

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

**THE CITY OF PORTLAND, OREGON;
THE CITY OF LOS ANGELES,
CALIFORNIA; THE SACRAMENTO
METROPOLITAN CABLE TELEVISION
COMMISSION; THE CITY OF
KIRKLAND, WASHINGTON; AND THE
MT. HOOD CABLE REGULATORY
COMMISSION,**

Petitioners,

v.

UNITED STATES OF AMERICA,

and

**FEDERAL COMMUNICATIONS
COMMISSION,**

Respondents.

Case No. 19-72391

**MOTION OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS
FOR LEAVE TO INTERVENE AS OF RIGHT**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e) and Rule 15(d) of the Federal Rules of Appellate Procedure, the National Association of Telecommunications Officers and Advisors (“NATOA”) hereby moves for leave to intervene as of right in the above-captioned proceeding, in support of Petitioners. NATOA contacted counsel of record, none of whom objected to this motion.

The case concerns review of Third Report and Order of the Federal Communications Commission, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Third Report and Order, MB Docket No. 05-311, FCC 19-80, 84 Fed. Reg. 44725 (August 27, 2019) (“Order”). The Order substantially affects local governments’ existing cable franchise agreements and rights to manage, and receive compensation for, use of the public rights-of-way by cable operators. The Order redefines the term “franchise fee” as used in federal law in a manner that could invalidate the agreed-upon terms of many of the tens of thousands of cable franchises in effect across the country. The Order will lead to a significant reduction in franchise fee payments to local governments and the loss of long-standing franchise provisions designed to protect the public interest. The Order also preempts local authority over the non-cable services provided by cable operators—services and facilities that are not authorized or regulated by cable franchise agreements—and jeopardizes the ability of local governments to maintain non-discriminatory treatment of the various providers of non-cable services operating in their public rights-of-way.

NATOA is a national association whose members include local government officials from across the nation whose responsibility is to develop and administer communications policy for the nation’s local governments, including negotiating

and implementing cable franchise agreements for cable operators' use of the public rights-of-way, and use of the public rights-of-way for non-cable facilities and services. NATOA actively participated in the proceeding below and it and its members will be adversely affected by the Order. NATOA's interests "are affected" within the meaning of 28 U.S.C. § 2348 and it is an "interested party" under 47 U.S.C. § 402(e). Accordingly, NATOA is entitled to intervene in this proceeding as of right.

NATOA respectfully requests that it be granted leave to intervene as of right in the above-captioned proceeding. At such time as this Court acts to transfer and/or consolidate this and any other related cases, NATOA also requests that it be included as appropriate in any subsequent consolidated proceeding.

Respectfully submitted,

/s/ Nancy L. Werner

Nancy L. Werner

General Counsel

National Association of

Telecommunications Officers and Advisors

3213 Duke Street, #695

Alexandria, VA 22314

Phone: (706) 519-8035

Fax: (706) 997-7080

*Counsel for Intervenor National Association
of Telecommunications Officers and
Advisors*

October 21, 2019

CORPORATE DISCLOSURE STATEMENT

The National Association of Telecommunications Officers and Advisors is a non-profit organization representing the interests of member municipalities, elected officials and their advisors. The organization does not issue stock, have any parent company, or have a 10% or greater ownership interest held by any publicly-traded company.

Respectfully submitted,

/s/ Nancy L. Werner

Nancy L. Werner

General Counsel

National Association of

Telecommunications Officers and Advisors

3213 Duke Street, #695

Alexandria, VA 22314

Phone: (706) 519-8035

Fax: (706) 997-7080

*Counsel for National Association of
Telecommunications Officers and Advisors*

October 21, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Motion for Leave to Intervene complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 473 words and complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

/s/ Nancy L. Werner
Nancy L. Werner
National Association of
Telecommunications Officers and Advisors

October 21, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2019, I filed the foregoing Motion to Intervene with the Clerk of the United States Court of Appeals for the Ninth Circuit through the CM/ECF system. Participants in the cases are all registered with CM/ECF and will be served by the CM/ECF system.

/s/ Nancy L. Werner
Nancy L. Werner
National Association of
Telecommunications Officers and Advisors

October 21, 2019