Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

JOINT PETITION FOR STAY OF UNITED STATES TELECOM ASSOCIATION, CTIA – THE WIRELESS ASSOCIATION®, AT&T INC., WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION, AND CENTURYLINK

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INTRODUCTION AND EXECUTIVE SUMMARY

Since its inception, the Internet has flourished as a space where companies and entrepreneurs could invest and innovate freely. To ensure the continued growth of the Internet, "unfettered by Federal or State regulation," 47 U.S.C. § 230(b)(2), Congress codified that market-based approach in the Telecommunications Act of 1996 ("1996 Act"). Over the ensuing two decades, bipartisan majorities of this Commission have consistently and repeatedly interpreted that statute to mean that broadband Internet access is an "information service" — *not* a "telecommunications service" — and therefore immune from 19th century common carrier regulation. Providers have invested billions of dollars in reliance on this bipartisan, light-touch approach to the benefit of Internet users and entrepreneurs alike.

Now, however, a sharply divided Commission has radically reversed course. For the first time ever, the Commission subjects broadband Internet access service — which it now defines to run from the customer's premises all the way across the Internet to the hand-off to content providers — to onerous common carrier duties under Title II of the Communications Act of 1934.[1] As Commissioner Pai explained in dissent, the Order thus "marks a monumental shift toward government control of the Internet" and gives the Commission "the power to micromanage virtually every aspect of how the Internet works." Pai Dissent, Order at 321.

Petitioners request that the Commission immediately stay the Order insofar as it subjects broadband Internet access service and the interconnection of Internet Protocol ("IP") networks to Title II, including the broad, but amorphous, "Internet conduct standard" that allows the Commission to adjudicate whether new and innovative services and offerings may proceed. From day one, the Commission's assertion of comprehensive control over the Internet will

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[1] Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015) ("Order").

subject broadband Internet access providers — especially, small providers — to enormous unrecoverable costs and reduce their ability and incentive to invest in broadband infrastructure.

Petitioners do *not* seek a stay of the three prophylactic "bright-line" rules that are generally associated with "net neutrality" — no blocking, no throttling, no paid prioritization — that the Commission adopted.[2] But the Commission has identified no urgent public interest need to layer common carrier regulation and a vague Internet conduct standard on top of those rules while petitions for review are pending.

The public interest would best be served by preserving the *status quo* as to reclassification while the lawfulness of the Order is reviewed. Otherwise, consumers and the industry would face a twice-convulsive situation if a fundamentally new and ill-fitting regulatory regime of extraordinary breadth is imposed on broadband providers and then, as Petitioners respectfully submit is likely, vacated by the reviewing court. Petitioners have sought review of the Order in the United States Court of Appeals for the D.C. Circuit. To allow adequate time for a judicial stay determination, if necessary, Petitioners respectfully request that the Commission act on this petition by May 8, 2015.

Petitioners are likely to prevail on the merits. The 1996 Act distinguishes between "telecommunications service[s]," which the Commission is to regulate as common carriage, and "information service[s]," which the Commission may not. It defines "information service[s]" as the offering of a "capability" to "generat[e]," "acquir[e]," "stor[e]," "transform[]," "process[]," "retriev[e]," "utiliz[e]," or "mak[e] available" "information" via telecommunications. 47 U.S.C.

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[2] Petitioners do not concede that these rules, or other aspects of the Order as to which we do not seek a stay, are lawful, but do not claim that they would suffer irreparable harm from those rules while the petitions for review are pending. Petitioners do, however, seek a stay of the "Internet conduct standard," 47 C.F.R. § 8.11, which was never mentioned in the *NPRM* and which creates significantly greater immediate uncertainty and irreparable injury than the three "bright-line" rules.

§ 153(24). As any Internet user understands, the whole point of Internet access is to do those things. Accordingly, the Commission has recognized many times that Internet access services are the epitome of information services.[3] Indeed, Congress explicitly indicated that the term "*includ[es] specifically a service . . . that provides access to the Internet*." *Id.* § 230(f)(2) (emphasis added).

The Commission's conclusion is doubly unlawful as to mobile broadband services, which are among the most innovative and dynamic services in the Internet economy. Congress and the Commission have found the unique competitive, technical, and operational circumstances of mobile broadband to warrant a particularly flexible approach. Congress therefore adopted additional, independent protections for those services that forbid subjecting them to common carriage under Title II, as the Commission has previously acknowledged. In the Order, the Commission turned its back on those multiple, distinct prior legal conclusions without any notice and notwithstanding its own, contemporaneous conclusion that mobile usage and speeds have "exploded" without the heavy-handed regulations that it upset the current regulatory order to impose. Order ¶ 89.

The Commission's drastic departure from established law threatens Petitioners and the public with immediate, irreparable harm. By fundamentally transforming the regulatory regime under which the Internet operates, and essentially converting broadband into a public utility, the Commission has imposed radical and burdensome obligations, compliance costs, and litigation risks on small and large providers of both fixed and mobile services. As Commissioner Pai explained, thousands of small providers will particularly be harmed, as they "don't have the means or the margins to withstand a regulatory onslaught." Pai Dissent, Order at 330. Some

[3] *See, e.g.*, Report to Congress, *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, ¶ 76 (1998) ("*Stevens Report*").

may be "squeezed . . . out of business altogether." *Id.* Multiple declarations, submitted together with this petition, confirm that those fears are real and that, absent a stay, there will be imminent and irreparable injury.

Among other things, those companies' retail offerings are now, for the first time, subject to the Commission's authority to set just and reasonable rates and to police unreasonable discrimination, as well as the Commission's new Internet conduct standard — even though Chairman Wheeler admits he "do[esn't] really know" what that standard means.[4] The Commission has also put its thumb firmly on the scale in negotiations for IP network interconnection agreements, and some parties to such agreements are already demanding changes and threatening regulatory complaints if they do not get their way.

If the Order goes into effect, Petitioners and their members will also be subject to private lawsuits (including class actions) under Sections 207 and 208 to enforce these requirements, as well as *post hoc* Commission forfeiture proceedings. Particularly for smaller broadband providers that have never been subject to Title II and lack human and financial resources, the sheer burden and complexity of compliance with its arcane provisions will be crushing. In addition, broadband providers will be subject to new Title II "privacy" requirements, which the Commission has declined even to define. Those requirements threaten providers with large penalties if they do not incur substantial, unrecoverable costs, while foregoing pro-competitive marketing practices that are standard in the Internet sphere. The attached declarations demonstrate that, as a result of the seismic shift from a light-touch legal framework to a common carrier regime, multiple providers will have to scale back deployments to rural communities and

[4] February 2015 Open Meeting, Press Conference of Chairman Tom Wheeler (Feb. 26, 2015), *available at* http://www.fcc.gov/events/open-commission-meeting-february-2015 (165:30-166:54).

reverse or limit prior investment decisions. These consequences constitute not just irreparable harm to providers, but harm to the public interest in more and better broadband networks and services for American consumers.

BACKGROUND

1. Codifying pre-existing regulatory distinctions, the 1996 Act establishes separate — and mutually exclusive — regulatory regimes for providers of "telecommunications service[s]" and providers of "information service[s]." *See Stevens Report* ¶¶ 43-48 (two categories are "mutually exclusive").

"Telecommunications service" involves "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53). "Telecommunications," in turn, means "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content." *Id.* § 153(50). "Information service[s]" offer "a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications," except where "such capability" is used "for the management, control, or operation of a telecommunications system or the management of a telecommunications service." *Id.* § 153(24).

These distinctions are fundamental to the statutory scheme because only telecommunications services, not information services, are subject to common-carrier regulation under Title II. *See* 47 U.S.C. § 153(51); *NCTA v. Brand X Internet Servs.*, 545 U.S. 967, 975-76 (2005).

2. A few years before the 1996 Act was adopted, Congress drew an additional distinction between common carrier and non-common carrier services in the mobile context.

Congress specified that commercial mobile radio services ("CMRS") — that is, mobile services that are interconnected with the telephone network — are regulated as common carrier services under Title II. *See* 47 U.S.C. § 332(c)(1)(A), (d)(1)-(2). Private mobile radio services ("PMRS") — services that are not CMRS or its functional equivalent — cannot be regulated as common carrier services. *See id.* § 332(c)(2), (d)(3).

3. Since the passage of the 1996 Act and consistent with its pre-1996 decisions interpreting the terms that the statute codified, the Commission has consistently and repeatedly held that Internet access service is an "information service." *E.g.*, *Stevens Report* ¶¶ 74-75, 79-80. As the Commission has explained, the most basic feature of an Internet access service — the ability to access and interact with websites — is an information service: Internet access providers join transmission with "data processing, information provision, and other computer-mediated offerings, thereby creating an information service." *Id.* ¶ 81. That is true whether the data processing is performed by the Internet access provider itself or by a third-party application. *See, e.g.*, *id.* ¶ 79.

As cable companies, local wireline telephone companies, mobile service providers, small fixed wireless providers, and even power companies began to offer Internet access services over their own, local broadband distribution facilities, the Commission uniformly held that these services are "information services."[5] In the case of mobile broadband services, the Commission further concluded that they are PMRS and cannot be subject to common carrier regulation for that reason as well.[6]

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[5] *See* Pai Dissent, Order at 340-41 & nn.130-134 (collecting citations).

[6] Declaratory Ruling, *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, ¶ 45 (2007) ("*Wireless Broadband Ruling*").

In *Brand X*, the Supreme Court upheld the Commission's conclusion that cable modem service is an information service because "it provides consumers with a comprehensive capability for manipulating information using the Internet via high-speed telecommunications." 545 U.S. at 987-89. Indeed, as discussed below, *all nine Justices* agreed that broadband Internet access involved an "information service."

4. In recent years, the Commission has attempted to impose "net neutrality" obligations on broadband Internet access providers. The D.C. Circuit struck down the Commission's first two attempts. In the first case, the court held that the Commission's regulation of Comcast's broadband network management practices could not be justified as an exercise of "ancillary authority" under Title I of the Communications Act, and that the Commission could not rely on Section 706 of the 1996 Act because it had consistently held that Section 706 was not a grant of authority. *See Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

In 2010, the Commission reversed its interpretation of Section 706 and adopted no blocking, no unreasonable discrimination, and transparency rules.[7] The Commission adopted less burdensome versions of those rules for mobile broadband based, in part, on the existence of particularly strong competition in that segment of the market.[8] The D.C. Circuit upheld the Commission's revised interpretation of Section 706, but vacated the no blocking and no discrimination rules because they imposed *per se* common carrier obligations on these information service providers in their dealings with "edge providers" that provide content,

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[7] Report and Order, *Preserving the Open Internet*, 25 FCC Rcd 17905 (2010) ("*2010 Order*").

[8] *See id.* ¶¶ 94, 95 (concluding that "mobile broadband presents special considerations that suggest differences in how and when open Internet protections should apply," including the fact that "most consumers have more choices for mobile broadband than for fixed (particularly fixed wireline) broadband").

services, and applications to end users over the Internet. *Verizon v. FCC*, 740 F.3d 623, 629, 650-59 (D.C. Cir. 2014). Such obligations also ran afoul of the separate limitation barring common carriage treatment of PMRS and hence were doubly invalid as to mobile broadband providers. *See id.* at 650.

5. On remand, the Commission proposed to adopt revised versions of the 2010 rules that did not run afoul of the statutory prohibitions on common carriage. The Notice of Proposed Rulemaking in this docket explained that, "[p]er the blueprint offered by . . . *Verizon v. FCC*, the Commission proposes to rely on section 706" while retaining the Commission's longstanding classification of Internet access services as an information service. Notice of Proposed Rulemaking, *Protecting and Promoting the Open Internet*, 29 FCC Rcd 5561, ¶ 4 (2014) ("*NPRM*"). Chairman Wheeler noted in his separate statement that, "[i]n response [to *Verizon*], I promptly stated that we would reinstate rules that achieve the goals of the 2010 Order using the Section 706-based roadmap laid out by the court. *That is what we are proposing today*." *Id.*, Wheeler Statement at 87 (emphasis added). And, taking *Verizon*'s cue, all of the proposals in the *NPRM* were structured to avoid imposing common carrier regulation. *See id.* ¶¶ 6, 89-90, 97, 122, 136.

6. Later, however, and only after months of private White House meetings with interest groups pushing for reclassification,[9] the Commission abruptly changed course. Without inviting public comment on potential reclassification, it issued a decision that "differs dramatically from the proposal [it] put out for comment." Pai Dissent, Order at 335. As noted above, the Order reclassifies fixed and mobile broadband Internet access services as

[9] *See* Gautham Nagesh and Brody Mullins, "Net Neutrality: How White House Thwarted FCC Chief," Wall St. J., Feb. 4, 2015; The White House, Net Neutrality: President Obama's Plan for a Free and Open Internet, https://web.archive.org/web/20150204034321/http://www.whitehouse.gov/net-neutrality (Nov. 10, 2014).

"telecommunications service[s]" subject to common carrier regulation, Order ¶¶ 336-337, and extends Title II treatment to a broadband provider's interconnection with other IP networks, *see id.* ¶ 195.

The Order also adopts "no-blocking" and "no-throttling" rules, and a complete ban on all paid prioritization arrangements. *See id.* ¶¶ 111-132. Those rules address the principal concerns of those favoring net neutrality regulation. The Order also adopts, without any notice in the *NPRM*, a sweeping new "standard for Internet conduct," under which the Commission asserts the right to determine, on a case-by-case basis, whether *any* practices "unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the Internet content, services, and applications of their choosing or of edge providers to access consumers using the Internet." *Id.* ¶ 135. Broadband Internet access providers that guess wrong about what will be deemed "unreasonable" may be subject to lawsuits, forfeiture penalties, license revocation, and other sanctions.

The Order purports to forbear from a number of provisions in Title II, but massive regulation remains. Most notably, the Commission retains the authority to regulate the "reasonableness" of all rates, terms, and practices of broadband Internet access service providers under Sections 201 and 202, which the Order interprets extraordinarily expansively. *See, e.g.*, *id.* ¶¶ 441-452, 512, 522. The Commission also declined to forbear from the privacy provisions of Section 222, though the Commission did forbear from the current implementing rules, so that providers have no current guidance as to how the statutory provision will be applied. *See id.* ¶¶ 462-467.

DISCUSSION

In determining whether to stay the effectiveness of one of its orders, the Commission applies a four-factor test developed by the courts. Under this test, a petitioner must show that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be substantially harmed if the stay is granted; and (4) the public interest favors granting a stay. Order, *Amendment of Parts 73 and 76 of the Commission's Rules*, 4 FCC Rcd 6476, ¶ 6 (1989) (citing *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)). All four factors are met here.

I. PETITIONERS ARE LIKELY TO PREVAIL ON THE MERITS

A. The Commission's Reclassification Decision Conflicts with the Plain Language of the Communications Act, Supreme Court Precedent, and Commission Precedent

1. Petitioners are likely to prevail on their argument that broadband Internet access service cannot lawfully be classified as a "telecommunications service" subject to Title II common-carrier regulation. To hold otherwise, the Commission twisted itself in knots, disregarding statutory text, overturning its own well-settled precedents and ignoring others, and in many cases not even providing notice that it intended to consider such a fundamental shift.

