

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

DECLARATION OF HERBERT LONGWARE

DECLARATION OF HERBERT LONGWARE,
PRESIDENT OF CABLE COMMUNICATIONS OF WILLSBORO

I, Herbert Longware, hereby state as follows:

1. I am owner and President of Cable Communications of Willsboro ("CCW").

2. CCW is a small broadband Internet access service and cable television provider based in Willsboro, New York. Founded in 1988, CCW serves the towns of Willsboro and Essex, in New York. These towns are in upstate New York, overlooking Lake Champlain, and have a significant resort population.

3. CCW's cable system offers broadband Internet access and cable television service to about 700 customers. CCW does not offer telephone service.

4. CCW has two employees primarily involved with its broadband Internet access and cable television service business. None of CCW's employees works solely on regulatory compliance matters.

5. In the past decade, the company has invested over \$150,000 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. CCW 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. CCW understands that the FCC's Open Internet Order ("Order") reclassified broadband Internet access providers like CCW as common carriers under Title II of the Telecommunications Act of 1934. CCW has never been regulated under Title II and has no experience complying with Title II requirements. CCW's reclassification as a Title II carrier will thus impose significant new burdens on the company. CCW 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. CCW 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 CCW from CPNI requirements, requiring compliance with those procedures will harm CCW 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 CCW, that have strong personal relationships with their customers. The company prides itself on being extremely accessible, and has offices downtown right next to the Post Office so that customers can come in and talk to staff in person. As a result, CCW's customers develop personal, informal relationships with the company. In fact, our staff can recognize many of our customers just by their voices. Those close customer relationships create loyalty 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. CCW serves a close-knit rural community, and customers—especially those who drop by our office in person—may feel insulted if asked to prove their identities after years of doing business with the company. Complicated authentication procedures, moreover, will cause many customers to perceive CCW 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 CCW to lose customers and market share. CCW's customers choose their broadband Internet access and cable television service based not just on price, but also on their personal relationships with the company. Those relationships are benefits of CCW's service—ones not offered by the large satellite and telephone companies CCW competes with for business.

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 CCW to make up for those losses once they are incurred.

12. 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 CCW has never had any problem keeping customer information safe, §222 may require CCW to upgrade the security of its computer databases, which will irreparably harm the company.

13. CCW does not currently have a secure customer information database. It keeps customer 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, on the company's billing computer. To isolate CPNI from other data and limit access, CCW could have to abandon its existing software, which was not designed for such security, and move to an entirely new system. New, untested software may result in computer crashes or other bugs. CCW 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, which would erode customer goodwill.

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

15. Complying with §222's requirement to take precautions to protect CPNI may also force CCW to abandon its existing billing system. Currently, customers annually receive a "coupon book" that contains each customer's monthly invoices. The book and accompanying documentation includes CPNI, including the type of service to which the customer is subscribed. To the extent that its billing system may be inadequate under CPNI rules, the company will have to put into place a new billing system. Transitioning to a new billing system would

create a significant risk of disruption to customer service and billing, which could cost CCW goodwill.

16. Any loss of goodwill from customer service disruptions caused by migrating to a new billing system would cause CCW irreparable harm. Customer goodwill can quickly evaporate in the face of billing errors, and once lost it is difficult if not impossible to recover.

17. CCW 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. Because the FCC has yet to devise specific rules for how broadband Internet access providers should handle CPNI, moreover, the whole endeavor may be a wasted effort. CCW must implement policies now—it cannot risk non-compliance—but may have to put in place entirely new policies when the FCC determines specific requirements. CCW would never be able to recoup the cost of these unnecessary efforts.

18. CCW cannot spread the expenses of those compliance efforts over a large customer base so as to reduce the impact on individual bills. If CCW 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 700 customers. To the extent CCW cannot pass those costs along, the

financial harm will be unrecoverable and irreparable. To the extent CCW 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 CCW were eventually able to lower prices to prior levels, customers who have left once are unlikely to come back.

19. 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. CCW would face enormous uncertainty about which rules it must obey and which rules are merely regulatory additions that have been forborne.

20. Any misjudgment by CCW about the statute's requirements could have catastrophic consequences. CCW understands that the FCC can impose large penalties—sometimes millions of dollars—for violations of CPNI rules. CCW 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. CCW would face grave risks as a result. Even hiring counsel—which can be prohibitive for a small company—cannot wholly insulate CCW from those risks

because there is so much uncertainty about what §222 requires of broadband Internet access providers.

21. CCW 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 CCW 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.

22. Uncertainty surrounding the FCC’s forbearance from applying certain Title II provisions will jeopardize CCW’s upgrade plans. CCW is currently in the process of deploying Data Over Cable Service Interface Specification (“DOCSIS”) 3.0, a new technology for cable modems that will allow CCW to offer higher-speed broadband Internet access service to customers. Deployment of DOCSIS 3.0 will be expensive and require substantial upfront capital expenditures. CCW 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, CCW will have to err on the side of caution before committing to major long-term capital projects.

