

JAN 16 2018

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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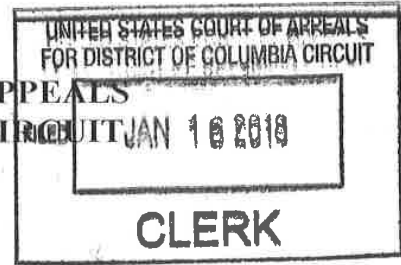
State of New York, State of California, State of
Connecticut, State of Delaware, State of
Hawaii, State of Illinois, State of Iowa,
Commonwealth of Kentucky, State of Maine,
State of Maryland, Commonwealth of
Massachusetts, State of Minnesota, State of
Mississippi, State of New Mexico, State of
North Carolina, State of Oregon,
Commonwealth of Pennsylvania, State of
Rhode Island, State of Vermont,
Commonwealth of Virginia, State of
Washington, and the District of Columbia

Petitioners,

v.

Federal Communications Commission, and
United States of America,

Respondents.



18-1013

Case No. 17-_____

PROTECTIVE PETITION FOR REVIEW

Pursuant to Federal Rule of Appellate Procedure 15, Circuit Rule 15,
5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, the
States of New York, California, Connecticut, Delaware, Hawaii, Illinois,
Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi,
New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island,
Vermont, Virginia, Washington, and the District of Columbia (State
Petitioners) petition this Court for review of the order of the Federal
Communications Commission (FCC) captioned *Restoring Internet Freedom*,

Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, FCC 17-166 (released on Jan. 4, 2018) (“Order”). A copy of the full text of the Order is attached as Exhibit 1.

Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

State Petitioners seek a determination by this Court that the Order is arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; violates federal law, including, but not limited to, the Constitution, the Communications Act of 1934, as amended, and FCC regulations promulgated thereunder; conflicts with the notice-and-comment rulemaking requirements of 5 U.S.C. § 553; and is otherwise contrary to law.

State Petitioners are filing this protective petition for review out of an abundance of caution and to preserve the right to be included in the judicial lottery procedure under 28 U.S.C. § 2112(a). Although State Petitioners believe that the Order, including the Declaratory Ruling that is part of the Order, should be deemed final on the date that it is published in the Federal Register, *see* Order ¶ 359, 47 C.F.R. §§ 1.13 and 1.4(b)(1), State Petitioners recognize the possibility that the Order may be construed to be final on the date that it was issued and wish to be included in the judicial lottery, should it be held prematurely.

Accordingly, to the extent that this protective petition for review is timely filed, State Petitioners respectfully request that this Court hold unlawful, vacate, enjoin, and set aside the Order, and that it provide such additional relief as may be appropriate.

Dated: January 16, 2018

Respectfully Submitted,

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL



STEVEN C. WU
Deputy Solicitor General
ESTER MURDUKHAYEVA
Assistant Solicitor General
KATHLEEN MCGEE
Chief, Bureau of Internet &
Technology
NOAH STEIN
JORDAN ADLER
Assistant Attorneys General
Bureau of Internet & Technology
120 Broadway
New York, NY 10271
(212) 416-6312

FOR THE STATE OF
CALIFORNIA

XAVIER BECERRA
ATTORNEY GENERAL

Sarah E. Kurtz/EM
SARAH E. KURTZ

Deputy Attorney General
NICKLAS A. AKERS
Senior Assistant Attorney General
MICHAEL E. ELISOFFON
STACEY D. SCHESSER
Supervising Deputy Attorneys
General
DANIEL OSBORN
Deputy Attorney General
California Department of Justice
Office of the Attorney General
Division of Public Rights
Consumer Law Section
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 703-5562

FOR THE STATE OF
DELAWARE

MATTHEW P. DENN
ATTORNEY GENERAL

Christian Douglas Wright/EM
CHRISTIAN DOUGLAS WRIGHT
Director of Consumer Protection
JILLIAN A. LAZAR
Deputy Attorney General
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8600

FOR THE STATE OF
CONNECTICUT

GEORGE JEPSEN
ATTORNEY GENERAL

Jonathan J. Blake/EM
JONATHAN J. BLAKE

JOHN S. WRIGHT
MICHAEL C. WERTHEIMER
Assistant Attorneys General
Attorney General's Office
110 Sherman Street
Hartford, CT 06105
(860) 808-5400

FOR THE DISTRICT OF
COLUMBIA

KARL A. RACINE
ATTORNEY GENERAL

L. Ali Khan
LOREN L. ALIKHAN
Acting Solicitor General
Office of the Solicitor General
Office of the Attorney General
441 4th Street, NW, Suite 600 South
Washington, D.C. 20001
(202) 727-6287

FOR THE STATE OF HAWAII

DOUGLAS S. CHIN
ATTORNEY GENERAL

Clyde J. Wadsworth/EM
CLYDE J. WADSWORTH

Solicitor General
BRYAN C. YEE
MANA MORIARTY
Deputy Attorneys General
425 Queen Street
Honolulu, HI 96813
(808) 586-1180

FOR THE STATE OF ILLINOIS

LISA MADIGAN
ATTORNEY GENERAL

David Franklin/EM
DAVID FRANKLIN

Solicitor General
BRETT E. LEGNER
Deputy Solicitor General
SUSAN L. SATTER
Public Utilities Policy Counsel
ANNA P. CRANE
Public Interest Counsel
CHRISTOPHER KIM
Assistant Attorney General
100 West Randolph Street, 12th
Floor
Chicago, IL 60601
(312) 814-5028

