

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Greenlining Institute, Public Knowledge,)
The Utility Reform Network, and National)
Association of State Utility Advocates, Petitioners)
)
v.)
)
Federal Communications Commission, Respondent)

PETITION FOR REVIEW

I. PETITION

Pursuant to 42 U.S.C. § 402(a), 28 U.S.C. § 2342(1), 28 U.S.C. § 2112, 5 U.S.C. § 706, and Federal Rule of Appellate Procedure 15(a), the Greenlining Institute (“Greenlining”), Public Knowledge, The Utility Reform Network (“TURN”), and National Association of State Utility Advocates (“NASUCA”) (collectively, “the petitioners”), hereby petition the court for review of the Order of the Federal Communications Commission (“FCC” or “the Commission”) entered on November 29, 2017. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, WC Docket No. 17-84, FCC 17-154 (rel. Nov. 29, 2017) (“*2017 Report and Order and Declaratory Ruling*”). The petitioners file this petition pursuant to the Commission’s judicial lottery procedures, which require parties to submit Petitions for Review within ten days after issuance of the Order. 47 C.F.R. § 1.13; 28 U.S.C. § 2112. Petitioners are requesting the court to review parts of the *Report and Order* and the *Declaratory Ruling*. Because the Commission ordered that the Declaratory Ruling is effective upon release; *see 2017 Report and Order and Declaratory Ruling* ¶ 193; the ten day window to file petitions for review was triggered on November 29, 2017. *See* 47 C.F.R. § 1.103.

II. RELIEF REQUESTED

The petitioners specifically request the court to review paragraphs 37 to 39 of the *Report and Order* and paragraphs 128 to 155 of the *Declaratory Ruling*. In the relevant paragraphs of the *Report and Order*, the Commission eliminated the *de facto retirement* rule, which required incumbent local exchange carriers to provide adequate notice to affected customers when they failed to maintain copper, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling. *See Technology Transitions et al*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9419 ¶ 80 (2015) (“*2015 Report and Order*”). The Commission now eliminated the copper and subloop portion of the *de facto retirement* rule. *See 2017 Report and Order and Declaratory Ruling*, ¶¶ 37-40. In the *Declaratory Ruling*, the Commission eliminated the “functional test” which required the Commission to examine the “totality of the circumstances” when evaluating whether an incumbent local exchange carrier’s network change constitutes a “discontinuance, reduction, or impairment of service” under section 214 of the Communications Act. *See 2015 Report and Order*, 30 FCC Rcd at 9471-9478 ¶¶181-201. The Commission now ruled that a carrier’s tariff is sufficient for determining what “service” a carrier offers for purposes of determining whether section 214 discontinuance review is required. *See 2017 Report and Order and Declaratory Ruling*, ¶¶ 128-155. The petitioners seek review of these Commission decisions on the ground that they are arbitrary, capricious, an abuse of discretion, or contrary to law pursuant to 5 U.S.C. § 706.

III. JURISDICTION

The petitioners were active participants in the Commission's proceeding filing comments, reply comments, and *ex partes*. See Comments of The Greenlining Institute on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (filed June 15, 2017); Comments of The Greenlining Institute on Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, WC Docket No. 17-84 (filed July 17, 2017); Comments of Public Knowledge, WC Docket No. 17-84 (filed June 15, 2017); Reply Comments of Public Knowledge, WC Docket No. 17-84 (filed July 17, 2017); Comments of NASUCA et al, WC Docket No. 17-84 (filed June 15, 2017); Reply Comments of NASUCA et al, WC Docket No. 17-84 (filed July 17, 2017); Written Ex Parte of Public Knowledge et al, WC Docket No. 17-84 (filed Nov. 9, 2017). Greenlining specifically has standing to file a petition for review in this court. Greenlining is a nonprofit advocacy organization that represents members in California currently subscribed to copper lines provided by incumbent local exchange carriers. Public Knowledge, TURN, and NASUCA join Greenlining in this petition for review. The petitioners request the court hold unlawful and vacate the challenged Commission decisions.

December 8, 2017

Respectfully submitted,

s/ Harold Feld
Senior Vice President
Public Knowledge
1818 N St NW Suite 410
Washington, DC 2036
Counsel for Public Knowledge
Counsel of Record¹

¹ Pursuant to Ninth Cir. R. 25-5(e), the filing attorney attests that all other parties on whose behalf this filing is submitted concur in the filing's content.

s/ David C. Bergmann
Counsel for NASUCA
3293 Noreen Drive
Columbus, OH 43221-4568
[\(614\) 771-5979](tel:6147715979)
david.c.bergmann@gmail.com
Admission to 9th Circuit Court of Appeals Pending

s/ Christine Mailloux
Managing Dir., San Diego
The Utility Reform Network
1620 Fifth Ave., Suite 810
San Diego, CA 92101
[\(619\) 398-3680](tel:6193983680)
[\(415\) 929-8876](tel:4159298876) (SF)
cmailloux@turn.org
Counsel for The Utility Reform
Network
*Admission to 9th Circuit Court of
Appeals Pending*

s/ Vinhcent Le
Telecommunications &
Technology Legal Counsel
The Greenlining Institute
360 14th Street, 2nd Floor,
Oakland, CA 94612
vinhcentl@greenlining.org
Counsel for The Greenlining
Institute
*Admission to 9th Circuit Court of
Appeals Pending*

CERTIFICATE OF SERVICE

I, Arian Attar, hereby certify that on the 8th day of December, 2017, I caused a true and correct electronic copy of the foregoing Petition for Review via email to the following:

Thomas M. Johnson, Jr.
General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
LitigationNotice@fcc.gov

s/ Arian Attar
Arian Attar

9th Circuit Case Number(s)

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

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