23. Harm from foregone upgrades and capital projects will be irreparable—for CCW and its customers. For example, if CCW delays rolling out DOCSIS 3.0 and the higher broadband speeds it makes possible, CCW will give up opportunities to win new customers, or entice existing customers to purchase higher tiers of service. 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

24. CCW understands that New York regulates pole attachment rates at the state level, rather than relying on federal formulas. CCW also understands that under the applicable formulas, it may pay higher rates if classified as a “telecommunications service” than if it is classified as a “cable service.”

25. CCW will be harmed by any increases in pole attachment rates. CCW has pole attachment agreements with New York State Electric & Gas, Verizon Communications, and Frontier Communications. As a rural operator, pole

attachment fees are a significant expense for CCW. Population densities in rural areas are low, and correspondingly the number of customers served per pole is low. Utilities charge CCW 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.

26. Harm to CCW from increased pole attachment fees will be irreparable. CCW will have to pay any increases—it cannot afford to risk litigation with large utilities by withholding fees. If CCW does not pass along increased fees to its customers, CCW will have a difficult time spending even more capital to properly maintain and repair its network. If CCW 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



Herbert Longware
3669 Essex Rd., Suite 1
Willsboro, NY 12966

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

DECLARATION OF STEVEN F. MORRIS

DECLARATION OF STEVEN F. MORRIS

I, Steven F. Morris, hereby state as follows:

1. I am Vice President and Associate General Counsel at the National Cable & Telecommunications Association (“NCTA”), the principal trade association for the U.S. cable industry. NCTA’s members include broadband Internet access service providers of all sizes and operating in all 50 states. In my position at NCTA, I routinely confer with and provide guidance to NCTA’s members regarding compliance with applicable statutory and regulatory requirements, including the rules adopted and other actions taken by the Federal Communications Commission (“FCC”) in the Order on Review. *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 role at NCTA requires me to develop a general understanding of the operations of and regulatory compliance measures taken by NCTA’s member companies as providers of broadband Internet access service.

2. Based on my review and analysis of the FCC’s Order, as well as my knowledge of the operations of and compliance measures in effect at or contemplated by NCTA’s member companies, and reports from member companies regarding actions they will take or refrain from taking as a result of the Order, 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 NCTA’s members. I describe several examples of such harms below.

3. As a general matter, the Order’s reclassification of broadband Internet access service as a “telecommunications service” will subject NCTA’s members, for the very first time with respect to that service, to a comprehensive and sweeping regulatory regime initially designed for telephone service under Title II of the Communications Act of 1934, as amended (the “Act”). NCTA’s members suddenly will face a host of new regulatory obligations, each of which will force them to undertake compliance measures that in many instances will require a significant commitment of resources that could not be recovered if the FCC’s reclassification decision were later vacated. Because the Order takes effect only 60 days after its publication in the Federal Register, NCTA’s members will be forced to implement these substantial compliance measures and incur the associated costs over a very short period of time. Making matters worse, the Order also leaves substantial ambiguity as to the precise nature of the legal obligations that flow from the FCC’s reclassification decision. Such ambiguity will compound the burdens faced by providers of broadband Internet access service in developing and

implementing systems, policies, and other measures to comply with these obligations, by (a) expanding the range of potential actions that must be considered to meet expansive and vague regulatory standards, and (b) chilling the pursuit of business initiatives that could be deemed inconsistent with such standards. The sudden imposition of these new, numerous, and ambiguous regulatory obligations thus will cause immediate and irreparable harms for NCTA's members, most notably with respect to the specific matters addressed herein.

4. ***Burdens of Compliance with Sections 201 and 202 and Related Regulatory Requirements.*** Most fundamentally, the Order's reclassification of broadband Internet access service as a "telecommunications service" will result in immediate and irreparable harms for NCTA's members stemming from the application of sweeping and vague common carrier obligations under Sections 201 and 202 of the Act.

5. Section 201 requires, among other things, that "[a]ll charges, practices, classifications, and regulations for and in connection with" a telecommunications service "shall be just and reasonable." 47 U.S.C. § 201(b). Section 202 prohibits providers of telecommunications services from "mak[ing] unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device," and from "giv[ing] any

undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.” *Id.* § 202(a). The Order provides virtually no guidance as to how these statutory requirements will be applied to broadband Internet access service—and in particular does not categorically identify any “charges” or “practices” that would be deemed unjust, unreasonable, or unreasonably discriminatory under Sections 201 and 202, nor does it specifically identify any charges or practices that are permissible. However, the Order *does* make clear that broadband providers alleged to have violated these provisions are subject to complaints before the FCC under Section 208, and to private suits for damages in court (including class actions) under Sections 206 and 207. *See* Order ¶ 453 (declining to forbear from Sections 206, 207, and 208).

