

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

UNITED STATES TELECOM
ASSOCIATION, et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMIS-
SION and UNITED STATES OF AMERICA,

Respondents.

Case No. 15-1063 (Lead)

*Consolidated with Nos.
15-1078, 15-1086, 15-1090,
15-1091, 15-1092, 15-1095,
15-1099, 15-1117*

**CONSENT MOTION TO EXCEED PAGE LIMITS FOR MOTION TO
STAY BY PETITIONERS AMERICAN CABLE ASSOCIATION AND
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Petitioners American Cable Association (“ACA”) and National Cable & Telecommunications Association (“NCTA”) respectfully move, pursuant to Federal Rule of Appellate Procedure 27(d)(2) and Circuit Rule 27(h), to exceed the page limits for their forthcoming Motion for Stay of Agency Order or Alternatively for Expedition. ACA and NCTA request leave to file a single, joint motion of 35 pages—as opposed to filing separate motions of 20 pages each, which petitioners are permitted to file by Federal Rule of Appellate Procedure 27(d)(2). Counsel for respondents Federal Communications Commission (“FCC”) and United States of America have been consulted and state that they consent to this motion.¹

¹ Petitioners agree that respondents are entitled to, and petitioners request that respondents be granted, an equivalent increase in the page limits for respondents to respond to petitioners’ stay motion.

This proceeding concerns the efforts of a sharply divided FCC to exert unprecedented and sweeping regulatory power over the Internet. In a complete reversal of longstanding regulatory policy, the order under review subjects retail broadband Internet access service to a complex web of utility-style regulation under Title II of the Communications Act of 1934. *In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24, 80 Fed. Reg. 19,738 (rel. Mar. 12, 2015; pub. Apr. 13, 2015) (“Order”). This seismic regulatory shift will have massive repercussions and will cause significant and immediate harm to broadband providers, consumers, and the entire Internet ecosystem.

ACA and NCTA have independently petitioned for review of the Order in this Court. *See* No. 15-1090 (NCTA petition); No. 15-1095 (ACA petition). ACA and NCTA are trade associations for the cable television industry, and many of their member companies offer broadband Internet access service. The Order’s reclassification ruling will subject the broadband services of those member companies to intrusive Title II regulation for the first time. ACA and NCTA therefore have overlapping interests, but they are different entities with different memberships. ACA is an association of small and medium-sized cable companies, many of whom serve small cities and rural areas. Some of ACA’s members serve as few as four subscribers, and its members have a median of just over 1,000 subscribers. NCTA’s members include owners and operators of larger cable television systems

that serve more than 80% of cable customers in the United States. NCTA also represents more than 200 cable television networks, as well as equipment suppliers and other affiliates of the cable industry.

ACA and NCTA intend to move this Court to stay the Order's reclassification of broadband Internet access service under Title II (but not its bright-line Open Internet rules) pending judicial review, or alternatively to grant expedited briefing.² As petitioners will explain in requesting a stay, this Court is likely to overturn the Order's departure from settled regulatory policy on the merits, petitioners' members will suffer severe and irreparable harms when the Order becomes effective on June 12, 2015, and a stay would cause no harm to respondents or the public because it would merely maintain the status quo until the lawfulness of the Order is adjudicated.

Petitioners respectfully submit that, due to the complex and consequential nature of this proceeding, it would benefit the Court to permit ACA and NCTA to file a single, joint stay motion of 35 pages.³ The Order presents one of the most

² NCTA's petition was docketed on April 14, 2015, NCTA Pet. for Review, No. 15-1090, and ACA's was docketed on April 15, ACA Pet. for Review, No. 15-1095. Petitioners accordingly intend to file their joint stay motion no later than May 14, 2015. *See* D.C. Circuit Handbook of Practice and Internal Procedures 28.

³ ACA and NCTA understand that several telephone companies and their trade associations, which have claims that overlap with but differ in substantial respects from the claims of ACA and NCTA, are similarly moving to file their own joint, 35-page motion for a stay or for expedited briefing.

significant cases that this Court is likely to encounter concerning technology, the future of the economy, and fundamental boundaries of statutory and administrative law. The sheer volume of the Order is also extraordinary: In the course of imposing its sprawling new regulatory regime, the Order spans 282 pages, 588 paragraphs, and 1,777 footnotes, and its concurring statements, dissents, and appendices cover another 118 pages. And the Order represents a significant departure from the FCC's long-held position that broadband cannot be subject to Title II. Granting petitioners leave to file a 35-page motion would allow them to address the important issues presented by this lengthy and complex Order, including the statutory scheme and the relevant judicial and administrative precedent from which the Order departs.

