

No. _____

In the Supreme Court of the United States

CITY OF EUGENE, OREGON, ET AL.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND THE UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOSEPH VAN EATON
CHERYL A. LEANZA
BEST BEST & KRIEGER LLP
1800 K Street, NW
Suite 725
Washington, DC 20006
(202) 785-0600
Joseph.VanEaton@bbklaw.com
*Counsel for City of
Portland,
Oregon, et al.*

TILLMAN L. LAY
Counsel of Record
JEFFREY M. BAYNE
LAUREN L. SPRINGETT
SPIEGEL & MCDIARMID LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 879-4000
Tim.Lay@spiegelmc.com
*Counsel for City
of Eugene, Oregon*

(additional counsel listed on inside cover)

MICHAEL J. WATZA
KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK
One Woodward Avenue
Suite 2400
Detroit, MI 48226-5485
mike.watza@kitch.com

*Counsel for City of Livonia,
Michigan, et al.*

QUESTION PRESENTED

The federal Cable Act requires cable operators to obtain a local franchise to provide cable service and imposes specific limitations on cable franchising, including limiting “tax[es], fee[s] or assessment[s]” imposed on cable operators “solely because of their status as such” to five percent of gross revenues derived from the cable system’s operation to provide cable service. 47 U.S.C. § 542. Otherwise, local and state authority is preserved; only laws “inconsistent with” the Act are preempted. *Id.* § 556(c). The City of Eugene, Oregon, requires all companies with facilities in the public rights-of-way, including cable operators, to pay a seven percent fee on broadband and other non-cable service revenues. The Oregon Supreme Court and the Sixth Circuit agree, contrary to a Federal Communications Commission ruling, that this fee is not based solely on a cable operator’s “status as such” and is not preempted by Section 542. Nevertheless, in conflict with the Oregon Supreme Court, the Sixth Circuit construed Sections 541(a)(2) and 544(b)(1) of the Cable Act to grant cable operators, “by implication,” a federal right to use rights-of-way to provide non-cable services, subject only to Section 542’s cable revenue-based fee; it therefore preempted fees like Eugene’s.

The question presented is:

Whether the Sixth Circuit properly held, in conflict with the Oregon Supreme Court, that a fee which is consistent with the Cable Act’s only express provision limiting state or local fees and taxes on cable operators is nonetheless preempted, based on its conclusion that other provisions of the Act grant cable operators, “by implication,” a federal right to provide non-cable services over local rights-of-way subject only to a cable revenue-based fee.

PARTIES TO THE PROCEEDING

Petitioners are: City of Eugene, Oregon; City of Portland, Oregon; Anne Arundel County, Maryland; Boston, Massachusetts; City of Livonia, Michigan; District of Columbia; Fairfax County, Virginia; State of Hawaii; Howard County, Maryland; City of Kirkland, Washington; Lincoln, Nebraska; Los Angeles County, California; Prince George's County, Maryland; The Sacramento Metropolitan Cable Television Commission; Texas Coalition of Cities for Utility Issues; Michigan Municipal League; Michigan Township Association; Mid-Michigan Area Cable Consortium; PROTEC; and National Association of Telecommunications Officers and Advisors.

The Federal Communications Commission and the United States of America are respondents and were respondents in the court of appeals.

Respondents that were petitioners below:

Alliance for Communications Democracy; Alliance for Community Media; Baltimore, Maryland; Bellevue, Washington; City of Bellingham, Washington; City of Bloomington, Minnesota; City of Bowie, Maryland; Brookhaven, Georgia; Carmel, Indiana; City of Chicago, Illinois; College Park, Maryland; Colorado Communications and Utility Alliance; Chevy Chase Village, Maryland; Davis, California; City and County of Denver, Colorado; Dubuque, Iowa; Edmond, Oklahoma; Edmonds, Washington; City of Fridley, Minnesota; Gaithersburg, Maryland; Greenbelt, Maryland; King County, Washington; City of Lacey, Washington; Laredo, Texas; Laurel, Maryland; City of Los Angeles, California; County of Marin, California; Minneapolis, Minnesota; Montgomery County, Maryland; Mt. Hood Cable Regulatory Commission; National League of

Cities; North Metro Telecommunications Commission; North Suburban Communications Commission; North Dakota County Cable Communications Commission; Northwest Suburban Cable Communications Commission; Oklahoma City, Oklahoma; City of Olympia, Washington; City of Palo Alto, California; Philadelphia, Pennsylvania; City of Pittsburgh, Pennsylvania; City of Portland, Maine; Rainier Communications Commission; Ramsey/Washington Counties Suburban Cable Communications Commission II; City of St. Louis Park, Minnesota; City of St. Paul, Minnesota; City of San Antonio, Texas; City and County of San Francisco, California; City of Seattle, Washington; Sioux Falls, South Dakota; South Washington County Telecommunications Commission; Southwest Suburban Cable Commission; the City of Tacoma, Washington; Thurston County, Washington; City of Tumwater, Washington; United States Conference of Mayors; Wilmington, Delaware; and Yuma, Arizona.

Respondents that were petitioner intervenors below:

City of Aurora, Colorado; City of Austin, Texas; Bloomfield Township, Michigan; Chicago Access Corporation; City of Coral Gables, Florida; City of Dearborn, Michigan; City of Fairview, Oregon; Florida League of Cities, Inc.; City of Grandville, Michigan; City of Hudsonville, Michigan; Jamestown Township, Michigan; City of Kent, Washington; City of Madison Heights, Michigan; Meridian Township, Michigan; City of New York; the City of Omaha, Nebraska; City of Pembroke Pines, Florida; City of Southfield, Michigan, Washington Association of Telecommunications Officers and Advisors; and City of Worthington, Minnesota.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.