

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

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

Petitioners,

v.

UNITED STATES OF AMERICA

and

**FEDERAL COMMUNICATIONS
COMMISSION**

Respondents

Case No. ____

**Motion for Waiver of Local Rule
15(c)(1-2) and FRAP 15(c)(1-2)**

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; the Town of Fairfax, California; the City of Gig Harbor, Washington; the City of Issaquah, 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; and the City of Yuma, Arizona (collectively, the “Petitioners”), respectfully request that, to the extent necessary the Court waive the requirements of Local Rule 15(c)(1-2) and Federal Rules of Appellate Procedure 15(c)(1-2) (collectively, “the Rules”) if they apply to the concurrently-filed Petition for Review of the Declaratory Ruling and Third Report and Order of the Federal Communications Commission (“FCC”), *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 18-133, WT Docket No. 17-79, 85 FR 51867 (the “Ruling”). The Court has previously waived this requirement in analogous circumstances, drawing persuasive guidance from another Circuit Court of Appeals.

The Rules require service of a Petition for Review on “each party admitted to participate in the agency proceedings, except for respondents.” Fed. R. App. P.

15(c)(1). The District of Columbia Circuit Court of Appeals Local Rule 15(a) provides an exception to this general requirement, specifying that “in cases involving informal agency rulemaking such as, for example, those conducted pursuant to 5 U.S.C. § 553, a petitioner or appellant need serve copies only on the respondent agency, and on the United States if required by statute.” D.C. Cir. Local Rule 15(a).

While the Ninth Circuit Local Rules do not contain a parallel exception, this Court has previously waived the Rules’ requirements, on two grounds. In *Sierra Club v. U.S. E.P.A.*, this Court noted first that “[b]ecause the rulemaking that is the subject of this petition for review was informal, the commenters were not ‘parties ... admitted to participate in the proceedings’ as envisioned under the rule.” *Sierra Club v. U.S. E.P.A.*, 118 F.3d 1324, 1326 (9th Cir. 1997). “In informal rulemaking, any interested group or person may submit written comments to the agency or comment orally if the agency decides to hold a hearing. As such, no one is ‘admitted to practice in the proceedings,’ and no one becomes a party in a formal administrative adjudication.” *Id.* Second, this Court was “guided ... by the D.C. Circuit and its local rule.” *Id.* It found implicit in the D.C. Circuit’s rule a “determination that participants in informal rulemakings are not ‘parties’ for purposes of FRAP 15(c).” *Id.*

The Ruling at issue here was the result of an informal rulemaking commenced by the release of a Notice of Proposed Rulemaking and Notice of Inquiry, *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 17-38, WT Docket No. 17-79. The circumstances are therefore analogous to those in *Sierra Club*, and the City is requesting the same relief this Court previously granted, on the same grounds to the extent that the rule may require service on other entities that filed comments in the proceeding. The Sierra Club served the respondents in that case, and the City has done the same here, while deferring further service pending this Court's ruling on this motion.

Respectfully submitted,

 /s/ Joseph Van Eaton

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October 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on October 24, 2018, I sent copies of the forgoing Motion for Waiver of Local Rule 15(c)(1-3) and FRAP 15(c)(1-3) via first class mail to the following parties:

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Respectfully submitted,

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