Petitioners' distinct but overlapping interests also warrant additional pages. The Order will irreparably harm all cable Internet access service providers, but its adverse effects will fall in distinct ways on smaller cable providers, many of whom are ACA members, than on larger providers. The requested page limit increase will allow petitioners sufficient space to address these relevant issues without burdening the Court with individual filings.

Moreover, permitting a joint motion of 35 pages would reduce, rather than increase, the total number of pages filed in this Court. As explained above, ACA and NCTA are separate associations that have filed separate petitions for review.

Although their cases have been consolidated with all other challenges to the Order in this Court, the Federal Rules of Appellate Procedure and this Court's rules still permit ACA and NCTA to file separate stay motions of 20 pages each. *See* Fed. R. App. P. 27(d)(2); D.C. Circuit Handbook of Practice and Internal Procedures 24 (explaining that consolidated cases retain their "individual identit[ies]" for purposes of motions). It will therefore conserve both the Court's and the parties' resources for ACA and NCTA to submit a single, 35-page motion that comprehensively addresses the complex issues in this proceeding—to which the FCC also can respond in a consolidated response—rather than two motions that are less comprehensive and that would total 40 pages.

CONCLUSION

Petitioners' consent motion to file a joint stay motion of 35 pages should be granted.

Dated: May 7, 2015

Respectfully submitted,

Jeffrey A. Lamken
MOLOLAMKEN LLP
The Watergate
Suite 660
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
(202) 556-2000

Ross J. Lieberman
AMERICAN CABLE ASSOCIATION
2415 39th Place, NW
Washington, D.C. 20007
(202) 494-5661

*Counsel for Petitioner American
Cable Association*

/s/ Miguel A. Estrada
Miguel A. Estrada
Counsel of Record
Theodore B. Olson
Jonathan C. Bond
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Matthew A. Brill
Matthew T. Murchison
Jonathan Y. Ellis
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200

Rick C. Chessen
Neal M. Goldberg
Michael S. Schooler
NATIONAL CABLE & TELECOMMUNICA-
TIONS ASSOCIATION
25 Massachusetts Avenue, N.W.
Suite 100
Washington, D.C. 20001
(202) 222-2445

*Counsel for Petitioner National Cable &
Telecommunications Association*

CERTIFICATE OF PARTIES AND AMICI

Pursuant to this Court's Rules 27(a)(4) and 28(a)(1)(A), the American Cable Association ("ACA") and the National Cable & Telecommunications Association ("NCTA") respectfully submit the following certificate of parties and amici curiae:

The petitioners to these consolidated petitions for review are: movants ACA (No. 15-1095) and NCTA (No. 15-1090); United States Telecom Association (Nos. 15-1063 and 15-1086); Alamo Broadband, Inc. (No. 15-1078); CTIA – The Wireless Association (No. 15-1091); AT&T, Inc. (No. 15-1092); CenturyLink (No. 15-1099); and Wireless Internet Service Providers Association (No. 15-1117).

Respondents in these consolidated cases are Federal Communications Commission and United States of America.

Movant ACA is a trade association of small and medium-sized cable companies. While members may serve as few as four subscribers, and others nearly a million, the median is just over 1,000 customers. Many ACA members serve small cities and rural areas, where the large distances between homes make infrastructure deployment especially challenging. ACA has no parent companies, subsidiaries, or affiliates whose listing is required by Rule 26.1.

Movant NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving over 80% of the nation's cable television customers, as

well as more than 200 cable program networks. NCTA also represents equipment suppliers and others interested in or affiliated with the cable television industry. NCTA has no parent companies, subsidiaries, or affiliates whose listing is required by Rule 26.1.

