

**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)

**MOTION OF THE TELECOMMUNICATIONS INDUSTRY
ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN
SUPPORT OF PETITIONERS**

Pursuant to Federal Rule of Appellate Procedure 29(a)-(b) and D.C. Circuit Local Rule 29(b) and (d), and the briefing schedule established in this case on June 29, 2015, the Telecommunications Industry Association (“TIA”) moves for leave to file a brief as amicus curiae on August 6, 2015, in support of petitioners United States Telecom Association, National Cable & Telecommunications Association, CTIA – The Wireless Association[®], AT&T Inc., American Cable Association, CenturyLink, Wireless Internet Service Providers Association, Alamo Broadband Inc., and Daniel Berninger.

TIA is the leading trade association for the information and communications technology industry, with hundreds of members involved in the manufacture and deployment of the hardware and software that constitutes the nation's broadband networks. Since the early days of radio and wireline telephony, TIA and its predecessor entities have provided economic analyses and market research to assist its members to make data-based decisions about communications infrastructure investment – and to assist policymakers make data-based decisions that foster such investment. Those efforts ultimately have benefitted American consumers, who enjoy the most robustly competitive broadband options in the world. TIA actively participated in the Federal Communications Commission (“FCC” or “Commission”) rulemaking at issue in this docket, as well as in prior related FCC rulemakings, by submitting empirical evidence concerning how wireline and wireless broadband technologies work and the investment considerations behind deployment decisions. TIA, therefore, has a demonstrated interest in this proceeding. *See* Fed. R. App. 29(b)(1).

TIA seeks leave to file an amicus curiae brief of 4000 words to argue that the FCC's decisions to reclassify broadband Internet access service (“BIAS”) as common carriage under Title II of the Communications Act of 1934, as amended 47 U.S.C. § 201 *et seq.*, and craft an additional, amorphous “Internet conduct rule” were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance

with law, thus violating Administrative Procedure Act, 5 U.S.C. § 706(2)(b). The FCC failed to satisfy its burden in changing course on the regulatory classification of BIAS, unsettling nearly two decades of investment-backed expectations for broadband network deployments and upgrades. In doing so, the Commission virtually ignored the extensive empirical evidence in the record showing that reclassification would operate at cross-purposes to the FCC's stated goals for the action, including statutory mandates to foster greater broadband deployment and adoption. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 706 ("Section 706"). Among its other flaws, the Commission rested its decision on data that is irrelevant to the statutory mandates, while disregarding pertinent empirical evidence concerning past infrastructure investment patterns – in both the United States and abroad – and the effect of the new regulatory restraints on current investment incentives. Similarly, the FCC failed to grapple with any of the empirical data before it in justifying the virtually standardless Internet conduct rule, which (as that data demonstrated) will depress the infrastructure investment that the Commission concedes is necessary to meet the broadband needs of U.S. consumers and end users. As the representative of the companies who will be most directly affected by reduced broadband infrastructure investment, TIA is uniquely situated to address these issues. For these reasons, an amicus brief from TIA is

desirable and the matters to be argued in the amicus brief are relevant to the disposition of this case. *See* Fed. R. App. 29(b)(2).

The interests of TIA and its members, which collectively manufacture and deploy broadband network equipment and also produce data analyses tracking industry trends, are significantly different from those of other entities wishing to appear as amici curiae. *See* D.C. Cir. Local R. 29(d).

Respectfully submitted,

/s/ Bryan N. Tramont

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July 13, 2015

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, the Telecommunications Industry Association respectfully submits the following corporate disclosure statement. TIA is the leading trade association representing the global information and communications technology (“ICT”) industry through standards development, policy initiatives, business opportunities, and market analysis. TIA members are involved in the development, manufacture, and deployment of broadband networks through which wireless, wireline, and satellite providers serve residential and commercial customers. TIA has no parent companies and no publicly held company has an ownership interest in TIA.

Respectfully submitted,

/s/ Bryan N. Tramont

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CERTIFICATE OF SERVICE

I hereby certify that, on July 13, 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/ Rosemary C. Harold

Rosemary C. Harold