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 WILLIAM D. BAUER

DECLARATION OF WILLIAM D. BAUER,
CEO OF WINDBREAK CABLE

I, William D. Bauer, hereby state as follows:

1. I am President and CEO of WinDBreak Cable ("WinDBreak").

2. WinDBreak is a small broadband Internet access service and cable television provider based in Gering, Nebraska. Founded in 1987, WinDBreak serves largely rural areas in the Nebraska panhandle and eastern Wyoming. It has cable systems in Harrison, Lyman, and Oshkosh, Nebraska, as well as in Pine Bluffs and Guernsey, Wyoming.

3. WinDBreak's five cable systems offer broadband Internet access and cable television to about 440 total customers. WinDBreak, through its affiliate InterTECH, provides services to other small cable operators around the country. WinDBreak provides support to cable operators for configuring and activating new lines when cable Internet service is first installed in a home. WinDBreak does not offer telephone service.

4. WinDBreak has three employees who are primarily involved with its broadband Internet access and cable television service, and ten total employees. None of WinDBreak's employees works solely on regulatory compliance matters.

5. In the past decade, the company has invested over $2 million in these networks, in reliance on the light-touch regulatory framework the FCC has to date applied to broadband Internet access and cable television service. WinDBreak

would not have invested so much money if the industry had been more heavily regulated, and will likely have to reduce its investment now that the FCC has applied heavier regulations to broadband Internet access service.

6. WinDBreak understands that the FCC's Open Internet Order ("Order") reclassified broadband Internet access providers like WinDBreak as common carriers under Title II of the Telecommunications Act of 1934. WinDBreak has never been regulated under Title II and has no experience complying with Title II requirements. WinDBreak's reclassification as a Title II carrier will thus impose significant new burdens on the company. WinDBreak may have to hire additional employees to manage compliance, which will be particularly burdensome given the company's small number of employees and the absence of any employees who work solely on regulatory compliance efforts.

Irreparable Harm from CPNI Requirements

7. WinDBreak understands that the FCC has used its authority to forbear, for now, from applying some regulations implementing Title II to broadband Internet access providers. But the FCC did not forbear from applying 47 U.S.C. § 222, which requires telecommunications providers to protect Customer Proprietary Network Information ("CPNI"). To the extent that forbearance does not entirely exempt WinDBreak from CPNI requirements, requiring compliance with those procedures will harm WinDBreak irreparably.

8. The Order states that §222 imposes a duty on carriers to protect the confidentiality of their customers' CPNI. Order ¶53. To the extent this duty mandates that telecommunications carriers require customers to provide passwords during support calls or photo identification during in-store visits before disclosing CPNI, *see* 47 C.F.R. §64.2010(b), (d), it would impose serious and irreparable harm on small carriers, like WinDBreak, that have strong personal relationships with their customers. Because of WinDBreak's live customer service—rather than an automated call center—and small customer base, WinDBreak's customers develop personal, informal relationships with the company and its staff. We know many, if not most, of our customers by name. Those close customer relationships create loyalty (sometimes called "stickiness") that the company cultivates to ensure a loyal customer base that stays with the company.

9. Mandating that customers provide "authentication"—*e.g.*, passwords or other forms of identification—will irreparably harm these customer relationships. Many customers will view the new procedures as an affront to the close relationship the company has developed with them over the years. Complicated authentication procedures, moreover, will cause many customers to perceive WinDBreak as another faceless company that does not make a significant effort to know and have relationships with its customers. That is especially true for older

customers, who may be skeptical of authentication procedures that require disclosure of personal information.

10. Impairment of close customer relationships may cause WinDBreak to lose customers and market share. WinDBreak's customers and its partners' customers choose their broadband Internet access and cable television service based not just on price, but also on their personal relationships with the companies. Personal customer relationships are WinDBreak's comparative advantage. Personalized customer service helps WinDBreak attract and retain customers who would otherwise go to larger competitors.

11. Losses of goodwill and customers are irreparable: Relationships that are damaged are hard to repair; goodwill that is lost is hard to retrieve; and winning back customers who switch or discontinue service is a rarity in this industry. There would be no way for WinDBreak to make up for those losses once they are incurred.

12. The Order states that §222 imposes restrictions on carriers' ability to use, disclose, or permit access to customers' CPNI without their consent. Order ¶462. We understand that the FCC has previously interpreted §222 to prohibit disclosing CPNI to partners or contractors when the information may be used for marketing purposes, and has suggested that any sharing of CPNI with partners or contractors may put that information at a heightened risk of disclosure.

Restrictions on such sharing of information with partners or contractors will irreparably harm WinDBreak, which derives significant revenue from partnering with other cable operators to provide services and support.

13. As noted above, WinDBreak offers support services to other cable operators. For example, when an operator first installs cable service in a customer's home, WinDBreak configures the operator's cable equipment to connect to the cable modem in the customer's house. When WinDBreak works with another operator, it configures its database so that technicians at both companies can access customer information, including CPNI. Technicians must log in to access the database. Once logged in, however, they can access individual customer information without further authentication. This sharing of information helps WinDBreak offer seamless support to its partners' customers.

14. To the extent that § 222 restricts how WinDBreak and its partners may share customer CPNI, WinDBreak will have to restructure its partnerships and may lose business. WinDBreak will likely need to renegotiate its contracts with its partners to ensure that all parties comply with new CPNI requirements. For example, to the extent that WinDBreak or its partners may use CPNI for marketing purposes, they will need to obtain customer consent, which may be difficult to secure. If the restrictions on CPNI sharing are too burdensome, WinDBreak's

partners may also start handling customer support on their own instead of working with WinDBreak.

15. WinDBreak will be irreparably harmed by lost opportunities to partner with other operators. Operators that decide to start handling their own support are unlikely to return to a partnership with WinDBreak. And if operators decide not to partner with WinDBreak because of concerns about CPNI rules, the company may never be able to recover those lost opportunities.

16. The FCC emphasized in the Order that § 222 requires carriers to take reasonable precautions to protect CPNI. Order ¶ 53. It also offered, as a warning, the example of a telecommunications carrier that was found in violation of § 222 for failing to put in place security measures for its computer databases containing CPNI. *Id.* Even though WinDBreak has never had any problem keeping customer information safe, § 222 may require WinDBreak to upgrade the security of its computer databases, which will irreparably harm the company.

17. WinDBreak develops its own computer databases to store customer information, and takes a serious approach to protecting that information from hackers and other threats. But the Order leaves WinDBreak uncertain about what specific measures it will have to put in place to comply with § 222. WinDBreak currently has a single, consolidated database that includes each customer's identifying information, such as name, phone number, and service address, as well

as information the FCC might in the future construe as CPNI, such as geographic location, service plan, service level, and bandwidth usage. The company's computer systems present all this information in one place to make it easy to offer customer support and diagnose service problems. If WinDBreak had to isolate CPNI from other data and limit access, WinDBreak would have to undertake significant modifications to its software. New, untested software may result in computer crashes or other bugs. WinDBreak will also have to re-train its users in the new software. That does not merely impose financial harm; it also threatens goodwill. Transitions and revisions to computer systems are always imperfect at first. That may result in reduced service and support quality, not to mention the possibility of new security vulnerabilities. These issues would all erode customer goodwill.

