

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

AT&T SERVICES, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

No. 18-1294
(Consolidated with
No. 18-1305)

STATEMENT OF ISSUES TO BE RAISED

In accordance with this Court's October 30, 2018 Order, petitioner AT&T Services, Inc., on behalf of its wireless affiliates, submits this nonbinding statement of issues to be raised in this case.

In the *Order* under review,¹ the Federal Communications Commission ("FCC") declined to adopt a "deemed granted" remedy for instances when a state or local government entity fails to act on a request for authorization to place, construct, or modify personal wireless services facilities within a reasonable period of time after the request is filed. The Communications Act, 47 U.S.C. § 332(c)(7)(B)(i)(II), precludes local governments from prohibiting or from taking

¹ Declaratory Ruling and Third Report and Order, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket Nos. 17-79 and 17-84, FCC 18-133 ("*Order*").

actions having the effect of prohibiting the provision of personal wireless services. Local governments must also act on requests for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is filed. *Id.* § 332(c)(7)(B)(ii). The FCC acknowledged that failure to act within a reasonable time “amount[s] to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II),” *Order* ¶ 118, but declined to adopt a standard that the failure to act within the required reasonable time should be deemed to be a grant of authorization, *id.* ¶ 124 & n.357.

The issue to be raised is:

Whether the FCC’s refusal to deem failure to act on a request for authorization to place, construct, or modify personal wireless services facilities within a reasonable time after the request is filed to be a grant of authorization is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

Respectfully submitted,

/s/ Sean A. Lev

Sean A. Lev
Frederick Gaston Hall
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
slev@kellogghansen.com
fhall@kellogghansen.com

David L. Lawson
Gary L. Phillips
AT&T SERVICES, INC.
1120 20th Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 457-3055

Robert Vitanza
AT&T SERVICES, INC.
208 S. Akard Street, Room 3031
Dallas, TX 75202
(214) 757-3357

Counsel for Petitioner AT&T Services, Inc.

November 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on November 29, 2018, I filed the foregoing in the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I further certify that all parties are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system, except for the following party who will be served via U.S. Mail.

The Honorable Matthew G. Whitaker
Acting Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

/s/ Sean A. Lev _____

Sean A. Lev