The Communications Act establishes a clear rule that a provider "shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services." 47 U.S.C. § 153(51). Because "telecommunications service" and "information service" are "mutually exclusive" categories, *Stevens Report* ¶¶ 43-48, providers of information services cannot be subject to Title II common-carrier regulation when providing those services.

Internet access unquestionably meets the definition of information service in the statute. Indeed, Internet access qualifies under every one of the eight parts of the statutory definition, which is written in the disjunctive. It offers consumers the capability to "acquire" and "retrieve" information from web sites, to "store" information in the cloud, to "transform" and "process" information by translating plain English commands into protocols understood by computers, to "utilize" information through computer interaction with stored data, and to "generate" and "make available" information to other users by engaging in file sharing from their home computers. 47 U.S.C. § 153(20). Simply put, the point of Internet access is to obtain, manipulate, and use *information*. Up until now, the Commission *itself* has concluded, on at least five separate occasions, that broadband Internet access is an information service.[10]

Section 230, enacted as part of the 1996 Act alongside the definitions of information and telecommunications service, confirms that Internet access is an information service. In Section 230(b)(2), Congress established a federal policy "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or state regulation." Section 230(f)(2) then defines "interactive computer service[s]" to include any "information service[], . . . *including specifically a service . . . that provides access to the Internet*." (emphasis added). Indeed, before its sudden about-face, the Commission concluded that Section 230 demonstrated that classifying Internet access as an information service was "consistent with Congress's understanding." Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 15 n.41 (2005).

[10] *See supra* nn. 3 & 5.

There is yet more statutory evidence fortifying this conclusion. As the Supreme Court, the D.C. Circuit, and the Commission have all acknowledged, in defining "information service" and "telecommunications service" in the 1996 Act, Congress codified two pre-existing regulatory distinctions: first, between information and telecommunications services under the Modification of Final Judgment ("MFJ") that broke up the Bell System; and, second, between "enhanced" and "basic" services under the Commission's *Computer* decisions. *See Brand X*, 545 U.S. at 976-77, 992-93; *Verizon*, 740 F.3d at 630; First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905, ¶¶ 102-103 (1996) ("*Non-Accounting Safeguards Order*").[11]

Applying those parallel regulatory definitions, the MFJ Court and the Commission squarely concluded that "gateways to online services" — the direct antecedents of today's Internet access services — are information and enhanced services. *See United States v. Western Elec. Co.*, 673 F. Supp. 525, 587-97 & n.275 (D.D.C. 1987) (gateways offer a number of functions, including the capability for storing, processing, acquiring, and making available information that "[*under*] *any fair reading*" fit within the definition of "information services") (emphasis added), *aff'd in part, rev'd in part*, 900 F.2d 283 (D.D.C. 1990); Final Decision, *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384, ¶¶ 97-98 (1980) ("subscriber interaction with stored information" is an "enhanced service[]"). The Commission itself has highlighted these facts, including its specific holdings that services offering "gateways" to online databases were "information" and

[11] The MFJ definition of "information service" is indistinguishable from the statutory definition. *See United States v. AT&T*, 552 F. Supp. 131, 229 (D.D.C. 1982); *see also* Pai Dissent, Order at 352.

"enhanced" services. *Stevens Report* ¶ 75. This regulatory history is controlling, because, as the Commission has stated, Congress's definition of information services in the 1996 Act includes "all of the services that the Commission has previously considered to be 'enhanced services.' " *Non-Accounting Safeguards Order* ¶ 102.

The Order ignores this controlling precedent. It argues instead that Internet access services fall within the narrow "telecommunications management" exception to the definition of "information services," Order ¶¶ 366-375; 47 U.S.C. § 153(24), which the Commission acknowledges merely codifies the similar "adjunct to basic" exception to the enhanced services definition, Order ¶ 312. But, as explained above, gateway services were treated as "enhanced services" by the Commission, and "information services" under the MFJ, not services that fall within the exceptions to those respective definitions.[12] Beyond that, by its terms, the exception in the statute applies only to "management, control, or operation of a *telecommunications system* or the *management of a telecommunications service*." 47 U.S.C. § 153(24) (emphases added). The functions involved here — such as caching,[13] cloud storage, and e-mail — do not manage ordinary transmissions, but allow consumers to interact with, obtain, and make available *information*. If these types of information service functions are subsumed by the "management exception," so too would countless other information services, thus erasing the line drawn by Congress to distinguish between two, mutually exclusive regulatory categories.

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[12] Likewise, the MFJ's "information services" definition included an identical "telecommunications management" exception, which the court held did not encompass the Internet's precursor, gateway services. *See Western Elec.*, 673 F. Supp. at 587 n.275.

[13] The Commission's dismissal of "caching" is particularly egregious, given that it concedes that third parties like Akamai are offering an information service when they perform caching. Order ¶ 372.

2. The Commission claims that *Brand X* establishes that the statute is ambiguous as to the issue presented here and that the Commission retains "delegated authority to revisit [its] prior interpretation." Order ¶ 332.

That misreads *Brand X*. That case strongly supports our arguments here. *No* Justice — in either the majority or the dissent — expressed any doubt that Internet access is an information service. The majority agreed with the Commission's understanding that the *entire* broadband Internet access service at issue there (cable modem service) was an "information service" because, among other things, "[t]hat service enables users . . . to browse the World Wide Web, to transfer files . . . and to access e-mail and Usenet newsgroups." 545 U.S. at 987. Likewise, in dissent, Justice Scalia quoted with approval a Commission staff paper stating that Internet access service "is an enhanced service provided by an ISP." *Id.* at 1009 (internal quotation marks omitted).

The only difference between the *Brand X* majority and dissent — and where the majority found ambiguity — was whether the cable company, in providing the so-called "last mile" transmission between an end-user customer's premises and the cable company's facilities, offers a telecommunications service *in addition to and separate from* its Internet access service. Justice Scalia argued that cable companies offered a separate "delivery service" between "the customer's computer and the cable company's computer-processing facilities" that qualified as a "telecommunications service." *Id.* at 1010. Using the example of a pizza delivery service, Justice Scalia argued that the last-mile transmission (pizza delivery) was separate from the Internet access functions (making the pizza) because it was "downstream from the computer-processing facilities" that performed those information-service functions. *Id.* at 1007, 1010.

But any dispute as to whether last-mile transmission is a separate offering of a telecommunications service is irrelevant here. The last-mile transmission service as to which *Brand X* found ambiguity is "just not the same service as the Internet access service that the Order claims is a telecommunications service here." Pai Dissent, Order at 356 n.258. That is because the Commission now seeks to define as a telecommunications service *the full broadband Internet access service from the end user all the way to every Internet end point and back*. *See* Order ¶ 193. Put differently, where Justice Scalia saw the relevant offerings as making pizza (information service) and delivering it (telecommunications service), the Commission now acts as though the pizzeria offers *only* delivery and does not make the pizza at all.

In sum, to classify broadband Internet access service in its entirety as a telecommunications service and not an information service "goes beyond the scope of whatever ambiguity [the statute] contains" — and certainly any ambiguity identified in *Brand X* — and therefore does not merit deference. *City of Chicago v. Environmental Def. Fund*, 511 U.S. 328, 339 (1994).

Even if the statute were ambiguous, however, the Commission's reading unreasonably collapses two, mutually exclusive statutory definitions into one. By definition, all information services are provided "via telecommunications." 47 U.S.C. § 153(24). Nevertheless, on the Commission's reasoning, it could find that the use of transmission renders almost any Internet-based service a "telecommunications service" because that service relies upon the transmission for the delivery of content, whether the transmission is obtained from third parties or self-provided. Today, many Internet edge providers own or control substantial broadband networks of their own that provide transmission supporting their services. There is no coherent limiting principle to such reasoning, which is why the Commission has previously and correctly rejected

it. *See Stevens Report* ¶ 57 ("[I]f . . . some information services were classed as telecommunications services, it would be difficult to devise a sustainable rationale under which all, or essentially all, information services did not fall into the telecommunications service category.").

3. The Commission relies on several alleged factual changes that have supposedly occurred since its prior orders to justify its about-face. Order ¶¶ 346-354. These supposed changes — greater use of third-party web services such as e-mail and increasing advertisement of transmission speeds — are legally irrelevant. They do not affect the fundamental capabilities that Internet access service offers consumers and thus provide no basis to ignore the clear and broad statutory definition of "information service" that Congress enacted and the Commission has repeatedly and consistently applied.

Beyond that, the specific "changes" to which the Commission now points are not new at all. Alternative e-mail has been widely used for decades, and consumers have been able to access third-party websites and capabilities for decades, too. Indeed, as Commissioner Pai notes (at 357), these facts are acknowledged in the *Cable Modem Order*[14] itself, so they cannot justify a revolutionary change. Similarly, providers' marketing using speed claims is not novel and likewise predated the Commission's prior orders. *E.g.*, Order at 357-58; *Brand X*, 545 U.S. at 1007 n.1 (Scalia, J., dissenting).[15]

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[14] Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798 (2002), *aff'd sub nom. National Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967 (2005).

[15] Petitioners are also likely to succeed in their challenge to the Commission's attempt to assert Title II authority over all private "commercial arrangements for the exchange of traffic *with* a broadband Internet access service provider." Order ¶ 29 (emphasis added). This finding is derivative of the Commission's flawed view that the retail broadband Internet access service is a "telecommunications service." *Id.* ¶¶ 363-364. But it is also unlawful for the independent reason that the Commission neither did, nor could, make the necessary finding that these

B. The Commission's Reclassification of Mobile Broadband as CMRS Conflicts with the Communications Act and Commission Precedent

Petitioners are also likely to prevail on their argument that mobile broadband Internet access services, which are among the most innovative and dynamic services in the broadband sector, cannot lawfully be subject to Title II for an additional and independent reason. That treatment is foreclosed by 47 U.S.C. § 332, in which Congress made clear that PMRS "shall not . . . be treated as a common carri[age]" service. 47 U.S.C. § 332(c)(2). Even if the Commission's reclassification of all broadband service were not unlawful, which it is, mobile broadband service is and always has been PMRS and, therefore, exempt from Title II regulation regardless.

Congress defined private mobile service as "any mobile service . . . that is not a commercial mobile service or [its] functional equivalent." *Id.* § 332(d)(3). A commercial mobile service must be, among other things, "interconnected with the public switched network." *Id.* § 332(d)(1)-(2). In 1993, it was well settled, and has been ever since, that the public switched network is the *telephone* network: Congress, courts, and the Commission all shared that understanding.[16] *See McDermott Int'l v. Wilander*, 498 U.S. 337, 342 (1991) (assuming that, "when a statute uses" a "term of art," "Congress intended it to have its established meaning"). Indeed, today, *every* use of "public switched network" in the U.S. Code refers exclusively to the

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separately negotiated private agreements with other networks and edge providers are themselves telecommunications services. *See Verizon*, 740 F.3d at 651-55; *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 644 (D.C. Cir. 1976).

[16] *See, e.g.*, H.R. Conf. Rep. No. 103-213, at 495-96 (1993) (describing the House version of the bill that became § 332, which used the term "public switched network," to require that a CMRS service be interconnected with the "public switched telephone network"); Memorandum Opinion and Order, *Petition for Declaratory Ruling and Expedited Relief Filed by Aeronautical Radio, Inc. and the Air Transport Association of America*, FCC 86-123, 1986 WL 291339, ¶¶ 7-8 (Mar. 28, 1986) (using the terms "public switched network" and "public switched telephone network" interchangeably); *Public Util. Comm'n of Tex. v. FCC*, 886 F.2d 1325, 1327, 1330 (D.C. Cir. 1989) (same).

telephone network, with Congress three years ago explicitly distinguishing the "public switched network" from the "public Internet." 47 U.S.C. § 1422(b)(1) ("public Internet or the public switched network, or both").[17] Because mobile broadband service connects to the Internet, not to the telephone network, it is not a commercial mobile service or its functional equivalent and, therefore, is doubly immune from regulation under Title II.

Before this Order, this was the Commission's own statutory conclusion. In 1994, the Commission found that the public switched network is "the traditional local exchange or interexchange switched network"[18] — that is, the telephone network — and codified that interpretation in its rules. *See* 47 C.F.R. § 20.3. In 2007, the Commission confirmed that the public switched network — as that term is used in both "section 332 and [its] implementing rules" — does not include the Internet. *Wireless Broadband Ruling* ¶ 45 n.119. Therefore, the Commission found, mobile broadband is private mobile service, *not* CMRS. The Commission expressly rejected arguments that mobile broadband services were interconnected with the public switched network by virtue of third-party Voice-over-Internet-Protocol ("VoIP") applications allowing calls to regular telephones over a mobile broadband connection. As the Commission explained, that argument improperly conflated the underlying broadband service with the applications riding on top of those services. *See id.* ¶¶ 42-45.

In the Order, the Commission reversed itself on every one of these legal points, and found that mobile broadband is not private mobile service, but instead is commercial mobile service or its functional equivalent. *See* Order ¶¶ 388-408. To accomplish this, the Commission

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[17] *See also* 47 U.S.C. § 259 (requiring incumbent local telephone companies to share certain "public switched network infrastructure"); *id.* § 769(a)(11) (referring to "public-switched network voice telephony").

[18] Second Report and Order, *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, ¶¶ 59-60 (1994).

did not, because it could not, claim that the meaning or purpose of Section 332 had changed. Rather, it amended the codified regulatory definition of the public switched network to include both the telephone network and the Internet, so that mobile broadband is now CMRS and thus no longer covered by Section 332(c)(2). In addition, it reversed its earlier conclusion as to third-party VoIP applications and the underlying mobile broadband service, adopted a bespoke test for functional equivalence, and disregarded its prior reliance on competition in the wireless broadband market as a basis for relatively less burdensome regulation of mobile (as opposed to fixed) services.

The Commission did all of this without providing any notice. The Commission simply asked in the notice whether mobile broadband "fit[s] within the definition of 'commercial mobile service'" *NPRM* ¶ 150. The Commission never proposed to amend its rules to redefine the term public switched network, adopt a new functional equivalence test, or reverse its prior position that the functionalities of third-party applications are not capabilities of the mobile broadband service itself. *See* Pai Dissent, Order at 348-50. Petitioners are likely to prevail on their challenges on this ground alone. *See, e.g.*, *Daimler Trucks N. Am. LLC v. EPA*, 737 F.3d 95, 103 (D.C. Cir. 2013); *Association of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 461-62 (D.C. Cir. 2012).

Moreover, although Congress gave the Commission authority to define the term public switched network, *see* 47 U.S.C. § 332(d)(2), that term is not so elastic that it can include the Internet, particularly because Congress has always used it to mean only the telephone network. Nor did the Commission sufficiently justify its about-face in finding that the same third-party VoIP applications that existed in 2007 now cause mobile broadband service to be interconnected with the telephone network. *See* Order ¶ 401. Indeed, the interconnection of those VoIP

services with the telephone network today, as in 2007, is provided by separate telephone companies that partner with the VoIP providers. And, the Commission's new functional equivalence test — created specifically for mobile broadband service, *see id.* ¶ 408 — ignores that mobile broadband lacks the key functionality that distinguishes commercial mobile services: interconnection with the telephone network.

