

**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 NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE FOR  
LEAVE TO INTERVENE  
IN SUPPORT OF RESPONDENTS**

New America’s Open Technology Institute (OTI) hereby moves, pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Federal Rules of Appellate Procedure 15(b) and D.C. Circuit Rule 15(d), to intervene in these consolidated appeals in support of Respondents Federal Communications Commission (the “FCC”) and the United States of America.<sup>1</sup>

---

<sup>1</sup> Pursuant to D.C. Circuit Rule 15(b), OTI understands that its motion to intervene in this case will also be deemed a motion to intervene in the cases *CenturyLink v. FCC*, D.C. Circuit Case No. 15-1099, *National Cable & Telecommunications Association v. FCC*, D.C. Circuit Case No. 15-1090, *CTIA—The Wireless Association v. FCC*, DC Circuit Case No. 15-1091, *AT&T Inc. v. FCC*, D.C.

## Statement of Interest

Strong network neutrality rules are central to achieving OTI's mission and supporting its development of important technological tools to both measure and increase broadband access and adoption. New America is a 501(c)(3) organization that is dedicated to the renewal of American politics, prosperity, and purpose in the Digital Age. New America carries out its mission as a nonprofit civic enterprise: an intellectual venture capital fund, think tank, technology laboratory, public forum, and media platform.

The Open Technology Institute (OTI) is a program within New America that is committed to freedom, social justice, and promoting the deployment of broadband in the United States and around the world. To achieve these goals, OTI engages in traditional policy debates, builds technology, and deploys tools within communities. OTI brings together a unique mix of technologists, policy experts, lawyers, and community organizers to address the impacts of technology and policy on people, commerce, and communities. As the FCC has repeatedly noted,<sup>2</sup> and this Court has acknowledged,<sup>3</sup> strong open Internet rules can promote the “virtuous cycle” that drives innovation and investment on the Internet, ultimately

---

Circuit Case No. 15-1092, and *American Cable Association v. FCC*, D.C. Circuit Case No. 15-1095, because all of the foregoing cases concern direct review of the same agency order.

<sup>2</sup> See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order (rel. Mar. 12, 2015).

<sup>3</sup> See *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

increasing broadband build-out and investment. Preserving the open Internet is therefore central to OTI's mission. Additionally, OTI relies on an open Internet to communicate with the public in furtherance of its mission as a 501(c)(3) tax-exempt organization.

Just as an open Internet is central to OTI's mission, so to is it central to OTI's work, which relies on the Internet as an open platform. For example, OTI develops technical tools such as the Commotion Wireless Project ("Commotion") that are designed to help communities connect to the Internet when existing infrastructure is inadequate.<sup>4</sup> OTI is also a partner in the Measurement Lab research consortium ("M-Lab"), an open, distributed server platform on which researchers can deploy open source Internet measurement tools.<sup>5</sup> M-Lab's goal is to advance network research and empower the public with useful information about their broadband and mobile connections. In the absence of rules to protect an open Internet, both Commotion's ability to reach communities and M-Lab's capabilities for broadband measurement could be compromised.

OTI's strong interest in this case is further demonstrated by its active participation in the *Protecting and Promoting the Open Internet* proceeding,

---

<sup>4</sup> See Commotion, <https://commotionwireless.net/> (last visited May 13, 2015).

<sup>5</sup> See Measurement Lab, <http://www.measurementlab.net/> (last visited May 13, 2015).

wherein it filed initial comments,<sup>6</sup> reply comments<sup>7</sup> and numerous *ex partes* detailing the specific consumer harms that would occur in the absence of strong open Internet protections. In particular, OTI detailed the harms to consumers that have occurred as a result of interconnection disputes<sup>8</sup> and articulated the clear need for a common regulatory framework that covered both wired and wireless networks.<sup>9</sup>

As demonstrated above, OTI's interests will be substantially affected by this Court's review of the FCC's *Order*. OTI is therefore a "party in interest in the proceeding" entitled to intervene "as of right" in this matter. 28 U.S.C. § 2348; 47 U.S.C. § 402(e).

