

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 7. Mediation Questionnaire

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9th Cir. Case Number(s) 19-70145

Case Name City and County of San Francisco v. Federal Communications Comm

Counsel submitting
this form

Tilman L. Lay
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Represented party/
parties

City and County of San Francisco

Briefly describe the dispute that gave rise to this lawsuit.

This petition for review arises out of a Federal Communications Commission (“FCC”) rulemaking proceeding, Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-79 & WC Docket No. 17-84. In its Declaratory Ruling and Third Report and Order, No. 18-133, 83 Fed. Reg. 51867 (Oct. 15, 2008) (“Order”), adopted in those dockets, the FCC construed Sections 253 and 332 (c)(7) of the Communications Act, 47 U.S.C. §§ 253 & 332(c)(7), to empower it to establish a scheme that regulates the rates, terms, and conditions under which local governments like San Francisco are required to make their local rights-of-way and other municipal infrastructure, including City-owned utility poles, street lights and traffic signals, available to private parties for the installation and operation of small wireless facilities (“SWF”). San Francisco filed comments and reply comments opposing the FCC’s proposals, and the FCC rejected the City’s position in the Order.

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

The FCC's Order substantially curtails and preempts the ability of local governments like San Francisco to manage SWF providers' access to municipal property and to receive fair and reasonable compensation for SWF providers' use of that property.

The issues raised on appeal are:

Whether the Order exceeds the FCC's authority and is contrary to law, including, but not limited to, the federal Communications Act and the Constitution of the United States, and is also arbitrary, capricious, and an abuse of discretion.

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

1. In addition to the pending cases in this Court with which this case has been consolidated, there are four pending appeals of the same FCC Order pending before the D.C. Circuit.
2. Pending before this Court is *City of Portland v. United States*, No. 18-72689, which is an appeal of an earlier FCC order in the same rulemaking proceeding that raises similar issues.
3. A motion to reconsider the Order filed by other parties is still pending before the FCC.

Signature /s/ Tillman L. Lay

Date 1/22/2019

(use "s/[typed name]" to sign electronically-filed documents)

CERTIFICATE OF SERVICE

I hereby certify that, on January 22, 2019, I caused the foregoing to be electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users. Counsel for all parties to this matter, and all matters consolidated therewith, are registered for CM/ECF and will be served by the CM/ECF system.

/s/ Tillman L. Lay

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