

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.

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.

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.

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.

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

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,

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)

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.

MONTGOMERY COUNTY,
MARYLAND,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

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)

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)

ORDER

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

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.¹

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Jane K. Castro
Counsel to the Clerk

¹ 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.