

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70506

FCC Nos. 17-108
17-166

Federal Communications Comm.

CALIFORNIA PUBLIC UTILITIES
COMMISSION,

Petitioner,

CITY AND COUNTY OF SAN
FRANCISCO,

Intervenor-Pending,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70510

MOZILLA CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70679

VIMEO, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70680

PUBLIC KNOWLEDGE,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70686

OPEN TECHNOLOGY INSTITUTE AT
NEW AMERICA, DBA New America,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70691

STATE OF NEW YORK; et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70692

NATIONAL HISPANIC MEDIA
COALITION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70695

NTCH, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70697

BENTON FOUNDATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70698

FREE PRESS,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70699

COALITION FOR INTERNET
OPENNESS,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70700

ETSY, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70701

AD HOC TELECOMMUNICATIONS
USERS COMMITTEE,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 18-70702

**MOTION TO INTERVENE OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15-1, the National Association of State Utility Consumer Advocates (“NASUCA”) moves to intervene in support of Petitioners in these consolidated appeals from the Order of the Federal Communications Commission (“Commission”) captioned *Restoring Internet Freedom*, WC Docket No. 17-106, FCC 166, Declaratory Ruling, Report and Order, and Order (released January 4, 2018).

NASUCA is a voluntary association of 56 consumer advocate offices. NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA’s full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA

member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

Here, NASUCA participated in the underlying proceeding through comments, reply comments and ex parte filings over many years. See, most recently, Reply Comments of the National Association of State Utility Consumer Advocates (August 16, 2017).¹

NASUCA's standing on appeal of FCC orders affecting consumers has been widely recognized. NASUCA's intervention was granted in *NARUC v. FCC*, D.C. Cir. Case No. 16-1170.² NASUCA intervened and signed on to an intervenor brief in *United States Telecom Ass'n v. FCC*, ___ F.3d ___ (D.C. Cir Case No. 15- 1063 (2016). Further, the D.C. Circuit heard NASUCA's appeal of FCC unbundling rules in *Covad v. FCC*, 450 F.3d 528 (D.C. Cir. 2006). NASUCA was one of thirty petitioners *In re FCC 11-161*, 753 F.3d 1015 (10th Cir., 2014), filed its own

¹ See also, *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Comments of the National Association of State Utility Consumer Advocates (January 14, 2010); *In the Matter of The D.C. Circuit Court of Appeal Decision in Verizon v. FCC, and What Actions the Commission Should Take, Consistent with its Authority under Section 706 and all other Available Sources of Commission authority, in Light of the Court's Decision*, GN Docket No. 14-28, NASUCA Comments (March 21, 2014), at pp. 21-22; *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No 14-28, *In the Matter of Framework for Broadband Internet Service*, GN Docket No. 10-127, NASUCA Comments (July 15, 2014) and Reply Comments September 15, 2014.

² Subsequent to briefing, the appeal was remanded to the Commission.

brief and joined in the main Petitioners' briefs, and presented oral argument. The standing recognized in those cases meets any reasonable test for intervention in this appeal. See *Personal Audio LLC v. EFF*, 2017 U.S. App. LEXIS 14485 (Fed. Cir. Aug. 7, 2017); see also *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989).

The FCC's *Report and Order*, in the name of "Restoring Internet Freedom," gave freedom to network owners (some of the nation's largest corporations – AT&T, Verizon, the members of NCTA) to take advantage of their customers (residential, business, enterprise, and governmental). The injury to the public interest and the harm to individual customers comes from the consumers' resulting lack of control over the terms and conditions, speed, and content of their (vital) Internet traffic.

NASUCA joins in Petitioners' request that the Court reverse and hold unlawful, vacate, enjoin, annul, and set aside the *Report and Order*, and provide such additional relief as may be just and proper.

Respectfully submitted,

David Springe, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

David C. Bergmann

Counsel
3293 Noreen Drive
Columbus, OH 43221
Phone (614) 771-5979
david.c.bergmann@gmail.com

March 26, 2018

CORPORATE DISCLOSURE STATEMENTS

NASUCA is a voluntary association of 56 consumer advocate offices.

NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

NASUCA has no parent company, subsidiary, or affiliate that has issued securities to the public. No publicly traded company owns any equity interest in NASUCA.

David C. Bergmann
Counsel
3293 Noreen Drive
Columbus, OH 43221

Phone (614) 771-5979
david.c.bergmann@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 26th 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 by using the Court's CM/ECF system. I further certify that service was accomplished on all participants in the case via the Court's CM/ECF system.

David C. Bergmann
Counsel
3293 Noreen Drive
Columbus, OH 43221
Phone (614) 771-5979
david.c.bergmann@gmail.com