

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 15-1128 2. DATE DOCKETED: 05-07-2015
3. CASE NAME (lead parties only) Daniel Berninger v. FCC & USA

4. TYPE OF CASE: [X] Review [] Appeal [] Enforcement [] Complaint [] Tax Court

5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? [] Yes [X] No
If YES, cite statute

6. CASE INFORMATION:
a. Identify agency whose order is to be reviewed: Federal Communications Commission
b. Give agency docket or order number(s): GN Docket No. 14-28; FCC 15-24
c. Give date(s) of order(s): Order released 3/12/15; Order published in Fed. Reg. 4/13/15

d. Has a request for rehearing or reconsideration been filed at the agency? [X] Yes [] No
If so, when was it filled? May 12 & 13 By whom? Smithwick & Belendiuk; NTCH, Inc. et al.
Has the agency acted? [] Yes [X] No If so, when?

e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
See attachment.

f. Are any other cases involving the same underlying agency order pending in this Court or any other?
[] Yes [] No If YES, identify case name(s), docket number(s), and court(s)
See attachment.

g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit
Court, or the Supreme Court which involve substantially the same issues as the instant case presents?
[] Yes [X] No If YES, give case name(s) and number(s) of these cases and identify court/agency:

h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other
alternative for dispute resolution? [] Yes [X] No If YES, provide program name and participation dates.

Signature /s/ Bennett L. Ross Date 06-08-2015

Name of Counsel for Appellant/Petitioner Bennett L. Ross

Address Wiley Rein LLP, 1776 K St. NW, Washington, D.C. 20006

E-Mail bross@wileyrein.com Phone (202) 719-7000 Fax (202) 719-7049

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so
advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the
challenged statement.

ATTACHMENT TO AGENCY DOCKETING STATEMENT

Daniel Berninger v. FCC, No. 15-1128

Response to Question 6(f):

The following cases involving the same agency order (FCC 15-24) are currently pending before this Court and have all been consolidated with No. 15-1128:

United States Telecom Ass'n v. FCC, Nos. 15-1063

Alamo Broadband Inc. v. FCC, No. 15-1078

United States Telecom Ass'n v. FCC, No. 15-1086

National Cable & Telecomms. Ass'n v. FCC, No. 15-1090

CTIA – The Wireless Ass'n v. FCC, No. 15-1091

AT&T Inc. v. FCC, No. 15-1092

American Cable Ass'n v. FCC, No. 15-1095

CenturyLink v. FCC, No. 15-1099

Wireless Internet Service Providers Ass'n v. FCC, No. 15-1117

Full Service Network, et al. v. FCC, No. 15-1151

In addition, on June 8, 2015, the United States Court of Appeals for the Fifth Circuit transferred the following case to this Court:

Alamo Broadband Inc. v. FCC, No. 15-60263

Response to Question 6(e):

Daniel Berninger is an entrepreneur and architect of new communications services. He has devoted his professional career to and earned his livelihood from

facilitating the transformation from traditional circuit switched services to Internet Protocol services. Since 2012, Mr. Berninger has dedicated substantial time and resources to speeding the transition to all-Internet Protocol networks and High Definition voice services, which require prioritization by network operators.

Mr. Berninger has standing because the Order threatens his livelihood. His investment interests in Internet Protocol services and his professional career as a communications services architect are predicated on the ability to design, develop, and implement services not subject to Title II regulation—an ability now imperiled by the Order. *See* Letter from Daniel Berninger, founder, VCXC, *et al.*, to Tom Wheeler, Chairman, FCC, GN Docket No. 14-28 (Jan. 23, 2015); Declaration of Daniel Berninger ¶¶ 14-16, 22-24. Furthermore, by prohibiting paid prioritization arrangements, the Order prevents Mr. Berninger from implementing new High Definition voice offerings to which he has devoted time and resources to develop. *See* Declaration of Daniel Berninger ¶¶ 17-21.

