

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

AT&T

Petitioner,

v.

UNITED STATES OF AMERICA

and

**FEDERAL COMMUNICATIONS
COMMISSION**

Respondents

Case No. 18-1294
(consolidated with
Case No. 18-1305)

**MOTION OF THE CITY OF SAN JOSE, CALIFORNIA; THE CITY OF
ARCADIA, CALIFORNIA; THE CITY OF BELLEVUE, WASHINGTON;
THE CITY OF BURIEN, WASHINGTON; THE CITY OF BURLINGAME,
CALIFORNIA; THE CITY OF CULVER CITY, CALIFORNIA; THE
TOWN OF FAIRFAX, CALIFORNIA; THE CITY OF GIG HARBOR,
WASHINGTON; THE CITY OF ISSAQUAH, WASHINGTON; THE CITY
OF KIRKLAND, WASHINGTON; THE CITY OF LAS VEGAS, NEVADA;
THE CITY OF LOS ANGELES, CALIFORNIA; THE COUNTY OF LOS
ANGELES, CALIFORNIA; THE CITY OF MONTEREY, CALIFORNIA;
THE CITY OF ONTARIO, CALIFORNIA; THE CITY OF PIEDMONT,
CALIFORNIA; THE CITY OF PORTLAND, OREGON; THE CITY OF
SAN JACINTO, CALIFORNIA; THE CITY OF SHAFTER, CALIFORNIA;
AND THE CITY OF YUMA, ARIZONA, FOR LEAVE TO INTERVENE AS
OF RIGHT**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Rule 15(d) of the Federal Rules of Appellate Procedure, and District of Columbia Circuit Rule 15(b), the City of San Jose, California; the City of Arcadia, California; the City of Bellevue, Washington; the City of Burien, Washington; the City of Burlingame, California;

the City of Culver City, California; the Town of Fairfax, California; the City of Gig Harbor, Washington; the City of Issaquah, Washington; the City of Kirkland, Washington; the City of Las Vegas, Nevada; the City of Los Angeles, California; the County of Los Angeles, California; the City of Monterey, California; the City of Ontario, California; the City of Piedmont, California; the City of Portland, Oregon; the City of San Jacinto, California; the City of Shafter, California; and the City of Yuma, Arizona (collectively, the “Intervenors”) hereby move for leave to intervene as of right in the above-captioned proceeding, in support of Petitioner American Public Power Association (“APPA”), in opposition to Petitioner AT&T, and in support of Respondents solely with respect to the AT&T petition. Counsel for APPA indicated they do not oppose the motion. Counsel for AT&T indicated they consent to intervention by any Intervenor who participated in the underlying proceeding, but only consents to the intervention of non-participants in the underlying proceeding so long as they file a joint brief with those Intervenors who did participate in the proceeding below. All Intervenors named in this motion participated in the proceeding below. Counsel for Respondents have not replied to Intervenors’ counsel’s inquiry regarding opposition to this motion.

Petitioner seeks review of the Declaratory Ruling and Third Report and Order, FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018) (“Order”) adopted by the Federal Communications Commission (“Commission”). Intervenors are local

governments who all participated in the underlying proceeding before the Commission, and “whose interests are affected” within the meaning of 28 U.S.C. § 2348. Intervenors are also “interested parties” under 47 U.S.C. § 402(e) as the Order substantially affects local governments’ rights to manage, and receive compensation for, use of the public rights-of-way. Accordingly, Intervenors are entitled to intervene in this proceeding as of right.

Moreover, no party to this proceeding can adequately protect the interests of Intervenors, as local governments are uniquely affected by the Order. Local governments were consistently at odds with AT&T in the proceeding before the Commission, and do not expect AT&T to share their interests in this litigation. Petitioner APPA does not share the same priorities as Intervenors as APPA’s interests are more narrow than those of local governments; Intervenors therefore cannot rely upon APPA to represent their interests in this case. The interests of Intervenors also do not align with those of the Respondents in this proceeding, as Intervenors are separately adverse to Respondents in their own ongoing appeal of the Order. Intervention is furthermore necessary to permit Intervenors to protect their rights prior to any eventual consolidation of cases.

Accordingly, Intervenors respectfully request that they be granted leave to intervene as of right in support of Respondents in the above-captioned proceeding. At such time as this Court acts to consolidate this and any other related cases,

pursuant to its Preliminary Order Regarding the Consolidation Ordered by the Judicial Panel on Multidistrict Litigation, Intervenors also request that they be included as appropriate in any subsequent consolidated proceeding.

Respectfully submitted,

/s/ Joseph Van Eaton

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Counsel for Intervenors

November 23, 2018

CERTIFICATE OF SERVICE**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, the City of San Jose, California; the City of Arcadia, California; the City of Bellevue, Washington; the City of Burien, Washington; the City of Burlingame, California; the City of Culver City, California; the Town of Fairfax, California; the City of Gig Harbor, Washington; the City of Issaquah, Washington; the City of Kirkland, Washington; the City of Las Vegas, Nevada; the City of Los Angeles, California; the County of Los Angeles, California; the City of Monterey, California; the City of Ontario, California; the City of Piedmont, California; the City of Portland, Oregon; the City of San Jacinto, California; the City of Shafter, California; and the City of Yuma, Arizona respectfully state they are governmental agencies and therefore exempt from Rule 26.1.

/s/ Joseph Van Eaton

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Counsel for Intervenors

November 23, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on November 23, 2018, 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. All participants in the case are registered CM/ECF users, and service will be accomplished through the CM/ECF system except those parties who have not yet appeared which are listed below and will be served via U.S. Mail.

The Honorable Jeff Sessions
Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington DC 20530

Respectfully submitted,

/s/ Joseph Van Eaton

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