

**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 VIMEO, LLC FOR LEAVE TO INTERVENE
IN SUPPORT OF RESPONDENTS**

Vimeo, LLC (“Vimeo”) hereby moves to intervene in these consolidated appeals¹ 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, Vimeo respectfully requests that the Court treat this motion as a notice of intention to intervene pursuant to 47 U.S.C.

¹ 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.

§ 402(e).²

In support of its motion, Vimeo states as follows:

1. Vimeo provides an Internet-based video service (available at <http://vimeo.com>) that allows creators to upload and share videos with the world and allows viewers to stream or download those videos from any Internet-connected device. Vimeo has over 35 million registered users and reaches a global monthly audience of about 160 million visitors.

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. Vimeo 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, Vimeo relies upon

² In accordance with that statute, Vimeo has attached a verified statement attesting to its interest in these appeals.

broadband Internet access carriers to reach its consumers. Vimeo would be disadvantaged if broadband Internet access carriers were permitted to block, throttle, or charge fees for traffic between Vimeo and its users.

4. Vimeo actively participated in the FCC rulemaking process below by advocating for the adopted rules. Vimeo filed opening and reply comments and *ex parte* letters.³ The FCC cited Vimeo's comments in its Order. *See, e.g.*, Order, 80 Fed. Reg. at 19,754, ¶ 126 (“Vimeo, for instance, argues that paid prioritization ‘would disadvantage user-generated video and independent filmmakers’ that lack the resources of major film studios to pay priority rates for dissemination of content.”) (quoting Vimeo Opening Comments).

5. Based upon the foregoing facts, Vimeo 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

³ *See, e.g.*, *In the Matter of Promoting the Open Internet*, GN Dkt. No. 14-28, Comments of Vimeo, LLC (July 15, 2014), (<http://apps.fcc.gov/ecfs/comment/view?id=6017899466>); Reply Comments of Vimeo, LLC (Sept. 10, 2014), (<http://apps.fcc.gov/ecfs/comment/view?id=6018380954>); *In the Matter of Promoting the Open Internet*, GN Dkt. No. 14-28, Ltr. from Michael A. Cheah, General Counsel, Vimeo, LLC to Marlene H. Dortch, Sec., FCC (Feb. 19, 2015), (<http://apps.fcc.gov/ecfs/comment/view?id=60001018553>).

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

Vimeo 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.

⁴ 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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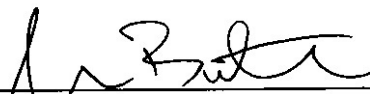
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**VERIFIED STATEMENT OF INTEREST BY UNION SQUARE
VENTURES, LLC**

I, John Buttrick, hereby declare and state the following:

1. I am a Managing Member of Union Square Ventures, LLC.
2. I hereby certified under penalty of perjury that the factual statements in numbered paragraphs 1-6 of Union Square Ventures, LLC's Motion to Intervene in Support of Respondents are true and correct to the best of my knowledge.



John Buttrick

Dated: May 12, 2015
New York, NY

CERTIFICATE AS TO PARTIES

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), Vimeo, LLC 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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Attorneys for Vimeo, LLC

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Vimeo, LLC states that it is (a) a for-profit limited liability company organized under the laws of the State of Delaware with its principal place of business in New York, New York; (b) a wholly-owned subsidiary of IAC/InterActiveCorp, a publicly-traded company that has no parent company; and (c) a provider of Internet-based video sharing and hosting services.

Dated: May 12, 2015

Respectfully submitted,

/s/ Seth D. Greenstein

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Attorneys for Vimeo, LLC

CERTIFICATE OF SERVICE

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