

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

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CITY OF HUNTINGTON BEACH,

*Petitioner,*

CITY OF ARCADIA, California; CITY OF BELLEVUE, Washington; CITY OF BURIEN, Washington; CITY OF BURLINGAME, California; CITY OF GIG HARBOR, Washington; CITY OF ISSAQUAH, Washington; CITY OF KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada; CITY OF LOS ANGELES, California; CITY OF MONTEREY, California; CITY OF ONTARIO, California; CITY OF PIEDMONT, California; CITY OF PORTLAND, Oregon; CITY OF SAN JACINTO, California; CITY OF SAN JOSE, California; CITY OF SHAFTER, California; CITY OF YUMA, Arizona; COUNTY OF LOS ANGELES, California; CULVER CITY, California; TOWN OF FAIRFAX, California; CITY OF NEW YORK,

*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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SPRINT CORPORATION,

*Petitioner,*

CITY OF BOWIE, Maryland; CITY OF EUGENE, Oregon; CITY OF HUNTSVILLE, Alabama; CITY OF WESTMINSTER, Maryland; COUNTY OF MARIN, California; CITY OF ARCADIA, California; CULVER CITY, California; CITY OF BELLEVUE, California; CITY OF BURIEN, Washington; CITY OF BURLINGAME, Washington; CITY OF GIG HARBOR, Washington; CITY OF ISSAQUAH, Washington; CITY OF KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada; CITY OF LOS ANGELES, California; CITY OF

No. 19-70146

No. 19-70123

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MONTEREY, California; CITY OF ONTARIO, California;  
CITY OF PIEDMONT, California; CITY OF PORTLAND,  
Oregon; CITY OF SAN JACINTO, California; CITY OF SAN  
JOSE, California; CITY OF SHAFTER, California; CITY OF  
YUMA, Arizona; COUNTY OF LOS ANGELES, California;  
TOWN OF FAIRFAX, California; CITY OF NEW YORK,

*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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VERIZON COMMUNICATIONS, INC.,

*Petitioner,*

CITY OF ARCADIA, California; CITY OF BELLEVUE,  
California; CITY OF BURIEN, Washington; CITY OF

BURLINGAME, Washington; CITY OF GIG HARBOR,  
Washington; CITY OF ISSAQUAH, Washington; CITY OF  
KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada;  
CITY OF LOS ANGELES, California; CITY OF MONTEREY,  
California; CITY OF ONTARIO, California; CITY OF  
PIEDMONT, California; CITY OF PORTLAND, Oregon;  
CITY OF SAN JACINTO, California; CITY OF SAN JOSE,  
California; CITY OF SHAFTER, California; CITY OF  
YUMA, Arizona; COUNTY OF LOS ANGELES, California;  
CULVER CITY, California; CITY OF NEW YORK; TOWN OF  
FAIRFAX, California,

*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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No. 19-70124

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PUERTO RICO TELEPHONE COMPANY, INC.,

*Petitioner,*

CITY OF ARCADIA, California; CITY OF BELLEVUE, California; CITY OF BURIEN, Washington; CITY OF BURLINGAME, Washington; CITY OF GIG HARBOR, Washington; CITY OF ISSAQUAH, Washington; CITY OF KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada; CITY OF LOS ANGELES, California; CITY OF MONTEREY, California; CITY OF ONTARIO, California; CITY OF PIEDMONT, California; CITY OF PORTLAND, Oregon; CITY OF SAN JACINTO, California; CITY OF SAN JOSE, California; CITY OF SHAFTER, California; CITY OF YUMA, Arizona; COUNTY OF LOS ANGELES, California; CULVER CITY, California; TOWN OF FAIRFAX, California; CITY OF NEW YORK,

*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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CITY OF SEATTLE, Washington; CITY OF TACOMA, Washington; KING COUNTY, Washington; LEAGUE OF OREGON CITIES; LEAGUE OF CALIFORNIA CITIES; LEAGUE OF ARIZONA CITIES AND TOWNS,