OTI's motion is timely as it is filed within 30 days after the most recent timely-filed petition in these consolidated appeals.<sup>10</sup> *See* 47 U.S.C. § 402(e); D.C. Circuit R. 15(b).

---

<sup>6</sup> Comments of New America Foundation's Open Technology Institute, GN Docket Nos. 10-127, 14-28 (July 17, 2014).

<sup>7</sup> Reply Comments of New America Foundation's Open Technology Institute, GN Docket Nos. 10-127, 14-28 (September 15, 2014).

<sup>8</sup> Notice of Ex Parte Communications, Open Technology Institute at New America, GN Docket Nos. 10-127, 14-28, MB Docket No. 14-57 (November 18, 2014); Notice of Ex Parte Communications, Open Technology Institute at New America, GN Docket Nos. 10-127, 14-28, MB Docket No. 14-57 (December 22, 2014).

<sup>9</sup> Notice of Ex Parte Communications, Open Technology Institute at New America, GN Docket Nos. 10-127, 14-28 (November 17, 2014).

<sup>10</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),

New America's Open Technology Institute therefore respectfully requests that this Court grant its motion for leave to intervene in support of the Respondents Federal Communications Commission and United States of America in the above-captioned case and any other cases with which this case has been or may hereafter be consolidated.

Respectfully submitted,

/s/ Sarah J. Morris

Sarah J. Morris  
Kevin S. Bankston  
Open Technology Institute | New America  
1899 L Street NW, Suite 400  
Washington, D.C. 20036  
Tel: 202-986-2700  
Fax: 202-986-3696  
morriss@newamerica.org  
bankston@newamerica.org

*Counsel for New America's Open Technology  
Institute*

---

which was filed on April 13, 2015, the date the Order was published in the Federal Register.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, New America submits the following corporate disclosure statement.

New America is a non-profit organization incorporated in the District of Columbia. New America has no parent corporation, nor is there any publicly-held corporation that owns stock or other interest in New America.

Respectfully submitted,

/s/ Sarah J. Morris

Sarah J. Morris  
Kevin S. Bankston  
Open Technology Institute | New America  
1899 L Street NW, Suite 400  
Washington, D.C. 20036  
Tel: 202-986-2700  
Fax: 202-986-3696  
morriss@newamerica.org  
bankston@newamerica.org

*Counsel for New America's Open Technology  
Institute*

May 13, 2015

UNITED STATES TELECOM  
ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION AND UNITED  
STATES OF AMERICA,

Respondents.

Case No. 15-1063 (and  
consolidated cases)

### **CERTIFICATE AS TO PARTIES**

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), New America's Open Technology Institute certifies the following:

In Case No. 15-1063 and consolidated cases, the Petitioners are the United States Telecom Association, CTIA – The Wireless Association, Century Link, the National Cable and Telecommunications Association, the Wireless Internet Service Providers Association, and Daniel Berninger. The Respondents are the Federal Communications Commission and the United States of America.

Movants to Intervene on behalf of the FCC include Public Knowledge, the National Association of Regulatory Utility Commissioners, Kickstarter, Inc., Meetup, Inc., Tumblr, Inc., Union Square Ventures, LLC, Vimeo, LLC, Etsy, Inc., Level 3 Communications, LLC, DISH Network Corporation, COMPTTEL, Netflix, Inc., Cogent Communications, Inc., and the National Association of State Utility

Consumer Advocates. The Independent Telephone and Telecommunications Alliance has moved to intervene in support of Petitioner CenturyLink. No amici have appeared before this Court at this time. New America's Open Technology Institute seeks leave to appear in this matter as an Intervenor in support of Respondents.

Respectfully submitted,

/s/ Sarah J. Morris

Sarah J. Morris  
Kevin S. Bankston  
Open Technology Institute | New America  
1899 L Street NW, Suite 400  
Washington, D.C. 20036  
Tel: 202-986-2700  
Fax: 202-986-3696  
morriss@newamerica.org  
bankston@newamerica.org

*Counsel for New America's Open Technology  
Institute*

May 13, 2015



UNITED STATES TELECOM  
ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION AND UNITED  
STATES OF AMERICA,

Respondents.

