

**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
(and consolidated cases)

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

American Cable Association (“ACA”) hereby moves, pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348, Federal Rule of Appellate Procedure 15(d), and Ninth Circuit Rule 15-1, for leave to intervene as of right in support of respondents Federal Communications Commission (“FCC”) and the United States. Counsel for ACA has contacted counsel for petitioners and respondents, and none stated that they intend to oppose ACA’s motion to intervene.

Petitioners seek review of the FCC’s Declaratory Ruling, Report and Order, and Order, *Restoring Internet Freedom*, WC Docket No. 17-108, FCC 17-166 (rel. Jan. 4, 2018) (the “Declaratory Ruling”).¹ That ruling addresses the regulatory treatment of broadband Internet access service under the Communications Act of

¹ Published in the Federal Register as Restoring Internet Freedom, 83 Fed. Reg. 7,852 (Feb. 22, 2018).

1934. Under the Communications Act, “telecommunications services” are subject to common-carrier obligations under Title II of the Act. By contrast, “information services” are exempt from common-carrier treatment. For decades, the FCC had classified broadband Internet access service as an “information service.”² In 2015, the FCC reclassified broadband service as a Title II “telecommunications service” to impose new “net neutrality” rules.³ The Declaratory Ruling restores the FCC’s earlier determination that broadband service is instead an “information service.”

ACA meets the requirements for intervention. ACA is a trade association of small and medium-sized cable companies that regularly represents its members and their interests before regulatory agencies such as the FCC, including in the proceedings below.⁴ Many of ACA’s members provide broadband Internet access service, and thus are “directly affected” by the Declaratory Ruling. *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 744-45 (D.C. Cir. 1986). ACA thus seeks to intervene to ensure that its members’ interests are adequately represented in this Court’s review.

CONCLUSION

The motion to intervene should be granted.

² See Declaratory Ruling ¶¶6-13.

³ 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).

⁴ Comments of ACA, FCC, WC Docket No. 17-108 (July 17, 2017); Reply Comments of ACA, FCC, WC Docket No. 17-108 (August 30, 2017).

March 16, 2018

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to 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.

March 16, 2018

Respectfully submitted,

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9th Circuit Case Number(s) 18-70506 and consolidated cases

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CERTIFICATE OF SERVICE

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [redacted].

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3/16/2018

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Kevin Anderson (North Carolina Department of Justice); Andrew G. Beshear (Office of the Kentucky Attorney General); Christopher J. Curtis (Office of the Vermont Attorney General); Michael W. Field (Office of the Rhode Island Attorney General); Lisa A. Hayes (Center for Democracy & Technology); Katherine T. Kelly (Attorney General of Minnesota); Crystal Utley Secoy (Mississippi Attorney General's Office)

Signature (use "s/" format) [redacted]

/s/ Jeffrey A. Lamken