*Petitioners,*

CITY OF BAKERSFIELD, California; CITY OF COCONUT CREEK, Florida; CITY OF LACEY, Washington; CITY OF OLYMPIA, Washington; CITY OF RANCHO PALOS VERDES, California; CITY OF TUMWATER, Washington; COLORADO COMMUNICATIONS AND UTILITY ALLIANCE; RAINIER COMMUNICATIONS COMMISSION; COUNTY OF THURSTON, Washington; CITY OF ARCADIA, California;

No. 19-70125

No. 19-70136

CITY OF BELLEVUE, Washington; CITY OF BURIEN, Washington; CITY OF BURLINGAME, California; CITY OF GIG HARBOR, Washington; CITY OF ISSAQUAH, Washington; CITY OF KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada; CITY OF LOS ANGELES, California; CITY OF MONTEREY, California; CITY OF ONTARIO, California; CITY OF PIEDMONT, California; CITY OF PORTLAND, Oregon; CITY OF SAN JACINTO, California; CITY OF SAN JOSE, California; CITY OF SHAFER, California; CITY OF YUMA, Arizona; COUNTY OF LOS ANGELES, California; CULVER CITY, California; TOWN OF FAIRFAX, California; CITY OF NEW YORK,

*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

CITY OF SAN JOSE, California; CITY OF ARCADIA, California; CITY OF BELLEVUE, Washington; CITY OF BURIEN, Washington; CITY OF BURLINGAME, California; CULVER CITY, California; TOWN OF FAIRFAX, California; CITY OF GIG HARBOR, Washington; CITY OF ISSAQUAH, Washington; CITY OF KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada; CITY OF LOS ANGELES, California; COUNTY OF LOS ANGELES, California; CITY OF MONTEREY, California; CITY OF ONTARIO, California; CITY OF PIEDMONT, California; CITY OF PORTLAND, Oregon; CITY OF SAN JACINTO, California; CITY OF SHAFER, California; CITY OF YUMA, Arizona,

*Petitioners,*

CTIA—THE WIRELESS ASSOCIATION; COMPETITIVE CARRIERS ASSOCIATION; SPRINT CORPORATION; VERIZON COMMUNICATIONS, INC.; CITY OF NEW YORK; WIRELESS INFRASTRUCTURE ASSOCIATION,

No. 19-70144

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*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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CITY AND COUNTY OF SAN FRANCISCO,

*Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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MONTGOMERY COUNTY, MARYLAND,

*Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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AT&T SERVICES, INC.,

*Petitioner,*

CITY OF BALTIMORE, Maryland; CITY AND COUNTY OF  
SAN FRANCISCO, California; MICHIGAN MUNICIPAL  
LEAGUE; CITY OF ALBUQUERQUE, New Mexico;  
NATIONAL LEAGUE OF CITIES; CITY OF BAKERSFIELD,  
California; TOWN OF OCEAN CITY, Maryland; CITY OF  
BROOKHAVEN, Georgia; CITY OF COCONUT CREEK,

