

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

City of Eugene, Oregon, et al.)	
Petitioners,)	
)	
v.)	Case No. 19-4161
)	and consolidated cases
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

**MOTION OF FEDERAL COMMUNICATIONS COMMISSION
FOR ABEYANCE**

The Federal Communications Commission respectfully requests that the Court postpone the argument scheduled for April 15, 2021, and place this case in abeyance for 120 days from the date of the scheduled argument in light of recent changes in the membership and leadership of the Commission.

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 Petitioners in the consolidated cases and the Intervenors in support of Petitioners consent to the motion, Respondent the United States does not oppose the motion, and counsel for Intervenor National Cable and Telecommunications Association (“NCTA”) has stated that NCTA intends to oppose this motion.

1. In this case, Petitioners seek review of the FCC order, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984*, 34 FCC Rcd

6844 (2019) (*Order*). The *Order* addressed the authority of state and local governments under Title VI of the Communications Act, 47 U.S.C. §§ 552-573, to impose franchise fees and other requirements on cable operators in return for cable operators' access to the local rights-of-way. Specifically, the *Order* held that under the Act, (1) "franchise fees" paid by cable operators to franchising authorities include cable-related, "in-kind" contributions and (2) franchising authorities are prohibited from regulating the non-cable facilities and services of cable operators. The Commission also preempted state and local franchising regulations that are inconsistent with the Act, including regulations that impose additional fees, or require an additional franchise, for the non-cable services of cable operators.

The Commission released the *Order* on August 2, 2019. Petitions for review were timely filed in the U.S. Courts of Appeals for the Third, 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 on November 29, 2019, that court granted the Commission's motion to transfer the petitions to this Court. The petitions were thereupon consolidated. After briefing was completed, the Court scheduled oral argument on April 15, 2021.

2. In the time since the 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 *Order* under review. There is accordingly no longer a majority of the members of the Commission who voted in favor of the *Order*. 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 *Order*. It would also serve to avoid the need for this Court to hold argument at this time 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 for a period of 120 days, or until August 13, 2021.

March 9, 2021

Respectfully submitted,

P. Michele Ellison
Acting General Counsel

Jacob M. Lewis
Associate General Counsel

/s/ Maureen K. Flood

Maureen K. Flood
Counsel

Federal Communications Commission
Washington, D.C. 20554
(202) 418-1740

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements and Type Style Requirements

- I. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):
 - this document contains 563 words, *or*
 - this document uses a monospaced typeface and contains _ lines of text.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:
 - this document has been prepared in a proportionally spaced typeface using Microsoft Word 360 in 14-point Times New Roman, *or*
 - this document has been prepared in a monospaced spaced typeface using _____ with _____.

/s/ Maureen K. Flood

Maureen K. Flood
Counsel

Federal Communications
Commission
Washington, D.C. 20554
(202) 418-1740

CERTIFICATE OF FILING AND SERVICE

I, Maureen K. Flood, hereby certify that on March 9, 2021, I filed the foregoing Motion of Federal Communications Commission for Abeyance with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the electronic CM/ECF system. The participants in the case, who are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Maureen K. Flood

Maureen K. Flood
Counsel

Federal Communications
Commission
Washington, D. C. 20554
(202) 418-1740