But, even if Section 332 did not expressly bar Title II obligations on mobile broadband providers, the Commission's reversals of its prior decisions is the epitome of arbitrary agency action. In the *2010 Order* (as well as in the *NPRM* here), the Commission recognized that it would be inappropriate to subject mobile broadband services to the same obligations as wireline services because of the extensive competition in the mobile broadband marketplace and the unique "operational constraints" mobile providers face. *2010 Order* ¶¶ 94-95; *NPRM* ¶ 105.[19] In the Order, the Commission highlighted the success of this light-touch approach, noting that "mobile broadband networks are faster, more broadly deployed, more widely used, and more technologically advanced than they were in 2010." *See* Order ¶¶ 86-90. Yet, the Order paradoxically concludes that the very success of this policy now warrants that mobile broadband providers be subject to common carrier obligations, and even that the existence of competitive choices for mobile was irrelevant to the regulatory issue. *See id.* ¶ 444. Simply put, in the Commission's view, the fact that consumers now rely more heavily on mobile broadband as a pathway to the Internet is reason to abandon the policies that made that a reality.

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[19] As the Commission's most recent data confirm, 82% of the U.S. population has access to four or more mobile broadband Internet access providers. *See* Seventeenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, 29 FCC Rcd 15311, ¶ 51, Chart III.A.2 & App. III, Table III.A.iv (Dec. 18, 2014).

This *non sequitur* fails to provide the "more substantial basis" needed for the Commission to depart from its established findings that marketplace competition and unique operational constraints faced by mobile providers requires less intrusive regulatory obligations. *Compare* Order ¶ 401 *with Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015) ("[T]he APA requires an agency to provide more substantial justification when 'its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account.' ") (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

II. THE BALANCE OF HARMS AND THE PUBLIC INTEREST SUPPORT A STAY

A. The Order Exposes Broadband Providers to Dramatic New Regulations, Leading to Unrecoverable Losses and Harm to Consumers

If the Order becomes effective, the Commission will become, just as intended by advocates of reclassification, the " 'Department of the Internet.' " Pai Dissent, Order at 324 (quoting Nilay Patel, *We Won the Internet Back*, The Verge (Feb. 4, 2015)). By reclassifying Internet access as a telecommunications service, the Commission will have authority to "micromanage virtually every aspect of how the Internet works," creating a "monumental shift toward government control." *Id.* at 321.

Thousands of providers, small and large, will be required to ensure that both their "rates" and their "practices" comply with the broad yet vague standards — "just," "reasonable," and not "unreasonably discriminatory" — set out in Sections 201 and 202. And they will have to try to satisfy the Commission's sweeping yet indeterminate "Internet conduct standard" as well. Class-action attorneys and the Commission's enforcement personnel will immediately be able to pursue costly litigation — leading to potentially substantial financial penalties, *see, e.g.*, 47 U.S.C. § 503, and harming providers' reputations and goodwill — based on the Commission's

exercise of "almost unfettered discretion." Pai Dissent, Order at 323. For providers that serve only a few hundred customers, simply living through a Commission complaint proceeding or court litigation will be too much to bear financially.

This open season of regulation and litigation will impose immediate and unrecoverable costs. As the attached declarations demonstrate, small providers particularly will be harmed, as they "don't have the means or the margins to withstand a regulatory onslaught." *Id.* at 330. Some may be "squeezed . . . out of business altogether." *Id.*; *see* Decl. of Nathan Stooke, CEO of Wisper ISP, Inc. ("Stooke Decl.") ¶ 10 (Exh. 1 hereto) (noting that the threat of a class action suit "would most likely force us to close the company"); Decl. of Elizabeth Bowles, President of Aristotle Inc. ("Bowles Decl.") ¶ 7 (Exh. 2 hereto) (describing how compliance costs combined with litigation expenses could force Aristotle to "shut down its broadband Internet division entirely"); Decl. of Ken Hohhof, President of KWISP Internet ("Hohhof Decl.") ¶ 11 (Exh. 3 hereto) (noting that the costs of defending even a frivolous lawsuit would force a rural broadband provider either to settle or to close or sell its business). Others will spend their limited resources on lawyers and compliance costs that they can never recover if and when the reviewing court reverses the Commission's ill-considered action. *See, e.g.*, Decl. of Ron Smith, CEO of Bluegrass Cellular, Inc. ("Smith Decl.") ¶ 9 (Exh. 4 hereto); Decl. of Clay Stewart, CEO of SCS Broadband ("Stewart Decl.") ¶¶ 5-6 (Exh. 5 hereto); Decl. of Forbes Mercy, President, Washington Broadband, Inc. ("Mercy Decl.") ¶ 4 (Exh. 6 hereto); Decl. of Josh Zuerner, President and CEO of Joink LLC ("Zuerner Decl.") ¶¶ 5-6 (Exh. 7 hereto). That is irreparable harm.[20]

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[20] *See, e.g.*, *Sottera, Inc. v. FDA*, 627 F.3d 891, 898 (D.C. Cir. 2010) (holding that product distributor would be irreparably harmed by agency's order that would destroy the distributor's ability to cover its purchase or production costs); *National Tank Truck Carriers*,

Moreover, because they are spending scarce resources complying with broad yet uncertain Title II requirements, these smaller providers, many of whom serve consumers in rural areas where competitive choices are fewer, will not be able to invest those resources to improve and expand broadband service or to devote those resources to improving their products or their customer service.[21] That is directly contrary to the acknowledged "national priority" of encouraging broadband deployment, which Congress codified in Section 706. Remarks of Tom Wheeler, Chairman, FCC, at the NATOA Annual Conference, 2014 FCC LEXIS 3604, at *8 (FCC Oct. 1, 2014).

Additionally, providers cannot reasonably decide whether to invest in new deployment or a service offering without knowing how the Commission will exercise its newfound, exceedingly broad, and undefined authority. The Order "injects tremendous uncertainty into the market. . . . [A] thick regulatory haze . . . should make any rational businesses hold back on investment." Pai Dissent, Order at 328. For example, the Commission refused to decide whether an existing practice known as "sponsored data" — where, similar to toll-free calling, a content provider agrees to bear the costs of a customer's data usage — will be deemed lawful. *See* Order ¶¶ 151-153. With no guidance on how to develop products and services within the new regulatory boundaries, providers are deterred from pursuing these and other practices that many consumers desire. *See, e.g.*, Smith Decl. ¶ 10 ("It will be difficult to invest in new or innovative products or

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Inc. v. Burke, 608 F.2d 819, 824 (1st Cir. 1979) (finding irreparable harm when plaintiff would incur substantial unrecoverable expenses to comply with regulations that may be invalid); *Brendsel v. Office of Federal Hous. Enter. Oversight*, 339 F. Supp. 2d 52, 66 (D.D.C. 2004) (general rule that economic losses are not irreparable harm "is of no avail . . . where the plaintiff will be unable to sue to recover any monetary damages against [federal agencies]").

[21] *See* Decl. of Ron B. McCue, COO of Silver Star Communications ("McCue Decl.") ¶¶ 4-5, 10 (Exh. 8 hereto); Smith Decl. ¶¶ 9-10; Stooke Decl. ¶¶ 12-13; Hohhof Decl. ¶ 6; Stewart Decl. ¶¶ 7-11; Mercy Decl. ¶ 6; Bowles Decl. ¶ 11.

business plans without knowing whether the FCC will find aspects of the planned service unlawful.”).

The effect of this regulatory uncertainty, however, is certain: the Order will stifle investment and innovation and harm consumers. The core purpose of the 1996 Act is to “reduce regulation in order to . . . encourage the rapid deployment of new telecommunications technologies.” Pub. L. No. 104-104, 110 Stat. 56, 56 (1996). And the Commission has — until this Order — expressly recognized that “regulatory uncertainty . . . in itself may discourage investment and innovation” in broadband Internet access services. *Cable Modem Order* ¶ 5. For example, as a direct result of this Order, one provider that serves southern Illinois has determined that it will now need 66% more customers to justify deploying Internet access service at a new base station and may actually have to “uninstall” some existing customers. *See* Stooke Decl. ¶ 14. Other providers have similarly been forced to cancel or reconsider additional deployments, to the detriment of consumers who would benefit from expanded service and competitive choice. For example, a fixed wireless broadband provider serving rural areas of northern Illinois has estimated that the additional risk and expense created by the Order will require it to delay or cancel projects including capacity upgrades to seven towers; construction of additional towers and repeater sites; a TV White Space experiment to serve customers in heavily wooded areas; and upgrades to backhaul capacity. *See* Hohhof Decl. ¶ 13; *see also* Stewart Decl. ¶¶ 8, 11 (investment in serving five additional counties is “in jeopardy” because of additional costs created by the Order and company is “withholding full investments to other rural counties”); Mercy Decl. ¶ 10 (due to compliance costs and risks created by Order, “WABB has decided to scale back expansion to new, unserved or underserved areas and focus on more urban/suburban areas where return on investment will be faster and greater”); Bowles Decl. ¶ 13 (based on the

Order, provider has "scal[ed] back" its plan "to triple our customer base by deployment of a redundant fixed wireless network that would cover a three-county area"); Zuerner Decl. ¶¶ 12-13 (describing a reduction or cessation of investment in fiber-to-the-home deployment due to the uncertainties created by the Order).

A reluctance to invest in broadband will irreparably harm Petitioners and, in the case of trade associations, their members — and ultimately consumers. *See, e.g.*, Stooke Decl. ¶ 15 ("[C]onsumers will be directly harmed by such reduced investments, as they will be left with slower broadband speeds, less dense coverage, and absence of expansion into new areas."); Mercy Decl. ¶ 11 ("Consumers will be directly harmed by our changed business model" scaling back service to unserved and underserved areas); *accord* Stewart Decl. ¶ 12; Bowles Decl. ¶ 14; Zuerner Decl. ¶ 14. The lost opportunities to develop and strengthen customer relationships through innovative service offerings will have a ripple effect on broadband providers' businesses that, while both real and certain, is indefinite in scope and impossible to measure financially. No after-the-fact judicial or administrative remedy can compensate for consumer perceptions that the quality of their broadband and related offerings has stagnated or worsened.[22] These harms have particular force for mobile broadband services — the most cutting-edge and rapidly changing technologies — which have been characterized until now by fast-paced innovation, are the most vulnerable to the burdens of antiquated regulations, and are increasingly important to consumers. *See* Smith Decl. ¶¶ 4-10.

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[22] *See, e.g.*, *Armour & Co. v. Freeman*, 304 F.2d 404, 406 (D.C. Cir. 1962) (producer would suffer irreparable injury from labeling rule that would force it either to misbrand its products and damage its reputation or withdraw from the market and face unrecoverable lost profits); *see also Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (affirming preliminary injunction when harm to plaintiff's business-development opportunities and customer goodwill resulting from defendant's conduct would cause an indeterminate amount of loss for years to come).

B. The Order Imposes Broad and Ill-Defined "Privacy" Obligations That Threaten Providers with Significant Costs and Would Hurt Consumers

Section 222 of the Communications Act imposes on telecommunications carriers a variety of duties with regard to customer proprietary information. In the Order, the Commission ruled that broadband Internet access service providers are subject to Section 222, although it would forbear, pending adoption of new rules, from the existing implementing regulations that, to date, have given much of the content to Section 222's requirements. Order ¶ 462. Providers therefore face the certainty of new regulation, but the corresponding uncertainty of trying to predict and anticipate precisely what the Commission or a court will require under the statute and any future regulations.

For example, Section 222(c) requires consent before customer proprietary network information ("CPNI") can be used for some marketing purposes. Prior to the Order, broadband providers were able to use information about a customer's broadband Internet access services and usage to develop customized outbound marketing programs that benefit both the provider and its customers, without any restrictions under Section 222(c). *See* Decl. of Brian Collins, Thomas F. Hughes, and Matthew T. Haymons ("AT&T Decl.") ¶¶ 7-15 (Exh. 9 hereto). The Commission's reclassification creates significant uncertainty as to whether these practices, which have unquestionably been legal to date, can continue in their current form or will potentially subject providers to enforcement and liability if they guess wrong as to how "broadband-related CPNI" is to be treated under Section 222(c). *Id.* ¶ 15. Ceasing existing programs that use broadband-related CPNI in ways that might require customer approval until implementing the systems to provide and track notifications necessary for obtaining such consents would result in substantial and irreparable harms. For AT&T alone, developing systems to provide and track notification to its tens of millions of broadband customers will cost between $13 and $18 million

that it cannot recover if the Commission's decision is overturned. *See id.* ¶¶ 21-23, 25. Further, delaying such marketing efforts until the notification and tracking systems can be put in place will cause providers to lose substantial revenues while also depriving customers of the opportunity to obtain services and offers they may well desire. *See id.* ¶ 24. Specifically, AT&T has estimated that it would lose up to approximately $400 million in revenues if it were to cease its existing outbound marketing programs that use broadband-related CPNI in ways that might require customer approval until notification and tracking systems are put in place. *See id.* (explaining that alternative programs would be "substantially less effective"); *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996) (finding irreparable harm when FCC order would cause carriers "irreparable losses in customers, goodwill, and revenue"). And these added requirements put AT&T at a competitive disadvantage against companies with which it competes to offer services, but which are not subject to these same requirements (because they are not broadband Internet access providers). *See* AT&T Decl. ¶ 20.

But even the conservative approach of delaying marketing pending notifications and systems changes is not without significant risk. If AT&T guesses wrong as to what is classified as CPNI and what requirements the Commission will ultimately adopt for consent, it would incur the costs and revenue losses described above while still facing the risk of enforcement and liability. *See id.* ¶¶ 26-28. Smaller providers have a significantly greater risk of harm, as the entire CPNI regulatory regime is foreign to some of them and many do not even have in-house legal departments. *See* Stooke Decl. ¶¶ 8-9; Mercy Decl. ¶¶ 7-8; Bowles Decl. ¶¶ 8-9; Zuerner Decl. ¶¶ 8-10; *cf.* Notice of Apparent Liability for Forfeiture, *TerraCom, Inc. and YourTel America, Inc.*, 29 FCC Rcd 13325, ¶¶ 18, 30 (2014) (proposing $10 million forfeiture for small

company's alleged failure to meet Section 222 requirements first announced in that Commission decision).

C. Reclassification Undermines Interconnection Negotiations

Interconnection provides another example of how the sweeping nature of the Commission's reclassification decision, combined with the lack of guidance as to how this regulatory change will be applied, will irreparably harm Petitioners absent a stay.

The Internet is a network of networks, and interconnection is the means by which those networks are connected. A variety of heretofore voluntarily negotiated and individualized arrangements have been used to exchange traffic between networks. *See* Decl. of Pieter Poll, Senior Vice President of Network Planning, CenturyLink ("Poll Decl.") ¶¶ 3-8 (Exh. 10 hereto). Under the Order, however, all these arrangements are now part of the "telecommunications service" that broadband Internet access providers offer their retail customers, and are thus subject to the just, reasonable, and non-discriminatory rates and practices requirements in Sections 201 and 202. *See* Order ¶¶ 28, 195. Yet, again, the Commission provided no explanation of what that means as a practical matter or how broadband providers should behave. *See id.* ¶¶ 202-203 (finding it would be "premature" to provide such guidance).

