

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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SPRINT CORPORATION,	)	
	)	
Petitioner,	)	
	)	
	)	
v.	)	No. 19-70123*
	)	and consolidated cases†
	)	
FEDERAL COMMUNICATIONS COMMISSION	)	
and UNITED STATES OF AMERICA,	)	
	)	
Respondents.	)	

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**JOINT MOTION OF RESPONDENTS TO EXCEED TYPE-VOLUME  
LIMIT**

Pursuant to Federal Rule of Appellate Procedure 27, Ninth Circuit Rules 27-1 and 32-2, and the Appellate Commissioner’s order of April 18, 2019 (Dkt. 60 in 19-70123), Respondents Federal Communications Commission and United States of America hereby move for leave to exceed the type-volume limitations set forth in Ninth Circuit Rule 32-1 for their Brief for Respondents, and to file a brief containing 34,345 words. Pursuant to Ninth Circuit Rule 32-2(a), the reasons for this Motion are set forth in the attached declaration. On August 7, 2019,

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\* This Motion should be directed to the attention of the Appellate Commissioner.

† Case Nos. 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70339, 19-70341, 19-70344.

Respondents requested by email the positions of the other parties in the above-captioned cases and in *City of Portland v. FCC*, No. 18-72689 (which is being briefed jointly with this case). I am authorized to represent that all parties in this case, and in *City of Portland*, either consent to or do not oppose this Motion, except that Intervenor City of New York, International City/County Management Association, and International Municipal Lawyers Association did not state a position.

Respectfully submitted,

By: /s/ Jacob M. Lewis

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August 8, 2019

## CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

### Certificate of Compliance With Type-Volume Limitation, Typeface Requirements and Type Style Requirements

- I. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(a) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):
  - this document contains 164 words, *or*
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2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:
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  - this document has been prepared in a monospaced spaced typeface using \_\_\_\_\_ with \_\_\_\_\_.

*/s/ Jacob M. Lewis*

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## DECLARATION OF COUNSEL

In support of the Joint Motion of Respondents to Exceed Type-Volume Limit (Case Nos. 18-72689, 19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70399, 19-70341, and 19-70344), I declare:

1. I am an associate general counsel for the Federal Communications Commission, which is a Respondent in the above-identified cases. I am authorized to file the Motion and this declaration on behalf of the FCC and Respondent United States of America.

2. Brief for Respondents, which is submitted simultaneously with this Motion, addresses two FCC orders. Case number 18-72689 is an appeal of the declaratory ruling portion of *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (2018) (*Moratoria Order*). Case numbers 19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70399, 19-70341, and 19-70344 are consolidated appeals of *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 9088 (2018) (*Small Cell Order*). The appeals of the *Small Cell Order* are not consolidated with the appeal of the declaratory ruling portion of the *Moratoria Order*. The cases are

subject to joint briefing pursuant to the April 18, 2019, order of the Appellate Commissioner (Dkt. 55 in 18-72689; Dkt. 60 in 19-70123).

3. With the permission of the Appellate Commissioner, Petitioners in these cases filed four separate opening briefs. One group of Petitioners and their supporting intervenors obtained leave to file an oversized brief of 21,288 words. Petitioners collectively used 52,954 words in their four individual briefs.

4. In addition, Intervenors City of New York and National Association of Telecommunications Officers and Advisors jointly filed an additional brief in support of Petitioners that totaled 7,513 words. There are 9 amicus briefs in support of Petitioners on file, which total 36,793 words.

5. If each Respondent were to respond individually to each of Petitioners' briefs, as this Court's rules would permit, Respondents would be entitled to file a total of eight 14,000-word briefs. Or if responding jointly to multiple briefs, each Respondent would be entitled to file a 15,400-word brief. Instead, to avoid duplicative briefing, reduce the total number of briefs, and minimize the total word count, Respondents have joined in a single brief. This joint Brief for Respondents contains 34,345 words. That figure is well under the 112,000 words that Respondents could have used if responding individually to each opening brief. It is also not substantially greater than the 30,800 words to which Respondents would have been collectively entitled if they each filed a single, individual response to all

of Petitioners' briefs. The Brief for Respondents thus offers substantial economies over the default type-volume limitations for separate briefs, and it is in line with the default type-volume limitations that would have applied if each Respondent had separately filed a single brief.

6. Substantial need supports Respondents' request to file a brief that exceeds the single-brief type-volume limitations. These appeals concern two FCC orders that, in relevant part, are approximately 100 single-spaced pages long. The orders rely on a voluminous record, and Petitioners' record excerpts collectively total nearly 1800 pages. The orders present numerous questions of statutory and constitutional interpretation, as well as factual questions that require discussion of detailed, technical matters concerning the contemporary wireless marketplace. In addition, Respondents' brief must address legislative history and numerous out-of-circuit cases.

7. Respondents exercised diligence to reduce repetition of common facts and legal issues. The joint statement of the case sets forth a single set of common facts and presents a succinct overview of the orders under review. Respondents have structured their brief to present issues in a manner calculated to avoid repetition—addressing specific elements of the two orders in Part I, overarching statutory issues in Part II, individual claims of Petitioner Montgomery County in Part III, and constitutional issues in Part IV.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on August 8, 2019, in Washington D.C.

/s/ Jacob M. Lewis  
Counsel for Respondent FCC

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2019, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: August 8, 2019

/s/ Jacob M. Lewis

*Counsel for Respondent FCC*