

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ALAMO BROADBAND INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION,

and UNITED STATES OF AMERICA,

Respondents.

Case No. 15-_____

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, Alamo Broadband Inc. (“Alamo”) hereby petitions this Court for review of the final order of the Federal Communications Commission (“FCC”) captioned *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, GN Docket No. 14-28 (“*Order*”). The *Order* was published in the Federal Register on April 13, 2015. *See* 80 Fed. Reg. 19738. A copy of the full text of the *Order* is attached as Exhibit A.

In the *Order*, the FCC adopts rules that regulate broadband Internet access service, which the *Order* reclassifies as a telecommunications service subject to

regulation under Title II of the Communications Act of 1934. Alamo, which participated in the proceeding below, is a provider of broadband Internet access service subject to the regulations adopted by the *Order* and the requirements of Title II of the Communications Act from which the *Order* does not forbear. Alamo thus is aggrieved by the *Order* and possesses standing to challenge it. Venue is proper in this Court because Alamo resides in and has its principal office in the State of Texas. 28 U.S.C. § 2343.

Alamo previously filed a petition for review of the *Order* in this Court on March 23, 2015. Alamo explained that its earlier petition for review was filed within ten days of the release date of the *Order* in an abundance of caution. *See* Petition for Review, Doc. 00512983355, at 1 n.1, No. 15-60201 (5th Cir. ECF filed Mar. 26, 2015). The FCC has since clarified its view that all petitions for review filed before publication of the *Order* in the Federal Register were “premature” and subject to dismissal because “the period for seeking judicial review of the order does not commence until the order is published in the Federal Register.” Notice to the Judicial Panel on Multidistrict Litigation, Doc. 00512986149, at 1, No. 15-60201 (5th Cir. ECF filed Mar. 30, 2015). Alamo is thus filing this petition for review within ten days of publication of the *Order* in the Federal Register to “avail itself of procedures established for selection of a court in the case of multiple appeals, pursuant to 28 U.S.C. 2112(a).” 47 C.F.R. § 1.13(a)(1).

Alamo seeks relief on the grounds that the *Order*: (1) is in excess of the Commission's authority; (2) is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act; (3) is contrary to constitutional right; and (4) is otherwise contrary to law. Accordingly, Alamo respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the *Order*, and provide such additional relief as may be appropriate.

Respectfully submitted,

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Dated: April 14, 2015

Counsel for Alamo Broadband Inc.

EXHIBIT A

CERTIFICATE OF SERVICE

I, Brett A. Shumate, hereby certify that on April 14, 2015, I filed the foregoing Petition for Review via the Court's Appellate ECF filing system. I further certify that I directed that one copy be delivered via United States mail and electronic mail to:

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