Accordingly, broadband Internet access providers are left to negotiate contracts subject to sweeping statutory mandates, but without knowing what rates and practices could lead to forfeitures or other enforcement action. Already, providers are facing demands for significant changes to interconnection agreements. *See* Poll Decl. ¶¶ 9-10. The parties making those demands have little incentive to recede from them, and are threatening to file enforcement actions if they do not get what they want. *See id.* ¶¶ 10-12. The resulting breakdown in what had been a well-functioning private negotiation process, and the irreparable harm to providers

that are prevented from entering into fair, market-based agreements, *see id.* ¶¶ 11, 13, is exactly the sort of irreparable harm that a stay can prevent. *See Iowa Utils.*, 109 F.3d at 425 (finding irreparable harm in part based on evidence "that the negotiations preferred by Congress are already breaking down due to the competitors' desire to hold out for the FCC's proxy rates").

D. There Is No Countervailing Harm and the Public Interest Supports a Stay

Far from harming third parties, as Petitioners have explained, a stay of the reclassification decision and the Internet conduct standard (but not, as discussed, the three prophylactic "bright-line" rules that initially animated this proceeding) will, in fact, prevent substantial harm to consumers in the form of reduced investment in broadband deployment and stifled innovation in services. In addition, a temporary stay while the reviewing court conducts an expedited review is particularly warranted here because, while imposing Title II regulation will create enormous immediate harm and uncertainty, the Commission has pointed to no urgent, imminent threat to other parties that makes this new regulation necessary. *See, e.g.*, *Washington Metro.*, 559 F.2d at 843 (granting stay when agency had not found that maintaining status quo would be contrary to the public interest). On the contrary, Chairman Wheeler himself has recently analogized the Order to an insurance policy designed to protect against low-probability events. *See* Remarks of Tom Wheeler, Chairman, FCC, at 7 (Mar. 27, 2015), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0330/DOC-332731A1.pdf; *see also* O'Rielly Dissent, Order at 387 (the FCC "is establishing an entire Title II/net neutrality regime to protect against hypothetical harms").

Thus, staying for a short time the reclassification decision and the Commission's Internet conduct standard would risk no third-party harm and would instead promote the public interest in

stability and predictability in these critical markets. *See Iowa Utils.*, 109 F.3d at 427 ("A stay would preserve the continuity and stability of [the existing] regulatory system.").

CONCLUSION

The Commission should grant a stay of the Order pending judicial review insofar as it subjects broadband Internet access service and the interconnection of IP networks to Title II and imposes a new Internet conduct standard.

Dated: May 1, 2015

Respectfully submitted,

/s/ *Michael K. Kellogg**

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TABLE OF EXHIBITS

Exhibit 1	Declaration of Nathan Stooke, CEO of Wisper ISP, Inc.
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Exhibit 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF NATHAN STOOKE IN SUPPORT OF MOTION FOR A STAY

1. My name is Nathan Stooke and I am CEO/Founder of Wisper ISP, Inc. I have been the CEO since I started Wisper 11 years ago. I make this declaration in support of a Motion for a Stay of the rules adopted in the FCC's "Open Internet" proceeding.

2. Wisper provides broadband Internet access service to 8,000 residential and business customers within a 120-mile radius around St. Louis, Missouri. The majority of our customers are located in Southern Illinois. Currently, Wisper provides that service as an information service that is not subject to regulation under Title II of the Communications Act as a common carrier service.

3. I am not a lawyer, but I understand that, if the FCC's March 12, 2015 Open Internet Order takes effect, Wisper's broadband Internet access service will, for the first time, become subject to common carrier regulation under Title II. In addition, Wisper's broadband Internet access service will be subject to the FCC's newly announced Internet conduct standard. For the reasons explained below, imposition of Title II obligations on Wisper would result in substantial and irreparable harm to our company.

4. Wisper currently has no in-house legal department. If the portions of the Order that subject broadband Internet access service to Title II take effect, Wisper will need to increase

substantially its expenditures on legal services. Wisper would need to hire at least two in-house lawyers and administrators as well as retain outside counsel in order to ensure Wisper's compliance with the obligations imposed by Title II. This would include, among other things, determining whether Wisper's existing practices with respect to its broadband Internet access service complies with the just and reasonable requirements of 47 U.S.C. §§ 201 and 202, the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255. Currently, none of these requirements apply to Wisper's broadband services.

5. In addition, Wisper would need to incur substantial expenditures on legal services to evaluate whether Wisper's current or future business practices violate the FCC's newly announced Internet conduct standard. As I understand it, this standard prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136. The FCC, however, has not provided meaningful guidance as to how this standard will be applied. Rather, the FCC has provided a "non-exhaustive list" of seven factors that it will use when implementing that standard on a case-by-case basis. *See id.* ¶¶ 138-145. This makes it particularly difficult for Wisper to know in advance whether any particular current or potential future practice will be viewed as consistent with the Internet conduct standard and will necessitate substantial expenditures on legal services to evaluate the risks that Wisper faces in continuing its existing service offerings and developing new offerings.

6. While Wisper does not currently employ usage-based billing like utilities, water, electricity and sewer do, we would like to reserve the right to institute such a plan if we believe it makes commercial sense. Wisper would be forced to change its business model to delay or slow expansion so that it could afford to litigate whether current such practices comply with the rules. Many opportunities require Wisper to provide a new service very quickly, in a matter of hours and days, and as a small company, we are able to take advantage of such opportunities. The need to ensure that our service is not subject to case-by-case litigation or after-the-fact decision could effectively render Wisper's competitive advantage null and void. Customers are requesting these services from Wisper because our larger competitors cannot provide service in the time frame the customers need.

7. The additional costs that the FCC's Order would impose on implementing new plans or services (or changing existing plans or services) are excessive when compared to the other operating costs of Wisper. We estimate that compliance costs of these "simple" regulations would constitute over 10% of Wisper's operating budget. This is a huge burden for Wisper and would unfairly affect our ability to maintain our business model because that 10% comes off the bottom line with no revenue attached to it.

8. Wisper will also have to make significant expenditures to comply with section 222's privacy obligations. Currently, Wisper does not have any restriction on how it uses information about its broadband customers for marketing purposes that might be considered "CPNI." Thus, for example, Wisper uses information about customers' broadband Internet service to market its interconnected VoIP service. While the FCC has provided detailed guidance as to how section 222(c) applies in the telephone context, it declined to provide such guidance in the Order. At a minimum, Wisper will need to retain legal counsel, at considerable

expense, to determine the extent to which its current use of broadband-related CPNI may be prohibited by section 222(c) and to evaluate what system and operational changes might need to be made to bring Wisper's marketing practices into conformance with the requirements of that section. Alternatively, Wisper may need to cease its existing use of broadband-related CPNI until the FCC issues meaningful guidance as to the applicable requirements. We believe that option will harm Wisper's bottom line and deprive broadband customers of other services they may value and that would save them money.

9. Similar concerns exist with regard to section 222(a). As I understand it, the FCC has interpreted this provision to protect against unauthorized disclosure of CPNI. Wisper takes its customers' privacy seriously, and has systems in place to safeguard its customers' information. I understand that, in the telephone context, the FCC has detailed regulations governing practices for authenticating individuals who request potentially protected information (whether by telephone, email or on-line) as well as requirements for notifying customers when account changes are made and processes for notifying law enforcement and customers of a data breach. Again, the FCC has not provided clear guidance as to how these restrictions apply in the broadband context. For this reason too, Wisper will have to incur substantial expenses to reevaluate its existing privacy practices to determine if they comply with how the FCC and the courts are likely to ultimately interpret the requirements of section 222.

10. As I understand it, all of the Title II obligations imposed by the Order can be potentially enforced by a complaint before the FCC or a lawsuit in federal court, including a class action. These additional compliance and potential litigation costs are material to Wisper and will prohibit us from spending money on other priorities, including expanding and improving service. It costs the party filing the class action lawsuit nothing to add companies to

the suit. Wisper has only about 8,000 retail customers. Wisper cannot afford to engage in costly litigation regarding the vague requirements imposed by the FCC's Order. Such a suit against Wisper would most likely force us to close the company.

11. Finally, the general level of uncertainty created by the FCC's Order will have a material impact on our company's day-to-day business decisions. It is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will find aspects of the planned service unlawful. The uncertainty in how the FCC will apply the legacy Title II regime and the novel Internet conduct standard to broadband Internet access service providers will hamper Wisper's efforts in expanding its broadband service area, improving its broadband service, and rolling out new broadband product offerings. Investment decisions for capital expenditures that will improve the reach and quality of our network take into account the expected returns from the capital investment. Wisper is a privately funded company that 8,000 customers depend on. Our capital investments are always in the best interest of our customers, however, to continue to serve them, we must stay in business.

12. The added costs and uncertainty the Order would impose if the Title II regime and Internet conduct standard were to take effect would have a direct impact on Wisper's investment decisions, by reducing the potential return on new investments. At a minimum, the Order creates substantial uncertainty as to the returns that will be realized on any expenditures for new or expanded services. Projects that were viable investments under the existing regulatory regime may, after the Order, no longer provide sufficient returns to justify the investment.

13. Because of the risks and costs imposed by the Order, Wisper has cut back on its plans to expand service. For example, our plan was to triple the number of new base stations we would deploy each month to provide fixed wireless broadband to new customers in new areas

near our existing coverage area. As a result of the Order, and the uncertainty surrounding it, we have put those plans on hold. Likewise, we have tabled discussions for larger acquisitions that we had planned to pursue because we are uncomfortable with the risks and costs the FCC's new rules will impose on us.

14. Currently Wisper needs only three customers to justify deploying Internet service to a new area. Conservatively assuming that the Order's Title II and Internet conduct standard requirements will increase our operating costs by 10-15%, Wisper will need five customers to justify our investment, a 66% increase in customers needed leaving large numbers of customers without service. The FCC might also find that the way Wisper provides service to these customers does not meet the FCC's standards. The added costs could force Wisper to uninstall rather than upgrade these customers. Under the current regime, Wisper is able to deploy quickly and reach the maximum numbers of customers desperate for Internet access service. Adding a new layer of rules and regulations will likely make large percentages of potential projects uneconomical.

15. Moreover, consumers will be directly harmed by such reduced investments, as they will be left with slower broadband speeds, less dense coverage, and absence of expansion into new areas. Wisper spends almost all of its revenue on growing and upgrading its service. Consequently, the increased operating and compliance costs that Wisper would incur as a result of the Order would reduce our growth and upgrade budgets, which in turn will directly affect our customers and our ability to attract new customers. While the rules are intended to help customers, the reverse will happen, as Wisper will be forced to divert its resources away from upgrading its network and expanding service to rural customers. Wisper prides itself in having a 96% customer satisfaction rating and we strongly believe that by redirecting Wisper's resources,

our customer service will suffer. This, along with previously viable investments that are no longer an option due to the Order, will result in lost customers and reduced customer goodwill.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Nathan T Stooke

Nathan Stooke

April 29, 2015

Exhibit 2

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF L. ELIZABETH BOWLES
IN SUPPORT OF MOTION FOR A STAY

1. My name is Elizabeth Bowles and I am President and Chairman of the Board of Aristotle Inc ("Aristotle"). Aristotle is a privately-funded company that was founded in 1995, and I have been President since 2002. I make this declaration in support of a Motion for a Stay of the rules adopted in the FCC's "Open Internet" proceeding. Aristotle is a member of the Wireless Internet Service Providers Association and I have served on its board for five years, three as its President.

2. Aristotle provides broadband Internet access service to nearly 800 residential and business customers in Little Rock, Arkansas, and the surrounding rural areas. Aristotle has been voted "Best Internet Service Provider" and "Best Customer Service" in public opinion polls. Aristotle currently provides that service as an information service not subject to regulation under Title II of the Communications Act as a common carrier service.

3. If the FCC's March 12, 2015 Open Internet Order takes effect, Aristotle's broadband Internet access service will, for the first time, become subject to common carrier regulation under Title II. In addition, Aristotle's broadband Internet access service will be subject to the FCC's newly-announced Internet conduct standard. For the reasons explained

below, imposition of Title II obligations on Aristotle would result in substantial and irreparable harm to our company.

4. Aristotle currently has no in-house legal department. Although I am an attorney, I am solely responsible for Aristotle's business development and strategic direction. If the portions of the Order that subject broadband Internet access service to Title II take effect, Aristotle will necessarily have to increase its expenditures on legal services. At a minimum, Aristotle would have to hire an in-house lawyer or retain outside counsel in order to ensure that Aristotle is complying with Title II obligations. This would include, among other things, determining whether Aristotle's existing practices with respect to its broadband Internet access service complies with the just and reasonable requirements of 47 U.S.C. §§ 201 and 202, the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255. Currently, none of these requirements apply to Aristotle's broadband services.

5. In addition, Aristotle would incur substantial expenditures on legal services to evaluate whether Aristotle's current or future business practices violate the FCC's newly announced Internet conduct standard. This standard prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136. However, the FCC has not provided meaningful guidance as to how this standard will be applied, choosing instead to recite a "non-exhaustive list" of seven factors that it will use when implementing that standard on a case-by-case basis. *See id.* ¶¶ 138-145. This creates uncertainty and makes it particularly difficult for

Aristotle to know in advance whether any particular current or potential future practice will be viewed as consistent with the Internet conduct standard and will necessitate substantial expenditures on legal services to evaluate the risks faced by Aristotle in continuing its existing service offerings and developing new offerings.

6. One of the advantages of our broadband service is speed to deployment versus our competitors. Often communities or residents in unserved and underserved areas will request that Aristotle deploy its network precisely because our competitors cannot or will not deploy within a reasonable timeframe. In a Title II regime combined with the new Internet conduct standard, Aristotle will have to delay or slow expansion in order to litigate whether such current practices comply with the rules. This will result in a real and direct loss to Aristotle of business opportunities, especially where speed to deployment is a factor in obtaining customers. Subjecting Aristotle to case-by-case litigation or, even worse, an after-the-fact decision, will require Aristotle to modify its business plan to be more conservative, further slowing the deployment into these areas.

7. Aristotle's margins are not large, and the compliance costs of these "simple" regulations alone—legal costs that will have no revenue benefit—will substantially reduce, if not completely eliminate, any profit Aristotle currently realizes from its broadband network. This financial burden would be even higher should Aristotle have to engage in litigation, possibly rendering that business line unprofitable. In that event, Aristotle would have to shut down its broadband Internet division entirely, which would, in turn, deprive those customers for whom we are the only available broadband provider of broadband access. This comprises roughly 60% of our customer base.

8. In addition to the above-mentioned compliance burden, Aristotle will have to make significant expenditures to comply with section 222's privacy obligations. While Aristotle does not share customer information with third parties and does not allow third parties to market to its customer base, we do inform our customers of new Aristotle offerings and service lines available to them. Although the FCC has provided detailed guidance as to how section 222(c) applies to telephones, it declined to provide such guidance in the Order. At a minimum, Aristotle will need to retain legal counsel, at considerable expense, to determine the extent to which its current use of broadband-related CPNI may be prohibited by section 222(c) and to evaluate what changes might need to be made to bring Aristotle's marketing practices into conformance with the requirements of that section. Alternatively, Aristotle may need to cease its existing use of broadband-related CPNI until the FCC issues meaningful guidance as to the applicable requirements. That option will cut off one of Aristotle's avenues to increase the average revenue per user, having a direct and negative effect on Aristotle's bottom line.

