

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

- 1. CASE NO. 18-1330 2. DATE DOCKETED: 12/12/2018
3. CASE NAME (lead parties only) City of Eugene, Oregon, et al. v. Federal Communications Commission
4. TYPE OF CASE: [X] Review [] Appeal [] Enforcement [] Complaint [] Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? [] Yes [X] No
6. CASE INFORMATION:
a. Identify agency whose order is to be reviewed: Federal Communications Commission
b. Give agency docket or order number(s): WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133
c. Give date(s) of order(s): Released 9/27/2018, published in Fed. Reg. on 10/15/2018.
d. Has a request for rehearing or reconsideration been filed at the agency? [X] Yes [] No
e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2): SEE ATTACHMENT
f. Are any other cases involving the same underlying agency order pending in this Court or any other? [X] Yes [] No
g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve substantially the same issues as the instant case presents? [X] Yes [] No
h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? [] Yes [X] No

Signature [Handwritten Signature] Date 1/16/19
Name of Counsel for Appellant/Petitioner Tillman L. Lay
Address Spiegel & McDiarmid LLP, 1875 Eye Street NW, Suite 700, Washington, DC 20006
E-Mail tim.lay@spiegelmc.com Phone (202) 879-4000 Fax (202) 393-2866

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

CITY OF EUGENE, OREGON, et al.
DOCKETING STATEMENT ATTACHMENT

6(e) Identify the basis of appellant's/petitioner's claim of standing.

Petitioners formally participated in the FCC proceeding below. The FCC's order substantially preempts each Petitioner's ability to manage and receive fair and reasonable compensation for use of its public right-of-way and infrastructure by wireless providers.

6(f). Are there any other cases involving the same underlying agency order pending in this Court or any other?

Yes, counsel is aware of the following cases:

U.S. Court of Appeals for the District of Columbia Circuit

- *AT&T Services, Inc. v. FCC*, No. 18-1294
- *Am. Pub. Power Assn. v. FCC*, No. 18-1305
- *City of Austin, Texas, et al. v. USA*, No. 18-1326

U.S. Court of Appeals for the Ninth Circuit

- *Sprint Corp. v. FCC*, No. 19-70123
- *Verizon Commc'ns v. FCC*, No. 19-70124
- *Puerto Rico Tel. Co. v. FCC*, No. 19-70125
- *City of Seattle, Washington, et al. v. FCC*, No. 19-70136
- *City of San Jose, California, et al. v. FCC*, No. 19-70144
- *City and County of San Francisco v. FCC*, No. 19-70145
- *City of Huntington Beach, California, v. FCC*, No. 19-70146
- *Montgomery County, Maryland, v. FCC*, No. 19-70147
- *City of North Little Rock, Arkansas, et al. v. FCC*, No. 19-70148

6(g). Are there any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?

Yes, counsel understands that the following case may raise issues substantially similar to some of the issues in this case:

U.S. Court of Appeals for the Ninth Circuit

- *City of Portland v. United States*, No. 18-72689

CERTIFICATE OF SERVICE

I hereby certify that, on January 16, 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

Tillman L. Lay

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**PROVISIONAL CERTIFICATE AS TO PARTIES, RULINGS, AND
RELATED CASES**

Pursuant to D.C. Circuit Rules 15(c)(3) and 28(a)(1), Petitioners City of Eugene, Oregon; City of Huntsville, Alabama; and City of Bowie, Maryland, submit the following Provisional Certificate as to Parties, Rulings, and Related Cases.

A. *Parties and Amici*

1. Parties in this Court.

The Petitioners in this case are City of Eugene, Oregon; City of Huntsville, Alabama; and City of Bowie, Maryland.

The Petitioners in these consolidated petitions for review are:

- AT&T Services, Inc.
- American Public Power Association
- City of Austin, Texas
- City of Ann Arbor, Michigan
- County of Anne Arundel, Maryland
- City of Atlanta, Georgia
- City of Boston, Massachusetts
- City of Chicago, Illinois
- Clark County, Nevada
- City of College Park, Maryland
- City of Dallas, Texas

- District of Columbia
- City of Gaithersburg, Maryland
- Howard County, Maryland
- City of Lincoln, Nebraska
- Montgomery County, Maryland
- City of Myrtle Beach, South Carolina
- City of Omaha, Nebraska
- City of Philadelphia, Pennsylvania
- City of Rye, New York
- City of Scarsdale, New York
- City of Seat Pleasant, Maryland
- City of Takoma Park, Maryland
- Texas Coalition of Cities for Utility Issues
- Meridian Township, Michigan
- Bloomfield Township, Michigan
- Michigan Townships Association
- Michigan Coalition to Protect Public Rights-of-Way

Respondents in this case and in these consolidated cases are the Federal Communications Commission (“FCC”) and the United States of America.