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No. 19-70145

No. 19-70147

No. 19-70326

Florida; CITY OF DUBUQUE, Iowa; CITY OF EMERYVILLE, California; CITY OF FRESNO, California; CITY OF LA VISTA, Nebraska; CITY OF LACEY, Washington; CITY OF MEDINA, Washington; CITY OF OLYMPIA, Washington; CITY OF PAPILLION, Nebraska; CITY OF PLANO, Texas; CITY OF RANCHO PALOS VERDES, California; CITY OF ROCKVILLE, Maryland; CITY OF SAN BRUNO, California; CITY OF SANTA MONICA, California; CITY OF SUGARLAND, Texas; CITY OF TUMWATER, Washington; CITY OF WESTMINSTER, Maryland; COLORADO COMMUNICATIONS AND UTILITY ALLIANCE; CONTRA COSTA COUNTY, California; COUNTY OF MARIN, California; INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION; INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION; LEAGUE OF NEBRASKA MUNICIPALITIES; NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS; RAINIER COMMUNICATIONS COMMISSION; THURSTON COUNTY, Washington; TOWN OF CORTE MADERA, California; TOWN OF HILLSBOROUGH, California; TOWN OF YARROW POINT, Washington; CITY OF ARCADIA, California; CITY OF BELLEVUE, Washington; CITY OF BURIEN, Washington; CITY OF BURLINGAME, California; CITY OF CULVER CITY, California; CITY OF GIG HARBOR, Washington; CITY OF ISSAQUAH, Washington; CITY OF KIRKLAND, Washington; CITY OF LAS VEGAS, Nevada; CITY OF LOS ANGELES, California; CITY OF MONTEREY, California; CITY OF ONTARIO, California; CITY OF PIEDMONT, California; CITY OF PORTLAND, Oregon; CITY OF SAN JACINTO, California; CITY OF SAN JOSE, California; CITY OF SHAFTER, California; CITY OF YUMA, Arizona; COUNTY OF LOS ANGELES, California; TOWN OF FAIRFAX, California,

*Intervenors,*

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

AMERICAN PUBLIC POWER ASSOCIATION,

*Petitioner,*

CITY OF ALBUQUERQUE, New Mexico; NATIONAL LEAGUE OF CITIES; CITY OF BROOKHAVEN, Georgia; CITY OF BALTIMORE, Maryland; CITY OF DUBUQUE, Iowa; TOWN OF OCEAN CITY, Maryland; CITY OF EMERYVILLE, California; MICHIGAN MUNICIPAL LEAGUE; TOWN OF HILLSBOROUGH, California; CITY OF LA VISTA, Nebraska; CITY OF MEDINA, Washington; CITY OF PAPANILLION, Nebraska; CITY OF PLANO, Texas; CITY OF ROCKVILLE, Maryland; CITY OF SAN BRUNO, California; CITY OF SANTA MONICA, California; CITY OF SUGARLAND, Texas; LEAGUE OF NEBRASKA MUNICIPALITIES; NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS; CITY OF BAKERSFIELD, California; CITY OF FRESNO, California; CITY OF RANCHO PALOS VERDES, California; CITY OF COCONUT CREEK, Florida; CITY OF LACEY, Washington; CITY OF OLYMPIA, Washington; CITY OF TUMWATER, Washington; TOWN OF YARROW POINT, Washington; THURSTON COUNTY, Washington; COLORADO COMMUNICATIONS AND UTILITY ALLIANCE; RAINIER COMMUNICATIONS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO, California; COUNTY OF MARIN, California; CONTRA COSTA COUNTY, California; TOWN OF CORTE MADERA, California; CITY OF WESTMINSTER, Maryland,

*Intervenors,*

V.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

No. 19-70339

CITY OF AUSTIN, Texas; CITY OF ANN ARBOR, Michigan;  
COUNTY OF ANNE ARUNDEL, Maryland; CITY OF  
ATLANTA, Georgia; CITY OF BOSTON, Massachusetts;  
CITY OF CHICAGO, Illinois; CLARK COUNTY, Nevada;  
CITY OF COLLEGE PARK, Maryland; CITY OF DALLAS,  
Texas; DISTRICT OF COLUMBIA; CITY OF GAITHERSBURG,  
Maryland; HOWARD COUNTY, Maryland; CITY OF  
LINCOLN, Nebraska; MONTGOMERY COUNTY, Maryland;  
CITY OF MYRTLE BEACH, South Carolina; CITY OF  
OMAHA, Nebraska; CITY OF PHILADELPHIA,  
Pennsylvania; CITY OF RYE, New York; CITY OF  
SCARSDALE, New York; CITY OF SEAT PLEASANT,  
Maryland; CITY OF TAKOMA PARK, Maryland; TEXAS  
COALITION OF CITIES FOR UTILITY ISSUES; MERIDIAN  
TOWNSHIP, MICHIGAN; BLOOMFIELD TOWNSHIP,  
MICHIGAN; MICHIGAN TOWNSHIPS ASSOCIATION;  
MICHIGAN COALITION TO PROTECT PUBLIC RIGHTS-OF-  
WAY,