Declaration of Daniel Berninger

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

UNITED STATES TELECOM
ASSOCIATION, *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION,

and UNITED STATES OF AMERICA,

Respondents.

Case No. 15-1053 and
consolidates cases

DECLARATION OF DANIEL BERNINGER

I, Daniel Berninger, declare as follows:

1. My name is Daniel Berninger. I was born in Wilmington, Delaware USA. I am an entrepreneur, founder of the Voice Exchange Communication Committee (“VCXC”), and an architect of new communications services since 1991.

2. I am an honors graduate of Villanova University, where I earned a Bachelor of Electrical Engineering and a Master of Electrical Engineering. I completed the classwork for a Doctorate of Philosophy in Systems Engineering at the University of Pennsylvania, where my degree remains pending completion of a dissertation on the mathematical analysis of complex systems.

3. I have devoted my professional career to transforming the communications industry from traditional circuit switched services to the Internet Protocol (“IP”) services upon which customers increasingly rely today. I served as a Member of the Technical Staff and developer of new telephone network services at Bell Laboratories in the early 1990’s. However, over the past 20 years, I have been involved in a number of industry firsts in IP communications.

4. I was appointed to the first Voice over IP (“VoIP”) deployment team at AT&T (1995) and led the first VoIP deployments for NASA (1997), Verizon (1997), and HP (1998). I co-founded the VON Coalition, which was the first VoIP policy advocacy organization. I also participated with friends and partners in or otherwise contributed to the first call completed between the Public Switched Telephone Network (“PSTN”) and the Internet anywhere in the world (1995), the first international calling company relying on VoIP (1997), the first company to use VoIP to offer domestic unlimited calling (2001), and the first live network multi-service provider High Definition (“HD”) voice call (2013). During my career, I was involved in the founding of Free World Dialup (“FWD”), ITXC, and Vonage, helped recruit the CEOs for each of these companies, and participated in developing their initial business models. I received the VON Pioneer Award in 1999.

5. I founded VCXC in 2012 as a non-profit organization to provide a home for initiatives working to speed the transition to all-IP networks and HD voice. I gave the IP transition its name and kicked off the transformation of the communications sector at a Grand Challenge event on June 15, 2012 hosted by VCXC. The founding of VCXC reflects a desire to raise awareness about opportunities for the communications services enabled by all-IP networks. I agree with other technologists who believe that frictionless global communications promise a Knowledge Age transformation of life on the planet. The communications capacity of unregulated information services already expands at a pace consistent with Moore's Law, doubling capacity every 18 months. The recent achievement of a 1000-fold expansion of capacity becomes a billion-billion expansion opportunity by the end of the century.

6. My 25 years of experience in the communications sector leaves me with four certain conclusions. First, the degree of regulation is the primary factor in the success or failure of a communications service. Second, services subject to Title II of the Communications Act, which allows regulators to take advantage of their regulatory powers to intervene in markets, are destined to fail. Third, non-Title II communications services may achieve some success, but only if regulators can resist their natural tendency to overregulate them. Fourth, communications services classified as unregulated information services (the entire information

technology sector) or that are simply beyond classification by the Federal Communication Commission (“FCC”) achieve dramatic success.

7. Because a regulated company cannot serve two masters – regulator and customer – the regulatory requirements to which a regulated company is subject always trump customer needs. For example, regulatory lawyers played a prominent role in product and service development meetings at Bell Laboratories. During my tenure at Bell Labs, every new service or change in an existing service had Title II implications, which the development teams needed lawyers to interpret. Not surprisingly, the goal of the lawyers, whose opinions were given considerable weight by the development teams, was to ensure regulatory compliance, not meet customer needs. The result was a process by which Title II services were shaped to appease non-customer regulatory issues.

8. Because Title II disserves customers and is antithetical to innovation, I have worked for more than two decades in opposing Title II regulation of the Internet. After nearly a decade of advocacy in which I, my colleagues, and the larger information technology community were involved, the Commission classified the service offered by FWD as an unregulated information service in a ruling known as the “Pulver Order” in 2004. Beginning in 2002, the Commission also issued a series of rulings in which it classified broadband Internet access services as an unregulated information services. In the intervening years, the

expansion of Internet capacity accelerated, and IP communications services began rapidly displacing PSTN services.