18. Any harm to WinDBreak from upgrading its computer systems would be irreparable. WinDBreak would never be able to recoup the cost of software development. More importantly, if customer service suffers while the computer system is being upgraded, WinDBreak will never be able to recover the lost goodwill.

19. Moving to Title II regulation will also impose irreparable harm to the extent § 222 is construed to prohibit carriers from using CPNI except to provide telecommunications service or related services, or prohibits the use of CPNI for

marketing purposes, except within the same "categories of service" to which a customer is already subscribed. Because the Order leaves so much unclear about what §222 requires of broadband providers, WinDBreak will have to decide between potentially violating the rules and being overcautious about how it markets its services. Imposing these restrictions on WinDBreak will prevent it from efficiently marketing new services that it is planning to deploy.

20. The inability to target marketing to broadband subscribers will be particularly problematic for the communities that WinDBreak services. These small communities often lack local newspapers or radio stations, and inserting ads into cable channels is costly and ineffective (particularly for a smaller company with fewer than 500 customers). Direct mail advertisements to existing customers would be the most efficient way to reach relevant customers.

21. Those forgone marketing opportunities will irreparably harm WinDBreak. The company can never recoup revenues or market share it loses from lost opportunities to sign up customers for new services. It cannot recover the lost revenues that result when customers are reached more slowly, and sign up more slowly, because of such restrictions. And it would be impossible to quantify the impact on its competitive position.

22. WinDBreak currently has no formal policies and procedures for handling CPNI. It will have to develop such policies from scratch and train its

employees to follow them. That may require hiring additional personnel as well as the involvement of legal counsel. Worse still, because the FCC has yet to issue specific rules for how broadband Internet access providers should handle CPNI, the whole endeavor may be a wasted effort. WinDBreak must implement policies now—it cannot risk non-compliance—but may have to put in place entirely new policies when the FCC issues specific requirements. WinDBreak would never be able to recoup the cost of these unnecessary efforts.

23. WinDBreak cannot spread the expenses of those compliance efforts over a large customer base so as to reduce the impact on individual bills. If WinDBreak had to hire just one new employee to manage compliance efforts—to say nothing of new hardware and software—that would require significant increases in the bills of the company's 440 customers. To the extent WinDBreak cannot pass those costs along, the financial harm will be unrecoverable and irreparable. To the extent WinDBreak attempts to pass those expenses through, it will lose some customers. And it may lose many customers to larger competitors who can spread compliance costs among a large base of customers, minimizing any impact on individual bills. Even if WinDBreak were eventually able to lower prices to prior levels, customers who have left once are unlikely to come back.

24. The uncertainty regarding the extent and scope of these prohibitions exacerbates the irreparable harm. Although the FCC has decided to forbear from

certain specific CPNI regulatory requirements, it has also indicated that § 222 itself imposes certain duties in connection with CPNI. Order ¶¶462, 467. The FCC does not specify what requirements are necessary for statutory compliance. WinDBreak would face enormous uncertainty about which rules it must obey and which rules are merely regulatory additions that have been forborne.

25. Any misjudgment by WinDBreak about the statute's requirements could have catastrophic consequences. WinDBreak understands that the FCC can impose large penalties—sometimes millions of dollars—for violations of CPNI rules. WinDBreak also understands that the FCC did not forbear from provisions of Title II that create a private right of action against carriers who violate other provisions of the statute. WinDBreak would face grave risks as a result. Even hiring counsel—which can be prohibitive for a small company—cannot wholly insulate WinDBreak from those risks because there is so much uncertainty about what § 222 requires of broadband Internet access providers.

26. WinDBreak understands that the FCC has decided to forbear from applying other requirements under Title II. But the FCC has created enormous regulatory uncertainty in the process. For example, the Order forbears, "for now," from requiring broadband Internet access providers to contribute to the Universal Service Fund, but does not forbear from applying Title II provisions that presuppose a provider's contributions into the fund. Order ¶¶57-58, 488; *see* 48

U.S.C. §254(h)(1)(A). The FCC also instructs providers to protect customer privacy without giving concrete guidance on how to do so. Order ¶¶462, 467, 468, 470. The resulting patchwork leaves WinDBreak uncertain about its new obligations under Title II, and leaves the door open for the FCC to impose additional obligations and fees in the near future.

27. Uncertainty surrounding the FCC's forbearance from applying certain Title II provisions will further jeopardize WinDBreak's upgrade plans. Upgrades will require substantial upfront capital expenditures. WinDBreak will have to take on debt for the capital expenditures, and commit to servicing it with revenues remaining after paying for operating expenses and overhead, like compliance costs. To the extent that the new Title II rules create uncertainty about future compliance burdens, WinDBreak will have to err on the side of caution before committing to major long-term capital projects.

28. Harm from forgone upgrades and capital projects will be irreparable—for WinDBreak and its customers. For example, if WinDBreak delays rolling out any upgrades, WinDBreak will give up opportunities to win new customers, or entice existing customers to purchase better services. It will never be able to calculate the cost of those forgone opportunities. And many customers—mostly in smaller, rural communities—will be deprived of those services, aggravating the digital divide between them and their urban counterparts.

Irreparable Harm from Increased Pole Attachment Rates

29. WinDBreak understands that neither Nebraska nor Wyoming regulates pole attachment rates at the state level, and that utilities calculate the pole attachment rates WinDBreak pays based on federal formulas. WinDBreak also understands that it currently pays rates based on formulas applicable to "cable services" and that reclassification may cause utilities to apply formulas applicable to "telecommunications services," which may result in higher rates.

30. WinDBreak will be harmed by any increases in pole attachment rates. WinDBreak has pole attachment agreements with Nebraska Public Power Division and Wyoming Rural Electric. As a rural operator, pole attachment fees are a significant expense for WinDBreak. Population densities in rural areas are low, and correspondingly the number of customers served per pole is low. Utilities routinely charge WinDBreak a yearly fee for each pole attachment, and consequently the company pays a higher fee per customer than cable operators who serve more urban areas.

31. Harm to WinDBreak from increased pole attachment fees will be irreparable. WinDBreak must pay any increases—it cannot afford litigation with utilities by withholding fees. If WinDBreak does not pass along increased fees to its customers, WinDBreak will have a difficult time spending even more capital to

properly maintain and repair its network. If WinDBreak does pass along increased fees to its customers, customer goodwill will be eroded.

