

ORAL ARGUMENT SCHEDULED FOR FEBRUARY 1, 2019

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

Mozilla Corporation, et al.,)	
)	
Petitioners,)	
)	
v.)	No. 18-1051 (and
)	consolidated cases)
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

**MOTION TO POSTPONE ORAL ARGUMENT
IN LIGHT OF LAPSE IN APPROPRIATIONS**

The Federal Communications Commission respectfully moves to postpone oral argument in the above-captioned case, which is currently scheduled for February 1, 2019. We have notified the other parties of this motion. Petitioners oppose the motion. Petitioner-intervenors Internet Association, Entertainment Software Association, CCIA, and Writers Guild of America, West, Inc. take no position on the motion. The United States, intervenor Digital Justice Foundation, and respondent-intervenors USTelecom, CTIA, NCTA, American Cable Association, and Wireless Internet Service Providers Association do not oppose the motion.

The Commission recognizes that the Court has indicated that arguments in February will proceed as scheduled. However, due to the recent lapse in funding for the FCC and the relevant component of the Department of Justice, the

Commission believes that, in an abundance of caution, it should move for an extension to ensure that attorneys may fully prepare for argument consistent with the Antideficiency Act, 31 U.S.C. § 1342, as interpreted in guidance from the United States Department of Justice and this Court's recent order in *Kornitzky Group, LLC v. Elwell*, No. 18-1160 (D.C. Cir. issued Jan. 9, 2019). In its guidance, the Department of Justice "instructs government attorneys to request that active [civil] cases be postponed until funding is available." *Kornitzky Group*, opinion of Judges Srinivasan and Edwards, concurring in the denial of the motion, at 1 (citing U.S. Dep't of Justice, FY 2019 Contingency Plan at 3 (Sept. 11, 2018)).

As members of this Court noted, however, "[i]f a court denies the request [for postponement] and adheres to its existing schedule, 'the Government will comply with the court's order, which would constitute express legal authorization for the activity to continue'" under the Antideficiency Act. *Id.* (quoting U.S. Dep't of Justice, FY 2019 Contingency Plan at 3).

The Commission respectfully requests prompt resolution of its motion so that it may fully prepare for argument in the event that the Court intends to hear the argument as scheduled on February 1, 2019.

Respectfully submitted,

Thomas M. Johnson, Jr.
General Counsel

/s/Scott M. Noveck

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January 15, 2019

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/s/ Scott M. Noveck

Scott M. Noveck.

Counsel for Respondent

Federal Communications Commission

CERTIFICATE OF FILING AND SERVICE

I, Scott M. Noveck, hereby certify that on January 15, 2019, I filed the foregoing Motion to Postpone Oral Argument in Light of Lapse in Appropriations with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Scott M. Noveck

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