*Petitioners,*

No. 19-70341

CITY OF ALBUQUERQUE, New Mexico; NATIONAL  
LEAGUE OF CITIES; CITY OF BROOKHAVEN, Georgia;  
CITY OF BALTIMORE, Maryland; CITY OF DUBUQUE,  
Iowa; TOWN OF OCEAN CITY, Maryland; CITY OF  
EMERYVILLE, California; MICHIGAN MUNICIPAL LEAGUE;  
TOWN OF HILLSBOROUGH, California; CITY OF LA VISTA,  
Nebraska; CITY OF MEDINA, Washington; CITY OF  
PAPILLION, Nebraska; CITY OF PLANO, Texas; CITY OF  
ROCKVILLE, Maryland; CITY OF SAN BRUNO, California;  
CITY OF SANTA MONICA, California; CITY OF  
SUGARLAND, Texas; LEAGUE OF NEBRASKA  
MUNICIPALITIES; NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS; CITY  
OF BAKERSFIELD, California; CITY OF FRESNO,  
California; CITY OF RANCHO PALOS VERDES, California;  
CITY OF COCONUT CREEK, Florida; CITY OF LACEY,  
Washington; CITY OF OLYMPIA, Washington; CITY OF  
TUMWATER, Washington; TOWN OF YARROW POINT,  
Washington; THURSTON COUNTY, Washington;  
COLORADO COMMUNICATIONS AND UTILITY ALLIANCE;



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RAINIER COMMUNICATIONS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO, California; COUNTY OF MARIN, California; CONTRA COSTA COUNTY, California; TOWN OF CORTE MADERA, California; CITY OF WESTMINSTER, Maryland,

*Intervenors,*

V.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

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CITY OF EUGENE, Oregon; CITY OF HUNTSVILLE, Alabama; CITY OF BOWIE, Maryland,

*Petitioners,*

CITY OF ALBUQUERQUE, New Mexico; NATIONAL LEAGUE OF CITIES; CITY OF BROOKHAVEN, Georgia; CITY OF BALTIMORE, Maryland; CITY OF DUBUQUE, Iowa; TOWN OF OCEAN CITY, Maryland; CITY OF EMERYVILLE, California; MICHIGAN MUNICIPAL LEAGUE; TOWN OF HILLSBOROUGH, California; CITY OF LA VISTA, Nebraska; CITY OF MEDINA, Washington; CITY OF PAPILLION, Nebraska; CITY OF PLANO, Texas; CITY OF ROCKVILLE, Maryland; CITY OF SAN BRUNO, California; CITY OF SANTA MONICA, California; CITY OF SUGARLAND, Texas; LEAGUE OF NEBRASKA MUNICIPALITIES; NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS; CITY OF BAKERSFIELD, California; CITY OF FRESNO, California; CITY OF RANCHO PALOS VERDES, California; CITY OF COCONUT CREEK, Florida; CITY OF LACEY, Washington; CITY OF OLYMPIA, Washington; CITY OF TUMWATER, Washington; TOWN OF YARROW POINT, Washington; THURSTON COUNTY, Washington; COLORADO COMMUNICATIONS AND UTILITY ALLIANCE;

No. 19-70344

RAINIER COMMUNICATIONS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO, California; COUNTY OF MARIN, California; CONTRA COSTA COUNTY, California; TOWN OF CORTE MADERA, California; CITY OF WESTMINSTER, Maryland,

*Intervenors,*

V.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA,

*Respondents.*

**OPPOSITION OF PETITIONER, CITY OF HUNTINGTON BEACH TO  
FEDERAL COMMUNICATIONS COMMISSION’S MOTION TO HOLD  
IN ABEYANCE AND DEFER FILING OF THE RECORD**

Petitioner City of Huntington Beach, California (“Huntington Beach”) joins in the Opposition of the City of San Jose, et al, City of Austin, et al., and Local Government Intervenors ( the “*Local Governments’ Opposition*”) in requesting that the Court deny the Motion of the Federal Communications Commission (“FCC”) to hold this matter in abeyance and to delay filing of the record.

