

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

AT&T SERVICES, INC.,

Petitioners,

v.

UNITED STATES OF AMERICA,

and

**FEDERAL COMMUNICATIONS
COMMISSION,**

Respondents.

**AMERICAN PUBLIC POWER
ASSOCIATION,**

Petitioners,

v.

UNITED STATES OF AMERICA,

and

**FEDERAL COMMUNICATIONS
COMMISSION,**

Respondents.

CITY OF AUSTIN, TEXAS, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Case Nos. 18-1294
(consolidated w/18-1305, 18-1326
and 18-1330)

Case No. 18-1305

Case No. 18-1326

and

**FEDERAL COMMUNICATIONS
COMMISSION**

Respondents.

CITY OF BOWIE, MARYLAND, ET AL.,

Petitioners,

Case No. 18-1330

v.

UNITED STATES OF AMERICA,

and

**FEDERAL COMMUNICATIONS
COMMISSION**

Respondents.

**MOTION OF THE NATIONAL LEAGUE OF CITIES, THE CITY OF
BALTIMORE, MARYLAND, THE TOWN OF OCEAN CITY,
MARYLAND, AND THE MICHIGAN MUNICIPAL LEAGUE, FOR
LEAVE TO INTERVENE AS OF RIGHT**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Rule 15(d) of the Federal Rules of Appellate Procedure, and District of Columbia Circuit Rule 15(b), the National League of Cities, the City of Baltimore, Maryland, the Town of Ocean City, Maryland, and the Michigan Municipal League (collectively, the “Intervenors”) hereby move for leave to intervene as of right in the above-captioned proceeding, in support of Petitioners American Public Power Association (“APPA”), the City of Austin, Texas, *et al.*, the City of Bowie,

Maryland, *et al.*; in opposition to Petitioner AT&T; and in support of Respondents solely with respect to the AT&T petition. The National League of Cities, the City of Baltimore, and the Michigan Municipal League participated in the underlying FCC proceeding; the Town of Ocean City did not. Counsel for AT&T indicated they consent to intervention by any Intervenor who participated in the underlying proceeding, but only consent to the intervention of non-participants in the underlying proceeding so long as they file a joint brief with those Intervenors who did participate in the proceeding below. Counsel for APPA consents to the intervention. Counsel for the City of Bowie, *et al.* consents to the intervention. Petitioners City of Austin Texas, *et al.* are represented by the same counsel as Intervenors, and support this intervention. Respondents were contacted for their position, but did not reply, likely due to the ongoing federal government shutdown.

The case concerns review of the Declaratory Ruling and Third Report and Order, FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018) (“Order”) adopted by the Federal Communications Commission (“Commission”). Intervenors are local governments, and organizations representing local governments, “whose interests are affected” within the meaning of 28 U.S.C. § 2348. Intervenors are also “interested parties” under 47 U.S.C. § 402(e) as the Order substantially affects local governments’ rights to manage, and receive compensation for, use of the public rights-of-way. The City of Baltimore and the Town of Ocean City, as local

governments, own and manage both public rights-of-way and infrastructure within those rights-of-way, and the scope of their ability to govern those spaces are directly implicated by the Order on appeal. The National League of Cities and Michigan Municipal League are both dedicated to protecting the rights and interests of local governments and leaders, and represent the interests of numerous local governments which, among other functions, own, regulate, and maintain public rights-of-way and infrastructure. Accordingly, Intervenors are entitled to intervene in this proceeding as of right, as each are both “interested parties” and parties “whose interests are affected” by the Order.

Accordingly, Intervenors respectfully request that they be granted leave to intervene as of right in the above-captioned proceeding. At such time as this Court acts to transfer and/or consolidate this and any other related cases, Intervenors also request that they be included as appropriate in any subsequent consolidated proceeding.

Respectfully submitted,

/s/ Joseph Van Eaton

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January 10, 2019

CORPORATE DISCLOSURE STATEMENT

The National League of Cities is dedicated to helping city leaders build better communities. Working in partnership with the 49 state municipal leagues, NLC serves as a resource to and an advocate for the more than 19,000 cities, villages and towns it represents. The Michigan Municipal League is organized to effectively represent the interests of member municipalities to preserve local control and empower municipal officials to shape the destiny of their municipality and improve the quality of life of their citizens. Neither group, nor any of their members, issues stock, has any parent company, or has a 10% or greater ownership interest held by any publicly-traded company. Both the National League of Cities and the Michigan Municipal League are interested in this litigation by virtue of their dedication to protecting the interests of local governments in managing their communities and public rights-of-way, which are substantially impaired by the Federal Communications Commission ruling being appealed here.

The City of Baltimore, Maryland and the Town of Ocean City, Maryland respectfully states they are governmental agencies and therefore exempt from Rule 26.1.

/s/ Joseph Van Eaton

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January 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2019 I filed the foregoing Motion to Intervene with the Clerk of the United States Court of Appeals for the DC Circuit through the CM/ECF system. Participants in the cases are all registered CM/ECF and will be served by the CM/ECF system.

/s/ Joseph Van Eaton
Joseph Van Eaton
Best Best & Krieger LLP

January 10, 2019