2. **Intervenors in this Court.**

The following parties have moved to intervene in this case or the consolidated cases:

- City of Yuma, Arizona
- City of Shafter, California
- City of San Jacinto, California
- City of Portland, Oregon
- City of Piedmont, California
- City of Ontario, California
- City of Monterey, California
- County of Los Angeles, California
- City of Los Angeles, California
- City of Las Vegas, Nevada
- City of Kirkland, Washington
- City of Issaquah, Washington
- City of Gig Harbor, Washington
- Town of Fairfax, California
- City of Culver City, California
- City of Burlingame, California
- City of Burien, Washington
- City of Bellevue, Washington
- City of Arcadia, California

- City of San Jose, California
- League of Nebraska Municipalities
- City of Sugarland, Texas
- City of Santa Monica, California
- City of San Bruno, California
- City of Rockville, Maryland
- City of Plano, Texas
- City of Papillion, Nebraska
- City of Medina, Washington
- City of La Vista, Nebraska
- Town of Hillsborough, California
- City of Emeryville, California
- City of Dubuque, Iowa
- City of Brookhaven, Georgia
- City of Albuquerque, New Mexico
- National Association of Telecommunications Officers and Advisors
- Michigan Municipal League
- Town of Ocean City, Maryland
- City of Baltimore, Maryland
- National League of Cities
- International Municipal Lawyers Association
- The International City/County Management Association

- Cities of Bakersfield, Fresno & Rancho Palos Verdes, CA
- City of Coconut Creek, FL
- Cities of Lacey, Olympia & Tumwater, WA
- Town of Yarrow Point, WA
- Thurston County, WA
- Colorado Communications & Utility Alliance and Rainier Communications Commission
- City and County of San Francisco, California
- County of Marin, California
- Contra Costa County, California
- Town of Corte Madera, California
- City of Westminster, Maryland

3. *Amici* in this Court.

As of the time of this filing, there are no *amici curiae*.

4. Participants in underlying agency proceeding.

Below is a list of the entities that the FCC listed in its order as filing formal comments or reply comments in the proceeding leading to the Order under review:

- 5G Americas
- Aaron Rosenzweig
- ACT | The App Association
- Advisors to the International EMF Scientist Appeal
- Advisory Council on Historic Preservation

- African American Mayors Association
- Agua Caliente Band of Cahuilla Indians Tribal Historic Preservation Office
- Alaska Department of Transportation & Public Facilities
- Alaska Native Health Board
- Alaska Office of History and Archaeology
- Alaska State Historic Preservation Office
- Alexandra Ansell
- American Association of State Highway and Transportation Officials
- American Bird Conservancy
- American Cable Association
- American Petroleum Institute
- American Public Power Association
- Angela Fox
- Arctic Slope Regional Corporation
- Arizona State Parks & Trails, State Historic Preservation Office
- Arkansas SHPO
- Arnold A. McMahon
- Association of American Railroads
- AT&T
- B. Golomb
- Bad River Band of Lake Superior Tribe of Chippewa Indians
- Benjamin L. Yousef

- BioInitiative Working Group
- Blue Lake Rancheria
- Board of County Road Commissioners of the County of Oakland
- Bristol Bay Area Health Corporation
- Cahuilla Band of Indians
- California Office of Historic Preservation, Department of Parks and Recreation
- California Public Utilities Commission
- Cape Cod Bird Club, Inc.
- Catawba Indian Nation Tribal Historic Preservation Office
- Catherine Kleiber
- Charter Communications, Inc.
- Cheyenne River Sioux Tribe Cultural Preservation Office
- Chickasaw Nation
- Chippewa Cree Tribe
- Choctaw Nation of Oklahoma
- Chuck Matzker
- Cindy Li
- Cindy Russell
- Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
- Citizen Potawatomi Nation
- Citizens Against Government Waste

- City and County of San Francisco
- City of Alexandria, Virginia; Arlington County, Virginia; and Henrico County, Virginia
- City of Arlington, Texas
- City of Austin, Texas
- City of Baltimore, Maryland
- City of Bellevue, City of Bothell, City of Burien, City of Ellensburg, City of Gig Harbor, City of Kirkland, City of Mountlake Terrace, City of Mukilteo, City of Normandy Park, City of Puyallup, City of Redmond, and City of Walla Walla
- City of Chicago
- City of Claremont (Tony Ramos, City Manager)
- City of Eden Prairie, MN
- City of Houston
- City of Irvine, California
- City of Kenmore, Washington, and David Baker, Vice-Chair, National League of Cities Information Technology and Communications Committee
- City of Lansing, Michigan
- City of Mukilteo
- City of New Orleans, Louisiana
- City of New York
- City of Philadelphia
- City of Springfield, Oregon
- Cityscape Consultants, Inc.

