



(“USF”)—which funds longstanding, vitally important programs that support affordable telecommunications and internet access service for rural health care providers, schools, and libraries nationwide. Many of SHLB’s members participate in and benefit from these USF programs. The Petition, if successful, would do great harm to the interests and goals of SHLB and its members.

**I. SHLB is entitled to intervene as a matter of right.**

A motion to intervene “must be filed within thirty days after [a] petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d). Intervention of right is appropriate when: (1) the motion to intervene is timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the case; (3) its ability to protect that interest may be impaired in the absence of intervention; and (4) the parties already before the court may not adequately represent its interest. *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999); *see also Sierra Club, Inc. v. EPA*, 358 F.3d 516, 518 (7th Cir. 2004) (explaining that because Rule 15(d) does not provide substantive criteria for intervention, Courts of Appeals look to the considerations governing intervention in district courts under Federal Rule of Civil Procedure 24). SHLB’s motion satisfies each of these requirements.

*First*, this motion is timely. The docket reflects that Petitioners filed their Petition for Review in this Court on September 30, 2021, and this motion was filed

within the 30-day time period set out in Federal Rule of Appellate Procedure 15(d). *See* Fed. R. App. P. 26(a)(1)(C) (providing that when the last day of a time period is a weekend day or holiday, the period continues to run until the end of the next working day).

*Second*, SHLB has a substantial legal interest in the subject matter of this case. Petitioners seek review of the Federal Communications Commission's approval of the USF contribution factor for the USF program for the final quarter of 2021. *See Proposed Fourth Quarter 2021 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 21-1134 (rel. September 10, 2021). Petitioners' case has far-reaching implications: they challenge not only the Commission's power to set a contribution factor, but also its authority to collect and distribute universal service funds at all. *See* Pet. for Review at 3-5. In effect, Petitioners' challenge to the USF contribution factor is a challenge to the existence of the USF programs.

As an organization, SHLB is a strong supporter of the USF programs, and it regularly advocates before the Federal Communications Commission on USF-related matters.<sup>2</sup> Many of its members receive funding support from critical USF programs. In particular, health care providers that are SHLB members receive

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<sup>2</sup> *See, e.g.*, Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184 (filed Sept. 27, 2021).

support through the Rural Health Care Support Mechanism, a program that allows rural health care providers to pay rates for telecommunications and advanced services similar to those of their urban counterparts, making telehealth services affordable. Its educational members receive support through the Schools and Libraries Support Mechanism, known as the “E-Rate” program, which provides telecommunication services, internet access, and connection equipment to eligible schools and libraries. This case has put the continued existence of these funding sources in jeopardy.

*Third*, SHLB’s ability to protect its interests may be impaired absent intervention. This case directly implicates the SHLB Coalition’s organizational interest in making affordable internet service available nationwide, and it implicates its members’ interest in receiving support from the USF programs. If SHLB cannot intervene here to defend the legality of the USF contribution factor, its ability to protect those interests will be impaired.

*Fourth*, Respondents may not adequately represent SHLB’s interests. The proposed intervenor’s burden in showing that it may not be adequately represented is “minimal.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997). It “is not required to show that the representation will *in fact* be inadequate,” and “it may be enough to show that the existing party who purports to

seek the same outcome will not make all of the prospective intervenor's arguments.” *Id.* (emphasis added).

Although SHLB seeks the same ultimate resolution of this case as Respondents, its interests are different. In general, courts “look skeptically on government entities serving as adequate advocates for private parties.” *Crossroads Grassroots Pol’y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015). The government’s interests in representing the public at large are different from the targeted interests of SHLB in pursuing its policy goals on behalf of its members. And when a private party challenges an agency action, intervention by a private party with opposing views simply “places the private adversaries on equal terms.” *Sierra Club*, 358 F.3d at 518.

SHLB satisfies the four requirements for intervention of right.

**II. In the alternative, this Court should grant SHLB permissive intervention.**

In the alternative, SHLB seeks permissive intervention under the requirements set out in Federal Rule of Civil Procedure 24(b). Rule 24(b) allows intervention when the proposed intervenor makes a timely application demonstrating that (1) a federal statute provides a conditional right to intervene, or (2) the intervenor “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1). SHLB has a right to intervene under 28 U.S.C. § 2348, which permits “[c]ommunities, associations,

corporations, firms, and individuals, whose interests are affected by” an agency order to “intervene in any proceeding to review the order.” As set forth above, the interests of SHLB and its members are affected by the order on review.

Additionally, SHLB’s defense of the USF contribution factor will involve many of the same questions of law or fact implicated by the claims put forward by Petitioners and Respondents’ likely defenses.

### CONCLUSION

For the reasons stated above, SHLB respectfully requests that it be granted leave to intervene in support of Respondents.

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing document complies with the requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in 14-point Times New Roman font. I further certify that the foregoing document complies with the requirements of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,136 words according to the word-count feature of Microsoft Word.

/s/ Stephanie Weiner  
Stephanie Weiner

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 1, 2021, the foregoing document was filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit. Service was accomplished on all parties or their counsel of record via CM/ECF.

/s/ Stephanie Weiner  
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