

**IN THE UNITED STATES COURT OF APPEALS
FOR THE 9TH CIRCUIT**

MOZILLA Corporation,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION AND
UNITED STATES OF AMERICA,

Respondents.

Case **18-70679**
and consolidated cases

MOTION OF LEONID GOLDSTEIN FOR LEAVE TO INTERVENE IN
SUPPORT OF RESPONDENTS

I, Leonid Goldstein, hereby move, pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Federal Rules of Appellate Procedure 15(b) and 9th Circuit Rule 15(d), to intervene in these appeals in support of Respondents the Federal Communications Commission (the “FCC”) and United States of America¹.

I am a U.S. citizen affected by the FCC order 17-166 *Restoring Internet Freedom* (“RIF Order”) both as an ordinary internet user and as an author using the internet as a speech medium on my website defyccc.com. The RIF Order repeals most provisions of an FCC order 15-24 (“FCC-15-24”), which was entered in 2015. Under the pretext of regulating ISPs, FCC-15-24 has stripped citizens of almost all Constitutional rights when using the internet. The RIF Order is a great step toward restoring these rights.

¹ I understand that this motion to intervene in this case will also be deemed a motion to intervene in the cases: *Vimeo, Inc. v. FCC & USA*, 9th Circuit No. 18-70680; *State of New York, et al. v. FCC & USA*, 9th Circuit No. 18-70692; *California PUC v. FCC & USA*, 9th Circuit No. 18-70510; *National Hispanic Media Coalition v. FCC & USA*, 9th Circuit No. 18-70695; *County of Santa Clara, et al. v. FCC & USA*, 9th Circuit No. 18-70506; *Benton Foundation v. FCC & USA*, 9th Circuit No. 18-70698; *Public Knowledge v. FCC & USA*, D.C. Circuit No. 18-70686; *Open Technology Institute v. FCC & USA*, 9th Circuit No. 18-70691; *Free Press v. FCC & USA*, 9th Circuit No. 18-70699; *Coalition for Internet Openness v. FCC & USA*, 9th Circuit No. 18-70700; *Etsy, Inc. v. FCC & USA*, 9th Circuit No. 18-70701; *NTCH Inc. v FCC & USA*, 9th Circuit No. 18-70697; *Ad Hoc Telecomm Users Comm v. FCC & USA*, 9th Circuit No. 18-70702; *Center for Democracy and Tech v. FCC & USA*, 9th Circuit No. 18-70703

The current motion is being filed within 30 days after the first petition for review was filed. In support of this motion, I state as follows:

1. I typically connect to the internet using broadband internet access services, as defined in the FCC-15-24.

The First Amendment Rights

2. FCC-15-24 has defined broadband internet access in a way that is much broader than this term is ordinarily understood, including substantially all internet access services used or desired by individuals in their homes and small businesses. The only exception is dial-up internet access, which is almost extinct. Under the pretext of “protection,” FCC-15-24 has prohibited internet users from making their own choices about content and exercising other Constitutional rights. The FCC-15-24 order violates my First Amendment rights, and the RIF Order is a step toward restoring them.
 - a. I have the right to access the speech of my choice through any medium made available to me, including the internet. FCC-15-24 has abridged this right. It has set a pre-condition that I pay for the transfer of content from private corporations, such as Netflix, Google, Facebook, Twitter, and Pornhub (the “edge providers”), to third parties, unknown to me,

prior to accessing the destination of my choice on the internet, such as WattsUpWithThat.com or AmericanThinker.com. The amount of this anti-Constitutional charge, which is collected from me via my ISP bill, is about \$60 per month.

- b. Many activities of the “edge providers” that I am forced to finance under FCC-15-24 run against my conscience. I do not wish to support them financially or otherwise, and the government is prohibited from forcing me to do that. Notably, the Islamic State of Iraq and Syria (ISIS) and other terrorist organizations are among the privileged “edge providers.” They maintain websites or place their content on the web properties of Google, Twitter, and/or other “edge providers”, and FCC-15-24 mandates me and other American internet users to pay for their traffic. I estimate that Americans involuntarily pay more than \$30 billion for the “edge providers” traffic.
- c. I am an author, editor, and publisher of defyccc.com, publishing a broad range of materials that range from original research in hard sciences to political commentary. I want to offer my readers a paid subscription to premium features of defyccc.com and other worthy publications, together with the needed broadband internet access, any surplus of

which the subscribers would use as they wish. I am willing to purchase the internet access from the local (to each subscriber) ISP. Internet access is an integral part of my speech, just like paper is an integral part of a book. FCC-15-24 has denied me this freedom by expanding FCC authority from regulating telecommunications industry to “any person engaged in providing broadband internet access service.” Then, it effectively banned my speech by demanding I pay not only for the delivery of my speech, but also for millions of times larger amounts of content from Netflix, Google, Facebook, and other huge corporations.

3. FCC-15-24 has banned citizens from utilizing network side content filtering. It even suggested those who wish to have family friendly internet access to install specialized software on their home computers. Thus, FCC-15-24 has read into the First Amendment that free exercise of one’s religion is limited to his home.