- Coalition for American Heritage, Society for American Archaeology, American Cultural Resources Association, Society for Historical Archaeology, and American Anthropological Association
- Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)
- Colorado River Indian Tribes
- Colorado State Historic Preservation Office
- Comcast Corporation
- Commissioner Sal Pace, Pueblo Board of County Commissioners
- Communications Workers of America
- Community Associations Institute
- Competitive Carriers Association
- CompTIA (The Computing Technology Industry Association)
- Computer & Communications Industry Association (CCIA)
- Confederated Tribes of Grand Ronde Community of Oregon Historic Preservation Department
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Umatilla Indian Reservation Cultural Resources Protection Program
- Consumer Technology Association
- Conterra Broadband Services, Southern Light, LLC, and Uniti Group, Inc.
- Critical Infrastructure Coalition
- Crow Creek Sioux Tribe

- Crown Castle
- CTIA
- CTIA and Wireless Infrastructure Association
- Dan Kleiber
- David Roetman, Minnehaha County GOP Chairman
- Defenders of Wildlife
- Department of Arkansas Heritage (Arkansas Historic Preservation Program)
- DuPage Mayors and Managers Conference
- East Bay Municipal Utility District
- Eastern Shawnee Tribe of Oklahoma
- Edward Czelada
- Elijah Mondy
- Elizabeth Doonan
- Ellen Marks
- EMF Safety Network, Ecological Options Network
- Enterprise Wireless Alliance
- Environmental Health Trust
- ExteNet Systems, Inc.
- Fairfax County, Virginia
- FibAire Communications, LLC d/b/a AireBeam
- Florida Coalition of Local Governments
- Fond du Lac Band of Lake Superior Chippewa

- Forest County Potawatomi Community of Wisconsin
- Fort Belknap Indian Community
- Free State Foundation
- General Communication, Inc.
- Georgia Department of Transportation
- Georgia Historic Preservation Division
- Georgia Municipal Association, Inc.
- Gila River Indian Community
- Greywale Advisors
- History Colorado (Colorado State Historic Preservation Office)
- Hongwei Dong
- Hualapai Department of Cultural Resources
- Illinois Department of Transportation
- Illinois Municipal League
- INCOMPAS
- Information Technology and Innovation Foundation
- International Telecommunications Users Group
- Irregulars
- Jack Li
- Jackie Cale
- Jerry Day
- Joel M. Moskowitz, Ph.D.

- Jonathan Mirin
- Joyce Barrett
- Karen Li
- Karen Spencer
- Karon Gubbrud
- Kate Kheel
- Kaw Nation
- Kevin Mottus
- Keweenaw Bay Indian Community
- Kialegee Tribal Town
- League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities
- League of Minnesota Cities
- Leo Cashman
- Li Sun
- Lighttower Fiber Networks
- Lisbeth Britt
- Lower Brule Sioux Tribe
- Maine Department of Transportation
- Marty Feffer
- Mary Whisenand, Iowa Governor's Commission on Community Action Agencies
- Mashantucket (Western) Pequot Tribe

- Mashpee Wampanoag Tribe
- Matthew Goulet
- Mayor Patrick Furey, City of Torrance, California
- McLean Citizens Association
- Miami Tribe of Oklahoma
- Missouri State Historic Preservation Office
- Mobile Future
- Mobilitie, LLC
- Mohegan Tribe of Indians of Connecticut
- Montana State Historic Preservation Office
- Monte R. Lee and Company
- Muckleshoot Indian Tribe
- Muscogee (Creek) Nation
- National Association of Regulatory Utility Commissioners
- National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Towns and Townships, National Association of Regional Councils, United States Conference of Mayors, and Government Finance Officers Association
- National Association of Tower Erectors (NATE)
- National Association of Tribal Historic Preservation Officers
- National Black Caucus of State Legislators
- National Conference of State Historic Preservation Officers
- National Congress of American Indians

- National Congress of American Indians and United South and Eastern Tribes Sovereignty Protection Fund
- National Congress of American Indians, National Association of Tribal Historic Preservation Officers, and United South and Eastern Tribes Sovereignty Protection Fund
- National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, and National Association of Tribal Historic Preservation Officers
- National League of Cities
- National League of Cities, United States Conference of Mayors, International Municipal Lawyers Association, Government Finance Officers Association, National Association of Counties, National Association of Regional Councils, National Association of Towns and Townships, and National Association of Telecommunications Officers and Advisors
- National Organization of Black Elected Legislative (NOBEL) Women
- National Rural Electric Cooperative Association
- National Tribal Telecommunications Association
- National Trust for Historic Preservation
- Native Public Media
- NATOA
- Natural Resources Defense Council
- Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
- Naveen Albert
- NCTA—The Internet & Television Association
- nepsa solutions LLC
- New Mexico Department of Cultural Affairs, Historic Preservation Division