6. As a result of the unprecedented application of these common carrier requirements to cable broadband services, at the moment the Order becomes effective, every “charge” and “practice” instituted or maintained by a broadband provider suddenly will become subject to challenge before the FCC and in federal court. Broadband providers thus will be obligated to devote substantial time and resources to evaluating all current “charges” and “practices” in order to determine whether any might be challenged as unjust, unreasonable, or unreasonably

discriminatory under these statutes, and must do so without any useful clarification from the FCC as to the meaning of those terms in the context of broadband Internet access service. The broad and uncertain reach of Sections 201 and 202—and the threat of legal challenges (even ones that are baseless under this legal framework) to broadband providers' charges and practices—also will force broadband providers to undertake costly compliance measures that ultimately may prove to be unnecessary, chill their efforts to offer new and innovative services or pricing plans, and sap resources that could be devoted to investment in broadband networks and other business initiatives. These harms will be particularly severe for NCTA's smaller members, which have very limited resources available to devote to expanded regulatory compliance.

7. Application of Sections 201 and 202 could create significant uncertainty surrounding the introduction of new services. For example, cable operators and other ISPs often introduce new services or faster tiers of service in limited geographic areas, rather than immediately offering such services to their entire customer base. ISPs may be hesitant to take such steps after the Order takes effect due to the risk that such services will trigger complaints or litigation from customers to whom such new services are not available for failure to provide service “upon reasonable request” under Section 201 or because the limited

availability of such services constitutes unreasonable discrimination pursuant to Section 202.

8. The Order imposes other broad and unclear requirements on cable broadband providers pursuant to Sections 201 and 202, subjecting NCTA's members to additional regulatory uncertainty that likewise will result in immediate, irreparable harm. Most notably, the Order imposes an amorphous prohibition on any and all ISP practices that, in the FCC's view, "unreasonably interfere with or unreasonably disadvantage" end users' access to content and content providers' access to end users, Order ¶¶ 133-53—thus immediately chilling ISPs' efforts to develop innovative and pro-consumer service offerings that might implicate this rule. The FCC identifies a variety of factors that would be considered in applying this standard, but these factors are sufficiently vague as to provide no meaningful guidance to ISPs. Similarly, the Order creates a threat of *ex post* regulation of broadband rates under the same ambiguous "just and reasonable" standard, *id.* ¶ 451, and accordingly frustrates ISPs' efforts to roll out innovative pricing plans that consumers desire. *See, e.g.,* Declaration of W. Thomas Simmons, Midcontinent Communications ("Simmons Decl.") ¶¶ 3-4.

9. In addition, the Order could be read as leaving in place an undefined set of regulations adopted under Sections 201 and 202 that do not relate to "ratemaking." Order ¶ 456; *but see id.* ¶ 443 n. 1317 (suggesting such rules do not

apply). Because the Commission has not provided a specific list of which rules apply or which rules have been forborne from, it is entirely unclear which of these rules will apply to ISPs going forward, NCTA's members will be forced to devote substantial resources to establish compliance mechanisms that may ultimately prove unnecessary.

10. The FCC's Order also will subject NCTA's members to immediate, irreparable harms in negotiating agreements with third parties under the restrictions imposed by Sections 201 and 202. For decades prior to the adoption of the Order, NCTA's members negotiated Internet interconnection arrangements in an unregulated, free-market setting, and market forces have long encouraged parties to reach fair and efficient arrangements to allocate the costs associated with exchanging Internet traffic. But the Order turns this longstanding free-market system upside down, by imposing a new requirement on ISPs—and only ISPs—not to engage in “unjust or unreasonable practices” in negotiating interconnection arrangements, without providing any indication as to what sorts of practices might be deemed unjust or unreasonable. *Id.* ¶ 203. The Order accordingly forces NCTA's members to negotiate interconnection arrangements subject to ambiguous and one-sided limitations—requiring ISPs to ensure that any terms they offer are “just and reasonable” while leaving ISPs with no recourse when counterparties propose terms that are unjust and unreasonable. In doing so, the Order invites

transit providers and content delivery networks (“CDNs”)—ISPs’ counter-parties in interconnection negotiations—to leverage the asymmetric regulatory regime to obtain preferential economic and non-economic terms. The risk and uncertainty faced by ISPs thus will significantly reduce their incentive and ability to resist unreasonable pricing and other demands from transit providers and CDNs in interconnection negotiations—thus forcing ISPs to accept less favorable commercial agreements than if the Order were stayed pending judicial review. And by inhibiting the ability of ISPs to recover the costs of interconnection from transit providers and CDNs, and encouraging transit providers and ISPs to place more onerous demands on ISPs, such a regime will cause collateral damage to consumers, who will be forced to shoulder a larger portion of ISPs’ network costs. *See, e.g.*, Declaration of Jennifer W. Hightower, Cox Communications, Inc. (“Hightower Decl.”) ¶¶ 4-5; Declaration of Thomas J. Larsen, Mediacom Communications Corp. (“Larsen Decl.”) ¶¶ 3-4; Declaration of Ronald da Silva, Time Warner Cable Inc. (“da Silva Decl.”) ¶¶ 3-8.