The IV, IX, and X Amendments

4. FCC-15-24 banned internet users from utilizing ISP services that would prevent or make difficult the exfiltration of private information. It effectively opened our homes to the "edge providers" (including foreign governments and terrorist organizations) and vested into them an authority to conduct searches

on our home computers in violation of the IV Amendment. Of notice, the websites of “edge providers” usually leave “cookies” on users’ computers, but Google and Microsoft also install their software that they control over the internet.

5. At a time when our lives are increasingly depending on the internet, FCC-15-24 violated Amendment IX and Amendment X by banning me and other citizens from accessing and using the internet in any way other than prescribed by FCC.

U.S. Sovereignty. Articles I, II, and III of the Constitution.

6. For many internet users, their broadband internet access service provider is the only entity on the internet with which they have substantial commercial relationships. For most users, it's the only internet entity with a local presence. An ordinary user visiting a website, downloading software, or chatting with anybody on Facebook, doesn't even know whether that website or another person is in the U.S. Of all internet entities encountered by a home user, none has less incentives to mistreat him or her, and none is more accountable to him or her than the internet service provider. Home users are being served by thousands of ISPs, none of them has more than 25% of the market, and almost all users have a choice or even simultaneous access to multiple providers of broadband internet access service. On the other hand,

almost every user is totally dependent on both Google and Microsoft, and many are also addicted to Facebook and/or Twitter. Each of these four companies is a monopoly in one or more internet markets. To the extent they compete, they entered a brazen collusion to deny their users content according to the whims of the European Commission and political forces affecting it, as described in the following paragraph. Their relationships with the users are governed by the "all rights waved" mouse click "agreements," or so they believe.

7. FCC-15-24 has stripped internet users of purchasing power and ability of meaningful choice in selecting "edge providers," to the benefit of a few pre-selected monopolies allied with the Obama administration. Even worse, FCC-15-24 has vested into Google, Facebook, Twitter, and Microsoft authority that is beyond the Constitutionally allowed authority of all branches of the government together. But each of them (except for Twitter) derives most of its revenues from abroad and expects most of its growth to come from abroad. Each of them has many times more users abroad than in the U.S., and each one fancies itself as a supranational body rather than a corporate citizen of the U.S., but they are totally dependent on foreign governments and other foreign political powers. Soon after FCC-15-24, these corporations signed a joint letter

with the European Commission promising to censor content in their services in the U.S.², including services for which they became common carriers under the Communications Act of 1934/96. Despite the phrase “illegal hate speech” in the title of the letter, this pact allows European politicians and global NGOs to demand the suppression of any speech of any American. Google has removed my content on climate change, favoring the American position in the US-EU disagreement on the subject, both in the EU, but in the U.S. Meanwhile, Google tirelessly promotes the EU climate change propaganda. There is evidence that Facebook had made a censorship promise to the government of Pakistan³. Of course, Twitter is notorious for deleting the president’s account. Obviously, ISPs would not act like this. ISPs are based in the U.S. and have very little exposure to foreign influences.

8. The internet is the main communication medium in our society today.

Currently, internet communications lines are controlled by Google, Facebook, Twitter, and Microsoft.

² *European Commission and IT Companies announce Code of Conduct on illegal online hate speech.* May 21, 2016. http://europa.eu/rapid/press-release_IP-16-1937_en.htm

³ *We’ll drop anti-Islam input, Facebook tells Pak.* *The Gulf Today, UAE*, July 9, 2017, <https://archive.is/NzH0d>. Archived on March 7, 2018.

Unprecedented Campaign of Threats & Abuse

9. Netflix, Google, Facebook, and Twitter organized, financed, and directed a disinformation and intimidation campaign with a purpose to thwart making the RIF Order and to maintain their privileges and profits under FCC-15-24. Unprecedentedly, these huge corporations used their computational and network infrastructure and financial resources to cause multiple death threats to be made against FCC Chairman Ajit Pai⁴. It's as if tobacco companies were making death threats made against the Surgeon General to prevent determination that the cigarette smoking is a health hazard in 1964. The Attorneys General petitioners failed to act, and now attempt to raise procedural issues about the ways in which the FCC made the RIF order when it was almost literally under fire⁵.
10. Under FCC-15-24, Google, Facebook, Twitter, and Microsoft became common carriers for certain types of internet communication. Each of them has not only failed to fulfill common carrier obligations, but openly discriminated

⁴ Federal officials are certainly concerned, now that a flood of death threats has reached a level most insiders say they've never seen. This is "routine for presidents and vice presidents," sources say, "but highly unusual for heads of government agencies like the FCC." – *The Daily Signal*, January 10, 2018 <http://dailysignal.com/2018/01/10/death-threats-fcc-chairman-unprecedented-must-stop/>

⁵ In December, ahead of the commission's vote to formally nix the controversial 2015 regulation, a specific bomb threat forced the FCC to halt proceedings and clear the building. – *The Commentary Magazine*, January 5, 2018 <https://www.commentarymagazine.com/american-society/torment-ajit-pai-net-neutrality-fcc/>

against users, including myself, based on their political views, possibly to receive favorable treatment from foreign governments. Nevertheless, the FCC has not been enforcing their compliance, possibly in anticipation that the RIF Order would resolve the problem quicker.

Thus, I am a “party in interest in the proceeding” entitled to intervene “as of right” in this matter, and therefore respectfully request that this Court grant this motion for leave to intervene in support of Respondents Federal Communications Commission and United States of America.

Respectfully submitted,

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