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

May 1, 2015

William D Bauer

William D. Bauer
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Gering, NE 69341

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

DECLARATION OF RONALD DA SILVA

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I, Ronald da Silva, hereby state as follows:

1. I am Vice President for Network Engineering, Architecture, and Technology at Time Warner Cable Inc. ("TWC"). TWC is a leading provider of broadband Internet access, video, and voice services to residential and business customers in 29 states. In my position at TWC, I am one of the employees with primary responsibility for managing the operation of company's broadband network, ensuring that Internet traffic is transmitted and processed over the network as efficiently and cost-effectively as possible, and negotiating interconnection arrangements with interconnect partners with which TWC exchanges Internet traffic.

2. In that capacity, I have already seen a change in the demands of our negotiating counterparts as the result of the Federal Communications Commission ("FCC")'s recently adopted Order. *See Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (rel. Mar. 12, 2015) ("Order on Review" or "Order"). My interconnect partner counterparts have been emboldened by the Order and are already making onerous demands and engaging in threats that will result in immediate and irreparable harms to TWC.

3. Shortly after the FCC released the text of the Order, Cogent Communications ("Cogent") contacted TWC seeking to renegotiate the parties' interconnection arrangement and proposed terms that Cogent claimed are required under the Order's new "just and reasonable" rubric for ISPs' interconnection practices. These terms include demands that TWC supply additional interconnection ports and make them available to Cogent, and that TWC alone bear the costs associated with adding ports and implementing other network changes required to expand capacity for Cogent. Under such an arrangement, Cogent's traffic-exchange practices would no longer be disciplined by the network costs that its exchange of Internet traffic with TWC creates; as a result, Cogent would have no incentive to establish a collaborative relationship with TWC to exchange traffic and undertake port expansions and capacity upgrades in an efficient manner. Cogent took the position that if TWC refuses to accede to these demands, Cogent will file a complaint with the FCC pursuant to the Order.

4. Prior to the FCC's Order, TWC would have been free to continue negotiating towards a fairer and commercially reasonable outcome, particularly given that the terms Cogent proposed contravene the decades-long industry practice of splitting such costs between the ISP and the interconnecting network provider. TWC also would have been able to walk away from any interconnection relationship if negotiations failed to yield a mutually agreeable arrangement; the

interconnected nature of the Internet obviates the need to have direct connections with every network operator, and indeed it would be inefficient to establish direct connections with *every* network provider that carries Internet traffic.

5. But the Order's extension of Sections 201 and 202 to ISPs' Internet traffic-exchange practices now significantly undercuts TWC's ability to resist these demands, and could even preclude TWC from declining to interconnect with any similarly situated network provider that seeks a direct connection. To begin with, the application of Section 201 creates a compulsion to serve that has never existed before, thus giving current and would-be interconnect partners a greater ability to force TWC to accept inefficient interconnection arrangements. And by subjecting TWC to the threat of complaints alleging that it is engaging in "unjust and unreasonable" interconnection practices, the Order presents TWC with a choice between two alternatives in responding to unfair demands by interconnect partners with which TWC is interested in doing deals, each of which would result in immediate and irreparable harms for TWC and its customers.

6. The first option for TWC would be simply to accede to Cogent's (and similarly situated parties') demands in order to prevent any disruption to the exchange of Internet traffic between the networks and to avoid lengthy and costly litigation over TWC's interconnection practices. But that approach would eliminate incentives for Cogent to exchange Internet traffic with TWC in an

efficient manner and would raise interconnection costs for TWC and its customers. Because these negotiations are ongoing or imminently forthcoming, the harm to TWC's business will be immediate. And because the Order precludes *ISPs* from filing complaints challenging the reasonableness of such terms, *see* Order ¶ 205, these harms would not be remediable if the Order were not stayed.

7. The other alternative would be for TWC to resist Cogent's (and other similarly situated parties') demands, at which point, based on my experience at negotiating with such parties, the interconnect partner would likely seek to increase its leverage by overloading TWC's most utilized and costly ports and degrade the perceived performance of TWC's broadband Internet access service. In particular, in my experience, Cogent and other interconnect partners have consistently resorted to those tactics when TWC has been unwilling to abandon industry-standard practices and provide substantially increased network capacity for out-of-balance traffic flows without any compensation. I believe such conduct is even more likely here, since Cogent has made clear in conversations with TWC that it will file complaints against TWC and other parties that refuse to give into its demands, and I believe it would then try in those proceedings to portray the problems it created as a reason that it should be awarded relief. Indeed, Cogent has publicly announced that it will file complaints or otherwise petition the FCC to require ISPs to "reduce congestion at interconnection points," and will "ask the

[FCC] to take action *as soon as the [O]rder takes effect.*" *See* Kery Murakami, *Cogent To Petition FCC Over Interconnection*, Communications Daily, Apr. 7, 2015, at 2-5 (emphasis added). Therefore, any effort by TWC to resist Cogent's demands almost certainly will be met with immediate and harmful traffic manipulation by Cogent, lost goodwill from customers whose access to the Internet will be impaired, and costly litigation over the "reasonableness" of TWC's interconnection practices. Such harms cannot be remedied through some later monetary award, and the FCC's one-sided complaint regime for interconnection precludes TWC from seeking such a remedy in any event.

8. The harms to TWC's business from these tactics, including the unquantifiable loss of goodwill from TWC's customers whose access to the Internet will be impaired, will be immediate and irreparable. TWC also will be required to devote substantial resources to defending itself against interconnection complaints that arise from these disputes—costs that likewise cannot be recovered if the Order is later struck down.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 1, 2015

Ronald da Silva

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 JENNIFER W. HIGHTOWER

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I, Jennifer W. Hightower hereby state as follows:

1. I am Senior Vice President of Law and Policy and General Counsel at Cox Communications, Inc. ("Cox"). Cox is a broadband communications and entertainment company, providing advanced digital video, Internet, telephone, and home security and automation services over its robust broadband network. In my position as Senior Vice President of Law and Policy and General Counsel, I oversee Cox's compliance, legal operations, litigation, regulatory and privacy affairs, and corporate government affairs. I also advise on policy and strategic initiatives related to Cox's lines of business. Based on my review and analysis of the FCC's Order, as well as my position at Cox, which requires me to have knowledge of Cox's operations and compliance measures, I have gained an understanding of how the measures that the FCC adopted in the Order—including the reclassification of broadband Internet access service as a "telecommunications service" and the regulatory obligations imposed in conjunction with that reclassification—will result in a variety of immediate, irreparable harms to Cox as described below.

2. The FCC's Open Internet Order subjects broadband Internet access service ("BIAS") to an expansive and highly uncertain new regulatory regime. Since Cox began offering BIAS to its customers in 1996, it has done so under a

"light touch" regulatory regime that permitted Cox to build its broadband network and operate its business absent intrusive governmental mandates and restrictions. Cox has invested more than $15 billion in its network over the past 10 years and most recently has begun to deploy 1-Gigabit-per-second residential Internet speeds in certain markets and to double the speeds of the company's most popular broadband tiers for the majority of its customers. Cox's network investment and commitment to broadband has been based in part on the promise of FCC regulators of both major political parties that this "light touch" regime would continue. And it has offered its services on terms responsive to the interests of its customers and the demands of the competitive broadband marketplace, rather than by regulatory fiat.

