

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

CITY OF EUGENE, OREGON, ET AL.,

Petitioners,

v.

Case No. 18-1330
(Consolidated with Nos. 18-1294,
18-1305, and 18-1326)

UNITED STATES OF AMERICA,

and

FEDERAL COMMUNICATIONS
COMMISSION,

Respondents.

STATEMENT OF ISSUES TO BE RAISED

In accordance with this Court's order of December 17, 2018, Petitioners, the Cities of Eugene, Oregon; Huntsville, Alabama; and Bowie, Maryland, submit this nonbinding statement of issues to be raised in this case.

In the *Order* under review,¹ the Federal Communications Commission ("FCC") construed Sections 253 and 332(c)(7) of the federal Communication Act, as amended,² to empower it to establish a scheme that regulates the rates, terms,

¹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133, 83 Fed. Reg. 51867 (Oct. 15, 2018) ("*Order*").

² 47 U.S.C. §§ 253 and 332(c)(7).

and conditions of wireless service providers' access to Petitioners' and other local governments' property, including local rights-of-way, light poles, traffic poles, and other municipal infrastructure. Among other things, the *Order* effectively compels local governments such as Petitioners to grant access to their property, at cost, and within FCC-mandated deadlines.

The issues to be raised are:

Whether the FCC's decision to mandate and regulate access to municipal infrastructure and other property exceeds the FCC's authority and is contrary to law, including, but not limited to, the Constitution of the United States and the Communications Act, and is also arbitrary, capricious, and an abuse of discretion.

Respectfully submitted,

/s/ Tillman L. Lay

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January 16, 2019

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.

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