

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COUNTY OF SANTA CLARA and
SANTA CLARA COUNTY CENTRAL
FIRE PROTECTION DISTRICT,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES
OF AMERICA,

Respondents.

No. 18-70506;

No. 18-70510 (companion case)

**MOTION FOR LEAVE TO INTERVENE OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), and Rule 15(d) of the Federal Rules of Appellate Procedure, NCTA – The Internet & Television Association (“NCTA”) hereby moves for leave to intervene as a matter of right in the above-captioned case and its companion case. All parties have stated that they do not oppose NCTA’s motion.

In these cases, petitioners seek review of the FCC’s Order in *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166, WC Docket No. 17-108, 83 Fed. Reg. 7852 (Feb. 22, 2018) (“Order”). In the Order, the FCC reclassified broadband Internet access service as an “information service” under Title I of the Communications Act of 1934 (47 U.S.C. §§ 151 *et*

seq). See Order ¶¶ 7-45. The FCC also refined its transparency rule and formally eliminated other rules it had adopted under Title II of the Communications Act of 1934 (“Communications Act”) to regulate the provision of broadband service. See *id.* ¶¶ 188-277.

Petitioners in these cases seek review of the Order on various grounds, including that it purportedly (1) violates federal law, including the Communications Act of 1934, the Telecommunications Act of 1996, and FCC regulations promulgated thereunder; (2) abdicates the FCC’s statutory mandates; (3) is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; and (4) is otherwise contrary to law. NCTA respectfully moves to intervene in each of these cases.

NCTA has a direct interest in these cases. NCTA is the principal trade association of the cable television industry in the United States, and NCTA’s members are among the largest providers of broadband Internet access service in the country. NCTA meets the statutory requirements to intervene because it was an active participant in the agency proceeding below and because the interests of NCTA’s members will be substantially “affected by” this Court’s review of the Order. 28 U.S.C. § 2348. If this Court were to vacate the FCC’s Declaratory Ruling, broadband Internet access service would once again be classified as a “telecommunications service,” subjecting NCTA’s members to common-carriage

regulation under Title II of the Communications Act. Similarly, if this Court were to vacate that portion of the FCC's Order eliminating the prior substantive rules (e.g., the "General Conduct Standard"), NCTA's members would once again be subjected to those rules.* NCTA is therefore entitled to intervene as a matter of right under 28 U.S.C. § 2348.

Accordingly, NCTA respectfully requests that it be granted leave to intervene in support of Respondents.

CONCLUSION

NCTA's motion to intervene should be granted.

* In 2015, the FCC classified broadband as a "telecommunications service" and promulgated so-called net-neutrality rules. *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, GN Docket No. 14-28, 80 Fed. Reg. 19,737 (Apr. 13, 2015) ("2015 Order"). Although NCTA challenged the classification decision, the D.C. Circuit upheld the 2015 Order. *See U.S. Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), *petition for cert. filed*, No. 17-502 (Sept. 28, 2017). Accordingly, the 2015 Order would remain in effect if this Court were to vacate the FCC Order being challenged in this proceeding.

Dated: March 15, 2018

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Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, movant-intervenor NCTA – The Internet & Television Association (“NCTA”) respectfully submits the following corporate disclosure statement.

NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving over 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks. The cable industry is also a leading provider of residential broadband service to U.S. households. NCTA has no parent companies, subsidiaries, or affiliates whose listing is required by Rule 26.1.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion for Leave to Intervene complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 545 words. I further certify that this Motion complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2018, I electronically filed the foregoing Motion for Leave to Intervene with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Court's appellate CM/ECF system. I further certify that service was accomplished on all participants in the case via the Court's CM/ECF system.

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