



County of San Diego

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Via CM/ECF Filing

Ms. Molly C. Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: County of San Diego's Letter of Support for Local Government Petitioners, Intervenor, and Amici [*Consolidated Petitions 18-72689, 19-70490, 19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70339, 19-70341, 19-70344*]

Dear Ms. Dwyer:

Pursuant to the Ninth Circuit Advisory Committee Note to Ninth Circuit Rule 29-1, the County of San Diego ("County") hereby joins in specified arguments in support of the Local Government Petitioners, Intervenor, and Amici.

THE COUNTY'S INTEREST

The County was party to *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008), which held that the "unambiguous text" of section 253(a) of the Telecommunications Act bars only "actual or effective prohibition, rather than the mere possibility of prohibition." *Id.* at 578-79.

Applying the “actual or effective prohibition” test, this Court approved the County’s Wireless Telecommunications Zoning Ordinance, and preserved the County’s discretion to “balance the competing goals of [the] ordinance – the provision of wireless services and other valid public goals such as safety and aesthetics.” *Id.* at 580. So too did this Court approve the County’s use of detailed application requirements, and its requirement of public hearings. *Id.*

This Court acknowledged that local procedural rules or discretionary processes, at least in theory, could be used to cause unreasonable delays. In practice, however, there was no evidence of any such delays. Moreover, if unreasonable delays or unjustifiable denials were to occur, providers would have access to expedited remedies. *Id.* (“[I]f a telecommunications provider believes that the zoning board is in fact using its procedural rules to delay unreasonably an application, or its discretionary authority to deny an application unjustifiably, the Act provides an expedited judicial review process in federal or state court.”).

Following the *Sprint Telephony* decision, the County’s Ordinance was not the subject of litigation. Rather, the County worked cooperatively with providers with the shared goal of deploying technology, consistent with state and federal law, and County procedures and processes.

**THE COUNTY SUPPORTS THE LOCAL GOVERNMENT PETITIONERS,
INTERVENORS, AND AMICI**

Pursuant to Circuit Rule 29-1, the County of San Diego joins in Petitioner Local Governments’ Joint Opening Brief (Case No. 18-72689, et al.) (Docket No. 62) in its entirety; the Joint Brief for Intervenors the City of New York and National Association of Telecommunications Officers and Advisors (Case No. 19-70123, et al.) (Docket No. 93) in its entirety; and the Amicus Brief of the Association of Washington Cities Supporting Petitioners (Case No. 19-70144) (Docket No. 88-2), Sections I., II., and III.

Respectfully submitted,
THOMAS E. MONTGOMERY, County Counsel

By s/Jeffrey P. Michalowski, Senior Deputy