

18-9563(L)

(and 18-9566; 18-9567; 18-9568, 18-9571, 18-9572)

United States Court of Appeals
for the Tenth Circuit

SPRINT CORPORATION,

Petitioners,

against

FEDERAL COMMUNICATIONS COMMISSION and UNITED
STATES OF AMERICA,

Respondents.

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

**NEW YORK CITY'S UNOPPOSED MOTION TO INTERVENE IN
SUPPORT OF PETITIONERS**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), and Federal Rule of Appellate Procedure 15(d), the City of New York moves for leave to intervene as a matter of right in support of each of the petitioners in the above-captioned proceedings—but only to the extent that each of the petitioners seeks review of agency action, as discussed in more detail below. No party has indicated that they oppose this motion.

Each of the petitioners in these actions seeks review of the Declaratory Ruling and Report and Order of the Federal Communications Commission (“FCC” or “Commission”) captioned *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133, WT Docket No. 17-79, WC Docket No. 17-84 (rel. Sept. 27, 2018). In the Order, the Commission sets out a new approach to local control over the processes for reviewing the siting of wireless-infrastructure facilities, such as fifth-generation or “5G” facilities.

The City of New York is entitled to intervene in this proceeding as a matter of right. The City is a local government whose current practices would be significantly restrained if the Order goes into effect, and will thus be directly “affected” by this Court’s review of the Order. 28 U.S.C. § 2348. The City also actively participated in the Commission proceedings below by submitting comments and is therefore a “party in interest.” *Id.*

The City of New York’s interests are not adequately represented by the current petitioners. The City of New York’s interests are most closely aligned with those of the other local government petitioners

(Seattle *et al.* in 18-9571; Huntington Beach *et al.* in 18-9572; and San Jose *et al.* in 18-9568, together the “Local Government Petitioners”). However, the Local Government Petitioners are differently positioned than the City in several material ways, so they may not adequately protect the City’s unique interests in this proceeding. *See* 10th Cir. R. 15.2(B)(1).

Nor are the City of New York’s interests aligned with the telecommunication company petitioners (Sprint in 18-9563, Verizon in 18-9566, and Puerto Rico Telephone Co. in 18-9567, together the “Telecommunication Company Petitioners”). The City’s interests were at odds with the Telecommunication Company Petitioners in the proceeding before the Commission, and we expect our positions will remain at odds.

Because our interests do not align with those of the Telecommunication Company Petitioners or Respondents in this proceeding, and because our interests, although different, are aligned with the Local Government Petitioners, intervention is necessary to permit the City of New York to protect its rights in these actions now and when they are eventually consolidated.

For the foregoing reasons, the City of New York respectfully requests that it be granted leave to intervene in these proceedings in support of petitioners.

Dated: New York, NY
November 29, 2018

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMIT AND OF DIGITAL SUBMISSION**

In accordance with Federal Rules of Appellate Procedure 27(d), 32(a), and 32(g)(1), Tenth Circuit Local Rule 25.5, and this Court's CM/ECF User's Manual II(J), I certify that:

- 1) All required privacy redactions have been made per Tenth Circuit Rule 25.5;
- 2) Hard copies of this pleading that may be required to be submitted to the Court are exact copies of the ECF filing;
- 3) The ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, McAfee VirusScan Enterprise + AntiSpyware Enterprise 8.8, version 6000.8403, last updated on November 19, 2018, and, according to the program, is free of viruses; and
- 4) I hereby certify that the foregoing Motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d) because it contains 459 words. The Motion complies with the typeface and style requirements of Federal Rules of Appellate Procedure 27(d) and 32(a) because it has been prepared in a proportionally spaced typeface using Century Schoolbook 14-point typeface.

By: MacKenzie Fillow
MacKenzie Fillow

New York, NY
November 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that this Motion is being electronically filed using the CM/ECF system on November 29, 2018, 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 by the CM/ECF system.

By: /s MacKenzie Fallow
MacKenzie Fallow

New York, NY
November 29, 2018