

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):	19-70136		
District Court/Agency Case Number(s):	18-133		
District Court/Agency Location:	Federal Communications Commission		
Case Name:	City of Seattle, et al.	v.	FCC, et al.
If District Court, docket entry number(s) of order(s) appealed from:	N/A		
Name of party/parties submitting this form:	Cities of Seattle and Tacoma, WA; King County, WA; League of Oregon Cities; League of California Cities; League of Arizona Cities and Towns; City of Bakersfield, CA; City of Coconut Creek, FL; City of Lacey, WA; City of Olympia, WA; City of Rancho Palos Verdes, CA; City of Tumwater, WA; Colorado Communications and Utility Alliance; Rainier Communications Commission; and Thurston County, WA.		

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

The Federal Communications Commission ("Commission") initiated notice of inquiry and informal rulemaking proceedings in Docket Nos. WT 17-79 and WC 17-84 through which it proposed to identify and eliminate alleged barriers to wireline and wireless broadband deployment. Many local governments, including Petitioners and some of the Intervenors, objected to the Commission's proposals on both legal and policy grounds, and submitted substantial legal, economic, and policy evidence into the underlying record.

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

On September 27, 2018, the Commission adopted the order captioned In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, which is the subject of this appeal. The Order was published in the Federal Register on October 15, 2018. The Order will become effective on January 14, 2019.

The Commission's rules are an unlawful pre-emption of local and state government authority promulgated without response to the arguments advanced and factual evidence submitted by Petitioners in the record. Petitioners dispute the Order on statutory and constitutional grounds, and also assert that it is arbitrary, capricious, and an abuse of discretion.

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

See Attachment

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 Commission proceedings which resulted in the Declaratory Ruling and Third Report and Order that is the subject of this appeal. 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 the numerous participants.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto: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.

**Kenneth S. Fellman representing:** City of Coconut Creek, FL; King County, WA; City of Lacey, WA; City of Olympia, WA; City of Seattle, WA; City of Tacoma, WA; Thurston County, WA; City of Tumwater, WA; Colorado Communications and Utility Alliance; and Rainier Communications Commission

**Robert C. May III representing:** City of Bakersfield, CA; City of Rancho Palos Verdes, CA; League of California Cities; League of Oregon Cities; and League of Arizona Cities and Towns

## ATTACHMENT TO MEDIATION QUESTIONNAIRE

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

Counsel is aware of the following proceedings:

Federal Communications Commission:

- *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Petition for Reconsideration by Smart Communities and Special Districts Coalition, WT Docket No. 17-79 and WC Docket No. 17-84 (filed Sep. 4, 2018).
- *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Petition for Reconsideration by Coalition of Concerned Utilities, WT Docket No. 17-79 and WC Docket No. 17-84 (filed Oct. 15, 2018).
- *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Petition for Reconsideration by City of New Orleans, Louisiana *et al.*, WT Docket No. 17-79 and WC Docket No. 17-84 (filed Nov. 14, 2018).

**U.S. Court of Appeals for the District of Columbia Circuit:**

- *City of Eugene, Oregon et al. v. FCC*, No. 18-1330.
- *AT&T Services, Inc. v. FCC*, No. 18-1294.
- *Am. Pub. Power Assn. v. FCC*, No. 18-1305.
- *City of Austin, Texas, et al. v. USA*, No. 18-1326.

**U.S. Court of Appeals for the Ninth Circuit:**

- *Sprint Corp. v. FCC*, No. 19-70123.
- *Verizon Commc'ns v. FCC*, No. 19-70124.
- *Puerto Rico Tel. Co. v. FCC*, No. 19-70125.
- *City of San Jose, California, et al. v. FCC*, No. 19-70144.
- *City and County of San Francisco v. FCC*, No. 19-70 145.
- *City of Huntington Beach, California, v. FCC*, No. 19-70 146.
- *Montgomery County, Maryland, v. FCC*, No. 19-7014 7.
- *City of North Little Rock, Arkansas, et al. v. FCC*, No. 19-70 148.
- *City of Portland v. United States*, No. 18-72689.

**U.S. Court of Appeals for the Eleventh Circuit:**

*Am. Electric Power Serv. Corp. et al. v. FCC* (18-14408).

## CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2019, I filed the foregoing Mediation Questionnaire with the Clerk of the United States Court of Appeals for the Ninth Circuit through the CM/ECF system, which will send a notice of filing to all registered users. All participants in this matter, and all matters consolidated therewith, are registered CM/ECF users, and service will be accomplished through the CM/ECF system.

*s/ Kenneth S. Fellman*

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