

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

League of California Cities, et al.)	
Petitioners,)	
)	
v.)	Case No. 20-71765
)	and consolidated cases
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

**UNOPPOSED MOTION OF FEDERAL COMMUNICATIONS
COMMISSION FOR ABEYANCE AND TO SUSPEND THE BRIEFING
SCHEDULE**

The Federal Communications Commission (the “Commission”) respectfully requests that, in light of recent changes in the membership and leadership of the Commission, the Court hold this case in abeyance for 120 days from the date this motion is granted and amend the briefing schedule accordingly. Fed. R. App. P. 27; Circuit Rule 27-1; Circuit Advisory Committee Note to Rule 27-1(6). Placing this case in abeyance will allow the newly constituted Commission an opportunity to determine how it plans to proceed with respect to this case. Undersigned counsel is authorized to represent that the Petitioners in *City of Boston v. FCC*, No. 20-72749, consent to the motion, Respondent the United States does not oppose the motion, and Petitioners and Intervenors in *League of California Cities* (No. 20-71765) and *City of Seattle* (No. 20-27234), and Intervenors supporting Respondents do not oppose this motion.

1. In this case, Petitioners seek review of the FCC order, Declaratory Ruling and Notice of Proposed Rulemaking, *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Requests Under Section 6409(a) of the Spectrum Act of 2012*, 35 FCC Rcd. 5977 (2020). The *Ruling* clarifies certain provisions of rules the Commission promulgated in 2014 to implement Section 6409(a) of the Spectrum Act, which provides that local governments “may not deny, and shall approve” requests to modify existing wireless facilities if those modification do not “substantially change the physical dimensions” of towers and other structures that currently support wireless communications equipment. 47 U.S.C. § 1455(a)(1).

The Commission released the *Ruling* on June 10, 2020. Petitions for review were timely filed in the U.S. Courts of Appeals for the Ninth and D.C. Circuits. Pursuant to 28 U.S.C. § 2112(a)(5), the petitions for review were transferred to the Ninth Circuit, and consolidated on November 20, 2020. Pursuant to the briefing schedule the Court set on January 5, 2021, Petitioners and Intervenors in support of Petitioners filed opening briefs on January 11 and 19, 2021. The brief of the Federal Communications Commission and the United States is due on March 17, 2021.

2. In the time since the opening briefs were filed, the composition and leadership of the Commission have changed. The former Chairman of the

Commission, Ajit Pai, left the agency, and Commissioner Jessica Rosenworcel was designated by the President as Acting Chair. In addition, with the expiration of his term, Commissioner Michael O’Rielly left the agency and, on December 8, 2020, was replaced by Commissioner Nathan Simington.

As a result, of the four current members of the agency, two (the Acting Chair and Commissioner Geoffrey Starks) dissented from the *Ruling* under review. There is accordingly no longer a majority of the members of the Commission who voted in favor of the *Ruling*. Placing the case in abeyance would permit the Commission as currently constituted – and any fifth Commissioner who might be appointed and confirmed to the agency in the interim – the opportunity to consider how to proceed in this case, including whether to revisit some or all of the actions taken in the *Ruling*. It would also serve to avoid the need for this Court to receive further briefing on challenges to an order that might be re-evaluated by the agency.

For the foregoing reasons, the Court should grant this unopposed motion, and place this case in abeyance and suspend the briefing schedule for a period of 120 days from the date the motion is approved. If the court does not grant this motion, the Commission requests that the Court grant the Commission 3 days from the date of denial to file its brief. *Cf.* Circuit Advisory Committee Note to Rule 31-2.2.

March 16, 2021

Respectfully submitted,

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/s/ Rachel Proctor May

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