

ORAL ARGUMENT NOT YET SCHEDULED

No. 18-1294

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

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AT&T SERVICES, INC.,

*Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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On Petition for Review of an Order of  
the Federal Communications Commission

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**RESPONDENT FEDERAL COMMUNICATIONS COMMISSION'S  
UNOPPOSED MOTION TO TRANSFER TO THE TENTH CIRCUIT**

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Respondent Federal Communications Commission (FCC) respectfully moves to transfer this case to the United States Court of Appeals for the Tenth Circuit, as required by 28 U.S.C. § 2112(a)(5). Counsel for the FCC have conferred with opposing counsel and are authorized to represent that all parties consent to this motion.

The petition for review in this case challenges the FCC's Declaratory Ruling and Third Report and Order, *Accelerating Wireless*

*Broadband Deployment by Removing Barriers to Infrastructure Investment*, --- FCC Rcd. ---, FCC 18-133 (2018) (*Order*). A summary of the *Order* was published in the Federal Register on October 15, 2018. See 83 Fed. Reg. 51867. Other parties have petitioned for review of the *Order* in the First, Second, Ninth, and Tenth Circuits.

Under 28 U.S.C. § 2112(a), when petitions for review of an FCC order are filed in multiple circuits and date-stamped copies are served on the agency within ten days after issuance of the order, the Judicial Panel on Multidistrict Litigation conducts a judicial lottery to designate one court of appeals, from among those receiving qualifying petitions, in which the record is to be filed. 28 U.S.C. § 2112(a)(1)-(3); see *Remington Lodging & Hospitality, LLC v. NLRB*, 747 F.3d 903, 904 (D.C. Cir. 2014). All petitions for review challenging that order (including both the petitions included in the judicial lottery and any other petitions challenging the same order) must then be transferred to the court in which the record is filed. 28 U.S.C. § 2112(a)(5).

The petitions filed in the First, Second, Ninth, and Tenth Circuits qualified under the judicial lottery statute and were submitted to the

Judicial Panel.\* The Judicial Panel randomly selected the United States Court of Appeals for the Tenth Circuit as the court in which the record is to be filed. See Consolidation Order, MCP No. 155 (J.P.M.L. Nov. 2, 2018) (copy attached). Because the Tenth Circuit has been designated as the court in which the record is to be filed, “[a]ll courts in which proceedings are instituted with respect to” the *Order* “shall transfer those proceedings to” the Tenth Circuit. 28 U.S.C. § 2112(a)(5); see, e.g., *Mabey v. FERC*, 1996 WL 525382 (D.C. Cir. 1996) (per curiam).

Accordingly, the FCC respectfully requests that the Court transfer this case to the United States Court of Appeals for the Tenth Circuit, as required by 28 U.S.C. § 2112(a)(5).

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\* The petition for review in this case did not qualify for the judicial lottery because the agency was not served with a date-stamped copy of the petition by the lottery deadline. See 28 U.S.C. § 2112(a)(2); 47 C.F.R. § 1.13(a); *Remington Lodging*, 747 F.3d at 904-05.

Dated: November 13, 2018

Respectfully submitted,

*/s/ Richard K. Welch*\_\_\_\_\_

Richard K. Welch

*Deputy Associate General Counsel*

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*Counsel*

FEDERAL COMMUNICATIONS

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*/s/ Richard K. Welch*  
\_\_\_\_\_  
Richard K. Welch  
*Counsel for Respondent*  
*Federal Communications Commission*

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on November 13, 2018, I caused the foregoing Unopposed Motion to Transfer to the Tenth Circuit to be filed with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. I further certify that all participants in the case, listed below, are registered CM/ECF users and will be served electronically by the CM/ECF system.

*/s/ Richard K. Welch*

Richard K. Welch

*Counsel for Respondent*

*Federal Communications Commission*

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**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

**IN RE: FEDERAL COMMUNICATIONS COMMISSION,  
IN THE MATTER OF ACCELERATING WIRELESS  
BROADBAND DEPLOYMENT BY REMOVING BARRIERS  
TO INFRASTRUCTURE INVESTMENT; ACCELERATING  
WIRELINE BROADBAND DEPLOYMENT BY REMOVING  
BARRIERS TO INFRASTRUCTURE INVESTMENT,  
DECLARATORY RULING AND THIRD REPORT AND  
ORDER, FCC 18-133, RELEASED SEPTEMBER 27, 2018**

**MCP No. 155**

(SEE ATTACHED SCHEDULE)

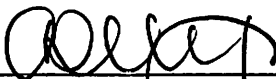
**CONSOLIDATION ORDER**


The Federal Communications Commission issued an order dated September 27, 2018. On November 1, 2018, the Panel received, pursuant to 28 U.S.C. § 2112(a)(3), a notice of multicircuit petitions for review of that order. The notice included petitions for review pending in four circuit courts of appeal as follows: First Circuit, Second Circuit, Ninth Circuit and Tenth Circuit.

The Panel has randomly selected the United States Court of Appeals for the Tenth Circuit in which to consolidate these petitions for review.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 2112(a)(3), the petitions on the attached schedule are consolidated in the United States Court of Appeals for the Tenth Circuit, and that this circuit is designated as the circuit in which the record is to be filed pursuant to Rules 16 and 17 of the Federal Rules of Appellate Procedure.

FOR THE PANEL:

  
\_\_\_\_\_  
Crystal Dorsey, Case Administrator  
Random Selector

  
\_\_\_\_\_  
Dana L. Johnson, QC Analyst  
Witness

**IN RE: FEDERAL COMMUNICATIONS COMMISSION,  
IN THE MATTER OF ACCELERATING WIRELESS  
BROADBAND DEPLOYMENT BY REMOVING BARRIERS  
TO INFRASTRUCTURE INVESTMENT; ACCELERATING  
WIRELINE BROADBAND DEPLOYMENT BY REMOVING  
BARRIERS TO INFRASTRUCTURE INVESTMENT,  
DECLARATORY RULING AND THIRD REPORT AND  
ORDER, FCC 18-133, RELEASED SEPTEMBER 27, 2018**

**MCP No. 155**

**SCHEDULE OF PETITIONS**

**CIRCUIT NO.**

First Circuit, No. 18-2063  
Second Circuit, No. 18-3255  
Ninth Circuit, No. 18-72883  
Ninth Circuit, No. 18-72886  
Ninth Circuit, No. 18-72893  
Tenth Circuit, No. 18-9563

**CASE CAPTION**

Puerto Rico Tel. Co., Inc. V. FCC  
Verizon v. FCC  
City of San Jose, et al. V. FCC  
City of Seattle, et al. V. FCC  
City of Huntington Beach v. FCC  
Sprint Corp. V. FCC