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April 17, 2019

Peter L. Shaw
Appellate Commissioner
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Joint Report on Case Management Conference in consolidated cases Nos. 18-72689 and 19-70490; and Nos. 19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70339, 19-70341, and 19-70344

Dear Commissioner Shaw:

The parties participating in the Case Management Conference in the above cases have conferred and discussed an agenda for the conference, submitted for your consideration, and identified areas where there is agreement and where there may not be agreement on issues related to the consideration of these cases by the Court of Appeals. The parties agree on the points as set forth in proposed agenda set forth below. The second paragraph is submitted in the interest of distinguishing among the various appeals, and aiding in the conduct of the conference, and it is not intended to convey any particular position on the merits of any matter or any issue that will be considered at the conference.

The Order on appeal in 18-72689 and 19-70490, adopted in August, 2018, had two distinct parts. It included a Declaratory Ruling regarding the application of Section 253 and 332 of the Communications Act to actions taken by state and local governments and publicly-owned utilities that the FCC classifies as moratoria on broadband deployment. We refer to this below as the *Portland Appeal*. The August Order also included a Report and Order adopting rules governing pole attachments to utility poles owned by private utilities. We refer to this as the *AEP Appeal*. The Orders on appeal in Nos. 19-70123 et al. were adopted in September 2018, and deal more broadly with the application of Sections 253 and 332 to the authority of state and local governments and publicly-owned utilities to control placement of wireless facilities. We refer to these as the *Small Cell Appeals*. Some of the *Small Cell Appeals* were filed by local governments and publicly-owned utilities (the public petitioners), and separate appeals were filed by various providers of wireless services (industry petitioners). Their positions are in opposition, and industry petitioners, as well as certain intervenors, will support the FCC in opposing the public petitioners, and vice versa.



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Possible Agenda for Conference

Topic 1: The status of the abeyance motions in the *Portland Appeal* and *Small Cell Appeals*.

Topic 2: The schedule for briefing and calendaring of the appeals for oral argument.

a. The parties agree that it makes sense to have the *AEP Appeal* briefing proceed separately from the *Portland Appeal* and *Small Cell Appeals*. The parties also agree that there should be consolidated briefing for the *Portland Appeal* and *Small Cell Appeals*.

b. The parties agree that, unless matters are held in abeyance, the record would be filed for all appeals within 20 days of the conclusion of the case management conference.

c. The parties have agreed that the schedule for the *AEP Appeal* should require principal briefing approximately fifteen (15) days after the date scheduled for the principal briefs in the *Portland* and *Small Cell Appeals*, unless the *Portland* and *Small Cell Appeals* are stayed or held in abeyance, in which case the *AEP Appeal* petitioners request that the briefing in their case move forward.

d. The parties have discussed, but have not reached agreement on, the briefing schedule for the *Portland and Small Cell Appeals*, and possible expedited calendaring for all appeals. Local government petitioners and intervenors and publicly-owned utilities and petitioners on the *AEP Appeal* also wish to briefly discuss the relationship of the schedule and a possible motion to stay the effectiveness of the orders on appeal.

Topic 3: Word Counts and Briefing.

a. The parties to the *Portland and Small Cell Appeals* have exchanged, but not reached agreement on, word counts for briefing or the number of briefs (see attached proposals). They have agreed that the schedule should include the following:

- i. Principal Briefs of Petitioners
- ii. Briefs of Intervenors Supporting Petitioners
- iii. Respondents Brief
- iv. Briefs of Intervenors Supporting Respondents



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v. Reply Briefs of Petitioners

vi. Reply Briefs of Intervenors

b. The *AEP Appeal*, where there is a single group of petitioners, will follow standard FRAP/Ninth Circuit rules for briefing size and number of briefs. The parties to the *AEP Appeal* also anticipate agreement on the sequence of briefing and intervals between briefing.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Joseph Van Eaton'.

Joseph Van Eaton
of BEST BEST & KRIEGER LLP

Counsel for San Jose, California; Arcadia, California; Bellevue, Washington; Burien, Washington; Burlingame, California; Culver City, California; Town of Fairfax, California; Gig Harbor, Washington; Issaquah, Washington; Kirkland, Washington; Las Vegas, Nevada; Los Angeles, California; County of Los Angeles, California; Monterey, California; Ontario, California; Piedmont, California; Portland, Oregon; San Jacinto, California; Shafter, California; Yuma, Arizona; Albuquerque, New Mexico; National League of Cities; Brookhaven, Georgia; Baltimore, Maryland; Dubuque, Iowa; Ocean City, Maryland; Emeryville, California; Michigan Municipal League; Town of Hillsborough, California; La Vista, Nebraska; Medina, Washington; Papillion, Nebraska, Plano, Texas; Rockville, Maryland; San Bruno, California; Santa Monica, California; Sugarland, Texas; League of Nebraska Municipalities; Austin, Texas; Ann Arbor, Michigan; County of Anne Arundel, Maryland; Atlanta, Georgia; Boston, Massachusetts; Chicago Illinois; Clark County, Nevada; College Park, Maryland; Dallas, Texas; the District of Columbia; Gaithersburg, Maryland; Howard County, Maryland; Lincoln, Nebraska; Myrtle Beach, South Carolina; Omaha, Nebraska; Philadelphia, Pennsylvania; Rye, New York; Scarsdale, New York; Seat Pleasant, Maryland; Takoma Park, Maryland; the Texas Coalition of Cities for Utility Issues; Meridian Township, Michigan; Bloomfield Township, Michigan; the Michigan Townships Association; The Michigan Coalition to Protect Public Rights-Of-Way

ATTACHMENT

Parties	Local Government Petitioners' Proposed Word Count	Respondents' Proposed Word Count
Local Government Petitioners (Moratorium and Small Cell Orders)	22,000	21,000 [divided as petitioners prefer]
Montgomery County (RF issues)	10,000	
Public-Owned Utility Petitioner (APPA)	10,000	
Industry Petitioners	14,000	7,000
Total for Petitioners:	56,000	28,000
Intervenors Supporting Local Government Petitioners	14,000	14,000
Intervenors Supporting Industry Petitioners	10,000	10,000
Respondents (FCC and US)	56,000	28,000
Total for Respondents:	56,000	28,000
Intervenors Supporting Respondents (opposing industry petitioners)	10,000	10,000
Intervenors Supporting Respondents (opposing local government petitioners)	14,000	14,000
Reply Brief(s) of Local Government Petitioners, Montgomery County, and APPA	21,000	10,500
Reply Brief of Industry Petitioners	7,000	3,500
Reply Brief of Intervenors Supporting Local Government Petitioners	7,000	7,000
Reply Brief of Intervenors Supporting Industry Petitioners	5,000	5,000
Total for Reply Briefs:	40,000	26,000