9. After years of success under this unregulated approach, I never considered Title II regulation of the Internet a serious possibility until President Obama released a YouTube video in November 2014 endorsing Title II. Like many of my colleagues in the entrepreneurial community, I was amazed at the prospect that the Commission would reverse more than a decade of bipartisan, pro-innovation decisions by extending Title II to the Internet.

10. Because of our direct experience with the innovation deadening effect of Title II, I convened a group of friends and tech elder entrepreneurs to help educate the communicating public about the risk of subjecting the Internet to Title II regulation. This group includes: John Perry Barlow, lyricist and activist; Mark Cuban, Founder, AXS TV; Tim Draper, founder, Draper Fisher Jurvetson; Tom Evslin, founder & former, CEO ITXC; Dave Farber, Professor Emeritus, CMU and Board Member ISOC; Charlie Giancarlo, Senior Advisor, Silver Lake; George Gilder, author; John Gilmore, activist; Brian Martin, Chairman and CTO, 8x8; Scott McNealy, co-founder, SUN Microsystems; Bob Metcalfe, Professor, University of Texas and inventor of Ethernet; Ray Ozzie, creator Lotus Notes, former CTO Microsoft; Jeff Pulver, co-founder, Zula and Vonage; Michael Robertson, CEO, MP3.com; and Les Vadasz, former EVP, Intel.

11. This group recognizes that America was the only country in the world to explicitly protect the unregulated status of computing and computer networks in the 20th century. This fact accounts for the global dominance of the United States information technology sector. The *Order* eliminates these decades-old protections by subjecting the Internet to Title II regulation. In my view, nothing useful will result from the regulation of 21st century computer networks pursuant to a law addressing a monopoly voice telephone market signed by President Franklin Delano Roosevelt in 1934 before the invention of the transistor or computing. Indeed, the category of telecommunications services subject to Title II regulation has experienced a complete lack of innovation and presently attracts less than half the usage of the pre-commercial Internet period. The failure to improve the voice quality of a telephone call over a period of 80 years represents an unprecedented technology anomaly that traces to Commission implementation of Title II regulation.

12. The *Order*, which does not even recognize the entrepreneurial value of new communications services that rely upon IP networks, threatens my livelihood. By seeking to benefit entrepreneurs that use communications, the *Order* favors one type of entrepreneur over another. This represents an inevitable consequence of the Commission's market intervention approach. Market interventions designed to serve the interests of one group (users of communications

services) necessarily undermines the prospects of another group of which I am a member (architects of communications services).

13. The *Order* dramatically alters my investment interests in IP communications services and causes irreparable harm to my career as an architect of new communications services if allowed to take effect pending judicial review.

14. First, my ability to design, develop, and ultimately profit from new and innovative IP communications services requires preserving their nonregulated status. Communications services subject to Title II regulation are toxic to entrepreneurs such as me. In developing any communications service attractive to end users, I must employ a rapid process of trial and error, adapting to conditions based on available technology, competitive alternatives, and customer interest. The challenges of this development process are daunting enough without adding to the list the prospect of shifting regulatory foundations inherent under Title II regulation. If the *Order* takes effect and the Internet falls within the FCC's Title II jurisdiction, I will be unable to continue my chosen profession as an IP communications services architect. Title II regulation of the Internet will leave me with no option but to abandon my investments in IP communications services and devote my time and resources to another sector of the economy.

15. Second, because of the entrepreneurial imperative to avoid investing in communications services subject to Title II regulation, the entrepreneurial

community relies on the existence of an operationally practical means of distinguishing between regulated and unregulated services. However, such an understanding is rendered impossible by virtue of the breadth of the *Order* and the absence of any limiting principle to FCC discretion regarding the regulation of IP communications services.