Case No. 15-1063 (and  
consolidated cases)

### **CERTIFICATE OF SERVICE**

I hereby certify that this thirteenth day of May, 2015, I caused true and correct copies of the Motion to Intervene from New America's Open Technology Institute, 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 if not registered with the CM/ECF system:

James Carr  
David Morris Gossett  
Jacob M. Lewis  
Richard Kiser Welch  
FEDERAL COMMUNICATIONS  
COMMISSION  
Room 8-A741  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
(202) 418-1700

*Counsel for Respondent Federal  
Communications Commission*

Nickolai G. Levin  
Kristen C. Limarzi  
Robert J. Wiggers  
UNITED STATES DEPARTMENT  
OF JUSTICE  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

*Counsel for Respondent United States  
of America*

Michael K. Kellogg  
Scott H. Angstreich  
KELLOGG, HUBER, HANSEN,  
TODD, EVANS & FIGEL, PLCC  
1615 M Street N.W., Suite 400  
Washington, D.C. 20036  
(202) 326-7900

Kathleen M. Sullivan  
QUINN EMANUEL URGUHART &  
SULLIVAN, LLC  
51 Madison Avenue  
22<sup>nd</sup> Floor  
New York, NY 10010  
(212) 849-7000

*Counsel for Petitioner United States  
Telecom Association*

Brett A. Shumate  
Andrew G. McBride  
Eve Klindera Reed  
WILEY REIN LLP  
1776 K Street N.W.  
Washington, D.C. 20006  
(202) 719-7000

*Counsel for Petitioner Alamo  
Broadband Inc.*

Miguel A Estrada  
Theodore B. Olson  
Jonathan C. Bond  
GIBSON, DUNN & CRUTCHER  
LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500

Rick C. Chessen  
Neal M. Goldberg  
Michael S. Schooler  
NATIONAL CABLE &  
TELECOMMUNICATIONS  
ASSOCIATION  
25 Massachusetts Avenue, N.W.,  
Suite 100  
Washington, D.C. 20001  
(202) 222-2445

Matthew A. Brill  
Matthew T. Murchison  
Jonathan Y. Ellis  
LATHAM & WATKINS LLP  
555 Eleventh Street, N.W.,

Suite 1000  
Washington, D.C. 20004  
(202) 637-2200

*Counsel for Petitioner National Cable  
& Telecommunications Association*

Michael K. Kellogg  
Scott H. Angstreich  
KELLOGG, HUBER, HANSEN,  
TODD, EVANS & FIGEL, PLCC  
1615 M Street N.W., Suite 400  
Washington, D.C. 20036  
(202) 326-7900

Peter D. Keisler  
James P. Young  
C. Frederick Beckner III  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000

Gary L. Phillips  
Christopher M. Heimann  
AT&T, INC.  
1120 20<sup>th</sup> Street, N.W., Suite 1000  
Washington, D.C. 20036  
(202) 457-3055

*Counsel for Petitioner AT&T Inc.*

Jeffrey A. Lamken  
MOLO LAMKEN LLP  
The Watergate, Suite 660  
600 New Hampshire Avenue, N.W.  
Washington, D.C. 20037  
(202) 556-2000

*Counsel for Petitioner American  
Cable Association*

David H. Solomon  
Russell P. Hanswer  
WILKINSON BARKER KNAUER  
LLP  
2300 N Street, N.W., Suite 700  
Washington, D.C. 20037

*Counsel for Petitioner CenturyLink*

Michael K. Kellogg  
Scott H. Angstreich  
KELLOGG, HUBER, HANSEN,  
TODD, EVANS & FIGEL, PLCC  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
(202) 326-7900

Helgi C. Walker  
Michael R. Huston  
Kellam M. Conover  
GIBSON DUNN & CRUTCHER  
LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500

*Counsel for Petitioner CTIA – The  
Wireless Association*

Richard E. Wiley  
Bennett L. Ross  
Brett A. Shumate  
WILEY REIN LLP  
1776 K Street, N.W.  
Washington, D.C. 20036  
(202) 719-7000

*Counsel for Petitioner Daniel  
Berninger*

Stephan E. Coran  
Dennis P. Corbett  
LERMAN SENTER PLLC  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006  
(202) 429-8970