11. In addition, this new interconnection regime will require ISPs to devote significant resources not only to reviewing existing interconnection arrangements to determine whether they could be viewed as implicating this vague and one-sided standard, but also to defending against complaints from transit providers, CDNs, and others challenging existing terms and conditions under

Sections 201 and 202. Notably, even before the effective date of the Order, NCTA's members received demands from transit providers to renegotiate the terms of their current interconnection arrangements under the vague, one-sided standard imposed on ISPs in the Order. *See, e.g.,* da Silva Decl. ¶ 3. And Cogent has announced that it will 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. Thus, absent a stay, ISPs will face a barrage of threatened and actual legal challenges from transit providers, CDNs, and others as to the “reasonableness” of *existing* interconnection arrangements under Section 201 and 202—again imposing substantial costs on ISPs that cannot be recovered.

12. ***Burdens of Compliance with Section 222.*** The FCC's Order also will result in immediate, irreparable harms for NCTA's members related to compliance with new and ambiguous obligations under Section 222 of the Act. Section 222(c) subjects telecommunications carriers to various restrictions relating to the confidentiality of “customer proprietary network information” (“CPNI”)—defined 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(c), (h)(1)(A). The FCC has adopted several orders interpreting these statutory CPNI obligations in the voice context, and while the Order specifically forbore from applying the FCC’s “rules” implementing Section 222(c), *see* Order ¶ 462, it left open the possibility that the FCC’s prior interpretations of the statute would remain authoritative in the broadband context. NCTA’s members are subject to similar burdens and regulatory uncertainty with regard to Section 222(a), which requires providers to “protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers,” and Section 222(b), which limits the ability of providers to use “proprietary information from another carrier” for purposes other than “providing any telecommunications service.” 47 U.S.C. §§ 222(a), (b).

13. The application of Section 222 will impose a variety of immediate and irreparable harms on NCTA’s members if the Order is not stayed. Broadband providers’ efforts to safeguard CPNI will become subject to FCC enforcement action under the statute, which the FCC has applied aggressively without relying on its implementing rules. *See TerraCom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability and Forfeiture, 29 FCC Rcd 13325 (2014) (“*TerraCom NAL*”). Moreover, plaintiffs’ class action lawyers can immediately bring

complaints for purported violations of Section 222 pursuant to Sections 206 and 207 of the Act. Because Section 222's provisions have never previously applied to broadband Internet access and the FCC has identified no safe harbors, ISPs face a very real risk of liability for alleged failures to comply.

14. Relatedly, these new and ambiguous requirements under Section 222 will require NCTA members to dedicate significant resources to evaluating their current business practices, determining what changes are necessary under the statute, implementing such changes, and training personnel to abide by these requirements. Facing an immediate risk of enforcement, NCTA's members will have no choice but to treat the FCC's prior interpretations of Section 222 and even existing but forborn-from CPNI rules for telephone services as guideposts—thus forcing members to take measures that could be entirely misguided and unnecessary.

15. For example, NCTA's members will be compelled to reexamine and in some cases change their marketing practices to comport with rules in the telephone context governing the use of account information to market additional services to customers, given FCC precedent indicating that such restrictions are grounded directly in Section 222 itself (and not just in implementing rules). *See, e.g.,* Hightower Decl. ¶¶ 8-10; Simmons Decl. ¶¶ 9-11. Relatedly, NCTA's members will be forced to reevaluate current practices for authenticating

individuals who request CPNI by telephone, online, or in retail locations, so that members can ensure that they are protecting customer information from inappropriate disclosure in compliance with Section 222—and will face significant new costs and other burdens related to the development and implementation of new identity-verification systems and the training of staff in the proper use of these systems. *See, e.g.*, Hightower Decl. ¶ 7; Simmons Decl. ¶¶ 6-8; Larsen Decl. ¶ 6. NCTA’s members also will be required to devote substantial time and resources in attempting to discern what other obligations might flow from the sudden imposition of CPNI requirements designed for the telephone industry under Section 222, and in undertaking other business measures to comply with those obligations, including the overhauling of current systems and processes for seeking and obtaining customer consent, and the implementation of new monitoring and audit procedures. *See, e.g.*, Simmons Decl. ¶¶ 12-13; Larsen Decl. ¶¶ 6-7. NCTA’s members will not be able to recover these substantial compliance costs in the event the Order is vacated, and the impact will be especially severe on NCTA’s smaller members.

16. ***Burdens of Compliance with Sections 225, 255, and 251(a)(2).*** The FCC’s Order also will result in immediate, irreparable harms for NCTA’s members related to compliance with new and ambiguous disabilities access obligations under Section 225, 255, and 251(a)(2) of the Act. Section 225 addresses

“telecommunications relay services” (TRS), which enable hearing-disabled persons 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). The Order declined to forbear from applying Section 225 to broadband providers based on the notion that ISPs’ 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. Accordingly, NCTA’s members not only will be required to undertake thorough reevaluations of their network management practices to determine whether they might adversely affect TRS services, but also will be chilled in efforts to optimize network performance for fear of violating Section 225. *See, e.g.,* Hightower Decl. ¶ 11.

