

**IN THE 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 and UNITED STATES
OF AMERICA,

Respondents.

Case No. 18-70506
(and consolidated cases)

**MOTION FOR LEAVE TO INTERVENE OF THE COMPUTER &
COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

Pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Rule 15(d) of the Federal Rules of Appellate Procedure, and Ninth Circuit Rule 15-1, the Computer & Communications Industry Association (“CCIA”) respectfully moves for leave to intervene as a matter of right in support of petitioners in the above-captioned case and each of its companion cases. All parties to those cases have either consented or stated that they do not oppose CCIA’s motion.

In these cases, petitioners seek review of the final order of the Federal Communications Commission (“FCC”) captioned *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* at Sec. III. The FCC also changed its transparency rule and formally eliminated other rules that it had adopted three years ago to provide enforceable, open Internet rules. *See id.* at Sec. IV; *see also Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Red. 5601 (2015) (the “2015 Order”). The United States Court of Appeals for the District of Columbia Circuit upheld the 2015 Order less than two years ago. *See United States Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

Petitioners in these cases seek review of the *Order* on various grounds, including that it is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; violates federal law, including but not limited to the United States Constitution, the Communications Act of 1934, as amended; was promulgated without observation of the notice-and-comment rulemaking requirements of 5 U.S.C. § 553; and is otherwise contrary to law.

CCIA has a direct interest in these cases. For over four decades, CCIA has stood for open markets and open competition. CCIA represents more than twenty large, medium-sized, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce,

telecommunications, and Internet products and services — companies that collectively generate more than \$465 billion in annual revenues.¹ CCIA meets the statutory requirements to intervene because CCIA actively participated in the *Restoring Internet Freedom* proceeding below, and CCIA’s interests, as well as those of the companies it represents, would be substantially “affected by” the *Order* because CCIA and its members rely on access to the open Internet. CCIA is thus a “party in interest in the proceeding” entitled to intervene “as of right” in this matter. 28 U.S.C. § 2348; 47 U.S.C. § 402(e).

Accordingly, CCIA respectfully requests that this Court grant its motion for leave to intervene in support of Petitioners.

CONCLUSION

CCIA’s motion to intervene in support of petitioners should be granted.

Dated: March 22, 2018

Respectfully submitted,

s/ Matt Schruers

Matt Schruers

Counsel of Record

John A. Howes, Jr.

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¹ A complete list of CCIA members is available at <https://www.ccianet.org/members>.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, movant-intervenor the Computer & Communications Industry Association states that it is a Section 501(c)(6) not-for-profit corporation organized under the laws of the District of Columbia, and it does not have a parent corporation and that no publicly held corporation has an ownership stake of 10% or more in it.

Dated: March 22, 2018

Respectfully submitted,

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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 875 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 in Times New Roman 14-point font.

Dated: March 22, 2018

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*Counsel for the Computer &
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CERTIFICATE OF SERVICE

I hereby certify that 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 on March 22, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 22, 2018

Respectfully submitted,

s/ Matt Schruers

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