

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

**THE CITY OF PORTLAND,  
OREGON**

Petitioner,

v.

**UNITED STATES OF AMERICA**

and

**FEDERAL COMMUNICATIONS  
COMMISSION**

Respondents

Case No. \_\_

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

Pursuant to Section 402(a) of the Communications Act of 1934, as amended (the “Communications Act”), 47 U.S.C. § 151 *et seq.*, and Sections 2342(1) and 2344 of Title 28 of the United States Code, 28 U.S.C. §§ 2342, 2344; and in accordance with Federal Rules of Appellate Procedure 15, the City of Portland, Oregon (the “City”), hereby petitions for review of the Declaratory Ruling of the Federal Communications Commission (“FCC”) in the attached Third Report and Order and Declaratory Ruling , *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 18-111, WT Docket No. 17-79 (the “Ruling”), which, *inter alia*, finds that state and local *de facto* and *de jure* moratoria on broadband wireline or wireless deployment, including

restrictions on the weight of trucks permitted on roads, violate 47 U.S.C. §§ 253(a) and are not generally saved from preemption by 47 U.S.C. §253(c). The Ruling was adopted on August 2, 2018, and released on August 3. The Declaratory Ruling was not published in the Federal Register and was effective upon its release.<sup>1</sup>

Venue is proper in this Court under 28 U.S.C. § 2343. The City is located in this judicial circuit. On June 17, 2017, the City filed comments in the FCC proceeding which led to the Ruling, as part of a coalition of local governments.

The Ruling exceeds the FCC's statutory authority; is arbitrary and capricious and an abuse of discretion; and is otherwise contrary to law, including the Constitution of the United States. The City respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the Declaratory Ruling; and grant such other relief as it may deem appropriate.

Respectfully submitted,

/s/ Joseph Van Eaton

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October 2, 2018

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<sup>1</sup> The Third Report and Order was published in the Federal Register on September 14, 2018. 83 FR 46812.