17. The Order’s application of Section 225 to broadband Internet access service also will inhibit ISPs’ ability to offer innovative, low-cost services and pricing models to consumers. As the Order acknowledges, service plans that include “usage allowances” or usage-based billing “may benefit consumers by offering them more choices over a greater range of service options” and price points. *Id.* ¶ 153. But in describing how the FCC will apply Section 225 to broadband, the Order indicates that service plans “limiting [users’] bandwidth

capacity” could violate ISPs’ obligations under the statute, based on a theory that usage limits “could compromise [users’] ability to obtain access” to TRS services, including Video Relay Service. *Id.* ¶ 468. Thus, the application of Section 225 will require ISPs to reevaluate and potentially eliminate existing offerings that involve usage allowances or usage-based billing, and will chill efforts to make such options available to consumers in the future. In both cases, ISPs will suffer irreparable harm from the loss of goodwill among consumers who prefer such lower-priced plans but now must move to more expensive plans with larger (or unlimited) usage allowances.

18. Sections 255 and 251(a)(2) of the Act require telecommunications service providers to make their services accessible to individual 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 (“CVAA”) to ensure that individual with disabilities may utilize advanced communication services. *See* Order ¶¶ 473-74. For example, the Order indicates that the rules adopted under Sections 255 and 251(a)(2) impose technical

requirements on the “equipment” used to provide telecommunications services that go beyond the CVAA’s requirements, including the mandatory pass-through of all “cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format, if readily achievable.” 47 C.F.R. § 6.9 (cited at Order ¶ 474 & n.1436). NCTA’s members will need to devote significant resources to determining whether existing systems and practices comport with these and other new requirements, and to upgrading those systems and updating those practices where necessary. NCTA’s members will not be able to recover these substantial compliance costs in the event the Order is vacated. *See, e.g.,* Hightower Decl. ¶ 12.

19. ***Fees, Taxes, and Related Burdens Resulting from the FCC’s Order.***

The Order’s reclassification of broadband Internet access service as a “telecommunications service” also will result in immediate, irreparable harms for NCTA’s members 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.

20. ***Pole Attachment Fees and Related Harms.*** When attaching broadband equipment to utility poles, cable broadband providers have long been permitted by law to pay pole owners pursuant to the rate formula applicable to

cable operators in Section 224(d) of the Act, *see NCTA v. Gulf Power Co.*, 534 U.S. 327 (2002)—rather than the rate formula applicable to telecommunications service providers in Section 224(e), which results in higher rates than the cable rate formula in almost all cases. *See* Order ¶ 481 (acknowledging that the “cable rate” is the “lower rate” under the statutory formulas); *see also* Petition for Reconsideration or Clarification of the National Cable & Telecommunications Association, COMPTTEL, and tw telecom, Inc., WC Docket No. 07-245, at 5-6, Attach. A (filed Jun. 8, 2011) (showing that applying the current rate formulas “would result in a telecom rate that is 70 percent higher than the cable rate for most poles”).

21. The FCC’s reclassification decision, once effective, may trigger obligations for NCTA’s members to notify pole owners upon offering telecommunications services—obligations that could implicate many thousands of pole agreements that NCTA’s members have throughout their service areas. Such notifications in turn will lead to demands by pole owners to pay the higher rate for telecommunications service providers, as the FCC’s Order recognizes in its repeated assertions that it hopes pole owners will simply forgo such increases. *See, e.g.*, Order ¶ 482 (expressing concern that pole owners will use the Order “as an excuse to increase pole attachment rates of cable operators providing broadband Internet access service”). Notably, the Order on Review does *not* preclude pole

owners from seeking higher pole attachment rates as a result of the FCC's reclassification decision. *See id.* (declining to grant forbearance to address increases in pole attachment rates). And the notion that pole owners will *voluntarily* hold back on this opportunity to seek increased revenues is unfounded—and potentially in violation of pole owners' fiduciary obligations to their own shareholders to maximize revenues. *See* Kery Murakami, *Net Neutrality Order Leads to Uncertainty Over Cable Pole Attachment Rates*, Communications Daily, Apr. 17, 2015, at 6-9 (citing an attorney “who represents a number of utilities” stating that the “order has created uncertainty” that pole owners will seize upon in seeking higher rates).

