

August 7, 2018

**BY EMAIL AND
OVERNIGHT MAIL**

Hon. Scott Harris, Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *Daniel Berninger, et al. v. FCC, et al.*, No. 17-498
AT&T Inc. v. FCC, et al., No. 17-499
American Cable Association v. FCC, et al., No. 17-500
CTIA-The Wireless Association, et al. v. FCC, et al., No. 17-501
NCTA-The Internet & Television Association v. FCC, et al., No. 17-502
Techfreedom, et al. v. FCC, et al., No. 17-503
U.S. Telecom Association, et al. v. FCC, et al., No. 17-504

Dear Mr. Harris:

I am writing on behalf of the non-governmental respondents (who were intervenor-defendants in the court of appeals) to request a 30-day extension of time to file our briefs in opposition, through September 14, 2018.

The above petitions were filed on September 27, 2017 and September 28, 2017. Each seeks review of the D.C. Circuit's decision in *United States Telecom Assoc. v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), which upheld the Federal Communication Commission's 2015 Open Internet Order. By the time the petitions were filed, the FCC had issued a Notice of Proposed Rulemaking, proposing to repeal the 2015 Order. For the past ten months, the Government has taken repeated extensions of time, with petitioners' consent, until the Commission was able to repeal the 2015 Order, effective June 11, 2018. *See* 83 Fed. Reg. 21,927 (May 11, 2018).

On August 2 – fifty-two days after the Order was repealed and thirteen days before the present due date for responsive briefs – the Government filed its brief. That brief requests that the Court vacate the court of appeals decision under *United States v. Munsingwear*, 340 U.S. 36 (1950), on the ground that the Court's review was prevented by the case becoming moot.

We ask for additional time to respond to that position, for two reasons. First, thirteen days is an unduly short time to respond to the United States' request for vacatur. Only one of the petitions included any substantive arguments regarding *Munsingwear* vacatur, and then only briefly. *See* NCTA Pet. 17-19. The Government itself, which had the better part of a year to draft its brief, took nearly two months after the case was mooted to file its response.

Second, most of the intervenor-respondents are petitioners or intervenors in litigation presently pending in the D.C. Circuit challenging the repeal. On July 30, 2018, that court issued a briefing order under which petitioners' principal brief is due August 20, 2018 and intervenors' brief is due a week later. Complying with that schedule and the present deadline for the briefs in opposition in this Court would be very burdensome.

Granting the extension should not unduly delay final disposition of the case. And the repeal of the Order at issue further limits any prejudice the delay could cause.

The federal respondents, and all petitioners with the exception of Daniel Berninger in No. 17-498, take no position on this request. Berninger, having consented to ten months' of extensions by the Government, opposes this request.¹ Thank you for your attention to this matter.

Sincerely,



Kevin K. Russell

cc: Counsel of Record

¹ Should Berninger's opposition preclude granting an extension in his case, we ask to be granted extensions in the cases in which the request is unopposed.