

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

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):	19-70144 (cons. w/ 70123, 70124, 70125, 70136, 70145, 70146, 70147 & 70148)		
District Court/Agency Case Number(s):	18-133		
District Court/Agency Location:	Federal Communications Commission		
Case Name:	San Jose, et al.	v.	FCC and USA
If District Court, docket entry number(s) of order(s) appealed from:			
Name of party/parties submitting this form:	City of San Jose, et al.		

Please briefly describe the dispute that gave rise to this lawsuit.

On Sept. 26, the Federal Communications Commission issued a Declaratory Order and Report and Order in Docket Nos. WT 17-79 and WT 17-84 that, among other things: reinterprets key statutory terms in Sec. 253 and 332(c)(7); and which establishes new deadlines for action on applications for "small wireless facilities." Many local governments, including Petitioners, objected to the FCC's proposals on both legal and policy grounds, and submitted substantial legal, economic, and policy evidence into the underlying record never addressed by the agency.

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

Among other things, the Order abrogates an en banc plain language decision of this Circuit interpreting Sec. 332 and Sec. 253; requires states and localities to lease facilities not generally dedicated to public use to certain wireless companies at out of pocket costs; abrogates Section 224 and asserts federal control over municipal utility structures; shortens time for action on wireless applications in a way that is designed to prevent public participation; and sets a federal standard for aesthetics without authority. Petitioners dispute the ruling on statutory and constitutional grounds, and also argue that it is, inter alia, arbitrary, capricious, and an abuse of discretion.

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

The related cases are: City of Portland, Oregon v. USA, 9th Circuit 18-72689 and AT&T v. FCC, DC Circuit, 18-1294 (cons. w/ APPA v. FCC, 18-1305, City of Austin v. FCC, 18-1326 and Eugene OR 18-1330); and consolidated cases are: Puerto Rico v. FCC, 9th Circuit 19-70125; City of Huntington Beach v USA, 9th Circuit 18-70146; City of Seattle v. USA, 9th Circuit 18-70136; Sprint v. FCC, 9th Circuit 18-70123; Verizon v. FCC, 9th Circuit 19-70124; Montgomery County, Maryland v. FCC, 9th Circuit 19-70147; and City of North Little Rock, AK v. FCC, 9th Circuit 19-70148; City and County of San Francisco v. FCC, 9th Circuit 19-70145 .

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

Every major wireless service and infrastructure provider, hundreds of communities and many individuals and associations participated in the FCC proceedings which resulted in the Order that is being appealed. We do not believe it possible that this matter can be resolved through mediation owing to the nature and scope of the issues at hand, and to the complexity of the appeals now pending.

Any party may provide additional information in confidence directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include 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

Note: 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. File this document electronically in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2019, I filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit through the CM/ECF system. Participants in the cases who are registered CM/ECF users will be served by the CM/ECF system.

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

January 22, 2019