22. The actual and potential application of higher pole attachment rates as a result of the FCC's Order will cause immediate, irreparable harms for NCTA's members. Absent a stay, NCTA's members immediately will need to analyze many thousands of pole attachment agreements for terms and obligations that may be triggered by or relevant to the FCC's reclassification decision, including additional notice obligations, prohibitions on the use of pole attachments to provide telecommunications services without authorization, and automatic fee modifications. The process of reevaluating and complying with these arrangements will entail substantial time and resources; NCTA's largest member has over 700 pole attachment agreements on its own, and nearly all of its members

have multiple utility partners. NCTA's members also will need to devote substantial time and resources to analyzing all relevant state laws regulating pole attachment rates in order to determine the impact of the FCC's reclassification decision on pole attachments at the state level. The resources needed to undertake these review and compliance measures necessarily will be diverted from other business efforts—a particular burden on NCTA's smaller members. *See, e.g.,* Larsen Decl. ¶ 9.

23. Moreover, the Order inevitably will result in efforts by pole owners to collect higher pole attachment rates. These disputes not only will strain relationships between pole owners and attachers, but also will impose substantial financial and administrative burdens on NCTA's members, which will significantly interfere with the deployment of broadband facilities and other business initiatives. The inevitable payment of higher pole attachment rates likewise will sap resources that could be devoted to the deployment of broadband facilities and other business initiatives by reducing the capital available for such efforts, or will be passed on to consumers in the form of higher retail rates, thus resulting in a loss of customer goodwill. These delays in deployment and losses of goodwill cannot meaningfully be offset by some later monetary award. And if the FCC's reclassification decision is ultimately vacated, efforts by NCTA's members to recoup the excessive pole fees paid in the interim period will be costly, time-

consuming, and potentially unsuccessful, as pole owners will argue that any such payments under the rate for telecommunications services were proper while the Order was in effect. *See, e.g.*, Hightower Decl. ¶¶ 16-17; Larsen Decl. ¶¶ 12.

24. *State and Local Taxes.* The Order’s reclassification decision also will result in immediate, irreparable harms for NCTA’s members related to demands by state authorities for and payment of state and local taxes that have never previously applied to cable broadband service. Although the Order asserts that the Internet Tax Freedom Act (“ITFA”) precludes the imposition of new state and local taxes on Internet access, *see* Order ¶ 430, the ITFA expressly 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). Thus, once the Order becomes effective, NCTA members operating in jurisdictions that assess income or property taxes on “telecommunications service” providers (or an equivalent category) may immediately become subject to new payment obligations in connection with such taxes. For example, in several states where NCTA’s members operate, property taxes for telecommunications services are assessed centrally using a much less favorable methodology that taxes both tangible and intangible assets, whereas cable operators are generally locally assessed and pay property taxes only on their tangible assets. *See, e.g.*, Hightower Decl. ¶ 19; Larsen Decl. ¶ 13. The move to a centralized assessment of property taxes for NCTA’s members as a result of the

FCC's reclassification decision thus will directly and immediately lead to significantly higher tax burdens in many jurisdictions. *See, e.g.*, Hightower Decl. ¶ 19; Larsen Decl. ¶ 13.

25. Also, several of NCTA's members operate in jurisdictions in which the ITFA's prohibition on "taxes on Internet access" does not apply *at all*, including states that have "grandfathered" taxes on Internet access, such as Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. 47 U.S.C. § 151 note, ITFA, § 1105(10)(C). Accordingly, NCTA members operating in these jurisdictions will not be exempt from—and thus will be required to pay, for the first time—*any* taxes that apply to "telecommunications service" providers (or an equivalent category) in offering Internet access. *See, e.g.*, Simmons Decl. ¶¶ 16-17.

26. The actual and potential application of these taxes as a result of the FCC's Order will cause immediate, irreparable harms for NCTA's members. NCTA's members will be forced to devote significant time and resources to complying with or disputing the application of new state and local taxes, and these burdens will significantly interfere with the deployment of broadband facilities and other business initiatives. Moreover, any payment of these taxes will slow the deployment of broadband facilities and other business initiatives by reducing the capital available for such efforts (particularly for smaller providers), or will be

passed on to consumers in the form of higher retail rates, thus resulting in a loss of customer goodwill. These delays in deployment and losses of goodwill cannot meaningfully be offset by some later monetary award. And if the FCC's reclassification decision is ultimately vacated, efforts by NCTA's members to recoup additional taxes paid in the interim period will be costly, time-consuming, and potentially unsuccessful.

27. *Franchise Fees and Related Harms.* Cable franchise agreements with local or state governments frequently are written to authorize the use of a "cable system" as defined by federal law, and the definition of "cable system" under the Communications Act of 1934, as amended (the "Act"), excludes "a facility of a common carrier, which is subject, in whole or in part, to" Title II, except in certain instances. 47 U.S.C. § 522(7). A significant percentage of state and local franchising authorities impose separate franchising requirements on cable systems and telecommunications services. *See, e.g.*, D.C. Code Ann. § 34-2004 (providing authority to impose separate franchising obligations on providers of "telecommunications service"). The Order on Review does not expressly prohibit franchising authorities from seeking additional franchise fees from or imposing additional franchise requirements on cable broadband providers, asserting only that the FCC "do[es] not believe" such fees would be justified. Order ¶ 433 n.1285. State and local governments are not bound by the FCC's "beliefs," however, and

the FCC's recognition of the need to address this concern illustrates its acknowledgement that the problem is real. Accordingly, the FCC's reclassification decision inevitably will lead to disputes over whether cable operators must obtain separate franchises and pay new franchise fees for the portions of their networks used to provide broadband Internet access service. *See, e.g.*, Hightower Decl. ¶ 20.

