

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>

**MEDIATION QUESTIONNAIRE**

This form is available in a fillable version at [http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Mediation\\_Questionnaire.pdf](http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Mediation_Questionnaire.pdf).

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	19-70146	
District Court/Agency Case Number(s):	Not applicable; FCC 18-133	
District Court/Agency Location:	Not Applicable	
Case Name:	City of Huntington Beach, et al.	v. Federal Communication Commission
If District Court, docket entry number(s) of order(s) appealed from:	Not Applicable	
Name of party/parties submitting this form:	City of Huntington Beach	

Briefly describe the dispute that gave rise to this lawsuit.

This Petition for Review arises from the Federal Communications Commission ("FCC") decision to adopt "Accelerating Wireless and Wireline Deployment by Removing Barriers to Infrastructure Investment," FCC 18-133 (the "Order"). The Order significantly limits the rights of state and local governmental entities such as Petitioner, City of Huntington Beach, to regulate, and lease its own property for the installation of Small Wireless Facilities ("SWF") in the public rights-of-way ("ROW") and on city-owned streetlights, and traffic signals. SWFs will be installed primarily for the deployment of 5G Wireless Networks. The Order is an unlawful pre-emption of local and state government authority.

Briefly describe the result below and the main issues on appeal.

The City contends that the Order is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act (5 USC § 701 et seq.); Violates the Constitution, including the Contracts Clause; violates federal law, including the Communications Act of 1934, as amended, and FCC regulations promulgated thereunder; is in excess of statutory jurisdiction, and authority, and without observance of procedure required by law; conflicts with the notice-and-comment rulemaking requirements of 5 U.S.C. § 553; and is otherwise contrary to law.

*(Continue to next page)*

Describe any proceedings remaining below or any related proceedings in other tribunals.

The Petitioner, City of Huntington Beach, together with the consolidated Petitions filed by States and municipalities across the nation, seeks review of the Order pursuant to 5 U.S.C §706; 47 U.S.C. §402; 28 U.S.C §§2341, 2344 and FRAP 15. On 1/10/2019, Huntington Beach's Petition, together with other consolidated Petitions, was transferred from the 10th Circuit to the 9th Circuit because a first-in-time petition for review of an order issued by the FCC on August 3, 2018 was already pending. [*Third Report and Order of Declaratory Ruling*, FCC 18-111, 83 Fed. Reg. 46, 812 (Sept. 14, 2018).

Provide any other thoughts you would like to bring to the attention of the mediator.

The FCC order, and the objections to it by all of the consolidated Petitions of States and municipalities is not suitable to mediation.

*Any party may provide additional information in confidence directly to the Circuit Mediation Office at ca09\_mediation@ca9.uscourts.gov. Provide the case name and Ninth Circuit case number in your message. Additional information might include level of interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.*

## CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

***How to File:*** Complete the form and then convert the filled-in form to a static PDF (File > Print > PDF Printer or any PDF Creator). To file, log into Appellate ECF and select File Mediation Questionnaire. (*Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system.*)

## CERTIFICATE OF SERVICE

I hereby certify that, on January 18, 2019, I caused the foregoing to be electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users. All participants in the case are registered CM/ECF users, and service will be accomplished through the CM/ECF system.

/s/ Michael J. Vigliotta  
Michael J. Vigliotta  
Office of the City Attorney of Huntington Beach

January 18, 2019