9. Similar concerns exist with regard to section 222(a). The FCC has interpreted this provision to protect against unauthorized disclosure of CPNI. Aristotle takes its customers' privacy seriously, and has systems in place to safeguard its customers' information. However, in the context of telephone services, the FCC has detailed regulations governing practices for authenticating individuals who request potentially protected information (whether by telephone, email or on-line) as well as requirements for notifying customers when account changes are made and processes for notifying law enforcement and customers of a data breach. But again, in the current Order, the FCC has not provided clear guidance as to how these restrictions apply in the broadband context. For this reason also, Aristotle will have to incur substantial expenses to

reevaluate its existing privacy practices to determine if they comply with how the FCC and the courts are likely to ultimately interpret the requirements of section 222.

10. All of the Title II obligations imposed by the Order can be potentially enforced by a complaint before the FCC or a lawsuit in federal court, including through class action. These additional compliance and potential litigation costs are material to Aristotle and will hinder us in spending money on other priorities, including expanding and improving service. A party filing a class action lawsuit pays nothing to add additional companies to its suit, but Aristotle has fewer than 800 retail customers. Aristotle cannot afford to engage in costly litigation regarding the vague requirements imposed by the FCC's Order. The costs of defense of a class action lawsuit against Aristotle might result in our having to close the company.

11. Finally, the general level of uncertainty created by the FCC's Order will have a material impact on our company's day-to-day business decisions. It is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will find aspects of the planned service unlawful. The uncertainty in how the FCC will apply the legacy Title II regime and the novel Internet conduct standard to broadband Internet access service providers will hamper Aristotle's efforts in expanding its broadband service area, improving its broadband service, and rolling out new broadband product offerings. Currently, investment decisions for capital expenditures to improve the reach and quality of our network take into account the expected returns from the capital investment. While Aristotle feels its obligation to serve unserved and underserved areas of Aristotle heavily, we do have to show a return for our investment. The uncertainty created by the application of Title II and its incumbent and vague regulation will make it nearly impossible to assess that capital investment. Aristotle is a privately-funded small business, and we have a responsibility to our employees and shareholders

in addition to our customers and potential new markets. We cannot responsibly make additional capital investment in an environment where expenses are uncertain and difficult to quantify.

12. The added costs and uncertainty the Order would impose if the Title II regime and Internet conduct standard were to take effect would have a direct impact on Aristotle's investment decisions by reducing the likely return on new investments. At a minimum, the Order creates substantial uncertainty as to the returns that will be realized on any expenditures for new or expanded services. Projects that were viable investments under the existing regulatory regime may, after the Order, no longer provide sufficient returns to justify the investment.

13. Because of the risks and costs imposed by the Order, Aristotle is reassessing its plans to expand our service into unserved areas of rural Arkansas. Until the Order was adopted, it was our intention to triple our customer base by deployment of a redundant fixed wireless network that would cover a three-county area. However, until we understand more fully the impact of the Order, we have pulled back on those plans, scaling back our deployment to three, smaller, communities that abut our existing network. Aristotle is uncomfortable with the risks the FCC's new rules may impose on us and concerned about the expense of complying with those rules.

14. Consumers in rural Arkansas, who currently have no viable options for broadband service other than what Aristotle plans to deploy, will be directly harmed by such reduced investments. They will remain with no or insufficient broadband services, less dense coverage, and limited network expansion to new areas. As a privately-funded entity, Aristotle has grown organically, spending most of its revenue on growing and upgrading its service. It goes without saying that the increased operational and compliance costs Aristotle would incur as a direct result

of the Order would reduce the capital available for growth and network upgrades, which will have a direct effect on our customers, will negatively affect our ability to retain customers, and will hamper the acquisition of new customers. The Aristotle name is well known throughout Arkansas and stands for quality, both in the broadband service we provide and the customer service we offer. Hampering our ability to offer the customer service for which we are known by forcing Aristotle to redirect resources will affect the goodwill we have built over the last 20 years and could result in the loss of customers in addition to harm to Aristotle's reputation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

L. E. Bowles

L. Elizabeth Bowles

April 29, 2015

Exhibit 3

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF KWISP IN SUPPORT OF MOTION FOR A STAY

1. My name is Ken Hohhof, and I am President of Express Dial Internet, Inc. dba KWISP Internet. I have held this position for 12 years and am currently the sole shareholder. I make this declaration in support of Motion for a Stay of the FCC's new "Open Internet" rules.

2. KWISP provides fixed wireless broadband Internet access service to 475 retail customers in rural northern Illinois. The KWISP network has been self-funded, with upgrades and expansions paid when cash flow permits. Currently, KWISP provides that service as an information service that is not subject to regulation under Title II of the Communications Act as a common carrier service. KWISP does not provide any telephone services and has never been regulated under Title II.

3. I am not a lawyer, but I understand that, if the FCC's recent Order takes effect, KWISP's broadband Internet access service will become subject to common carrier regulation under Title II for the first time, as well as to the FCC's newly announced Internet conduct standard.

4. Currently, KWISP has no in-house legal department. If the portions of the Order that subject broadband Internet access service to Title II take effect, I would need to retain outside counsel in order to determine whether KWISP's existing practices with respect to its

broadband Internet access service complies with, among other things, the just and reasonable standards in 47 U.S.C. §§ 201 and 202, the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255. KWISP's current attorney handles incorporation and contract matters, and has no experience in telecom law.

5. Similarly, if the new Internet conduct standards take effect, KWISP would need to hire lawyers to help determine whether current or future business practices violate the FCC's newly announced standard, which prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136. As I understand it, the FCC has provided a "non-exhaustive list" of seven factors that it will use to interpret that standard on a case-by-case basis, but this makes it very difficult to know in advance if any particular current or potential future practice is likely to be permissible. *See id.* ¶¶ 138-145.

6. Also, any user or edge provider, large or small, could file a complaint before the FCC or go to federal court alleging, potentially as part of a class action, that KWISP's broadband practices do not comply with the Title II statutory provisions or the Internet conduct standard. For a small company like KWISP that is entirely self-funded, additional compliance and litigation costs would be significant and would detract from KWISP's ability to invest our scarce financial resources on expanding and improving service to rural communities where the need for broadband access service is greatest. It is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will find aspects of our planned service unlawful.

7. The added cost and the substantial uncertainty in how the FCC and courts will apply both the legacy Title II regime and the novel Internet conduct standard to broadband Internet access service providers will have a direct impact on KWISP's investment decisions, by reducing the likely return on new investments. Therefore, projects that were viable investments under the regime that existed before the Order will no longer provide the necessary returns to justify the investment.

8. The fixed wireless business is very infrastructure intensive. Rapid adoption of video streaming, smartphones, and similar uses of the Internet require increased speeds and more network capacity. Equipment life cycle was once 8-10 years but is now 3-5 years before a "forklift upgrade" where all tower sectors, customer radios, and backhaul radios must be replaced to keep up with the demand for higher speeds and usage.

9. In the past two years and continuing this year, KWISP has implemented complete upgrades at our three largest towers. We also equipped four new tower sites to fill in coverage gaps and one new tower site to expand coverage. At completion of this project in mid-2015, we will have eight towers and 375 customers on new, high capacity equipment capable of speeds up to our highest offered tier of 20/5. This will leave seven towers and 100 customers on older equipment with limited capacity and speed. These customers can only receive up to our 3/1 Mbps speed tier, and we are not accepting new customers on some sectors that are at capacity, otherwise everyone would see their speeds drop at peak usage times. KWISP has devoted all free cash flow to the upgrades, plus financing around $60,000 of equipment on three-year equipment leases. Any additional expenses for legal and regulatory costs will take funds away from upgrade projects. Additional legal and financial risk will make it more difficult for us to obtain financing and insurance. Strategically, we will need to operate more conservatively by

setting aside funds for possible lawsuits, and not financing any more equipment once the current leases are paid off.

10. Legal costs incurred to review our operating procedures, customer contracts, and marketing materials take away funds that would otherwise be spent on upgrades and expansion. If rules change after court review, we will incur additional legal costs. A stay would at least keep these costs to a minimum.

11. The possibility of fines or civil lawsuits based on uncertain interpretation of the new rules pose a different potential for harm to a small business such as KWISP. It is difficult to quantify the risk. Is this a thousand dollar risk, or a million dollar risk? The scenario we most fear is that a customer or prospective customer misunderstands the Open Internet Order to mean an obligation to provide service, or protection from being disconnected for nonpayment, or price parity with cable Internet in town, or a legal remedy for some grievance that would normally be settled without involving the legal system. For a large broadband provider, defending a lawsuit is a nuisance; for KWISP, it is a substantial problem. We simply do not have the financial or legal resources to defend against a lawsuit, even one that is unfounded or frivolous. We have never had to deal with a lawsuit or even had to consider the risk of one. KWISP would be forced to settle out of court, or close the business, or try to sell the business which would be difficult with a lawsuit pending. We do intend to seek legal counsel for the purpose of rewriting customer facing agreements to the extent possible in order to minimize the potential for such lawsuits. It must be stressed though that the risk for a small business is not that the lawsuit would be successful, but that the costs of defending against such a lawsuit would be more than we could afford.

12. KWISP's customers will suffer from reduced investment, as speed and capacity upgrades are not implemented, and coverage is not expanded. KWISP will also suffer harm through lost customers and the reduced goodwill stemming from investments that would be made but for the uncertainty and costs embodied in the Order.

13. Based on best estimates available at this time, the following projects will have to be delayed at least a year or cancelled entirely. There will also be a ripple effect in future years due to reduced revenue, higher costs, and a more conservative approach to investment in the face of regulatory and financial risk.

a. Upgrade of the remaining seven towers and 100 customers from 3/1 Mbps speeds to 20/5 Mbps and higher speeds will be put on hold. Without capacity upgrades, we will stop accepting new customers at some or all of these towers. As customer usage continue to grow, the towers will become overloaded and even 3/1 Mbps speeds will not be maintained at peak usage times.

b. No additional towers will be equipped for the foreseeable future to expand coverage into unserved/underserved areas, or to fill in holes in our current coverage. Normally we add 3-4 new towers or repeater sites per year.

c. We had planned at least one TV white space experiment in 2015 and had a site picked out. This is now on hold. The intent was not that TVWS would be profitable on its own, but would allow us to serve customers in our coverage area who live in areas with dense trees. Previously we might have used 900 MHz to reach these customers, but this is not feasible due to smartmeter interference, and speeds of only 1 Mbps or less.

d. As usage continues to increase unabated, we need to increase backhaul capacity between towers, and at our upstream connection to the Internet. The more expensive upgrades involving licensed microwave links and fiber will have to be delayed at least a year and implemented at a slower pace than we had planned. The result will be congestion at peak times that will impact all customers, even those served from towers that have been upgraded with higher capacity equipment. It will become necessary to install network management equipment to deal with this congestion in a fair and reasonable manner, unfortunately that cost will further delay other upgrades.

e. In the event of a lawsuit or demand to settle based on the new rules, even if unfounded, abusive or frivolous, it is entirely possible that KWISP would have to close the business and all customers would be forced to alternatives such as satellite or mobile broadband.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Kenneth J. Hohhof

April 30, 2015

Exhibit 4

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF RON SMITH IN SUPPORT OF A STAY

1. I am currently President and CEO at Bluegrass Cellular Inc. I have held this position for twenty-three years and have been with Bluegrass for more than twenty-four years. Bluegrass is a member of CTIA-The Wireless Association. I make this declaration in support of the Motion for a Stay filed by CTIA and other parties.

2. Bluegrass provides wireless broadband Internet access service to over 137,000 retail customers in the Bluegrass Cellular service area. Currently, Bluegrass provides that service as an information service that is not subject to regulation under Title II of the Communications Act as a common carrier service.

3. Although I am not a lawyer, I understand that, if the FCC's recent Order takes effect, Bluegrass's broadband Internet access service will become subject to common carrier regulation under Title II for the first time, as well as to the FCC's newly announced Internet conduct standard.

4. Bluegrass's highest obligations are to its customers, and that includes compliance with all legal and regulatory duties. Despite my thirty-six years in the telecommunications field, and notwithstanding the input of legal counsel, the vagueness of the Order makes it impossible for me to determine what business practices the FCC deems lawful and what practices it deems unlawful with respect to broadband Internet access service.

5. For example, the Order will require that all charges to Bluegrass customers be "just and reasonable" (47 U.S.C. § 201(b)) and that Bluegrass refrain from "unreasonable discrimination in charges" (47 U.S.C. § 202(a)). Bluegrass offers a variety of rate plans to its broadband Internet access service customers, including the ability to purchase a "bucket" of data per month for a fixed amount, subject to an overage charge for exceeding the data cap (i.e, the volume contained in the bucket). Customers can purchase smaller buckets for lesser amounts, or larger buckets for greater amounts, all subject to overage charges that themselves vary depending on the amount of the overage.

6. The Order does not define in any way what constitutes "just and reasonable" charges or "unreasonable discrimination in charges." Nor does it address the legality of data caps. Instead, my company's charges and billing practices will be subject to review after the fact, when a complaint is filed by a supposedly aggrieved party. I believe that Bluegrass customers get a good value and are fairly treated, but I do not know how the FCC will adjudicate a rate complaint because it has failed to identify any standards or factors it will use to determine whether charges are "just and reasonable" or whether they constitute "unreasonable discrimination." While Bluegrass must consider a number of factors in setting rates, we have no idea how to factor in the Order's requirements described above, notwithstanding the fact that Bluegrass could face significant financial and other liability for violating those requirements.

7. Specifically with respect to data caps and similar billing arrangements, the FCC announced a new standard that prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to

end users." Order ¶ 136. The FCC identifies a "non-exhaustive list" of seven factors that it will use when implementing that standard on a case-by-case basis. *See id.* ¶¶ 138-145. I believe that data caps provide a good value for Bluegrass's customers but it is impossible to know whether the FCC will find such plans consistent with its rules, given that the FCC has yet to explain how the identified factors will be weighed or to identify all of the factors that it will take into account in making that determination. As with rate plans generally, I am concerned about exposure to liability under the FCC's rules.

8. The FCC's failure to explain my company's legal obligations extends not just to the standards in 47 U.S.C. §§ 201 and 202, but also to the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255.

9. If the Order takes effect, any user or edge provider could file a complaint before the FCC or a lawsuit in federal court claiming, potentially as part of a class action, that Bluegrass's practices with respect to its broadband Internet access service violate one of those statutory provisions or the Internet conduct standard. Any compliance and potential litigation costs will hinder us in spending money on other priorities, including expanding and improving service.