3. If the FCC's Order is permitted to go into effect, the impact on Cox's business will be significant. The Order's reclassification of BIAS—from an "information service," lightly regulated under Title I of the Communications Act of 1934, as amended (the "Act"), and Section 706 of the Telecommunications Act of 1996, to a newly defined "telecommunications service," regulated under an ill-conceived hodgepodge of Title II provisions—will cause immediate, significant, and irreparable harm to Cox in a several respects.

4. ***Burdens of Compliance with Sections 201 and 202 and Related Regulatory Requirements.*** The uncertainty surrounding the FCC's new regulatory

regime for BIAS will create significant difficulties for Cox's business. For example, the FCC's assertion that it will now monitor Cox's traffic-exchange agreements with transit providers and content delivery networks ("CDNs") under Sections 201 and 202 of the Act is particularly troubling. Order ¶¶ 194-206. As the Order acknowledges, these arrangements are essential to providing broadband Internet access to Cox's customers. They are also complex and highly technical agreements that the FCC itself notes it lacks the experience to fully understand. *Id.* ¶ 202. And yet the Order creates an immediate requirement that Cox refrain from "engaging in unjust and unreasonable practices," while providing no indication of what that might mean in this context. *See id.* ¶ 203. To make matters worse, the Order applies that standard to broadband providers only and not to the other party to these agreements between sophisticated, commercial entities.

5. The one-sided and vague nature of these obligations will immediately impede Cox's ability to move forward with its interconnection objectives. Cox, as a smaller Internet service provider ("ISP"), already has very limited negotiating leverage with large edge providers or intermediaries for Internet traffic exchange. The uncertainty created by the new rules will widen this gap by permitting such entities, which are not subject to the Section 201 and 202 standards of reasonableness, to threaten lengthy, costly, and uncertain complaint proceedings unless Cox accepts all of their terms—no matter how egregious. While Cox

believes its interconnection policies are reasonable and nondiscriminatory, the Order contains so much subjectivity that Cox can have no assurance that the FCC or others will view its policies and objectives the same way. At the very least, rather than focusing solely on entering into agreements that benefit our customers, Cox will be forced to weigh the risk of this uncertainty with each negotiation.

6. ***Burdens of Compliance with Section 222.*** Cox will be required to devote significant time and resources to establish new policies and procedures and to train personnel to comply with its new obligations under Section 222 of the Act. Section 222 imposes a general duty on all telecommunication carriers "to protect the confidentiality of [all] proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers"; imposes certain specific restrictions on the use—including for marketing purposes—of "customer proprietary network information" ("CPNI") without customer approval; and requires telecommunications carriers to disclose CPNI to "any person designated by the customer" upon the customer's request. 47 U.S.C. § 222. The Order forbears from applying the FCC's implementing regulations for Section 222 but "decline[s] to forbear from applying [S]ection 222" itself. Order ¶ 462.

7. There is considerable uncertainty as to what processes will be required under the statute. The FCC has interpreted these statutory provisions broadly in the telephone context, and may well apply the statute in a similarly expansive

manner to broadband service even absent the forborn-from rules. At a minimum, Cox will be required to evaluate its current processes for authenticating individuals who contact Cox via phone, online, or in retail locations to obtain BIAS-related customer data to determine whether it is protecting customer information using processes that specifically comply with the requirements of Section 222. *See* 47 C.F.R. § 64.2010; *see also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 64 (2007) (indicating that compliance with this rule also is one of the "minimum requirements" to comply with *statutory* obligations under Section 222). Cox also will be forced to evaluate all of its contracts with vendors that come into contact with BIAS-related customer data to ensure that the contracts provide sufficient protection to comply with the requirements of Section 222. In some cases, renegotiation of the contracts likely will be required.

8. Moreover, if the Order is not stayed, Cox may have to quickly adjust its business practices. Section 222 defines CPNI as "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the

customer solely by virtue of the carrier-customer relationship." 47 U.S.C. § 222(h)(1)(A). "Except as required by law or with the approval of the customer," a telecommunications carrier may "use, disclose, or permit access" to "individually identifiable" CPNI only in its provision of (1) "the telecommunications service from which such information is derived," or (2) "services necessary to, or used in, the provision of such telecommunications services." *Id.* § 222(c)(1).

9. In the voice context, the FCC has concluded that "the best interpretation" of Section 222(c)(1) affords carriers the right to use CPNI for marketing related offerings within their customers' existing service, but does not permit the use of CPNI to market "categories of service" to which its customers do not already subscribe. *See Implementation of the Telecommunications Act of 1996*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 ¶ 35 (1998). Without further guidance from the FCC, Cox must decide whether to apply this "best interpretation" of Section 222(c)(1) to the BIAS context. Doing so, however, would require Cox to impose new restrictions on the use of CPNI, and to create processes to ensure that the data will not be used in marketing without appropriate customer consent—for example, targeting its BIAS-only subscribers for offers of telephone or cable television service, since the "type" of telecommunications service a customer subscribes to (here, BIAS-only service) is included in the statutory definition of CPNI. Cox's existing customer notices

and processes may need to be quickly changed to cover BIAS services, at great cost and effort to Cox.

10. This situation is exacerbated by the absence of any safe harbor, which means that even conduct that is consistent with the voice rules may be deemed insufficient with respect to broadband. Cox therefore can either wait to seek customer approval for what may be newly prohibited marketing practices until the FCC specifies an approval method for doing so (and thus forgo these practices until then) or it can implement new notice and approval procedures at substantial costs only to risk the FCC's finding those procedures to be inadequate in the future.

11. ***Burdens of Compliance with Sections 225, 255, and 251(a)(2).*** Cox similarly will incur significant burdens adapting its policies and procedures to comply with new obligations under Section 225, 255, and 251(a)(2) of the Act. Section 225 addresses "telecommunications relay services" ("TRS") which provide the ability for individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to engage in communications "in a manner that is functionally equivalent to the ability of hearing individuals without a speech disability to communicate using voice communications. 47 U.S.C. § 225(a)(3). It requires the FCC to "ensure that interstate and intrastate telecommunications relay services are available . . . to hearing-impaired and speech-impaired individuals in the United

States." 47 U.S.C. § 225(b)(1). Video Relay Service ("VRS") for hearing impaired/deaf customers could potentially consume large amounts of bandwidth. Nevertheless, the Order declined to forbear from applying Section 225 to broadband providers for fear that the providers' otherwise neutral network management practices "could have an adverse effect" on TRS services that rely on broadband Internet access service, Order ¶ 468, but provided no guidance to broadband providers on how to avoid such a result. Cox thus has been forced to evaluate its current *neutral* network management practices in an effort to determine whether they might "adverse[ly] effect" TRS, Internet TRS, and VRS over its network. And Cox's efforts to optimize its network will be significantly impeded by these ambiguous requirements going forward.

