

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

United States Telecom Association,
et al.,

Petitioner,

v.

Federal Communications Commission
and United States of America,

Respondents.

Appeal No. 15-1063 (Lead)

Consolidated with Nos. 15-1078,
15-1086, 15-1090, 15-1091, 15-1092,
15-1095, 15-1099, 15-1117, 15-1128

COGENT COMMUNICATIONS, INC.’S MOTION TO INTERVENE

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Rule 15(d) of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15(b), Cogent Communications, Inc. (“Cogent”) hereby moves for leave to intervene as of right in the above-captioned Petitions for Review in support of Respondents Federal Communications Commission (“FCC” or “Commission”) and United States of America.¹

Petitioners United States Telecom Association, Alamo Broadband Inc., National Cable & Telecommunications Association, CTIA – The Wireless Association, AT&T Inc., American Cable Association, CenturyLink, the Wireless

¹ Pursuant to Circuit Rule 15(b), this motion will be deemed an intervention motion in all appeals that have been filed and that will be filed in this Circuit involving the same underlying Commission order.

Internet Service Providers Association, and Daniel Berninger seek review of the FCC final order titled *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 80 Fed. Reg. 19738 (April 13, 2015) (“*Open Internet Order*”). In the *Open Internet Order*, the Commission lawfully adopted a framework for protecting and promoting an open Internet for consumers that included reclassification of broadband Internet access service as a telecommunications service subject to Title II of the Communications Act.

As a party to the proceeding below whose interests would be affected if the *Open Internet Order* were overturned, Cogent has a right to intervene under 28 U.S.C. § 2348 and 47 U.S.C. § 402(e). “[A]ny party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right.” 28 U.S.C. § 2348; *see also* 47 U.S.C. § 402(e) (permitting any “interested person” to “intervene and participate” in an appeal). Cogent’s interests “will be affected” should the Court enjoin, set aside, or suspend the *Open Internet Order* because Cogent depends on an open Internet to connect its customers who provide content to the Internet (*i.e.*, “edge providers”) with consumers seeking to access that content through their broadband Internet service providers. Moreover, one of the consequences of the *Open Internet Order*’s

reclassification of broadband Internet access service as a telecommunications service is that, pursuant to Title II, entities such as transit providers will be able to file complaints against certain broadband Internet service providers for unjust and unreasonable interconnection practices—*i.e.*, practices “that interfere with the delivery of a broadband Internet access service end user’s traffic” *Open Internet Order* ¶ 204. Accordingly, any ruling that would affect the *Open Internet Order* would also affect Cogent’s business of connecting these edge providers with consumers.

Cogent therefore respectfully requests that this Court grant its motion for leave to intervene in support of Respondents Federal Communications Commission and United States of America.

Respectfully submitted,

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Dated: May 12, 2015

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CORPORATE DISCLOSURES AND CERTIFICATE AS TO PARTIES

Pursuant to Circuit Rules 15(c)(6) and 26.1, and Federal Rule of Appellate Procedure 26.1, Intervenor Cogent Communications, Inc. (“Cogent”) submits the following corporate disclosure.

Cogent is a subsidiary of Cogent Communications Holdings, Inc. There are no publicly held companies, other than Cogent Communications Holdings, Inc., that have an ownership interest of 10 percent or more in Cogent. With respect to Cogent Communications Holdings, Inc., there are also no publicly held companies that have an ownership interest of 10 percent or more.

The “general nature and purpose, insofar as relevant to litigation,” Circuit Rule 26.1(b), of Cogent is twofold. First, Cogent is an Internet transit provider, meaning that Cogent facilitates the transmission of data between content providers

and Internet service providers as well as between other transit providers. Second, Cogent is an Internet service provider through its sale of Internet access to mostly small- and medium-sized businesses.

Pursuant to D.C. Circuit Rule 27(a)(4) and D.C. Circuit Rule 28(a)(1)(A), the following are “all persons who are parties . . . in this court”:

- a) Petitioner United States Telecom Association,
- b) Petitioner Alamo Broadband Inc.,
- c) Petitioner National Cable & Telecommunications Association,
- d) Petitioner CTIA – The Wireless Association,
- e) Petitioner AT&T Inc.,
- f) Petitioner American Cable Association,
- g) Petitioner CenturyLink,
- h) Petitioner Wireless Internet Service Providers Association,
- i) Petitioner Daniel Berninger,
- j) Respondent Federal Communications Commission, and
- k) Respondent United States of America.

The Court has not yet granted any motions to intervene and no amici have yet filed for leave to file a brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this twelfth day of May, 2015, I caused true and correct copies of Cogent Communications, Inc.'s Motion to Intervene, as well as its Corporate Disclosures and Certificate as to Parties, to be filed electronically with the Clerk of the Court using the Case Management and Electronic Case Files ("CM/ECF") system for the D.C. Circuit. The persons listed below will be served by the CM/ECF system or by U.S. Mail:

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