- Nez Perce Tribe
- Nina Beety
- Nokia
- North Carolina State Historic Preservation Office
- Northern Cheyenne Tribal Historic Preservation Office
- NTCA—The Rural Broadband Association
- Office of Historic Preservation for the Mashantucket Pequot Tribal Nation of Connecticut
- Ohio State Historic Preservation Office
- Oklahoma History Center State Historic Preservation Office
- Olemara Peters
- Omaha Tribe of Nebraska
- ONE Media, LLC
- Oregon State Historic Preservation Office
- Osage Nation
- Otoe-Missouria Tribe
- Pala Band of Mission Indians
- Patrick Wronkiewicz
- Pechanga Band of Luiseno Indians
- Pennsylvania State Historic Preservation Office
- Prairie Island Indian Community
- PTA-FLA, Inc .
- Pueblo of Acoma

- Pueblo of Laguna
- Pueblo of Pojoaque
- Pueblo of Tesuque
- Puerto Rico State Historic Preservation Office
- Puerto Rico Telephone Company, Inc., d/b/a Claro
- Quad Cities Cable Communications Commission
- Quapaw Tribe of Oklahoma
- Quintillion Networks, LLC, and Quintillion Subsea Operations, LLC
- R Street Institute
- Rebecca Carol Smith
- Red Cliff Band of Lake Superior Chippewa
- Representative Tom Sloan, State of Kansas House of Representatives
- Representatives Anna G. Eshoo, Frank Pallone, Jr., and Raul Ruiz, U.S. House of Representatives
- Rhode Island Historical Preservation and Heritage Commission
- Ronald M. Powell, Ph.D.
- Rosebud Sioux Tribe Tribal Historic Preservation Cultural Resource Management Office
- S. Quick
- Sacred Wind Communications, Inc.
- Samsung Electronics America, Inc.
- Santa Clara Pueblo
- Sault Ste. Marie Tribe of Chippewa Indians

- SCAN NATOA, Inc.
- SDN Communications
- Seminole Nation of Oklahoma
- Seminole Tribe of Florida
- Senator Duane Ankney, Montana State Senate
- Shawnee Tribe
- Sisseton Wahpeton Oyate
- Skokomish Indian Tribe Tribal Historic Preservation Office
- Skull Valley Band of Goshute
- Skyway Towers, LLC
- SmallCellSite.Com
- Smart Communities and Special Districts Coalition
- Soula Culver
- Sprint
- Standing Rock Sioux Tribe
- Starry, Inc.
- State of Washington Department of Archaeology & Historic Preservation
- Sue Present
- Swinomish Indian Tribal Community
- Table Mountain Rancheria Tribal Government Office
- Tanana Chiefs Conference
- Telecommunications Industry Association

- Texas Department of Transportation
- Texas Historical Commission
- The Greenlining Institute
- Thlopthlocco Tribal Town
- T-Mobile USA, Inc.
- Tonkawa Tribe of Oklahoma
- Triangle Communication System, Inc.
- Twenty-Nine Palms Band of Mission Indians
- United Keetoowah Band of Cherokee Indians In Oklahoma
- United States Conference of Mayors
- Utah Department of Transportation
- Ute Mountain Ute Tribe
- Utilities Technology Council
- Verizon
- Wampanoag Tribe of Gay Head (Aquinnah)
- Washington, D.C. Office of the Chief Technology Officer
- WEC Energy Group, Inc.
- Wei Shen
- Wei-Ching Lee, MD, California Medical Association Delegate of Los Angeles County
- Winnebago Tribe of Nebraska
- Wireless Infrastructure Association
- Wireless Internet Service Providers Association

- Xcel Energy Services Inc.

B. Ruling Under Review

The ruling under review is the order of the 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 18-133, 83 Fed. Reg. 51867 (Oct. 15, 2018).

C. Related Cases

This case has not previously been before this Court. The following cases seeking review of the same FCC order are consolidated with this case and pending before this Court:

- *AT&T Services, Inc. v. FCC*, No. 18-1294
- *Am. Pub. Power Assn. v. FCC*, No. 18-1305
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- *City of Seattle, Washington, et al. v. FCC*, No. 19-70136

- *City of San Jose, California, et al. v. FCC*, No. 19-70144
- *City and County of San Francisco v. FCC*, No. 19-70145
- *City of Huntington Beach, California, v. FCC*, No. 19-70146
- *Montgomery County, Maryland, v. FCC*, No. 19-70147
- *City of North Little Rock, Arkansas, et al. v. FCC*, No. 19-70148

CERTIFICATE OF SERVICE

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/s/ Tillman L. Lay

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