

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**City of Seattle, Washington;
City of Tacoma, Washington;
King County, Washington;
League of Oregon Cities;
League of California Cities; and
League of Arizona Cities and Towns,**

Petitioners,

v.

United States of America

and

**Federal Communications
Commission,**

Respondents.

Case No. _____

**PETITION FOR REVIEW
of Order of the Federal
Communications Commission**

Pursuant to Federal Rule of Appellate Procedure 15, Circuit Rule 15-1, 5 U.S.C. § 706, 47 U.S.C. § 402(a), 47 U.S.C. § 151 *et seq.*, and 28 U.S.C. §§ 2342(1) and 2344, the City of Seattle, Washington; the City of Tacoma, Washington; King County, Washington; the League of California Cities; the League of Oregon Cities; and the League of Arizona Cities and Towns (collectively “Petitioners”) hereby petition this Court for review of the Federal Communications Commission (“Commission”) order captioned *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling

and Third Report and Order, WT Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133 (released Sep. 27, 2018) (the “Order”). The Order was published in the Federal Register on October 15, 2018.¹ A copy of the full text of the Order is attached.

The Order purports to further the Commission’s goal of accelerating the deployment of 5G small cell technology by limiting or eliminating Petitioners’ traditional local regulatory authority over zoning and right-of-way management and Petitioners’ proprietary rights over whether and on what terms State and local governments may allow communications providers rights to access, occupy and use Petitioners’ real and personal property. However, the Commission’s rules are an unlawful pre-emption of local and state government authority promulgated without response to the arguments advanced by Petitioners in the record.

The Order is a final order subject to appeal under 47 U.S.C. § 402(a). Venue is proper in this Court under 28 U.S.C. § 2343 because Petitioners are located in this judicial circuit. All Petitioners participated in the underlying proceeding.

Petitioners seek review of the Order on the grounds that the Order is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; violates federal law, including, but not limited

¹ See Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, 83 Fed. Reg. 51867 (Oct. 15, 2018).

to, the Constitution of the United States, the Communications Act of 1934, as amended, and the Commission’s regulations promulgated thereunder; and is otherwise contrary to law. Petitioners respectfully request that this Court hold unlawful, vacate, enjoin, and set aside the Order; and grant such other relief as the Court may find proper.

Dated: October 24, 2018

Respectfully submitted:

CITY OF SEATTLE, WASHINGTON;
CITY OF TACOMA, WASHINGTON; and
KING COUNTY, WASHINGTON

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AND

LEAGUE OF CALIFORNIA CITIES;
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