THE TOWN OF  
HILLSBOROUGH, CALIFORNIA; THE CITY OF LA VISTA,  
NEBRASKA; THE CITY OF MEDINA, WASHINGTON, THE CITY OF  
PAPILLION, NEBRASKA; THE CITY OF PLANO, TEXAS; THE CITY OF  
ROCKVILLE, MARYLAND, THE CITY OF SAN BRUNO, CALIFORNIA;  
THE CITY OF SANTA MONICA CALIFORNIA; THE CITY OF  
SUGARLAND, TEXAS AND THE LEAGUE OF NEBRASKA  
MUNICIPALITIES FOR LEAVE TO INTERVENE AS OF RIGHT**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Rule 15(d) of the Federal Rules of Appellate Procedure, and District of Columbia Circuit Rule 15(b), the City of Albuquerque, New Mexico; the City of Brookhaven, Georgia; the City of Dubuque, Iowa; the City of Emeryville, California; the Town of Hillsborough,

California; the City of La Vista, Nebraska; the City of Medina, Washington, the City of Papillion, Nebraska; the City of Plano, Texas; the City of Rockville, Maryland, the City of San Bruno, California; the City of Santa Monica California; the City of Sugarland, Texas and the League of Nebraska Municipalities (Collectively, the “Intervenors”) hereby move for leave to intervene as of right in the above-captioned proceeding, in support of Petitioner American Public Power Association (“APPA”), the City of Austin, Texas, *et al.*, the City of Bowie, Maryland, *et al.*; in opposition to Petitioner AT&T; and in support of Respondents solely with respect to the AT&T petition. Counsel for AT&T indicated they consent to intervention by any Intervenor who participated in the underlying proceeding, but only consents to the intervention of non-participants in the underlying proceeding so long as they file a joint brief with those Intervenors who did participate in the proceeding below. Counsel for APPA indicated no objection to intervention. Counsel for the City of Bowie, *et al.* indicated no objection to intervention. Petitioners City of Austin Texas, *et al.* are represented by the same counsel as Intervenors, and support this Motion. Respondents were contacted for their position, but did not respond.

The case concerns review of the Declaratory Ruling and Third Report and Order, FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018) (“Order”) adopted by the Federal Communications Commission (“Commission”). Intervenors are local

governments “whose interests are affected” within the meaning of 28 U.S.C. § 2348. Intervenors are also “interested parties” under 47 U.S.C. § 402(e) as the Order substantially affects local governments’ rights to manage, and receive compensation for, use of the public rights-of-way. Accordingly, Intervenors are entitled to intervene in this proceeding as of right.

Accordingly, Intervenors respectfully request that they be granted leave to intervene as of right in the above-captioned proceeding. At such time as this Court acts to transfer and/or consolidate this and any other related cases, Intervenors also request that they be included as appropriate in any subsequent consolidated proceeding.

Respectfully submitted,

/s/ Joseph Van Eaton

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*Counsel for Intervenors*

December 18, 2018

## **CORPORATE DISCLOSURE STATEMENT**

The League of Nebraska Municipalities is organized to effectively represent the interests of member municipalities to preserve local control and empower municipal officials to shape the destiny of their municipality and improve the quality of life of their citizens . Neither it, nor any of its members, issues stock, has any parent company, or has a 10% or greater ownership interest held by any publicly-traded company. The League of Nebraska Municipalities is interested in this litigation by virtue of its dedication to protecting the interests of local governments in managing their communities and public rights-of-way, which are substantially impaired by the Federal Communications Commission ruling being appealed here.

The City of Albuquerque, New Mexico; the City of Brookhaven, Georgia; the City of Dubuque, Iowa; the City of Emeryville, California; the Town of Hillsborough, California; the City of La Vista, Nebraska; the City of Medina, Washington the City of Papillion, Nebraska; the City of Plano, Texas; the City of Rockville, Maryland, the City of San Bruno, California; the City of Santa Monica

California; and the City of Sugarland, Texas respectfully state they are governmental agencies and therefore exempt from Rule 26.1.

/s/ Joseph Van Eaton

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December 18, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2018 I filed the foregoing Motion to Intervene with the Clerk of the United States Court of Appeals for the DC Circuit through the CM/ECF system. Participants in the cases are all registered CM/ECF and will be served by the CM/ECF system.

/s/ Joseph Van Eaton  
Joseph Van Eaton  
Best Best & Krieger LLP

December 18, 2018