

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

Full Service Network, TruConnect Mobile,  
Sage Telecommunications LLC, and  
Telescope Communications, Inc.,

*Petitioners,*

v.

Federal Communications Commission and  
United States of America,

*Respondents.*

No. 15-1151

**MOTION OF AMERICAN CABLE ASSOCIATION  
FOR LEAVE TO INTERVENE**

Pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348, Federal Rule of Appellate Procedure 15(d), and D.C. Circuit Rule 15(b), the American Cable Association (“ACA”) hereby moves for leave to intervene as of right in partial support of respondents solely in the above-captioned proceeding (Case No. 15-1151), and not in any existing proceedings with which this petition is consolidated.

Petitioners in this case seek review of the Federal Communications Commission’s “Open Internet Order.”<sup>1</sup> In the Open Internet Order, the FCC classified broadband Internet access service as a “telecommunications service” subject to common-carrier regulation under Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*, as amended. *See* Open Internet Order ¶¶ 306-430. At the

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<sup>1</sup> Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24 (Mar. 12, 2015).

same time, the FCC exercised its discretion under Section 10 of the Communications Act (codified at 47 U.S.C. § 160) to forbear from applying some of Title II's provisions to broadband Internet access service. *See* Open Internet Order ¶¶434-542.

In this case, petitioners have taken the position that the FCC's reclassification of broadband Internet access service as a Title II telecommunications service is "correct as a matter of law." Petition for Review 2. However, they seek review of the FCC's decision to forbear from applying various Title II requirements. *Id.* at 3. They thus will argue that the FCC should have imposed additional regulatory burdens on broadband providers.

ACA is a trade association of small and medium-sized cable companies, many of which provide broadband Internet access service. ACA has sought review of the Open Internet Order, challenging the FCC's reclassification of broadband as a Title II telecommunications service and the imposition of *any* Title II regulatory burdens on its members. *See Am. Cable Ass'n v. FCC*, No. 15-1095 (D.C. Cir. pet. filed Apr. 14, 2015), consolidated with other petitions under *U.S. Telecom Ass'n v. FCC*, No. 15-1063 (D.C. Cir.). ACA and its members, however, also have a strong interest in ensuring that—to the extent the FCC's reclassification of broadband Internet access service is upheld—broadband providers are not subjected to *additional* regulatory burdens beyond those imposed by the order under review.

ACA therefore seeks to intervene to ensure that its members' interests are adequately represented in the ongoing proceeding. ACA regularly represents its members and its interests before regulatory agencies such as the FCC, and it participated in the Commission proceeding below on behalf of its members.<sup>2</sup> ACA's members are directly and adversely affected by the Open Internet Order, which subjects them and other broadband Internet access service providers to a host of new regulatory burdens under Title II. And their "interests will be affected" more gravely still if petitioners prevail on their argument that the Open Internet Order did not go far enough in imposing regulatory burdens on broadband providers. 28 U.S.C. § 2348. Because ACA's members are "directly affected by" the order under review, Rule 15(d) intervention is appropriate. *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 744-45 (D.C. Cir. 1986).

### CONCLUSION

The motion for leave to intervene should be granted.

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<sup>2</sup> See, e.g., Comments of American Cable Association, FCC, GN Docket No. 14-28 (July 17, 2014).

May 26, 2015

Respectfully submitted,

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the D.C. Circuit Rules and Rule 26.1 of the Federal Rules of Appellate Procedure, American Cable Association (“ACA”) states as follows: ACA has no parent corporation and no publicly held corporation owns 10% or more of its stock, pays 10% or more of its dues, or possesses or exercises 10% or more of the voting control of ACA.

As relevant to this litigation, ACA is a trade association of small and medium-sized cable companies, many of which provide broadband Internet access service. ACA is principally engaged in representing the interests of its members before Congress and regulatory agencies such as the Federal Communications Commission.

May 26, 2015

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**CERTIFICATE OF SERVICE**

I, Jeffrey A. Lamken, hereby certify that, on May 26, 2015, I electronically filed the foregoing Motion of American Cable Association for Leave To Intervene and Corporate Disclosure Statement using the appellate CM/ECF system, which will serve registered CM/ECF users participating in the case.

May 26, 2015

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