10. The general uncertainty about how the FCC will wield the regulatory authority it has claimed under Title II, including the Internet conduct standard, will chill decision-making for my company. Like any business, the regulatory environment directly affects my company's capital-related decisions. In the Order, the FCC has converted my business from one largely unregulated by the FCC into one that is subject to numerous new, undefined duties, as explained above. It will be difficult to invest in new or innovative products or business plans without knowing whether the FCC will find aspects of the planned service unlawful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Ron Smith
President and CEO
Bluegrass Cellular Inc.

April 27, 2015

Exhibit 5

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF CLAY STEWART IN SUPPORT OF MOTION FOR A STAY

1. I am currently the CEO at SCS Broadband. I have held this position for eight years and I am the founder of SCS Broadband which was started as Stewart Computer Services in 1986. I make this declaration in support of the Motion for a Stay of "Open Internet" rules adopted by the FCC .

2. SCS Broadband provides broadband Internet access service to over 800 rural homes and businesses in Nelson, Amherst, Buckingham, Appomattox and Albemarle counties of Virginia. Our customers include local government offices, fire stations, U.S. Post Offices, private schools, manufacturing, restaurants, breweries, wineries, and many small businesses. We are in the process of expanding into five more rural counties in Virginia. Currently, SCS Broadband provides that service as an information service that is not subject to regulation under Title II of the Communications Act as a common carrier service.

3. Although I am not a lawyer, I understand that, if the FCC's recent Order takes effect, SCS Broadband Internet access service will, for the first time, become subject to common carrier regulation under Title II and the FCC's newly announced Internet conduct standard.

4. SCS Broadband has no legal department, and uses outside legal assistance on an *ad hoc* basis. If the portions of the Order that subject broadband Internet access service to Title

II take effect, I would need bring in additional legal expertise in order to determine whether SCS Broadband existing practices with respect to its broadband Internet access service complies with, among other things, the just and reasonable standards in 47 U.S.C. §§ 201 and 202, the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255.

5. Further, I would need to hire lawyers to help determine whether SCS Broadband's current or future business practices violate the FCC's newly announced Internet conduct standard, which prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136. The FCC's "non-exhaustive list" of seven factors that it will use to implement that standard on a case-by-case basis makes it especially difficult to determine in advance whether any particular current or potential future practice is likely to pass muster under this standard. *See id.* ¶¶ 138-145.

6. SCS Broadband is considering, for instance, providing packages which may, or may not, be affected by this Order. To determine whether these new packages comply with the new Open Internet Order, SCS Broadband will incur additional expenses for attorneys and will need to delay adopting such plan changes. In the fixed wireless broadband industry, it has been a historical fact that the market has driven changes in services, and service packages often, sometimes multiple changes within each year. If each time package changes have to be evaluated for legal compliance with the FCC's Order, then this could become restrictive in maintaining marketability. For instance, we are considering marketing one package at a given

speed with priority packet processing, public IP and 24/7 support, while at a different price, market a package at same speed, standard packet processing, no public IP and 5/9 support. This meets the market demand for two diverse customer types, one being a manufacturing plant running 24/7 with in-house servers, and the lower cost customer being a home business.

7. Furthermore, if the Order takes effect, any user or edge provider could file a complaint with the FCC or go to federal court asserting, potentially as part of a class action, that SCS Broadband's practices with respect to its broadband Internet access service violate one of those Title II provisions or the Internet conduct standard. These additional compliance and potential litigation costs are significant to a small company like SCS Broadband and will cause us to divert scarce financial resources to these costly activities and away from expanding and improving service.

8. The general uncertainty about how the FCC will wield the regulatory authority it has claimed under Title II, including the Internet conduct standard, are also material to my company's decisions. It is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will find aspects of the planned service unlawful. Even now, we are withholding full investments to other rural counties, such as the above plan change for larger customers, until the effect of the Order is clear, or we determine if the additional cost in legal fees warrant such investments.

9. The added cost and the substantial uncertainty in how the FCC and courts will apply both the legacy Title II regime and the novel Internet conduct standard to broadband Internet access service providers will therefore prevent SCS Broadband from expanding our broadband service area, improving its current broadband service and rolling out new broadband product offerings. The decision whether to spend the capital necessary to deploy broadband

service in a new areas, improve existing broadband service facilities, or develop and roll out a new product service offering depends on the expected returns from the capital investment.

10. The added costs and uncertainty the Order would impose if the Title II regime and Internet conduct standard were to take effect would have a direct impact on SCS Broadband's investment decisions, by reducing the likely return on new investments. This Order will, and already is, affecting investment groups from which SCS Broadband solicits further investment funds. The current and future uncertainly of the FCC Order has already impacted SCS Broadband directly on obtaining further outside investment. SCS Broadband management, and outside investment groups see projects that were viable investments under the regime that existed before the Order will no longer provide the necessary returns to justify the investment.

11. SCS Broadband has been meeting with Administrations and Supervisors with five new counties gravely needing our services for thousands of homes and businesses. Every one of these officials is working with us to provide infrastructure at a cost that is feasible for SCS Broadband to invest in the labor and equipment required for these expansions. Additional legal and labor costs that will be generated from the FCC Order will place every one of these plans in jeopardy simply by making the return on investment impossible, or not worthwhile accomplishing.

12. Consumers will be directly harmed by these reduced investments, as they will be left with inferior Internet access for business and educational functions. SCS Broadband will also be harmed through the lost customers and the reduced customer goodwill that would result from investments that would have been viable but for the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Clay Stewart

April 29, 2015

Exhibit 6

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF FORBES H. MERCY IN SUPPORT OF MOTION FOR A STAY

1. My name is Forbes H. Mercy, and I am currently President of Washington Broadband, Inc. ("WABB") I have held this position, and have been with WABB for more than 14 years, and an additional eight years introducing our community to the Internet as dial-up. I make this declaration in support of a Motion for a Stay of the FCC's "Open Internet" rules.

2. WABB provides fixed wireless broadband Internet access service to approximately 1,400 retail customers in Yakima County, Washington. Currently, WABB provides that service as an information service that is not subject to regulation under Title II of the Communications Act as a common carrier service, and is considered a small business.

3. I am not a lawyer, but it has been explained to me that, if the FCC's recent Order takes effect, WABB's broadband Internet access service will become subject to common carrier regulation under Title II for the first time, as well as to the FCC's newly announced Internet conduct standard.

4. WABB has no in-house legal department. If the portions of the Order that subject broadband Internet access service to Title II become effective, WABB would need to retain outside counsel in order to determine whether our existing practices with respect to our broadband Internet access service complies with, among other things, the just and reasonable

standards in 47 U.S.C. §§ 201 and 202, the privacy requirements in 47 U.S.C. § 222, and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255. Likewise, if the portions of the Order that create the new Internet conduct standard take effect, I would need to hire lawyers to help determine whether WABB's current or future business practices violate the FCC's newly announced standard, which prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] our end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or any edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136.

5. The Order includes a "non-exhaustive list" of seven factors that the FCC will use when implementing that standard on a case-by-case basis, making it especially difficult to determine in advance whether any particular current or potential future practice is likely to pass muster under this standard. *See id.* ¶¶ 138-145. Unlike some of our competitors, WABB has never raised prices, uses only unlimited data plans, and charges cancelation fees that decline as the contract period progresses without early termination fees. I worry that our honest attempt to provide stable pricing and service with a local responsiveness will be undermined by the FCC, which may outlaw certain practices at the expense of customers who cannot afford increases in fees.

6. Furthermore, if the Order takes effect, I understand that any user or edge provider, including some of the world's largest companies, could file a complaint before the FCC or a lawsuit in federal court claiming, potentially as part of a class action, that WABB's practices with respect to its broadband Internet access service violate one of those statutory provisions or the Internet conduct standard. These additional compliance and potential litigation costs are

material to WABB and will stifle our ability to spend money on other priorities, such as expanding and improving service in areas that may have only slow satellite broadband.

7. As I understand it, while the FCC will, for the first time, impose section 222(a) privacy obligations on WABB, the FCC did not adopt specific rules governing how that statute would apply to broadband Internet access services. I further understand the FCC has in the past imposed significant penalties on providers that, in the FCC's view, failed to protect adequately customer information. WABB is committed to protecting its customers' privacy, and has systems in place to do so. If the Order becomes effective, however, WABB will have to spend considerable sums to determine, as best it can, the extent to which its current customer information systems satisfy the requirements of section 222(a) with respect to our broadband services in the absence of specific regulations and, potentially, have to make substantial and costly modification to its systems.

8. I further understand that WABB will be subject, for the first time, to the restrictions found in section 222(c) regarding Customer Proprietary Network Information, or CPNI. As is the case with section 222(a), I understand the FCC made section 222(c) applicable to WABB's broadband Internet access services but did not provide detailed guidance on how those requirements would apply in this context. As a result, WABB will need to engage legal counsel to determine the extent to which its current use of broadband-related CPNI may be prohibited by section 222(c) and will need to determine what systems and operational practices must be put in place to ensure our marketing practices comply with the statute. Given these costs and the uncertainty as to how section 222(c) applies here, WABB will also need to consider deferring use of broadband-related CPNI altogether until the FCC provides sufficient guidance as to the applicable requirements. That alternative, however, eliminates revenues that WABB

currently earns from use of broadband CPNI in marketing other services, such as our interconnected VoIP service, and deprives broadband customers of information regarding a service they may want to purchase.

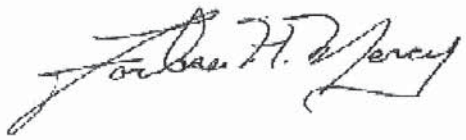
9. The general uncertainty about how the FCC will exercise the broad authority it has claimed under Title II, including the Internet conduct standard, are also material to WABB's business decisions. It is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will deem aspects of the planned service unlawful.

10. The new costs and uncertainty the Order would impose if Title II provisions and the Internet conduct standard were to apply would have a direct impact on WABB's investment decisions. WABB has aggressively constructed new towers that cover small areas based on a return on investment model of light density return. Because of the compliance costs and enforcement and litigation risks described above, WABB has decided to scale back expansion to new, unserved or underserved areas and focus on more urban/suburban areas where return on investment will be faster and greater. This violates our own promise to serve our entire community, including those areas that are most in need, makes WABB less profitable, deprives those who expected faster Internet, and slows our ability to extend uniform service. In addition, any slow-down of expansion gives unfair advantage to large operators who can afford the potential legal requirements and who will continue to expand into areas where we could have provided service and badly-needed competition.

11. Consumers will be directly harmed by our changed business model. WABB would be unwilling to serve areas that it would otherwise want to serve because we will be forced to sacrifice investment in broadband expansion to new areas for legal and compliance costs. WABB will also be harmed through the lost customers, lost revenue and reduced

customer goodwill that would result from investments that would have been viable but for the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Forbes H. Mercy

April 30, 2015

Exhibit 7

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF JOSH ZUERNER IN SUPPORT OF MOTION FOR A STAY

1. My name is Josh Zuerner and I am currently the President and CEO at Joink LLC ("Joink"). I have held this position since November 30, 2012 and have been with Joink for more than eleven (11) years. I make this declaration in support of a Motion for a Stay of new "Open Internet" rules the FCC adopted. Joink is a member of the Wireless Internet Service Providers Association.

2. Joink is a small business that employs about 40 people and provides broadband Internet access service to approximately 2,500 customers in Terre Haute, Indiana and the surrounding rural communities using a combination of unlicensed wireless spectrum, DSL and fiber optics. Rural communities served include Annapolis, Illinois; Bicknell, Indiana; Blackhawk, Indiana; Bloomfield, Indiana; Brazil, Indiana; Carlisle, Illinois; Casey, Illinois; Clay City, Indiana; Clinton, Indiana; Darwin, Illinois; Dugger, Indiana; Farmersburg, Indiana; Fontanet, Indiana; Grandview, Illinois; Hutsonville, Illinois; Hymera, Indiana; Jasonville, Indiana; Linton, Indiana; Marshall, Illinois; Martinsville, Illinois; Palestine, Illinois; Robinson, Illinois; Rockville, Indiana; Shelburn, Indiana; and Sullivan, Indiana. Starting in March of 2014, we began constructing a fiber optic network that now spans just shy of 65,000 feet with an additional 35,000 feet currently under construction. This network has the potential to serve over

five hundred (500) small to medium businesses and thousands of residential subscribers. The vast majority of our outside plant construction has been constructed by our own employees. Our entire fixed wireless network was built by our staff. The creation and maintenance of these networks has allowed us to grow our labor force and mentor and develop technical talent in an otherwise IT-talent deprived market place.

3. Currently, we provide these Internet access services as an "information service" that is not subject to regulation under Title II of the Communications Act as a common carrier service. In addition to residential and business customers, Joink serves hospitals, medical clinics, schools, and municipalities. Services provided to customers range in capacity from 1 Mbps to 500 Mbps.

4. After discussion with membership and leadership of WISPA, including WISPA's legal counsel, my understanding is that if the FCC's recent Order takes effect, our broadband Internet access service will – for the first time – become subject to common carrier regulation under Title II, as well as to the FCC's newly announced Internet conduct standard. If the Order goes into effect, I believe our company will suffer significant and irreparable harm.

5. Currently, Joink has no in-house legal department. While we have been fortunate to establish and maintain quality professional service relationships in the legal community, such legal services have been justified in accordance with investment in growth in our business. If the Order takes effect, we will have to substantially increase our legal expenditures to determine whether our existing and future practices with respect to its broadband Internet access service complies with Title II. These Title II obligations include the requirement that the rates for our broadband services be "just and reasonable" as well as requirements related to the privacy of certain data concerning our customers.

6. In addition, if the Order takes effect, Joink will need to retain legal counsel to evaluate whether our current or future business practices violate the FCC's newly announced standard, which prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136. The FCC did not provide meaningful guidance on how this "standard" will be applied in practice. Instead, the Order identified a "non-exhaustive list" of seven factors that the FCC will consider on a case-by-case basis. *See id.* ¶¶ 138-145. This lack of clear guidance makes it problematic for our company to determine in advance whether any particular current or potential future practice is likely to pass muster under this standard.

7. One of the major contributing factors in Joink's growth and success has been our ability to rapidly respond to customer's needs. We routinely bring to market new packages, products, and services in response to customer requests. I'm very concerned that subjecting our company to Title II rules will hamper our ability to be so responsive. The added burden of ensuring new plan compliance with Title II and any associated professional legal services risk of not only pricing us out of the market but also no longer being responsive to customer needs. A larger organization can retain personnel (in house counsel, lobbyists, subject matter experts, etc.) with knowledge of the full panoply of applicable Title II requirements and be able to amortize those costs over a significant customer base. That is simply not feasible for a provider the size of Joink.

8. The section 222 privacy obligations that would be imposed for the first time on our company by the Order provide a vivid illustration of this concern. Again, while I am not a

lawyer, I understand the FCC has given a broad reading to the obligations imposed by section 222(a) but did not adopt specific rules governing how that statute would apply to broadband Internet access services. I further understand the FCC has imposed significant penalties on providers that, in the FCC's view, failed to protect adequately customer information.

9. We are committed to protecting its customers' privacy, and have systems in place to do so. But those systems were not specifically developed to comply with the requirements of Title II. If the Order becomes effective, our company will have to spend considerable sums to determine, as best it can, the extent to which its current customer information systems satisfy the requirements of section 222(a) in the absence of specific regulations and, potentially, have to make substantial and costly modification to its systems.

