

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 7. Mediation Questionnaire**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>*

**9th Cir. Case Number(s)** 19-70147 (FCC 18-133)

**Case Name** Montgomery County v. FCC, et al.

**Counsel submitting this form** Eric P. Gotting, Keller and Heckman LLP

**Represented party/ parties** Montgomery County

*Briefly describe the dispute that gave rise to this lawsuit.*

The Petition for Review challenges an FCC order captioned In the Matter of Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, which was released on September 27, 2018 and published at 83 Fed. Reg. 51867 (Oct. 15, 2018) ("Order").

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

The stated goal of the FCC's Order is to accelerate the deployment of 5G small cell technology by substantially reducing the ability of Petitioner and local governmental entities across the country to manage telecommunication carriers' rights to access, occupy, and use government property and rights-of-way. The overall question in this case is whether the FCC failed to adequately address comments submitted by Petitioner and other interested parties asking the FCC to first determine whether the FCC's existing radiofrequency ("RF") emission standards, which are now over 20-years old and were promulgated for non-5G mobile technologies, will adequately protect the health and safety of citizens living in Montgomery County and elsewhere. Petitioner seeks determination by this Court that the Order: (i) violates federal statutes and regulations – including, but not limited to, the Administrative Procedure Act, 5 U.S.C. § 706, the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq., the FCC's regulations promulgated thereunder, the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended, and the Council on Environmental Quality's and FCC's regulations promulgated thereunder; (ii) is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law; (iii) is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and (iv) is otherwise contrary to law.

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

The FCC's Order constitutes final agency action. Related proceedings in other tribunals include four petitions for review challenging the same Order that have been filed in the D.C. Circuit, but which have not yet been transferred (see Case Nos. 18-1294, 18-1305, 18-1326, and 18-1330). There are also a number of pending motions to intervene in those cases.

**Signature**

**Date**

*(use "s/[typed name]" to sign electronically-filed documents)*

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## CERTIFICATE OF SERVICE

I hereby certify that on January 22, 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. Counsel for all parties to this matter, and all matters consolidated therewith, are registered for CM/ECF and will be served by the CM/ECF system.

/s/ Eric P. Gotting  
Eric P. Gotting

Law Offices of:

Keller and Heckman LLP  
1001 G Street NW, Suite 500 West  
Washington D.C. 20001  
Phone: (202) 434-4100  
Facsimile: (202) 434-4646  
Email: [gotting@khlaw.com](mailto:gotting@khlaw.com)  
*Counsel for Montgomery County, Maryland*