At issue is whether the Ninth Circuit should hold in abeyance judicial review of the FCC’s Declaratory Ruling and Third Report and Order, *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, 33 FCC Rcd 9088 (Sep. 27, 2018) (“*September Order*”). When considering whether to grant abeyance, the Ninth Circuit considers “whether delaying judicial review will impose hardships on plaintiffs.” (*Acura of Bellevue v.*

*Reich* (9th Cir. 1996) 90 F.3d 1403, 1408.) Huntington Beach agrees with San Jose Petitioners that the hardships are significant.

As explained in the attached Declaration of Hayden Beckman, complying with the new Shot Clock will impose a hardship on Huntington Beach, particularly as applied to small wireless facilities. Among other things, the FCC's 60-day short clock makes it impossible to follow well-established local procedures for obtaining land use exceptions where a proposed facility fails to satisfy local aesthetic standards.

Dated: March 7, 2019

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
(714) 536-5555

By: /s/ Michael J. Vigliotta

MICHAEL J. VIGLIOTTA,  
Chief Asst. City Attorney  
2000 Main Street  
Huntington Beach, CA 92648  
(714) 536-5555

*Counsel for Petitioners*

## DECLARATION OF HAYDEN BECKMAN

I, Hayden Beckman, declare and state:

1. I have worked as a professional urban planner for the City of Huntington Beach for almost 11 total years. Throughout the past years, a significant part of my time has been spent on the entitlement and permitting processes for Panel Antennas and their supporting Remote Radio Units, collectively known as “Cell Sites.”
2. The generally applicable zoning regulations for Cell Sites require administrative Design Review (“DR”) and approval by a Conditional Use Permit (“CUP”) following a public hearing. Further, pursuant to State Law, Cell Sites in the Coastal Zone of the City require an additional Coastal Development Permit (“CDP”). Many telecommunications companies seek to install Cell Sites in the Coastal Zone, which includes State Highway 1.
3. In 2017, the City amended its Zoning Code to address “small wireless facilities” (“SWFs”) located in the public right-of-way, including administrative approval where the application satisfies one of four pre-approved Design Standards. These Design Standards satisfy the FCC’s requirement of publishing objective design standards. (FCC 18-133, ¶86.)
4. However, not all telecommunications carriers submit applications to install SWFs on existing structures in the public right-of-way that take advantage of the City Design Standards. Yet, in its September 2018 Report and Order, the

FCC required that regardless of whether the SWF application satisfies the Design Standards, the City must determine within 10 days if an application is complete, and must approve or deny the application in 60 days.

5. It is simply not possible to resolve a SWF application that does not meet the Design Standards in 60-days.

6. The problem with the 60-day window is compounded because multiple telecommunications providers may file applications in a short time frame, and even a single applicant may file an unlimited number of applications at once. Responding to multiple SWF applications that do not meet the Design Standards places an unreasonable strain on limited City staff in order to avoid the risk of litigation, or delaying other land use applications.

7. It is my understanding that Huntington Beach is challenging the validity of the FCC September 2018 Report and Order regarding SWFs. It is critical to the City that Huntington Beach's challenge is resolved as quickly as possible to avoid the above problems with complying with the Shot Clock.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of March, 2019 at Huntington Beach, California.

/s/ Hayden Beckman  
Hayden Beckman  
Senior Planner

## **CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

### **Certificate of Compliance With Type-Volume Limitation, Typeface Requirements and Type Style Requirements**

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(a) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) this document contains 695 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Michael J. Vigliotta  
Michael J. Vigliotta  
Chief Asst. City Attorney

March 7, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 7, 2019, I sent copies of the forgoing  
Opposition via the ECF system to the parties:

/s/ Michael J. Vigliotta  
Michael J. Vigliotta  
Chief Asst. City Attorney

March 7, 2019