Many thousands of companies, organizations, and individuals participated in some manner in the rulemaking proceeding (GN Docket No. 14-28) before the Federal Communications Commission (“FCC”). The FCC did not include in its Order a listing of the participants before the agency. Below is a reasonably complete, but not comprehensive, list of companies and organizations that filed comments or reply comments during the rulemaking according to the FCC’s Electronic Comment Filing System:

- 4G Americas
- 18MillionRising.org
- 21st Century Fox, Inc.
- AARP
- Access
- Access Sonoma Broadband
- Ad Hoc Telecommunications Users Committee
- ADT Corporation
- ADTRAN, Inc.
- Advanced Communications Law & Policy Institute at New York Law School
- AHCIET
- Akamai Technologies, Inc.
- Alamo Broadband
- Alarm Industry Communications Committee
- Alaska Rural Coalition
- Alcatel–Lucent
- American Association for Justice

American Association of Law Libraries et al.
American Association of People with Disabilities
American Association of State Colleges and Universities et al.
American Cable Association
American Civil Liberties Union
American Consumer Institute
American Library Association
American Public Media Group
American Society of Journalists and Authors
American Sustainable Business Council
Americans for Tax Reform and Digital Liberty
AOL Inc.
Arris Group, Inc.
Asian Americans Advancing Justice | AAJC
Association for Information Systems
Association of Free Community Papers
AT&T Services, Inc.
Automotive Parts & Services Association
Benton Foundation
Black Women's Roundtable
Blackfoot Telephone Cooperative
Boulder Regional Emergency Telephone Service Authority
Bright House Networks, LLC
Broadband Alliance of Mendocino
Broadband Institute of California
BT Americas
Cablevision
California Manufacturers & Technology Association
California Public Utilities Commission
California Telehealth Network
CALinnovates
CBS Corp.
CCIA
Center for Boundless Innovation in Technology
Center for Democracy & Technology
Center for Individual Freedom
Center for Media Justice et al.
CenturyLink
Cequel Communications, LLC d/b/a Suddenlink Communications
Charter Communications, Inc.

Chatham Business Association
Chicagoland Black Chamber of Commerce
Cisco Systems, Inc.
Citizens Against Government Waste
Citrus Council of the National Kidney Foundation of Florida
City of Boston, Massachusetts
City of New York, New York
City of Los Angeles, California
City of Philadelphia, Pennsylvania
City of Portland, Oregon
City of San Francisco, California
Coalition of Arts and Cultural Organizations
Codecademy
CodeCombat
Cogent Communications Group, Inc.
ColorOfChange.org
Comcast Corporation
Common Cause
Communications Workers of America
Competitive Carriers Association
Competitive Enterprise Institute
COMPTEL
Computer & Communications Industry Ass'n (CCIA)
Consumer Electronics Association
Consumer Federation of America
Consumer Watchdog
Consumers Union
Cox Communications, Inc.
Creative Commons – USA
Croatan Institute
CTIA – The Wireless Association®
Daily Kos
Data Foundry
Digital Policy Institute
Distributed Computing Industry Association (DCIA)
Dwolla Corp.
eBay Inc.
Elder Care Advocacy of Florida
Electronic Frontier Foundation
Embedly

Engine Advocacy
Entertainment Software Association
Ericsson
Etsy, Inc.
European Digital Rights
European Telecommunications Network Operators' Association
Fandor
Fiber to the Home Council Americas
Financial Services Roundtable
Floor64 / Techdirt
Florida State Hispanic Chamber of Commerce
Free Press
Free State Foundation
Free-Market Advocates Opposed to Internet Regulation
Frontier Communications
Future of Music Coalition
General Assembly
Global Healthy Living Foundation
Golden Frog
Google Inc.
Greenlining Institute
GSM Association
GVNW Consulting, Inc.
Hepatitis Education Awareness and Liver Support (H.E.A.L.S.) of the South
Heyzap
Hippo Smashblast
Home Telecom
i2Coalition
iClick2Media
Independent Colleges & Universities of Texas, Inc.
Independent Film & Television Alliance
Independent Filmmaker Organizations
Information Technology Industry Council
Institute for Local Self-Reliance
Institute for Policy Integrity at New York University School of Law
Intel Corp.
Interisle Consulting Group LLC
International Center for Law & Economics
International Documentary Association et al.
Internet Association