12. Sections 255 and 251(a)(2) of the Act and the accompanying regulations require telecommunications service providers to make their services accessible to individuals with disabilities, whenever "readily achievable," 47 U.S.C. § 255(c), and prohibit providers from installing any new "network features, functions, or capabilities that do not comply with the guidelines and standards established under [S]ection 255," 47 U.S.C. § 251(a)(2). As the Order acknowledges, the requirements imposed by the FCC under these provisions exceed the existing regulation of broadband providers under the Twenty-First Century Communications and Video Accessibility Act of 2010 to ensure that

individual with disabilities may utilize advanced communication services. *See* Order ¶ 473-74. To meet its regulatory requirements, Cox will need to hire additional accessibility subject matter experts in addition to deploying new accessibility technologies, the costs of which cannot easily be recouped if the Order is vacated.

13. ***Fees, Taxes, and Related Burdens Resulting from the FCC's Order.*** The Order's reclassification of BIAS as a "telecommunications service" also will cause Cox irreparable harms related to demands for and payment of a variety of new or increased fees and taxes, including higher pole attachment fees, state and local taxes, franchise fees, and state regulatory fees.

14. *Pole Attachment Agreements.* Cox has entered into approximately 244 pole attachment agreements with public utilities. Pursuant to these agreements, Cox is permitted to add attachments to utility poles in order to deliver cable service and related non-telecommunications services to its customers. The FCC and, in some instances, the States have long possessed regulatory authority over these agreements. *See* 47 U.S.C. § 224(f)(1) (requiring utilities to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it"); 47 U.S.C. § 224(b)(1) (granting the FCC the authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and

conditions are just and reasonable" where a State does not do so). The Order's reclassification of BIAS will harm Cox with respect to these agreements in two ways.

15. First, FCC rules require Cox to "notify pole owners upon offering telecommunications services." 47 C.F.R. § 1.1403(e). At a minimum, if the Order is not stayed, Cox's legal staff will be required to review each of its 244 pole agreements and prepare potentially hundreds of such notices to utilities. Moreover, many pole attachment agreements contain specialized telecommunications notice requirements, which will be triggered automatically by reclassification. Cox will be required to devote many hours of in-house staff time, hire outside counsel, and incur the substantial expense of reviewing each agreement and taking the required follow up actions. These costs will not be recoverable if Order is ultimately overturned on judicial review.

16. Second, reclassification is likely to subject Cox to higher rates for its pole attachments. Section 224 of the Act provides different formulas for calculating "just and reasonable" rates for pole attachments for "cable service" than for "telecommunications services"; rates for "telecommunications services" are permitted to be higher. *Compare* 47 U.S.C.§ 224(d) (cable service rate formula), *with* 47 U.S.C. § 224(e) (telecommunications services rate formula). Reclassification could permit many of the utilities with whom Cox has agreements

to seek to renegotiate our rates on terms favorable to the utilities. Based on past experience, Cox expects utilities to attempt to do so at the earliest opportunity.

17. Once the utility pole owners begin requesting these higher rates, Cox has two options, both equally detrimental to Cox's business strategy. First, Cox could pay the increased pole rates and then sue for refunds if the Order is ultimately vacated. We would expect the utility companies to contest Cox's entitlement to a refund under this scenario, and, at a minimum, Cox could be required to pursue costly utility-by-utility litigation to challenge the increased pole fees and with no guarantee of ultimate success against hundreds of utilities across its service footprint. Second, and in the alternative, Cox could engage in self-help by withholding payment until judicial review of the Order is complete. Utility pole owners typically respond to this kind of practice, however, by refusing to process new attachment permits until all amounts are paid in full. This outcome would significantly impede Cox's deployment of broadband facilities.

18. Finally, Cox operates in six states that regulate pole attachments pursuant to its own state laws and regulations. In addition to the efforts described above, reclassification will require Cox to analyze the applicable state laws and regulations in these jurisdictions to determine the impact of the reclassification on pole attachments in those states as well.

19. *State and Local Taxes.* Cox also will be at risk of facing new state and local taxes as a direct result of the FCC's reclassification decision in the Order. Currently, Cox is generally assessed locally for property taxes as a provider of cable service. Over the last several years, authorities in states served by Cox have signaled a willingness to change the methodology for assessing property taxes by treating cable companies more like traditional telephone companies, which are subject to centralized assessments that result in higher property taxes. The FCC's decision to reclassify BIAS as a telecommunications service now paves the way for centralized assessment of property taxes for cable broadband service in many states. Although the Order asserts that the Internet Tax Freedom Act ("ITFA") prohibits states and localities from imposing "[t]axes on Internet access," Order ¶ 430, it ignores the fact that the ITFA does not apply to taxes "upon or measured by net income, capital stock, net worth, or property value." 47 U.S.C. § 151 note, ITFA, § 1105(10)(B). Accordingly, IFTA will not preclude the application of new state property taxes stemming from the FCC's reclassification decision—taxes that will be impracticable to recover should the Order be overturned on appeal.

20. *Franchise Agreements.* The Order's reclassification of broadband Internet access may require Cox to acquire or modify franchise agreements with State and localities all across the country. Cox holds franchises to operate "cable system[s]" throughout its footprint, but is concerned that reclassification may

prompt the relevant States and localities to require new or modified franchise agreements in order to permit Cox to offer a telecommunications service, even though the functional service being provided to the customer remains unchanged. *See, e.g.*, Scottsdale, Ariz., Mun. Code § 47-163(a) (providing that entities shall not "construct, install, maintain or operate telecommunications facilities in any public highway" without a telecommunications franchise); Norfolk, Va., Mun. Code § 42-55 (precluding the installation of "telecommunications" facilities "without having first obtained a franchise from the city council permitting the same"). At best, reclassification will force Cox to undertake an analysis of each of these agreements and all relevant State and local laws. With franchises in 500 communities and 18 States, this analysis will impose a significant burden on Cox's resources that will not be recoverable if the Order is vacated. The Order states that the FCC "do[es] not believe that [its Order] would serve as justification for a state or local franchising authority to require a party . . . to obtain an additional or modified franchise," but it stops short of preempting such a requirement. Order ¶ 433 n.1285.

