

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 17, 2021

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AT&T SERVICES, INC.,)	
)	
Petitioner)	Case No. 20-1190
)	
v.)	<i>(Consolidated with Case Nos. 20-</i>
)	<i>1216, 20-1272, 20-1274, 20-1281,</i>
FEDERAL COMMUNICATIONS)	<i>and 20-12-84)</i>
COMMISSION; UNITED STATES)	
OF AMERICA,)	
Respondents)	

REPLY IN SUPPORT OF MOTION TO DIVIDE ARGUMENT

Petitioner Association of Public-Safety Communications Officials

International, Inc., (“APCO”) offers this Reply in Support of its Motion to Divide Argument. Motion to Divide Argument, *AT&T Services Inc. v. FCC*, No. 20-1190, Doc. No. 1912883 (D.C. Cir. Sept. 3, 2021). Allotting argument time to APCO will assist this Court in resolving a critical issue presented by this case: What is the scope of the Federal Communications Commission’s (“FCC”) statutory duty to consider public safety in agency rulemakings?

The issue APCO intends to address is outcome determinative. *See Mozilla Corp. v. FCC*, 940 F.3d 1, 63 (D.C. Cir. 2019) (reversing and remanding FCC “net neutrality” decision for failure to address legal duties owed to public safety).

Further, the issue before the Court is not simply whether the FCC complied with its duty to consider public safety in the Order, but whether the FCC can effectively

avoid that statutory duty in the future, which would be the case if the Order is permitted to stand.

This Court has described the FCC's statutory duty as requiring "focused and specific study of public safety implications." *Mozilla*, 940 F.3d at 63. But the Order and the substance of the FCC's filings in this litigation betray that statutory duty. For example, the FCC argues that it satisfied its statutory obligation to consider public safety because the Order addressed the potential for interference to all incumbent fixed microwave operations in the 6 GHz band, including public safety entities. *See* FCC Br. 62. As APCO has noted, the FCC's argument would effectively allow it to bypass "focused and specific" public safety review, contrary to *Mozilla*. Fundamentally, when the FCC changed its rules such that, rather than having exclusive use of certain radio frequencies, public safety agencies would have to share spectrum with millions of unlicensed devices, and when the FCC acknowledged that interference was possible, *see* JA-1318 ("there is virtually no type of [radio frequency]-emitting device that does not have the potential for causing [harmful] interference"), more was required for the FCC to comply with its statutory duty.

Public safety is a decisive issue in this case that merits dedicated time at argument, and APCO is in the best position to address that issue for the Court. *See Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir. Jan. 23, 2019) (granting non-

government intervenors, including those arguing specifically for public safety, dedicated time to argue). Despite its importance, APCO's public safety argument was not part of the common section of the brief, nor was it an argument joined by all Petitioners. Given the wide array of infirmities in the Order, public safety received only limited attention in the briefs. Other petitioners, and AT&T in particular, are not well-suited to present APCO's argument to the court. Indeed, given that AT&T did not join APCO's section of the Petitioners' brief, AT&T cannot be the proper party to zealously argue on behalf of public safety to the Court. *See* Pet'r's Final Br. 31 n. 13 ("AT&T and Lumen do not join Section VI.A.").

CONCLUSION

For the foregoing reasons, APCO respectfully asks the Court to grant the motion, apportion 10 minutes to issues common among the Petitioners, and apportion the remaining 5 minutes to APCO to specifically address the proper scope of the FCC's statutory duty to consider public safety in agency rulemakings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2021, a copy of the foregoing was filed via CM/ECF and was served on all parties or their counsel of record through that system.

/s/ Mark S. Reddish
Mark S. Reddish

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the requirements of Fed. R. App. P. 27(d)(1) because it has been prepared in 14-point Times New Roman font. I further certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 556 words according to the word-count feature of Microsoft Word.

/s/ Mark S. Reddish
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