

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CONSUMERS’ RESEARCH; CAUSE BASED
COMMERCE, INC.; JOSEPH BAYLY; JEREMY
ROTH; DEANNA ROTH; LYNN GIBBS; PAUL
GIBBS,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION; UNITED STATES OF
AMERICA,

Respondents.

No. 21-3886

**INTERVENORS’ RESPONSE IN SUPPORT OF RESPONDENTS’
MOTION TO HOLD CASE IN ABEYANCE**

Intervenors USTelecom – The Broadband Association; NTCA – The Rural Broadband Association; Competitive Carriers Association; Schools, Health, & Libraries Broadband Coalition; Benton Institute for Broadband and Society; Center for Media Justice; and National Digital Inclusion Alliance (“Intervenors”) hereby submit this response in support of the Motion of Respondents Federal Communications Commission and the United States to Hold Case in Abeyance (“Motion”).

Holding this case in abeyance will allow the Federal Communications Commission (“FCC” or “Commission”) to fully and fairly address—for the first

time—the issues raised in the Petition for Review. Petitioners’ argument that doing so will result in prejudicial delay, *see* Petitioners’ Opposition at 3, is belied by their own decades long delay in filing this lawsuit. Petitioners’ argument fails to note that the current iteration of the universal service program was established by rulemaking pursuant to the Telecommunications Act of 1996 and has been in existence since 1998. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8797-98 ¶¶ 39-42 (1997). At no time in the last quarter century have Petitioners raised—to either the Commission or the Court—the fundamental constitutional questions they now claim are so urgent that a delay of seven months is untenable.¹ Compared to the many years that the challenged contribution mechanism has already been in place, granting Respondents’ request to hold this case in abeyance for a short period of time to allow for the agency to provide its views on the issues presented would require only minimal delay.

Respondents’ Motion should be granted to provide a record on which the Commission can address the issues Petitioners raise before this Court in the first instance. *See* Motion at 1. Intervenors each plan to file extensive comments

¹ Petitioner Consumers’ Research has been in operation since 1929. *See About Consumers’ Research*, Consumers’ Research (last accessed Jan. 14, 2022), <https://consumersresearch.org/history/>.

responding to the FCC's Notice of Inquiry² and addressing the Petitioners' specific arguments in detail. The abeyance period will therefore be used to develop a fulsome record, based on which the Commission will reach and explain its views on the issues Petitioners have raised. This Court will then have the opportunity to benefit from the Commission's views and those of the other filing parties in this appeal.

For the foregoing reasons, as well as Respondents' arguments in the Motion, Intervenors respectfully request that the Court grant Respondents' Motion and hold this case in abeyance.

Respectfully submitted,

/s/ Jennifer Tatel

Jennifer Tatel

Lead Counsel

Craig E. Gilmore

Michael D. Miller

Wilkinson Barker Knauer, LLP

1800 M Street NW, Suite 800N

Washington, DC 20036

(202) 783-4141

jtatel@wbklaw.com

cgilmore@wbklaw.com

mmiller@wbklaw.com

*Counsel for USTelecom – The
Broadband Association, NTCA – The
Rural Broadband Association, &
Competitive Carriers Association*

/s/ Stephanie Weiner

Stephanie Weiner

Lead Counsel

Jason Neal

Harris, Wiltshire & Grannis LLP

1919 M St. NW, 8th Floor

Washington, DC 20036

(202) 730-1300

sweiner@hwglaw.com

jneal@hwglaw.com

*Counsel for Schools, Health, &
Libraries Broadband Coalition*

² See *Report on the Future of the Universal Service Fund*, Notice of Inquiry, FCC No. 21-127, WC Docket No. 21-476 (rel. Dec. 15, 2021).

/s/ Andrew Jay Schwartzman

Andrew Jay Schwartzman

Lead Counsel

1341 G Street, NW

5th Floor

Washington, DC 20005

(202) 241-2408

AndySchwartzman@gmail.com

*Counsel for Benton Institute for
Broadband and Society, Center for
Media Justice, & National Digital
Inclusion Alliance*

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because it contains 443 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, 14-point font.

Date: January 14, 2022

/s/ Stephanie Weiner

CERTIFICATE OF SERVICE

I hereby certify that, on January 14, 2022, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Sixth 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/ Stephanie Weiner _____