

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

UNITED STATES TELECOM  
ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION and UNITED STATES  
OF AMERICA,

Respondents.

Case No. 15-1063 (and  
consolidated cases)

**MOTION OF ETSY, INC. FOR LEAVE TO INTERVENE  
IN SUPPORT OF RESPONDENTS**

Etsy, Inc. (“Etsy”) hereby moves to intervene in these consolidated appeals<sup>1</sup> in support of Respondents Federal Communications Commission (the “FCC”) and the United States of America pursuant to Federal Rules of Appellate Procedure 15(b). In the alternative, Etsy respectfully requests that the Court treat this motion

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<sup>1</sup> Pursuant to D.C. Circuit Rule 15(b), a motion to intervene in a case concerning “direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases.” Accordingly, this motion to intervene shall serve as a motion to intervene in each of the consolidated cases. *See* Docket Nos. 15-1078, 15-1086, 15-1089, 15-1090, 15-1091, 15-1092, 15-1095, 15-1099, 15-1117, and 15-1128.

as a notice of intention to intervene pursuant to 47 U.S.C. § 402(e).<sup>2</sup>

In support of its motion, Etsy states as follows:

1. Etsy is a marketplace (available at <http://www.etsy.com>) where people connect, both online and offline, to make, sell and buy unique goods. As of December 2014, Etsy hosted 1.4 million active sellers worldwide, who together grossed over \$1.93 billion in 2014.

2. Petitioners in these consolidated cases—broadband Internet access carriers and their trade associations—challenge the FCC’s final order titled *Protecting and Promoting the Open Internet* (the “Order”), 80 Fed. Reg. 19,737 (Apr. 13, 2015). In that Order, the FCC established rules to protect and promote the open Internet by, among other things, prohibiting carriers from blocking, throttling, and charging “prioritization” fees for Internet traffic passing through their networks between consumers and “edge providers”—providers of Internet services and applications at the edge of the Internet’s networks. *See id.* at 19,738.

3. Etsy and its members would be adversely affected if the Order were vacated or modified in a way that provided less protection for Internet traffic traveling through carrier networks. Etsy depends on the rules set forth in the Order to ensure that the goods sold by the micro-businesses on its platform reach online consumers at the same speeds as those of bigger, more established companies.

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<sup>2</sup> In accordance with that statute, Etsy has attached a verified statement attesting to its interest in these appeals.

Etsy and especially its sellers would be disadvantaged if broadband Internet access carriers were permitted to block, throttle, or charge fees for online traffic to consumers.

4. Etsy actively participated in the FCC rulemaking process below by advocating for the adopted rules. Etsy filed opening comments and several *ex parte* letters following meetings with FCC officials. Etsy participated in the FCC Open Internet Roundtable on September 16, 2014 and in the FCC Open Meeting on February 26, 2015 where the rules were adopted. The FCC cited Etsy's public comments in its Order several times.<sup>3</sup>

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<sup>3</sup> See, e.g., *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Comments of Etsy, Inc. (July 8, 2014), <http://apps.fcc.gov/ecfs/document/view?id=7521372050>; *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Ltr. from Marvin Ammori & Julie Samuels to Marlene H. Dortch, Sec., FCC (Nov. 12, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=60000979457>; *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Ltr. from Gigi Sohn to Marlene H. Dortch, Sec., FCC (July 17, 2014), (<http://apps.fcc.gov/ecfs/document/view?id=7521680048>); *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Ltr. from Matthew Wood to Marlene H. Dortch, Sec., FCC (May 15, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=6017647019>; *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Ltr. from Althea Erickson, Global Policy Director, Etsy, Inc. to Marlene H. Dortch, Sec., FCC (May 8, 2014), <http://apps.fcc.gov/ecfs/document/view?id=7521120200>; *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, FCC Open Internet Roundtable (<https://www.fcc.gov/events/open-internet-roundtable-policy-approaches>); *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Video of Chad Dickerson, Etsy CEO, speaking at FCC Open Meeting (Feb. 26, 2015), <http://www.c-span.org/video/?324473-2/open-internet-rules>; 80 Fed. Reg. 19,737, 19,738, ¶ 3.