21. *State Regulatory Fees.* The Order's reclassification decision also will lead to efforts by state authorities to require that Cox pay new state regulatory fees, and these fees will not be readily recoverable in the event the Order is vacated. Although the Order purports to preempt the imposition of state universal service

fees, several state authorities have asserted that they view this preemption as invalid. As a result, Cox expects to be subject to demands to pay new state universal service fees in connection with Cox's provision of BIAS in various states. In addition to contributions to state universal service funds, Cox operates in a number of states that require telecommunications service providers to pay regulatory fees for a variety of other purposes, and will incur additional irreparable losses if these fees are applied to BIAS.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 1, 2015

Jennifer W. Hightower
Jennifer W. Hightower

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 MICHAEL JENSEN

DECLARATION OF MICHAEL JENSEN, GENERAL MANAGER OF BAGLEY PUBLIC UTILITIES

I, Michael Jensen, hereby state as follows:

1. I am General Manager at Bagley, MN Public Utilities ("Bagley Utilities").

2. Bagley Utilities is the not-for-profit public utility provider in the City of Bagley, Minnesota. Among other services, it offers residents broadband Internet access and cable television service. The primary mission of the utility is to offer broadband Internet access and cable television service at low rates.

3. Bagley Utilities' cable system offers broadband Internet access and cable television to about 450 total customers. Bagley Utilities does not offer telephone service.

4. Bagley Utilities has one employee who is primarily involved with its broadband Internet access and cable television service, seven full-time employees, and one part-time employee. None of the utility's employees works solely on regulatory compliance matters.

5. In the past three years, the company has invested approximately $400,000 in these networks, in reliance on the light-touch regulatory framework the FCC has to date applied to broadband Internet access and cable television service. Bagley Utilities would not have invested so much money if the industry

had been more heavily regulated, and will likely have to reduce its investment now that the FCC has applied heavier regulation to broadband Internet access service.

6. Bagley Utilities understands that the FCC's Open Internet Order ("Order") reclassified broadband Internet access providers like Bagley Utilities as common carriers under Title II of the Telecommunications Act of 1934. Bagley Utilities has never been regulated under Title II and has no experience complying with Title II requirements. Bagley Utilities' reclassification as a Title II carrier will thus impose significant new burdens on the utility. Bagley Utilities may have to hire additional employees to manage compliance, which will be particularly burdensome given the utility's small number of employees and the absence of any employees who work solely on regulatory compliance efforts.

Irreparable Harm from CPNI Requirements

7. Bagley Utilities understands that the FCC has used its authority to forbear, for now, from applying some regulations implementing Title II to broadband Internet access providers. But the FCC did not forbear from applying 47 U.S.C. § 222, which requires telecommunications providers to protect Customer Proprietary Network Information ("CPNI"). To the extent that forbearance does not entirely exempt Bagley Utilities from CPNI requirements, requiring compliance with those procedures will harm Bagley Utilities irreparably.

8. The Order states that § 222 imposes a duty on carriers to protect the confidentiality of their customers' CPNI. Order ¶ 53. To the extent this duty mandates that telecommunications carriers require customers to provide passwords during support calls or photo identification during in-store visits before disclosing CPNI, *see* 47 C.F.R. § 64.2010(b), (d), it would impose serious and irreparable harm on small carriers, like Bagley Utilities, that have strong personal relationships with their customers. Because of the utility's small customer base, and the fact that it is a local public utility dedicated to serving the City of Bagley, the utility's customers develop personal, informal relationships with the utility and its staff. Those close customer relationships create loyalty among the utility's customer base and ensure that city residents feel like they are getting the best possible value from their public utility.

9. Mandating that customers provide "authentication"—*e.g.*, passwords or other forms of identification—will irreparably harm these customer relationships. Many customers will view the new procedures as an affront to the close relationship the utility has developed with them over the years. Burdensome authentication procedures, moreover, will cause many customers to stop perceiving Bagley Utilities as a small-town utility provider that knows and is dedicated to the residents of the city. That is especially true for older customers, who may be

skeptical of authentication procedures that require disclosure of personal information.

10. Impairment of close customer relationships may cause Bagley Utilities to lose customers and market share. Bagley Utilities' customers choose their broadband Internet access and cable television service based not just on price, but also on their personal relationships with the utility. Personalized customer service helps Bagley Utilities attract and retain customers who might otherwise choose to subscribe to the services of a larger satellite television company.

11. Losses of goodwill and customers are irreparable: Relationships that are damaged are hard to repair; goodwill that is lost is hard to retrieve; and winning back customers who switch or discontinue service is a rarity in this industry. There would be no way for Bagley Utilities to make up for those losses once they are incurred.

12. The Order states that §222 imposes restrictions on carriers' ability to use, disclose, or permit access to customers' CPNI without their consent. Order ¶462. We understand that the FCC has previously interpreted §222 to prohibit disclosing CPNI to partners or contractors when the information may be used for marketing purposes, and has suggested that any sharing of CPNI with partners or contractors may put that information at a heightened risk of disclosure. Restrictions on such sharing of information with partners or contractors will

irreparably harm Bagley Utilities, which relies on a contractor to perform certain operational services.

13. For example, Bagley Utilities contracts with Momentum Telecom to configure and activate new service in customers' homes and monitor its network for outages. Momentum Telecom also serves as a second level of technical support.

14. To the extent that § 222 restricts how Bagley Utilities may share CPNI with contractors, Bagley Utilities will have to restructure its relationship with Momentum Telecom. For example, it may have to renegotiate its contracts with the company to ensure that CPNI is never used for marketing or sales purposes, and to ensure that Momentum Telecom takes necessary precautions to ensure the confidentiality of CPNI. And to the extent that Bagley Utilities concludes that sharing CPNI with Momentum Telecom creates a heightened risk of disclosure of CPNI, Bagley Utilities may be forced to handle certain operational activities itself.

15. Having to renegotiate, or forgo entirely, its arrangements with Momentum Telecom will irreparably harm Bagley Utilities. In particular, if Bagley Utilities must find other providers to work with, it may not be able to secure the same favorable terms it currently enjoys with Momentum Telecom. And if it must start handling operational tasks currently performed by Momentum Telecom itself, its ability to offer seamless customer service may be disrupted, for

example, by delays in installing new service or responding to outages. Bagley Utilities would never be able to recoup those expenses or the lost goodwill.

16. The FCC emphasized in the Order that §222 requires carriers to take reasonable precautions to protect CPNI. Order ¶53. It also offered, as a warning, the example of a telecommunications carrier that was found in violation of §222 for failing to put in place security measures for its computer databases containing CPNI. *Id.* Even though Bagley Utilities has never had any problem keeping customer information safe, §222 may require the utility to upgrade the security of its computer databases, which will irreparably harm the utility.

17. Bagley Utilities currently has a single, consolidated database that includes each customer's identifying information, such as name, phone number, and service address, as well as information the FCC might in the future construe as CPNI, such as geographic location, service plan, service level, and bandwidth usage. To isolate CPNI from other data and limit access, Bagley Utilities would have to upgrade its software systems and potentially move to a new, costly system. New, untested software may result in computer crashes or other bugs. Bagley Utilities will also have to re-train its employees in the new software. That does not merely impose financial harm; it also threatens goodwill. Transitions and revisions to computer systems are always imperfect at first. That may result in reduced service and support quality, which would erode customer goodwill.

