

**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.

No. 15-1063 (and
consolidated cases)

**PETITIONERS' JOINT OPPOSITION TO INTERVENORS' MOTION
FOR LEAVE TO FILE AN OVERLENGTH OPPOSITION TO
PETITIONERS' MOTION FOR STAY OR EXPEDITION**

Intervenors' request for leave to file a 35-page opposition to Petitioners' Joint Motion for Stay — to supplement the Federal Communications Commission's and United States' own 35-page opposition — is contrary to this Court's orders governing briefing on the stay motion. Granting such relief would also be unfair to Petitioners. The motion should be denied.

On May 7, 2015, seven Petitioners sought leave to file two, separate 35-page stay motions before this Court. On May 8, 2015, this Court denied the motions and instead required Petitioners "to file a single joint motion for stay, not to exceed 35 pages." Order, No. 15-1063 *et al.* (May 8, 2015). The Court's order set page limits for Respondents' opposition and Petitioners' reply — of 35 and 18 pages,

respectively — with no pages allocated to Intervenors in support of Respondents. *See id.*¹ On May 14, 2015, the Court *sua sponte* shortened the time for Respondents’ opposition and Petitioners’ reply, again without providing for an opposition from any of the more than 20 entities with then-pending motions to intervene. *See* Order, No. 15-1063 *et al.* (May 14, 2015). The Court’s Orders, therefore, do not authorize *any* opposition from Intervenors — much less an opposition equal in length to Respondents’ opposition, which would unfairly (1) grant the parties who support the FCC’s Order twice as many pages as the Court granted to Petitioners, and (2) force Petitioners to address 70 pages of briefing in an 18 page reply prepared on a compressed time schedule over a holiday weekend.²

If the Court were now to grant Intervenors leave to file an additional opposition — rather than to require them to join Respondents’ opposition — it should specify that the combined length of Respondents’ and Intervenors’ oppositions not exceed the 35 pages allocated to Petitioners. In all events, Intervenors’ opposition should be *shorter than* Respondents’ opposition, as is the

¹ Two Intervenors — NASUCA and Public Knowledge — had filed their motions to intervene on April 22. Neither responded to the Court’s order by seeking leave to participate in the briefing on Petitioners’ anticipated stay motion.

² Intervenors draw the wrong inference from this Court’s decision not to include them in the briefing schedule when they assert that, because the Court’s Orders have “not set a specific schedule for Intervenors’ opposition,” they could file oppositions on May 26, 2015. Motion at 3 n.1. If Intervenors wanted to participate in the stay briefing, they should have made their intentions clear from the outset.

normal case in this Court. *Cf.* D.C. Cir. R. 32(a)(2).³ Furthermore, the Court should permit no more than *one* Intervenor opposition, in case any of the other Intervenors have plans to file on their own.

Finally, if Intervenors are permitted to file their own opposition brief, Petitioners request that the Court grant them at least a proportional increase in length for their reply brief and extend the deadline for filing to 12:00 noon on Tuesday, June 2.

³ Intervenors' claim (at 2) that they have "more material to cover than Petitioners" is facially incorrect, and Intervenors identify no arguments they would raise that Respondents, which are defending the entire Order, are not well situated to raise in response to Petitioners' arguments. Intervenors also misstate the facts in claiming that "Petitioners seek to stay many of the FCC's Open Internet Rules." *Id.* Petitioners seek to stay the Order only insofar as it subjects broadband Internet access service and Internet interconnection to Title II and adopts one rule (the "Internet conduct standard"). As Petitioners have made clear, we do not seek to stay the three "bright-line" rules (no blocking, no throttling, no paid prioritization) that originally animated the FCC's Open Internet proceeding.

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RULE ECF-3(B) ATTESTATION

In accordance with D.C. Circuit Rule ECF-3(B), I hereby attest that all other parties on whose behalf this joint opposition is submitted concur in its content.

/s/ Michael K. Kellogg

Michael K. Kellogg

May 19, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on May 19, 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/ Michael K. Kellogg

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