16. For example, in adopting a new definition of the “Public Switched Network” to include “public IP addresses,” the FCC was persuaded that this definition better “reflects the emergence and growth of” IP networks, which “use standardized addressing identifiers other than NANP numbers for routing of packets” and which “give users a universally recognized format for sending and receiving messages across the country and worldwide.” *Order* ¶ 391. The FCC also recast the PSTN as a “single network” that comprises the Internet, rather than two separate networks as had been understood before. *Id.* ¶ 396. Even worse, the nature of the regulatory process relieves the Commission of any obligation to make a precise statement regarding limitations in the exercise of its new found authority. These limitations, if any, will only become clear over time through litigation and additional regulatory proceedings. This approach obliterates the historical and clearly defined mechanism for determining the regulated status of a communications service by virtue of its connectivity to the PSTN.

17. Third, by prohibiting paid prioritization arrangements, the *Order* prevents me from implementing new HD voice offerings, which I have devoted time and resources to developing in order to take advantage of the economic opportunities created by the retirement of the PSTN in favor of all-IP networks. Because latency, jitter, and packet loss in the transmission of a communications will threaten voice quality and destroy the value proposition of an HD service, it is imperative that network operators prioritize this traffic. And, for network operators exchanging HD voice traffic, they will reasonably expect and demand to receive compensation or some other benefit in consideration for providing such prioritization.

18. One HD offering threatened by the *Order*, which was announced as the HD Network (“HDN”) on January 6, 2015, allows end users to elect and for network operators to provision HD voice functionality on an individual end-user by end-user basis. A number of operators support HD voice on their networks, but the HDN, demonstrated through trials in 2013, provides a means to move HD calls between networks.

19. Another HD service I am developing involves a voice hosting offer giving website visitors the ability to communicate with each other through HD voice. This project establishes HD voice as a new means of conversation without the need for telephone numbers or traditional dialing. Visiting a web page

provides the triggering mechanism to initiate an HD voice conversation with others sharing interest in the web page topic. This business model features a subscription-based destination for customers as well as provides an affiliation model and new revenue stream encouraging website owners to promote HD voice conversations between members of their audience.

20. My work on the architecture of new communications services supporting HD voice relies on IP devices and IP networks, with no dependency or reliance on the PSTN. VCXC exists to help the communications sector navigate the retirement of the PSTN, which does not support HD voice. In order to compete with competitive alternatives in terms of reliability and consistency of performance, the implementation of HD voice requires IP interconnection agreements with network operators to support the type of paid prioritization options the *Order* prohibits. The best efforts model associated with existing IP interconnection agreements does not enable the relevant implementation requirements necessary to support HD voice.

21. Although options for HD voice exist in the over-the-top arena of proprietary services as in the example of Viber and Facebook Messenger, the new FCC rule 8.9 would prevent broadband Internet access providers from prioritizing HD voice “in exchange for considering (monetary or otherwise) from a third party.” The benefits of HD voice resulting from my offerings will not be realized

without prioritization. And, by prohibiting a broadband Internet access service provider from receiving any consideration or benefit for prioritizing HD voice traffic, the possible business models that would support my HD voice offerings shrink to zero.

22. Fourth, I am not aware of any sources of venture capital available for investment in new communications services subject to the type of open ended regulatory risk posed by the Commission's Title II authority as contemplated by the *Order*. The loss of funding options owes to the easily observable correlation between enterprise value and the extent of regulatory obligation. Companies subject to the Commission's regulatory authority achieve valuation multiples that are a fraction of companies not subject to Commission oversight. The loss of funding sources as a result of the change in policy strands my time and investment in the HD voice start-up initiatives described above.

23. Fifth, I am not aware of a single start-up success within the domain of Title II telecommunications services regulated by the FCC. The lack of any attempt to review or hold the Commission accountable for prior market interventions leaves the plans described in the *Order* entirely untested and with potential to create yet another collapse of telecom investment.

