

Net Neutrality Fight To Feature Top BigLaw Names

By **Bill Donahue**

Law360, New York (April 30, 2015, 4:03 PM ET) -- Experts long predicted that Internet service providers would lawyer up in response to the Federal Communications Commission's tough new net neutrality rules, and boy were they right — the challengers have hired a who's who of topflight communications firms to take on the new rules.

Nine lawsuits have been filed thus far over the agency's controversial February order, which reclassified broadband Internet as a "telecommunications service" that can be regulated under the tougher framework of the Communications Act's Title II.

The FCC and net neutrality supporters say the move was needed to give the agency sufficient legal muscle to ban providers like Comcast Corp. or AT&T Inc. from unfairly discriminating against certain traffic on their networks, but the ISPs say it illegally subjects them to obsolete, heavy-handed regulations designed for old-school phone networks.

Fighting to prove that point will be an imposing cast of characters, including veterans of the last round of net neutrality litigation, a former solicitor general, a former acting attorney general, several seasoned Supreme Court litigators, and many other top names in communications and appellate law.

Alamo Broadband Inc. — the small Texas broadband provider that sued back on March 23 — retained Wiley Rein LLP and Andrew G. McBride, the head of the firm's communications litigation practice and a widely known name in telecom law.

It was McBride representing Verizon Communications Inc. when the D.C. Circuit ruled in 2003 that the Recording Industry Association of America couldn't force ISPs to hand over the identities of subscribers using a controversial type of subpoena created by the Digital Millennium Copyright Act. It was McBride again when the wireless industry won a Ninth Circuit ruling in 2012 shooting down a San Francisco ordinance that required emission warnings on cellphones.

It's also worth noting that the Wiley Rein partners on his team, Eve Klindera Reed and Brett A. Shumate, are no strangers to net neutrality. Both were on the legal team that won last year's D.C. Circuit ruling for Verizon that struck down the FCC's last set of rules — the one that got us here in the first place.

The National Cable & Telecommunications Association — the industry group for the major cable companies, which sued the FCC on April 14 — retained both Gibson Dunn and Latham & Watkins LLP.

From Gibson Dunn, the NCTA tapped Theodore B. Olson, a former solicitor general whose Supreme Court case roll speaks for itself: *Bush v. Gore*, *Citizens United v. Federal Election Commission*, *Hollingsworth v. Perry*, and so on.

Also from Gibson Dunn is appellate vet Miguel A. Estrada, who served as the lead counsel for Comcast in the U.S. Supreme Court's *Comcast Corp. v. Behrend* — a widely cited 2013 decision that invalidated a class of consumers seeking \$2.6 billion on accusations that the cable giant monopolized the Philadelphia market.

From Latham, NCTA is represented by Matthew A. Brill, the chair of the firm's communications practice, who's fresh off serving as lead regulatory counsel for Time Warner Cable in Comcast's now-abandoned bid to buy the company.

The United States Telecom Association, which sued the same day as Alamo, hired elite litigation firm Quinn Emanuel Urquhart & Sullivan LLP and name partner Kathleen M. Sullivan — an attorney widely rumored to be in the running for a Supreme Court job a few years back. The company also retained Michael K. Kellogg from Kellogg Huber Hansen Todd Evans & Figel PLLC — the same litigation and appellate shop that represented Aereo last summer before the Supreme Court.

CTIA - The Wireless Association, whose wireless carrier members are subject to net neutrality rules for the first time under the FCC's new order, also hired Kellogg Huber.

AT&T Inc., the largest company to sue the FCC directly, hired Kellogg Huber as well, but also retained Sidley Austin LLP. Among the Sidley attorneys on the team are Peter D. Keisler — a former acting attorney general and the head of the firm's Supreme Court and appellate practice — and veteran communications litigators C. Frederick Beckner and James P. Young.

CenturyLink, the other major company to challenge the rules outside of an industry group and the most recent to sue, hired Wilkinson Barker Knauer LLP and its well-known communications practice. That includes David H. Solomon, a former chief of the FCC's Enforcement Bureau who, in private practice, worked on Comcast's 2011 blockbuster acquisition of NBCUniversal. Wilkinson's Russell Paul Hanser, another former high-level FCC attorney, is also repping CenturyLink.

The American Cable Association, which represents small and midsize cable companies, hired litigation boutique MoloLamken LLP and founding partner Jeffrey A. Lamken, an appellate veteran who's argued more than 20 cases before the Supreme Court and used to head up Baker Botts LLP's appellate group.

The Wireless Internet Service Providers Association, a group that says it represents companies that provide broadband in underserved areas across rural America and the most recent to file suit, is represented by Stephan E. Coran and Dennis Corbett of Lerman Senter PLLC, a Washington, D.C., telecom and media boutique.

The outlier of the bunch is the lawsuit filed with the Third Circuit by several small telecom companies on April 24. The suit claims the FCC didn't go far enough with its new rules and waived too much of its authority to foster competition in broadband.

The plaintiffs in that case — Full Service Network, TruConnect Mobile, Sage Telecommunications LLC and Telscape Communications Inc. — hired Earl Comstock of Eckert Seamans Cherin & Mellott LLC. Comstock was a perfect fit for that suit's argument: He's the former CEO of COMPTTEL, a trade organization that says its "a fierce advocate for a competitive communications marketplace" and consumer choice.

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