

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 10, 2019

Elisabeth A. Shumaker  
Clerk of Court

SPRINT CORPORATION,

Petitioner,

and

CITY OF NEW YORK,

Intervenor - Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents,

and

CITY OF BOWIE, MARYLAND; CITY  
OF EUGENE, OREGON; CITY OF  
HUNTSVILLE, ALABAMA; CITY OF  
WESTMINSTER, MARYLAND;  
COUNTY OF MARIN, CALIFORNIA;  
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  
ISSAQUAH, WASHINGTON; THE CITY  
OF GIG HARBOR, WASHINGTON; THE  
CITY OF KIRKLAND, WASHINGTON;  
THE CITY OF LAS VEGAS, NEVADA;

No. 18-9563  
(FCC No. 18-133)

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;  
THE CITY OF YUMA, ARIZONA,

Intervenors - Respondents.

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VERIZON COMMUNICATIONS, INC.,

Petitioner,

and

CITY OF NEW YORK,

Intervenor - Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents.

and

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

No. 18-9566  
(FCC No. 18-133)

CITY, CALIFORNIA; THE TOWN OF FAIRFAX, CALIFORNIA; THE CITY OF ISSAQUAH, WASHINGTON; THE CITY OF GIG HARBOR, 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; THE CITY OF YUMA, ARIZONA,

Intervenors - Respondents.

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PUERTO RICO TELEPHONE COMPANY, INC.,

Petitioner,

and

CITY OF NEW YORK,

Intervenor - Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA,

Respondents,

and

No. 18-9567  
(FCC No. 18-133)

THE CITY OF SAN JOSE,  
CALIFORNIA; 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  
ISSAQUAH, WASHINGTON; THE CITY  
OF GIG HARBOR, 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;  
THE CITY OF YUMA, ARIZONA,

Intervenors - Respondents.

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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; 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  
SHAFTER, CALIFORNIA; CITY OF  
YUMA, ARIZONA,

Petitioners,

and

CITY OF NEW YORK,

Intervenor - Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents,

and

CTIA-THE WIRELESS ASSOCIATION;  
COMPETITIVE CARRIERS  
ASSOCIATION; SPRINT  
CORPORATION; VERIZON  
COMMUNICATIONS, INC.; WIRELESS  
INFRASTRUCTURE ASSOCIATION,

Intervenors - Respondents.

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CITY OF SEATTLE, WASHINGTON;  
CITY OF TACOMA, WASHINGTON;  
KING COUNTY, WASHINGTON;

No. 18-9568  
(FCC No. 18-133)

LEAGUE OF OREGON CITIES;  
LEAGUE OF CALIFORNIA CITIES;  
LEAGUE OF ARIZONA CITIES AND  
TOWNS,

Petitioners,

and

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;  
THURSTON COUNTY, WASHINGTON;  
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  
ISSAQUAH, WASHINGTON; THE CITY  
OF GIG HARBOR, 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;

THE CITY OF YUMA, ARIZONA; CITY OF NEW YORK,

Intervenors - Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA,

Respondents.

No. 18-9571  
(FCC No. 18-133)

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CITY OF HUNTINGTON BEACH,

Petitioner,

and

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 ISSAQUAH, WASHINGTON; THE CITY OF GIG HARBOR, 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;  
THE CITY OF YUMA, ARIZONA; CITY  
OF NEW YORK,

Intervenors - Petitioners,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents.

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MONTGOMERY COUNTY,  
MARYLAND,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents.

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CITY AND COUNTY OF SAN  
FRANCISCO,

Petitioner,

v.

UNITED STATES OF AMERICA;  
FEDERAL COMMUNICATIONS  
COMMISSION,

Respondents.

No. 18-9572  
(FCC No. 18-133)

No. 18-9586  
(FCC No. 18-133)

No. 18-9588  
(FCC No. 18-133)



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CITY OF NORTH LITTLE ROCK,  
ARKANSAS; THE MISSOURI  
ASSOCIATION OF MUNICIPAL  
UTILITIES,

Petitioners,

v.

FEDERAL COMMUNICATIONS  
COMMISSION; UNITED STATES OF  
AMERICA,

Respondents.

No. 19-9501  
(FCC No. 18-133)

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**ORDER**

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Before **BRISCOE, BACHARACH, and PHILLIPS**, Circuit Judges.

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On September 27, 2018, the Federal Communications Commission issued an order entitled *Declaratory Ruling and Third Report and Order* (the “September Order”). FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018). The United States Judicial Panel on Multidistrict Litigation designated this circuit as the court in which to consolidate the various petitions for review of the September Order.

These matters are before us on a *Motion to Transfer*, filed by the petitioners in *City of San Jose, et al. v. F.C.C., et al.*, No. 18-9568. The San Jose Petitioners seek to transfer these matters, pursuant to 28 U.S.C. § 2112(a)(5), to the United States Court of Appeals for the Ninth Circuit where a first-in-time petition for review of an order issued

by the FCC on August 3, 2018 is pending. *Third Report and Order and Declaratory Ruling*, FCC 18-111, 83 Fed. Reg. 46,812 (Sep. 14, 2018) (the “August Order”). The FCC and the United States filed a response opposing transfer and supplemental authority. Sprint Corporation, Verizon Communications, Inc., Puerto Rico Telephone Company, Inc., CTIA – The Wireless Association®, the Wireless Infrastructure Association, and the Competitive Carriers Association also filed a response opposing transfer. Finally, the San Jose Petitioners filed a reply in support of their motion.

After careful consideration, we conclude that the FCC’s August Order and its September Order are the “same order” for purposes of § 2112(a). Accordingly, the motion to transfer is granted and these matters are transferred to the United States Court of Appeals for the Ninth Circuit.<sup>1</sup>

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



by: Jane K. Castro  
Counsel to the Clerk

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<sup>1</sup> Four petitions for review of the September Order are presently pending before the United States Court of Appeals for the District of Columbia Circuit. *See AT&T Services, Inc., v. FCC*, No. 18-1294 (D.C. Cir. filed Oct. 25, 2018); *American Public Power Ass’n v. FCC*, No. 18-1305 (D.C. Cir. filed Nov. 15, 2018); *City of Austin v. FCC*, No. 18-1326 (D.C. Cir. filed Dec. 11, 2018); *City of Eugene v. FCC*, No. 18-1330 (D.C. Cir. filed Dec. 12, 2018). As these petitions are not before us, this order does not address them.