Internet Business Council
Internet Business Council for Africa
Internet Innovation Alliance (IIA)
ITIF
ITTA – The Voice of Midsize Communications Companies
Kentucky Public Library Association Intellectual Freedom Committee
Kickstarter, Inc.
Level 3 Communications, LLC
Liberty Global
MadHat Media, Inc.
Massachusetts Department of Telecommunications and Cable
Media Action Grassroots Network
Media Alliance
MediaFreedom.org
Meetup, Inc.
Mercatus Center at George Mason University
Microsoft Corporation
Minority Media & Telecom Council
MIT Media Lab
MLB Advanced Media, L.P.
Mobile Future
Motion Picture Association of America
Mozilla
NAACP
National Arts and Cultural Organizations
National Association of Black Journalists
National Association of Consumer Advocates
National Association of Independent Colleges and Universities
National Association of Manufacturers (NAM)
National Association of Realtors
National Association of Regulatory Utility Commissioners
National Association of State Utility Consumer Advocates
National Black Chamber of Commerce et al.
National Black Church Initiative
National Cable & Telecommunications Association
National Congress of American Indians
National Grange
National Minority Organizations
National Public Radio, Inc.
National Religious Broadcasters

National Venture Capital Association
NetAccess Futures
Netflix, Inc.
New America Foundation
New Media Rights
New Networks
Newspaper Association of America
Nokia Solutions and Networks US LLC
Northeast Ohio Coalition for the Homeless
NTCA – The Rural Broadband Association
OCHIN
OneCommunity
Online News Association
Online Publishers Association
Open MIC et al.
OpenCurriculum
Opera Software ASA
Orange County Business Council
Orange County Taxpayers Association
Peer 2 Peer University & The School of Open
Pennsylvania Public Utility Commission
Phoenix Center
Popular Resistance
Presente.Org
Private Citizen
Public Citizen
Public Knowledge
QUALCOMM Incorporated
RCN Telecom
reddit, Inc.
Rewheel
Rivada Networks
Roku, Inc.
Rural Broadband Policy Group
Sandvine Incorporated
Scripps Networks Interactive, Inc.
Security Industry Association
Sickle Cell Disease Association
Small Business & Entrepreneurship Council
Smithwick & Belendiuk, P.C.

Southern Company Services, Inc.
Sprint Corporation
State Educational Technology Directors Association (SETDA)
State Library of Kansas
State of Illinois
State of New York
STEM4US!
Stop the Cap!
Syntonic Wireless, Inc.
Taxpayers Protection Alliance
TechAmerica
TechFreedom
Technology Policy Institute
Telecom Italia
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al.
Telecommunications Industry Association
TELEFONICA
ThoughtWorks
TimeBank USA
Time Warner Cable Inc.
Time Warner Inc.
T-Mobile USA, Inc.
Tompkins County, New York
TouchCast
Tumblr, Inc.
U.S. Cellular Corp.
U.S. Chamber of Commerce
U.S. Public Interest Research Group
United Church of Christ et al.
United Spinal Association
United States Conference of Mayors
United States Distance Learning Association
United States Hispanic Chamber of Commerce
United States Telecom Association
Utilities Telecom Council
Verizon
Verizon Wireless
Vermont Office of the Attorney General
Vermont Public Service Board
Viacom Inc.

Vimeo, LLC
Voices for Internet Freedom et al.
Vonage Holdings Corp.
Walt Disney Co.
WATCH
Williamson & Williams, PLLC
Wireless Internet Service Providers Association
Wisconsin Dept. of Public Instruction
Women, Action & the Media et al.
Women's Media Center
Writers Guild of America, East
Writers Guild of America, West, Inc.
WTA – Advocates for Rural Broadband
Y Combinator

Public Knowledge and the National Association of State Utility Consumer

Advocates are movants-intervenors for respondents. There currently are no amici.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2015, I electronically filed the foregoing Motion to Exceed Page Limits with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel for respondents, who are registered CM/ECF users:

James M. Carr
David Morris Gossett
Jacob M. Lewis
Richard Kiser Welch
Federal Communications
Commission
Office of General Counsel
Room 8-A741
445 12th Street, S.W.
Washington, D.C. 20554
(202) 418-1700
james.carr@fcc.gov
jacob.lewis@fcc.gov
david.gossett@fcc.gov
richard.welch@fcc.gov
*Counsel for Respondent Federal
Communications Commission*

Nickolai Gilford Levin
Kristen Ceara Limarzi
Robert J. Wiggers
United States Department of Justice
Antitrust Division, Appellate Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2460
nickolai.levin@usdoj.gov
kristen.limarzi@usdoj.gov
robert.wiggers@usdoj.gov
*Counsel for Respondent United States
of America*

/s/ Miguel A. Estrada
Miguel A. Estrada
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
mestrada@gibsondunn.com

*Counsel for Petitioner National Cable &
Telecommunications Association*