*Counsel for Petitioner Wireless  
Internet Service Providers  
Association*

Harold J. Feld  
PUBLIC KNOWLEDGE  
1818 N Street, N.W.  
Suite 410  
Washington, D.C. 20036  
(202) 861-0020

*Counsel for Movant-Intervenor Public  
Knowledge*

David C. Bergmann  
LAW OFFICE OF DAVID C.  
BERGMANN  
3293 Noreen Drive  
Columbus, OH 43221  
(614) 771-5979

*Counsel for Movant-Intervenor  
National Association of State Utility  
Consumer Advocates*

Seth D. Greenstein  
Robert S. Schwartz  
CONSTANTINE CANNON LLP  
1001 Pennsylvania Avenue, N.W.  
Suite 1300N

Washington, D.C. 20004  
(202) 204-3500

*Counsel for Movant-Intervenor  
Kickstarter, Inc.*

Seth D. Greenstein  
Robert S. Schwartz  
CONSTANTINE CANNON LLP  
1001 Pennsylvania Avenue, N.W.  
Suite 1300N  
Washington, D.C. 20004  
(202) 204-3500

*Counsel for Movant-Intervenor  
Meetup, Inc.*

Seth D. Greenstein  
Robert S. Schwartz  
CONSTANTINE CANNON LLP  
1001 Pennsylvania Avenue, N.W.  
Suite 1300N  
Washington, D.C. 20004  
(202) 204-3500

*Counsel for Movant-Intervenor Union  
Square Ventures, LLC*

James Bradford Ramsay  
NATIONAL ASSOCIATION OF  
REGULATORY UTILITY  
COMMISSIONERS  
1101 Vermont Avenue, Suite 200  
Washington, D.C. 20005  
(202) 898-2207

*Counsel for Movant-Intervenor  
National Association of Regulatory  
Utility Commissioners*

Seth D. Greenstein  
Robert S. Schwartz  
CONSTANTINE CANNON LLP  
1001 Pennsylvania Avenue, N.W.  
Suite 1300N  
Washington, D.C. 20004  
(202) 204-3500

*Counsel for Movant-Intervenor Etsy,  
Inc.*

Seth D. Greenstein  
Robert S. Schwartz  
CONSTANTINE CANNON LLP  
1001 Pennsylvania Avenue, N.W.  
Suite 1300N  
Washington, D.C. 20004  
(202) 204-3500

Marvin Ammori  
AMMORI GROUP  
1718 M Street, N.W., Suite 1990  
Washington, D.C. 20036  
(202) 505-3680  
marvin@ammorigroup.com

*Counsel for Movant-Intervenor  
Tumblr, Inc.*

Seth D. Greenstein  
Robert S. Schwartz  
CONSTANTINE CANNON LLP  
1001 Pennsylvania Avenue, N.W.  
Suite 1300N  
Washington, D.C. 20004  
(202) 204-3500

*Counsel for Movant-Intervenor  
Vimeo, LLC*

Robert M. Cooper  
James P. Denvir III  
Scott E. Gant  
Hamish P.M. Hume  
Hershel A Wancjer  
BOIES, SCHILLER & FLEXNER  
LLP  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
(202) 237-2727

*Counsel for Movant-Intervenor  
Cogent Communications, Inc.*

Markham C. Erickson  
Andrew W. Guhr  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

*Counsel for Movant-Intervenor  
Netflix, Inc.*

Markham C. Erickson  
Andrew W. Guhr  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

*Counsel for Movant-Intervenor Level  
3 Communications, LLC*

Markham C. Erickson  
Andrew W. Guhr  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

*Counsel for Movant-Intervenor  
COMPTEL*

Pantelis Michalopoulos  
Stephanie A. Roy  
Andrew W. Guhr  
STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

*Counsel for Movant-Intervenor DISH  
Network Corporation*

/s/ Sarah J. Morris

Sarah J. Morris

Open Technology Institute | New America

1899 L Street NW, Suite 400

Washington, D.C. 20036

Tel: 202-986-2700

Fax: 202-986-3696

morriss@newamerica.org

bankston@newamerica.org

*Counsel for New America's Open Technology  
Institute*

May 13, 2015