

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

UNITED STATES TELECOM	)	
ASSOCIATION, et. al.,	)	
	)	
<i>Petitioner,</i>	)	Case No. 15-1063 &
	)	consolidated Case Nos.
v.	)	15-1078, 15-1086, 15-1090,
	)	15-1091, 15-1092, 15-1095,
FEDERAL COMMUNICATIONS	)	15- 1099, & 15-1117
COMMISSION,	)	
	)	
<i>Respondent.</i>	)	

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**MOTION FOR LEAVE TO INTERVENE**

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Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, D.C. Cir. R. 15(b), 47 U.S.C. § 402(e) and 28 U.S.C. § 2348, the National Association of Regulatory Utility Commissioners (“NARUC”) requests leave to intervene of right in the above-captioned proceedings.

For over 125 years, NARUC, a quasi-governmental non-profit corporation in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with, *inter alia*, overseeing certain operations of telecommunications utilities.

NARUC is recognized by Congress in several statutes<sup>1</sup> and consistently by the Courts<sup>2</sup> as well as a host of federal agencies,<sup>3</sup> as the proper entity to represent the collective interests of State utility commissions.

Pursuant to D.C. Circuit Rule 15(b), NARUC requests this motion also be considered a motion to intervene in the timely filed petitions for review filed in the cases captioned *Alamo Broadband Inc. v. FCC*, D.C. Circuit Case No. 15-1078, *United States Telecom Association v. FCC*, D.C. Circuit Case No. 15-1086, *National Cable & Telecommunications Association v. FCC*, D.C. Circuit Case No. 15-1090, *CTIA -The Wireless Association v. FCC*, D.C. Circuit Case No. 15-1091,

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<sup>1</sup> See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains “Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

<sup>2</sup> See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); *Compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>3</sup> *Compare, NRC Atomic Safety and Licensing Board Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

*AT&T Inc. v. FCC*, D.C. Circuit Case No. 15-1092, *American Cable Association v. FCC*, D.C. Circuit Case No. 15-1095, *CenturyLink v. FCC*, D.C. Circuit Case No. 15-1099, and *WISPA v. FCC*, No. 15-1117, because all of the foregoing cases concern direct review of the same agency order.

All the Petitioners, including the United States Telecom Association,<sup>4</sup> seek review of the Federal Communications Commission's ("FCC" or "Commission") final "Report and Order on Remand, Declaratory Ruling, and Order," in the proceeding captioned *In the Matter of Protecting and promoting the Open Internet*, GN Docket No. 14-28 (FCC No. 15-24) (rel. March 12, 2015), ("*Open Internet Order*").<sup>5</sup>

In this Order, the FCC followed the suggestions of this Court in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), to lawfully reclassify broadband Internet access service as a telecommunications service, and adopt a comprehensive

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<sup>4</sup> The United States Telecom Association filed its "protective" Petition for Review in Case No. 15-1063 within ten days of the release of the order on appeal. USTelecom filed a "supplemental" petition after the order had been published in the Federal Register, on April 13, 2015. Additional appeals have been filed in the Fifth (Alamo Braodband v. FCC, No. 15-60263) and Third Circuits (Full Service Network v. FCC, Case no. 15-20007) The FCC has moved to transfer those two petitions to the D.C. Circuit claiming the lottery held on the "protective" petitions that assigned the case to this circuit is binding.

<sup>5</sup> The order was published in the Federal Register April 13, 2015 (80 Fed. Reg. 19737), at: <https://www.federalregister.gov/articles/2015/04/13/2015-07841/protecting-and-promoting-the-open-internet>. The full text of the decision is at: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf).

framework for rules to consumers and competition from unreasonably discriminatory acts by wireless and wireline Internet access service providers.

NARUC's members' ability to protect ratepayers and the public interest will be impacted by the outcome of this appeal. The legal rationales adopted impact the jurisdiction of NARUC's members both directly and indirectly. NARUC specifically supports the FCC's legal rationale underlying this rule. Both Section 706 and Title II support the FCC's action below.

NARUC requests leave to intervene in support of Respondents FCC and the United States of America. The ratepayers and the public interest overseen by NARUC's members benefit from the rules adopted in the *Open Internet Order*. NARUC was an active participant in the proceedings below. NARUC is a "party in interest in the proceeding" entitled to intervene. 28 U.S.C. § 2348; 47 U.S.C. § 402(e). For the foregoing reasons, NARUC respectfully requests that it be permitted to intervene in these proceedings.

Respectfully submitted,

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DATED: May 11, 2015

## **RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the National Association of Regulatory Utility Commissioners (NARUC) respectfully submits this disclosure statement. NARUC is a quasi-governmental nonprofit organization founded in 1889 and incorporated in the District of Columbia. NARUC is a “trade association” as that term is defined in Rule 26.1(b). NARUC has no parent company. No publicly held company has any ownership interest in NARUC. NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the regulated electric utilities within their respective borders.

Respectfully submitted,

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## CERTIFICATE OF PARTIES

Pursuant to D.C. Circuit Rule 27(a)(4) and D.C. Circuit Rule 28(a)(1)(A), NARUC hereby certifies the following: In Case No. 15-1063, the Petitioner is United States Telecom Association and the Respondents are the Federal Communications Commission (“FCC”) and the United States of America. In Case No. 15-1078, the Petitioner is Alamo Broadband Inc. The Respondents are the FCC and the United States of America. In Case No. 15-1086, the Petitioner is the United States Telecom Association. The Respondents are the FCC and the United States of America. In Case No. 15-1090, the Petitioner is the National Cable & Telecommunications Association. The Respondents are the FCC and the United States of America. In Case No. 15-1091, the Petitioner is CTIA—The Wireless Association. The Respondents are the FCC and the United States of America. In Case No. 15-1092, the Petitioner is AT&T Inc. The Respondents are the FCC and the United States of America. In Case No. 15-1095, the Petitioner is the American Cable Association. The Respondents are the FCC and the United States of America. In Case No. 15-1099, the Petitioner is CenturyLink. The Respondents are the FCC and the United States of America.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of May 2014, I electronically filed the foregoing *Motion for Leave to Intervene* with the Clerk of Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system.

I certify further that I have directed that copies of the forgoing Motion for Leave to Intervene be served by electronic service via CM/ECF or by first-class mail, as indicated, to the following persons.

Respectfully submitted,

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