24. While I agree there exists a need to defend the promise of the Internet from would- be gatekeepers, the 80-year track record of the FCC exposes Title II

regulation as the primary gatekeeper risk. The Commission's exercise of "command and control" regulation left communication services unimproved for decades before the arrival of the Internet. By contrast, the success of the Internet is due to the independence that entrepreneurs such as myself have enjoyed in creating and deploying new services – without government approval or oversight. By bringing the Internet within the Title II jurisdiction of the Commission, the *Order* destroys this regime of Internet independence and places the Commission in the role of gatekeeper for IP communications services. In short, the *Order* forecloses my ability to continue earning a living as an architect of new communications services and strands my investment in previously unregulated IP services with no possibility of remediation.

* * * *

I, Daniel Berninger, hereby declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to be 'D Berninger', written above a horizontal line.

Daniel Berninger

Executed this 8th day of June 2015

**PROVISIONAL CERTIFICATE AS TO PARTIES, RULINGS, AND
RELATED CASES**

Pursuant to D.C. Circuit Rules 15(c)(3) and 28(a)(1)(A), Petitioner Daniel Berninger respectfully submits the following Provisional Certificate of Parties, Rulings, and Related Cases:

(A) Parties and *Amici*

The petitioners in these consolidated petitions for review are: Daniel Berninger (No. 15-1128); American Cable Association (No. 15-1095); National Cable & Telecommunications Association (No. 15-1090); United States Telecom Association (Nos. 15-1063 and 15-1086); Alamo Broadband Inc. (No. 15-1078); CTIA – The Wireless Association (No. 15-1091); AT&T, Inc. (No. 15-1092); CenturyLink (No. 15-1099); Wireless Internet Service Providers Association (No. 15-1117); Full Service Network, TruConnect Mobile, Sage Telecommunications LLC, and Telescape Communications, Inc. (No. 15-1151).

Respondents are the Federal Communications Commission and United States of America.

Many thousands of companies, organizations, and individuals participated in some manner in the rulemaking proceeding (GN Docket No. 14-28) before the Federal Communications Commission (“FCC”). The FCC did not include in its Order a listing of the participants before the agency. Below is a reasonably

complete, but not comprehensive, list of companies and organizations that filed comments or reply comments during the rulemaking according to the FCC's

Electronic Comment Filing System:

4G Americas

18MillionRising.org

21st Century Fox, Inc.

AARP

Access

Access Sonoma Broadband

Ad Hoc Telecommunications Users Committee

ADT Corporation

ADTRAN, Inc.

Advanced Communications Law & Policy Institute at New York Law School

AHCIET

Akamai Technologies, Inc.

Alamo Broadband

Alarm Industry Communications Committee

Alaska Rural Coalition

Alcatel-Lucent

American Association for Justice

American Association of Law Libraries et al.

American Association of People with Disabilities

American Association of State Colleges and Universities et al.

American Cable Association

American Civil Liberties Union

American Consumer Institute

American Library Association

American Public Media Group

American Society of Journalists and Authors

American Sustainable Business Council

Americans for Tax Reform and Digital Liberty

AOL Inc.

Arris Group, Inc.

Asian Americans Advancing Justice | AAJC

Association for Information Systems

Association of Free Community Papers

AT&T Services, Inc.
Automotive Parts & Services Association
Benton Foundation
Black Women's Roundtable
Blackfoot Telephone Cooperative
Boulder Regional Emergency Telephone Service Authority
Bright House Networks, LLC
Broadband Alliance of Mendocino
Broadband Institute of California
BT Americas
Cablevision
California Manufacturers & Technology Association
California Public Utilities Commission
California Telehealth Network
CALinnovates
CBS Corp.
CCIA
Center for Boundless Innovation in Technology
Center for Democracy & Technology
Center for Individual Freedom
Center for Media Justice et al.
CenturyLink
Cequel Communications, LLC d/b/a Suddenlink Communications
Charter Communications, Inc.
Chatham Business Association
Chicagoland Black Chamber of Commerce
Cisco Systems, Inc.
Citizens Against Government Waste
Citrus Council of the National Kidney Foundation of Florida
City of Boston, Massachusetts
City of New York, New York
City of Los Angeles, California
City of Philadelphia, Pennsylvania
City of Portland, Oregon
City of San Francisco, California
Coalition of Arts and Cultural Organizations
Codecademy
CodeCombat
Cogent Communications Group, Inc.
ColorOfChange.org