28. The actual and potential application of these franchise fees and other requirements as a result of the FCC's Order will cause immediate, irreparable harms for NCTA's members. NCTA's members will face legal challenges to their facilities already deployed in the public rights-of-way, and also will be forced to devote significant time and resources to complying with or disputing the application of new franchise fees and requirements. These burdens will significantly interfere with the deployment of broadband facilities and other business initiatives. Moreover, any payment of these franchise fees will slow the deployment of broadband facilities and other business initiatives by reducing the capital available for such efforts (particularly for smaller providers), or will be passed on to consumers in the form of higher retail rates, thus resulting in a loss of customer goodwill. These delays in deployment and losses of goodwill cannot meaningfully be offset by some later monetary award. And if the FCC's reclassification decision is ultimately vacated, efforts by NCTA's members to

recoup additional franchise fees paid in the interim period will be costly, time-consuming, and potentially unsuccessful.

29. *State Regulatory Fees and Related Harms.* The Order's reclassification decision also will result in immediate, irreparable harms for NCTA's members related to demands by state authorities for and payment of state regulatory fees related to the provision of telecommunications services that have never previously applied to cable broadband service. Some states, such as South Carolina and Vermont, assess both intrastate and interstate telecommunications service revenues for purposes of collecting contributions to their respective state universal service funds. *See Office of Regulatory Staff v. S.C. Pub. Serv. Comm'n*, 374 S.C. 46 (S.C. 2007) (upholding state universal service contribution requirements assessed on interstate revenues); Vermont Public Service Board, *Interpretation of Act No. 197 of 1994 Relating to the Vermont Universal Service Fund*, §§ 201, 301, available at <http://psb.vermont.gov/sites/psb/files/projects/vusf/FirstRuling.pdf> (interpreting Vermont law as authorizing assessment of state universal service contributions on various "interstate and international" services). State authorities have demonstrated that they have an interest in assessing such fees and have suggested that the FCC's preemption authority may be limited. *See Steve Zind, Under New FCC Standard, 30 Percent of Vermonters Now Lack Broadband*, Vermont Public Radio, Feb. 3, 2015, available at

<http://digital.vpr.net/post/under-new-fcc-standard-30-percent-vermonters-now-lack-broadband> (quoting the Executive Director of the Vermont Telecommunications Authority as stating that reclassification of broadband will give Vermont “the ability to assess a universal service fee on broadband services”); *see also* Letter of the National Association of Regulatory Utility Commissioners to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, at 7 n.13 (filed Nov. 6, 2014) (asserting that “Congress reserved State authority to impose universal service” obligations on telecommunications service providers notwithstanding federal preemption authority). Accordingly, NCTA members providing broadband Internet access service in those states suddenly will be subject to demands to pay substantial new regulatory fees to support state universal service funds. *See, e.g.*, Hightower Decl. ¶ 21.

30. The actual and potential application of these state regulatory fees as a result of the FCC’s Order will cause immediate, irreparable harms for NCTA’s members. NCTA’s members will be forced to devote significant time and resources to complying with or disputing state efforts to impose regulatory fees that are subject to preemption under the Order, and these burdens will significantly interfere with the deployment of broadband facilities and other business initiatives. Moreover, any payment of these fees will slow the deployment of broadband facilities and other business initiatives by reducing the capital available for such

efforts (particularly for smaller providers), or will be passed on to consumers in the form of higher retail rates, thus resulting in a loss of customer goodwill. These delays in deployment and losses of goodwill cannot meaningfully be offset by some later monetary award. And if the FCC's reclassification decision is ultimately vacated, efforts by NCTA's members to recoup additional regulatory fees paid in the interim period will be costly, time-consuming, 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



Steven F. Morris

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

DECLARATION OF STEVEN NEU



**DECLARATION OF STEVEN NEU,
OWNER OF MOUNTAIN ZONE BROADBAND**

I, Steven Neu, hereby state as follows:

1. I am owner and manager of Mountain Zone Broadband (“Mountain Zone”).

2. Mountain Zone is a small broadband Internet access service and cable television provider based in Alpine, Texas. Founded in 1957, Mountain Zone serves rural counties in west Texas. The company has systems in Brewster, Presidio, Jeff Davis, Reeves, Culberson, and Terrell Counties. The population density in the counties Mountain Zone serves is just 1.7 people per square mile.

3. Mountain Zone’s seven cable and two wireless networks offer broadband Internet access and cable television service to about 2,139 customers. Mountain Zone does not offer telephone service.

4. Mountain Zone has two employees who are primarily involved with its broadband Internet access and cable television service, and six total employees. None of Mountain Zone’s employees works solely on regulatory compliance matters.