10. Joink will also be subject, for the first time, to the restrictions found in section 222(c). As an information service provider, Joink currently does not have any restriction on how it uses information about its broadband customers for marketing purposes that might be considered "CPNI." As is the case with section 222(a), I understand the FCC in the Order made section 222(c) applicable to Joink's broadband Internet access services but without providing detailed guidance as to the specific requirements that apply in this context. Thus, we will need to engage legal counsel to determine the extent to which its current use of broadband-related CPNI may be prohibited by section 222(c) and we will also need undertake determine what systems and operational practices must be put in place to ensure our marketing practices comply with the statute. Given these costs and the uncertainty as to how section 222(c) applies here, Joink will also need to consider whether it should simply cease use of broadband-related CPNI until the FCC issues meaningful guidance as to the applicable requirements. That alternative, however, comes with its own considerable costs: it eliminates the revenues that Joink currently earns from

use of broadband CPNI in marketing other services and deprives broadband customers of information regarding that service that they may value.

11. The potential harms from application of Title II (and the Internet conduct standard) to Joink's broadband services are attenuated by the fact that any user or edge provider is entitled to enforce those requirements by filing a complaint before the FCC or a lawsuit in federal court (including a class action lawsuit). Indeed, such suits could be brought by large edge providers whose market capitalization dwarfs Joink's. These additional compliance and potential litigation costs are material to Joink and will hinder us in spending money on other priorities, including expanding and improving service. It concerns me tremendously that those with deeper pockets can use broadly applied subjective standards to drag entities such as Joink into litigation or to force us to forego profitable business practices that can benefit our customers to avoid potentially crippling litigation expenses.

12. The general uncertainty about how the FCC will exercise the regulatory authority it has claimed under Title II, including the Internet conduct standard, are also material to Joink's investment decisions. To say the least, it is very difficult to invest in new or innovative products or business plans without knowing whether the FCC will find aspects of the planned service unlawful and whether providing those services will cause Joink to incur liability. The decision whether to spend the capital necessary to deploy broadband service in a new area, facilities necessary to improve existing broadband service and develop and roll out a new product service offering depends on the expected returns from the capital investment. The imposition of broad Title II obligations create an unquantifiable drag on net income which materially affects our ability to re-invest earnings back into the business and also increases the risk of developing new service offerings, because of the potential for liability under the new uncertain regulatory regime

that applies to broadband. Therefore, projects that were viable investments when our services were treated as "information services," such as our recent investment in fiber deployment, may no longer provide the necessary returns to justify the investment. Of even greater concern, if the FCC finds that Joink's existing (or future) broadband services do not satisfy the requirements of Title II or the FCC's Internet access service, it may require the company to terminate the service or renegotiate the terms of the service.

13. More specifically, we are currently exploring investing in areas not easily funded through commercial bank loans, such as fiber to the home. Our fiber asset borders many residential communities in our marketplace and it provides us with a competitive advantage in affordably servicing these homes. Uncertainties surrounding the Order will cause us to slow this investment, or not make it at all, because we will perceive a greater requirement for maintenance of working capital to address unquantifiable burdens imposed by these new rules.

14. Consumers will be directly harmed by these reduced investments, as they will be left with slower broadband speeds. Joink will also be harmed through the lost customers and the reduced customer good will that would result from investments that would have been viable but for the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Josh Zuerner

April 30, 2015

Exhibit 8

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF SILVER STAR COMMUNICATIONS IN SUPPORT OF A STAY

1. I am currently President and Chief Operating Officer at Silver Star Communications. I have held this position for four years and have been with Silver Star Communications for more than 26 years. Silver Star Communications is a member of the United States Telecom Association ("USTelecom"). I make this declaration in support of the Petition for Stay filed by USTelecom and other parties.

2. Silver Star Communications provides wireline broadband Internet access service to approximately 7,400 retail broadband customers in western Wyoming and eastern Idaho.

3. I am not an attorney, but I am advised and understand that Silver Star Communications presently provides its broadband Internet access service as an information service, meaning that it is not subject to what is known as "common carrier" regulation under Title II of the federal Communications Act. I am further advised that, under the FCC's recent "Open Internet" Order, that will change. I understand that the Order will subject Silver Star Communications' broadband Internet access service to new and existing Title II rules and requirements that have never applied to such service. I further understand that the Order will subject this service to a new Internet conduct standard. If they are permitted to take effect, these changes will irreparably harm Silver Star Communications.

4. Silver Star Communications takes very seriously its obligation to comply with the legal and regulatory duties imposed by federal law. But Silver Star Communications is at a loss in attempting to plan and arrange for compliance with the Order. The Order fails to provide any meaningful guidance on how the FCC will exercise its newfound authority over the broadband services offered by Silver Star Communications. Without this information, Silver Star Communications will be hamstrung in making day-to-day decisions about how to run its business. And the uncertainty caused by the Order will reduce Silver Star Communications' incentives to invest in new products and services.

5. The chilling effects of this uncertainty are compounded by the fact that, once the Order takes effect, private parties will be able to file complaints with the FCC and federal lawsuits (including, I understand, class action lawsuits) accusing Silver Star Communications of violating the amorphous standards established by the Order. Defending against such charges would not only be costly to Silver Star Communications — further diverting resources away from new investments — but also would exacerbate the negative impact on its business decisions.

6. An example of the Order's ambiguity is found in the requirements (which will now apply to broadband Internet access service by virtue of Title II) that all charges to Silver Star Communications customers be "just and reasonable" (47 U.S.C. § 201(b)) and that Silver Star Communications refrain from "unreasonable discrimination in charges" (47 U.S.C. § 202(a)). The Order does not define what constitutes a "just and reasonable" charge for broadband Internet access service, what kind of discrimination is "unreasonable," or what standards will be used to apply these requirements.

7. Instead, the Order defers those questions to after-the-fact review, after a complaint has been filed against a particular charge or practice. Silver Star Communications

believes its charges are just, reasonable, and non-discriminatory, and that its practices adhere to those standards as well. But Silver Star Communications has no way of knowing how the FCC or a court will adjudicate disputes concerning those standards or what factors it might apply to judge a broadband provider's compliance. In the meantime, Silver Star Communications will be forced to set its rates and policies without the benefit of this critical information, and with the prospect of significant financial and other penalties if Silver Star Communications guesses wrong.

8. Similarly, the Order announces a new Internet conduct standard that prohibits any practice that "unreasonably interfere[s] with or unreasonably disadvantage[s] (i) end users' ability to select, access, and use broadband Internet access service of the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." Order ¶ 136. As with the standards discussed above, the Order provides no clear guidance on how the FCC will apply that standard. The FCC instead plans to decide individual cases based on a "non-exhaustive list" of factors. *See id.* ¶¶ 138-145. Combined with the prospect of other, as-yet-unstated factors, this list provides no meaningful guidance to Silver Star Communications in conducting its business. Silver Star Communications strongly believes that its practices are reasonable and benefit consumers, but without knowing how those practices will be judged, Silver Star Communications is concerned about the potential for liability in this area as well.

9. These are only a few key examples of the issues created by the Order. The ambiguity of Silver Star Communications' obligations permeates the Order. The FCC has failed to explain, for example, how it will apply the privacy requirements in 47 U.S.C. § 222 and the disability access requirements in 47 U.S.C. §§ 225, 251(a), and 255.

10. As explained above, the substantial uncertainty generated by the Order, coupled with the prospect of significant penalties for noncompliance, will chill decision-making for Silver Star Communications and inhibit its investment decisions. In the Order, the FCC has converted my business from one largely unregulated by the FCC into one that is subject to numerous new, undefined duties. As Silver Star Communications enters into this unfamiliar territory, it will be difficult to invest in new or innovative products or business plans without any comfort that the FCC will ultimately deem any given aspect of the plans lawful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Ron B. McCue

Ron B. McCue

April 30, 2015

Exhibit 9

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF BRIAN COLLINS, THOMAS F. HUGHES AND MATTHEW T. HAYMONS IN SUPPORT OF MOTION FOR A STAY

1. I, Brian Collins, am currently Vice President-Wireline Consumer Marketing at AT&T. I have held this position for two years and have been employed by AT&T for more than 22 years. I make this declaration in support of the Motion for a Stay. In my capacity as Vice President-Wireline Consumer Marketing, I am responsible for, among other things, how AT&T uses information relating to its consumer broadband Internet access services to market other wireline services to its existing and potential residential customers. I am sponsoring the portions of this declaration that pertain to the impact on residential customers of the limitations on AT&T's outbound marketing programs required by the FCC's reclassification of broadband Internet access and to customer notification costs and procedures.

2. I, Thomas F. Hughes, am currently Vice President-Small Business Marketing at AT&T. I have held this position for six months and have been employed by AT&T for more than 23 years. I make this declaration in support of the Motion for a Stay. In my capacity as Vice President-Small Business Marketing, I am responsible for, among other things, how AT&T uses information relating to its small business broadband Internet access services to market other services to its existing and potential small business customers. I am sponsoring the portions of this declaration that pertain to the impact on small business customers of the limitations on

AT&T's outbound marketing programs required by the FCC's reclassification of broadband Internet access.

3. I, Matthew T. Haymons, am currently Vice President-Mobility Account Management at AT&T. I have held this position for six months and have been employed by AT&T for more than 18 years. I make this declaration in support of the Motion for a Stay. In my capacity as Vice President-Mobility Account Management**,** I am responsible for, among other things, helping to ensure that AT&T's systems keep a proper record of AT&T's customers' CPNI preferences. I am sponsoring the portions of this declaration that pertain to the changes in the systems used to record those preferences that are required by the FCC's reclassification of broadband Internet access.

4. We are not lawyers, but understand that, pursuant to the FCC's Report and Order on Remand, Declaratory Ruling, and Order released in this proceeding on March 12, 2015 and published in the Federal Register on April 13, 2015, broadband Internet access service providers such as AT&T will soon be subject to the requirements of 47 U.S.C. § 222, but not the FCC's existing regulations implementing that section.

5. We further understand that, under section 222(c)(1), absent "approval" from a customer, AT&T may "only use, disclose, or permit access to individually identifiable customer proprietary network information" ("CPNI") in providing "(A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."

6. The FCC's decision to reclassify broadband Internet access services as telecommunications services that are subject to the CPNI marketing restrictions of section 222(c)(1) will harm broadband providers and their customers. As discussed in greater detail

below, for broadband providers, the application of section 222(c)(1) threatens substantial, immediate and irreparable harm through some combination of lost sales, unrecoverable systems redevelopment and other costs, and/or after-the-fact forfeitures or other penalties. For consumers and mass market small business customers, reclassification means less information to inform their choices in a dynamic and rapidly evolving marketplace.

7. As is common practice for service providers in all industries, AT&T strives, where possible, to tailor its marketing and advertising to existing customers to the particular needs of those customers. The purchase of one service, and the particular type of that service the customer has selected, can often be the best gauge of the other services (and types of those services) that may be most useful to the customer and that the customer therefore may be interested in purchasing. In AT&T's experience this can be particularly true of Internet access services, which are subject to enormous variation in technology, throughput speeds, rates, usage allowances, and other terms and characteristics. Quite frequently, a customer that purchases a particular type of broadband service will benefit from a complementary service, of which he or she may not be aware, or a different plan for that service as part of a discounted bundle of services that provides the consumer with the convenience of a single bill, a single installation and a single point of contact for troubleshooting. This is true for all types of broadband Internet access customers, including residential, mobile, and small business customers. Examples of such uses are described below.

8. With regard to residential customers, AT&T uses information about the type of broadband Internet access services its retail customers purchase to market *other* services in ways that benefit both the company and consumers. For example, AT&T uses the fact that a customer has purchased AT&T's broadband service, as well as information regarding the specific type of

technology used to provide that service (*i.e.*, Digital Subscriber Line ("DSL"), Internet Protocol-Digital Subscriber Line ("IP-DSL"), Very High Speed Digital Subscriber Line ("VDSL"), or GigaPower fiber to the home service), to identify customers to whom it will market AT&T's U-Verse video service, because only VDSL and GigaPower provide the high speed transmission that is required to support this service. Similarly, AT&T uses the fact that a customer has purchased an AT&T broadband service with the minimum transmission speeds necessary to support voice conversations to identify potential targets to market its Voice-Over-Internet Protocol ("VoIP") service, which is often less costly and provides more features than traditional telephone service. AT&T also uses the fact that a customer is an AT&T broadband customer to assist its marketing of other AT&T services, such as security services and technical support packages.

9. These types of marketing programs provide substantial consumer benefits. When developing marketing offers for bundled services, AT&T is frequently able to provide offerings that may allow the customer to benefit from discounted pricing by purchasing multiple services, or that provide better service (*e.g.*, higher Internet access speed) for prices comparable to what the consumer was paying. Customers also benefit from a single bill, and a single point of contact for installation and service.

10. AT&T also uses information regarding the type of broadband Internet access service the customer has, the speed of that service, the rate plan (including promotional offerings) and usage patterns, in combination with demographic information, to identify categories of consumers that are likely to value AT&T's various service offerings. This modeling is also used to identify customers who may be at risk of leaving AT&T for a competitor and whose business might be retained through targeted offerings. These retention

offerings can include a wide range of consumer benefits, including free movies, premium services, upgraded equipment, and rate discounts.

11. With regard to mobile customers, AT&T gathers data regarding the extent to which those customers exceed their data allowance in order to offer them wireline broadband services that may better meet their data needs. In particular, AT&T develops offerings tailored to allow such mobile customers to "offload" their data usage to wireline-based services (via Wi-Fi). Such services can provide significant benefits to mobile wireless broadband Internet access service customers that are incurring additional charges because of substantial data usage.

12. And with regard to small business customers, AT&T develops a wide-variety of marketing programs based on the type and speed of the broadband Internet access service they receive. This allows AT&T to identify bundled services offerings that are likely to be of value to the small business customer. In addition to broadband Internet access services, AT&T develops bundled offerings for particular types of small business customers that may include local and long distance voice service, U-Verse video service, wireless data services, and a host of business-focused applications, such as computer technical support, software-based productivity tools, Internet security applications, web hosting, web design and email. AT&T also uses small business mobile usage data to determine whether the business would be a good candidate for Wi-Fi services that would help reduce wireless plan data usage.

13. As with bundled offerings to consumers, these programs can provide significant value to small business customers. They can provide the small business customer an opportunity to reduce the amount it is spending for the individual components of the services bundle or increase the quality of its service while maintaining existing prices. And small businesses can often benefit from a single bill and point of contact for service and installation.

14. AT&T also uses information regarding the type of broadband service, the speed of service, the rate for service and the amount of usage from small business customers to develop predictive models to identify existing small business customers that might be "at risk" because they do not have a service plan that is the best fit for their needs. Based on this modeling, AT&T develops marketing offerings designed to retain customers by offering them greater value and additional capabilities. These offerings can include the type of bundled offerings discussed above, as well as proposals to migrate to newer technology that can support a wider array of services.