Comcast Corporation
Common Cause
Communications Workers of America
Competitive Carriers Association
Competitive Enterprise Institute
COMPTEL
Computer & Communications Industry Ass'n (CCIA)
Consumer Electronics Association
Consumer Federation of America
Consumer Watchdog
Consumers Union
Cox Communications, Inc.
Creative Commons – USA
Croatan Institute
CTIA – The Wireless Association®
Daily Kos
Data Foundry
Digital Policy Institute
Distributed Computing Industry Association (DCIA)
Dwolla Corp.
eBay Inc.
Elder Care Advocacy of Florida
Electronic Frontier Foundation
Embedly
Engine Advocacy
Entertainment Software Association
Ericsson
Etsy, Inc.
European Digital Rights
European Telecommunications Network Operators' Association
Fandor
Fiber to the Home Council Americas
Financial Services Roundtable
Floor64 / Techdirt
Florida State Hispanic Chamber of Commerce
Free Press
Free State Foundation
Free-Market Advocates Opposed to Internet Regulation
Frontier Communications
Future of Music Coalition

General Assembly
Global Healthy Living Foundation
Golden Frog
Google Inc.
Greenlining Institute
GSM Association
GVNW Consulting, Inc.
Hepatitis Education Awareness and Liver Support (H.E.A.L.S.) of the South
Heyzap
Hippo Smashblast
Home Telecom
i2Coalition
iClick2Media
Independent Colleges & Universities of Texas, Inc.
Independent Film & Television Alliance
Independent Filmmaker Organizations
Information Technology Industry Council
Institute for Local Self-Reliance
Institute for Policy Integrity at New York University School of Law
Intel Corp.
Interisle Consulting Group LLC
International Center for Law & Economics
International Documentary Association et al.
Internet Association
Internet Business Council
Internet Business Council for Africa
Internet Innovation Alliance (IIA)
ITIF
ITTA – The Voice of Midsize Communications Companies
Kentucky Public Library Association Intellectual Freedom Committee
Kickstarter, Inc.
Level 3 Communications, LLC
Liberty Global
MadHat Media, Inc.
Massachusetts Department of Telecommunications and Cable
Media Action Grassroots Network
Media Alliance
MediaFreedom.org
Meetup, Inc.
Mercatus Center at George Mason University

Microsoft Corporation
Minority Media & Telecom Council
MIT Media Lab
MLB Advanced Media, L.P.
Mobile Future
Motion Picture Association of America
Mozilla
NAACP
National Arts and Cultural Organizations
National Association of Black Journalists
National Association of Consumer Advocates
National Association of Independent Colleges and Universities
National Association of Manufacturers (NAM)
National Association of Realtors
National Association of Regulatory Utility Commissioners
National Association of State Utility Consumer Advocates
National Black Chamber of Commerce et al.
National Black Church Initiative
National Cable & Telecommunications Association
National Congress of American Indians
National Grange
National Minority Organizations
National Public Radio, Inc.
National Religious Broadcasters
National Venture Capital Association
NetAccess Futures
Netflix, Inc.
New America Foundation
New Media Rights
New Networks
Newspaper Association of America
Nokia Solutions and Networks US LLC
Northeast Ohio Coalition for the Homeless
NTCA – The Rural Broadband Association
OCHIN
OneCommunity
Online News Association
Online Publishers Association
Open MIC et al.
OpenCurriculum