5. In the past decade, the company has invested in excess of \$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. Mountain Zone 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. Mountain Zone understands that the FCC's Open Internet Order ("Order") reclassified broadband Internet access providers like Mountain Zone as common carriers under Title II of the Telecommunications Act of 1934. Mountain Zone has never been regulated under Title II and has no experience complying with Title II requirements. Mountain Zone's reclassification as a Title II carrier will thus impose significant new burdens on the company. Mountain Zone 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. Mountain Zone 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 Mountain Zone from CPNI requirements, requiring compliance with those procedures will harm Mountain Zone 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 Mountain Zone, that have strong personal relationships with their customers. Because Mountain Zone has a small customer base, and offers responsive service—including letting customers call service technicians directly—Mountain Zone's customers develop personal, informal relationships with the company and its staff. We personally know almost every one of our customers. Those close customer relationships create loyalty 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 imposition, inconsistent with the close relationships the company has built with them over the years. Complicated authentication procedures, moreover, will cause many customers to perceive Mountain Zone 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 Mountain Zone to lose customers and market share. Mountain Zone's customers choose their broadband Internet access and cable television service based not just on price, but also on their personal relationships with the company. For example, Mountain Zone competes with a Title II carrier in its service area that subjects customers to a rigorous procedure to sign up for service. That process frustrates many people, who instead choose to become customers of our 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 Mountain Zone to make up for those losses once they are incurred.

12. 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 Mountain Zone has never had any problem keeping

customer information safe, §222 may require Mountain Zone to upgrade the security of its computer databases, which will irreparably harm the company.

13. Mountain Zone 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, Mountain Zone 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. Mountain Zone 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, which would erode customer goodwill.

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

15. Mountain Zone 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 devise specific rules for how broadband Internet access providers should handle CPNI, the whole endeavor may be a wasted effort. Mountain Zone must implement policies now—it cannot risk non-compliance—but may have to put in place entirely new policies when the FCC determines specific requirements. Mountain Zone would never be able to recoup the cost of these unnecessary efforts.

16. Mountain Zone cannot spread the expenses of those compliance efforts over a large customer base so as to reduce the impact on individual bills. If Mountain Zone 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 2,139 customers. To the extent Mountain Zone cannot pass those costs along, the financial harm will be unrecoverable and irreparable. To the extent Mountain Zone 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 Mountain Zone were eventually able to lower prices to prior levels, customers who have left once are unlikely to come back.

17. 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. Mountain Zone would face enormous uncertainty about which rules it must obey and which rules are merely regulatory additions that have been forborne.

18. Any misjudgment by Mountain Zone about the statute's requirements could have catastrophic consequences. Mountain Zone understands that the FCC can impose large penalties—sometimes millions of dollars—for violations of CPNI rules. Mountain Zone 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. Mountain Zone would face grave risks as a result. Even hiring counsel—which can be prohibitive for a small company—cannot wholly insulate Mountain Zone from those risks because there is so much uncertainty about what §222 requires of broadband Internet access providers.

19. Mountain Zone 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. *Id.* ¶¶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 Mountain Zone 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.

20. Uncertainty surrounding the FCC's forbearance from applying certain Title II provisions will jeopardize Mountain Zone's upgrade plans. Mountain Zone is constantly upgrading the circuits that connect its network to the broader Internet. That is an extremely expensive proposition in rural areas, like the counties Mountain Zone serves. To the extent that the new Title II rules create uncertainty about future compliance burdens, Mountain Zone will have to err on the side of caution before committing to major long-term capital projects.

21. Harm from forgone upgrades and capital projects will be irreparable—for Mountain Zone and its customers. For example, if Mountain Zone delays upgrading the circuits that connect its network to the broader Internet, Mountain Zone will give up opportunities to win new customers and frustrate its existing customers that demand more bandwidth for their online activities. 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

22. Mountain Zone understands that Texas does not regulate pole attachment rates at the state level, and that utilities calculate the pole attachment rates Mountain Zone pays based on federal formulas. Mountain Zone 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.

23. Mountain Zone will be harmed by any increases in pole attachment rates. Mountain Zone has pole attachment agreements with American Electric Power and El Paso Electric. If those utilities raised Mountain Zone’s rates to the level they apply to telecommunication services, the company would incur significant additional expenses. Mountain Zone anticipates a high probability of such rate increases, because utilities in Texas requested such increases recently.

24. Increased pole attachment rates will have a particularly harmful effect on operators in rural areas, like Mountain Zone. Population densities in rural areas are low, and correspondingly the number of customers served per pole is low. Utilities charge Mountain Zone 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.

25. Harm to Mountain Zone from increased pole attachment fees will be irreparable. If Mountain Zone does not pass along increased fees to its customers, Mountain Zone will have a difficult time spending even more capital to properly maintain and repair its network. If Mountain Zone 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.

April 30, 2015



Steven Neu
307 E Ave. E
Alpine, TX 79830