18. Any harm to Bagley Utilities from upgrading its computer systems would be irreparable. Bagley Utilities would never be able to recoup the cost of new software. More importantly, if customer service suffers while the computer system is being upgraded, Bagley Utilities will never be able to recover the lost goodwill.

19. Bagley Utilities currently has no formal policies and procedures for handling CPNI. It will have to develop such policies from scratch and train its employees to follow them. That may require hiring additional personnel as well as the involvement of legal counsel. Worse still, because the FCC has yet to issue specific rules for how broadband Internet access providers should handle CPNI, the whole endeavor may be a wasted effort. Bagley Utilities must implement policies now—it cannot risk non-compliance—but may have to put in place entirely new policies when the FCC issues specific requirements. The utility would never be able to recoup the cost of these unnecessary efforts.

20. Bagley Utilities cannot spread the expenses of those compliance efforts over a large customer base so as to reduce the impact on individual bills. If Bagley Utilities had to hire just one new employee to manage compliance efforts—to say nothing of new hardware and software—that would require significant increases in the bills of the utility's 450 customers. To the extent Bagley Utilities cannot pass those costs along, the financial harm will be unrecoverable and

irreparable. To the extent Bagley Utilities attempts to pass those expenses through, it will lose some customers. And it may lose many customers to larger competitors who can spread compliance costs among a large base of customers, minimizing any impact on individual bills. Even if Bagley Utilities were eventually able to lower prices to prior levels, customers who have left once are unlikely to come back.

21. Bagley Utilities' status as a public utility, answerable to the City of Bagley Public Utilities Commission, increases the threat of irreparable harm from additional burdens under Title II. The Commission is extremely cost-sensitive. Higher compliance burdens from Title II regulation and higher prices could cause the Commission to decide that the utility can no longer fulfill its mission to provide low-cost service to residents, and require the utility to discontinue those services. In that event, even if the Commission could be convinced to reinstate service, the utility could not win back customers who switched to other providers.

22. The uncertainty regarding the extent and scope of Title II requirements on Bagley Utilities exacerbates the irreparable harm. Although the FCC has decided to forbear from certain specific CPNI regulatory requirements, it has also indicated that § 222 itself imposes certain duties in connection with CPNI. Order ¶¶ 462, 467. The FCC does not specify what requirements are necessary for statutory compliance. Bagley Utilities would face enormous uncertainty about

which rules it must obey and which rules are merely regulatory additions that have been forborne.

23. Any misjudgment by Bagley Utilities about the statute's requirements could have catastrophic consequences. Bagley Utilities understands that the FCC can impose large penalties—sometimes millions of dollars—for violations of CPNI rules. Bagley Utilities also understands that the FCC did not forbear from provisions of Title II that create a private right of action against carriers who violate other provisions of the statute. Bagley Utilities would face grave risks as a result. Even hiring counsel—which can be prohibitive for a small utility—cannot wholly insulate Bagley Utilities from those risks because there is so much uncertainty about what § 222 requires of broadband Internet access providers.

24. Bagley Utilities understands that the FCC has decided to forbear from applying other requirements under Title II. But the FCC has created enormous regulatory uncertainty in the process. For example, the Order forbears, "for now," from requiring broadband Internet access providers to contribute to the Universal Service Fund, but does not forbear from applying Title II provisions that presuppose a provider's contributions into the fund. Order ¶¶57-58, 488; *see* 48 U.S.C. § 254(h)(1)(A). The FCC also instructs providers to protect customer privacy without giving concrete guidance on how to do so. Order ¶¶462, 467, 468, 470. The resulting patchwork leaves Bagley Utilities uncertain about its new

obligations under Title II, and leaves the door open for the FCC to impose additional obligations and fees in the near future.

25. Uncertainty surrounding the FCC's forbearance from applying certain Title II provisions will jeopardize Bagley Utilities' upgrade plans. The utility is currently in the process of upgrading to Data Over Cable Service Interface Specification ("DOCSIS") 3.0, a new cable modem technology that will allow it to offer higher-speed service to its customers. Deploying such upgrades will require substantial upfront capital expenditures. Bagley Utilities will have to take on debt for the capital expenditures, and commit to servicing it with revenues remaining after paying for operating expenses and overhead, like compliance costs. To the extent that the new Title II rules create uncertainty about future compliance burdens, Bagley Utilities will have to err on the side of caution before committing to major long-term capital projects.

26. Harm from forgone upgrades and capital projects will be irreparable—for Bagley Utilities and its customers. For example, if Bagley Utilities delays rolling out higher-speed Internet access service, Bagley Utilities will give up opportunities to win new customers, or entice existing customers to purchase better services. It will never be able to calculate the cost of those forgone opportunities. And many customers will be deprived of those services.

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

April 30, 2015

Michael Jensen
18 Main Ave. S
Bagley, MN 56621

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 THOMAS J. LARSEN

DECLARATION OF THOMAS J. LARSEN

I, Thomas J. Larsen, hereby state as follows:

1. I am Group Vice President of Legal & Public Affairs at Mediacom Communications Corporation ("Mediacom"). In this role, I oversee all government relations and media relations functions for Mediacom, and interact extensively with Mediacom's accounting, customer service, engineering and technology, finance, legal, operations, and tax departments. My position requires me to have knowledge of the FCC's rules governing broadband Internet access service ("BIAS") and Mediacom's compliance with such regulations, and accordingly I have reviewed the Federal Communication Commission's ("FCC") recently adopted Order. *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (rel. Mar. 12, 2015) ("Order"). The Order's reclassification of BIAS will cause immediate, significant, and irreparable harm to Mediacom in a several respects.

2. Reclassification will, as described below, harm Mediacom in several specific ways. But the overarching harm to Mediacom stems from the tremendous uncertainty created by the Order. The Order imposes a complicated and vast new regulatory scheme under Title II of the Communications Act covering nearly every aspect of Mediacom's BIAS offering, and yet leaves many of the specifics of that regime unclear—for example, the meaning of the "just and reasonable" standard

under Sections 201 and 202 in the broadband context; the precise activities that will be prohibited under the Order's new "general conduct" standard; the extent of the FCC's forbearance from non-"ratemaking" rules adopted under Sections 201 and 202; and various other matters. This uncertainty will frustrate Mediacom's efforts to ensure compliance with this new regulatory regime now and in the future, and cast a shadow on its interactions with its customers, vendors, and business partners.