5. Based upon the foregoing facts, Etsy has a material interest in these appeals and is therefore entitled to intervene as of right. *See* 47 U.S.C. § 402(e) (“Any person who would be aggrieved or whose interest would be adversely affected by a reversal or modification of the order . . . shall be considered an interested party.”); 28 U.S.C. § 2348 (any entity “whose interests are affected by [an] order of [a federal] agency, may intervene in any proceeding to review the order”); *Yakima Valley Cablevisions, Inc. v. FCC*, 794 F.2d 737, 744-45 (D.C. Cir. 1986) (granting intervention to parties “directly affected” by FCC order); Fed. R. App. P. 15(d).

6. Etsy’s motion is timely as it is filed within 30 days after the most recent timely-filed petition in these consolidated appeals.<sup>4</sup> *See* 47 U.S.C. § 402(e); D.C. Circuit R. 15(b).

Etsy respectfully requests that this Court grant its motion for leave to intervene in these appeals in support of Respondents Federal Communications Commission and the United States.

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<sup>4</sup> The most recently-filed petition (No. 15-1128) was filed on May 7, 2015. This motion is also filed within 30 days of the earliest timely petition (No. 15-1086), which was filed on April 13, 2015, the date the Order was published in the Federal Register. The petitions filed before the Order’s publication (Nos. 15-1063 and 15-1078) are incurably premature. *See Consumer Elec. Ass’n v. FCC*, 347 F.3d 291, 296-97 (D.C. Cir. 2003).

Dated: May 12, 2015

Respectfully submitted,

*/s/ Seth D. Greenstein*

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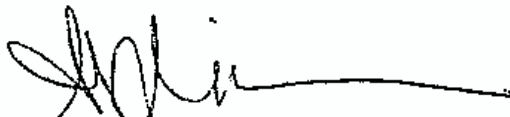
Case No. 15-1063 (and  
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**VERIFIED STATEMENT OF INTEREST BY ETSY, INC.**

I, Althea F. Erickson, hereby declare and state the following:

1. I am Global Policy Director of Etsy, Inc.
2. I hereby certified under penalty of perjury that the factual statements

in numbered paragraphs 1-6 of Etsy Inc.'s Motion to Intervene in Support of Respondents are true and correct to the best of my knowledge.



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Althea F. Erickson

Dated: May 12, 2015  
Brooklyn, NY

**CERTIFICATE AS TO PARTIES**

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), Etsy, Inc. certifies that the parties, intervenors, and amici appearing before this Court are listed in Petitioner United States Telecom's Certificate as to Parties, Ruling, and Related Cases dated April 23, 2015 and as set forth below:

The Petitioner in Case No. 15-1117 is the Wireless Internet Service Providers Association; the Respondents are the FCC and the United States of America.

The Petitioner in Case No. 15-1128 is Daniel Berninger; the Respondents are the FCC and the United States of America.

Pursuant to the instant motion and motions filed concurrently herewith, the following entities seek intervenor status: Etsy Inc., Kickstarter Inc., Meetup, Inc., Tumblr, Inc., Union Square Ventures, LLC, and Vimeo, LLC.

Dated: May 12, 2015

Respectfully submitted,

*/s/ Seth D. Greenstein*

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Etsy, Inc. states that it is: (a) a for-profit corporation organized under the laws of the State of Delaware with its principal place of business in New York, New York; (b) a publicly-traded company that has no parent company and no publicly-held corporation owns 10% or more of its stock; and (c) a marketplace where people connect, both online and offline, to make, sell and buy unique goods.

Dated: May 12, 2015

Respectfully submitted,

*/s/ Seth D. Greenstein*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2015, I caused this Motion of Etsy, Inc. to Intervene in Support of Respondents to be served by filing with the CM/ECF system of the United States Court of Appeal for the D.C. Circuit.

*/s/ Seth D. Greenstein*

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