

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

Kickstarter, Inc. (“Kickstarter”) 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, Kickstarter respectfully requests that the Court treat this motion as a notice of intention to intervene

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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.

pursuant to 47 U.S.C. § 402(e).<sup>2</sup>

In support of its motion, Kickstarter states as follows:

1. Kickstarter (available at <http://kickstarter.com>) is the world's largest funding community for creative projects—everything from films, games, restaurants, and music to art, design, and technology. Since launching in 2009, 8.5 million people have pledged over \$1.7 billion to projects on Kickstarter, successfully funding 85,000 creative ideas.

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. Kickstarter is an "edge provider" that 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. As an edge provider whose

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

services include delivery of high-definition video content, Kickstarter relies upon broadband Internet access carriers to reach its consumers. Kickstarter would be disadvantaged if broadband Internet access carriers were permitted to block, throttle, or charge fees for traffic between Kickstarter and its users.

4. Kickstarter actively participated in the FCC rulemaking process below by advocating for the adopted rules. Kickstarter filed opening comments and an *ex parte* letter, and the FCC cited Kickstarter's comments in its order.<sup>3</sup> *See, e.g.*, Order, 80 Fed. Reg. at 19,754, n. 311 (quoting Kickstarter Opening Comments).

5. Based upon the foregoing facts, Kickstarter 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

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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 Kickstarter, Inc. (July 10, 2014), (<http://apps.fcc.gov/ecfs/comment/view?id=6017879813>); Letter of Marvin Ammori to Marlene H. Dortch, Sec., FCC (May 6, 2014) (<http://apps.fcc.gov/ecfs/comment/view?id=6017627355>) (describing meeting between FCC staff and representatives of Kickstarter, Inc., Meetup, Inc., Tumblr, Inc., NY Tech Meetup, and Engine Advocacy).

order); Fed. R. App. P. 15(d).

6. Kickstarter'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).

Kickstarter 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.

Dated: May 12, 2015

Respectfully submitted,

/s/ Seth D. Greenstein

Seth D. Greenstein

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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).

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**VERIFIED STATEMENT OF INTEREST BY KICKSTARTER, INC.**

I, Michal Rosenn, hereby declare and state the following:

1. I am Deputy General Counsel of Kickstarter, Inc.
2. I hereby certified under penalty of perjury that the factual statements in numbered paragraphs 1-6 of Kickstarter, Inc.'s Motion to Intervene in Support of Respondents are true and correct to the best of my knowledge.



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Michal Rosenn

Dated: May 12, 2015  
Brooklyn, NY

**CERTIFICATE AS TO PARTIES**

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), Kickstarter, 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, Kickstarter, Inc. states that (a) it is a Delaware corporation with its principal place of business in Brooklyn, New York; (b) it has no parent corporation; (c) there is no publicly held corporation owning 10% or more of Kickstarter's stock; and (d) it is an Internet-based platform for funding creative projects.

Dated: May 12, 2015

Respectfully submitted,

*/s/ Seth D. Greenstein*

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Attorneys for Kickstarter, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2015, I caused this Motion of Kickstarter, 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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