

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

AT&T SERVICES, INC.,

*Petitioner,*

v.

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

UNITED STATES OF AMERICA,

and

FEDERAL COMMUNICATIONS  
COMMISSION,

*Respondents.*

AMERICAN PUBLIC POWER  
ASSOCIATION,

*Petitioner,*

v.

Case No. 18-1305

UNITED STATES OF AMERICA,

and

FEDERAL COMMUNICATIONS  
COMMISSION,

*Respondents.*

CITY OF AUSTIN, TEXAS, et al.,

*Petitioners,*

v.

Case No. 18-1326

UNITED STATES OF AMERICA

and

FEDERAL COMMUNICATIONS  
COMMISSION,

*Respondents.*

CITY OF EUGENE, OREGON, et al.,

*Petitioners,*

v.

Case No. 18-1330

UNITED STATES OF AMERICA,

and

FEDERAL COMMUNICATIONS  
COMMISSION,

*Respondents.*

**MOTION OF THE CITY AND COUNTY OF SAN  
FRANCISCO, CALIFORNIA; THE COUNTY OF MARIN,  
CALIFORNIA; CONTRA COSTA COUNTY, CALIFORNIA;  
TOWN OF CORTE MADERA, CALIFORNIA; AND THE  
CITY OF WESTMINSTER, MARYLAND, 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 Rule 15(b) of the Rules of this Court, the City

and County of San Francisco, California; the County of Marin, California; Contra Costa County, California; the Town of Corte Madera, California; and the City of Westminster, Maryland (collectively, the “Intervenors”), hereby move for leave to intervene as of right in the above-captioned consolidated cases, in support of Petitioners American Public Power Association (“APPA”) (No. 18-1305), the City of Austin, Texas, *et al.* (No. 18-1326), and the City of Eugene, Oregon, *et al.* (No. 18-1330); in opposition to Petitioner AT&T Services, Inc. (“AT&T”) (No. 18-1294); and in support of Respondents solely with respect to the AT&T petition (No. 18-1294).

Counsel for AT&T indicated that it does not object to intervention by any Intervenor that adequately participated in the underlying FCC proceeding, and to the intervention of any Intervenor that did not participate in that proceeding only if the non-participating Intervenors join the same brief as those Intervenors that did participate below. Intervenors accept AT&T’s condition. Counsel for APPA does not object to intervention. Counsel for Petitioners City of Austin, Texas, *et al.* does not object to intervention. Petitioners City of Eugene, Oregon, *et al.* are represented by the same counsel as Intervenors, and support this Motion. Counsel for Respondent United States of America indicated that, due to the lapse of federal funding, it is not able to take a position on the motion. Respondent FCC was contacted for its position, but has not responded.

These consolidated cases seek review of an order of the Federal Communications Commission (“FCC”) captioned *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-33, 83 Fed. Reg. 51867 (Oct. 15, 2018) (“*Order*”).

Intervenors are local governments “whose interests are affected” within the meaning of 28 U.S.C. § 2348, and they are also “interested parties” under 47 U.S.C. § 402(e). The *Order* substantially and adversely affects the rights and ability of each Intervenor to manage, or to receive fair and reasonable compensation for, use of its local public rights-of-way and infrastructure by private commercial wireless providers. Moreover, AT&T’s petition, if granted, would result in an even greater intrusion, and limitation, upon Intervenors’ rights-of-way authority and property than the *Order*. Intervenors are therefore 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 consolidated appeals. At such time as this Court acts to transfer and/or consolidate these and any other related cases, Intervenors also request that they be included as appropriate in any subsequent transferred or further consolidated proceeding.

Respectfully submitted,

*/s/ Tillman L. Lay*

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Tillman L. Lay

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*Counsel for Intervenors*

January 11, 2019

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of this Court, the City and County of San Francisco, California; the County of Marin, California; the Town of Corte Madera, California; and the City of Westminster, Maryland, are each a governmental agency and therefore exempt from Rule 26.1.

Respectfully submitted,

*/s/ Tillman L. Lay*

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*Counsel for Intervenors*

January 11, 2019

## CERTIFICATE OF SERVICE

I hereby certify that, on January 11, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to this matter, and all matters consolidated therewith, registered for CM/ECF will be served by the appellate CM/ECF system.

*/s/ Tillman L. Lay*

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Tillman L. Lay

## Law Offices of:

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