FOR THE STATE OF
IOWA

THOMAS J. MILLER
ATTORNEY GENERAL

Benjamin E. Bellus/em
BENJAMIN E. BELLUS

Assistant Attorney General
NATHAN BLAKE
Deputy Attorney General
Consumer Protection Division
1305 East Walnut Street, Second
Floor
Des Moines, IA 50319
(515) 281-5926

FOR THE COMMONWEALTH OF
KENTUCKY

ANDY BESHEAR
ATTORNEY GENERAL

Andy Beshear/em
ANDY BESHEAR

Attorney General
J. MICHAEL BROWN
Deputy Attorney General
LA TASHA BUCKNER
Assistant Deputy Attorney General
S. TRAVIS MAYO
Executive Director
Office of Civil and Environmental
Law
MATT JAMES
Assistant Attorney General
Office of the Attorney General
700 Capitol Avenue
Capitol Building, Suite 118
Frankfort, Kentucky 40601-3449
(502) 696-5300

FOR THE COMMONWEALTH
OF MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL

Jared Rinehimer/EM
JARED RINEHIMER

Assistant Attorney General
Consumer Protection Division
TIMOTHY REPPUCCI
Assistant Attorney General
Energy and Telecommunications
Division
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200

FOR THE STATE OF
MAINE

JANET T. MILLS
ATTORNEY GENERAL

Brendan O'Neil/EM
BRENDAN O'NEIL

Assistant Attorney General
Office of the Attorney General of
Maine
6 State House Station
Augusta, Maine 04333
(207) 626-8842

FOR THE STATE OF
MARYLAND

BRIAN E. FROSH
ATTORNEY GENERAL

Richard L. Trumka, Jr./EM
RICHARD L. TRUMKA, JR.

STEVEN M. SAKAMOTO-
WENGEL
LEAH TULIN
Assistant Attorneys General
Office of the Attorney General
200 St. Paul Place, 16th floor
Baltimore, MD 21202
(410) 576-6957

FOR THE STATE OF
MINNESOTA

LORI SWANSON
ATTORNEY GENERAL

Katherine T. Kelly/EM
KATHERINE T. KELLY

Assistant Attorney General
JAMES W. CANADAY
Deputy Attorney General
JASON PLEGGENKUHLE
Manager, Civil Division
JOSEPH C. MEYER
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 757-1308

FOR THE STATE OF
MISSISSIPPI

JIM HOOD
ATTORNEY GENERAL

Crystal Utley Secoy/EM
CRYSTAL UTLEY SECOY

Consumer Protection Division
Mississippi Attorney General's
Office
Post Office Box 22947
Jackson, Mississippi 39225
(601) 359-4213

FOR THE STATE OF NEW
MEXICO

HECTOR BALDERAS
ATTORNEY GENERAL

Tania Maestas/EM
TANIA MAESTAS

Deputy Attorney General
408 Galiseto
Santa Fe, NM 87501
(505) 490-4060

FOR THE STATE OF NORTH
CAROLINA

JOSHUA H. STEIN
ATTORNEY GENERAL

Kevin Anderson/EM
KEVIN ANDERSON

Senior Deputy Attorney General
Director, Consumer Protection
Division

SRIPRIYA NARASIMHAN
Deputy General Counsel
114 West Edenton Street
Raleigh, NC 27603
(919) 716-6000

FOR THE STATE OF
OREGON

ELLEN F. ROSENBLUM
ATTORNEY GENERAL

Keith L. Kutler/EM
KEITH L. KUTLER

Senior Assistant Attorney General
BENJAMIN GUTMAN
Solicitor General

ANDREW SHULL
Senior Assistant Attorney General
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301
(503) 378-4402

FOR THE COMMONWEALTH OF
PENNSYLVANIA

JOSH SHAPIRO
ATTORNEY GENERAL

Michael J. Fischer/EM

MICHAEL J. FISCHER
Chief Deputy Attorney General
JOHN M. ABEL
Senior Deputy Attorney General
BRANDON J. BINGLE
Deputy Attorney General
Office of Attorney General
Strawberry Square
Harrisburg, PA 17120
(215) 560-2171

FOR THE STATE OF RHODE
ISLAND

PETER F. KILMARTIN
ATTORNEY GENERAL

Michael W. Field/EM

MICHAEL W. FIELD
Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400

FOR THE STATE OF
VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

Christopher J. Curtis/EM

CHRISTOPHER J. CURTIS
Chief, Public Protection Division
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5586

FOR THE COMMONWEALTH OF
VIRGINIA

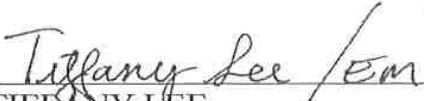
MARK R. HERRING
ATTORNEY GENERAL

Samuel T. Towell/EM

SAMUEL T. TOWELL
Deputy Attorney General, Civil
Litigation
MARK S. KUBIAK
Assistant Attorney General, Unit
Manager
Barbara Johns Building
202 N. Ninth Street
Richmond, VA 23219
(804) 786-6731

FOR THE STATE OF
WASHINGTON

ROBERT W. FERGUSON
ATTORNEY GENERAL


TIFFANY LEE

Assistant Attorneys General
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
(206) 464-6098

CERTIFICATE OF SERVICE

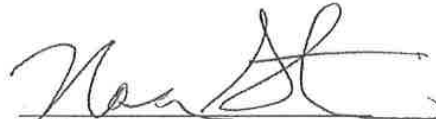
I hereby certify that, on January 16, 2018, I caused one copy of the foregoing Protective Petition for Review to be served on the following counsel by the manner indicated:

By First Class Mail and Electronic Mail

Thomas M. Johnson, Jr.
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
LitigationNotice@fcc.gov

By First Class Mail

Hon. Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530



NOAH STEIN