15. We understand that similar practices are commonplace throughout the industry. The FCC's reclassification of broadband Internet access service as a "telecommunications service," however, creates enormous uncertainty as to whether these standard practices can continue. It also subjects broadband providers to the risk of substantial liability and enforcement if they guess wrong about how "broadband-related CPNI" can be used, if at all, for marketing purposes. As discussed above, AT&T currently uses in its marketing initiatives information about the technical configuration and type of broadband Internet access service a customer purchases as well as quantity and amount of use, but the FCC might decide this information meets the statutory definition of CPNI. We understand that the FCC has provided detailed guidance as to how section 222(c)(1) should be applied in the telephone context, including whether providers must obtain "opt in" consent from each individual customer prior to using his or her CPNI for marketing purposes (a practice that is frequently infeasible) or may rely upon "opt out" consent, and the specific forms and types of information that must be conveyed to the consumer to meet the requirements of section 222(c)(1). We further understand that substantial liability in enforcement cases often turns on such details.

16. But we understand the FCC has stated that its existing CPNI rules do not apply to broadband Internet access services. We further understand the FCC has provided no guidance to fill the gap and the FCC has not yet even determined what constitutes CPNI from the provision of broadband Internet access service, nor has it explained how carriers may obtain approval for the use of such information, consistent with the requirements of the statute, or whether existing "opt out" consents will apply to broadband customers.

17. The FCC's decision to reclassify broadband Internet access service as a telecommunications service that is subject to section 222(c)(1), coupled with the absence of clarity as to how this provision will apply poses, obvious and severe problems for providers of broadband Internet access services. In the absence of a stay of this provision, AT&T must choose one of several paths going forward, each of which threatens irreparable harm.

18. One path would be for broadband providers to cease using information that might be deemed broadband-related CPNI unless and until the FCC establishes clear rules for implementing section 222(c)(1). This path would clearly harm both consumers and providers. As explained above, AT&T and other broadband Internet providers use that information gained in the course of providing Internet access services to their customers to provide customers with information about AT&T products and services that they are likely to value. Customers will be deprived of the opportunity to learn about how other services tailored to their specific broadband choices may benefit them and be left to make less informed choices if AT&T and other providers cease these targeted marketing efforts because of the potential liability arising from the FCC's ultimate interpretation of section 222(c)(1).

19. This option would also substantially and irreparably harm AT&T. AT&T has estimated that ceasing its existing programs described above that use broadband-related CPNI in

ways that might require customer approval would deprive AT&T of more than $800 million in lost mobile and wireline business *per year*. This figure does not include campaigns that target customers for just broadband upgrade/migration.

20. While AT&T might be able to engage in other types of outbound marketing programs to try to reduce this revenue loss, those programs would be substantially less effective than those that are currently based on broadband-related CPNI and generate over $800 million in revenues. Further, AT&T's analysis was conservative in two important respects. First, it assumed that AT&T's largest competitors will also stop using broadband-related CPNI to market their services. But if they continue to do so after AT&T has stopped, they would have a competitive advantage in the marketplace. Second, it did not account for the fact that other entities that compete with AT&T, but which are not deemed to be telecommunications service providers, including other participants in the Internet economy, would not face the same restrictions on their use of information derived from their customer relationships. Thus, for example, "over-the-top" providers of voice, video and other applications that compete head-to-head with AT&T services included in its bundled service offerings can continue to capture and use customer data without regard to the restrictions imposed by section 222(c)(1).

21. The second option would be for AT&T to cease using broadband-related CPNI temporarily, while it implements processes that reflect its best guesses of how the FCC ultimately will interpret the requirements of section 222(c)(1) as applied to broadband. This would require AT&T to predict, among other things, what information will be deemed broadband-related CPNI and the processes to be followed to obtain customer approval of the use of such information.

22. Implementing these processes would require that AT&T prepare and transmit notices to approximately 46 million retail and small business broadband customers. Customers would have to be given adequate time to respond to these notices, and AT&T would have to have the ability to track and give effect to those responses. In particular, AT&T would need to have databases and systems in place to ensure that it did not use the broadband-related CPNI of broadband customers that "opted-out."

23. AT&T's systems currently track CPNI elections for voice services but do not track those elections for broadband Internet access service subscribers. AT&T would need to modify more than 40 applications and supporting systems to integrate broadband Internet access CPNI preferences into these systems.

24. AT&T has estimated that ceasing its existing programs described above that use broadband-related CPNI in ways that might require customer approval for that time period would deprive AT&T of approximately $400 million in lost mobile and wireline business revenues. Again, while AT&T might be able to engage in other types of outbound marketing programs to try to reduce this revenue loss, those programs would be substantially less effective than those that are currently based on broadband-related CPNI. Further, AT&T's estimates did not account for the possibility that AT&T's competitors continue to use broadband-related CPNI while AT&T has stopped, which would likely increase AT&T's loss of sales and existing customers.

25. In addition to lost sales and customers, AT&T would incur substantial, unrecoverable costs of making these systems changes and sending the notices to customers. AT&T estimates further that it would cost a minimum of $3 million to send out the 46 million notices (using the most efficient combination of available methods, including billing inserts, email notifications, and only when necessary, direct mail notifications), plus $10-15 million for

the system changes described above. That estimate is based on time and materials costs to send notifications to more than 46 million AT&T broadband customers and to make the systems changes described above.

26. The harm presented by this option would be compounded by the possibility that the broadband CPNI rules the FCC has promised to issue at some indeterminate future date may require that notices be different in form or content, and/or that processes for obtaining customer consent (*i.e.*, opt-out versus opt-in) be different in whole or part from what AT&T assumed. If this occurs, AT&T could be required to implement additional systems changes and incur additional costs sending *another* set of notices to consumers. This need for duplicative, inconsistent notices and, potentially, for further systems changes also would be extremely confusing to customers. And AT&T would also, of course, be potentially subject to liability for failing to correctly guess the content of the FCC's future rules.

27. The systems changes and customer notices would all be for naught if the FCC's reclassification decision ultimately is overturned, rendering section 222(c)(1) inapplicable. In that circumstance, however, it would likely be infeasible for AT&T to put the genie back in the bottle. In particular, having informed customers pursuant to section 222(c)(1) that they may restrict AT&T's use of their broadband information (potentially twice), it would not be feasible for AT&T to decline to honor customer elections that were made as a result of those notices.

28. The third option available to AT&T is to assume that, in the absence of specific rules, section 222(c)(1) cannot be implemented and will not be enforced. Or, relatedly, AT&T could assume that existing opt-out consents cover broadband Internet access services. Under this option, AT&T would continue its marketing as described above (at least to the extent it has an opt-out consent). This option would expose AT&T to the possibility of lawsuits (including

potentially class action lawsuits) and FCC sanctions. In this regard, we are aware of a recent FCC decision asserting authority to impose a $9 *billion* forfeiture, which the FCC, exercising its "discretion," reduced to $10 million, on a small company for allegedly violating section 222 under standards first announced in the FCC order imposing the fine. *See Notice of Apparent Liability for Forfeiture, TerraCom, Inc. and YourTel America, Inc.*, 29 FCC Rcd 13325, ¶¶ 18, 30 (2014). Given the much larger number of AT&T customers potentially affected here, AT&T could potentially be subject to much larger penalties if the FCC were to determine its marketing practices violate section 222(c)(1).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Brian Collins

April 29, 2015

Thomas F. Hughes

April __, 2015

Matthew T. Haymons

April __, 2015

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Brian Collins

April __, 2015

Thomas F. Hughes

April 30, 2015

Matthew T. Haymons

April __, 2015

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____
Brian Collins

April ___, 2015

_____
Thomas F. Hughes

April ___, 2015

Matthew T. Haymons
Matthew T. Haymons

April 30, 2015

Exhibit 10

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20544

In the Matter of	
Protecting and Promoting the Open Internet	GN Docket No. 14-28

DECLARATION OF PIETER POLL IN SUPPORT OF MOTION TO STAY

I. QUALIFICATIONS

1. My name is Pieter Poll and I am currently Senior Vice President of Network Planning for CenturyLink. I have held that position since April 2014, and in that position I am responsible for CenturyLink's local, national and international network planning. Prior to that time, I held various positions at CenturyLink and its predecessor companies, including Chief Technology Officer and Senior Vice President of National Network Planning and Engineering. The organizations I have led have been responsible for AS209 peering since the inception of AS209. The matters recited in this Declaration are based on my personal knowledge, information and belief, and if called to testify, I could and would testify competently to the same effect.

II. THE FCC'S ORDER WILL INEVITABLY DISRUPT THE MARKETPLACE FOR INTERNET BACKBONE SERVICES.

2. The purpose of this declaration is to explain the impact of the Commission's recent "Open Internet" Order on the exchange of Internet traffic between Internet backbone providers. I first provide background on how Internet traffic has historically been exchanged between Internet backbone providers. I then describe how the Order's imposition of common carrier regulation on the exchange of Internet traffic will inevitably disrupt the currently well-functioning market for Internet backbone services.

3. *The Internet Interconnection Marketplace Today.* The Internet is comprised of more than 40,000 individual "networks," and these interconnected networks form the Internet. Numerous providers own and operate Internet backbone networks. Some of these entities also offer retail Internet access service to customers as Internet Service Providers or "ISPs." ISPs' networks are interconnected to other providers' Internet backbone networks, either by the ISP's own Internet backbone facilities (as in CenturyLink's case) or through direct interconnection with one or more Internet backbone networks. The interconnections between and among ISPs, on the one hand, and Internet backbone networks, on the other hand, allow customers of one ISP to access Internet content at locations served by another ISP.

4. Internet backbone providers and other Internet companies exchange traffic under a variety of commercially negotiated arrangements. In all cases, however, companies obtain these arrangements for *compensation*—either one pays negotiated rates to the other or they pay for services *in kind* by exchanging roughly equivalent amounts of traffic within an agreed-upon range.

5. More specifically, CenturyLink owns and operates Internet backbone facilities and has "peering" arrangements with over 40 Internet backbone providers. Peering is a private

commercial arrangement under which two "peer" Internet backbone providers connect and exchange traffic. Each peer provides the other with access only to its own customers – not to the entire Internet.

6. Although peering arrangements are often "settlement-free," in the sense that the two parties typically do not exchange monetary payments, peering is not "free." These arrangements are barter transactions under which each peer network agrees to exchange roughly equivalent amounts of traffic within a negotiated range and to comply with certain other metrics (relating, for example, to traffic volumes and the number of points at which they will exchange traffic). When the ratio of traffic exchanged between the parties is roughly equivalent (and other criteria are met), these relationships are economically and mutually beneficial to both parties because they enable the parties to avoid the cost of billing each other for transporting and terminating equivalent traffic. The industry norm, however, is that if traffic becomes unbalanced, other types of paid arrangements are more appropriate.

7. Companies that want to reach the customers that CenturyLink serves as an ISP do not have to interconnect directly with CenturyLink. A company seeking to deliver traffic to and from CenturyLink's network can also choose to enter into a "transit" arrangement with one of CenturyLink's peers (or another provider that offers transmit to the CenturyLink network), which would deliver that company's content to CenturyLink's network over its peering links with CenturyLink. Generally speaking, in a transit arrangement, the originator (*e.g.*, a content provider) pays "transit" fees to an Internet backbone provider to deliver the traffic to another location on the Internet (*e.g.*, an Internet access service provider or its end user customer).

8. The arrangements described above are very common in the marketplace, and each of CenturyLink's peers interconnect with CenturyLink at up to 10 different peering locations in

the U.S. (and others abroad) and CenturyLink manages approximately 250-plus points of network ingress. Until now, these arrangements have been negotiated and agreed upon in a purely commercial context, without any regulatory involvement. This is the framework that gave rise to the Internet as it exists today.

9. *Negotiations Since the Order.* In the wake of the Commission's March 12, 2015 Order, certain of CenturyLink's peering partners that, unlike CenturyLink, do not themselves offer mass-market broadband Internet access service are seeking to substantially modify their peering arrangements with CenturyLink. During the past few years, some of CenturyLink's peering partners have changed their business focus to serving content-heavy websites and have massively increased the amount of traffic they are sending to CenturyLink, creating a substantial imbalance in traffic. Indeed, for some of CenturyLink's peering partners, the traffic imbalance has been significant and greatly in excess of the balance of traffic ratio policy reflected in CenturyLink's published Settlement Free Peering Policy [http://www.centurylink.com/legal/peering_na.html] for substantial periods (*i.e.*, the peer sends to CenturyLink significantly greater traffic than CenturyLink sends to that peer). This imbalance increases the cost to CenturyLink, since CenturyLink must carry that traffic over its network to the ultimate destination.

10. Some of CenturyLink's peers are now demanding in ongoing negotiations that CenturyLink agree to peering settlement-free, regardless of the balance of traffic, and to perform network upgrades to accommodate new traffic even when the traffic exceeds the ratios specified in CenturyLink's Settlement Free Peering Policy. Specifically, these peers have already demanded in negotiations with CenturyLink that CenturyLink agree to implement costly upgrades to its network to ensure that CenturyLink's network can handle the disproportionately

large volumes of traffic these companies seek to send to CenturyLink's network. This "augmentation" would require CenturyLink to construct and maintain costly circuits to be used to allow the peer to send more traffic to CenturyLink's backbone facilities (and thereby increasing further traffic imbalances). One of these peers has also indicated in these negotiations that, if CenturyLink does not provide the augmented interconnection they desire, the peer will initiate an enforcement action at the FCC rather than agree to the sort of arrangements that have been standard in the industry for the last two decades. And, they have indicated that they believe that the FCC will implement the Order (specifically, the Order's extension of standards contained in Sections 201 and 202 of the Act to the traffic exchange context) as requiring ISPs to accede to their demands. Additionally, another peer of CenturyLink's has indicated in public statements that they plan to demand the same result via a future complaint action to the FCC. And, it is my understanding that other Internet backbone providers are being subjected to identical arguments and threats.

11. Thus, absent a stay of the Commission's Order pending appeal, the Order threatens to disrupt not only CenturyLink's negotiations with its peering partners, making it impossible for CenturyLink to negotiate reasonable interconnection arrangements, but indeed the entire marketplace for such services. Backbone providers will not accede to demands for mandatory, settlement-free augmentation and expanded interconnection and do not believe the Order requires that. But in the wake of the Commission's Order, their peering partners are now insisting on free augmentation and expanded interconnection.

12. The peering partners have indicated that, rather than enter into the type of commercial agreements that are common in the industry today, they will seek to "enforce" their

"rights" with the Commission, which will enmesh CenturyLink and other providers, not to mention the FCC, in costly and burdensome litigation.

13. In short, the Commission's Order is already disrupting the marketplace for Internet backbone services and impeding CenturyLink's and other providers' ability to negotiate reasonable interconnection arrangements with Internet companies. Due solely to the effect of the Commission's Order on the behavior of market participants, CenturyLink will lose opportunities to enter into standard, fair agreements and those lost opportunities can never be recreated by any judicial remedy.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 30, 2015.

Pieter Poll

Senior Vice President of Network Planning for CenturyLink

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of May 2015, the foregoing Joint Petition of USTelecom, CTIA, AT&T, WISPA, and CenturyLink for Stay was served via electronic mail on the following persons:

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/s/ *Michael K. Kellogg*
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