Opera Software ASA
Orange County Business Council
Orange County Taxpayers Association
Peer 2 Peer University & The School of Open
Pennsylvania Public Utility Commission
Phoenix Center
Popular Resistance
Presente.Org
Private Citizen
Public Citizen
Public Knowledge
QUALCOMM Incorporated
RCN Telecom
reddit, Inc.
Rewheel
Rivada Networks
Roku, Inc.
Rural Broadband Policy Group
Sandvine Incorporated
Scripps Networks Interactive, Inc.
Security Industry Association
Sickle Cell Disease Association
Small Business & Entrepreneurship Council
Smithwick & Belendiuk, P.C.
Southern Company Services, Inc.
Sprint Corporation
State Educational Technology Directors Association (SETDA)
State Library of Kansas
State of Illinois
State of New York
STEM4US!
Stop the Cap!
Syntonic Wireless, Inc.
Taxpayers Protection Alliance
TechAmerica
TechFreedom
Technology Policy Institute
Telecom Italia
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al.
Telecommunications Industry Association

TELEFONICA
ThoughtWorks
TimeBank USA
Time Warner Cable Inc.
Time Warner Inc.
T-Mobile USA, Inc.
Tompkins County, New York
TouchCast
Tumblr, Inc.
U.S. Cellular Corp.
U.S. Chamber of Commerce
U.S. Public Interest Research Group
United Church of Christ et al.
United Spinal Association
United States Conference of Mayors
United States Distance Learning Association
United States Hispanic Chamber of Commerce
United States Telecom Association
Utilities Telecom Council
Verizon
Verizon Wireless
Vermont Office of the Attorney General
Vermont Public Service Board
Viacom Inc.
Vimeo, LLC
Voices for Internet Freedom et al.
Vonage Holdings Corp.
Walt Disney Co.
WATCH
Williamson & Williams, PLLC
Wireless Internet Service Providers Association
Wisconsin Dept. of Public Instruction
Women, Action & the Media et al.
Women's Media Center
Writers Guild of America, East
Writers Guild of America, West, Inc.
WTA – Advocates for Rural Broadband
Y Combinator

The Court has granted the Independent Telephone and Telecommunications Alliance's motion to intervene in support of CenturyLink, and the motions to intervene in support of Respondents filed by the following entities: Credo Mobile, Netflix, Akamai Technologies, Vimeo, New America's Open Technology Institute, Vonage, Cogent Communications, the National Association of Regulatory Utility Commissioners, ColorOfChange.org, COMPTEL, Level 3 Communications, DISH, Public Knowledge, Etsy, Kickstarter, Ad Hoc Telecommunications Users Committee, Free Press, Center for Democracy & Technology, Tumblr, Meetup, Union Square Ventures, the National Association of State Utility Consumer Advocates, Demand Progress, and Fight For The Future.

There are currently no *amici curiae*.

(B) Ruling Under Review

The ruling under review is the FCC's Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24, 80 Fed. Reg. 19,738 (rel. Mar. 12, 2015; published Apr. 13, 2015) ("Order").

(C) Related Cases

This case has not previously been before this Court or any other court. The following cases involving the same agency order (FCC 15-24) are currently pending before this Court and have all been consolidated with No. 15-1128:

United States Telecom Ass'n v. FCC, Nos. 15-1063

Alamo Broadband Inc. v. FCC, No. 15-1078

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National Cable & Telecomms. Ass'n v. FCC, No. 15-1090

CTIA – The Wireless Ass'n v. FCC, No. 15-1091

AT&T Inc. v. FCC, No. 15-1092

American Cable Ass'n v. FCC, No. 15-1095

CenturyLink v. FCC, No. 15-1099

Wireless Internet Service Providers Ass'n v. FCC, No. 15-1117

Full Service Network, et al. v. FCC, No. 15-1151

In addition, on June 8, 2015, the United States Court of Appeals for the Fifth Circuit transferred the following case to this Court:

Alamo Broadband Inc. v. FCC, No. 15-60263

CERTIFICATE OF SERVICE

I hereby certify that, on June 8, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Bennett L. Ross

Bennett L. Ross

Counsel for Daniel Berninger