3. ***Burdens of Compliance with Sections 201 and 202 and Related Regulatory Requirements.*** The Order immediately will hamper Mediacom's ongoing commercial negotiations with transit providers and content delivery networks ("CDNs"), including those operated by website/online service providers and other so-called "edge" companies. For example, as a result of the increased capacity demand created by rising use of certain web applications, , Mediacom recently has been required to make significant network upgrades in order to provide a satisfactory experience to its customers. Mediacom is making investments in fiber connectivity in order to eliminate dependence on intermediate carriers that might lack adequate network capacity. Edge providers and other entities with which Mediacom exchanges traffic will be the primary beneficiaries of these improvements. Prior to the FCC's Order, these entities would have appropriately borne some of these costs under established industry practice, and

Mediacom would have been able to negotiate with these providers to facilitate the sharing of such costs to the ultimate benefit of consumers.

4. Absent a stay, the Order will embolden these providers to take a position in these negotiations that they should bear no cost burdens in expanding the capacity that their applications require. By establishing an amorphous reasonableness standard that applies only to Mediacom's side of any interconnection arrangements, *see* Order ¶¶ 194-206, while also threatening enforcement against any action by Mediacom that might construed as "impair[ing] or degrad[ing] lawful Internet traffic on the basis of content, application, or service," *id.* ¶ 119, the Order gives these providers undue leverage in negotiations over allocating the costs of delivering their content to Mediacom's customers. As a result, Mediacom will be required to accept less favorable commercial terms from these providers than it would obtain if the Order were not in effect. These unfavorable deals in turn will only create a precedent for later deals, and cause substantial, unrecoverable harm to Mediacom's business if the Order is not stayed.

5. ***Burdens of Compliance with Section 222.*** Mediacom also will face immediate, irreparable harm in undertaking to comply with new requirements imposed by Section 222 of the Communications Act of 1934, as amended (the "Act"). Under that section, Mediacom will be required "to protect the confidentiality of proprietary information of, and relating to, other

telecommunication carriers, equipment manufacturers, and customers" and to refrain certain uses of "customer proprietary network information" ("CPNI") without customer approval. 47 U.S.C. § 222.

6. The Order creates significant ambiguity as to the precise measures that Mediacom must take in order to comply with Section 222. On the one hand, the Order states that it is forbearing from applying the FCC's rules implementing Section 222 to BIAS providers. *See* Order ¶ 462. But at the same time, the FCC already has interpreted Section 222 in the context of voice telephony to require certain procedures as the "minimum" needed to comply with *statutory* obligations. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 64 (2007). These procedures include specific authentication protocols that must be followed before releasing CPNI through phone calls, the company's website, or in retail stores; "immediate" customer notification when changes are made to a customer's account; and mandatory law-enforcement and customer notification if there is a breach of CPNI. *See* 47 C.F.R. §§ 64.2010, 64.2011.

7. Given these ambiguities, Mediacom will have no choice but to implement new procedures to comply with Section 222, including updating

operating manuals, implementing necessary technical or software updates, and training its customer support staff. The substantial costs involved in taking these potentially unneeded steps cannot be recouped if the Order's reclassification is vacated.

8. ***Fees, Taxes, and Related Burdens Resulting from the FCC's Order.*** The Order will also result in immediate and irreparable harm for Mediacom related to its pole attachment agreements with various utility pole owners. To provide cable service and broadband Internet access service to its customers, Mediacom has entered into numerous pole attachment agreements with public utilities—*e.g.*, telephone, electric, gas, and water companies—that own utility poles throughout the company's footprint. These agreements allow Mediacom, for a fee, to attach equipment to utility poles in order to provide cable and broadband services to its customers. These arrangements have long been subject to regulation and such regulation will continue after the Order takes effect. *See* 47 U.S.C. § 224(f)(1) (requiring utilities to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it"); 47 U.S.C. § 224(b)(1) (granting the FCC the authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable" where a State does not do

so). But the Order's reclassification will cause Mediacom immediate, irreparable harms related to these agreements in two ways.

9. First, pursuant to FCC rules, Mediacom has an obligation to "notify pole owners upon offering telecommunications services." 47 C.F.R. § 1.1403(e). At a minimum, if the Order is not stayed, Mediacom's legal staff will be required to review each of its pole agreements and prepare hundreds of such notices to utilities. Moreover, many pole attachment agreements contain more demanding or specialized notice requirements that will be triggered by reclassification. This review process will be an enormous undertaking. Mediacom will be required to devote many hours of in-house staff time, hire outside counsel, and incur the substantial expense of reviewing each agreement and taking the required follow up actions. This burden on Mediacom's personnel and the outside legal expenses will be wasted if the Order is ultimately overturned on judicial review.

10. Second, reclassification will subject Mediacom to higher rates for its attachments. Some pole agreements specify the types of services Mediacom may offer over facilities attached to poles, and many do not include telecommunications service. Reclassification of BIAS as a telecommunications service thus will mean that Mediacom will be in breach of such agreements absent new terms authorizing telecommunications attachments and, in all likelihood, imposing related fee increases.

11. Other pole attachment agreements specify different rates for cable services and for telecommunications services. Section 224 of the Act provides different formulas for calculating "just and reasonable" rates for pole attachments for "cable service" and for "telecommunications services"; rates for "telecommunications services" are typically higher. *Compare* 47 U.S.C.§ 224(d) (cable service rate formula), *with id.* § 224(e) (telecommunications services rate formula); *see also* Order ¶ 481 (noting that the "cable rate" is the "lower rate" under the statutory formulas). Reclassification may automatically increase Mediacom's rates under any agreements that may follow these formulas. In addition, a significant number of Mediacom's systems are in rural areas where the difference between the cable and telecom rates is more significant than in urban areas.

12. Mediacom has two unworkable options for responding to these increases. Mediacom can pay the increased pole rates and then sue for refunds if the Order is ultimately reversed. Pole owners will undoubtedly contest such lawsuits and, at a minimum, Mediacom will be required to pursue costly utility-by-utility litigation to recoup the increased pole fees against hundreds of utilities across the country. Mediacom has been involved in this type of litigation in the past; it imposes substantial burdens on the company with no guarantee of ultimate success. Or Mediacom could delay payment of the increased rates until judicial

review of the Order is complete. But, in Mediacom's experience, when faced with this sort of "self-help," utilities often simply refuse to process new attachment permits, which would significantly impede Mediacom's deployment of broadband facilities.

13. As a result of the Order, Mediacom also may face new state and local taxes. For example, because the property tax assessment approach in many states differs between telecommunications and non-telecommunications services, the reclassification may cause states to change their assessment methodology with respect to Internet access services. While the Order states that the Internet Tax Freedom Act ("ITFA") bars states and municipalities from imposing "[t]axes on Internet access," Order ¶ 430, the ITFA does not apply to taxes "upon or measured by net income, capital stock, net worth, or property value." 47 U.S.C. § 151 note, ITFA, § 1105(10)(B). If, as a result of the Commission's reclassification of BIAS, Mediacom is required to pay higher state and local taxes, efforts to recover such taxes if the Order were to be overturned would be costly and potentially unsuccessful.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 1, 2015

Thomas J. Larsen